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Contents

Federal Register

Vol. 81, No. 221

Wednesday, November 16, 2016

Agriculture Department

See Food Safety and Inspection Service

Alcohol, Tobacco, Firearms, and Explosives Bureau

NOTICES

Commerce in Explosives:

2016 Annual List of Explosive Materials, 80684–80686

Bureau of Safety and Environmental Enforcement

RULES

Oil and Gas and Sulfur Operations on the Outer

Continental Shelf:

Decommissioning Costs for Pipelines, 80587–80592

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Sulfur Operations, 80679–80682

Census Bureau

NOTICES

Charter Renewals:

Federal Economic Statistics Advisory Committee, 80632–80633

Meetings:

Federal Economic Statistics Advisory Committee, 80633

Centers for Disease Control and Prevention

NOTICES

Meetings:

Advisory Council for the Elimination of Tuberculosis, 80665

Board of Scientific Counselors, Office of Public Health Preparedness and Response, 80664–80665

Centers for Medicare & Medicaid Services

RULES

Medicare and Medicaid Programs:

Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers; Correction, 80594

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 80665–80666

Coast Guard

PROPOSED RULES

Safety Zones:

Vigor Industrial Drydock Movement, West Duwamish Waterway; Seattle, WA, 80621–80624

Commerce Department

See Census Bureau

See Foreign-Trade Zones Board

See International Trade Administration

See National Oceanic and Atmospheric Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 80633–80634

Commodity Futures Trading Commission

RULES

Chief Compliance Officer Annual Report Requirements for Futures Commission Merchants, Swap Dealers, and Major Swap Participants: Filing Dates, 80563–80567

Comptroller of the Currency

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of \$50 Billion or More, 80717–80719

Conversion Applications; Approvals:

Community Savings, Caldwell, OH, 80719

Defense Department

NOTICES

Meetings:

Judicial Proceedings Since Fiscal Year 2012 Amendments Panel, 80650–80651

Education Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Common Core of Data School-Level Finance Survey 2016–2018, 80651–80652

Energy Department

See Federal Energy Regulatory Commission

PROPOSED RULES

Safeguarding of Restricted Data by Access Permittees, 80612–80618

NOTICES

Authorizations to Export and Import Liquefied Natural Gas: Bluewater Gas Storage, LLC, et al., 80652–80653

Meetings:

Environmental Management Site-Specific Advisory Board, Hanford, 80653–80654

Proposed Subsequent Arrangement, 80653

Environmental Protection Agency

RULES

Allocations of Cross-State Air Pollution Rule Allowances from New Unit Set-Asides for the 2016 Compliance Year, 80593

PROPOSED RULES

Addition of Nonylphenol Ethoxylates Category:

Community Right-to-Know Toxic Chemical Release Reporting, 80624–80629

Renewables Enhancement and Growth Support Rule, 80828–80980

NOTICES

Certain New Chemicals:

Statements of Findings for October 2016, 80662–80664

Environmental Impact Statements; Availability, etc.:

Weekly Receipts, 80664

Federal Aviation Administration**PROPOSED RULES**

Establishment of Class E Airspace:

Denver, CO, 80620–80621

Wessington Springs, SD, 80618–80620

Federal Communications Commission**RULES**

Telephone Consumer Protection Act, 80594–80608

Federal Election Commission**NOTICES**

Meetings; Sunshine Act, 80664

Federal Emergency Management Agency**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Preparedness Grants—Tribal Homeland Security Grant Program, 80675–80676

Preparedness Grants—Urban Areas Security Initiative Nonprofit Security Grant Program, 80675

Federal Energy Regulatory Commission**NOTICES**

Applications:

Kaukauna Utilities, 80662

South Carolina Public Service Authority, 80656–80657

Texas Eastern Transmission, LP, 80658–80659

Combined Filings, 80654–80656, 80659–80660

Environmental Impact Statements; Availability, etc.:

PennEast Pipeline Company, LLC, 80654

Initial Market-Based Rate Filings Including Requests for

Blanket Section 204 Authorizations:

SR South Loving LLC, 80657–80658

License Transfer Applications:

Essential Power Massachusetts, LLC, Nautilus Hydro, LLC, 80656

Meetings:

Kinetica Energy Express, LLC; Technical Conference, 80654

Meetings; Sunshine Act, 80660–80662

Refund Effective Dates:

Central Hudson Gas and Electric Corp., Tucson Electric Power Co., UNS Electric, Inc., UniSource Energy Development Co., 80660

Requests for Waivers:

Tesoro Great Plains Gathering and Marketing LLC, 80655–80656

Federal Highway Administration**NOTICES**

Fixing America's Surface Transportation Act:

Study on Performance of Bridges, 80712–80713

Surface Transportation Project Delivery Program:

Renewal Package from the State of California; Proposed Memorandum of Understanding Assigning Environmental Responsibilities to the State, 80708–80710

State of Utah; Application, 80710–80712

Federal Railroad Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 80714–80716

Positive Train Control Safety Plan Approval and System Certification:

National Railroad Passenger Corporation—Amtrak, 80713–80714

Food and Drug Administration**RULES**

Refuse to Accept Procedures for Premarket Tobacco Product Submissions; Withdrawal, 80567

NOTICES

Site Visit Training Program for Office of Pharmaceutical Quality Staff, 80666–80667

Food Safety and Inspection Service**NOTICES**

Nutrition Facts Label Compliance, 80631–80632

Foreign-Trade Zones Board**NOTICES**

Proposed Production Activities:

voestalpine Texas, LLC, Foreign-Trade Zone 122, Corpus Christi, TX, 80634–80635

Subzone Applications:

Aceros de America, Inc., Foreign-Trade Zone 61, San Juan, PR, 80635

Subzone Approvals:

ASICS America Corp., Byhalia, MS, 80635

Subzone Expansion; Applications:

Huntington Ingalls Industries, Subzone 92B, Pascagoula, MS, 80635

Health and Human Services Department*See* Centers for Disease Control and Prevention*See* Centers for Medicare & Medicaid Services*See* Food and Drug Administration*See* National Institutes of Health**Historic Preservation, Advisory Council****NOTICES**

Policy Statements:

Historic Preservation and Community Revitalization, 80669–80675

Homeland Security Department*See* Coast Guard*See* Federal Emergency Management Agency**NOTICES**

Meetings:

Homeland Security Advisory Council, 80677–80678

The President's National Security Telecommunications Advisory Committee, 80676–80677

Housing and Urban Development Department**RULES**

Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in the Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs, 80567–80587

Violence Against Women Reauthorization Act of 2013:

Implementation in HUD Housing Programs, 80724–80825

NOTICES

Small Area Fair Market Rents in Housing Choice Voucher Program Values for Selection Criteria and Metropolitan Areas Subject to Small Area Fair Market Rents, 80678–80679

Interior Department*See* Bureau of Safety and Environmental Enforcement*See* Surface Mining Reclamation and Enforcement Office**Internal Revenue Service****RULES**

Section 707 Regarding Disguised Sales, Generally; Correction, 80587

International Trade Administration**NOTICES**

Antidumping or Countervailing Duty Investigations, Orders, or Reviews:

Carbon and Certain Alloy Steel Wire Rod from Mexico, 80638–80640

Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 4.5 Inches) from Japan, 80635–80637

Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4.5 Inches) from Japan, 80640–80641

Sunset Reviews, 80637–80638

Export Trade Certificates of Review, 80637

Trade Missions:

Smart Technologies; Taiwan and Hong Kong with an Optional Stop in Guangzhou China, 80641–80643

International Trade Commission**NOTICES**

Investigations; Determinations, Modifications, and Rulings, etc.:

Welded Stainless Steel Pressure Pipe from India, 80683

Recent Trends in U.S. Services Trade, 2017 Annual Report, 80682–80683

Justice Department

See Alcohol, Tobacco, Firearms, and Explosives Bureau

NOTICES

Proposed Consent Decrees under CERCLA, 80686

Legal Services Corporation**NOTICES**

Meetings; Sunshine Act, 80686–80687

National Institutes of Health**NOTICES**

Meetings:

Center for Scientific Review, 80667–80668

National Institute of Dental and Craniofacial Research, 80668

National Institutes of Health, 80667

National Oceanic and Atmospheric Administration**RULES**

Fisheries of the Exclusive Economic Zone Off Alaska:

Pacific Cod in the Bering Sea and Aleutian Islands Management Area, 80610–80611

PROPOSED RULES

Protection for Hawaiian Spinner Dolphins under the Marine Mammal Protection Act, 80629–80630

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Large Pelagic Fishing Survey, 80645–80646

Atlantic Highly Migratory Species:

Exempted Fishing, Scientific Research, Display, Shark Research Fishery, and Chartering Permits; Letters of Acknowledgment, 80646–80649

Meetings:

Atlantic Highly Migratory Species Advisory Panel, 80643–80644

North Pacific Fishery Management Council, 80649–80650

Taking and Importing Marine Mammals:

Elliot Bay Seawall Project in Seattle, WA, 80644–80645

National Science Foundation**NOTICES**

Meetings:

Advisory Committee for Computer and Information Science and Engineering, 80687–80688

Research Performance Progress Report, 80687

Nuclear Regulatory Commission**NOTICES**

Test Plans:

Response of Nuclear Power Plant Instrumentation Cables When Exposed to Fire Conditions, 80688–80689

Postal Regulatory Commission**NOTICES**

New Postal Products, 80689

Presidential Documents**PROCLAMATIONS**

Special Observances:

American Education Week (Proc. 9540), 80981–80984

Get Smart About Antibiotics Week (Proc. 9541), 80985–80986

National Apprenticeship Week (Proc. 9542), 80987–80988

Saint Lawrence Seaway Development Corporation**NOTICES**

Meetings:

Advisory Board, 80716

Securities and Exchange Commission**NOTICES**

Meetings; Sunshine Act, 80706–80707

Self-Regulatory Organizations; Proposed Rule Changes:

Bats EDGX Exchange, Inc., 80705–80706

Chicago Board Options Exchange, Inc., 80689–80691

Miami International Securities Exchange LLC, 80691–80694

NASDAQ PHLX LLC, 80694–80701

NYSE Arca, Inc., 80703–80705

The NASDAQ Stock Market LLC, 80701–80703

State Department**NOTICES**

Delegations of Authority, 80707

Surface Mining Reclamation and Enforcement Office**RULES**

Stream Protection Rule:

Final Environmental Impact Statement, 80592–80593

Trade Representative, Office of United States**NOTICES**

Generalized System of Preferences:

Import Statistics Relating to Competitive Need Limitations, 80707–80708

Transportation Department

See Federal Aviation Administration

See Federal Highway Administration

See Federal Railroad Administration

See Saint Lawrence Seaway Development Corporation

Treasury Department

See Comptroller of the Currency

See Internal Revenue Service

See United States Mint

RULES

Acquisition Regulations:

Incremental Funding of Fixed-Price, Time-and-Material
or Labor-Hour Contracts during a Continuing
Resolution, 80608–80610

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 80719–80720

United States Mint**NOTICES**

Meetings:

Citizens Coinage Advisory Committee, 80720

Veterans Affairs Department**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:

Disability Benefits Questionnaires—Ischemic Heart
Disease, Hairy Cell and Other B-Cell Leukemia, and
Parkinson's Disease, 80720–80721

Meetings:

Veterans' Advisory Committee on Rehabilitation, 80721

Separate Parts In This Issue**Part II**

Housing and Urban Development Department, 80724–80825

Part III

Environmental Protection Agency, 80828–80980

Part IV

Presidential Documents, 80981–80988

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to <https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new>, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR	483.....80594
Proclamations:	484.....80594
9540.....80983	485.....80594
9541.....80985	47 CFR
9542.....80987	64.....80594
10 CFR	48 CFR
Proposed Rules:	1032.....80608
1016.....80612	1052.....80608
14 CFR	50 CFR
Proposed Rules:	679.....80610
71 (2 documents) .....80618,	Proposed Rules:
80620	216.....80629
17 CFR	
3.....80563	
21 CFR	
1105.....80567	
24 CFR	
5.....80724	
91.....80724	
92.....80724	
93.....80724	
200.....80724	
247.....80724	
574.....80724	
576.....80724	
578.....80724	
880.....80724	
882.....80724	
883.....80724	
884.....80724	
886.....80724	
888.....80567	
891.....80724	
905.....80724	
960.....80724	
966.....80724	
982 (2 documents) .....80567,	
80724	
983 (2 documents) .....80567,	
80724	
985.....80567	
26 CFR	
1.....80587	
30 CFR	
250.....80587	
700.....80592	
701.....80592	
773.....80592	
774.....80592	
777.....80592	
779.....80592	
780.....80592	
783.....80592	
784.....80592	
785.....80592	
800.....80592	
816.....80592	
817.....80592	
824.....80592	
827.....80592	
33 CFR	
Proposed Rules:	
165.....80621	
40 CFR	
97.....80593	
Proposed Rules:	
79.....80828	
80.....80828	
372.....80624	
42 CFR	
482.....80594	

Rules and Regulations

Federal Register

Vol. 81, No. 221

Wednesday, November 16, 2016

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

RIN 3038-AE49

Chief Compliance Officer Annual Report Requirements for Futures Commission Merchants, Swap Dealers, and Major Swap Participants; Amendments to Filing Dates

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (“Commission” or “CFTC”) is amending its regulations regarding the timing for furnishing to the Commission the chief compliance officer (“CCO”) annual reports of futures commission merchants (“FCMs”), swap dealers (“SDs”), and major swap participants (“MSPs”) (collectively, “Registrants”). The Commission is also amending its regulations by delegating to the Director of the Division of Swap Dealer and Intermediary Oversight (“DSIO”) authority to grant extensions to the CCO annual report filing deadline.

DATES: This rule will become effective November 16, 2016.

FOR FURTHER INFORMATION CONTACT: Eileen T. Flaherty, Director, 202–418–5326, eflaherty@cftc.gov; Erik Remmler, Deputy Director, 202–418–7630, eremmler@cftc.gov; Laura Gardy, Associate Director, 202–418–7645, lgardy@cftc.gov; or Pamela M. Geraghty, Special Counsel, 202–418–5634, pgeraghty@cftc.gov, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Proposed Rule

On August 12, 2016, the Commission published a Notice of Proposed Rulemaking (“Proposal”)¹ to amend Commission Regulation 3.3(f) regarding when Registrants must furnish to the Commission annual reports describing, among other things, their compliance with the Commodity Exchange Act (“CEA”) and CFTC regulations (the “CCO Annual Reports”).² The Proposal sought to extend the time period for furnishing the CCO Annual Report to the Commission from 60 days to 90 days after a Registrant’s fiscal year-end by codifying the ongoing relief most recently provided to Registrants in CFTC Staff Letter No. 15–15.³ The Proposal would permit an FCM to furnish its CCO Annual Report to the Commission not more than 30 days after submission of its Form 1–FR–FCM or Financial Operational Combined Uniform Single Report (“FOCUS Report”), and would permit an SD or MSP to furnish its CCO Annual Report to the Commission not more than 90 days after its fiscal year-end until such time as the Commission adopts and implements rules establishing the time for filing the annual financial condition report required under CEA section 4s(f). The Proposal also contemplated adding new paragraph (f)(2)(ii) to clarify the filing requirements for SDs and MSPs located in a jurisdiction for which the Commission has issued a comparability

¹ Chief Compliance Officer Annual Report Requirements for Futures Commission Merchants, Swap Dealers, and Major Swap Participants; Amendments to Filing Dates, 81 FR 53343 (Aug. 12, 2016).

² CEA section 4s(k)(3)(A)(i), 7 U.S.C. 6s(k)(3)(A)(i), requires CCOs for SDs and MSPs, in accordance with rules prescribed by the Commission, to prepare and sign an annual report describing, among other things, the SD’s or MSP’s compliance with the CEA and CFTC regulations. CEA section 4s(k)(3)(B)(i), 7 U.S.C. 6s(k)(3)(B)(i), requires the CCO Annual Report to accompany each appropriate financial report of the SD or MSP required to be furnished to the Commission. CEA section 4d(d), 7 U.S.C. 6d(d), requires CCOs of FCMs to “perform such duties and responsibilities” as are established by Commission regulation or rules of a registered futures association. Regulations 3.3(e) and (f), 17 CFR 3.3(e) and (f), codify the duty to furnish the CCO Annual Report to the Commission for all Registrants.

³ CFTC Letter No. 15–15, No-Action Relief for Futures Commission Merchants, Swap Dealers, and Major Swap Participants from Compliance with the Timing Requirements of Commission Regulation 3.3(f)(2) Relating to Annual Reports by Chief Compliance Officers (Mar. 27, 2015), available at <http://www.cftc.gov/idc/groups/public/@llettergeneral/documents/letter/15-15.pdf>.

determination and which elect to file reports in accordance with that determination (“Substituted Compliance Registrants”). Finally, the Proposal added new paragraph (h) to delegate to the Director of DSIO authority to grant extensions to the CCO Annual Report filing deadline.

The Commission generally requested comments on the Proposal and also solicited comments on certain specific matters.⁴ For example, the Commission solicited comments on the appropriateness of permitting Registrants an additional 30 days to furnish their CCO Annual Reports to the Commission, as well as the Commission’s application of Regulation 3.3(f)(2) to Substituted Compliance Registrants.

II. Summary of Comments

In response to the Proposal, the Commission received one comment submitted jointly by the Futures Industry Association (the “FIA”), International Swaps and Derivatives Association (“ISDA”), and the Securities Industry and Financial Markets Association (“SIFMA”) (collectively, “Commenters”) on behalf of their FCM, SD, and MSP member firms.⁵ The Commenters were generally supportive of the Proposal and agreed with the basic premise that the statutory requirement under CEA section 4s(k)(3)(B)(i) requiring CCO Annual Reports to “accompany” each appropriate financial report does not require a simultaneous filing of the two reports.

The Commenters made several suggestions aimed at more closely aligning the Proposal with the relief provided in CFTC Staff Letter No. 15–15 and providing greater certainty for all SDs. First, Commenters cautioned against linking the filing deadline for the CCO Annual Report to the submission date for the applicable annual financial reports. The Commenters stated that using the *submission* date as a reference point, rather than the *deadline* date, could have the practical effect of reducing the time period for filing the CCO Annual Report if a Registrant chose to submit

⁴ See 81 FR at 53346.

⁵ Letter from FIA, ISDA, and SIFMA (Sept. 12, 2016). This comment letter is available on the Commission’s Web site at <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1729>.

their financial report early.⁶ Commenters asserted that this outcome would be problematic because the inherent differences, in both substance and process, between CCO Annual Reports and financial reports affect the time required to adequately prepare each report. As a result, linking the CCO Annual Report deadline to the submission of financial reports would require new coordination and processes between the distinct groups responsible for each report's preparation.⁷ To address this technical timing issue, the Commenters recommended that the filing of the CCO Annual Report be required 30 days after the regulatory *deadline* for filing the financial reports.⁸

The Commenters further noted that under the Commission's proposed Capital Requirements of Swap Dealers and Major Swap Participants rulemaking,⁹ prudentially regulated SDs would not be required to comply with the Commission's financial condition report requirement.¹⁰ As such, Commenters explained that under language in the Proposal, which ties the submission of the CCO Annual Report with the submission of applicable financial reports, prudentially regulated SDs would have a different CCO Annual Report deadline than other SDs.¹¹ Commenters suggested that, in order to achieve consistency among all SDs, the Commission should "set a 90-day deadline for SDs that are not subject to the Commission's proposed financial reporting rule."¹²

Finally, regarding application of the Proposal to Substituted Compliance Registrants, the Commenters requested that the Commission provide "supplemental guidance as to what constitutes a 'specifically identifiable completion date'" for Substituted Compliance Registrants who file comparable annual reporting information (hereinafter, "Comparable Annual Report").¹³ The Commenters indicated that different jurisdictions address reporting deadlines in many different ways that can change over time and from year to year. Accordingly, it was not clear to Commenters how the Proposal language would apply in all instances.

III. The Final Rule

The Commission has considered the comments it received in response to the Proposal. Upon consideration of Commenters' suggestions, the Commission's implementation experience,¹⁴ and the current absence of financial condition reporting requirements for SDs under Commission regulations,¹⁵ the Commission is adopting a final rule that modifies Regulation 3.3(f)(2)(i) to give all Registrants up to 90 days after their fiscal year-end to furnish the CCO Annual Report to the Commission. Because the CEA section 4s(k)(3)(B) contemplates year-end filing for financial reports and CCO Annual Reports, the final rule ensures that the two reports will accompany one another at the Commission within a proximate and predictable timeframe. The Commission believes that providing all Registrants a deadline that follows their annual fiscal year meets Congressional intent and achieves fairness and consistency across all Registrants, while also codifying longstanding no-action relief. The final rule text effectively results in the same outcome as the Proposal, but does so in a manner that is simple and direct. The Commission is adopting Regulation 3.3(f)(2)(ii) as proposed, which incorporates the modified language of Regulation 3.3(f)(2)(i), and also clarifying its application to Substituted Compliance Registrants. The Commission received no comments on the proposed delegation of authority to the Director of DSI to grant extensions to the CCO annual report filing deadline, and is adopting Regulation 3.3(h) as proposed.

A. CCO Annual Report Filing Deadline

The Commission believes that the language in CEA section 4s(k)(3)(B) requiring the CCO to "annually" prepare a compliance report to accompany each "appropriate" financial report does not require a simultaneous filing of the two reports to achieve its intended purpose. Rather, the intention of the statute is to require the CCO Annual Report to follow an annual reporting cycle in line with the financial reporting cycle aimed at providing the Commission, and a Registrant's senior management, with a timely self-evaluation and internal assessment of the Registrant's compliance program.¹⁶

In a similar manner, under Commission regulations, when entities are subject to capital adequacy requirements, periodic financial reporting is the mechanism employed to demonstrate compliance. Annual and other financial reporting requirements provide the Commission and self-regulatory organizations information about the financial condition of the registrant. As observed by the Commission and highlighted by Commenters, the CCO Annual Report and annual financial reports, though they serve similar informational goals, are inherently different and require different processes and expertise to produce. Accordingly, while each ought to be completed on an annual reporting cycle and provided to the Commission in temporal proximity, their submission to the Commission need not occur simultaneously to achieve their intended purpose.

Permitting all Registrants to submit their CCO Annual Report to the Commission within 90 days after their fiscal year-end meets the statutory intent of having the CCO Annual Report follow an annual reporting cycle in line with the financial reporting cycle while providing fair and consistent treatment across all Registrants. The final rule also ensures that Registrants may continue to leverage their existing report preparation processes that were developed while the Commission's no-action relief was in place. This ensures that there is effectively no change in the burden and expense of preparing the CCO Annual Reports as a result of the final rule.

B. Deadline for Substituted Compliance Registrants

With respect to the application of new paragraph (f)(2)(ii) to Substituted Compliance Registrants, the Proposal provided that Substituted Compliance Registrants whose home jurisdictions' regulations identify a specific completion or due date have 15 days after that date to submit their Comparable Annual Report to the CFTC. If a Substituted Compliance Registrant's home jurisdiction does not require or is silent as to a particular completion or due date for the Comparable Annual Report, then the Substituted Compliance Registrant must furnish its Comparable Annual Report to the Commission not more than 90 days after its fiscal year-end.

As described above, the Commenters requested additional guidance on the meaning of "specifically identifiable completion date." The Commission is clarifying that the completion or due date could be set by the Substituted Compliance Registrant's home

⁶ *Id.* at 2.

⁷ *Id.*

⁸ *Id.*

⁹ See Capital Requirements of Swap Dealers and Major Swap Participants, 76 FR 27802, 27838 (proposed May 12, 2011).

¹⁰ Letter from FIA, ISDA, and SIFMA at 2.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 3.

¹⁴ See 81 FR 53343, 53344 n.7.

¹⁵ *Id.* at 53345 n.14.

¹⁶ See Designation of a Chief Compliance Officer; Required Compliance Policies; and Annual Report of a Futures Commission Merchant, Swap Dealer, or Major Swap Participant, 75 FR 70881, 70883 (proposed Nov. 19, 2010).

jurisdiction's regulations, or that the Substituted Compliance Registrant's applicable regulatory authority could otherwise announce a modified completion or due date consistent with the practices and procedures of the applicable regulatory regime. The Commission anticipates a Substituted Compliance Registrant will timely inform DSIO of any such modifications to their completion or due date.

Whether the completion or due date remains static from year to year, or is subject to annual modification, the Commission intends to defer to the Substituted Compliance Registrant's home jurisdiction in this regard.

The Commission, however, is concerned about the possibility of significant reporting delays or deferrals that may apply to a specific Registrant. Accordingly, the Commission expects that a Substituted Compliance Registrant will inform the Commission of any delays or deferrals beyond the deadlines set by their home jurisdiction regulations or applicable regulatory authority that would extend that particular Registrant's Comparable Annual Report filing date, and seek appropriate relief under Regulation 3.3(f)(5), as necessary.

C. Delegation of Authority to the Director of DSIO

The Commission received no comments on its proposal to delegate to the Director of DSIO, or such other employee(s) that the Director may designate, the authority to grant extensions of time to file CCO Annual Reports. Accordingly, the Commission is adopting new paragraph (h) as proposed.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act¹⁷ ("RFA") requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis reflecting the impact. In the Proposal, the Commission certified that the Proposal would not have a significant economic impact on those entities. The Commission received no comments with respect to the RFA.

As discussed in the Proposal, the final rule amends the filing deadline for CCO Annual Reports of FCMs, SDs, and MSPs and clarifies the filing deadline for Comparable Annual Reports. The final rule affects FCMs, SDs, and MSPs that are required to be registered with

the Commission. The Commission has previously established certain definitions of "small entities" to be used in evaluating the impact of its regulations on small entities in accordance with the RFA, and has previously determined that FCMs, SDs, and MSPs are not small entities for purposes of the RFA.¹⁸ Therefore, the Commission believes that the final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the final rule being published today by this **Federal Register** release will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")¹⁹ provides that a federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number issued by the Office of Management and Budget ("OMB"). As discussed in the Proposal, the final rule contains a collection of information for which the Commission has previously received a control number from the Office of Management and Budget ("OMB"). The title for this collection of information is "Annual Report for Chief Compliance Officer of Registrants, OMB control number 3038-0080." As discussed in the Proposal, the Commission believes that this final rule will not impose any new information collection requirements that require approval of OMB under the PRA. As a general matter, the final rule allows Registrants up to 90 days after the end of their fiscal years, and certain Substituted Compliance Registrants with up to 15 days after the date on which the Comparable Annual Report must be completed under the requirements of their home jurisdiction, to file the CCO Annual Report and Comparable Annual Reports, respectively. As such, the final rule does not, by itself, impose any new burden or any new information collection requirements in addition to those that already exist in connection with the preparation and delivery of the CCO

Annual Report pursuant to part 3 of the Commission's regulations.

C. Cost-Benefit Considerations

1. Background

As discussed above, the Commission is adopting amendments to the filing requirements for CCO Annual Reports in Regulation 3.3 that: (1) Increase the amount of time registrants have to file their CCO Annual Reports with the Commission; and (2) clarify the filing requirements for Comparable Annual Reports. The baseline for this cost and benefit consideration is existing Commission Regulation 3.3.

2. Costs

The final rule does not change the report contents or require any additional actions to be taken by Registrants. The 90 days (or up to 15 days after the date on which a Comparable Annual Report must be completed under applicable home jurisdiction standards that allow more time) provided by the final rule lengthens the time before senior management or the board of the Registrants and the Commission may receive the CCO Annual Reports. The additional time to furnish the reports should not materially impact regulatory oversight given that the purpose of the reports is to provide a status update for the Registrant's compliance activities over the course of the preceding fiscal year and planned changes for the coming year. The reports generally do not serve to address crisis situations for which immediacy is critical. Therefore, the additional time allowed should not materially impact the usefulness of the information in the reports.²⁰ The Commission had no other information available to it indicating that changing the filing deadline would measurably change the cost to prepare the CCO Annual Reports. Accordingly, the Commission believes that the final rule does not impose any additional costs on any other market participants, the markets themselves, or the general public. In the Proposal, the Commission solicited comments regarding how the costs associated with the CCO Annual Reports could change as a result of adopting the Proposal, but did not receive any.

3. Benefits

The Commission believes that the final rule provides relief for Registrants

¹⁸ See Policy Statement and Establishment of Definitions of "Small Entities" for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18619 (Apr. 30, 1982) (FCMs); Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant," 77 FR 30596, 30701 (May 23, 2012) (SDs and MSPs).

¹⁹ 44 U.S.C. 3501 *et seq.*

²⁰ The CCO Annual Report must contain a description of material non-compliance events that occurred over the review period. However, reporting on those events in the CCO Annual Report provides transparency regarding the effectiveness of the implementation of the compliance program over the preceding year for management and the CFTC.

¹⁷ 5 U.S.C. 601 *et seq.*

from time pressures in preparing and filing their CCO Annual Reports. The additional time provided will allow Registrants to more carefully complete their internal processes used to develop the broad variety of information needed for the reports resulting in more accurate and complete reports. The Commission solicited comments regarding the nature of any benefits that could result from adoption of the Proposal, but did not receive any specific comments. Commenters were generally appreciative of the Commission's effort to improve the process.²¹

4. Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.²² Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considered the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

a. Protection of Market Participants and the Public

The Commission recognizes that there are trade-offs between reducing regulatory burdens and ensuring that the Commission has sufficient, timely information to fulfill its regulatory mission. The final rule is intended to reduce some of the regulatory burdens on Registrants. While the final rule will delay the time in which the Commission will receive the CCO Annual Reports, the delay is relatively short given that the information in the reports looks back over the entire year-long reporting period, and identifies planned improvements for the coming year. Accordingly, the Commission believes that the short delay will not affect the protection of market participants and the public.

b. Efficiency, Competitiveness, and Financial Integrity of Markets

The Commission believes that the final rule could improve allocational efficiency for participants in the market by reducing the burden of preparing the

CCO Annual Report in a shorter time-frame thereby allowing them to allocate compliance resources more efficiently over the report preparation period. The Commission believes that the final rule will not have any market efficiency, competitiveness, or market integrity impacts because the reports address internal compliance programs of each Registrant and are not publicly available.

c. Price Discovery

The Commission believes that the final rule does not impact on price discovery. Given that the final rule affects only the timing of when the CCO Annual Reports are filed with the Commission and the CCO Annual Reports generally would not contain trade information or be available to the public, the final rule does not affect price discovery.

d. Sound Risk Management Practices

The Commission believes that the final rule will not have a meaningful effect on the risk management practices of Registrants. While the CCO Annual Reports may discuss certain risk management aspects related to Registrants' compliance programs, the final rule only amends the timing of delivery of the reports to the Commission, not the contents of the reports. As described above under subsection 4.a, the short delay in delivery of the reports provided for by the final rule is not significant given the nature of the information included in the report and allowing additional time to prepare CCO Annual Reports might allow Registrants to prepare better reports that more effectively address the information contained therein.

e. Other Public Interest Considerations

The Commission has not identified any other public interest considerations for this rulemaking.

List of Subjects in 17 CFR Part 3

Administrative practice and procedure, Brokers, Commodity futures, Major swap participants, Reporting and recordkeeping requirements, Swap dealers.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 3 as follows:

PART 3—REGISTRATION

■ 1. The authority citation for part 3 is revised to read as follows:

Authority: 5 U.S.C. 552, 552b; 7 U.S.C. 1a, 2, 6a, 6b, 6b–1, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 6s, 8, 9, 9a, 12, 12a, 13b, 13c,

16a, 18, 19, 21, and 23, as amended by Title VII of Pub. L. 111–203, 124 Stat. 1376.

■ 2. Amend § 3.3 as follows:

■ a. Revise paragraph (f)(2); and

■ b. Add paragraph (h).

The revision and addition read as follows:

§ 3.3 Chief compliance officer.

* * * * *

(f) * * *

(2)(i) Except as provided in paragraph (f)(2)(ii) of this section, the annual report shall be furnished electronically to the Commission not more than 90 days after the end of the fiscal year of the futures commission merchant, swap dealer, or major swap participant.

(ii) The annual report of a swap dealer or major swap participant that is eligible to comply with a substituted compliance regime for paragraph (e) of this section pursuant to a comparability determination of the Commission may be furnished to the Commission electronically up to 15 days after the date on which the comparable annual report must be completed under the requirements of the applicable substituted compliance regime. If the substituted compliance regime does not specify a date by which the comparable annual report must be completed, then the annual report shall be furnished to the Commission by the date specified in paragraph (f)(2)(i) of this section.

* * * * *

(h) *Delegation of authority.* The Commission hereby delegates to the Director of the Division of Swap Dealer and Intermediary Oversight, or such other employee or employees as the Director may designate from time to time, the authority to grant extensions of time, as set forth in paragraph (f)(5) of this section. Notwithstanding such delegation, in any case in which a Commission employee delegated authority under this paragraph believes it appropriate, he or she may submit to the Commission for its consideration the question of whether an extension of time should be granted. The delegation of authority in this paragraph shall not prohibit the Commission, at its election, from exercising the authority set forth in paragraph (f)(5) of this section.

Issued in Washington, DC, on November 10, 2016, by the Commission.

Robert N. Sidman,

Deputy Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

²¹ Letter from FIA, ISDA, and SIFMA at 1.

²² 7 U.S.C. 19(a).

Appendix to Chief Compliance Officer Annual Report Requirements for Futures Commission Merchants, Swap Dealers, and Major Swap Participants; Amendments to Filing Dates—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2016-27525 Filed 11-15-16; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1105

[Docket No. FDA-2016-N-1555]

Refuse To Accept Procedures for Premarket Tobacco Product Submissions; Withdrawal

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) published in the *Federal Register* of August 8, 2016, a direct final rule regarding procedures for refusing to accept premarket tobacco product submissions. The comment period closed October 24, 2016. FDA is withdrawing the direct final rule because the Agency received significant adverse comment. FDA will consider the comments we received on the direct final rule to be comments on the companion proposed rule published at 81 FR 52371 (August 8, 2016).

DATES: The direct final rule published at 81 FR 52329 (August 8, 2016), is withdrawn effective November 16, 2016.

FOR FURTHER INFORMATION CONTACT: Annette Marthaler or Paul Hart, Office of Regulations, Center for Tobacco Products, Food and Drug Administration, Document Control Center, Bldg. 71, Rm. G335, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 877-287-1373, CTPRregulations@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, the direct final rule published on August 8, 2016, (81 FR 52329) is withdrawn.

Dated: November 9, 2016.

Peter Lurie,

Associate Commissioner for Public Health Strategy and Analysis.

[FR Doc. 2016-27456 Filed 11-15-16; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 888, 982, 983, and 985

[Docket No. FR-5855-F-03]

RIN 2501-AD74

Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in the Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule applies the use of Small Area Fair Market Rents (Small Area FMRs) in the administration of the Housing Choice Voucher (HCV) program for certain metropolitan areas. This final rule provides for the use of Small Area FMRs, in place of the 50th percentile rent, the currently codified regulations, to address high levels of voucher concentration in certain communities. The use of Small Area FMRs is expected to give HCV tenants access to areas of high opportunity and lower poverty areas by providing a subsidy that is adequate to cover rents in those areas, thereby reducing the number of voucher families that reside in areas of high poverty concentration.

DATES: *Effective:* January 17, 2017.

FOR FURTHER INFORMATION CONTACT: For information about this rule, contact Peter B. Kahn, Director, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 402-2409 or Becky L. Primeaux, Director, Housing Voucher Management and Operations Division, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708-0477; email: SAFMR_Rule@hud.gov. The listed telephone numbers are not toll-free numbers. Persons with hearing or speech impairments may access this number through TTY by calling Federal Relay Service at (800) 877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: Under this final rule, public housing agencies

(PHAs) operating in designated metropolitan areas are required to use Small Area FMRs, while PHAs not operating in the designated areas have the option to use Small Area FMRs in administering their HCV programs. Other programs that use FMRs would continue to use area-wide FMRs. This final rule also provides for regulatory implementation of certain provisions of the Housing Opportunity Through Modernization Act (HOTMA) related to FMRs, as well as conforming regulatory changes to part 982 concerning the reduction in payment standards during the term of the Housing Assistance Payment (HAP) contract in the HCV program. Specifically, the final rule provides for publication of FMRs by way of the World Wide Web, and provides that PHAs are no longer required to reduce the payment standard for a family under HAP contract when the PHA is required to reduce the payment standard for its program as the result of a reduction in the FMR.

I. Executive Summary

A. Purpose of the Regulatory Action

This final rule establishes a more effective means for HCV tenants to move into areas of higher opportunity and lower poverty by providing the tenants with a subsidy adequate to make such areas accessible and, consequently, help reduce the number of voucher families that reside in areas of high poverty concentration. Prior to this rule, subsidy for HUD's HCV program is determined by a formula that considers rent prices across an entire metropolitan area. However, rents can vary widely within a metropolitan area depending upon the size of the metropolitan area and the neighborhood in the metropolitan area within which one resides. The result of determining rents on the basis of an entire metropolitan area is that a voucher subsidy may be too high or may be too low to cover market rent in a given neighborhood. To date, HUD's policy for addressing high concentrations of voucher holders raises the level of the FMR from the 40th percentile to the 50th percentile (roughly a 7–8 percent increase) in the whole FMR area. This level of added subsidy has not been targeted to areas of opportunity, and consequently, this formula has not proven effective in addressing the problem of concentrated poverty and economic and racial segregation in neighborhoods. Experience with the 50th percentile regime has shown that the majority of HCV tenants use their vouchers in neighborhoods where rents are low but

poverty is generally high. Small Area FMRs will complement HUD's other efforts to support households in making informed choices about units and neighborhoods with the goal of increasing the share of households that choose to use their vouchers in low poverty opportunity areas.

This rule provides that in lieu of determining rents on the basis of an entire metropolitan area, rents will be determined on the basis of ZIP codes for those metropolitan areas with both significant voucher concentration challenges and market conditions where establishing FMRs by ZIP code areas has the potential to significantly increase opportunities for voucher families. ZIP codes are small enough to reflect neighborhood differences and provide an easier method of comparing rents within one ZIP code to another ZIP code area within a metropolitan area. Based on early evidence from PHAs using Small Area FMRs that are in place in certain metropolitan areas in the U.S., HUD believes that Small Area FMRs are more effective in helping families move to areas of higher opportunity and lower poverty.

B. Summary of the Major Provisions of the Regulatory Action

The major provisions of this final rule are set out in two sections: (1) Those that were in the proposed rule and retained at the final rule; and (2) those that were revised at the final rule or are new provisions at the final rule stage, developed in response to public comment: The major provisions are as follows:

1. Major Provisions at the Proposed Rule Stage Retained by This Final Rule

- Defines Small Area FMR areas as the U.S. Postal Service ZIP code areas within a designated metropolitan area.
- Provides for criteria by which Small Area FMRs will be set. Small Area FMRs will be set for metropolitan areas where the area includes the following criteria: number of HCVs under lease (initially, 2,500 or more); the standard quality rental stock, within the metropolitan area, that is in small areas (that is ZIP codes) where the Small Area FMR is more than 110 percent of the metropolitan FMR (initially 20 percent or more); and the percentage of voucher holders living in concentrated low-income areas relative to all renters within these areas over the entire metropolitan area exceeds a specified threshold (initially 1.55). (This final rule also adopts additional criteria for setting Small Area FMRs for a metropolitan area, see below.)

- Defines "concentrated low-income areas" to mean those census tracts in the metropolitan FMR area with a poverty rate of 25 percent or more; or any tract in the metropolitan FMR area where 50 percent or more of the households earn incomes at less than 60 percent of the area median income (AMI) and are designated as Qualified Census Tracts in accordance with section 42 of the Internal Revenue Code (26 U.S.C. 42).

- Provides for designation of Small Area FMR areas at the beginning of a Federal fiscal year and makes additional area designations every 5 years thereafter as new data becomes available.

- Requires if a metropolitan area meets the criteria for application of Small Area FMRs, that all PHAs administering HCV programs in that area will be required to use Small Area FMRs.

- Provides that a PHA that is administering an HCV program in a metropolitan area that is not subject to application of Small Area FMRs may opt to use Small Area FMRs by seeking approval of HUD's Office of Public and Indian Housing through written request to such office.

- For all rent determinations of FMRs, 40th percentile or Small Area FMRs, replaces "the most recent decennial census" with the "most recent American Community Survey conducted by the U.S. Census Bureau."

- Provides that metropolitan areas with FMRs set at the 50th percentile rent will transition to either (1) the 40th percentile rent at the expiration of the 3-year period for the 50th percentile rent, or (2) designation as a Small Area FMR area in accordance with the criteria for determining a Small Area FMR area.

- Provides that a PHA with jurisdiction in a 50th percentile FMR area that reverts to the standard 40th percentile FMR may request HUD approval of payment standard amounts based on the 50th percentile rent in accordance with the regulations in 24 CFR 982.503(f) that are changed by this final rule. PHAs, however, would be required to continue to meet the provisions of 24 CFR 982.503(f) annually in order to maintain payment standards based on 50th percentile rents.

- Removes the existing regulations at 24 CFR 888.113 that provide for FMRs to be set at the 50th percentile rent. However, for areas not selected for implementation of Small Area FMRs, the final rule does not revoke any FMR currently set at the 50th percentile rent, and for which the current 3-year term

for retaining a 50th percentile rent has not expired.

2. Major Provisions—New Provisions or Changes Made at Final Rule Stage

- Confirms the regulations at § 982.505(c)(3) with the portion of section 107 of the Housing Through Opportunity Modernization Act (HOTMA), Public Law 114–201, which provides PHAs with the option to hold families under a Housing Assistance Payments (HAP) contract harmless from payment standard reductions that are currently required at the family's second annual recertification if the family's payment standard falls outside of the basic range as the result of a decrease in FMRs (including a decrease in FMR attributable to the implementation of Small Area FMRs). As an additional protection, the final rule provides that should a PHA choose not to hold the payment standard at its current level for families under HAP contract in an area experiencing a payment standard reduction, the PHA may set the payment standard for families that remain under HAP contract at any amount between the current payment standard and new normally applicable payment standard amount, and may further reduce the payment standard for families under HAP contract over time to gradually bring the family's payment standard down to payment standard that is normally applicable to the area for the PHA's program or reduce the gap between the two payment standards. The rule further extends these same flexibilities to the PHA in cases where the payment standard decrease is not the result of a FMR decrease.

The rule further provides that if the PHA chooses to apply a reduction in the payment standard to the family's subsidy calculation during the HAP contract term, the earliest the PHA may implement the initial reduction in the payment standard is the second regular reexamination following the effective date of the decrease in the payment standard amount. Section 107 of HOTMA also provides new requirements for publishing HUD's FMRs.

- Additional criteria by which Small Area FMRs will be set.

- Adds the vacancy rate of an area as a criterion to the selection parameters for Small Area FMRs. The vacancy rate will be calculated in the following manner: Using data from the 1-year American Community Survey (ACS) tabulations, the vacancy rate is the number of Vacant For Rent Units divided by the sum of the number of Vacant For Rent Units, the number of Renter Occupied Units, and the number

of Rented, not occupied units. The vacancy rate will be calculated from the 3 most current ACS 1 year datasets available and average the 3 values. Initially, this threshold will be set at 4 percent, meaning areas designated for Small Area FMRs must have vacancy rates higher than 4 percent.

- Adds an additional requirement to the voucher concentration ratio included in the proposed rule. In addition to requiring the ratio of the proportion of voucher tenants in concentrated low-income areas (CLIAs) to the proportion of renter occupied units in CLIAs to exceed a minimum threshold (initially 155 percent), the final rule requires that the numerator of the ratio (the proportion of voucher tenants in CLIAs) meet or exceed a minimum threshold. Initially, this threshold will be set at 25 percent.

- Exempts all project-based vouchers from required application of Small Area FMRs but allows a PHA operating under the Small Area FMRs for its tenant-based program to apply Small Area FMRs to future PBV projects (and to current PBV projects provided the owner mutually agrees to the change).

- Provides that a PHA's selection to use Small Area FMRs for PBVs would not require HUD approval but should be undertaken in accordance with guidance issued by HUD and indicated in the PHA's administrative plan.

- Rather than codify both the selection criteria and the selection values in the regulatory text as in the proposed rule, the final rule codifies the selection criteria in the regulatory text, but does not codify the selection values in the regulatory text. The selection values for the first round of Small Area FMR areas is announced in a separate notice published in today's **Federal Register**. The selection values for future designations of Small Area FMR areas will be made available for public comment via **Federal Register** notice before HUD selects additional areas to be designated as Small Area FMR Areas.

- Makes two changes to the exception payment standard requirements in response to public comments:

- PHAs not operating in Small Area FMR designated areas may establish exception payment standards for a ZIP code area of up to 110 percent of the relevant Small Area FMR by notifying HUD; and

- The 50 percent population cap (24 CFR 982.503(c)(5)) will not be applicable to Exception Payment Standards in Small Area FMR areas.

- Exempts manufactured home space rental from Small Area FMRs.

- Provides that PHAs have up to three months from the date when the new

FMRs go into effect in which to update their payment standards if a change is necessary to fall within the basic range of new FMRs. For example, if the new FMR went into effect on October 1, 2017, the PHA would need to update their payment standard if necessary to fall within the basic range of the new FMRs no later than January 1, 2018.

- Provides HUD may suspend a Small Area FMR designation for a metropolitan area, including at the request of a PHA, where HUD determines such action is warranted based on a documented finding of adverse rental housing market conditions that will be set out by notice (for example, the metropolitan area experiences a significant loss of housing units as a result of a natural disaster).

- Provides that HUD may provide an exception payment standard for a PHA administering the HCV program under Small Area FMRs for an entire ZIP Code area in accordance with the conditions and procedures provided by notice in the **Federal Register**. The requirements at § 982.503(c) do not apply to these exception payment standard requests.

C. Costs and Benefits

The main benefit of the final rule is that, through setting rental subsidy amounts at a more local level, assisted households will be more able to afford homes in areas of high opportunity than under current policy. Such moves are expected to benefit both individual households, for example, through access to better schools or safer neighborhoods, and areas as a whole through reducing concentrated neighborhood poverty. Other benefits could arise through the reduction of overpayment of rent in areas where the neighborhood rent is below the metropolitan average. Early evidence from current Small Area FMR locations suggests that there could be per-voucher cost decreases relative to 50th percentile rents, depending on the choices made by tenants. Evidence also suggests that families moved to better neighborhoods with higher rents, although not greatly in excess of the metropolitan FMR, which resulted in no overall program cost increases.¹ Finally, the final rule eliminates the year to year volatility of some areas changing to and from 50th percentile FMRs.

Potential costs of the final rule include the administrative expenses associated with implementation on the part of PHAs. Additionally, if there are barriers to households moving to areas

of higher opportunity beyond housing costs, such as transportation expenses or social factors, assisted households might be worse off if they can no longer afford their current units in their neighborhoods. This may be particularly true for elderly families or families with a disabled member; however, HUD regulations allow PHAs wide latitude in setting payments standards for disabled tenants as "reasonable accommodations" of their disabilities. Finally, if the long-term impacts of the final rule cause per-voucher costs to rise, fewer households would receive assistance without an overall increase in program funds.

II. Background

The Housing Choice Voucher Program and Fair Market Rents

HUD's HCV program helps low-income households obtain standard rental housing and reduces the share of their income that goes toward rent. Vouchers issued under the HCV program provide subsidies that allow individuals and families to rent eligible units in the private market. A key parameter in operating the HCV program is the FMR. In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities. In addition, all rents subsidized under the HCV program must meet rent reasonableness standards. Rent reasonableness is determined by PHAs with reference to rents for comparable unassisted units.

In the HCV program, the FMR is the basis for determining the "payment standard amount" used to calculate the maximum monthly subsidy for a voucher household (see § 982.503). PHAs may establish payment standards between 90 and 110 percent of the FMR.² HCV program households receive a housing assistance payment equal to the difference between the lower of the gross rent of the unit or the payment standard established by the PHAs and the family's Total Tenant Payment (TTP), which is generally 30 percent of the household's adjusted monthly income. Participants in the voucher program can choose to live in units with gross rents higher than the payment standard, but would be required to pay the full cost of the difference between the gross rent and the payment standard, in addition to their TTP.

¹ Please see Collinson and Ganong, "The Incidence of Housing Voucher Generosity", available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2255799.

² Moving to Work (MTW) agencies have the authority to waive § 982.503 and can propose, for HUD approval, alternate rent policies in their Annual MTW Plan.

Please note that at initial occupancy the family's share cannot exceed 40 percent of adjusted monthly income.

HUD establishes FMRs for different geographic areas. Because payment standards are based on FMRs, housing assistance payments on behalf of the voucher household are limited by the geographic area in which the voucher household resides. HUD calculates FMRs for all nonmetropolitan counties and metropolitan areas. To date, the same FMR is applicable throughout a nonmetropolitan county or metropolitan area, which generally is comprised of several metropolitan counties. FMRs in a metropolitan area (Metropolitan FMR) represent the 40th percentile (or in special circumstances the 50th percentile) gross rent for typical non-luxury, non-standard rental units occupied by recent movers in a local housing market.³

As noted earlier, HUD regulations have allowed a PHA to set a payment standard between 90 percent and 110 percent (inclusive) of the FMR. PHAs may determine that payment standards that are higher than 110 percent, or lower than 90 percent, are appropriate for subareas of their market; in this instance, a PHA would request HUD approval for a payment standard below 90 percent or an exception payment standard above 110 percent. The total population of a HUD-approved exception payment area (*i.e.*, an area covered by a payment standard that exceeds 110 percent of the FMR) may not include more than 50 percent of the population of the FMR area (see § 982.503).

On October 2, 2000, at 65 FR 58870, HUD published a rule (2000 rule) establishing policy, currently in HUD's codified regulations, to set FMRs at the 50th percentile for "areas where higher FMRs are needed to help families, assisted under HUD's program as well as other HUD programs, find and lease decent and affordable housing." This policy was put in place to achieve two program objectives: (1) Increase the ability of low-income families to find and lease decent and affordable housing; and (2) provide low-income families with access to a broad range of housing opportunities throughout a metropolitan area. The policy further provides that PHAs that had been authorized to use FMRs set at the 50th percentile rent may later be required to use FMRs set at the 40th percentile rent. This would occur if the FMR were set

at the 50th percentile rent to provide a broad range of housing opportunities throughout a metropolitan area for three years, but the concentration of voucher holders in the metropolitan area did not lessen.

Since HUD established the 50th percentile FMRs 16 years ago, research has emerged⁴ that indicates that 50th percentile FMRs are not an effective tool in increasing HCV tenant moves from areas of low opportunity to higher opportunity areas. Specifically, it appears that much of the benefit of increased FMRs simply accrues to landlords in lower rent submarket areas in the form of higher rents rather than creating an incentive for tenants to move to units in communities with more and/or better opportunities. As provided in HUD's currently codified regulation, to determine the 50th percentile program's effectiveness, HUD must measure the reduction in concentration of HCV tenants (objective 2 above) presumably from high poverty areas, over a 3-year period. If there is no measurable reduction in the concentration of HCV tenants, the FMR area loses the 50th percentile FMRs for a 3-year period. A large number of areas have been disqualified from the 50th percentile program for failure to show measurable reduction in voucher concentration of HCV tenants since 2001 when the program started, which strongly suggests that the deconcentration objective is not being met.⁵

History of Small Area FMRs

Since the establishment of the 50th percentile program, HUD has developed Small Area FMRs to reflect rents in ZIP code based areas with a goal to improve HCV tenant outcomes. Small Area FMRs have been shown to be a more direct approach to encouraging tenant moves to housing in lower poverty areas by increasing the subsidy available in specific ZIP codes to support such moves.⁶ Since 2010, when the United States Census Bureau made available data collected over the first 5 years of the American Community Survey

(ACS), HUD has considered various methodologies that would set FMRs at a more granular level. HUD's goal in pursuing the Small Area FMR methodology is to create more effective means for HCV tenants to move into higher opportunity, lower poverty areas by providing them with subsidy adequate to make such areas accessible and to thereby reduce the number of voucher families that reside in areas of high poverty concentration.

Toward this end, through a **Federal Register** notice published on May 18, 2010, at 75 FR 27808, HUD announced that in Fiscal Year (FY) 2011 it would seek to conduct a Small Area FMR demonstration project to determine the effectiveness of FMRs which are published using U.S. Postal Service ZIP codes as FMR areas within metropolitan areas. HUD also solicited public comment on the proposed demonstration. On November 20, 2012, at 77 FR 69651, HUD announced the commencement of the Small Area FMR Demonstration, for which advance notice was provided on May 18, 2010, and further announced the participation of the following PHAs: The Housing Authority of the County of Cook (IL), the City of Long Beach (CA) Housing Authority, the Chattanooga (TN) Housing Authority, the Town of Mamaroneck (NY) Housing Authority, and the Housing Authority of Laredo (TX).

Through a second **Federal Register** notice published on August 4, 2010, at 75 FR 46958, HUD mandated the use of Small Area FMRs in place of metropolitan-area-wide-FMRs to settle litigation in the Dallas, TX, HUD Metro FMR Area. Small Area FMRs have been in operation in Dallas, Texas, as part of a court settlement since 2010, and in a small number of PHAs since 2012.

HUD Proposals To Move to Small Area FMRs

On June 2, 2015, at 80 FR 31332, HUD published an advance notice of proposed rulemaking (ANPR) entitled "Establishing a More Effective Fair Market Rent (FMR) System; Using Small Area Fair Market Rents (Small Area FMRs) in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs." In this ANPR, HUD announced its intention to amend HUD's FMR regulations applicable to the HCV program to provide HCV tenants with subsidies that better reflect the localized rental market, including subsidies that would be relatively higher if they move into areas that potentially have better access to jobs, transportation, services, and educational opportunities. The ANPR sought public

³ General information concerning FMRs including more detailed information about their calculation is available at <https://www.huduser.gov/portal/datasets/fmr.html>.

⁴ From 2000 to 2010, however, voucher concentration *rose* in the largest metro areas, even though most of those areas used 50th percentile FMRs for at least part of that period. Kirk McClure, Alex F. Schwartz, and Lydia B. Taghavi, "Housing Choice Voucher Location Patterns a Decade Later," November, 2012, p 7. In 2010, 24 percent of vouchers in the 50 largest areas were used in tracts where at least 10 percent of households used vouchers, compared to 16 percent in 2000, p 7.

⁵ Areas may subsequently requalify for 50th percentile status after a 3-year period.

⁶ Please see Collinson and Ganong, "The Incidence of Housing Voucher Generosity", available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2255799.

comment on the use of Small Area FMRs for the HCV program within certain metropolitan areas. HUD received 78 public comments in response to the ANPR.

On June 16, 2016, at 81 FR 39218, HUD published a proposed rule that require the use of Small Area FMRs in place of the 50th percentile rent to address high levels of voucher concentration. The proposed rule addressed the issues and suggestions raised by public commenters on the ANPR. (See 81 FR 39222 through 39224.) In addition to responding to public comments on the ANPR, HUD specifically requested comment on certain issues. (See 81 FR 39224 through 39226.) HUD received 113 comments on its June 16, 2016, proposed rule. The public comments can be found at <https://www.regulations.gov/docket?D=HUD-2016-0063>.

The significant issues raised by the public commenters and HUD's responses are provided in the following section of this preamble.

III. Discussion of Public Comments and HUD's Responses

General Comments

Commenters were divided in their support for the rule. For those commenters that supported the rule they stated that this new methodology was long overdue because the current system was not working. Commenters stated that the current system was not working and HUD's proposal sounded like a good solution. Commenters stated that creating a system where cities, counties and municipalities could have a finer laser point on their rental markets could increase subsidy utilization rates and customer choice. The commenters stated that they highly recommended not only looking at the proposed methodologies but also collecting and refining more data from cities on their housing stock and availability. A commenter stated that setting FMRs for smaller areas is an ingenious solution because it will put an end to unnecessarily high subsidies in high poverty areas, and will gradually erode the legacy of segregation by giving HCV households more access to low-poverty neighborhoods. Another commenter stated that this FMR change is a welcome innovative step toward increasing housing choices for low-income individuals and families. Other commenters stated that the goal of the Small Area FMR rule will benefit people with disabilities by affording them better opportunities for integration into the community.

For those commenters that opposed the rule they offered the following concerns. A commenter stated HUD's proposal would result in Section 8 recipients in designated ZIP codes experiencing decreases in their subsidies, and these recipients would be obliged to increase their out-of-pocket share. Other commenters stated that research indicates low poverty rates are not 100 percent indicative of high opportunity areas. The commenters stated that given this information, Small Area FMRs are not an indicator of areas of opportunity and cannot be substituted for more robust mobility efforts resulting in poverty deconcentration, racial/ethnic deconcentration, and other positive outcomes associated with areas of opportunity. Other commenters similarly stated that voucher holders access to opportunity/higher market neighborhoods is only partially impacted by adequate payment standards. The commenters stated that while higher payment standards are essential this is not a solution to moving low-income families with children into opportunity neighborhoods. Commenters stated that HUD should not implement Small Area FMRs unless HUD revises the HCV funding formula to ensure that implementation of the rule does not result in fewer households being subsidized under the voucher program.

The following presents the specific issues that commenters raised on the proposed rule and HUD's responses.

Specific Comments

In the proposed rule, HUD sought comment on 13 specific areas presented below.

1. Should HUD provide for PBVs that are in the pipeline to continue using metropolitan FMRs even if the area is designated as a Small Area FMR area? Additionally, should HUD require newly proposed PBVs post Small Area FMR designation to use Small Area FMRs?

Comment: In response to the question of whether PBVs in the pipeline in a designated area, and newly proposed PBVs post-designation, should use Small Area FMRs, commenters expressed wide-ranging views. Many stated that applying Small Area FMRs to existing PBV projects or those in the pipeline could destabilize deals (e.g., impact their value for LIHTC allocation, etc.). Some commenters indicated Small Area FMRs would assist in placing PBV units in high opportunity areas and reduce incentives to develop units in high-poverty areas. Other commenters stated Small Area FMRs would not be

high enough to achieve the goal of creating units in high opportunity areas. Some suggested Small Area FMRs should not apply to PBVs at all because PBVs are essential to revitalization and preservation strategies. In summary, commenters offered differing views: Some recommend PBVs be excluded entirely (with or without an opt-in provision); some recommend voluntary adoption for new or pipeline projects, and others advocate application to all new projects to encourage placement of PBVs in high opportunity areas. One commenter requested HUD remove the word "jurisdiction" in proposed § 888.113(h), to clarify that the new Small Area FMRs apply in any zip code where a PHA's voucher is placed in the metropolitan area.

HUD Response: HUD appreciates that PBVs relationship to FMRs is different than tenant-based vouchers; for example, PBVs are often used for preservation in low-income neighborhoods where the Small Area FMR would be lower than current FMRs—however, Small Area FMRs that are higher than current FMRs could help PBVs reach high opportunity neighborhoods. In the context of HUD's Rental Assistance Demonstration (RAD), the use of Small Area FMRs for PBV may limit PHA options in terms of deciding whether PBV or PBRA is the appropriate choice for the RAD conversion.

Given the range and variation among public comments, and the range of uses of PBV within HUD's rental assistance programs, HUD is choosing to exempt all current and future PBVs from Small Area FMRs at this time. However, if a PHA is operating its tenant-based program under the Small Area FMRs, the PHA may apply Small Area FMRs to all future PBV projects if it establishes such a policy in its PHA administrative plan. In such a case, the PHA may also choose to also establish a policy that allows the PHA to apply the Small Area FMRs to current PBV projects, provided the owner is willing to mutually agree to do so. The application of the Small Area FMR to the PBV project must be prospective. The PHA and the PBV project owner operating under the Small Area FMRs may not subsequently choose to revert back to the metropolitan-wide FMR, regardless of whether the PHA subsequently changes its administrative policy to no longer apply Small Area FMRs to PBV projects. HUD believes this approach offers maximum flexibility for varied circumstances and HUD will closely monitor the results of the policy including for any fair housing or civil rights concerns.

HUD is also removing the term “jurisdiction” in § 888.113(h) for consistency since HUD provides approval to a “PHA” that requests to voluntarily use Small Area FMRs under 982.113(c) as opposed to a “PHA jurisdiction”.

2. The proposed rule provides for Small Area FMR area selection parameters to be codified in regulatory text. HUD is seeking comment on whether these parameters should be codified or should be incorporated into each annual proposed FMR notice to provide HUD, PHAs, and other stakeholders with flexibility, in any given fiscal year, to offer changes to these selection parameters and have the opportunity to comment before any changes to the parameters are made.

Comment: Some commenters proposed codifying area selection criteria with limited flexibility in the specific parameter values for reach (percentages, populations). They recommended HUD should codify the criteria for selecting Small Area FMR areas but the final regulations should allow HUD to revise the Small Area FMR criteria if necessary, through notice and opportunity for public comment, in the **Federal Register**. Commenters suggested this would be the way to ensure changes are guaranteed to fall under the informal administrative rulemaking process. However, other commenters preferred incorporating the parameters into the annual notice as a way to allow for comments and perhaps changes before final Small Area FMRs are issued for that year—enabling potential flexibility for changes on an annual basis. Commenters indicate that HUD should make clear whether Small Area FMRs designations are permanent.

HUD Response: In order to provide specificity to FMR users, and flexibility to HUD, the final rule codifies the definitions of selection parameters in regulatory text but will not include the specific values for these selection criteria in the regulatory text. The values of the selection parameters for the first round of Small Area FMR area selections are specified in a separate **Federal Register** notice published today. The values of selection parameters for subsequent Small Area FMR Area designations, which will be made every 5 years, will be specified through **Federal Register** notice with opportunity for public comment as new Small Area FMR designations are made. Further, once an area is selected to use Small Area FMRs, the selection is permanent. In future years, HUD intends to make additional selections

based on updated information and different selection parameter values.

3. Several commenters to HUD’s ANPR suggested that HUD provide for tenant rent protections in ZIP codes where the Small Area FMR is below the metropolitan area and tenants choose not to move. No additional tenant protections were instituted for tenants serviced by PHAs accepting HUD’s invitation to participate in the Small Area FMR demonstration nor were additional tenant protections implemented for tenants living in the Dallas, TX HUD Metropolitan Area when Small Area FMRs were implemented there. However, as part of a transition strategy between Metropolitan FMRs and Small Area FMRs, HUD seeks comment on what additional policies or requirements the final rule should include that would mitigate the impact of significant and abrupt decreases in the FMRs for certain ZIP code areas on families currently under HAP contract in those impacted areas.

Comment: Commenters suggested a range of additional policies or requirements that would mitigate the impact of significant or abrupt decreases in the FMR for families currently in those areas. Many requested that HUD hold all current tenants harmless permanently if they remain in their same unit (or, as some suggested, neighborhood); others suggested until tenants move or remain for more than 5 years; and others still suggested hold harmless should only apply to certain populations. Commenters urged HUD to fund support mechanisms for impacted households, such as mobility counseling, training and guidance on reasonable accommodation procedures, and others. Some commenters stated that no additional protections were necessary. In addition, commenters also raised concerns about specific populations, exception payment standards, phasing in of payment standard reductions, and incorporation of vacancy rates; those comments are handled elsewhere in the response to comments within this preamble as other questions more directly focus on that content.

HUD Response: Based on the comments received, HUD agrees that it is important to protect tenants, and therefore, the following changes have been incorporated within this final rule. The final rule makes conforming regulatory changes in accordance with Section 107 of HOTMA, which provides PHAs with the option to establish an administrative policy that would hold harmless those families remaining in place from payment standard reductions

that are currently required at the family’s second annual recertification if the family’s payment standard falls outside of the basic range as the result of a decrease in FMRs (including a decrease in FMR attributable to the implementation of Small Area FMRs). This will be done without requiring individual exception payment standard requests.

In addition, the final rule provides PHAs with the option to establish a new payment standard for families under HAP contract between the full “hold harmless” option provided under HOTMA and the new payment standard based on the Small Area FMR. Under this option, the PHA would have greater flexibility than what is afforded under HOTMA (which essentially requires the PHA to either hold the in-place families completely harmless or transition them to the new payment standard). This policy would allow the PHA to still achieve some budgetary flexibility by reducing the payment standard for families under HAP at the second reexamination, while ensuring the reduction in subsidy is modest and does not place families at risk of displacement.

The rule further extends these same flexibilities to the PHA if the payment standard decrease is not the result of a decrease in the FMR.

Finally, in order to ensure that a suitable amount of units remain available during the transition to Small Area FMRs, this final rule limits the annual decrease in Small Area FMRs to no more than 10 percent of the area’s FMR in the prior fiscal year. That is, the current FMR may be no less than 90 percent of the area’s FMR in the previous fiscal year. In addition, the final rule provides that HUD may approve exception payment standards for PHAs administering their HCV programs under Small Area FMRs for an individual ZIP code area in accordance with conditions and procedures set forth in a separate **Federal Register** notice as opposed to the normally applicable requirements at 982.503(c).

4. Related to question 3, HUD seeks comment on whether the final rule should limit the potential decline in the FMR for a ZIP code area resulting from the implementation of Small Area FMRs in order to ensure that sufficient housing opportunities remain available to voucher holders? If so, HUD seeks recommendations on specific policies or requirements that should be included in the final rule to achieve the desired outcome.

a. For example, an approach would be to allow the PHA to establish exception payment standards above the basic

range for impacted ZIP code areas meeting certain conditions through a streamlined HUD approval process. One example of this may be that PHAs could have the discretion of setting their payment standards at up to 130 percent of the Small Area FMR in the 1st year of transition, at up to 120 percent of the Small Area FMR in the 2nd year of transition, and at up to 110 percent of the Small Area FMR in the 3rd and subsequent years following implementation.

b. With respect to protections for tenants currently under HAP contract, one possibility may be to increase the amount of time that the family is held harmless from a decrease in the payment standard. For instance, instead of the lower payment standard going into effect on the second reexamination following the effective date of the decrease in the payment standard, the final rule could provide that the lower payment standard would not go into effect for a family under HAP contract until a later re-examination (e.g., third, fourth, or fifth reexamination).

Comment: Many commenters urged HUD to provide flexibility for PHAs to set rent levels and to protect tenants served by PHAs that do not choose to hold tenants harmless as allowed under HOTMA. Commenters urged HUD to implement the provision in HOTMA that gives PHAs the discretion to hold harmless decreases in Small Area FMRs and FMRs for current tenants. Others suggested PHA-administered phase-ins and increased timeframes before decreases are required are not necessarily helpful, as such phase-ins and timeframes add to administrative tracking requirements and increase program audit risks for the administering agency, as well as cause confusion for residents and landlords.

Regarding the proposal in which PHAs could have exception payment standards above the basic range, some commenters embraced the proposal; however, others felt it would not go far enough, and only delay the onset of rent burdens. Compared to a Small Area FMR phase-in, some commenters suggested it would protect fewer families since it is likely that only some PHAs would implement the higher payment standards. Other commenters suggested HUD could permit PHAs to set payment standards for eligible voucher holders that fall anywhere between the Small Area FMR and the metro-level FMR. Commenters also suggested that HUD limit the amount the FMR or payment standard could fall below metropolitan FMRs each year. Suggestions offered by the commenters ranged from suggesting Small Area

FMRs be set no lower than 90–95 percent of the metropolitan FMR, no lower than 80–90 percent the second year, and so on in 5 percent or 10 percent increments.

Some commenters supported limiting annual FMR reductions by 3 percent or 5 percent, while others suggested the decreases should occur over a 5-year instead of a 3-year period (for all areas, or for only those areas that decrease by more than 10 percent), or the total drop be no more than 5 percent. Other commenters suggested changes included removing or increasing the cap on Small Area FMR values.

Regarding the proposal to increase the amount of time that the family is held harmless from a decrease in the payment standard, some commenters suggested HUD hold the rent harmless until at least the fifth reexamination following implementation of Small Area FMRs. Other commenters stated that if HUD implements the HOTMA payment standard provision, there would be no need to implement a hold harmless provision that holds payment standards harmless in the third, fourth, or fifth reexamination.

HUD Response: As noted above, the final rule implements a number of tenant protection policies: First, the final rule conforms the regulation in accordance with Section 107 of HOTMA, which provides PHAs with the option to maintain an in-place family's current payment standard at a level above a payment standard at the top of the basic range of the a new, lower FMR. Second, the final rule further provides PHAs with the option to establish a new payment standard for families under the HAP contract between the full "hold harmless" option provided under HOTMA and a payment standard based on the basic range of the new lower Small Area FMR. It is noted that the rule also extends these same flexibilities to the PHA in cases where the payment standard decrease is not a result of a decrease in the FMR.

The rule maintains that in cases where the PHA will apply a decrease in the payment standard to families during the term of the HAP contract, the earliest that the PHA may apply the initial reduction to the payment standard amount is the second regular reexamination following the effective date of the change in the payment standard amount. This provides at minimum a family with no less than the amount of time previously provided under the regulations before a reduction in the payment standard may take effect during the term of the family's HAP contract. The final rule also provides the PHA with the administrative flexibility

to further reduce the payment standard for the families that remain under HAP contract if the PHA wishes to gradually reduce or eliminate the difference between the family's payment standard and the normally applicable payment standard on the PHA's payment standard schedule over time.

HUD notes that section 78001 of the Fixing America's Surface Transportation Act (or FAST Act), amended the 1937 Act to allow PHAs to undertake full income reexaminations for families with 90 percent or more of their income from fixed-income sources every three years instead of annually. HUD recognizes that implementation of this change in the frequency of reexaminations may have significant ramifications in terms of when a decrease in a payment standard could take effect during the term of the HAP contract for some families given that under this rule the decrease may not take effect until the second regulation reexamination. Rather than try to incorporate changes to the tenant protection provisions of this rule in anticipation of those potential complications, HUD will instead consider if any changes are necessary as part of the forthcoming rule-making for implementation of those FAST Act provisions.

The final rule further provides that the PHA may establish different policies regarding how decreases in payment standards will apply during the term of the HAP contract for designated areas within their jurisdiction (e.g., for different zip code areas). However, the PHA must apply the same policies to all families under HAP contract within that designated area.

Fourth, controlling for extremely large decreases in FMRs, the final rule protects families, by limiting the maximum amount the FMR may decrease year over year to 10 percent of the prior year's FMR for the area. This protection applies to all tenants—families under HAP contract, current participants that either want or are required to move to new units, and families from the waiting list who are issued vouchers to begin their initial housing search, and to metropolitan and non-metropolitan county FMRs.

Fifth, the final rule permits a PHA that is administering its HCV program under the Small Area FMRs to request and HUD to approve exception payment standards for a ZIP Code Area under the conditions and procedures set forth in a **Federal Register** Notice instead of the requirements under 982.503(c). This will allow HUD to establish a process by which a PHA may request and receive approval to establish an exception payment standard promptly for a ZIP

Code area if necessary to react to rapidly changing market conditions or to ensure sufficient rental units are available for voucher families.

5. The proposed rule adds a new paragraph (i) to § 888.113 to address the transition of metropolitan areas that were previously subject to 50th percentile FMRs. HUD believes that the Small Area FMR methodology will provide HCV tenants with greater access to areas of opportunity than metropolitan area wide 50th percentile FMRs. As a result, this rule proposes that a 50th percentile metropolitan area designated for Small Area FMRs would transition to Small Area FMRs on the effective date of the Small Area FMR designation. HUD is also proposing that a 50th percentile FMR area that is not designated for Small Area FMRs would remain under 50th percentile FMRs until the end of the existing 3-year period for the 50th percentile FMRs prior to reverting to the standard 40th percentile FMRs. The rule does not eliminate provisions that permit a PHA with jurisdiction in a 50th percentile FMR area that reverts to the standard 40th percentile FMR to request HUD approval of payment standard amounts based on the 50th percentile rent in accordance with the existing § 982.503(f); however, HUD is specifically seeking comment on whether this provision should be eliminated in order to phase out the use of 50th percentile rents for deconcentration purposes. HUD would also appreciate comments as to whether or not the current SEMAP deconcentration standard is appropriate as the basis for PHAs requesting HUD to approve payment standards based on 50th percentile rents under existing § 982.503(f). HUD is specifically seeking comment on these proposed policies, as well as suggestions for alternative approaches or other recommendations on how best to phase-out 50th percentile rent FMRs for impacted metropolitan areas and transition the area to either the Small Area FMRs or the standard metropolitan-wide 40th percentile FMRs.

Comment: Commenters responses to this issue varied. Some commenters requested continuation of the 50th percentile policy in its entirety (including expanding it so that all FMRs would be set at the 50th percentile). Other commenters recommended it be optional if areas proved successful deconcentration using it, and others recommended phasing out 50th percentile rents altogether. Some commenters responded that the SEMAP standard should be considered an appropriate basis for PHAs to request

payment standards based on the 50th percentile until such time as the Section Eight Management Assessment Program (SEMAP) provision for deconcentration is modified. Others commented that if HUD allows agencies that earn the SEMAP deconcentration bonus to retain 50th percentile FMRs, it should also require such agencies to demonstrate that retaining 50th percentile FMRs would be more effective in enabling voucher holders to live in high-opportunity areas than adopting Small Area FMRs, and others still indicated that before determining this, HUD should clarify proposed mobility factors of SEMAP reform.

HUD Response: It is impractical to maintain both 50th percentile FMRs and Small Area FMRs as the FMR tools that HUD provides to help deconcentrate voucher tenants in metropolitan areas. However, HUD recognizes that some PHAs have attained deconcentration success using 50th percentile FMRs. Therefore, as in the proposed rule, the final rule provides that current 50th percentile areas that are designated for Small Area FMR usage will transition to using Small Area FMRs when Small Area FMRs become effective and areas not designated for Small Area FMR usage will remain 50th percentile areas until the end of their 3-year designated period and then will revert to 40th percentile areas. PHAs operating in 50th percentile areas that do not convert to Small Area FMR areas and do not choose to opt-in to using Small Area FMRs may follow the procedures available at 24 CFR 982.503(f) to apply to continue to use payment standards based on 50th percentile rents.

6. HUD is specifically seeking comment on how to reduce the administrative burden on PHAs and simplify the transition to Small Area FMRs. For example, HUD is proposing to change the percentage decrease in FMRs that triggers rent reasonableness redeterminations from 5 percent to 10 percent for Small Area FMR PHAs. HUD requests comments, however, regarding whether 10 percent is the right trigger for program-wide rent reasonableness redetermination, whether HUD should limit this proposal to Small Area FMR decreases, or also change the percentage of decrease that triggers rent reasonableness for all FMRs, and whether it should revise the trigger for program-wide rent reasonableness redeterminations at all. In regards to potentially expanding the 10 percent trigger for rent reasonableness redetermination to a program-wide requirement, HUD seeks comments on the trade-offs between administrative relief and decreased program oversight

on rent levels. HUD also requests comments on what other changes would reduce the potential administrative burden and complexity for PHAs impacted by the implementation of Small Area FMRs.

Comment: Commenters emphasized that that Small Area FMRs and other recent programmatic changes represent increased administrative burden. Many commenters supported increasing the threshold at which an FMR decline triggers a rent reasonableness redetermination from 5 percent to 10 percent as a way to reduce that burden. However, others recommended changing the trigger from 5 percent to 35 percent and allowing the PHA to make that change through their annual plan process. Some commenters opposed changing the standard altogether. Other commenters stated that they do not believe a change from 5 percent to 10 percent is enough to reduce administrative burden sufficiently given the number of rent redeterminations expected from the transition to Small Area FMRs.

Aside from whether and at what level to change the trigger, some commenters recommended this be program-wide, and not just for Small Area FMRs. Commenters urged HUD to issue updated rent reasonableness guidance—including for high opportunity neighborhoods to avoid methods disallowing rents if the methods do not adequately consider location. Commenters also urged HUD to require PHAs to be transparent with the data used to perform the analysis and make it publicly available.

Other commenters urged HUD to publish new FMRs and Small Area FMRs far in advance of their effective date to avoid requiring PHAs to redo redeterminations. Commenters asked HUD to provide at least six months after publication of Small Area FMR designations before they are required to have Small Area FMR-based payment standards in place.

Some commenters raised concerns about increasing the trigger for PBV because it would trigger rent reasonable studies that result in a significant loss of income to owners of PBV contracts. The commenters stated that for properties in which this income was assumed as part of initial financing or refinancing, the property is likely to become financially unstable and unable to meet its obligations. Other commenters stated that aside from rent reasonableness, the increased administrative costs of administering Small Area FMRs come at a time when PHAs are not being paid fully to administer the HCV program.

HUD Response: Based on public comment, HUD agrees that a reduction in administrative burden is necessary. Therefore, HUD is adopting the proposed rule provisions which change the required rent reasonableness review standard from a 5 percent to a 10 percent decrease in the FMR. This change would apply not just to voucher units in Small Area FMR areas but to units in all FMR areas. Moreover, the final rule implements a policy that limits the annual decrease in FMRs (including Small Area FMRs). This change is being implemented in response to comments on the need for additional tenant protections, but should also provide some administrative relief to PHAs by having more certainty around the path of Small Area FMRs within areas where the Small Area FMR is below the metropolitan FMR as well as FMR decreases more generally.

7. HUD is currently proposing, through this rulemaking, to expand the use of Small Area FMRs within the HCV program. HUD seeks public comment as to whether or not other HUD rental assistance programs would benefit from using Small Area FMRs in their operations. For example, would the rental assistance component of the Housing Opportunities for Persons with AIDS (HOPWA) programs be a candidate for Small Area FMR treatment? Frequently, metropolitan FMRs are inadequate for HOPWA-assisted tenants to find units near health care facilities, or in neighborhoods with better job opportunities. Should the HOPWA program regulations be amended to allow participating jurisdictions the flexibility to set tenant-based assistance rents according to Small Area FMRs either in areas that would be designated Small Area FMR areas or for the HOPWA program more generally? Would other HUD programs benefit as well?

Comment: Commenters responses to this issue were varied. Some commenters were against expansion to any other program, and some urged HUD to wait until Small Area FMRs could be studied more fully. Other commenters stated that they believed new tenants in tenant-based rental assistance programs could benefit from Small Area FMRs (e.g., HOPWA, CoC Rental Assistance, Legacy Shelter Plus Care program, HOME tenant-based rental assistance.). The commenters that recommended expansion to other programs stated that applying the same Small Area FMR scheme would be less burdensome on PHAs and landlords than multiple standards.

HUD Response: HUD appreciates the suggestions, but at this time, due the myriad of programs and program rules, it is beyond the scope of this rulemaking to make changes to these programs; therefore, HUD is proceeding solely with implementation of Small Area FMRs for the HCV program, which includes traditional vouchers and special purpose vouchers. HUD will consider the comments received for future rulemaking or other program implementation strategies for the various programs as the opportunity arises.

8. As currently proposed, the Small Area FMR policy would apply to all residents within a ZIP code who receive housing vouchers. HUD seeks comment on whether there are certain situations or any specific groups of voucher recipients within the general population, such as persons with disabilities or elderly voucher recipients, where an alternate policy should apply that should exempt them from having their voucher level change as a result of this policy due to specific hardships they may encounter by having to choose between staying in their current area and receiving a smaller voucher or moving to a new area for the sake of obtaining a larger voucher?

Comment: Many commenters urged HUD to hold all existing tenants harmless, and if HUD declined to do this, to hold disabled and elderly tenants harmless.

HUD Response: In response to the commenters request that HUD hold disabled and elderly tenants harmless under this policy, HUD is prohibited from treating one or more protected class differently under the Fair Housing Act and other civil rights requirements, absent statutory authority. HUD in this rule is implementing robust tenant protections for all tenants, including those enacted in HOTMA, as outlined earlier in this preamble. HUD will study the specific impact on elderly and disabled voucher recipients as a result of this rule change to determine if additional policy changes are necessary.

9. Are there specific groups within the general population of voucher holders for whom this policy change would be particularly burdensome? What are the ways in which this policy change could create a disproportionate burden on certain groups like elderly and disabled voucher holders?

Comment: Commenters stated that there are specific groups of voucher holders for whom this policy change would be particularly burdensome. The commenters stated that these specific groups include the elderly, people with

disabilities, and families with children. Commenters raised the concern that each group could face increased housing cost burdens, displacement, prohibitively expensive moves, and homelessness. Other commenters raised the concern that all tenants may have chosen their current location based on community, religious, medical, service provider, and social networks.

Specifically, certain commenters stated that tenants with disabilities may not be able to find accessible units in higher rent neighborhoods and may face limited public transportation options. They may also face discrimination in these areas. Commenters stated that it is insufficient to suggest that these tenants are not at risk because they can request reasonable accommodation. The commenters stated that many people do not know enough about their rights to request the accommodation and will not be informed of them by landlords seeking higher payments. The commenters further stated that responding to requests for accommodations from a significant portion of voucher holders may be administratively burdensome for HUD. Specific recommendations from commenters focused exception payment standards (EPS) in which HUD should (1) notify all tenants who will experience a reduced payment standard of their right to a reasonable accommodation based on disability, (2) identify tenants, based on their participant file, who might be entitled to an EPS based on disability and take affirmative steps to accommodate them, and (3) publish additional guidance with the final rule that directs PHAs to allow EPS as a reasonable accommodation in any instance when a voucher family will experience a disability-related hardship as a result of being forced to pay over 30 percent of their income in rent or move.

Commenters stated that elderly tenants may also share similar challenges finding accessible units, and that stability in a neighborhood may be more of an opportunity than mobility. Commenters also suggested families with children may be adversely impacted, as having a large number of children can act as a barrier to being able to find suitable housing. Commenters stated that families report longer search times and far fewer options.

HUD Response: HUD agrees that the concerns raised by the commenters pose serious challenges for the specific populations raised above. As such, the final rule implements robust tenant protections for all tenants and a lengthened transition to full Small Area

FMR implementation as outlined earlier in this preamble. In addition, the final rule clarifies that reasonable accommodation requests may include exception payment standards of more than 120 percent of the published FMR, consistent with HOTMA. Consistent with current practice, for such requests, the focus of HUD's review will be on the exception payment standard requested by the PHA.

10. HUD is seeking comment on the criteria that HUD selected for determining which metropolitan areas should be impacted by the shift to a Small Area FMR instead of the current 50th percentile policy. Did HUD use the correct criteria in making these choices? What other criteria should HUD be using to select metropolitan areas that will be impacted by this rule change and why are those criteria important?

Comment: Commenters provided a range of responses on many topics, outlined below:

- Vacancy: Many commenters urged HUD to factor in vacancy data into the formula. Their recommendations included:

- Excluding low vacancy markets (those with a 4 percent, 5 percent or 6 percent vacancy rates).

- Allow PHAs with low vacancy rates to opt out of Small Area FMRs, even if they meet HUD's criteria, and require PHAs with low vacancy rates that choose to adopt Small Area FMRs to hold current tenants harmless.

- Exempt low vacancy areas from decreases in authorized Section 8 rent levels for existing tenants; Small Area FMRs should be implemented only for new tenants (or existing tenants who move) in these areas.

- Revising the formula

- Considering relative voucher concentration by measuring the difference—rather than the ratio—between the voucher and renter concentration shares. HUD should use the criteria that there must be at least a 15 percent difference between renter and voucher holder concentration in low-income areas.

- Compare voucher concentration to the distribution of all housing units rather than just rental units.

- Reduce the required proportion of rental units in areas over 110 percent of the regional FMR to 17 percent, to capture more of our most deeply segregated metro areas. An alternative approach would prioritize metropolitan areas with the highest proportion of families with young children living in concentrated poverty neighborhoods.

- Lower this threshold for the share of rental units in ZIP codes with Small

Area FMRs above 110 percent of the metro FMR at least to 15 percent.

- Change criterion to better target metropolitan areas in which overall segregation is the highest, with less focus on concentration of voucher households in high poverty areas relative to other renters.

- Exclusions and other comments
 - Commenters also suggested that, in order not to impede PHAs whose program management has already resulted in participants living in higher opportunity/lower poverty areas, HUD should require adoption of Small Area FMRs only by those PHAs in Metro areas meeting the Small Area FMR designation criteria whose percentage of voucher holders living in concentrated low-income areas relative to all renters in concentrated low-income areas over the entire Metro FMR area exceeds 155 percent.

- The use of Qualified Census Tracts (QCTs) in the criteria for designating Small Area FMR areas is inappropriate. In the LIHTC program, the purpose of QCTs is to increase the supply of affordable housing in these areas. It is contradictory to incentivize the construction of affordable rental units in certain areas on the one hand, and use Small Area FMRs to move residents out of those areas on the other.

- In addition to modifying the criteria, HUD should also revise the proposed regulation to give itself flexibility to designate highly segregated areas as Small Area FMR areas if it concludes that this is needed to further fair housing.

HUD Response: While SAFMRs may be a useful tool for expanding choice and providing voucher holders with access to more units in opportunity areas, public comments on the proposed rule raised concerns with HUD's knowledge of how well SAFMRs will work in areas experiencing low vacancy rates. HUD agrees that areas with extremely low vacancy rates are indicative of rental markets in disequilibrium and the final rule includes additional selection criterion to those provided in the proposed rule. In order for the rental housing market to function in an orderly manner, there needs to be an ample supply of available vacant units. Once the vacancy rate falls below a certain percentage, typically when the quantity of units demanded exceeds the quantity of units supplied, this places upward pressure on rental prices. The solution is typically the creation of additional supply; however, in the short run, a market clearing price is harder to achieve and the rental market ceases to function normally. Therefore, the final rule includes

vacancy rate as an additional selection criterion to those provided in the proposed rule. Commenters provided varied feedback on the level of vacancy for which areas should be excluded from Small Area FMR designation. The American Community Survey (ACS) provides the most comprehensive data measuring rental vacancies across all metropolitan areas; however, due to the manner in which vacancies are assessed in the ACS, as detailed in the Regulatory Impact Analysis of this rule, HUD research indicates that ACS based vacancy rates tend to underrepresent the actual level of vacancies across most markets; consequently, the final rule excludes any metropolitan area with an ACS based vacancy rate of 4 percent or lower from designation as a Small Area FMR designated area as a 4 percent vacancy rate measured by the ACS is roughly equivalent to an actual vacancy rate of 5 percent under reasonable assumptions.

While HUD believes the criterion should remain focused on voucher concentration rather than residential segregation, HUD also agrees with commenters that the voucher concentration criterion should be improved to better target communities where voucher concentration is most severe. Consequently, in addition to the voucher concentration ratio included in the proposed rule, the final rule also requires the numerator of this measure, the concentration of voucher holders within concentrated low income areas, to meet a minimum standard level (25 percent).

HUD notes the other suggestions made by commenters and will evaluate program effects including access to neighborhoods with better employment opportunities, better schools, lower crime rates and lower racial and ethnic isolation to inform any future expansion of the program.

11. The proposed rule makes no changes to 24 CFR 888.113(g), the FMR for Manufactured home space rental for voucher tenants that own manufactured housing units. Under this proposed rule Small Area FMRs would apply to manufactured home space rentals in areas designated for Small Area FMRs (*i.e.*, FMRs for space rentals would be set at 40 percent of the 2-bedroom Small Area FMR). Given the costly nature of moving a manufactured home, HUD is seeking comment on whether or not current voucher holders using their voucher for a manufactured home space should be exempt from Small Area FMRs at their current address?

Comment: Most commenters suggested HUD should exempt manufactured home space rental from

Small Area FMRs wholesale. Others suggested an exemption for existing voucher holders so long as the voucher holder remains at the current address. Some suggested HUD exempt only when the Small Area FMR is lower than the metro FMR; some pointed out that voucher holders in ZIP codes where the payment standard will increase under Small Area FMR should be permitted to benefit from the increased payment standard. Others commented that Small Area FMRs should be voluntary altogether, including for those areas which may have vouchers for manufactured home space. Manufactured homes are often limited by local regulation to particular sites. Residents should not be penalized in subsidy available to support their housing choice based on the ZIP code location of allowable manufactured home sites.

HUD Response: Based on public comment, the final rule exempts vouchers used to subsidize the rent of a manufactured home space from the use of Small Area FMRs.

12. HUD has proposed to amend the Exception Payment Standard rules at 24 CFR 982.503 to account for the fact that FMR areas in Small Area FMR designated metropolitan areas will be ZIP codes. HUD is seeking public comment to determine if there are other amendments HUD should make to the Exception Payment Standard Regulations to better facilitate the approval process of Exception Payment Standards. For example, the current exception payment standard regulations require that an exception payment standard may not include more than 50 percent of the population of the FMR area. This may be an impractical requirement when determining exception payment standards within a ZIP code. Similarly, given that ZIP codes more narrowly define the FMR area, the provision within the regulation that program justification may include helping families find housing outside areas of high poverty may not be applicable even though an exception payment standard may be necessary. Therefore, HUD is soliciting feedback to ensure that the exception payment standard regulations are revised so that PHAs may use this component of the regulations to optimize the administration of their HCV programs.

Comment: Some commenters offered that under Small Area FMRs, EPSs become much less necessary, other than to group neighborhoods into payment standard buckets to simplify program administration and limit significant volatility between years.

Specific requests of commenters included eliminating the population cap that prevents more than 50 percent of an area to be covered by an EPS, and clarify that that exception rents may exceed 150 percent of Small Area FMR. Commenters also suggested HUD clarify how exceptions will work for Census tracts and other small geographic areas. Some commenters suggested EPS should be available up to 130 percent in the first two years of the program; others request up to 150 percent of the FMR. Another commenter stated that HUD should publish additional guidance with the final rule that directs PHAs to allow EPS as a reasonable accommodation in any instance when a voucher family will experience hardship or pay over 30 percent of their income in rent.

Commenters recommended that PHAs be able to set a payment standard up to 120 percent of the FMR without requesting HUD approval. Other suggested eliminating the distinction between exceptions above and below 120 percent of FMR, as the differences and processes are complex. If they are kept separate, commenters suggested HUD should revise the regulation for 110–120 percent to eliminate the requirements that PHAs submit information other than data on market rents or inability to secure housing and, for standards below the basic range, rent burdens. If HUD retains the requirement that increases above 120 percent prevent financial hardship, it is crucial that HUD revise the regulation or provide guidance making clear that this includes potential hardship that deters families from moving to the exception area in the first place.

As far as the process, overall, commenters requested streamlined processes, clear guidance and an expedited path for approvals that is standardized across local HUD offices and HUD headquarters. Some commenters suggested a system in which HUD's Office of Policy Development and Research obtains data from local housing authority rent reasonable databases to immediately grant exception payment standards that will support the utilization of vouchers and prevent families from falling into homelessness or remain homeless. Commenters suggested allowing exception payment standards to remain in place for a prolonged period without PHA action. HUD could review existing exception every so many years.

HUD Response: This final rule addresses the operation of exception payment standards with respect to Small Area FMRs. Specifically, the rule allows PHAs to request exception

payment standards within ZIP codes. Additionally, for the purposes of exception payment standards within the context of Small Area FMRs, the final rule removes the 50 percent population cap for exception payment standards within ZIP codes. Furthermore, HUD is also simplifying the procedures for PHAs not using Small Area FMRs to run their HCV program. The final rule provides that PHAs in non-Small Area FMR areas may request an exception payment standard from the HUD Field Office of up to 110 percent of the relevant Small Area FMR with no additional supporting information. Finally, as noted earlier the final rule provides that HUD may approve a request by a PHA administering the HCV program under the Small Area FMRs for an exception payment standard for a ZIP Code area in accordance with the conditions and procedures set forth in a **Federal Register** Notice as opposed to the formerly applicable requirements under 982.503(c). This will allow HUD to establish a streamlined and responsive process for Small Area FMR ZIP Code area exception payment standard requests.

HUD has decided against proposing comprehensive changes to its EPS regulations at this time due to the implementation of Small Area FMRs and the potential to learn from PHA experiences with their adoption and operation. The suggestions offered through the public comment process will however be taken into consideration whenever HUD does revisit its EPS regulations.

13. HUD makes administrative data for research into HUD's programs available in a variety of ways (*i.e.*, Public Use Microdata Sample—PUMS data, Research Partnerships, and Data License Agreements). HUD seeks comment on what additional data or dissemination strategies would be helpful to the public to assess the impact of the implementation of the Small Area FMR proposed rule.

Comment: Commenters requested both data and dissemination at the federal and PHA levels. They include:

- PUMS data set should include geographic identifiers for the census tract and ZIP code tabulation area, and HUD Fair Market Rent Metro Areas (HMFAs), so researchers can incorporate neighborhood information from, for example, the American Community Survey. Because HMFAs often diverge from OMBs definitions of metropolitan areas, it would also be helpful to append key HMFA-level variables (poverty rate, median gross rent, income, etc.) to the microdata.

- Number of voucher landlords and units associated with those landlords by ZIP code to which PHAs provide access to new voucher holders. This data is public, but not easily available or centralized.

- Ensure assessments of fair housing provide data at the ZIP code level.

- Study the impact the rule has on households' ability to use their voucher within the allowable time.

- Data from the evaluation of the Small Area FMR demonstration.

- List of ZIP codes by jurisdiction and the associated FMR rather than a list at the level of metropolitan area.

- All data used in the formula to designate the areas required to implement Small Area FMRs

- Data on whether increases to FMR for higher rent neighborhoods effectuates an increase in leasing activity in these neighborhoods.

- External evaluation of the Small Area FMR implementation parallel to implementation.

- Data not only for designated Small Area FMR areas and PHAs that opt in, but also for other areas and PHAs in order to allow comparison:

- Number of voucher holders by ZIP code including relevant data on race, ethnicity, disability status and other factors relevant to fair housing concerns.;

- Voucher success rates by PHA (if available and reliable); PHAs should report the average time it takes to lease-up for new and continuing voucher participants (who continue in their current jurisdiction or attempt to port their voucher);

- Voucher turnover rates; to assess the impact of Small Area FMRs on program participants, it is essential that data is collected on the number of participants leaving and entering the program each year;

- Voucher program exit and new admission rates by PHA;

- Number of voucher holders with rent burdens at various levels (30 percent of income or less, 31–40 percent, 41–50 percent, and so forth) by PHA or by ZIP code;

- Number of units on lists provided to families issued vouchers, broken down by ZIP code and PHA.

- Technical Assistance opportunities for impacted landlords and beneficiaries to understand the policy revisions and rationales.

- Information on what strategies PHAs used in conjunction with the Small Area FMRs.

- HUD should determine and publicize what payment standards PHAs use, and make this information available to help HCV households with their housing search.

- Publicly Available ZIP-Code-Level Counts of Voucher Holders and Their Race: Currently, HUD makes the number of voucher holders in a particular area available in two ways: (1) On HUD's Open Data Web site and (2) as part of the underlying data used in the AFH Data and Mapping Tool. Both give voucher counts on the Census tract level, while the latter source includes a count of the number of non-white voucher holders in each tract. Although HUD releases a crosswalk file that matches Census tracts and ZIP Code Tabulation Areas (ZCTAs), the process of converting HUD's tract-level data to ZCTAs is complex and riddled with potential for errors. Since Small Area FMRs use ZCTAs, not Census tracts, as the primary unit of analysis, HUD should release voucher counts at the ZCTA level in order to evaluate the impact of Small Area FMRs. The data made available by race will also allow evaluation of how the Small Area FMR rule impacts jurisdictions' AFFH obligations.

- Whether increasing available asking rents impact local land use decisions.

- Data on total tenant payments by age group over the course of voucher lease-up and through Small Area FMR transitions, payment standard changes by housing agencies within Small Area FMR areas, and the use and value of PBVs.

- Availability of health services in new/old neighborhoods, the rate at which households retain their vouchers in new/old neighborhoods, and the financial costs of moving beyond rent payments (transportation, deposits, etc.).

HUD Response: HUD thanks the public for these helpful comments, and will take these recommendations under advisement. HUD does not need to undertake rulemaking to release additional data or information but does need to carefully consider the ramifications and disclosure issues associated with many of the suggestions. As HUD determines what additional information is releasable, HUD will continue to post Small Area FMR-relevant data online at <https://www.huduser.gov/portal/datasets/fmr/smallarea/index.html>.

Comment: Commenters provided a vast array of requests through this question that support a variety of objectives:

- The ability to assess the efficacy of Small Area FMRs.

- The ability to do additional research into the Housing Choice Voucher program.

- The ability to better administer the Housing Choice Voucher program.

HUD Response: Within the context of the final rule, HUD will release Small Area FMRs accompanied by both the minimum and maximum basic range amounts (90 percent and 110 percent) for each bedroom unit count Small Area FMR. HUD will further sort the ZIP code based Small Area FMRs for each metropolitan area from least to greatest to facilitate PHAs wishing to group multiple ZIP codes together into Payment Standard regions. HUD is taking the rest of these recommendations under advisement and will continue to post Small Area FMR-relevant data online at <https://www.huduser.gov/portal/datasets/fmr/smallarea/index.html>.

Other Comments

Commenters provided a variety of other comments regarding the proposed rule. Two of these topic areas include Moving To Work (MTW) PHAs, and comments on the methods for calculating FMRs.

Issue: Moving To Work (MTW) PHAs and the use of Small Area FMRs.

Comment: Commenters asked HUD to clarify whether or not MTW PHAs operating in metropolitan areas designated for Small Area FMR usage will have to use Small Area FMRs.

HUD Response: The proposed Rule pointed out that MTW PHAs have the ability to set alternative rent policies, outside of the standard regulations governing the use of FMRs in setting payment standards with approval from HUD. To clarify, MTW PHAs administering the HCV program can exercise flexibility in regards to establishing rent in accordance with the terms of their respective MTW Agreement and approved Annual MTW Plan. If an MTW PHA has not exercised flexibility through their Annual MTW Plan, the Small Area FMR requirements set forth in this Final Rule will apply to the MTW PHA, and the MTW PHA will be required to use Small Area FMRs in place of metropolitan-wide FMRs if the PHA jurisdiction is located within a designated Small Area FMR metropolitan area.

Issue: Methodology for Calculations of Metropolitan Fair Market Rents and Small Area Fair Market Rents.

Comment: Several commenters provided HUD with unsolicited feedback regarding the methods that HUD uses to calculate metropolitan-wide and Small Area FMRs. Several commenters suggested that HUD should modify the process HUD uses to calculate FMRs to be more reflective of market rents.

Overall FMR concerns: Many commenters discussed concerns

regarding overall FMRs, including data lags and gap between local rents that will be embedded into Small Area FMRs.

- Specific suggestions included:
 - Fine tuning current formula to include rent variations for different bedroom size units, and ensuring that the five-year American Community Survey is keeping pace with actual rents in each ZIP code, particularly in the targeted metro areas, and to make upward adjustments as needed.
 - Alter the current FMR methodology to account for trends in local rental markets; cease using the “Trend Factor” to calculate FMRs, which measures the forecasted changes in national gross rents, and instead use the percentage change in metropolitan area-wide rents published as part of HUD PD&R’s quarterly U.S. Housing Market Conditions Regional Reports.
 - Revising the formula
 - Some commenters urged HUD to adopt a methodology for calculating Small Area FMRs that would better ensure access to 40% of units in all ZCTAs.
 - Urged consideration of methodology other than ZIP codes, such as independent analyses of local housing submarkets. ZIP codes may be too large to get desired impact.
 - Calculate 40th-percentile rents with data specific to different unit sizes (rather than indexing the rents to the 2-bedroom units),
 - Rely upon local rather than national CPI data in order to trend FMRs forward

HUD Response: HUD appreciates the breadth of comments provided to HUD regarding the methods used to calculate FMRs (both metropolitan-wide and Small Area FMRs). As stated earlier in the response to comments, in this final rule HUD is implementing a floor on the amount that FMRs can decrease from year to year. This is being done to provide in-place tenants with an additional element of subsidy protection during the transition from metropolitan FMRs to Small Area FMRs. Additionally, limiting the annual decrease in FMRs will help ensure a sufficient supply of affordable units during the transition to both existing tenants who wish to move and new voucher families entering the market. The final rule does not otherwise affect the data or methods HUD uses to estimate FMRs or Small Area FMRs. Due to provisions within HOTMA, HUD will be publishing **Federal Register** notices of proposed material changes in the methods for calculating FMRs for public comment before these changes are incorporated into the calculation of

FMRs. HUD will respond to comments on FMR methodology provided in response to the proposed Small Area FMR rule as well as the notice announcing Fiscal Year 2017 FMRs in an upcoming Notice of Proposed Material Change in FMRs.

Issue: Rulemaking is premature.

Comment: A commenter stated that given that demonstrations of this idea in five locations are well underway, HUD’s proposal is premature. The commenter stated that demonstrations have the admirable purpose of working out the problems that occur even with proposals that are highly meritorious in general terms before implementing them at large scale.

HUD Response: While HUD acknowledges that more information on the overall effects of the Small Area FMR approach will be forthcoming when the results of the Small Area FMR demonstration are available to inform broad policy, HUD believes that it is not premature to implement Small Area FMRs on this limited basis in those areas where it has the potential to address significant voucher concentration concerns. Through this final rule, HUD seeks not only to employ a better tool than the 50th percentile policy to expand housing opportunities for families where voucher concentration is a particular challenge but to also provide PHAs with the administrative flexibility to implement appropriate tenant protections to families currently under HAP contract and to address changing market conditions.

Issue: Continuation in Small Area FMRs in the Dallas, TX HUD Metro FMR Area.

Comment: A commenter noted that the Dallas, TX HUD Metro FMR Area, which has been operating under Small Area FMRs since 2010 pursuant to a court settlement, was very close to the thresholds for inclusion as a Small Area FMR area, and raised concerns that it might be excluded from continuing as a Small Area FMR area in the final rule or in the future.

HUD Response: While the final rule establishes a permanent Small Area FMR program, the final does not void the settlement agreement by which PHAs in the Dallas, TX HUD Metro FMR Area are required to operate with Small Area FMRs. PHAs in the Dallas TX, HUD Metro FMR Area will continue to be required to operate using Small Area FMRs in accordance with this final rule. The final rule contains no provisions for discontinuing Small Area FMRs once they have been implemented for a FMR Area.

IV. Findings and Certifications

Regulatory Planning and Review

OMB reviewed this final rule under Executive Order 12866 (entitled “Regulatory Planning and Review”). This rulemaking was determined to be an “economically significant regulatory action,” as defined in section 3(f)(1) of the order. The accompanying Regulatory Impact Analysis (RIA) for this rulemaking addresses the costs and benefits that would result from implementation of this final rule and the RIA can be found at <http://www.regulations.gov>.

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 final rule does not impose any federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Environmental Impact

This final rule concerns the establishment of fair market rent schedules and related external administrative requirements or procedures that do not constitute a development decision that affects the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

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. At the proposed rule stage, HUD prepared an Initial Regulatory Flexibility Analysis (IRFA) and HUD follows the IRFA with a Final Regulatory Flexibility Analysis (FRFA). HUD finds in the FRFA that this final rule will not have a significant economic impact on a substantial number of small entities. The FRFA, which is found in Appendix A to this final rule and can also be found at www.regulations.gov elaborates, and provides details on how HUD made this finding.

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 final 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*24 CFR Part 888*

Grant programs-housing and community development, Rent subsidies.

24 CFR Part 982

Grant programs-housing and community development, Grant programs-Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs-housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 985

Grant programs-housing and community development, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR parts 888, 982, 983, and 985 as follows:

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT ANNUAL ADJUSTMENT FACTORS

■ 1. The authority citation for part 888 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535d.

■ 2. In § 888.111, revise paragraph (a) to read as follows:

§ 888.111 Fair market rents for existing housing: Applicability.

(a) The fair market rents (FMRs) for existing housing are determined by HUD and are used in the Section 8 Housing Choice Voucher program (HCV program) (part 982 of this title), Section 8 project-based assistance programs and other programs requiring their use. In the HCV program, the FMRs are used to determine payment standard schedules. In the Section 8 project-based assistance programs, the FMRs are used to determine the maximum initial rent (at the beginning of the term of a housing assistance payments contract).

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■ 3. Revise § 888.113 to read as follows:

§ 888.113 Fair market rents for existing housing: Methodology.

(a) *Basis for setting fair market rents.* Fair Market Rents (FMRs) are estimates of rent plus the cost of utilities, except telephone. FMRs are housing market-wide estimates of rents that provide opportunities to rent standard quality housing throughout the geographic area in which rental housing units are in competition. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units in the FMR area. FMRs are set at the 40th percentile rent, the dollar amount below which the rent for 40 percent of standard quality rental housing units fall within the FMR area. The 40th percentile rent is drawn from the distribution of rents of all units within the FMR area that are occupied by recent movers. Adjustments are made to exclude public housing units, newly built units and substandard units.

(b) *Setting FMRs at the 40th percentile rent.* Generally, HUD will set the FMRs at the 40th percentile rent, but no lower than 90 percent of the previous year's FMR for the FMR area.

(c) *Setting Small Area FMRs.* (1) HUD will set Small Area FMRs for certain metropolitan FMR areas for use in the administration of tenant-based assistance under the HCV program. HUD will establish the selection values used to determine those metropolitan areas through a **Federal Register** notice on November 16, 2016 and may update the selection values through a **Federal Register** notice, subject to public comment. The selection criteria used to determine those metropolitan areas are:

- (i) The number of vouchers under lease in the metropolitan FMR area;
- (ii) The percentage of the standard quality rental stock, within the metropolitan FMR area is in small areas (ZIP codes) where the Small Area FMR is more than 110 percent of the metropolitan FMR area;

(iii) The percentage of voucher families living in concentrated low income areas;

(iv) The percentage of voucher families living in concentrated low income areas relative to the percentage of all renters within these areas over the entire metropolitan area; and

(v) The vacancy rate for the metropolitan area.

(2) For purposes of determining applicability of Small Area FMRs to a metropolitan area, the term “concentrated low-income areas” means:

(i) Those census tracts in the metropolitan FMR area with a poverty rate of 25 percent or more; or

(ii) Any tract in the metropolitan FMR area where at least 50 percent of the households earn less than 60 percent of the area median income and are designated by HUD as Qualified Census Tracts in accordance with section 42 of the Internal Revenue Code (26 U.S.C. 42).

(3) If a metropolitan area meets the criteria of paragraph (c)(1) of this section, Small Area FMRs will apply to the metropolitan area and all PHAs administering HCV programs in that area will be required to use Small Area FMRs. A PHA administering an HCV program in a metropolitan area not subject to the application of Small Area FMRs may opt to use Small Area FMRs by seeking approval from HUD's Office of Public and Indian Housing (PIH) through written request to PIH.

(4) HUD will designate Small Area FMR areas at the beginning of a Federal fiscal year, such designations will be permanent, and will make new area designations every 5 years thereafter as new data becomes available. HUD may suspend a Small Area FMR designation from a metropolitan area, or may temporarily exempt a PHA in a Small Area FMR metropolitan area from use of the Small Area FMRs, when HUD by notice makes a documented determination that such action is warranted. Actions that may serve as the basis of a suspension of Small Area FMRs are:

- (i) A Presidentially declared disaster area that results in the loss of a substantial number of housing units;
- (ii) A sudden influx of displaced households needing permanent housing; or
- (iii) Other events as determined by the Secretary.

(5) Small Area FMRs only apply to tenant-based assistance under the HCV program. However, a PHA may elect to apply Small Area FMRs to project-based voucher (PBV) units at 24 CFR part 983

as provided in paragraph (h) of this section.

(d) *FMR areas.* FMR areas comprise metropolitan areas and nonmetropolitan counties and Small Area FMR areas as follows:

(1) Generally, FMR areas are metropolitan areas and nonmetropolitan counties. With several exceptions, the most current Office of Management and Budget (OMB) metropolitan area definitions of Metropolitan Statistical Areas (MSAs) are used because of their generally close correspondence with housing market area definitions. HUD may make exceptions to OMB definitions if the MSAs encompass areas that are larger than housing market areas. The counties deleted from the HUD-defined FMR areas in those cases are established as separate metropolitan county FMR areas. FMRs are established for all areas in the United States, the District of Columbia, and the Insular Areas of the United States.

(2) Small Area FMR areas are the U.S. Postal Service ZIP code areas within a designated metropolitan area.

(e) *Data sources.* (1) HUD uses the most accurate and current data available to develop the FMR estimates and may add other data sources as they are discovered and determined to be statistically valid. The following sources of survey data are used to develop the base-year FMR estimates:

(i) The most recent American Community Survey conducted by the U.S. Census Bureau, which provides statistically reliable rent data.

(ii) Locally collected survey data acquired through Address-Based Mail surveys or Random Digit Dialing (RDD) telephone survey data, based on a sampling procedure that uses computers to select statistically random samples of rental housing.

(iii) Statistically valid information, as determined by HUD, presented to HUD during the public comment and review period.

(2) Base-year recent mover adjusted FMRs are updated and trended to the midpoint of the program year they are to be effective using Consumer Price Index (CPI) data for rents and for utilities.

(f) *Unit size adjustments.* (1) For most areas the ratios developed incorporating the most recent American Community Survey data are applied to the two-bedroom FMR estimates to derive FMRs for other bedroom sizes. Exceptions to this procedure may be made for areas with local bedroom intervals below an acceptable range. To help the largest most difficult-to-house families find units, higher ratios than the actual

market ratios may be used for three-bedroom and larger-size units.

(2) The FMR for single room occupancy housing is 75 percent of the FMR for a zero bedroom unit.

(g) *Manufactured home space rental.* The FMR for a manufactured home space rental (for the HCV program under 24 CFR part 982) is 40 percent of the FMR for a two-bedroom unit for the metropolitan area or non-metropolitan county, as applicable. Small Area FMRs under paragraph (c) of this section do not apply to manufactured home space rentals.

(h) *Small Area FMRs and Project-based vouchers.* Small Area FMRs do not apply to Project-based vouchers regardless of whether HUD designates the metropolitan area or approves the PHA for Small Area FMRs under paragraph (c)(3) of this section. The following exceptions apply:

(1) Where the PHA notice of owner selection under 24 CFR 983.51(d) was made on or before the effective dates of both the Small Area FMR designation and the PHA administrative policy, the PHA and owner may mutually agree to apply the Small Area FMR. The application of the Small Area FMRs must be prospective and consistent with the PHA administrative plan. The owner and PHA may not subsequently choose to revert back to the use of the metropolitan-wide FMRs for the PBV project. If the rent to owner will increase as a result of the mutual agreement to apply the Small Area FMRs to the PBV project, the rent increase shall not be effective until the first annual anniversary of the HAP contract in accordance with 24 CFR 983.302(b).

(2) Where the PHA notice of owner selection under 24 CFR 983.51(d) was made after the effective dates of both the Small Area FMR designation and the PHA administrative policy, the Small Area FMRs shall apply to the PBV project if the PHA administrative plan provides that Small Area FMRs are used for all future PBV projects. If the PHA chooses to implement this administrative policy, the policy must apply to all future PBV projects and the PHA's entire jurisdiction. An owner and the PHA may not subsequently choose to apply the metropolitan area FMR to the project, regardless of whether the PHA subsequently changes its administrative plan to revert to the use of metropolitan-wide FMR for future PBV projects.

(3) For purposes of this section, the term "effective date of the Small Area FMR designation" means:

(i) The date that HUD designated a metropolitan area as a Small Area FMR area; or

(ii) The date that HUD approved a PHA request to voluntarily opt to use Small Area FMRs for its HCV program, as applicable.

(4) For purposes of this section, the term "effective date of the PHA administrative policy" means the date the administrative policy was formally adopted as part of the PHA administrative plan by the PHA Board of Commissioners or other authorized PHA officials in accordance with § 982.54(a).

(i) *Transition of metropolitan areas previously subject to 50th percentile FMRs.* (1) A metropolitan area designated as 50th percentile FMR areas for which the 3-year period has not expired prior to January 17, 2017 shall transition out of 50th percentile FMRs as follows:

(i) A 50th percentile FMR area that is designated for Small Area FMRs in accordance with paragraph (c) of this section will transition to the Small Area FMRs upon the effective date of the Small Area FMR designation;

(ii) A 50th percentile metropolitan FMR area not designated as a Small Area FMRs in accordance with paragraph (c) of this section, will remain a 50th percentile FMR until the expiration of the three-year period, at which time the metropolitan area will revert to the standard FMR based on the 40th percentile rent for the metropolitan area.

(2) A PHA with jurisdiction in a 50th percentile FMR area that reverts to the standard 40th percentile FMR may request HUD approval of payment standard amounts based on the 50th percentile rent in accordance with 24 CFR 982.503(f).

(3) HUD will calculate the 50th percentile rents for certain metropolitan areas for purposes of this transition and to approve success rate payment standard amounts in accordance with 24 CFR 982.503(e). As is the case for determining 40th percentile rent, the 50th percentile rent is drawn from the distribution of rents of all units that are occupied by recent movers and adjustments are made to exclude public housing units, newly built units and substandard units.

■ 4. Revise § 888.115 to read as follows:

§ 888.115 Fair market rents for existing housing: Manner of publication.

(a) *Publication of FMRs.* FMRs will be published at least annually by HUD on the World Wide Web, or in any other manner specified by the Secretary. HUD will publish a notice announcing the

publication of the FMRs in the **Federal Register**, to be effective October 1 of each year, and provide for a minimum of 30 days of public comments and requested for reevaluation of the FMRs in a jurisdiction. The FMRs will become effective no earlier than 30 days after the date the notice publishes in the **Federal Register** (e.g., if HUD fails to publish FMRs 30 days before October 1, the effective date will be 30 days after publication), except for areas where HUD receives comments during the minimum 30-day comment period requesting reevaluation of the FMRs in a jurisdiction. After HUD reviews a request for reevaluation, HUD will post on the World Wide Web the final FMRs for the areas that have been reevaluated and publish a notice in the **Federal Register** announcing the publication and the effective date.

(b) *Changes in methodology.* HUD will publish for comment in the **Federal Register** a document proposing material changes in the method for estimating FMRs and shall respond to public comment on the proposed material changes in the subsequent **Federal Register** document announcing the availability of new FMRs based on the revised method for estimating FMRs.

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

■ 5. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535d.

■ 6. In § 982.54, revise paragraph (d)(14) and add paragraph (d)(23) to read as follows:

§ 982.54 Administrative plan.

* * * * *

(d) * * *

(14) The process for establishing and revising payment standards, including policies on administering decreases in the payment standard during the HAP contract term (see § 982.505(d)(3)).

* * * * *

(23) Policies concerning application of Small Area FMRs to project-based voucher units (see § 888.113(h)).

■ 7. Amend § 982.503 as follows:

- a. Add a sentence to the end of paragraph (b)(1)(i);
- b. Revise paragraph (b)(1)(iii) and add paragraphs (b)(1)(iv) through (vi);
- c. Revise paragraph (b)(2);
- d. Revise paragraphs (c)(2) introductory text, (c)(2)(ii), and (c)(5);
- e. In paragraphs (f) introductory text and (f)(2), remove “§ 888.113(c)” and add in its place “§ 888.113(i)(3)”.

The addition and revisions read as follows:

§ 982.503 Payment standard amount and schedule.

* * * * *

(b) * * *

(1) * * *

(i) * * * The PHA must revise the payment standard amount no later than 3 months following the effective date of the published FMR if a change is necessary to stay within the basic range.

* * * * *

(iii) A PHA that is not in a designated Small Area FMR area or has not opted to voluntarily implement Small Area FMRs under 24 CFR 888.113(c)(3) may establish exception payment standards for a ZIP code area above the basic range for the metropolitan FMR based on the HUD published Small Area FMRs. The PHA may establish an exception payment standard up to 110 percent of the HUD published Small Area FMR for that ZIP code area. The PHA must notify HUD if it establishes an exception payment standard based on the Small Area FMR. The exception payment standard must apply to the entire ZIP code area.

(iv) At the request of a PHA administering the HCV program under Small Area FMRs under § 888.113(c)(3), HUD may approve an exception payment standard for a Small Area FMR area above the 110 percent of the published FMR in accordance with conditions set forth by Notice in the **Federal Register**. The requirements of paragraph (c) of this section do not apply to these exception payment standard requests and approvals.

(v) The PHA may establish an exception payment standard of not more than 120 percent of the published FMR if required as a reasonable accommodation in accordance with 24 CFR part 8 for a family that includes a person with a disability. Any unit approved under an exception payment standard must still meet the reasonable rent requirements found at § 982.507.

(vi) The PHA may establish an exception payment standard of more than 120 percent of the published FMR if required as a reasonable accommodation in accordance with 24 CFR part 8 for a family that includes a person with a disability after approval from HUD. Any unit approved under an exception payment standard must still meet the reasonable rent requirements found at § 982.507.

(2) Except as described in paragraphs (b)(1)(iii) through (v) of this section, the PHA must request HUD approval to establish a payment standard amount that is higher or lower than the basic range. HUD has sole discretion to grant or deny approval of a higher or lower

payment standard amount. Paragraphs (c) and (e) of this section describe the requirements for approval of a higher payment standard amount (“exception payment standard amount”).

(c) * * *

(2) *Above 110 percent of FMR to 120 percent of published FMR.* The HUD Field Office may approve an exception payment standard amount from above 110 percent of the published FMR to 120 percent of the published FMR (upper range) if the HUD Field Office determines that approval is justified by the median rent method or the 40th percentile rent or the Small Area FMR method as described in paragraph (c)(2)(ii) of this section (and that such approval is also supported by an appropriate program justification in accordance with paragraph (c)(4) of this section).

* * * * *

(ii) *40th percentile rent or Small Area FMR method.* In this method, HUD determines that the area exception payment standard amount equals application of the 40th percentile of rents for standard quality rental housing in the exception area or the Small Area FMR. HUD determines whether the 40th percentile rent or Small Area FMR applies in accordance with the methodology described in 24 CFR 888.113 for determining FMRs. A PHA must present statistically representative rental housing survey data to justify HUD approval.

* * * * *

(5) *Population.* The total population of HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area, except when applying Small Area FMR exception areas under paragraph (b)(1)(iii) of this section.

* * * * *

■ 8. In § 982.505, revise paragraph (c)(3) and add a sentence at the end of paragraph (d) to read as follows:

§ 982.505 How to calculate housing assistance payment.

* * * * *

(c) * * *

(3) *Decrease in the payment standard amount during the HAP contract term.* If the amount on the payment standard schedule is decreased during the term of the HAP contract, the PHA is not required to reduce the payment standard amount used to calculate the subsidy for the families under HAP contract for as long as the HAP contract remains in effect.

(i) If the PHA chooses to reduce the payment standard for the families currently under HAP contract during

the HAP contract term in accordance with their administrative plan, the initial reduction to the payment standard amount used to calculate the monthly housing assistance payment for the family may not be applied any earlier than the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard amount.

(ii) The PHA may choose to reduce the payment standard amount for families that remain under HAP contract to the current payment standard amount in effect on the PHA voucher payment standard schedule, or may reduce the payment standard amount to an amount that is higher than the normally applicable payment standard amount on the PHA voucher payment standard schedule. The PHA may further reduce the payment standard amount for the families during the term of the HAP contract, provided the subsequent reductions continue to result in a payment standard amount that meets or exceeds the normally applicable payment standard amount on the PHA voucher payment standard schedule.

(iii) The PHA must provide the family with at least 12 months' notice that the payment standard is being reduced during the term of the HAP contract before the effective date of the change.

(iv) The PHA shall administer decreases in the payment standard amount during the term of the HAP contract in accordance with the PHA policy as described in the PHA administrative plan. The PHA may establish different policies for designated areas within their jurisdiction (e.g., for different zip code areas), but the PHA administrative policy on decreases to payment standards during the term of the HAP contract applies to all families under HAP contract at the time of the effective date of decrease in the payment standard within that designated area. The PHA may not limit or otherwise establish different protections or policies for certain families under HAP contract.

* * * * *

(d) * * * A PHA may establish a payment standard greater than 120 percent of the FMR by submitting a request to HUD.

■ 9. In § 982.507, revise paragraph (a)(2)(ii) to read as follows:

§ 982.507 Rent to owner: Reasonable rent.

- (a) * * *
- (2) * * *

(ii) If there is a 10 percent decrease in the published FMR in effect 60 days before the contract anniversary (for the unit size rented by the family) as compared with the FMR in effect 1 year before the contract anniversary.

* * * * *

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

■ 10. The authority citation for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535d.

■ 11. In § 983.301, revise paragraph (a)(3) to read as follows:

§ 983.301 Determining the rent to owner.

(a) * * *

(3) The rent to owner is also redetermined in accordance with § 983.302.

* * * * *

■ 12. In § 983.302, revise paragraph (a)(2) to read as follows:

§ 983.302 Redetermination of rent to owner.

(a) * * *

(2) When there is a 10 percent decrease in the published FMR.

* * * * *

■ 13. In § 983.303, revise paragraph (b)(1) to read as follows:

§ 983.303 Reasonable rent.

* * * * *

(b) * * *

(1) Whenever there is a 10 percent decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR in effect 1 year before the contract anniversary.

* * * * *

PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

■ 14. The authority citation for part 985 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

■ 15. In § 985.3, revise paragraphs (b)(1), (b)(3)(i)(B), and (b)(3)(ii) and add a sentence to the end of paragraph (i)(1) to read as follows:

§ 985.3 Indicators, HUD verification methods and ratings.

* * * * *

(b) * * *

(1) This indicator shows whether the PHA has and implements a reasonable

written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units: At the time of initial leasing; if there is any increase in the rent to owner; at the HAP contract anniversary if there is a 10 percent decrease in the published fair market rent (FMR) in effect 60 days before the HAP contract anniversary. The PHA's method must take into consideration the location, size, type, quality and age of the units, and the amenities, housing services, and maintenance and utilities provided by the owners in determining comparability and the reasonable rent. (24 CFR 982.4, 24 CFR 982.54(d)(15), 982.158(f)(7) and 982.507)

* * * * *

(3) * * *

(i) * * *

(B) Based on the PHA's quality control sample of tenant files, the PHA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable in accordance with § 982.507 of this chapter for at least 98 percent of units sampled at the time of initial leasing, if there is any increase in the rent to owner, and at the HAP contract anniversary if there is a 10 percent decrease in the published FMR in effect 60 days before the HAP contract anniversary. 20 points.

* * * * *

(ii) The PHA's SEMAP certification includes the statements in paragraph (b)(3)(i) of this section, except that the PHA documents its determination of reasonable rent for only 80 to 97 percent of units sampled at initial leasing, if there is any increase in the rent to owner, and at the HAP contract anniversary if there is a 10 percent decrease in the published FMR in effect 60 days before the HAP contract anniversary. 15 points.

* * * * *

(i) * * *

(1) * * * For purposes of this paragraph, payment standards that do not exceed 110 percent of the current applicable published FMRs include exception payment standards established by the PHA in accordance with 982.503(c)(iii).

* * * * *

Dated: November 3, 2016.

Nani A. Coloretti,
Deputy Secretary.

Appendix A—Final Regulatory Flexibility Analysis

Final Regulatory Flexibility Analysis Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs

1. Introduction

The Regulatory Impact Analysis of the final Small Area Fair Market Rent (Small Area FMR) rule identifies two types of small entities that would be affected by the rule: Small Public Housing Agencies (PHAs) and small private landlords. The Final Regulatory Flexibility Analysis (FRFA) furthers the analysis of the impact of the rule on small entities by including more data on the relevant sectors as well as a more rigorous definition of what is a “small” PHA. The analysis of the final rule satisfies Section 604 of the Regulatory Flexibility Act. The requirements of the FRFA are listed below.⁷

(a) Each final regulatory flexibility analysis required under this section shall contain—

(1) A statement of the need for, and objectives of, the rule: *This requirement is met by Sections 2.2 and 2.3 of the FRFA. A lengthier discussion can be found in the Regulatory Impact Analysis and the Preamble of the Final Rule.*

(2) A statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; *This requirement is met by Sections 3 of the FRFA. A discussion concerning all public comments submitted on the proposed rule can be found in the Preamble of the Final Rule.*

(3) The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; *This requirement is met by Section 3 of the FRFA.*

(4) A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available: *This requirement is met Sections 4.2 and 5.2 of the FRFA.*

(5) A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record: *This requirement is met by Section 4.2 of the FRFA.*

(6) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why

each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected: *This requirement is met by Section 6 of the FRFA.*

(b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the **Federal Register** such analysis or a summary thereof. *This requirement is satisfied by the present FRFA.*

HUD expects a variety of economic effects stemming from implementation of the final rule. Transfers involving vouchers would be the most sizable of those effects. PHAs will face both costs and benefits from the implementation of this rule. Social benefits and costs associated with the rule could be generated by a new settlement pattern among voucher holders. Quantified incremental impacts include an expected transfer of \$151 million among participants and \$2 million of implementation costs to PHAs. The Regulatory Impact Analysis accompanying the final rule includes a lengthy description of qualitative impacts as well details concerning the calculation of the quantitative impacts.

2. Statement of the Need for, and Objectives of, the Rule

Section 2 documents the need for the final Small Area FMR rule as well as the objectives of the final rule.

2.1. Overview of Final Rule

This final rule requires the use of Small Area Fair Market Rents (Small Area FMRs) in the administration of the Housing Choice Voucher (HCV) program for certain metropolitan areas. HUD is implementing the use of Small Area FMRs in place of the current 50th percentile rent to address high levels of voucher concentration. HUD believes that Small Area FMRs gives HCV tenants a more effective means to move into areas of higher opportunity and lower poverty areas by providing them with subsidy adequate to make such areas accessible and to thereby reduce the number of voucher families that reside in areas of high poverty concentration.

HUD is using several criteria to determine which metropolitan areas would best be served by application of Small Area FMRs in the administration of the HCV program. These criteria include a threshold number of vouchers within a metropolitan area, the concentration of current HCV tenants in low-income areas, and the percentage of renter occupied units within the metropolitan area with Small Area FMRs above the payment standard basic range. Public housing agencies (PHAs) operating in designated metropolitan areas would be required to use Small Area FMRs. PHAs not operating in the designated areas would have the option to use Small Area FMRs in administering their HCV programs. Other programs that use FMRs would continue to use area-wide FMRs.

Note to Reader: A more comprehensive summary of the rule can be found in the Regulatory Impact Analysis and the Rule itself.

2.2. Need for the Rule

HUD's current rule for addressing high concentrations of voucher tenants in metropolitan areas, the 50th percentile Fair Market Rent rule, has not succeeded in providing voucher tenants access to high opportunity areas within a Fair Market Rent area. Therefore, the Small Area FMR rule is needed to replace the current regulatory provision with a new framework intended to provide voucher families with increased opportunities to find suitable units in higher opportunity areas.

2.3. Objectives of Rule

This final rule, through establishment of Small Area FMRs as a means of setting rents in certain metropolitan areas, is intended to facilitate the Housing Choice Voucher (HCV) program in achieving two program objectives: (1) Increasing the ability of low-income families to find and lease decent and affordable housing; and (2) providing low-income families with access to a broad range of housing opportunities throughout a metropolitan area. HUD's goal in pursuing this rulemaking is to provide HCV tenants with a greater ability to move into areas where jobs, transportation, and educational opportunities exist.

3. Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis and Comments filed by the Chief Counsel for Advocacy of the Small Business Administration, Agency Assessment of Such Issues, and Changes Made in the Proposed Rule as a Result of Such Comments

3.1. Public Comments Filed Regarding the Initial Regulatory Flexibility Analysis

No public comments were filed that discussed or provided feedback on the Initial Regulatory Flexibility Analysis. Consequently, there is nothing for HUD to assess regarding these types of comments and no changes were made to the proposed rule based on IRFA comments.

3.2. Comments Filed by Chief Counsel for Advocacy of the Small Business Administration

No public comments were filed from the Chief Counsel for Advocacy of the Small Business Administration. The Small Business Administration provided comments during the interagency clearance process preceding publication of the proposed rule that were incorporated in the published document; however, no further changes to the proposed rule were made.

4.0. Description and Estimate of the Number of Small Entities to Which the Rule Will Apply

4.1. Industry Data: Lessors of Residential Building and Dwellings

The Small Business Administration defines a lessor of residential real estate to be a small business if it earns annual revenues (sales receipts) of less than \$27.5 million. In the 2012 Economic Census, the Census counted approximately 50,000 of which approximately 43,000 operated for the entire year of 2012. Our comparisons are made

⁷ HUD is not a covered agency, as defined in section 609(d)(2), and so is not required to comply with (6)1.

using the full-year data to be more consistent with the definition of what is small (firms operating the entire year).

Of the 42,911 firms operating all year, 42,618 can be considered small firms. Total annual revenue of the industry was \$84 billion,⁸ compared to \$43 billion for small

firms. Approximately 300,000 individuals were employed by firms operating all year during the pay period observed in March 2012; 200,000 of them were employed by small firms. Small lessors account for 99 percent of all firms, 51 percent of all revenue, 57 percent of all payroll, and 67 percent of

employees hired during the first quarter. The industry is dominated by small firms in numbers of firms and employees, but is roughly equivalent to all large firms in terms of revenue and payroll.

LESSORS OF RESIDENTIAL BUILDINGS AND DWELLINGS (NAICS INDUSTRY 531110) OPERATED FOR THE ENTIRE YEAR 2012, UNITED STATES

Firm size by revenue	Firms	Revenue (\$1,000)	Payroll (\$1,000)	Employees for period including March 12
All firms *	42,911	83,593,387	9,838,805	303,135
Revenue less than \$25,000,000	42,618	42,908,437	5,574,606	202,381
Proportion small firms**	99%	51%	57%	67%

* Note that there were 50,664 firms altogether but that 42,911 operated all year. Using the larger base would reduce the proportion of small firms.

** The official size standard of the SBA is \$27.5 million. Statistics are not available for this cut-off so we use the closest one leading to a slight underestimate of the proportion "small."

HUD is able to provide information on the number of owners who participate in the housing choice voucher program. Note that counting real estate owners is not equivalent to lessors that operate the property. One would expect there to be many more owners than lessors. Nonetheless, the data provides

insight as to the distribution of vouchers. It is evident that the overwhelming proportion of owners rent to very few voucher tenants. Approximately two-thirds of owners who rent to voucher tenants rent to only one voucher tenant household. Many of these are likely owners of single-family homes for

whom the rental income is not the primary source of income. Approximately 90 percent rent to no more than 4 voucher tenant households, which could be housed in a large two-story building. Very few owners rent to enough voucher tenants to occupy multiple buildings.

U.S. RESIDENTIAL REAL ESTATE OWNERS RENTING TO VOUCHER TENANT HOUSEHOLDS *

Category of owner with voucher tenant households	Number of owners with voucher tenant households*	Percent of owners with voucher tenant households
1 Voucher	435,653	67.2
2-4 Vouchers	142,925	22.1
5-19 Vouchers	55,206	8.5
20-49 Vouchers	10,773	1.7
50-99 Vouchers	2,564	0.4
100-199 Vouchers	687	0.1
200 or more Vouchers	148	0.0
All	647,956	100.0

* This table describes voucher tenants but NOT non-voucher tenants. It is likely that many owners rent to additional tenants, making the above table a slight overestimate of the small landlords affected by the rule.

The data on the distribution of owners by number of vouchers implies that industry structure is not significantly different for vouchers than for other residential rental properties. The tables do not correspond perfectly because one describes property managers and the other property owners. In addition, the table for owners shows information for voucher tenants only and does not include any unassisted tenants.

HUD estimates that 18 percent of all vouchers are likely to be affected by the rule. If the number of lessor firms is proportional to the number of vouchers, then approximately 7,700 firms operating all year round (or 9,000 firms operating at any time) would manage units in Small Area FMR areas. They do not necessarily provide housing for voucher tenants but would be affected by any market externalities

engendered by the rule. The median share of voucher holders in a census tract is 3.1 percent. Again, assuming proportionality we expect 400-500 NAICS industry 531110 firms to manage units occupied by voucher tenants in the Small Area FMR areas created by the proposed rule. The number of voucher units managed by any one firm will vary.

4.2. Economic Impacts and Compliance Requirements on Small Landlords

There are two types of possible effects of the rule on property owners and managers. The first is *direct*: An owner (and lessor) who receives income from a voucher tenant may experience a change in rental income without changing the contract or tenant. Consider a low-rent area in which the subsidy will decline. The owner (and lessor) would be held harmless if the tenant chose to make up

the difference. However, suppose that the subsidy declined by a critical amount such that the tenant can no longer afford the unit. The owner has two choices: Search for a new tenant who will pay the market rent or lower the rent by enough to maintain the current tenant. The former strategy would be chosen if the housing submarket were characterized by adequate demand. The latter strategy would be chosen if the reduction in rents are offset by the costs of finding a new tenant. Thus, while the owner (and lessor) may lose a particular voucher tenant, they will not lose the rental income from that unit. The rule may generate revenue for lessors of residential building and dwellings if a significant number of moves result. Managing turnover is one of the primary services provided by a lessor to an owner. This would not be a major effect but could serve to

⁸ American Community Survey data indicate that the lessor industry revenue is approximately 20 percent of aggregate rents. The industry collects

twice the average 10 percent commission for property managers. This difference could be explained by: Realtors' commissions, other

activities, and lessors owning property and thus collecting the full rent.

counterbalance any minor adverse effects on lessors.

The second type of effect is *indirect* (a pecuniary externality). A reduction (increase) of the voucher subsidy would lower (raise) the demand for housing in that submarket. Even properties without any voucher tenants would be affected by such a market-wide effect. However, a decline in demand would only result if voucher households make up a sufficiently large portion of rental households in a given neighborhood. Market spillovers are expected to be minimal in many areas due to the limited size of the voucher program in relation with the entire housing market. Of the 10,800 Census tracts in the areas affected by the final rule, the median share of voucher households is 3.2 percent. Even in areas where the share is larger, the rule does not eliminate the subsidy but reduces it. Small lessors will be disproportionately impacted by market effects only if the units leased by small lessors are disproportionately concentrated in low-rent areas.

The final rule does not impose any additional reporting, recordkeeping and other compliance requirements. Compliance and unit standards remain the same. An additional effect of the rule is that eight current 50th percentile areas will revert to 40th percentile FMRs, as the Small Area FMR rule uses different selection criteria than the 50th percentile rule. These areas currently cover 82,000 vouchers. On average, the FY16 40th percentile FMR is \$77 lower than the 50th percentile FMR, meaning a *transfer* of \$6.3 million is expected through a combination of landlords accepting lower rent, tenants increasing out of pocket rent, or tenants moving to lower cost, less desired units.

5. Public Housing Agencies Affected

PHAs operating in metropolitan areas that meet the established Small Area FMR criteria of the final rule will be required to use Small Area FMRs in their HCV programs. As of issuance of this final rule, there are 24 areas listed that meet these criteria. These areas contain approximately 368,000 (18 percent) of the HCV households nationwide.⁹ Of these 368,000 vouchers, 219,000 vouchers are administered by PHAs that may not yet use multiple payment standards.

5.1. Data: Small PHAs

A small PHA is defined by HUD to be one of less than 250 units.¹⁰ Using this definition, approximately half of the PHAs (1,100 out of 2,200) that administer HCVs are considered small. In the 24 metropolitan areas affected by the proposed rule, there are 217 PHAs, of which 71 are small. The Regulatory Flexibility Analysis authorizes an agency to adopt and apply definitions of small, “which are appropriate to the activities of the

⁹ This number includes areas that have already implemented Small Area FMRs and Moving to Work Agencies, which may not be compelled to adjust their payment standards as a result of the rule. The analysis below considers these exceptions.

¹⁰ For regulatory definitions of small PHAs, see: Deregulation of Small PHAs Final Rule, 24 CFR part 902, 903, and 985.

agency” for each category of small entity.¹¹ The 250-unit limit is one traditionally used by HUD in data collection as well as by city governments. In addition, it has been shown that PHAs of this size class face greater average costs of administering housing choice vouchers.¹² A greater average cost is an indicator for smaller entities is suggestive evidence of fixed costs of operation. Small PHAs make up 32 percent of the PHAs in affected areas and would manage no more than 2 percent of the vouchers.

5.2. Economic Impacts and Compliance Requirements for PHAs

PHAs administering Small Area FMRs will likely face higher administrative costs. Initial costs would include training employees and setting up new systems. Periodic costs include costs related to payment standard and rent determinations as well any increase in moves and contract rent changes than those operating under one metropolitan FMR. PHAs change their payment standards as the FMR changes. Once the payment standard is established, and the PHA board approves, the PHA creates materials to inform their customers (and landlords) of the new payment standards. Making the transition from one to many payment standards is likely to impose some burden at initial implementation of the Small Area FMR rule.

There are at least two ways that a PHA would respond to the increased complexity of multiple payment standards. First, it could pursue a more labor-intensive solution and ask staff to determine the payment standard manually. This would not be particularly difficult for a small PHA with few payment standards. Small PHAs typically have smaller service areas with fewer ZIP codes and therefore fewer Small Area FMR-based payment standards to determine and administer than do larger PHAs. Another solution is to make an upfront investment to automate the process of subsidy determination. A unit’s address is already entered into a PHA’s database. All that is needed is a tool that calculates the rental subsidy as a function of the address. HUD has the intention of developing such an application for PHAs and voucher holder tenants. For it to work, PHAs will have to provide data on their payment standard decisions to HUD. Thus, compliance costs of PHAs are expected to rise slightly but not significantly. Because the tool will be developed, tested, and provided by HUD, it is not expected that the cost of implementation will be disproportionate.

A 2015 study¹³ reports that, according to a Dallas PHA official, implementation costs of multiple payment standards were minimal at roughly \$10 a household. Though it is unclear what this estimate considers, and assuming it can be applied elsewhere, as a rough measure of magnitude this would mean \$2.2 million to \$3.7 million in implementation costs over the 24 areas designated and 217 PHAs affected by this

¹¹ The RFA standard definition of a “small governmental jurisdiction” is the government of a city, county, town, school district or special district with a population of less than 50,000.

¹² Abt Associates, 2015.

¹³ Collinson and Ganong, (2015, May).

final rule. The more accurate estimate is the lower because it is based on PHAs that do not already use multiple payment standards. Both were considered for completeness. The impact on small entities would be a fraction of this impact. Assuming that all PHAs are affected and that all small PHAs are at the maximum, then the total impact on all small PHAs would be \$177,500 (71 × 250 × \$10). Such a conservative estimate would reduce any downwards bias in the estimate of the impact stemming from returns to scale.

The Small Area FMR rule will be beneficial to PHAs in some important respects. First, the rule intends to eliminate the possibility that an area will cycle in and out of the 50th percentile FMR as it can currently occur under the 2000 rule. This change is expected to reduce the year-to-year administrative uncertainty and the costs of adjusting the program to changing FMR calculations over time. Second, the final rule is also expected to facilitate PHA and regional compliance with consolidated planning and Fair Housing requirements and allow counseling and similar efforts to be more effective.¹⁴ Finally, the use of Small Area FMRs is expected to decrease the costs of rent reasonableness determinations as the payment standards better reflect local rent levels.

6. Alternatives Which Minimize Impact on Small Entities

Under the Final Regulatory Flexibility Analysis, HUD must discuss alternatives that minimize the economic impact on small entities. In order to lessen the burden on PHAs, and specifically small PHAs, HUD has taken, or is committed to taking, several measures in implementing Small Area FMRs designed to facilitate transition to this approach and minimize costs and burdens. Specifically, HUD is pursuing the following strategies to mitigate adverse impacts:

- *Publish Small Area FMRs grouped by overlapping potential payment standards.* Although the final rule does not specifically address the format of HUD’s publication of Small Area FMRs, in on-line materials HUD will provide a version of Small Area FMRs formatted and organized so as to facilitate compliance by PHAs.

- *Develop a mobile application to automate payment standard identification and significantly reduce administrative costs of implementing the Small Area FMR rule for all parties involved (tenant, landlord, PHA).* As noted above, HUD will be developing such an application for PHAs, voucher holders, and landlords.

- *Allow the rounding of Small Area FMRs to the nearest ten dollars to make it easier to arrange the small areas into payment standard groups.* Although the final rule does not specify the calculation methods for Small Area FMR estimates, HUD’s practice in the Dallas, TX HUD Metro FMR Area and in the Small Area FMR demonstration sites has been to round Small Area FMR estimates to the nearest \$10.00 to make it easier to arrange small areas into payment standard groups. Doing so reduces the number of payment standards PHAs would be required to administer.

¹⁴ Advancing mobility is one of the costliest activities of a PHA.

- Consider an exemption for PHAs administering very few vouchers in Small Area FMR areas. The final rule exempts HUD Metropolitan FMR Areas with less than 2,500 HCVs under lease from using Small Area FMRs.

In addition to the above, the presentation of the information in HUD's proposed revision to its PHA administrative fee formula would also soften any adverse impact by providing additional resources to small PHAs generally.

7. Conclusion

The majority of lessors of residential real estate and a substantial fraction of PHAs are characterized as small. If there were disproportionate effects on small entities, then a more detailed regulatory flexibility analysis would be merited. However, after an in-depth discussion of the industry structure and impact of the rule, HUD cannot conclude that there is a significant and disproportionate impact on small entities. It is true that many lessors may receive income from voucher tenants but it is not likely that they will be adversely affected once market forces are accounted for. Small PHAs could face an additional administrative burden but HUD has offered solutions to significantly reduce any burden.

[FR Doc. 2016-27114 Filed 11-15-16; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9787]

RIN 1545-BK29

Section 707 Regarding Disguised Sales, Generally; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9787) that were published in the **Federal Register** on Wednesday, October 5, 2016 (81 FR 69291). The final regulations are under sections 707 and 752 of the Internal Revenue Code.

DATES: This correction is effective November 16, 2016 and is applicable on and after October 5, 2016.

FOR FURTHER INFORMATION CONTACT: Deane M. Burke or Caroline E. Hay at (202) 317-5279 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9787) that are the subject of this correction are under sections 707 and 752 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9787) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR Part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

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

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

Section 1.707-5 also issued under 26 U.S.C. 707(a)(2)(B).

§ 1.707-5 [Amended]

■ **Par. 2.** For each entry in § 1.707-5(f) in the “Section” column, remove the language in the “Remove” column from wherever it appears in the Example and add in its place the language in the “Add” column as set forth below:

Section	Remove	Add
Paragraph (f) <i>Example</i> 5(i)	2016	2017
Paragraph (f) <i>Example</i> 10(i)	2016	2017
Paragraph (f) <i>Example</i> 10(ii)	2016	2017
Paragraph (f) <i>Example</i> 11(i)	2016	2017
Paragraph (f) <i>Example</i> 11(ii)	2016	2017
Paragraph (f) <i>Example</i> 12(i)	2016	2017

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2016-27515 Filed 11-15-16; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

[Docket ID: BSEE-2016-0004; 17XE1700DX EEEE500000 EX1SF0000.DAQ000]

RIN 1014-AA32

Oil and Gas and Sulfur Operations in the Outer Continental Shelf—Decommissioning Costs for Pipelines

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Final rule.

SUMMARY: This rule amends Bureau of Safety and Environmental Enforcement (BSEE) regulations requiring lessees and owners of operating rights to submit summaries of actual decommissioning expenditures incurred for certain decommissioning activities related to oil and gas and sulfur operations on the Outer Continental Shelf (OCS). The amendment requires lessees, owners of operating rights, and right-of-way (ROW) holders to submit summaries of actual expenditures incurred for pipeline decommissioning activities.

DATES: This final rule becomes effective on December 16, 2016.

FOR FURTHER INFORMATION CONTACT:

Betty Cox, Regulatory Analyst, Regulations and Standards Branch at *regs@bsee.gov* or by telephone at (703) 787-1616.

SUPPLEMENTARY INFORMATION:

BSEE's Functions and Authority

BSEE promotes safety, protects the environment, and conserves natural resources through vigorous regulatory oversight and enforcement regarding certain activities on the OCS. BSEE derives its authority primarily from the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331-1356a. Congress enacted OCSLA in 1953, codifying Federal control over the OCS and authorizing the Secretary of the Interior (Secretary) to, among other things, regulate oil and natural gas exploration, development, and production operations and to grant rights-of-way on the OCS. The Secretary has authorized BSEE to perform certain of these functions, including overseeing decommissioning. (See 30 CFR 250.101; 30 CFR part 250, subpart Q.) To carry out its responsibilities, BSEE regulates exploration, development, and production of oil and natural gas and pipeline operations to enhance safety and environmental protection in a way that reflects advancements in

technology and new information. BSEE also conducts onsite inspections to ensure compliance with regulations, lease terms, and approved plans or permits. Detailed information concerning BSEE's regulations and guidance for the offshore industry may be found on BSEE's Web site at: www.bsee.gov/Regulations-and-Guidance/index.

Background

Among its responsibilities, BSEE regulates certain types of oil and gas pipelines used on the OCS. (See 30 CFR 250.1000–250.1019). In general, BSEE regulates pipelines or pipeline segments on the OCS that are operated by oil and gas producers.¹ (See *id.*) Pipelines regulated by BSEE generally fall within two categories, “lease term” pipelines or ROW pipelines. Among other things, BSEE approves the installation, modification, and decommissioning of all lease term and ROW pipelines, and the modification or relinquishment of all pipeline ROW grants on the OCS. BSEE's regulations for decommissioning pipelines are found at 30 CFR 250.1700 through 250.1704 and 250.1750 through 250.1754. A more detailed discussion of BSEE's regulations for OCS pipelines is found in the preamble to the proposed rule for this rulemaking. (See 81 FR 53348 (Aug. 12, 2016).)

Purpose and Summary of Proposed and Final Amendment To Decommissioning Cost Reporting Requirements

In 2009, BSEE's predecessor agency, the Minerals Management Service (MMS), proposed new reporting requirements related to lease assignment for lease term pipelines. (See 74 FR 25177 (May 27, 2009).) MMS also proposed to require the submission of information on expenditures for decommissioning of wells, platforms, and other facilities and for site clearance. (See *id.*)

In a final rule published on December 4, 2015, BSEE amended its regulations to require lessees and owners of operating rights to submit summaries of actual decommissioning expenditures for certain required decommissioning activities within 120 days after completion of each such activity. (See 80 FR 75806.) Specifically, the final rule requires reporting of summaries of expenditures for plugging wells, removing platforms and other facilities, and clearing obstructions from sites. In addition, the final rule authorizes BSEE

to require additional supporting information regarding specific decommissioning costs on a case-by-case basis. The December 2015 final rule was codified at 30 CFR 250.1704(h) and (i).

On April 27, 2016, BSEE issued a Notice to Lessees and Operators (NTL), No. 2016–N03, *Reporting Requirements for Decommissioning Expenditures on the OCS*, providing guidance and clarification regarding the submission of the decommissioning cost summaries required by § 250.1704(h). On April 29, 2016, BSEE adopted a final rule revising and establishing requirements for improving well control equipment and procedures (the Well Control Rule). (See 81 FR 25888.) Among other things, effective July 28, 2016, the Well Control Rule revised paragraph (g) of § 250.1704, added a new paragraph (h), and redesignated existing paragraphs (h) and (i) as paragraphs (i) and (j), respectively. The Well Control Rule did not, however, affect the substance of those decommissioning cost reporting provisions.

BSEE did not include reporting of expenditures for pipeline decommissioning in the December 2015 final rule because the 2009 proposed rule did not expressly refer to pipeline decommissioning expenditures. BSEE has determined, however, that accurate information about expenditures incurred for pipeline decommissioning activities is needed to better estimate future decommissioning costs for those activities.

As BSEE explained in the December 2015 final rule, with regard to expenditures for other types of decommissioning activities, summaries of actual decommissioning expenditures will help BSEE better estimate future decommissioning costs. (See 80 FR 75806.) For the same reason, summaries of actual pipeline decommissioning expenditures will help BSEE better estimate future decommissioning costs. In addition, BSEE will share its pipeline decommissioning cost estimates—as well as all other decommissioning cost estimates—with the Bureau of Ocean Energy Management (BOEM) for use by BOEM in setting necessary financial assurance levels to minimize the possibility that (1) the government will incur future financial liability for decommissioning pipelines where the responsible party has failed to carry out the required decommissioning and has posted inadequate financial assurance; or (2) financial assurance requirements will exceed the amount actually necessary to cover future decommissioning liabilities.

Accordingly, on August 12, 2016, BSEE published a proposed rule to extend the existing decommissioning cost reporting regulations to require lessees, owners of operating rights, and pipeline ROW holders to submit information regarding actual expenditures incurred for activities related to decommissioning of pipelines. (See 81 FR 53348.) Specifically, BSEE proposed to expand the scope of: (1) Existing § 250.1704(i) in order to require that lessees, owners of operating rights, and pipeline ROW holders submit certified summaries of actual expenditures for decommissioning of pipelines; and (2) existing § 250.1704(j) in order to authorize Regional Supervisors to require the submission of additional information, on a case-by-case basis, to support summaries of pipeline decommissioning expenditures submitted under § 250.1704(i). The rule did not propose to revise the existing decommissioning cost reporting provisions.

For the reasons stated in the proposed rule and based on BSEE's evaluation of the public comments received, this rule finalizes the proposal to require lessees, owners of operating rights, and pipeline ROW holders to submit information reflecting actual expenditures incurred for the decommissioning of pipelines.² The final rule amends paragraphs (i) and (j) of § 250.1704 to require lessees, owners of operating rights, and pipeline ROW holders to submit certified summaries of actual expenditures for decommissioning of pipelines, and to authorize Regional Supervisors to require additional information, on a case-by-case basis, as needed, to support a specific summary of such expenditures.

Changes Between Proposed and Final Rules

BSEE has made no changes to the language of the proposed rule and is finalizing the regulatory text as proposed.

Summary of and Responses to Public Comments

In response to the proposed rule, BSEE received one comment, which was submitted by a trade association representing producing companies and service providers to the offshore oil and natural gas industry. The full text of the comment can be viewed at: www.regulations.gov. To access the comment, enter BSEE–2016–0004 in the

¹ BSEE also regulates transporter-operated pipelines that DOI and the U.S. Department of Transportation (DOT) have agreed are to be regulated by BSEE, as well as all OCS pipelines not subject to DOT regulation. See 30 CFR 250.1001.

² As stated in the proposed rule, BSEE recognizes that a designated operator may submit the required summary of decommissioning costs on behalf of a lessee. (See 81 FR 53350 n.4.)

search box. A summary of the issues raised by the comment, with BSEE's responses, follows.

Comment: The commenter asserted that BSEE had not provided guidance or details on how the certified summary of pipeline decommissioning expenditures should categorize and report information. The commenter stated that, at a minimum, the guidance in NTL No. 2016–N03 should be updated before the final rule is implemented to include specific guidance on decommissioning costs for pipelines, umbilicals, pipeline end terminations (PLETS), manifolds, and other equipment permitted through pipeline applications and bonding.

Response: Subsequent to publication of the December 2015 Decommissioning Cost Reporting final rule, BSEE issued NTL No. 2016–N03, which provides guidance and clarification regarding the submission of certified decommissioning cost expenditure summaries for wells, platforms or other facilities, and for clearance of any site. Among other things, that NTL addresses the format of submitted data and recommends the submission of cost data for each decommissioning activity type, including PLETS, pipeline end manifolds, and other types of equipment being decommissioned. Notwithstanding the clarification provided by NTL No. 2016–N03, BSEE understands that supplemental guidance and clarification may be needed regarding the submission of certified summaries of pipeline decommissioning cost expenditures and expects to issue additional guidance and clarification, as future circumstances may warrant, through appropriate means (e.g., in a revised or new NTL).

Comment: The commenter suggested that, if aggregate data are used by BSEE to estimate future decommissioning costs, these data should be made available, with specific operator information removed, to industry for benchmarking purposes. In addition, the commenter suggested that the owner or operator should have the ability to request an adjustment to a BSEE cost estimate by presenting its own decommissioning estimate data to BSEE/BOEM for review.

Response: The commenter's suggestions do not warrant any revision to the proposed regulatory language; however, BSEE will take these suggestions into consideration as aggregated data are developed and analyzed under the final rule. Regarding the commenter's suggestion that BSEE allow the presentation of company-specific estimates for review and possible adjustment of the BSEE cost estimates, BSEE has always allowed

such submissions and they will continue to be part of the BSEE process for estimating future costs.

Comment: The commenter asserted that the phrase "actually incurred" in proposed § 250.1704(i) is ambiguous, since operators may develop a figure for the value of work done (VOWD) prior to receiving an invoice from the vendor, and the VOWD may differ from the vendor invoice that, in some cases, may not be received until more than 120 days after the decommissioning work is completed. The commenter further stated that, while the 120-day deadline for submitting a summary of expenditures may be practicable if a summary based on the VOWD is acceptable, 120 days may be insufficient if the summary is required to be based on actual invoices for services received.

Response: BSEE disagrees that the phrase "expenditures actually incurred" is ambiguous. BSEE is requiring a summary of actual decommissioning expenditures for pipelines, using the same terminology used in the December 2015 final rule for submitting summaries of actual expenditures for decommissioning of wells, platforms, or other facilities and for site clearance. Such certified summaries are based on actual invoice data. By contrast, VOWD estimates may not accurately reflect the actual decommissioning costs and could negatively impact future BSEE decommissioning cost estimates. Accordingly, submitting a VOWD would not satisfy the requirement of this rule.

Regarding the commenter's assertion that 120 days may not be enough time to submit a certified summary based on actual invoice data, BSEE expects to apply the same guidance under this new rule as that contained in NTL No. 2016–N03, i.e.:

BSEE appreciates that there could be situations where it may take longer than the 120-day reporting period allowed by regulation for lessees to receive and process all decommissioning related invoices. In such cases, BSEE will consider granting an extension when timely requested and sufficiently justified. BSEE would rather receive a single complete submission with a reporting period extension than a preliminary summary followed by some number of revisions/supplements. However, failure to submit decommissioning cost summaries in the timeframe required by the regulation, or as extended by BSEE, may result in BSEE's issuance of an Incident of Noncompliance.

BSEE expects to address any special situations that may warrant an extension of the deadline for submitting a summary of pipeline decommissioning expenditures in the same manner as requests to extend the

deadline for summaries of other decommissioning costs.

Procedural Matters

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), will review all significant regulatory actions. BSEE has determined that this final rule is not a significant regulatory action as defined by section 3(f) of E.O. 12866 because:

- It is not expected to have an annual effect on the economy of \$100 million or more;
- It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, Tribal, or local governments or communities;
- It will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights or obligations of their recipients; and
- It will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Accordingly, BSEE has not prepared an economic analysis beyond the analysis required under the Paperwork Reduction Act, and OIRA has not reviewed this rule under E.O. 12866. E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. It also emphasizes that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. BSEE developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (RFA)

BSEE certifies that this final rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*).

This rule potentially affects offshore lessees, owners of operating rights and other operators, and pipeline ROW holders who perform decommissioning activities under 30 CFR part 250, subpart Q. In the December 2015 final rule, using the Small Business Administration's North American Industry Classification System (NAICS) codes 211111 (Crude Petroleum and Natural Gas Extraction) and 213111 (Drilling Oil and Gas Wells), we estimated that a substantial number, about 90 of the 130 active companies potentially affected by that rule (*i.e.*, lessees and operators), would be considered small entities. (*See* 80 FR 75808.) However, we concluded that the final rule would not have a significant economic effect on those small entities because the cost of preparing decommissioning cost summaries is not significant. (*See id.*)

This final rule will affect some additional companies (*i.e.*, ROW holders that were not covered by the December 2015 final rule as lessees or owners of operating rights) that will be required to submit pipeline decommissioning cost summaries. Using more recent information than was available when we published the December 2015 final rule, we estimate that this final rule's requirement to report pipeline decommissioning costs could affect approximately 111 lessees, owners of operating rights, and ROW holders that currently own or control DOI pipelines, including many companies already covered by the December 2015 final rule. Of these 111 potentially affected entities, we estimate that a substantial number (66 companies) are small entities. Therefore, this final rule will affect a substantial number of small entities.

However, because the final rule requires only summary reports of actual expenditures related to pipeline decommissioning activities, it will not impose significant new economic impacts on any affected small entities. The requirement to submit pipeline decommissioning cost summaries will not result in significant additional costs or burdens for any affected entity. As indicated in the Paperwork Reduction Act section of this document, the annual burden of the rule is estimated to be only 519 hours in total for all affected entities to prepare and submit their pipeline decommissioning cost summaries. Accordingly, since the changes reflected in this final rule will not have a significant economic effect on a substantial number of small entities, the RFA does not require BSEE to prepare a regulatory flexibility analysis for this rule.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). This final rule will not:

- Have an annual effect on the economy of \$100 million or more;
- Cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of BSEE, call 1-888-734-3247. You may comment to the Small Business Administration (SBA) without fear of retaliation. Allegations of discrimination/retaliation filed with the SBA will be investigated for appropriate action.

Unfunded Mandates Reform Act of 1995

This final rule will not impose an unfunded mandate on State, Tribal, or local governments or the private sector of more than \$100 million per year. This rule also will not have a significant or unique effect on State, Tribal, or local governments or the private sector. Thus, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this final rule will not effect a taking or otherwise have takings implications. This rule is not a governmental action capable of interference with constitutionally protected property rights. Therefore, a Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this final rule does not have federalism implications. This rule will not have a substantial direct effect on the States or the relationship between the Federal and State governments. To the extent that State and local

governments have a role in OCS activities, this final rule will not affect that role. Accordingly, a federalism summary impact statement is not required.

Civil Justice Reform (E.O. 12988)

This final rule complies with the requirements of Executive Order 12988 (E.O. 12988), *Civil Justice Reform* (February 7, 1996). Specifically, this rule:

- Meets the criteria of section 3(a) of E.O. 12988 requiring that all regulations be reviewed to eliminate drafting errors and ambiguity and be written to minimize litigation; and
- Meets the criteria of section 3(b)(2) of E.O. 12988 requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribal Governments (E.O. 13175)

We have evaluated this final rule under the Department's tribal consultation policy, under Departmental Manual Part 512 Chapters 4 and 5, and under the criteria in E.O. 13175 and have determined that it will have no substantial direct effects on federally recognized Indian tribes. As a result, consultation under the Department's tribal consultation policy is not required.

Paperwork Reduction Act (PRA)

This rule contains new information collection (IC) requirements and submission to the OMB under the PRA of 1995 (44 U.S.C. 3501 *et seq.*) is required. The OMB has approved the IC in this rule under OMB Control Number 1014-0030, expiring on November 30, 2019. We estimate the annual burden associated with this IC to be 519 hours per year.

The title of the collection of information for this rule is *30 CFR part 250, subpart Q, Decommissioning Costs for Pipelines*. Potential respondents include approximately 111 OCS lessees, owners of operating rights, and ROW holders. Responses to this collection are mandatory. The frequency of response is on occasion. The IC does not include questions of a sensitive nature. BSEE will protect confidential commercial and proprietary information according to section 26 of OCSLA (43 U.S.C. 1352), FOIA (5 U.S.C. 552) and DOI's implementing regulations (43 CFR part 2), and according to 30 CFR 250.197 (*Data and information to be made available to the public or for limited inspection*).

Once the requirements of this rulemaking have been codified, BSEE will consolidate these additional burden

hours into the primary collection for 30 CFR part 250, subpart Q, under OMB Control Number 1014-0010 (expiration November 30, 2016; 15,524 burden hours and \$1,686,396 non-hour cost burdens). There are no non-hour cost

burdens associated with this rulemaking.

The following table is a breakdown of the burden estimate:

We received one comment in response to the proposed rule pertaining to the information collection. Please see

the Summary of and Responses to Public Comments section in this preamble. Based on the comment received, we are increasing the burden to reflect requests for extension to the 120-day reporting period (+ 19 hours).

Burden Table

Citation 30 CFR 250	Reporting and Recordkeeping Requirements	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
1704(i), (j)	Submit to the Regional Supervisor a complete summary of expenditures incurred within 120 days after completion of each decommissioning activity (including permanently plugging any well, removal of any platform or facility, decommissioning of pipelines, etc.); any additional information that will support and/or verify the summary.	1 hour	500 pipeline summaries	500
1704(i); NTL	Request and obtain approval for extension of 120-day reporting period; including justification.	15 min.	75 requests	19
1704(i)	Submit certified statement attesting to accuracy of the summary for expenditures incurred.	Exempt from the PRA under 5 CFR 1320.3(i)(1).		0
TOTAL			575 Responses	519 Hours

An agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. The public may comment at any time on the accuracy of the IC burden in this rule and may submit any comments to the Department of the Interior, Bureau of Safety and Environmental Enforcement, Attention: Regulations and Standards Branch, VA-ORP, 45600 Woodland Road, Sterling, VA 20166.

National Environmental Policy Act of 1969 (NEPA)

This rule meets the criteria set forth in 516 Departmental Manual (DM) 15.4C(1) for a categorical exclusion because it involves modification of existing regulations, the impacts of which would be limited to administrative or economic effects with minimal environmental impacts.

We have also analyzed this rule to determine if it involves any of the extraordinary circumstances set forth in 43 CFR 46.215 that would require an environmental assessment or an environmental impact statement for

actions otherwise eligible for a categorical exclusion. We have concluded that this rule does not involve any of the listed extraordinary circumstances.

Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (44 U.S.C. 3516 *et seq.*, Pub. L. 106-554, app. C sec. 515, 114 Stat. 2763, 2763A-153-154).

Effects on the Nation's Energy Supply (E.O. 13211)

This rule is not a significant energy action under Executive Order 13211 (E.O. 13211) because:

- It is not a significant regulatory action under E.O. 12866;
- It is not likely to have a significant adverse effect on the supply, distribution or use of energy; and
- It has not been designated as a significant energy action by the Administrator of OIRA.

List of Subjects in 30 CFR Part 250

Administrative practice and procedure, Continental shelf,

Environmental impact statements, Environmental protection, Government contracts, Investigations, Oil and gas exploration, Penalties, Reporting and recordkeeping requirements, Sulfur.

Dated: November 1, 2016.

Amanda C. Leiter,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, BSEE amends 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULFUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

- 1. The authority citation for part 250 continues to read as follows:

Authority: 30 U.S.C. 1751, 31 U.S.C. 9701, 33 U.S.C. 1321(j)(1)(C), 43 U.S.C. 1334.

- 2. Amend § 250.1704 by revising paragraphs (i) and (j) in the table to read as follows:

§ 250.1704 What decommissioning applications and reports must I submit and when must I submit them?

* * * * *

DECOMMISSIONING APPLICATIONS AND REPORTS TABLE

Decommissioning applications and reports	When to submit	Instructions
(i) A certified summary of expenditures for permanently plugging any well, removal of any platform or other facility, clearance of any site after wells have been plugged or platforms or facilities removed, and decommissioning of pipelines.	Within 120 days after completion of each decommissioning activity specified in this paragraph.	Submit to the Regional Supervisor a complete summary of expenditures actually incurred for each decommissioning activity (including, but not limited to, the use of rigs, vessels, equipment, supplies and materials; transportation of any kind; personnel; and services). Include in, or attach to, the summary a certified statement by an authorized representative of your company attesting to the truth, accuracy and completeness of the summary. The Regional Supervisor may provide specific instructions or guidance regarding how to submit the certified summary.
(j) If requested by the Regional Supervisor, additional information in support of any decommissioning activity expenditures included in a summary submitted under paragraph (i) of this section.	Within a reasonable time as determined by the Regional Supervisor.	The Regional Supervisor will review the summary and may provide specific instructions or guidance regarding the submission of additional information (including, but not limited to, copies of contracts and invoices), if requested, to complete or otherwise support the summary.

[FR Doc. 2016-27416 Filed 11-15-16; 8:45 am]

BILLING CODE 4310-VH-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 701, 773, 774, 777, 779, 780, 783, 784, 785, 800, 816, 817, 824, and 827

[Docket ID: OSM-2010-0021; S1D1S SS08011000 SX064A000 178S180110; S2D2S SS08011000 SX064A000 17XS501520]

Stream Protection Rule; Final Environmental Impact Statement

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

ACTION: Notice of availability; final environmental impact statement.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), announce the availability of the Final Environmental Impact Statement (FEIS) for the Stream Protection Rule developed pursuant to the National Environmental Policy Act (NEPA).

DATES: The final EIS is available on November 16, 2016.

ADDRESSES: Copies of the FEIS are available for public inspection at the following OSMRE locations:

- Administrative Record, Room 101 SIB, 1951 Constitution Avenue NW., Washington, DC 20240, (Phone: 202-208-2823).
- Appalachian Regional Office, Three Parkway Center, Pittsburgh, Pennsylvania 15220 (Phone: (412) 937-2815).

- Mid-Centiment Regional Office, William L. Beatty Federal Building, 501 Belle Street, Room 216, Alton, Illinois 62002 (Phone: (618) 463-6460).

- Western Regional Office, 1999 Broadway, Suite 3320, Denver, Colorado 80201 (Phone: (303) 293-5000).

- Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301 (Phone: (304) 347-7158).

- Knoxville Field Office, 710 Locust Street, 2nd floor, Knoxville, Tennessee 37902 (Phone: (865) 545-4103).

- Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503 (Phone: (859) 260-3902).

- Beckley Area Office, 313 Harper Park Drive, Beckley, West Virginia 25801 (Phone: (304) 255-5265).

- Harrisburg Area Office, 215 Limekiln Road, New Cumberland, Pennsylvania 17070 (Phone: (717) 730-6985).

- Albuquerque Area Office, 100 Sun Avenue NE., Pan American Building, Suite 330, Albuquerque, New Mexico 87109 (Phone: (505) 761-8989).

- Casper Area Office, Dick Cheney Federal Building, 150 East B Street, Casper, Wyoming 82601 (Phone: (307) 261-6550).

- Birmingham Field Office, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209 (Phone: (205) 290-7282).

- Tulsa Field Office, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128 (Phone: (918) 581-6430).

Electronic copies of the FEIS are available at:

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. The Docket ID for the FEIS is OSM-2010-0021.

- OSMRE Web site: www.osmre.gov.

In addition, a limited number of CD copies of the FEIS are available upon

request. You may obtain a CD by contacting the person identified in **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Robin Ferguson, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240. Telephone: 202-208-2802. Email: rferguson@osmre.gov.

SUPPLEMENTARY INFORMATION:**Background**

Significant advances in scientific knowledge and mining and reclamation techniques have occurred in the more than 30 years that have elapsed since the enactment of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, and the adoption of Federal regulations implementing that law. On July 27, 2015, OSMRE proposed the Stream Protection Rule for the primary purpose of updating its regulations and providing regulatory certainty to industry using these advances in scientific knowledge to minimize the adverse impacts of surface coal mining and underground mining operations on surface water, groundwater, fish, wildlife, and related environmental values, with particular emphasis on protecting or restoring streams and aquatic ecosystems. (See 80 FR 44436.)

The draft environmental impact statement (DEIS) for the proposed rule was made available for public review and comment on July 17, 2015. (See 80 FR 42535.) After an extension was granted, the comment period closed on October 26, 2015. (See 80 FR 54590.) During the comment period, OSMRE held six public hearings in Colorado, Kentucky, Missouri, Pennsylvania, Virginia, and West Virginia, and

received approximately 95,000 comments on the proposed rule, DEIS, and the draft Regulatory Impact Analysis.

The FEIS for the Stream Protection Rule analyzes the environmental, socioeconomic, and other effects of the preferred alternative—Alternative 8, as revised—and a reasonable range of other alternatives, including a No Action Alternative. The FEIS, including Alternative 8, has been revised, as appropriate, in response to comments and other information received on the DEIS, proposed rule, and draft Regulatory Impact Analysis. It also includes the input of cooperating agencies.

Authority: 40 CFR 1506.6, 40 CFR 1506.1

Dated: November 11, 2016.

Sterling Rideout,

Assistant Director, Program Support.

[FR Doc. 2016-27655 Filed 11-15-16; 8:45 am]

BILLING CODE 4310-05-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 97

[FRL-9955-23-OAR]

Allocations of Cross-State Air Pollution Rule Allowances From New Unit Set-Asides for the 2016 Compliance Year

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of data availability (NODA).

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of emission allowance allocations to certain units under the new unit set-aside (NUSA) provisions of the Cross-State Air Pollution Rule (CSAPR) federal implementation plans (FIPs). EPA has completed final calculations for the second round of NUSA allowance allocations for the 2016 compliance year of the CSAPR NO_x Ozone Season Trading Program. EPA has posted spreadsheets showing the second-round 2016 NUSA allocations of CSAPR NO_x Ozone Season allowances to new units as well as the allocations to existing units of the remaining CSAPR NO_x Ozone Season allowances not allocated to new units in either round of the 2016 NUSA allocation process. EPA will record the allocated CSAPR NO_x Ozone Season allowances in sources' Allowance Management System (AMS) accounts by November 15, 2016.

DATES: November 16, 2016.

FOR FURTHER INFORMATION CONTACT:

Questions concerning this action should be addressed to Robert Miller at (202) 343-9077 or miller.robert@epa.gov or to Kenon Smith at (202) 343-9164 or smith.kenon@epa.gov.

SUPPLEMENTARY INFORMATION: Under the CSAPR FIPs, a portion of each state budget for each of the four CSAPR trading programs¹ is reserved as a NUSA from which allowances are allocated to eligible units through an annual one- or two-round process. EPA has described the CSAPR NUSA allocation process in three NODAs previously published this year in the *Federal Register* (81 FR 33636 May 27, 2016; 81 FR 50630 August 2, 2016; 81 FR 63156 September 14, 2016). In the most recent of these previous NODAs, EPA provided notice of preliminary lists of new units eligible for second-round 2016 NUSA allocations of CSAPR NO_x Ozone Season allowances and provided an opportunity for the public to submit objections.

EPA received no objections to the preliminary lists of new units eligible for second-round 2016 NUSA allocations of CSAPR NO_x Ozone Season allowances whose availability was announced in the September 14 NODA. EPA is therefore making second-round 2016 NUSA allocations of CSAPR NO_x Ozone Season allowances to the new units identified on these lists in accordance with the procedures set forth in 40 CFR 97.512(a)(9) and (12).

As described in the September 14 NODA, any allowances remaining in the CSAPR NO_x Ozone Season NUSA for a given state and control period after the second round of NUSA allocations to new units are to be allocated to the existing units in the state according to the procedures set forth in 40 CFR 97.512(a)(10) and (12). EPA has determined that CSAPR NO_x Ozone Season allowances do remain in the

¹ In the recently finalized Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS (CSAPR Update Rule), 81 FR 74504 (October 26, 2016), EPA is establishing new or modified FIP requirements for EGUs in 22 states to address transported pollution with regard to the 2008 ozone NAAQS, including requirements to participate in a new fifth CSAPR trading program—the CSAPR NO_x Ozone Season Group 2 Trading Program—for emissions occurring in 2017 and later years. In the same rule, EPA is also withdrawing the FIP provisions requiring EGUs in 24 states to participate in the existing trading program addressing transported pollution with regard to the 1997 ozone NAAQS for emissions occurring after 2016. (When the CSAPR Update rule takes effect in December 2016, the existing program will be renamed the CSAPR NO_x Ozone Season Group 1 Trading Program.) The 2016 allowance allocations described in this notice concern the existing program and are not affected by the CSAPR Update Rule.

NUSAs for a number of states following completion of second-round 2016 NUSA allocations; accordingly, EPA is allocating these allowances to existing units. The NUSA allowances are generally allocated to the existing units in proportion to the allocations previously made to the existing units under 40 CFR 97.511(a)(1), adjusted for rounding.

Under 40 CFR 97.512(b)(10), any allowances remaining in the CSAPR NO_x Ozone Season Indian country NUSA for a given state and control period after the second round of Indian country NUSA allocations to new units are added to the NUSA for that state or are made available for allocation by the state pursuant to an approved SIP revision. No new units eligible for allocations of CSAPR NO_x Ozone Season allowances from any 2016 Indian country NUSA have been identified, and no state has an approved SIP revision governing allocation of 2016 CSAPR NO_x Ozone Season allowances. The Indian country NUSA allowances are therefore being added to the NUSAs for the respective states and are included in the pools of allowances that are being allocated to existing units under 40 CFR 97.512(10) and (12).

The final unit-by-unit data and allowance allocation calculations are set forth in Excel spreadsheets titled “CSAPR NUSA 2016 NO_x OS 2nd Round Final Data New Units”, and “CSAPR NUSA 2016 NO_x OS 2nd Round Final Data Existing Units”, available on EPA’s Web site at <https://www3.epa.gov/airtransport/CSAPR/actions.html>.

Pursuant to CSAPR’s allowance recordation timing requirements, the allocated NUSA allowances will be recorded in sources’ AMS accounts by November 15, 2016. EPA notes that an allocation or lack of allocation of allowances to a given unit does not constitute a determination that CSAPR does or does not apply to the unit. EPA also notes that NUSA allocations of CSAPR NO_x Ozone Season allowances are subject to potential correction if a unit to which NUSA allowances have been allocated for a given compliance year is not actually an affected unit as of May 1 of the compliance year.²

Authority: 40 CFR 97.511(b).

Dated: November 2, 2016.

Reid P. Harvey,

Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 2016-27541 Filed 11-15-16; 8:45 am]

BILLING CODE 6560-50-P

² See 40 CFR 97.511(c).

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare & Medicaid Services****42 CFR Parts 482, 483, 484, and 485**

[CMS-3178-CN]

RIN 0938-AO91

Medicare and Medicaid Programs; Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers; Correction**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.**ACTION:** Final rule; correction.

SUMMARY: This document corrects typographical errors that appeared in the final rule published in the **Federal Register** on September 16, 2016 entitled “Medicare and Medicaid Programs; Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers.”

DATES: This correcting document is effective November 15, 2016.

FOR FURTHER INFORMATION CONTACT: Ronisha Blackstone, (410) 786-6882.

SUPPLEMENTARY INFORMATION:**I. Background**

In FR Doc. 2016-21404 which appeared in the September 16, 2016 **Federal Register** (81 FR 63860), entitled “Medicare and Medicaid Programs; Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers”, there were a number of typographical errors that are identified and corrected in the Correction of Errors section below. The provisions in this correction document are effective as if they had been included in the document published September 16, 2016. Accordingly, the corrections are effective November 15, 2016.

II. Summary of Errors

On page 64030, we inadvertently omitted a paragraph number (that is, paragraph (xii)) in numbering the paragraphs in § 482.15(h)(1).

On page 64032, we inadvertently omitted a paragraph number (that is, paragraph (xii)) in numbering the paragraphs in § 483.73(g)(1).

On page 64034, we made a typographical error in numbering the paragraphs in § 484.22(d)(1).

On page 64037, we inadvertently omitted a paragraph number (that is, paragraph (xii)) in numbering the paragraphs in § 485.625(g)(1).

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

We believe that this correcting document does not constitute a rule that would be subject to the APA notice and comment or delayed effective date requirements. This correcting document corrects typographical errors in the regulations text of the final rule but does not make substantive changes to the policies that were adopted in the final rule. As a result, this correcting document is intended to ensure that the regulations text in the final rule accurately reflect the policies adopted in that final rule.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest because it is in the public’s interest for providers and suppliers to receive the appropriate revisions in as timely a manner as possible, and to ensure that the Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers final rule accurately reflects our policies. Furthermore, such procedures would be unnecessary, as we are not altering our policies, but rather, we are simply implementing correctly the policies that we previously proposed, received comment on, and subsequently finalized. This correcting document is intended solely to ensure that the

Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers final rule accurately reflects these revisions. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

IV. Correction of Errors

In FR Doc. 2016-21404 of September 16, 2016 (81 FR 63860), make the following corrections:

§ 482.15 [Corrected]

■ 1. On page 64030, first column, in § 482.15(h)(1), correctly redesignate paragraph (h)(1)(xiii) as paragraph (h)(1)(xii).

§ 483.73 [Corrected]

■ 2. On page 64032, second column, in § 483.73(g)(1), correctly redesignate paragraph (g)(1)(xiii) as paragraph (g)(1)(xii).

§ 484.22 [Corrected]

■ 3. On page 64034, second column, in § 484.22(d)(1), correct the paragraph designated “(ii) Demonstrate staff” is to read “(iv) Demonstrate staff”.

§ 485.625 [Corrected]

■ 4. On page 64037, third column, in § 485.625(g)(1), correctly redesignate paragraph (g)(1)(xiii) as paragraph (g)(1)(xii).

Dated: November 9, 2016.

Madhura Valverde,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2016-27478 Filed 11-15-16; 8:45 am]

BILLING CODE 4120-01-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 64**

[CG Docket No. 02-278; FCC 16-99]

Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission modifies its rules under the Telephone Consumer Protection Act (TCPA) to implement a provision of the Bipartisan Budget Act of 2015 that excepts from the TCPA’s prior-express-consent requirement autodialed and prerecorded calls “made solely to collect a debt owed to or guaranteed by the United States.” While certain debt servicing calls are permitted under the

exception, the Commission caps the number of permitted calls to wireless numbers at no more than three within a thirty-day period; ensures that consumers have the right to stop such calls at any time; and adopts other consumer protections. These measures implement Congress's mandate to ensure the TCPA does not thwart important calls that can help consumers avoid debt troubles while preserving consumers' ultimate right to determine what calls they wish to receive.

DATES: This Order was issued August 11, 2016.

FOR FURTHER INFORMATION CONTACT:

Kristi Thornton, Consumer Policy Division, Consumer and Governmental Affairs Bureau, at (202) 418-2467 or email: Kristi.Thornton@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, document FCC 16-99, adopted on August 2, 2016, and released on August 11, 2016, in CG Docket No. 02-278. The full text of document FCC 16-99 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (844) 432-2272 (videophone), or (202) 418-0432 (TTY).

Synopsis

1. The Commission adopts rules to implement the Budget Act's amendments to the TCPA, including—based on substantial record support, and in furtherance of the TCPA's consumer-protection goals—restrictions on the number and duration of calls that may be made pursuant to the amendments. Among other things, the Commission determines who may make covered calls, limits the number of federal debt collection calls that may be made, and determines who may be called. The Commission also creates rules to, among other things:

- Permit calls made by debt collectors when the loan is in delinquency, and by debt servicers following a specific, time-sensitive event affecting the amount or timing of payment due, and in the 30 days before such an event.
- Determine that consumers have a right to stop the autodialed, artificial-voice, and prerecorded-voice servicing

and collection calls regarding a federal debt to wireless numbers at any point the consumer wishes.

- Specify that covered calls may be made by the owner of the debt or its contractor, to: (1) The wireless telephone number the debtor provided at the time the debt was incurred; (2) a phone number subsequently provided by the debtor to the owner of the debt or its contractor; and (3) a wireless telephone number the owner of the debt or its contractor has obtained from an independent source, provided that the number actually is the debtor's telephone number.

2. Once information collection requirements of the revised § 64.1200(j)(3), (j)(4) have been approved by the Office of Management and Budget (OMB), the Commission will publish a document in the **Federal Register** (1) revising §§ 64.1200(a)(1)(iii); (a)(3)(iv), (v), and (vi); (f)(17); (i); and (j); and (2) announcing the effective date of these revisions to be set at 60 days after publication of that document in the **Federal Register**.

Covered Calls

3. “*Solely to Collect a Debt.*” The Budget Act excepts covered calls from the prior-express-consent requirement when they are “solely to collect a debt owed to or guaranteed by the United States.” The Commission begins by interpreting the statutory phrase “solely to collect a debt” so as to determine whether calls are covered. Because the statutory term “solely to collect a debt” is ambiguous, the Commission has discretion to reasonably interpret that phrase.

4. The Commission rejects a subjective standard of what a caller may intend when determining whether a call is a covered call and instead looks to objective characteristics of the call. The Commission notes that an objective standard is consistent with its approach to other aspects of the TCPA, such as the meaning of “called party” for purposes of reassigned wireless numbers. Furthermore, a subjective standard would be difficult to administer, while an objective standard enables the Commission to look at actual, measurable characteristics of a call.

5. In the *2016 NPRM*, the Commission asked whether covered calls should begin at delinquency or default. Several commenters support the proposal that covered calls begin at delinquency, stating that calls during delinquency can assist a debtor in determining whether alternative payment plans are an option. The FTC staff's comments,

however, promote default as the starting point for covered calls. They argue that the FDCPA uses default as the “touchstone for coverage,” and that those collecting debts that were not in default when their agency obtained them are not considered debt collectors under the act. Because the amended TCPA is not limited to third-party debt collectors, however, this distinction is less important and the reasoning for using default rather than delinquency as an initiating event is likewise less persuasive.

6. The Commission interprets “solely to collect a debt,” and, therefore, calls made pursuant to the exception created in the Budget Act, to be limited to debts that are delinquent at the time the call is made or to debts that are at imminent risk of delinquency as a result of the terms or operation of the loan program itself. As a practical matter, this means that, at the time the call is made, the debt is delinquent or there is an imminent, non-speculative risk of delinquency due to a specific, time-sensitive event that affects the amount or timing of payments due, such as a deadline to recertify eligibility for an alternative repayment plan or the end of a deferment period. Many federal loan programs offer various alternate and income-based repayment options for which a debtor might qualify at various times during the life of the debt, and the amount or timing of payments due can vary significantly following expiration of a deferral period or an alternate payment plan. For example, some income-based repayment plans for student loans allow a debtor to make a monthly payment of zero dollars without being considered delinquent or in default, but higher monthly payments are required automatically if the debtor does not periodically recertify that he continues to qualify for the program. As such, calls regarding changes in the amount or timing of payments are directly related to the collection of the underlying debt in that they can ensure payments that would likely otherwise would not be made.

7. Some commenters argue that the Commission may not limit covered calls to those that are “delinquent” or in “default” because the Budget Act did not include such limiting language. For example, ACA states: “Congress made absolutely no mention of the [exception] being limited to calls made post delinquency or post-default. As a result it would be inappropriate for the Commission to read such a limitation into the amendment.” The Commission disagrees with regard to its discretion to interpret the statutory language, but notes that it is not limiting covered calls

only to those made after default or delinquency. As commenters note, the Supreme Court has confirmed that a person or entity “collects” a debt by attempting to obtain payment on it. Thus, the Commission believes that covered calls must have a reasonable nexus to seeking to obtain payment and that the calls permitted under the Commission’s interpretation of “solely to collect” have such a nexus. In contrast, calls outside the scope of covered calls lack such a nexus because the risk of delinquency would be too speculative and too far removed (*i.e.*, not imminent) from an event affecting the amount or timing of payments due.

8. Other commenters argue that covered calls should begin before delinquency because calls that occur after delinquency or default are “too late to prevent damage to the consumer’s credit profile and fail[] to allow the borrower to receive timely information to choose the repayment plan best suited for the borrower’s unique circumstances.” The Commission agrees. Certain calls to service a debt owed to or guaranteed by the government may be so closely tied to an imminent and non-speculative risk of delinquency as to also be “solely to collect a debt.” These calls pertain to specific, time-sensitive events that affect the amount or timing of payments due. Once these time-sensitive events are sufficiently imminent, calls about these events are no longer just about a debt, but are solely about the collection of a debt. The time-sensitive nature of these calls necessitates that they are “solely to collect a debt” for only a limited time—following the event and in the 30 days before such an event. Any earlier and the calls are too speculative and attenuated for the purpose of the call to be “solely to collect a debt.”

9. The record indicates that these debt servicing calls help a debtor avoid delinquency or default, which can preserve the debtor’s payment history and credit rating, and help maintain eligibility for future loans. The potential value of these servicing calls to debtors by helping them avoid delinquency or default, and the probability that servicing calls will create conditions that allow debts to be more readily collected by the United States, lead the Commission to determine that certain servicing calls should be included in the interpretation of “solely to collect a debt.”

10. A caller, therefore, need not wait until a debtor is delinquent to begin making certain debt servicing calls. Rather a caller may make debt servicing calls following a specific, time-sensitive event that affects the amount or timing

of payments due, such as a recertification deadline or the end of a deferment period, and in the 30 days before such an event. For purposes of the limits on the number of covered calls, no debt servicing calls will be permitted except those regarding an approaching deadline or a change in status (deferment, forbearance, rehabilitation), calls regarding enrollment or reenrollment in income-driven or income-based repayment plans, and calls regarding similar time-sensitive events or deadlines affecting the amount or timing of payments due. While commenters list other pre-delinquency calls they would like the Commission to include in the list of debt servicing calls for purposes of the Budget Act amendments, the Commission declines to do so. This list of calls the Commission is permitting as covered debt servicing calls includes the most-requested debt servicing calls and includes calls both to enroll debtors in consumer-friendly programs and to keep them enrolled in those programs. It also includes calls aimed at alerting debtors when significant events will occur that will change their payment patterns. The list does not include calls regarding routine events, such as reminders about scheduled upcoming payments. The Commission would consider a routine event one that occurs by operation of the contract alone, as contrasted with the events described above, which require affirmative steps by the debtor to take advantage of the provisions of the debt contract. These included calls, which often increase the probability that debts will be more readily collected and that a debtor will avoid delinquency, achieve the desired result of enabling the caller to collect a debt owed to or guaranteed by the United States and simultaneously can benefit the debtor. The Commission’s interpretation of covered calls permit no debt servicing calls unless the call follows one of these specific, time-sensitive events, and in the 30 days before such an event.

11. “Owed to or guaranteed by the United States.” The Commission turns next to the types of debts that are included in the phrase “owed to or guaranteed by the United States.” The Commission determines that, for TCPA purposes, this phrase includes only debts for which the United States is currently the owner or guarantor of the debt. The Budget Act amendments specify that covered calls may be made regarding “debts owed to or guaranteed by the United States.” Because the Commission lacks a developed record on the issue, it does not seek to define or determine with particularity exactly

which debts are included in or excluded from this phrase; like commenter SLSA, the Commission is cognizant of the “variety of types of debts covered by the provision,” and while the Commission does not “believe that the definitions applicable to each specific federal program should be used to [automatically] determine whether debt in that program is considered owed or guaranteed by the United States,” the Commission views such definitions—and any agency or judicial interpretations of them—as highly relevant evidence regarding whether a debt is “owed to or guaranteed by the United States.”

12. The Commission clarifies that the debt must be *currently* owed to or guaranteed by the federal government at the time the call is made. Debts that have been satisfied are not among the covered debts, and debts that have been sold in their entirety by the federal government are, likewise, not covered. In these cases, the debt is no longer “owed to . . . the United States.” The Commission notes that basic contract principles dictate that when an owner sells an item, it no longer belongs to the original owner, but to the purchaser. Likewise, the purchaser of a debt is owed the repayment obligation, not the prior obligee. For example, a debt is not still “owed to . . . the United States” if the right to repayment is transferred in whole to anyone other than the United States, or a collection agency that has acquired ownership of the debt from the federal government collects the funds and then remits to the federal government a percentage of the amount collected. In such circumstances, the debt is no longer owed to the United States and the rules permit no calls under this exception.

13. *Who may be called?* The Commission next turns to the question of who may be called using the exception created by the Budget Act. The Commission determines that, because calls made pursuant to the exception must be made “solely to collect a debt,” the covered calls may only be made to the debtor or another person or entity legally responsible for paying the debt. Calls are not permitted to other persons listed on the debt paperwork, such as references or witnesses, under FCC rules. These persons are not liable for the debt; consequently, calls to these persons cannot be “solely to collect” the debt. Senators and Members of Congress support the decision to limit covered calls in this way, writing: “The regulations should limit the calls to those made just to the debtors” and “[r]estrict the calls and texts to those

made just to debtors—not their family or friends.” Another Senator writes separately, urging: “Calls to persons who are not the borrower should be eliminated.” Consumer groups concur, stating “the only reasonable way to read the phrase ‘solely to collect a debt’ is to exclude all calls to persons who do not owe the debt.” The FTC staff also supports this limitation, stating “FTC staff recommends that covered calls be limited to calls directed at the person or persons obligated to pay the debt.”

14. Other commenters, however, urge the Commission to permit covered calls to persons other than the debtor. Navient, in particular, comments on the need to call the parents, relatives, and references of a borrower in order to locate the borrower. Navient writes: “[C]alling numbers obtained through skip tracing is sometimes the only way to reach a defaulted borrower.” It also notes that the Department of Education requires “lenders to contact every ‘endorser, relative, reference, individual, and entity’ identified in a delinquent borrower’s loan file as part of their due diligence efforts.” Navient fails to note, however, that there is no requirement to make these contacts via robocall. Navient also makes clear in its comments that its purpose in calling relatives and references is to locate the debtor, not to collect the debt. Because the language of the Budget Act authorizes the Commission to limit calls “solely to collect a debt,” the rules permit covered calls only to persons who are responsible for repaying the debt.

15. *Numbers that May be Called.* The Commission’s interpretation of the phrase “solely to collect a debt” permits no covered calls unless the call is made to the debtor or person responsible for paying the debt at one of three categories of wireless telephone numbers. First, calls may be made to the wireless telephone number the debtor provided at the time the debt was incurred, such as on the loan application. Second, covered calls may be made to a wireless phone number subsequently provided by the debtor to the owner of the debt or the owner’s contractor. Because the debtor has provided the phone numbers in these first two categories, the caller risks liability for the call after the first call to the number, if the number has been reassigned from the debtor to a third party. Third, covered calls are permitted to a wireless telephone number the owner of the debt or its contractor has obtained from an independent source, provided that the number actually is the debtor’s telephone number. The Commission’s decision to permit calls to

these three categories of numbers is consistent with its interpretation of the phrase “solely to collect a debt,” and continues to satisfy the TCPA’s consumer protection goals to the extent possible. As the connection between the phone numbers called and the debtor becomes more attenuated, so, too, does the likelihood of reaching the debtor. Beyond these three categories of numbers, persons reached will not likely be the debtor, so calls will not likely result in the collection of a debt owed to or guaranteed by the United States.

16. The Commission notes that the rules it is adopting, which permit calls only if they are to these three categories of numbers, are broader than the proposal in the 2016 NPRM. The Commission has included calls to numbers subsequently provided by the debtor to the owner of the debt or the owner’s contractor, and to numbers the owner of the debt or its contractor has obtained from an independent source, provided that any such number actually is the debtor’s number. These additional categories of numbers should prevent uninvolved consumers from receiving robocalls about debts they do not owe, while mitigating concerns that the phone number provided on the loan application no longer belongs to the debtor when the debt enters repayment.

17. This limitation the Commission is placing on the number of covered calls, which limits covered calls only to these three categories of numbers, is a determination that robocalls to wrong numbers are not covered by the exception created in the Budget Act amendments. Calls to reassigned wireless numbers may not be made pursuant to the exception either. Wrong numbers, as the Commission used the term in the 2015 *Declaratory Ruling and Order*, published at 80 FR 61129, Oct. 9, 2015, are “numbers that are misdialed or entered incorrectly into a dialing system, or that for any other reason result in the caller making a call to a number where the called party is different from the party the caller intended to reach or the party who gave consent to be called.” The Commission determines that covered calls to reassigned wireless numbers, however, are subject to the one-call window the Commission clarified in the 2015 *Declaratory Ruling and Order*. For purposes of this exception, the reassigned wireless number provision would come into play when the caller makes a call to the wireless number provided by the debtor but the number was subsequently reassigned. In this circumstance, the caller would be entitled to the one-call window the

Commission previously clarified if the caller did not know of the reassignment.

18. Numerous parties in the record urge the Commission to apply the same wrong number and reassigned number standards set forth in the 2015 *Declaratory Ruling and Order* to these covered calls. Others ask the Commission to abandon or alter the wrong-number and reassigned-number standard so that covered calls are treated differently from other robocalls, but do not set forth a persuasive argument for why a covered call is different from a typical robocall subject to the one-call window. Several commenters argue for a “reasonable belief” or “actual knowledge” standard. The Commission, however, rejected those standards in the 2015 *Declaratory Ruling and Order*. And while ABA/CBA argues that separate regulations “mandate[] that calls be made to distressed borrowers at their last known phone number of record,” it does not indicate that the regulations require that those calls be made using an autodialer, artificial voice, or prerecorded voice. Consequently, ABA/CBA could comply with these separate regulatory requirements by manually dialing the last known phone number of record.

19. *Who May Make the Calls?* The Commission next considers who may make the covered calls at issue. The Commission finds that a call is made “solely to collect a debt owed to or guaranteed by the United States” only if it is made by the owner of such a debt or its contractor. The record supports this interpretation. A number of commenters urge the Commission to determine that covered calls may be made by “creditors and those calling directly on their behalf,” or “creditors and those calling on their behalf, including their agents.” Two commenters ask the Commission to broaden the universe of those who may make covered calls, asking that “subcontractors [] be permitted to call, even if the subcontractor is not an agent.” The Commission declines to adopt rules that are as broad as “subcontractor,” but limits permitted callers to the owner of the debt or its contractor. As the Commission has noted above, consumers consistently complain to the Commission, the FTC, and CFPB about abusive and persistent debt-collection robocalls. In creating the rules limiting the number of covered calls, the Commission seeks to balance the goals of increasing the likelihood that debts owed to or guaranteed by the United States will be paid by the debtor and of protecting consumers. These rules properly balance these goals by recognizing the practicality that owners

of debts might use the services of contractors to make covered calls in a manner that reduces the potential for abuse or causing debtors undue hardship.

20. *What Constitutes a "Call Made"?* "Call," for this exception, is consistent with the Commission's previous interpretation of "call" for TCPA purposes. A call is any initiated call. The call need not be completed, and need not result in a conversation or voicemail. While many commenters support this interpretation of "call," others argue that the definition for purposes of the exception created by the Budget Act should be "connected calls" or "actual contacts." The Commission finds no statutory basis to deviate from its existing interpretation of "call" and "made," and finds persuasive one commenter's argument that "[e]very time the phone rings can cause anxiety. Whether or not the collector leaves a message on voice mail does not assuage this harassment." Consistent with the text of the TCPA and the Commission's previous clarifications, covered calls may be an autodialed call, a prerecorded- or artificial-voice call, or a text message sent using an autodialer.

21. *Content of the covered calls.* The 2016 NPRM asked how to ensure that covered calls do not include extraneous material that consumers do not want, such as marketing content. The Commission agrees with the many commenters who argue that content that includes marketing, advertising, or selling products or services, and other irrelevant content is not solely for the purpose of collecting a debt owed to or guaranteed by the United States. The Commission has previously found that calls solely for the purpose of debt collection do not constitute telemarketing. Content in these calls that is telemarketing, therefore, transforms the call from one solely for the purpose of debt collection into a telemarketing call.

Limits on Number and Duration of Federal Debt Collection Calls

22. *Need for restrictions.* In considering the need for restrictions on calls to collect debts owed to or guaranteed by the United States, the Commission notes the volume of consumer complaints, as set forth above. These factors, along with Congress' explicit grant of authority to the Commission to "restrict or limit the number and duration of calls made to a telephone number assigned to a cellular telephone service to collect a debt owed to or guaranteed by the United States," lead the Commission to adopt certain restrictions.

23. *Scope.* Section 301(a)(2) of the Budget Act, which enacts a new statutory provision at 47 U.S.C. 227(b)(2)(H), authorizes the Commission to "restrict or limit the number and duration of calls made to a cellular telephone number to collect a debt owed to or guaranteed by the United States." The scope of this authority is broader than the scope of the exception from the prior-express-consent requirement, because—unlike the exception—it is not limited to calls made "solely" to collect a covered debt. Thus, the rules the Commission promulgates under this authority apply to any autodialed, prerecorded-voice, and artificial-voice calls that reasonably relate to the collection of a covered debt and therefore apply even if the calls are not "calls made solely to collect a debt" under section 227(b)(1) of the Communications Act (the Act): e.g., as noted above, if the calls also contain other content (such as advertising) or precede the specified time period for calls excepted from the consent requirement. Moreover, these number and duration rules apply to calls by the federal government (to the extent it is the owner or guarantor of the debt) and its contractors, as explained in the Jurisdiction section below.

24. *The nature of restrictions, generally.* The Commission determines, based on consumer complaints and on support from the record, that restrictions on the number and duration of federal debt collection calls are appropriate and necessary. In reaching this conclusion, the Commission bears in mind one reasonable interpretation of Congress' action in enacting the amendments: To make it easier for owners of debts owed to or guaranteed by the United States, as well as their contractors, to make calls to collect the debts. The Commission also bears in mind the TCPA's overarching goal to protect the privacy interests of consumers and Congress' express grant of authority to the Commission to place certain restrictions on federal debt collection calls. In seeking to balance these two interests, the Commission limits the number of federal debt collection calls to three in thirty days, with exceptions as noted below; limits the length of calls using an artificial voice or prerecorded voice, and autodialed text messages; and limits the times of day when federal debt collection calls may be made to wireless numbers. As explained more fully below, these limits apply in the aggregate to all calls from a caller to a debtor, regardless of the number of debts of each type the servicer or

collector holds for the debtor. This cap of three calls per thirty days is cumulative for debt servicing calls and debt collection calls. Finally, the Commission limits the number of calls in light of a debtor's right to stop federal debt collection calls and to be notified of this right.

25. *Number of calls.* In the 2016 NPRM, the Commission proposed to limit the number of federal debt collection calls to three per month, per delinquency, only after delinquency. Several commenters support this number. One commenter reminds the Commission, "it is important to keep in mind that the calls made pursuant to this regulation are without consent, and are likely to comprise only a portion of the many other calls and contacts that debt collectors have with the debtors from whom they are collecting." Other commenters, however, argue for higher limits, stating that "it takes significantly more than three contact attempts to reach the borrower and additional contacts to effectively resolve a borrower's delinquency or default." One commenter asserts that it needs 50 calls over several months to reach the right person and have a conversation. Another states that it takes 14.3 attempts to contact a consumer. A third commenter states that it needs approximately 50 follow-up calls, but that those calls are consented-to. Two commenters assert that approximately ten call attempts per month is an appropriate rate at which to contact debtors. A mortgage servicer states: "By making up to five calls in the two weeks prior to a client becoming 60 days delinquent, we saw approximately 50% more clients become current on the loan when compared to those who weren't called."

26. As these comments demonstrate, there is no consensus in the record. The Department of Education states that it "does not believe that allowing loan servicers and [private collection agencies] to make three [federal debt collection calls] per month would measurably increase the likelihood that they would reach a borrower," but that "a higher limit will reasonably allow" them to do so. Consumer groups generally argue that three calls is the appropriate number for calls pursuant to the Budget Act amendments. As commenter Navient notes, however, these commenters often "fail to explain why three calls is an appropriate limit." Additionally, callers filing comments cite statistics and call patterns documenting their perceived need for more calls—but even callers vary widely when advocating for a number on federal debt collection calls. Congress

gave the Commission express authority to limit the number and duration of wireless federal debt collection calls, and the record documents the benefits to consumers of some number of covered calls. The Commission, therefore, must engage in an exercise in line drawing as it balances the competing interests to determine an appropriate limit on the number of federal debt collection calls.

27. The Commission determines, subject to the exception below, that a limit of three federal debt collection calls in a thirty-day period is appropriate. As stated above, a significant number of commenters support this numeric restriction. Furthermore, the overwhelming majority of individual commenters support the Commission imposing a low limit on the number of calls allowed pursuant to the Budget Act amendments. Commenters asking for a higher limit have failed to offer a compelling justification for any of the various limits they support. At the same time, the Commission agrees with consumer groups that have noted that callers may make as many calls as they like—they simply need to obtain the consent of the debtor or contact consumers without making a robocall.

28. The Commission, therefore, concludes that the appropriate limit for the number of federal debt collection calls is three calls within thirty days while the delinquency remains or following a specific, time-sensitive event, with such calls also permitted in the 30 days before such an event (but not before delinquency). The Commission recognizes, however, that some federal agencies, based on their expertise administering their respective statutes and programs, may desire additional calls. Balancing these needs with the TCPA's goal of protecting consumers from unwanted calls, the Commission notes that federal agencies may request a waiver seeking a different limit on the number of autodialed, prerecorded-voice, and artificial-voice calls that may be made without consent of the called party. The Commission delegates to the Consumer and Governmental Affairs Bureau the authority to address any such waivers.

29. The Commission is not persuaded by callers who argue that more calls are needed or that other regulatory or contractual obligations might impose higher limits on the total number of calls. The Commission is not limiting the total number of calls that may be made; instead, the Commission is exercising its statutory authority and discretion to establish a limit on the number of autodialed, prerecorded-

voice, and artificial-voice calls that can be made without the consent of the called party for the limited purpose at issue here. Thus, the Commission sets this limit with the knowledge that callers may make additional autodialed, artificial-voice, and prerecorded-voice calls if they obtain the prior express consent of the called party or if they dial manually. Robocallers are free, of course, to obtain prior express consent for additional calls and the Commission presumes that consumers who find the calls beneficial will provide it.

30. *Consumer ability to stop federal debt collection calls.* The Commission has determined that an ability to stop unwanted calls is critical to the TCPA's goal of consumer protection. That right is likely more important here, where consumers need not consent to the calls in advance in order for a caller to make federal debt collection calls. As one commenter notes, "[r]equiring calls to stop after the consumer so requests constitutes a limit on the number of calls that can be made, and Congress explicitly authorized the Commission to limit the number of calls." The Commission agrees. The Commission has stated that one reasonable interpretation of the statute is that Congress intended to make it easier for consumers to obtain useful information about debt repayment, which may be conveyed in these calls. When a debtor has rejected that presumption and declared that he or she no longer wishes to receive these calls, there is no longer any reason for the calls to continue. The Commission determines, per its authority to limit the number of federal debt collection calls, that consumers have a right to stop the covered autodialed, artificial-voice, and prerecorded-voice servicing and collection calls to wireless numbers at any point the consumer wishes. The debtor may make this request to the caller. Several commenters support this decision and the Commission's ability to make it. If Congress intended these amendments to make it easier for consumers to obtain useful information about debt repayment, then consumers may request that the calls stop if they do not find the calls or the information they contain useful. The Commission's rules, therefore, require that zero federal debt collection calls are permitted once a debtor asks the owner of the debt or its contractor to cease federal debt collection calls. This requirement that callers immediately honor a request to stop calls applies even where the caller has previously obtained prior express consent to make federal debt collection calls.

31. The Commission also understands that debts may be transferred from one servicer or collector to another. This stop-calling request is specific to the debt and the consumer, and transfers with the debt; once the consumer has asked that the number of federal debt collection calls be reduced to zero, only the consumer can alter that number restriction. Consequently, a stop-calling request applies to a subsequent collector or servicer of the same debt. In reaching this determination, the Commission rejects a commenter's proposal that a stop-calling request be limited to a period of time such as a month, but be renewable. Because the stop-calling request for federal debt collection calls applies for the life of the debt, servicers and collectors must ensure that information regarding the request conveys with the other relevant information regarding the debt when it is sold or transferred between servicers or collectors. The requirement that the stop-call request conveys from one servicer or collector to the next implicates the Paperwork Reduction Act, as indicated in the Commission's rules, and in the Final Regulatory Flexibility Act.

32. Granting consumers a right to request calls stop at any point is only useful if consumers know of this right. The Commission agrees with the FTC staff that "[a]n opt-out right [] is only effective if it is well-known" rather than with the commenters who argue that a consumer should be notified of the right only once and in writing, or that notifying consumers of the right within every phone call will "cause a consumer to attach undue significance to such a right." The Commission, therefore, requires callers to inform debtors of their right to make such a request. The disclosure of rights must inform the debtor that he or she has a right to request that no further autodialed, artificial-voice, or prerecorded-voice calls be made to the debtor for the life of the debt, and that such request may be made by any reasonable method. Disclosures must be made in a manner that gives debtors an effective opportunity to stop future calls. Callers must disclose this consumer right within every completed autodialed call with a live caller, whether the caller speaks with the debtor or leaves a voicemail message. Calls using a prerecorded or artificial voice must disclose the right within each message. Covered text messages must disclose the right within each text message or in a separate text message that contains only the disclosure and is sent immediately preceding the first covered text message.

If the disclosure is in a separate text message, that message does not count toward the numeric limits the Commission imposes in document FCC 16–99.

33. The Commission has previously determined that consumers may opt out of calls for which prior consent is required, and that they may do so using any reasonable method, including orally or in response to a text message. Here, where the federal debt collection calls do not require consent, but where consumers may request at any time that calls stop, consumers may also make a stop-calling request using any reasonable method, including orally or in response to a text message. The Commission reaches this conclusion regarding the methods by which a consumer may make a stop-calling request after considering consumer confusion, standard calling practices, and recordkeeping procedures. The Commission anticipates that confusion will be minimized and calling practices will be streamlined if stop-calling methods and opt-out procedures are consistent. For similar reasons, the Commission determines that federal debt collection calls made using a prerecorded or artificial voice must include an automated, interactive voice-and/or key press-activated opt-out mechanism so that debtors who receive these calls may make a stop-calling request during the call by pressing a single key. When a federal debt collection call using an artificial voice or prerecorded voice leaves a voicemail message, that message must also provide a toll-free number that the debtor may call at a later time to connect directly to the automated, interactive voice and/or key press-activated mechanism and automatically record the stop-calling request. Text message disclosures must include brief explanatory instructions for sending a stop-call request by reply text message and provide a toll-free number that enables the debtor to call back later to make a stop-call request. The requirement that the artificial- and prerecorded-voice calls, as well as text messages, include opt-out instructions and features implicates the Paperwork Reduction Act, as indicated in the Commission's rules, and in the Final Regulatory Flexibility Act.

34. *When may federal debt collection calls be made?* In order for a federal debt collection call to produce the intended effect of “collect[ing] a debt owed to or guaranteed by the United States,” it must occur close in time to a key event in the life of the debt. As set forth above, calls “solely to collect a debt” may be collection calls or servicing calls because both increase the

likelihood of a debt being collected. The Commission has interpreted the statutory phrase “solely to collect a debt” to limit debt collection calls to a period when a debt is delinquent, and to limit debt servicing calls to following a specific, time-sensitive event and in the 30 days before such an event. The Commission here uses the authority Congress granted it to limit the number and duration of calls “to collect a debt owed to or guaranteed by the United States.” The rules the Commission enacts today state that zero calls are permitted under the Budget Act amendments unless they occur: (1) During the period of delinquency for debt collection calls; and (2) following an enumerated, specific, time-sensitive event and in the 30 days before such an event for debt servicing calls.

35. *Content of the calls.* As stated above, the Commission's interpretation of the statutory phrase “solely to collect a debt” excludes calls that contain marketing, advertising, or selling products or services. The Commission here uses the authority Congress granted it to limit the number and duration of calls “to collect a debt owed to or guaranteed by the United States.” The rules the Commission enacts today state that zero calls are permitted under the Budget Act amendments if the autodialed, prerecorded-voice, or artificial-voice call contains any marketing, advertising, or selling of products or services. Commenters support this determination. The Commission's determination regarding calls that contain marketing, advertising, or sales also supports the Commission's interpretation of Congress' intent that the calls provide consumers with useful information about repaying their debt, and it is a step in preventing the very real problem that consumers will be subject to fraudulent calls and programs.

36. *Calls only to the debtor.* The Commission also here enacts rules stating that zero calls are permitted under the Budget Act amendments unless the calls are to the debtor or the person responsible for paying the debt, and the call is made to that person at one of the three categories of numbers specified in document FCC 16–99. The Commission's interpretation of the statutory phrase “solely to collect” explains its reasoning for establishing these limits on who may be called and the numbers at which these persons may be called. The Commission finds that the reasoning applies here as well, where Congress has authorized it to limit the number of calls made “to collect a debt.” Calls to persons other than the debtor or other entities

responsible for paying the debt are not directly tied to collecting a debt. In balancing the inconvenience to uninvolved persons against the interests of callers, the Commission determines it is not appropriate to extend federal debt collection calls beyond the debtor and others responsible for paying the debt. Likewise, calls to numbers other than the three categories of telephone numbers the Commission specified above are unlikely to reach the person responsible for repaying the debt, and so are unlikely to result in collection of the debt. The Commission, therefore, limits to zero calls made to persons or telephone numbers other than these.

37. *Call limits are per caller.* Commenters also ask the Commission to “clarify whether the [limited number of federal debt collection calls] is per debtor (e.g., inclusive of all telephone numbers used by the debtor)” per delinquency, or per servicer or collector. One consumer advocate states: “[B]ecause many consumers have multiple loans—often eight to ten student loans for each borrower—we recommend that the number of calls or texts permitted to be made without consent should be limited to three calls per servicer or collector. Without this limitation, consumers who have eight to ten outstanding loans, as many do, could be receiving between twenty-four and thirty robocalls per month to their cell phones.” Because the Commission has set the federal debt collection call limit at three calls per thirty days, that number could rise to twenty-four to thirty robocalls per month if the Commission were to determine that the call limit applied per loan. In light of the record, and to prevent an excessive number of calls to individual debtors, the Commission determines that the call limit on federal debt collection calls to wireless numbers applies for each servicer or collector. If the servicer or collector has contracts with the United States for more than one type of debt—for example to collect or service student loans and Department of Agriculture loans—the servicer may utilize a three-call in thirty day limit for each type of loan the servicer or collector manages for the debtor.

38. *Length of federal debt collection calls.* In the 2016 NPRM, the Commission sought comment on the maximum duration of a voice call, and whether it should adopt different duration limits for prerecorded- or artificial-voice calls than for autodialed calls with a live caller. Commenters generally support the idea of a maximum length for artificial-voice and prerecorded-voice calls, but not a maximum length for autodialed calls

with a live caller because this could impinge on a potentially lengthy conversation between a servicer and a debtor. Commenters who support a maximum length for artificial- and prerecorded-voice calls suggest caps of 30 or 60 seconds. Some commenters suggest that the time limit include time for any required disclosures, while others ask that required disclosures be outside of any time cap the Commission sets. In light of the record, the Commission determines that artificial-voice and prerecorded-voice calls may not exceed 60 seconds, exclusive of any required disclosures. The Commission does not place any cap on the duration of live-caller, autodialed calls made pursuant to the Budget Act exception.

39. The Commission also asked in the 2016 NPRM whether it should impose a limit on the length of text messages, and what that limit should be. Commenters note that senders of text messages generally keep the messages short because “[a] long text message would get split up into multiple texts and could confuse the borrower.” Other commenters ask that any cap on the length of a text message account for required disclosures. Text messages are generally limited to 160 characters. As stated above, any required disclosures may be included within this 160-character limit for a single text message or may be sent as a separate text message that does not count toward the numeric limits the Commission imposes herein.

40. *Time of day restrictions.* The Commission imposes an additional restriction on the number of federal debt collection calls or texts allowed, and determines that no federal debt collection calls or texts are permitted outside the hours of 8:00 a.m. to 9:00 p.m. (local time at the called party’s location), which is identical to the rule for telemarketing calls. Congress stated that federal debt collection calls are intended “to collect a debt,” and during these times consumers are likely available to answer calls and receptive to receiving information from callers. The record supports the Commission’s determination that consumers are generally comfortable with receiving calls during these times. Furthermore, FTC staff notes that the FDCPA and the Telemarketing Sales Rule “similarly limit debt collection and telemarketing calls to this same timeframe.” Adding a new category of calls to this generally accepted timeframe will cause less inconvenience and confusion to consumers than if the Commission were to impose a different schedule or no schedule for these calls. Likewise, call centers that contract with businesses to

make calls on their behalf are familiar with these time-of-day restrictions; this restriction should not impose a burden on callers or their contractors making federal debt collection calls.

41. *Multiple sets of regulations.* The Commission acknowledges that other statutes and regulations impact debt collection calls, yet it recognizes that Congress assigned to the Commission responsibility for crafting rules for autodialed, artificial-voice, and prerecorded-voice debt collection calls where the debt is owed to or guaranteed by the United States. Because Congress specifically gave the Commission certain authority over these federal debt collection calls, the Commission assumes that callers will follow the most restrictive rules for the call being made. Which rules apply will vary based on a number of factors, such as whether the caller is a debt collector or a debt servicer, the nature of the debt, and the length of delinquency. Where multiple rules apply to the same call and one of the rules is enacted by the Commission to implement the TCPA, a caller must comply with the most restrictive requirements regarding factors such as frequency, time of day, and so on. Section 301 of the Budget Act affects the TCPA and its implementing regulations but does not affect other laws, including specifically those for which the CFPB or the FTC have responsibility.

Other Implementation Issues

42. *Covered Calls to Residential Lines.* The Commission notes that under the current rules, artificial- or prerecorded-voice calls to residential lines that are made for the purpose of collecting a debt are currently not subject to the prior express consent requirement. Although the TCPA allows for broad coverage of the prior express consent requirement to all non-emergency artificial- and prerecorded-voice calls to residential lines, the Commission has exercised its statutory exemption authority so as to apply the consent requirement only to calls that include or introduce an advertisement or constitute telemarketing. The Commission has also found that debt collection calls do not constitute telemarketing.

43. Congress, in authorizing the Commission to enact rules implementing the Budget Act’s amendments, stated that the Commission could “restrict or limit the number and duration of calls made to a telephone number assigned to a cellular telephone service.” Congress, by omission, did not authorize the Commission to enact rules to limit the number and duration of calls made to a

telephone number assigned to a residential telephone line. Commenters support this understanding of the Budget Act amendment with regard to calls to numbers assigned to residential lines, stating: “Congress did not grant the Commission the authority to restrict or limit” these calls. Consequently, the Commission’s current rules regarding non-telemarketing autodialed, prerecorded-voice, and artificial-voice calls to residential numbers are not altered by the Budget Act amendments. The Commission is not imposing restrictions on these calls. Callers may, however, be subject to restrictions under other applicable statutes and regulations, such as the Fair Debt Collection Practices Act.

44. *Restrictions on Calls to Cellular Telephone Service.* Congress authorized the Commission to “restrict or limit the number and duration of calls made to a telephone number assigned to a cellular telephone service to collect a debt owed to or guaranteed by the United States.” Yet, the amendment to the TCPA, authorizing calls made to collect a debt owed to or guaranteed by the United States, is broader, applying to “any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.” Considering the identical language in the prior delegation of authority in section 227(b)(2)(C) of the Act, the Commission concludes that Congress delegated the Commission authority to limit the number and duration of all calls made pursuant to the debt collection exception in section 227(b)(1)(A)(iii) of the Act.

45. Congress, in granting the Commission authority to limit the number and duration of calls, used identical language to the language it used in the separate delegation of authority in section 227(b)(2)(C) of the Act. The identical language in these two delegations of authority indicates that Congress intended the two provisions to apply to the same services.

46. The Commission has interpreted section 227(b)(2)(C) of the Act to apply to all services mentioned in section 227(b)(1)(A)(iii) of the Act. In so doing, it has interpreted “cellular telephone service” by asking whether services are functionally equivalent from the consumer perspective rather than on technical or regulatory differences, such as which spectrum block is used to provide the service. This avoids, for example, consumers receiving wireless voice service from being treated differently depending on which

spectrum block their carriers use and callers having to determine which spectrum block is used for a particular consumer's service in order to know which requirements apply.

47. Applying the canon of statutory construction that Congress knows the law, including relevant agency interpretations, at the time it adopts a statute, the Commission presumes that Congress knew of the Commission's interpretation of this key language. Congress used the same language in the recent delegation of authority without taking any action to alter the Commission's interpretation of identical language elsewhere in the same statute. The Commission therefore concludes that the authority delegated to it in the new section 227(b)(2)(H) of the Act added by the Budget Act applies to all services to which amended section 227(b)(1)(A)(iii) of the Act applies.

48. *Application of Other TCPA Restrictions to Covered Calls.* The Commission believes the most reasonable interpretation of the Budget Act amendments is that they except covered calls from the requirement to obtain the consent of the called party, and that calls must in every other respect comply with the TCPA unless compliance with a requirement of the TCPA is prohibited by a separate regulation pertaining to debt collection calls generally. The Budget Act amendments apply to the consent requirement of section (b)(1) of the Act, but other sections of the TCPA are left unaffected. For example, the identification requirements of § 64.1200(b)(1) through (2) of the Commission's rules apply to both excepted calls and other calls made using an autodialer, a prerecorded voice, and an artificial voice. The exception Congress created in the Budget Act amendments is not an exception to compliance with the TCPA as a whole, but only with the requirement to obtain the consent of the called party to make the call. The Commission will resolve conflicts on a case-by-case basis.

49. *Other Issues.* Commenters in the record raise other arguments for the Commission's consideration in enacting rules for the Budget Act amendments. For example, one commenter asks the Commission to state that "no debt collection calls [may be made to] people receiving Supplemental Security Income (SSI) benefits on the basis of old age or disability, and that Treasury not pass along information on debts owed by SSI recipients to debt collectors." Another commenter asks the Commission to develop "a separate set of rules to assist federal student loan

borrowers." A separate commenter asks the Commission to create a certification system that authorizes callers to use autodialers for purposes of making covered calls and only renews the certification if the caller's yearly performance meets standards established by the Commission and the Department of Education. The Commission declines to address these and other ancillary issues and arguments raised in the record as they are outside the scope of this proceeding. Moreover, these issues are not fully developed in the record and the Commission would need more facts to meaningfully and cogently address these issues.

Severability

50. All of the rules that are adopted in document FCC 16–99 are designed to ensure a caller's ability to make calls pursuant to the Budget Act amendments and a debtor's ability to control the calls he or she receives. Each of the determinations the Commission undertakes in document FCC 16–99 serve a particular function toward this goal. Therefore, it is the Commission's intent that each of the rules and regulations adopted herein shall be severable. The Commission believes that debtors will benefit from the information they may receive from callers and will also benefit from the ability to ask that calls be stopped. If any of the rules or regulations, or portions thereof, are declared invalid or unenforceable for any reason, it is the Commission's intent that the remaining rules shall be in full force and effect.

Effective Date

51. As noted in the discussion above, two portions of the Commission's rules implicate the Paperwork Reduction Act (PRA). These portions involve the rules for the recording of a debtor's request to stop receiving autodialed, artificial-voice, and prerecorded-voice calls to collect a debt owed to or guaranteed by the United States, and rules for the conveyance of that stop-call request from one servicer or collector to another. Because these portions of the rules implicate the PRA, they will not become effective until 60 days after the Commission publishes a Notice in the **Federal Register** indicating approval of the information collection by OMB.

52. The remaining rules will not become effective until the rules requiring OMB approval become effective. While these remaining rules do not require OMB approval and could become effective immediately upon release of document FCC 16–99, the Commission determines that the

consumer-protection rules regarding stop-call requests and conveyance of those requests are so integral to this regulatory scheme that the remaining rules should not become effective until the consumer-protection rules are in place. The rules that could become effective immediately permit a caller to make calls—they specify how many calls may be made, who may make the calls, when the calls can be made, and to which numbers the calls may be made, among other things. These rules give effect to one of the reasonable interpretations the Commission has identified for Congress' passage of the Budget amendments: to make it easier for owners of debts owed to or guaranteed by the United States and their contractors to make calls to collect debts. But the second reasonable interpretation—to make it easier for consumers to obtain useful information about debt repayment—carries with it a consumer's prerogative to determine that the debtor does not want the information conveyed in the calls and to ask that the calls stop. The rules that give effect to this interpretation of Congress' intent are delayed by PRA requirements and OMB approval. The Commission determines that the regulatory scheme it implements today must include both the ability for callers to make calls and the right of debtors to ask that calls stop—and that both portions of the regulatory scheme become effective simultaneously. To do otherwise would be to allow callers to make calls but to leave debtors with no consumer protections until OMB approval is complete. The Commission determines that both portions of the rules must become effective for the regulatory scheme to be effective.

53. The notice of OMB's approval of the information collections, the announcement of the effective date for the rule changes adopted on August 2, 2016, and released on August 11, 2016, and the appropriate amendatory language, will be contained in a document published in the **Federal Register** at a later date.

Language of Rule Changes To Implement Regulatory Scheme

54. The amendments to §§ 64.1200(j)(3) and (j)(4) require OMB approval under the Paperwork Reduction Act (PRA) and will not go into effect until 60 days after we publish a notice in the **Federal Register** announcing OMB's approval and the effective date, and containing the formal amendatory language for the rules. The complete text of the rule changes may be found in the appendix to the Commission's decision, available on the

agency Web site. The subsection (j)(3) and (j)(4) rule changes are summarized as follows:

- *Required Disclosures.* Prerecorded-voice, artificial-voice, or autodialed calls to collect a debt owed to or guaranteed by the United States must include a disclosure that the debtor has a right to request that no further calls of this type be made to the debtor for the life of the debt and that such requests may be made by any reasonable method. Disclosures must be made in a manner that gives debtors an effective opportunity to stop future calls. For voice telephone calls, the disclosure must be made within each telephone call. For autodialed text messages, the disclosure must be within each text message or in a separate text message that contains only the disclosure and that is sent immediately preceding the first text message permitted, but the text message containing the disclosure does not count toward the character limit contained elsewhere in the rules.

- *Requests for no more calls.* A debtor may request to the owner of the debt or its contractor that no further telephone calls be made to the debtor for the life of the debt by any reasonable method, including orally and by reply text message. No autodialed, prerecorded-voice, or artificial-voice federal debt collection calls are permitted after the stop-call request. Telephone calls using an artificial or prerecorded voice must include an automated, interactive voice-and/or key press-activated opt-out mechanism that enables the debtor to make a stop-calling request prior to terminating the call, including brief explanatory instructions on how to use such mechanism. When a debtor elects to make a stop-calling request using such mechanism, it must automatically record the request and immediately terminate the call. When a telephone call using an artificial or prerecorded voice leaves a message on an answering machine or a voice mail service, the message must also include a toll free number that the debtor may call later to connect directly to the automated, interactive voice- and/or key press-activated opt-out mechanism and automatically record the stop-calling request. Text messages containing the disclosure required elsewhere in the rules must include brief explanatory instructions for sending a stop-calling request by reply text message and provide a toll free number that enables the debtor to call back later to make a stop-calling request.

55. The Commission determined that the amendments to §§ 64.1200(a)(1)(iii); (a)(3)(iv), (v), and (vi); (f)(17); (i), and (j)(1)–(2), (5)–(9), which do not require

OMB approval, nonetheless will not go into effect until 60 days after we publish a notice of OMB approval of § 64.1200(j)(3) and (j)(4), the effective date for all the rule changes, and the amendatory language for the rules. The complete text of the rule changes may be found in the appendix to the Commission's decision, available on the agency Web site. These other rule changes are summarized as follows:

- *No consent required for calls solely to collect a debt owed to or guaranteed by the United States.* The prior express consent of the called party is not needed when: A call is made to a telephone number assigned to a cellular telephone service, among others; the call is made solely to collect a debt owed to or guaranteed by the federal government of the United States; and the call is made using an automatic telephone dialing system or an artificial or prerecorded voice. The prior express written consent of the called party is not needed when a call is made to a telephone number assigned to a residential line when the call is made pursuant to the collection of a debt owed to or guaranteed by the federal government of the United States and the call is made using an artificial or prerecorded voice.

- *Debtor defined.* Debtor is defined as the debtor; a co-signor or other person or entity legally obligated to pay the debt; and an executor, guardian, administrator, receiver, trustee, or similar legal representative of the debtor or of another person or entity legally obligated to pay the debt.

- *When a call is made solely to collect a debt owed to or guaranteed by the United States.* To be considered a call made solely to collect a debt owed to or guaranteed by the United States, the telephone call must exclusively concern a debt that, at the time of the call, is owed to or guaranteed by the federal government of the United States and must contain no marketing, advertising, or sales information. The call must also be made by the owner of the debt, or its contractor, to the debtor. The entire content of the call must be directly and reasonably related either to collecting payment of a delinquent amount in order to cure such delinquency or to resolving the debt either by obtaining payment of such delinquent amount or by entering into an alternative payment arrangement that will cure such delinquency or resolve the debt, during a time period when a delinquency exists, or providing information about changes to the amount or timing of payments following the end of, or in the 30 days before: a grace, deferment, or forbearance period; expiration of an alternative payment

arrangement; or occurrence of a similar time-sensitive event or deadline affecting the amount or timing of payments due. The call must be made to the debtor at the wireless telephone number the debtor provided at the time the debt was incurred, or subsequently provided by the debtor to the owner of the debt or the owner's contractor, or a wireless telephone number obtained from an independent source, provided that the number actually is the debtor's telephone number.

- *Number and duration limits on calls made to collect a debt owed to or guaranteed by the United States.* Telephone calls made using an autodialer or a prerecorded or artificial voice to collect a debt owed to or guaranteed by the United States are limited to three calls to a debtor within a 30-day period but zero calls if a debtor requests no further calls. These limits apply whether the calls are made by the owner of the debt or by a contractor of the owner(s) of the debt. For purposes of determining the number of calls permitted, multiple debts owed by one debtor shall be considered one debt if the agent or contractor is servicing or collecting those debts on behalf of the same owner under the same contractual or agency relationship. The limit of zero calls if a debtor requests no further calls applies for the life of the debt; the limit of three calls in a 30-day period applies during each time period in which telephone calls may be made pursuant to paragraph (i)(2) of the rules.

- *Length of federal debt collection calls.* Artificial- and prerecorded-voice telephone calls may not exceed 60 seconds in length, excluding any required disclosures and stop-calling instructions. Text messages are limited to 160 characters in length.

- *Other restrictions on calls made to collect a debt owed to or guaranteed by the United States.* No telephone calls can be made before 8 a.m. or after 9 p.m. local time at the debtor's location. No calls are permitted if the call contains marketing, advertising, or sales information. No calls are permitted except to the debtor at the wireless telephone number the debtor provided at the time the debt was incurred, a wireless telephone number subsequently provided by the debtor to the owner of the debt or the owner's contractor, or a wireless telephone number the owner of the debt or its contractor has obtained from an independent source, provided that the number actually is the debtor's telephone number. No calls are permitted except during a time period when a delinquency exists, or following, or in the 30 days before: The end of a

grace, deferment, or forbearance period; expiration of an alternative payment arrangement; or occurrence of a similar time-sensitive event or deadline affecting the amount or timing of payments due.

Who must comply with the restrictions. Notwithstanding anything to the contrary, the number and duration rules for calls to collect a debt owed to or guaranteed by the United States apply to all autodialed, artificial-voice, or prerecorded-voice calls made to a wireless number including, for example, calls by any governmental entity or its agent.

Final Regulatory Flexibility Analysis

56. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Analyses (IRFA) was incorporated into the 2016 NRPM. The Commission sought written public comment on the proposals in the 2016 NRPM, including comment on the IRFA. The comments received are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Order

57. Document FCC 16–99 promulgates rules to implement section 301 of the Bipartisan Budget Act of 2015, which amends the Telephone Consumer Protection Act by excepting from that Act’s consent requirement robocalls to wireless numbers “made solely to collect a debt owed to or guaranteed by the United States” and authorizing the Commission to adopt rules to “restrict or limit the number and duration” of any calls to wireless numbers “to collect a debt owed to or guaranteed by the United States.” The Budget Act requires the Commission, in consultation with the Department of the Treasury, to “prescribe regulations to implement the amendments made” by section 301 of the Budget Act within nine months of enactment. In implementing these provisions, the Commission recognizes and seeks to balance the importance of collecting debt owed to or guaranteed by the United States and the consumer protections inherent in the TCPA. In adopting these rules today, the Commission fulfills the statutory requirement to prescribe rules to implement the amendments to the TCPA.

58. *Covered Calls.* The Commission interprets “solely to collect a debt” and, therefore, calls made pursuant to the exception created by section 301 of the Budget Act, to be limited to 1) debts that are delinquent at the time the calls are made, and 2) debts for which there is an imminent, non-speculative risk of

delinquency due to a specific, time-sensitive event that affects the amount or timing of payments due, such as a deadline to recertify eligibility for an alternative payment plan or the end of a deferment period. The Commission interprets “owed to or guaranteed by the United States” to include only debts that are owed to or guaranteed by the federal government at the time the call is made.

59. The Commission determines that, because calls made pursuant to the exception must be made “solely to collect a debt,” the covered calls may only be made to the debtor or another person or entity legally responsible for paying the debt. The Commission further determines that covered calls may only be made to the wireless telephone number the debtor provided at the time the debt was incurred, such as on the loan application; to a wireless phone number subsequently provided by the debtor; or to a wireless number that the owner of the debt or its contractor has obtained from an independent source, provided that the number actually is the debtor’s telephone number.

60. The Commission determines that robocalls to wrong numbers are not covered by the exception created in the Budget Act amendments. Calls to reassigned wireless numbers may not be made pursuant to the amendment either, but they are subject to the 1-call window the Commission clarified in the 2015 Declaratory Ruling and Order.

61. The Commission limits eligible callers to the owner of the debt or its contractor. The Commission determines that a “call,” for this exception, includes any initiated call, including a text message. The Commission determines that the excepted calls are limited in content to debt collection and servicing; they may not include any marketing, advertising, or selling products or services, or other irrelevant content.

62. *Limits on Number and Duration of Federal Debt Collection Calls.* The Commission limits the number of federal debt collection calls to three calls within a thirty-day period while the delinquency remains or following a specific, time-sensitive event, and in the 30 days before such an event. The Commission determines that consumers have a right to stop autodialed, artificial-voice, and prerecorded-voice servicing and collection calls to wireless numbers at any point the consumer wishes. Callers must inform debtors of their right to make such a request. The Commission limits federal debt collection calls so that zero calls are permitted unless they occur: (1) During

the period of delinquency for debt collection calls; and (2) following an enumerated, specific, time-sensitive event for debt servicing calls, and in the 30 days before such an event.

63. The Commission determines that artificial-voice and prerecorded-voice calls may not exceed 60 seconds, excluding any required disclosures. The Commission does not place any cap on the duration of live-caller, autodialed calls. The Commission limits text messages to 160 characters. Any required disclosures may be included within these 160 characters or may be sent as a separate text message that does not count toward the numeric limits. The Commission determines that no federal debt collection calls or texts are permitted outside the hours of 8:00 a.m. to 9:00 p.m. (local time at the called party’s location). The Commission determines that if multiple rules apply to the same call and one of the rules is enacted by the Commission to implement the TCPA, a caller must comply with the most restrictive requirements regarding factors such as frequency, time of day, and so on.

64. *Other Implementation Issues.* The Commission interprets section 227(b)(2)(C) of the Act to apply to all services mentioned in section 227(b)(1)(A)(iii) of the Act, which excludes residential lines.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

65. In document FCC 16–99, the Commission solicited comments on how to minimize the economic impact of the proposals on small businesses. The Commission received three comments directly addressing the IRFA. Two of the comments addressed the area of duplicate, overlapping, or conflicting rules, and one addressed coordination with the ongoing Consumer Financial Protection Bureau (CFPB) rulemaking. In addition, the Commission received six consumer comments that were against robocalls where the filer mentioned being the owner of a small business. None of the comments pointed out any areas where small businesses would incur a particular hardship in complying with the rules.

66. *Duplicate, Overlapping, or Conflicting Rules.* Both CMC and NSC claim that the Commission failed to identify rules that “duplicate, overlap or conflict with the proposed rule” as required by the Regulatory Flexibility Act. The Commission acknowledges that other statutes and regulations impact debt collection calls. The TCPA regulates autodialed, prerecorded-voice, and artificial-voice calls. The rules the

Commission adopted are concerned only with regulating that subset of autodialed, artificial-voice, and prerecorded-voice calls that are made to wireless numbers and to collect a debt that is owed to or guaranteed by the United States. The TCPA amendments and these implementing rules change only the specific conditions under which a caller can use an autodialer, prerecorded voice, and artificial voice to make calls to a wireless number without the prior express consent of the called party and the limitations that apply to autodialed, prerecorded-voice, or artificial-voice calls to a wireless number made to collect a debt owed to or guaranteed by the United States.

67. CMC suggests that the rules conflict with “longstanding federal and state foreclosure prevention efforts and policies”; “several federal requirements to call mortgage borrowers by telephone to try to prevent foreclosures”; “any new FCC rule permitting consumers to block calls”; “[t]he FDCPA prohibit[ion of] unfair practices by debt collectors in attempting to collect a debt”; and “[t]he Dodd-Frank Act prohibit[ion of] unfair, deceptive, or abusive acts or practices by covered persons or service providers, including consumer mortgage servicers.” However, none of the rules cited by CMC require that calls to wireless numbers be autodialed, artificial-voice, or prerecorded-voice calls. The TCPA, with or without the amendments, does not regulate whether or when a debt collector can make a debt collection call, nor does it in any way prohibit a mortgage servicer from making a call in compliance with foreclosure requirements. Debt collectors and mortgage servicers continue to be free to make calls in compliance with non-TCPA law. The rules the Commission adopted apply only to autodialed, prerecorded-voice, and artificial-voice calls. Therefore the rules cited by CMC do not “duplicate, overlap or conflict with” the proposed rule.

68. *Coordination with the CFPB.* ACA notes that the CFPB “will convene one or more panels under the Small Business Regulatory Enforcement Fairness Act to assess the potential impact of its debt collection proposals under consideration on affected small business, including by obtaining feedback from small entity representatives.” ACA suggests that the Commission wait for the results of the CFPB’s analysis, particularly since “the substantial majority of collection agencies are ‘small’ under the Small Business Administration’s size standard.” The Commission declines to do so for two reasons. First, the deadline

of August 2nd imposed by Congress prohibits the delay of this rulemaking. Second, the CFPB is analyzing overall debt collection rules and policies, a much wider scope than the narrow area covered by these rules, which are limited to regulating autodialed, artificial-voice, and prerecorded-voice calls to wireless numbers to collect a debt owed to or guaranteed by the United States. It is unlikely that the CFPB panels will provide more information than that which has already been received through the notice and comment process that began with the 2016 NPRM.

69. *Cost Analysis.* CMC recommends that the Commission “consider the costs of mortgage delinquencies and foreclosures and mortgage ‘rescue’ scams that telephone calls could have prevented or mitigated” as part of the cost analysis. The Commission has considered comments asserting the potential benefits to debtors of receiving the autodialed, pre-recorded voice, and artificial-voice calls at issue in developing the rules, including in balancing the importance of collecting debt owed to or guaranteed by the United States and the consumer protections inherent in the TCPA. Such costs as CMC mentions would not be incurred by regulated entities and, in this context, would be both hypothetical and highly speculative. As a result, the Commission does not attempt to quantify the costs raised by CMC in the Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities section below.

Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

70. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

Description and Estimate of the Number of Small Entities To Which Rules Will Apply

71. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term “small entity” as having the same meaning as

the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act. A “small-business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

72. The Commission’s rules restricting autodialed, artificial-voice, and prerecorded-voice calls to wireless numbers apply to all entities that make such calls or texts to wireless telephone numbers to collect debts owed to or guaranteed by the United States. Thus, the rules set forth in this proceeding are likely to have an impact on a substantial number of small entities in several categories.

73. *Collection Agencies.* This industry comprises establishments primarily engaged in collecting payments for claims and remitting payments collected to their clients. The SBA has determined that Collection Agencies with \$15 million or less in annual receipts qualify as small businesses. Census data for 2012 indicate that 3,361 firms in this category operated throughout that year. Of those, 3,166 firms operated with annual receipts of less than \$10 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

74. *Telemarketing Bureaus and Other Contact Centers.* This U.S. industry comprises establishments primarily engaged in operating call centers that initiate or receive communications for others—via telephone, facsimile, email, or other communication modes—for purposes such as (1) promoting clients products or services, (2) taking orders for clients, (3) soliciting contributions for a client, and (4) providing information or assistance regarding a client’s products or services. These establishments do not own the product or provide the services they are representing on behalf of clients. The SBA has determined that Telemarketing Bureaus and other Contact Centers with \$15 million or less in annual receipts qualify as small businesses. U.S. Census data for 2012 indicate that 2,251 firms in this category operated throughout that year. Of those, 2,014 operated with annual receipts of less than \$10 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

75. *Commercial Banks and Savings Institutions.* Commercial banks are establishments primarily engaged in

accepting demand and other deposits and making commercial, industrial, and consumer loans. Commercial banks and branches of foreign banks are included in this industry. Savings institutions are establishments primarily engaged in accepting time deposits, making mortgage and real estate loans, and investing in high-grade securities. Savings and loan associations and savings banks are included in this industry. The SBA has determined that Commercial Banks and Savings Institutions with \$500 million or less in assets qualify as small businesses. December 2013 Call Report data compiled by SNL Financial indicate that 6,877 firms in this category operated throughout that year. Of those, 5,533 qualify as small entities. Based on this data, the Commission concludes that a substantial number of businesses in this category are small under the SBA standard.

76. *Credit Unions*. This industry comprises establishments primarily engaged in accepting members' share deposits in cooperatives that are organized to offer consumer loans to their members. The SBA has determined that Credit Unions with \$550 million or less in assets qualify as small businesses. The December 2013 National Credit Union Administration Call Report data indicate that 6,687 firms in this category operated throughout that year. Of those, 6,252 qualify as small entities. Based on this data, the Commission concludes that a substantial number of businesses in this category are small under the SBA standard.

77. *Other Depository Credit Intermediation*. This industry comprises establishments primarily engaged in accepting deposits and lending funds (except commercial banking, savings institutions, and credit unions). Establishments known as industrial banks or Morris Plans and primarily engaged in accepting deposits, and private banks (*i.e.*, unincorporated banks) are included in this industry. The SBA has determined that Other Depository Credit Intermediation entities with \$550 million or less in assets qualify as small businesses. Census data for 2012 indicate that 6 firms in this category operated throughout that year. Due to the nature of this category, the Commission concludes that a substantial number of businesses in this category are small under the SBA standard.

78. *Sales Financing*. This industry comprises establishments primarily engaged in sales financing or sales financing in combination with leasing. Sales financing establishments are

primarily engaged in lending money for the purpose of providing collateralized sales agreement, either directly from or through arrangements with dealers. The SBA has determined that Sales Financing entities with \$38.5 million or less in annual receipts qualify as small businesses. Census data for 2012 indicate that 2,093 firms in this category operated throughout that year. Of those, 1,950 operated with annual receipts of less than \$25 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

79. *Consumer Lending*. This U.S. industry comprises establishments primarily engaged in making unsecured cash loans to consumers. The SBA has determined that Consumer Lending entities with \$38.5 million or less in annual receipts qualify as small businesses. Census data for 2012 indicate that 2,768 firms in this category operated throughout that year. Of those, 2,702 operated with annual receipts of less than \$25 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

80. *Real Estate Credit*. This U.S. industry comprises establishments primarily engaged in lending funds with real estate as collateral. The SBA has determined that Real Estate Credit entities with \$38.5 million or less in annual receipts qualify as small businesses. Census data for 2012 indicate that 2,535 firms in this category operated throughout that year. Of those, 2,223 operated with annual receipts of less than \$25 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

81. *International Trade Financing*. This U.S. industry comprises establishments primarily engaged in providing one or more of the following: (1) Working capital funds to U.S. exporters; (2) lending funds to foreign buyers of U.S. goods; and/or (3) lending funds to domestic buyers of imported goods. The SBA has determined that International Trade Financing entities with \$38.5 million or less in annual receipts qualify as small businesses. Census data for 2012 indicate that 126 firms in this category operated throughout that year. Of those, 120 operated with annual receipts of less than \$25 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

82. *Secondary Market Financing*. This U.S. industry comprises establishments primarily engaged in buying, pooling,

and repackaging loans for sale to others on the secondary market. The SBA has determined that Secondary Market Financing entities with \$38.5 million or less in annual receipts qualify as small businesses. Census data for 2012 indicate that 89 firms in this category operated throughout that year. Of those, 78 operated with annual receipts of less than \$25 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

83. *All Other Nondepository Credit Intermediation*. This U.S. industry comprises establishments primarily engaged in providing nondepository credit (except credit card issuing, sales financing, consumer lending, real estate credit, international trade financing, and secondary market financing). Examples of types of lending in this industry are: Short-term inventory credit, agricultural lending (except real estate and sales financing), and consumer cash lending secured by personal property. The SBA has determined that All Other Nondepository Credit Intermediation entities with \$38.5 million or less in annual receipts qualify as small businesses. Census data for 2012 indicate that 4,960 firms in this category operated throughout that year. Of those, 4,872 operated with annual receipts of less than \$25 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

84. *Mortgage and Nonmortgage Loan Brokers*. This industry comprises establishments primarily engaged in arranging loans by bringing borrowers and lenders together on a commission or fee basis. The SBA has determined that Mortgage and Nonmortgage Loan Brokers with \$7.5 million or less in annual receipts qualify as small businesses. Census data for 2012 indicate that 6,157 firms in this category operated throughout that year. Of those, 5,939 operated with annual receipts of less than \$5 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

85. *Other Activities Related to Credit Intermediation*. This industry comprises establishments primarily engaged in facilitating credit intermediation (except mortgage and loan brokerage; and financial transactions processing, reserve, and clearinghouse activities). The SBA has determined that Other Activities Related to Credit Intermediation entities with \$20.5 million or less in annual receipts qualify as small businesses. Census data for 2012 indicate that 3,989 firms in this category operated throughout that year.

Of those, 3,860 operated with annual receipts of less than \$20.5 million. The Commission concludes that a substantial majority of businesses in this category are small under the SBA standard.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

86. Document FCC 16–99 amends the Commission’s rules implementing the TCPA to align them with the amended statutory language of the TCPA enacted by Congress in the 2015 Budget Act, creating an exception that allows the use of an autodialer, prerecorded-voice, and artificial-voice when making calls to wireless telephone numbers without the prior express consent of the called party when such calls are made solely to collect a debt owed to or guaranteed by the United States, and imposing limitations on autodialed, prerecorded-voice, and artificial-voice calls to collect a debt owed to or guaranteed by the United States. Document FCC 16–99 will likely impose a one-time cost on some entities to set up new recordkeeping and other compliance requirements. These changes affect small and large companies equally, and apply equally to all of the classes of regulated entities identified above.

87. To comply with the right of the consumer to stop autodialed, artificial-voice, and prerecorded-voice federal debt collection calls to wireless numbers without consent, regulated entities must keep a record of any request made by a consumer for the cessation of the calls, and must pass that information to any subsequent collector or servicer of the debt if the debt is transferred. This rule obligates callers to retain records of consumers opting out of receiving these autodialed or prerecorded federal debt collection messages. Because autodialed, artificial-voice, and prerecorded-voice federal debt collection calls to wireless numbers required consent prior to these amendments, the Commission assumes calling entities have systems and procedures already in place to record consent and that the current way of doing business will be sufficient for tracking revocation of consent and will not impose new costs. However, the requirement to inform subsequent collectors or servicers of the revocation of consent might be new for some calling entities, and could impose a small initial cost to modify systems or procedures. This provision does not impose a significant economic impact on small businesses. The Commission did not receive any comments stating that this rule would cause a significant

economic impact on small businesses. The Commission does not require a particular form or format to be used in conveying the revocation of consent to subsequent collectors or servicers when a debt is transferred.

88. Federal debt collection calls made using a prerecorded or artificial voice must include an automated, interactive voice- and/or key press-activated opt-out mechanism so that debtors who receive these calls may make a stop-calling request during the call by pressing a single key. When a federal debt collection call using an artificial voice or prerecorded voice leaves a voicemail message, that message must also provide a toll-free number that the debtor may call at a later time to connect directly to the automated, interactive voice and/or key press-activated mechanism and automatically record the stop-calling request. Text message disclosures must include brief explanatory instructions for sending a stop-call request by reply text message and provide a toll-free number that enables the debtor to call back later to make a stop-call request. This rule obligates callers to modify their systems to produce the message, maintain toll-free numbers, and record any stop-call requests. Such records should demonstrate the caller’s compliance with the provision and utilization of the automated, interactive opt-out feature. The Commission allows the calling entities the flexibility to determine how to implement the mechanism. The Commission does not require a particular form or format evidencing this mechanism or its implementation. This provision does not impose a significant economic impact on small businesses. The Commission did not receive any comments stating that this rule would cause a significant economic impact on small businesses.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

89. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from

coverage of the rule, or any part thereof, for small entities.

90. The amendments to the rules change the specific conditions under which a caller can use an autodialer, prerecorded voice, and artificial voice to make calls to a wireless number without the prior express consent of the called party and the limitations that apply to autodialed, prerecorded-voice, and artificial-voice calls to a wireless number made to collect a debt owed to or guaranteed by the United States. The limitations balance the importance of collecting debt owed to the United States and the consumer protections inherent in the TCPA. The Commission interprets the amendments as allowing such calls to be made by the federal government, owners of debt guaranteed by the federal government, and by their respective contractors. The amendments therefore benefit the federal government, owners of debt guaranteed by the federal government, and their respective contractors. Although the federal government is not a small business, many of the owners of debt guaranteed by the federal government and the contractors who make these calls are small businesses. Thus, the Commission considered the needs of small businesses in reaching its approach.

91. Automated dialers and artificial-voice, and prerecorded-voice calling systems can be used to make thousands of calls without requiring commensurate staffing. By automating the process of making calls and texts, small businesses can make as many calls as large businesses. The volume of calls is not limited by the size of the business. Therefore limitations designed to protect consumer interests must apply to both large and small calling entities to be effective. The Commission believes that any economic burden these proposed rules may have on callers is outweighed by the benefits to consumers.

92. *Feedback.* The Commission considered feedback from the 2016 NPRM in crafting the final order. Although none of the comments offered suggestions of ways to make the rules more friendly to small businesses, there were many comments from regulated callers with suggestions to make compliance easier for all, large and small. The Commission evaluated the comments in light of balancing the need to collect the debt with the need to protect consumer interests, and modified the proposed rules in several ways. For example, the Commission expanded the definition of the types of calls permitted to include debt servicing calls made following a specific, time-

sensitive events such as a recertification deadline or the end of a deferment period, and in the 30 days before such an event, rather than limiting the exception to calls made when the debt is delinquent or in default. Similarly, the Commission expanded the reach of the exception by allowing covered calls to be made to a phone number subsequently provided by the debtor to the servicer or owner of the debt, or a number obtained from an independent source, rather than limiting calls to the number provided on the loan application. These changes benefit regulated entities of all sizes.

93. *Timetables.* The Commission does not see a need to establish a special timetable for small entities to reach compliance with the modification to the rules. No small business has asked for a delay in implementing the rules.

94. *Reporting requirements; performance standards.* Since the rule does not impose reporting requirements, there is no need to establish less burdensome reporting requirements for small businesses. Similarly, there are no design standards or performance standards to consider in this rulemaking.

95. *Exemption.* The Commission does not see a need to consider an exemption for small businesses from the modified rules. No small business has asked for such an exemption.

Congressional Review Act

The Commission will send a copy of document FCC 16–99 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Final Paperwork Reduction Act of 1995 Analysis

Document FCC 16–99 contains modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public to comment on the information collection requirements contained in document FCC 16–99 as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. In addition, the Commission notes that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission previously sought comment on how the Commission might “further reduce the information burden for small business concerns with fewer than 25 employees.” See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Notice of Proposed Rulemaking, published at 81 FR 31889, May 20, 2016 (2016 NPRM).

List of Subjects in 47 CFR Part 64

Claims, Communications common carriers, Credit, Reporting and

recordkeeping requirements, Telecommunications, and Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016–24745 Filed 11–15–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE TREASURY

48 CFR Parts 1032 and 1052

Department of the Treasury Acquisition Regulations; Incremental Funding of Fixed-Price, Time-and-Material or Labor-Hour Contracts During a Continuing Resolution

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Treasury Acquisition Regulation (DTAR) for the purposes of providing acquisition policy for incremental funding of Fixed-Price, Time-and-Material or Labor-Hour contracts during a continuing resolution.

DATES: *Effective date:* December 16, 2016.

FOR FURTHER INFORMATION CONTACT: Thomas O’Linn, Procurement Analyst, Office of the Procurement Executive, at (202) 622–2092.

SUPPLEMENTARY INFORMATION:

Background

The DTAR, which supplements the Federal Acquisition Regulation (FAR), is codified at 48 CFR Chapter 10.

The Anti-Deficiency Act, 31 U.S.C. 1341 and the FAR section 32.702, state that no officer or employee of the government may create or authorize an obligation in excess of the funds available, or in advance of appropriations unless otherwise authorized by law. A continuing resolution (CR) provides funding for continuing projects or activities that were conducted in the prior fiscal year for which appropriations, funds, or other authority was previously made available.

Each CR is governed by its specific terms. However, amounts available under a CR are frequently insufficient to fully fund contract actions that may be required during its term. No existing contract clause permits partial funding of a contract action awarded during a CR. While other strategies are available to address the need to take contract actions during a CR, these strategies— for example short-term awards—are

inefficient and may have other disadvantages.

On July 12, 2016, the Department issued a proposed rule (81 FR 45118) that would establish policies and procedures in order to facilitate successful, timely, and economical execution of Treasury contractual actions during a CR. Specifically, the proposed rule would set forth procedures for using incremental funding for fixed-price, time-and-material and labor-hour contracts during a period in which funds are provided to Treasury Departmental Offices or Bureaus under a CR. Heads of contracting activities may develop necessary supplemental internal procedures as well as guidance to advise potential offerors, offerors and contractors of these policies and procedures.

The comment period for the proposed rule closed on September 12, 2016. No public comments were received. Accordingly, the Department is adopting the proposed rule without substantive change.

Regulatory Planning and Review

This rule is not a significant regulatory action as defined in section 3(f) of Executive Order 12866. Therefore a regulatory assessment is not required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. chapter 6) generally requires agencies to conduct an initial regulatory flexibility analysis and a final 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.

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. The rule is intended to make changes to the DTAR that would allow for improvements in continuity when Treasury funding is operating under a CR and should not have significant economic impacts on small entities.

List of Subjects in 48 CFR Parts 1032 and 1052

Government procurement.

Accordingly, the Department of the Treasury amends 48 CFR Chapter 10 as follows:

PART 1032—CONTRACT FINANCING

■ 1. The authority citation for part 1032 continues to read as follows:

Authority: 41 U.S.C. 1707.

■ 2. Add subpart 1032.7 to read as follows:

Subpart 1032.7—Contract Funding

Sec.

1032.770 Incremental funding during a Continuing Resolution.

1032.770-1 Scope of section.

1032.770-2 Definition.

1032.770-3 General.

1032.770-4 Policy.

1032.770-5 Limitations.

1032.770-6 Procedures.

1032.770-7 Clause.

Subpart 1032.7—Contract Funding

1032.770 Incremental funding during a Continuing Resolution.

1032.770-1 Scope of section.

This section provides policy and procedure for using incremental funding for fixed-price, time-and-material and labor-hour contracts during a period in which funds are provided to Treasury Departmental Offices or Bureaus, under a continuing resolution (CR). HCAs may develop necessary supplemental internal procedures as well as guidance to advise potential offerors, offerors and contractors of these policies and procedures. Additionally, Bureaus who receive non-appropriated funds may utilize and tailor these policies and procedures to fit their needs.

1032.770-2 Definition.

“Continuing Resolution” means an appropriation, in the form of a joint resolution, that provides budget authority for federal agencies, specific activities, or both to continue operation until the regular appropriations are enacted. Typically, a continuing resolution is used when legislative action on appropriations is not completed by the beginning of a fiscal year.

1032.770-3 General.

The Anti-Deficiency Act, 31 U.S.C. 1341 and FAR 32.702, states that no officer or employee of the Government may create or authorize an obligation in excess of the funds available, or in advance of appropriations unless otherwise authorized by law. A CR provides funding for continuing projects or activities that were conducted in the prior fiscal year for which appropriations, funds, or other authority was previously made available. Each CR is governed by the specific terms in that specific CR (e.g. duration of the CR) and under certain CRs, the funding amounts available for award of contract actions are inadequate to fund the entire amounts needed for some contract actions.

1032.770-4 Policy.

(a) A fixed-price, time-and-materials or labor-hour contract or order for commercial or non-commercial supplies or severable or non-severable services may be incrementally funded when—

(1) Funds are provided to a Treasury Departmental Office or Bureau under a CR. This includes funds appropriated to a bureau, funds appropriated to another entity that will be directly obligated on a Treasury contract, and funds in a revolving fund or similar account that will be reimbursed by a customer agency funded by a CR;

(2) Sufficient funds are not being allocated from the responsible fiscal authority to fully fund the contract action that is otherwise authorized to be issued;

(3) There is no statutory restriction that would preclude the proposed use of funds;

(4) Funds are available and unexpired, as of the date the funds are obligated;

(5) Assurance is provided by the responsible financial authority that full funding is anticipated once an Appropriation Act is enacted; and

(6) The clause prescribed by 1032.770-7 is incorporated into the contract or order.

(b) Incremental funding may be limited to individual line item(s) or a particular order(s).

1032.770-5 Limitations.

(a) This policy does not apply to contract actions that are not covered by the CR.

(b) If this policy is applied to non-severable services or to supplies, the contracting officer shall take into consideration the business risk to the Government if funding does not become available to fully fund the contract. If the contracting officer determines the use of incremental funding for non-severable services or supplies is in the best interest of the Government the contracting officer shall ensure the contractor fully understands how the limitations of the Government’s liabilities under the contract might impact its ability to perform within the prescribed contract schedule.

1032.770-6 Procedures.

(a) An incrementally funded fixed-price, time-and-materials or labor-hour contract shall be fully funded once funds are available.

(b) The contracting officer shall ensure that sufficient funds are allotted to the contract to cover the total amount payable to the contractor in the event of termination of convenience by the Government.

(c) Upon receipt of the contractor’s notice under paragraph (c) of the clause at 1052.232-90, Limitation of Government’s Obligation, the contracting officer shall promptly provide written notice to the contractor that the Government is—

(i) Obligating additional funds for continued performance and increasing the Government’s limitation of obligation in a specified amount;

(ii) Obligating the full amount of funds needed;

(iii) Terminating for convenience, as applicable, the affected line items or contract; or

(iv) Considering whether to allot additional funds; and

(A) The contractor is entitled by the contract terms to stop work when the Government’s limitation of obligation is reached; and

(B) Any costs expended beyond the Government’s limitation of obligation are at the contractor’s risk.

(d) Upon learning that the contract will receive no further funds by the date provided in the notice under paragraph (c) of the clause at 1052.232-70, Limitation of Government’s Obligation, the contracting officer shall promptly give the contractor written notice of the Government’s decision and terminate the affected line items or contract, as applicable, for the convenience of the Government.

1032.770-7 Clause.

The contracting officer shall insert the clause at 1052.232-70, Limitation of Government’s Obligation, in

(a) Solicitations and resultant contracts when incremental funding of fixed-price, time-and-material or labor-hour contract via a CR is anticipated; or

(b) Contracts or orders when incremental funding of a fixed-price, time-and-material or labor-hour contract is authorized and the Treasury Departmental Office or Bureau is operating under a CR (see 1032.770-4); and

(c) The CO shall insert the information required in paragraphs (a) and (c) of the clause.

PART 1052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. The authority citation for part 1052 continues to read as follows:

Authority: 41 U.S.C. 1707.

■ 4. Add 1052.232-70 to subpart 1052.2 to read as follows:

1052.232-70 Limitation of Government’s obligation.

As prescribed in 1032.770-7, insert the following clause. Contracting

officers are authorized, in appropriate cases, to revise paragraph (a) of this clause to specify the work required under the contract, in lieu of using contract line item numbers as well as revise paragraph (c) of this clause to specify a different notification period and percentage. The 30-day period may

be varied from 45, 60 to 90 days, and the 75 percent from 75 to 85 percent:

Limitation of Government's Obligation (Nov 2016)

(a) Funding is not currently available to fully fund this contract due to the Government operating under a continuing

resolution (CR). The item(s) listed in the table below are being incrementally funded as described below. The funding allotted to these item(s) is presently available for payment and allotted to this contract. This table will be updated by a modification to the contract when additional funds are made available, if any, to this contract.

Contract line item number (CLIN)	CLIN total price	Funds allotted to the CLIN	Funds required for complete funding of the CLIN
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
Totals	\$	\$	\$

(b) For the incrementally funded item(s) identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including any invoice payments to which the Contractor is entitled and reimbursement of authorized termination costs in the event of termination of those item(s) for the Government's convenience, does not exceed the total amount currently obligated to those item(s). The Contractor is not authorized to continue work on these item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the line items of the contract regardless of anything to the contrary in any other clause, including but not limited to the clause entitled "Termination for Convenience of the Government" or paragraph (1) entitled "Termination for the Government's Convenience" of the clause at FAR 52.212-4, "Commercial Terms and Conditions Commercial Items."

(c) Notwithstanding paragraph (h) of this clause, the Contractor shall notify the Contracting Officer in writing at least thirty days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the item(s) identified in paragraph (a) of this clause. The notification shall state the estimated date when that point will be reached and an estimate of additional funding, if any, needed to continue performance. The notification shall also advise the Contracting Officer of the estimated amount of additional funds required for the timely performance of the item(s) funded pursuant to this contract. If after such notification additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed upon substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the terms of this contract

authorizing termination for the convenience of the Government. Failure to make the notification required by this paragraph, whether for reasons within or beyond the Contractor's control, will not increase the maximum amount payable to the Contractor under paragraphs (a) and (b) of this clause.

(d) The Government may at any time prior to termination allot additional funds for the performance of the item(s) identified in paragraph (a) of this clause.

(e) The termination provisions of paragraphs (a) through (h) of this clause do not limit the rights of the Government under the clause entitled "Default" or "Termination for Cause." The provisions of this clause are limited to the work and allotment of funds for the item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded.

(f) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the Government's termination for convenience terms set forth in this contract.

(g) Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

(h) The parties contemplate that the Government will allot funds to this contract from time to time as the need arises and as funds become available. There is no fixed schedule for providing additional funds. (End of clause)

Dated: November 8, 2016.

Iris B. Cooper,
Senior Procurement Executive, Office of the Procurement Executive.

[FR Doc. 2016-27548 Filed 11-15-16; 8:45 am]

BILLING CODE 4810-25-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150916863-6211-02]

RIN 0648-XF036

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by catcher/processors using pot gear in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to fully use the 2016 total allowable catch of Pacific cod allocated to catcher/processors using pot gear in the BSAI. **DATES:** Effective 1200 hours, Alaska local time (A.l.t.), November 15, 2016, through 2400 hours, A.l.t., December 31, 2016. Comments must be received at the following address no later than 4:30 p.m., A.l.t., December 1, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2015-0118, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov #/docketDetail;D=NOAA-NMFS-2015-0118, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

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

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (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.

NMFS closed directed fishing for Pacific cod by catcher/processors using pot gear in the BSAI under § 679.20(d)(1)(iii) on October 18, 2016 (81 FR 72009, October 19, 2016).

NMFS has determined that as of November 7, 2016, approximately 2,000 metric tons of Pacific cod remain in the 2016 Pacific cod apportionment for catcher/processors using pot gear in the BSAI. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully use the 2016 total allowable catch (TAC) of Pacific cod in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by catcher/processors using pot gear in the BSAI. The Administrator, Alaska Region, NMFS, (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of Pacific cod by catcher/processors using pot gear in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

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 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 the opening of directed fishing for Pacific cod by catcher/processors using pot gear in the BSAI. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 7, 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.

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by catcher/processors using pot gear in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until December 1, 2016.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: November 10, 2016.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries.

[FR Doc. 2016-27523 Filed 11-10-16; 4:15 pm]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 81, No. 221

Wednesday, November 16, 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 ENERGY

10 CFR Part 1016

[Docket No. DOE-HQ-2015-0029-0001]

RIN 1992-AA46

Safeguarding of Restricted Data by Access Permittees

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: The Department of Energy (DOE or Department) proposes to revise its regulations governing the standards for safeguarding Restricted Data by access permittees. The existing version of this regulation was promulgated in 1983, which transferred the regulation (originally promulgated in 1976). Since 1983, changes in organizations, terminology, and DOE and national policies render portions of the existing regulation outdated. The proposed revisions would update existing requirements.

DATES: Written comments must be received by DOE on or before December 16, 2016.

A public meeting will be held if one is requested by November 23, 2016.

ADDRESSES: Written comments should be addressed to: Mr. Matthew B. Moury, Associate Under Secretary for Environment, Health, Safety and Security, Office of Environment, Health, Safety and Security, AU-1/Forrestal Building, Department of Energy, Docket No. DOE-HQ-2015-0029-0001, 1000 Independence Avenue SW., Washington, DC 20585 or via email at 1992-AA46@hq.doe.gov. Questions concerning submitting written comments should be addressed to: Ms. Linda Ruhnnow, Office of Security Policy, Office of Environment, Health, Safety and Security, Department of Energy, AU-51/Germantown Building, 1000 Independence Avenue SW., Washington, DC 20585-1290, (301) 903-4053 or via email at 1992-AA46@hq.doe.gov. Requests to hold a public

meeting should be submitted by phone or email to Ms. Ruhnnow at the number or email address provided. You may submit comments, identified by [DOE-HQ-2015-0029-0001 and/or 1992-AA46], by any of the following methods:

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

- *Email:* 1992-AA46@hq.doe.gov. Include [DOE-HQ-2015-0029-0001 and/or 1992-AA46] in the subject line of the message.

- *Mail:* Mailing Address for paper, disk, or CD-ROM submissions: Department of Energy, Office of Security Policy, (AU-51, Attn: Linda Ruhnnow), 1000 Independence Ave. SW., Washington, DC 20585-1290.

- *Hand Delivery/Courier:* Street Address: Department of Energy, Office of Security Policy, (AU-51, Attn: Linda Ruhnnow), 1000 Independence Ave. SW., Washington, DC 20585-1290.

As a result of potential delays in the receipt and processing of mail sent through the U.S. Postal Service, DOE encourages respondents to submit comments electronically to ensure timely receipt.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to [http://www.regulations.gov/#!docketDetail;D=DOE-HQ-2015-0008](http://www.regulations.gov/) or contact Linda Ruhnnow at (301) 903-4053 prior to visiting Department of Energy, Office of Security Policy, (AU-51), 19901 Germantown Rd., Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Ruhnnow, Office of Security Policy at (301) 903-4053; Linda.Ruhnnow@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Section by Section Analysis
- III. Regulatory Review and Procedural Requirements
 - A. Review Under Executive Order 12866
 - B. Review Under the Regulatory Flexibility Act
 - C. Review Under Paperwork Reduction Act
 - D. Review Under the National Environmental Policy Act

- E. Review Under Executive Order 13132
 - F. Review Under Executive Order 12988
 - G. Review Under the Unfunded Mandates Reform Act of 1995
 - H. Review Under Executive Order 13211
 - I. Review Under the Treasury and General Government Appropriations Act of 1999
- IV. Opportunity for Public Comment

I. Background

The U.S. Department of Energy may issue an access permit to any person, as set forth in 10 CFR part 725, who requires access to Restricted Data applicable to civil uses of atomic energy for use in his/her business, trade or profession. 10 CFR part 725 specifies the terms and conditions under which the Department will issue an access permit and provides for the amendment, renewal, suspension, termination and revocation of an access permit.

The regulations in 10 CFR part 1016 establish requirements for the safeguarding of Secret and Confidential Restricted Data received or developed under an access permit. This part does not apply to Top Secret information because no such information may be provided to an access permittee within the scope of this regulation. The regulations in this part apply to all persons who may require access to Restricted Data used, processed, stored, reproduced, transmitted, or handled in connection with an access permit.

The original regulations for the safeguarding of Restricted Data were Atomic Energy Commission regulations that were transferred to the Energy Research and Development Administration (ERDA) upon its formation in 1974 (Energy Reorganization Act of 1974; Pub. L. 93-438). The regulations were subsequently revised to conform to ERDA's organization (41 FR 56775, 56785-56788, Dec. 30, 1976). The regulations were updated and transferred from 10 CFR part 795 to 10 CFR part 1016 in 1983. (48 FR 36432 (Aug. 10, 1983). DOE has developed the proposed modifications to 10 CFR part 1016 to reflect organizational, terminology and policy changes that have occurred since the regulations were last revised.

The proposed modifications to the sections of 10 CFR part 1016 that DOE proposes to amend are described in the Section by Section Analysis in section II.

II. Section by Section Analysis

The heading for this part would be revised to *Safeguarding of Restricted Data by Access Permittees*. The revision is intended to more accurately reflect the contents of the regulation.

Subpart A—General

In § 1016.3, Definitions, DOE proposes to delete the term “Authorized classifier”. Instead, 10 CFR part 1045 would be referenced as the source of classification requirements.

The terms “Document”, “Material” and “Matter” would be deleted because they are not used in any unique way in this regulation.

The access authorization terms Q, Q(X), L and L(X) would be updated to specify the type of background investigation required. For example, single scope background investigations are required for Q access authorizations.

The term “classified mail address” would be revised for better grammar.

The term “classified matter” would be revised to include all documents, material, electronic media and other physical forms that reveal or contain classified information.

The term “infraction” would be revised to include non-compliance with DOE approvals.

The term “intrusion alarm” would be revised to “intrusion detection system” and updated for more accurate usage consistent with current DOE policy.

The term “National Security Information” would be revised for consistency with Executive Order 13526, *Classified National Security Information*.

The term “Security Plan” would be revised to clarify that matter refers to classified matter.

Proposed changes for § 1016.4 would revise the addressee from the “Chief Health, Safety and Security Officer”, to the “Associate Under Secretary of Environment, Health, Safety and Security” to address a recent reorganization.

Proposed changes for § 1016.5 would require that procedures submitted pursuant to this section ensure that access permit holder employees are informed about classification and declassification requirements in 10 CFR part 1045.

DOE proposes to change the title of § 1016.8 to clarify the section topic.

The proposed changes for § 1016.9 and § 1016.10 revise grammar.

The proposed changes for § 1016.11 would revise “DOE Operations Office” to “the cognizant DOE office” to direct notification to the relevant DOE Element.

The proposed changes for § 1016.12 would update reference to reflect the proposed renumbering of current § 1016.39.

DOE proposes to renumber §§ 1016.21—1016.44 to eliminate the gaps in section numbering that exist in the current version of this regulation.

The renumbered § 1016.13, currently § 1016.21, would be revised to maintain consistency with current national and U.S. Department of Energy policies that no longer allows storage of classified matter in a locked steel file cabinet.

Proposed changes to the renumbered § 1016.14, currently § 1016.22, would clarify that a person must have need-to-know in addition to the appropriate access authorization. This revision does not change the intent of the requirement for protecting Restricted Data that is in use.

Proposed changes to the renumbered § 1016.15, currently § 1016.23, would update intrusion detection system terminology consistent with DOE policy and delete the word “may”.

Proposed changes to the renumbered § 1016.17, currently § 1016.25, would update the weapon specification to match current DOE policy. DOE Order 473.3, Protection Program Operations lists DOE-authorized firearms.

Proposed changes to the renumbered § 1016.18, currently § 1016.31, would apply the need-to-know criterion for Confidential as well as Secret Restricted Data.

Proposed changes to the renumbered § 1016.19, currently § 1016.32, would align requirements and terminology with 10 CFR part 1045, *Nuclear Classification and Declassification*. Also, the title would be changed to more accurately reflect the section and the “Office of Health, Safety and Security” would be replaced with “Office of Environment, Health, Safety and Security”.

Proposed changes to the renumbered § 1016.20, currently § 1016.33, would specify need-to-know as a basic criteria for determining access; indicate required approvals and remove the telephone statement because it is a subset of the telecommunication statement.

Proposed changes to the renumbered § 1016.21, currently § 1016.34, would reflect that classified matter (including matter in electronic format) containing Secret Restricted Data requires accountability.

Proposed changes to the renumbered § 1016.23, currently § 1016.36, would make changes in classification subject to the requirements in 10 CFR part 1045, *Nuclear Classification and Declassification*.

Proposed changes to the renumbered § 1016.24, currently § 1016.37, would amend the title to replace “documents or material” with “classified matter” and would delete provisions that are duplicative with the renumbered § 1016.21 regarding accountability of classified matter that contains Restricted Data.

Proposed new § 1016.25, Storage, use, processing, transmission and destruction of classified information on computers, computer networks, electronic devices/media, and mobile devices, would be added to include additional direction regarding newer forms of media (electronic) that may contain Restricted Data.

Proposed changes to the renumbered § 1016.27, currently § 1016.39 would clarify that termination of the security facility approval will be in accordance with the requirements in this part.

Proposed changes to the renumbered § 1016.31, currently § 1016.43, would update the reference to Executive Order 13526.

Throughout the proposed changes, the term “classified matter” is used so as to include documents and material.

III. Rulemaking Requirements

A. Review Under Executive Order 12866

This action does not constitute a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, “Regulatory Planning and Review” (58 FR 51735).

B. Review Under the Regulatory Flexibility Act

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

DOE has reviewed this proposed rule under the Regulatory Flexibility Act and certifies that, if adopted, the rule would not have a significant impact on a substantial number of small entities. This proposed action would amend an existing rule which establishes

safeguarding of Restricted Data by persons granted an Access Permit according to 10 CFR part 725. The rule would only apply to Access Permittees, of which there are historically very few (e.g., between zero and five), and the proposed changes are administrative changes (such as renumbering of several parts and changing office names to reflect a recent reorganization), updates to enable consistency with current policies and practices, and clarification of requirements.

Because these standards and requirements consist of clarifications and updates to existing standards and requirements, DOE does not expect that the impact on any Access Permittees would be significant. DOE seeks comment on its estimate of the number of small entities and the expected effects of this proposed rule.

For the above reasons, DOE certifies that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

C. Review Under Paperwork Reduction Act

This proposed rule does not contain a collection of information subject to OMB approval under the Paperwork Reduction Act.

D. Review Under the National Environmental Policy Act

This proposed rule amends existing policies and procedures establishing safeguarding of Restricted Data standards and requirements for Access Permittees and has no significant environmental impact. Consequently, the Department has determined that this rule is covered under Categorical Exclusion A-5, of Appendix A to Subpart D, 10 CFR part 1021, which applies to a rulemaking that addresses amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," (64 FR 43255, August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to develop a formal process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have "federalism implications." Policies that

have federalism implications are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." On March 7, 2011, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735, March 14, 2000).

DOE has examined the proposed and revised rule and has determined that it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Section 3 of Executive Order 12988, (61 FR 4729, February 7, 1996), instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in section 3(a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation describes any administrative proceeding to be available prior to judicial review and any provisions for the exhaustion of administrative remedies. The Department has determined that this regulatory action meets the requirements of section 3(a) and (b) of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory action on state, local and tribal governments and the private sector. For proposed regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. UMRA also requires Federal agencies to develop an effective process to permit timely input by elected

officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate." In addition, UMRA requires an agency plan for giving notice and opportunity for timely input to small governments that may be affected before establishing a requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820, March 18, 1997). (This policy is also available at <http://www.gc.doe.gov>). This proposed rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of \$100 million or more in any year, so these requirements do not apply.

H. Review Under Executive Order 13211

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

This proposed rule is not a significant energy action, nor has it been designated as such by the Administrator of OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

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

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as

an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

IV. Opportunity for Public Comment

A. Participation in Rulemaking

DOE encourages the maximum level of public participation in this rulemaking. Interested persons are encouraged to participate in the public hearings at the times and places indicated at the beginning of this proposed rulemaking.

DOE has established a period of thirty days following publication of this proposed rulemaking for persons and organizations to comment. All public comments, hearing transcripts, and other docket material will be available for review and copying at the DOE offices at each of the hearing sites. The docket material will be filed under "DOE-HQ-2015-0029-0001."

B. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this proposed rulemaking. Instructions for submitting written comments are set forth at the beginning of this notice and below. Where possible, comments should identify the specific section they address.

Comments should be labeled both on the envelope and on the documents, "Docket No. DOE-HQ-2015-0029-0001" and must be received by the date specified at the beginning of this proposed rulemaking. All comments and other relevant information received by the date specified at the beginning of this proposed rulemaking will be considered by DOE in the subsequent stages of the rulemaking process.

Pursuant to the provisions of 10 CFR part 1004, any person submitting information or data that is believed to be confidential and exempt by law from public disclosure should submit one complete copy of the document and three copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

C. Public Hearings

The dates, times and places of the public hearings are indicated at the beginning of this proposed rulemaking. DOE invites any person or organization who has an interest in these proceedings to make a request to make an oral

presentation at one of the public hearings. Requests can be phoned in advance to the telephone number indicated at the beginning of this proposed rulemaking. The person making the request should provide a telephone number where he or she may be contacted.

DOE reserves the right to schedule the presentations, and to establish the procedures governing the conduct of the hearings.

A DOE official will be designated to preside at the hearings and ask questions. Any necessary procedural rules regarding proper conduct of the hearings will be determined by the presiding official.

Transcripts of the hearings will be made and the entire record of this rulemaking, including the transcripts, will be retained by DOE and made available for inspection and copying as provided at the beginning of this proposed rulemaking as well as being posted on www.regulations.gov under Docket Number DOE-HQ-2015-0029-0001. Any person may also purchase a copy of a transcript from the transcribing reporter.

List of Subjects in 10 CFR Part 1016

Classified information, Nuclear energy, Reporting and recordkeeping requirements, Security measures.

Issued in Washington, DC, on November 1, 2016.

Matthew B. Moury,

Associate Under Secretary for Environment, Health, Safety and Security.

For the reasons set out in the preamble, DOE proposes to amend part 1016 of title 10 of the Code of Federal Regulations as set forth below:

PART 1016—SAFEGUARDING OF RESTRICTED DATA BY ACCESS PERMITTEES

■ 1. The authority citation for part 1016 continues to read as follows:

Authority: Sec. 161i of the Atomic Energy Act of 1954, 68 Stat. 948 (42 U.S.C. 2201).

- 2. The part heading for part 1016 is revised as set forth above.
- 3. Section 1016.3 is amended by:
 - a. Revising paragraph (a).
 - b. Removing paragraphs (c).
 - c. Redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.
 - d. Revising newly designated paragraphs (c) and (d).
 - e. Redesignating paragraphs (f) and (g) as paragraphs (e) and (f), respectively.
 - f. Removing paragraph (h).
 - g. Redesignating paragraphs (i) through (k) as paragraphs (g) through (i), respectively.

- h. Revising newly designated paragraphs (h) and (i).
- i. Removing paragraphs (l) and (m).
- j. Redesignating paragraphs (n) through (z) as paragraphs (j) through (v), respectively.
- k. Revising newly designated paragraphs (k) and (u).

The revisions read as follows:

§ 1016.3 Definitions.

(a) *Access authorization.* An administrative determination by DOE that an individual who is either a DOE employee, applicant for employment, consultant, assignee, other Federal department or agency employee (or other persons who may be designated by the Secretary of Energy), or a DOE contractor or subcontractor employee, or an access permittee is eligible for access to Restricted Data. Access authorizations granted by DOE are designated as "Q," "Q(X)," "L," or "L(X)."

(1) "Q" access authorizations are based upon single scope background investigations as set forth in applicable DOE and national-level directives. They permit an individual who has "need to know" access to Top Secret, Secret and Confidential Restricted Data, Formerly Restricted Data, National Security Information, or special nuclear material in Category I or II quantities as required in the performance of duties, subject to additional determination that permitting this access will not endanger the common defense or national security of the United States. There may be additional requirements for access to specific types of RD information.

(2) "Q(X)" access authorizations are based upon the same level of investigation required for a Q access authorization when "Q" access authorizations are granted to access permittees they are identified as "Q(X)" access authorizations and, as need-to-know applies, authorize access only to the type of Secret Restricted Data as specified in the permit and consistent with appendix A, 10 CFR part 725, "Categories of Restricted Data Available."

(3) "L" access authorizations are based upon National Agency Check with Local Agency Checks and Credit Check background investigation as set forth in applicable DOE and national-level directives. They permit an individual who has "need to know" access to Confidential Restricted Data, Secret and Confidential Formerly Restricted Data, or Secret and Confidential National Security Information, required in the performance of duties, provided such information is not designated

“CRYPTO” (classified cryptographic information), other classified communications security (“COMSEC”) information, or intelligence information and subject to additional determination that permitting this access will not endanger the common defense or national security of the United States. There may be additional requirements for access to specific types of RD information.

(4) “L(X)” access authorizations are based upon the same level of investigation required for an L access authorization. When “L” access authorizations are granted to access permittees, they are identified as “L(X)” access authorizations and, as need to know applies, authorize access only to the type of Confidential Restricted Data as specified in the permit and consistent with appendix A, 10 CFR part 725, “Categories of Restricted Data Available.”

* * * * *

(c) *Classified mail address.* A mail address established for each access permittee and approved by the DOE to be used when sending Restricted Data to the permittee.

(d) *Classified matter.* Anything in physical form (including, but not limited to documents and material) that contains or reveals classified information.

* * * * *

(h) *Infraction.* An act or omission involving failure to comply with DOE safeguards and security orders, directives, or approvals and may include a violation of law.

(i) *Intrusion detection system.* A security system consisting of sensors capable of detecting one or more types of phenomena, signal media, annunciators, energy sources, alarm assessment systems, and alarm reporting elements including alarm communications and information display equipment.

* * * * *

(k) *National Security Information.* Information that has been determined pursuant to Executive Order 13526, as amended “Classified National Security Information” or any predecessor or successor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

(u) *Security Plan.* A written plan by the access permittee, and submitted to the DOE for approval, which outlines the permittee’s proposed security procedures and controls for the protection of Restricted Data and which includes a floor plan of the area in which the classified matter is to be

used, processed, stored, reproduced, transmitted, or handled.

* * * * *

■ 4. Section 1016.4 is revised to read as follows:

§ 1016.4 Communications.

Communications concerning rulemaking, *i.e.*, petition to change part 1016, should be addressed to the Associate Under Secretary, Office of Environment, Health, Safety and Security, AU-1/Forrestal Building, Office of Environment, Health, Safety and Security, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All other communications concerning the regulations in this part should be addressed to the cognizant DOE or National Nuclear Security Administration (NNSA) office.

■ 5. Section 1016.5 is revised to read as follows:

§ 1016.5 Submission of procedures by access permit holder.

No access permit holder shall have access to Restricted Data until he has submitted to the DOE a written statement of his procedures for the safeguarding of Restricted Data and for the security education of his employees, and DOE shall have determined and informed the permittee that his procedures for the safeguarding of Restricted Data are in compliance with the regulations in this part and that his procedures for the security education of his employees, who will have access to Restricted Data, are informed about and understand the regulations in this part. These procedures must ensure that employees with access to Restricted Data are informed about and understand who is authorized or required to classify and declassify RD and FRD information and classified matter as well as how documents containing RD or FRD are marked (see 10 CFR part 1045) and safeguarded.

■ 6. The section heading for § 1016.8 is revised to read as follows:

§ 1016.8 Request for security facility approval.

■ 7. Section 1016.9 is revised to read as follows:

§ 1016.9 Processing security facility approval.

Following receipt of an acceptable request for security facility approval, the DOE will perform an initial security survey of the permittee’s facility to determine that granting a security facility approval would be consistent with the national security. If DOE makes such a determination, security facility approval will be granted. If not, security

facility approval will be withheld pending compliance with the security survey recommendations or until a waiver is granted pursuant to § 1016.6 of this part.

■ 8. Section 1016.10 is revised to read as follows:

§ 1016.10 Granting, denial, or suspension of security facility approval.

Notification of the DOE’s granting, denial, or suspension of security facility approval will be furnished the permittee in writing, or orally with written confirmation. This information may also be furnished to representatives of the DOE, DOE contractors, or other Federal agencies having a need to transmit Restricted Data to the permittee.

■ 9. Section 1016.11 is revised to read as follows:

§ 1016.11 Cancellation of requests for security facility approval.

When a request for security facility approval is to be withdrawn or cancelled, the cognizant DOE Office will be notified by the requester immediately by telephone and confirmed in writing so that processing of this approval may be terminated.

■ 10. Section 1016.12 is revised to read as follows:

§ 1016.12 Termination of security facility approval.

Security facility approval will be terminated when:

(a) There is no longer a need to use, process, store, reproduce, transmit, or handle Restricted Data at the facility; or

(b) The DOE makes a determination that continued security facility approval is not in the interest of common defense and security.

The permittee will be notified in writing of a determination to terminate facility approval, and the procedures outlined in § 1016.27 of this part will apply.

§§ 1016.21 through 1016.23 [Redesignated as §§ 1016.13 through 1016.15]

■ 11. Sections 1016.21 through 1016.23 are redesignated as §§ 1016.13 through 1016.15 and revised to read as follows:

§ 1016.13 Protection of Restricted Data in storage.

(a) Persons who possess Restricted Data pursuant to an Access Permit shall store the Restricted Data classified matter when not in use in a locked storage container or DOE-approved vault to which only persons with appropriate access authorization and a need to know the information contained have access. Storage containers used for storing classified matter must conform to U.S. General Services Administration (GSA) standards and specifications.

(b) Changes of combination: Each permittee shall change the combination on locks of his safekeeping equipment whenever such equipment is placed in use, whenever an individual knowing the combination no longer requires access to the repository as a result of change in duties or position in the permittee's organization, or termination of employment with the permittee or whenever the combination has been subjected to compromise, and in any event at least once a year. Permittees shall classify records of combinations no lower than the highest classification of the classified matter authorized for storage in the safekeeping equipment concerned.

§ 1016.14 Protection of Restricted Data while in use.

While in use, classified matter containing Restricted Data shall be under the direct control of a person with the appropriate access authorization and need to know. Unauthorized access to the Restricted Data shall be precluded.

§ 1016.15 Establishment of security areas.

(a) When, because of their nature or size, it is impracticable to safeguard classified matter containing Restricted Data in accordance with the provisions of §§ 1016.13 and 1016.14, a security area to protect such classified matter shall be established.

(b) The following controls shall apply to security areas:

(1) Security areas shall be separated from adjacent areas by a physical barrier designed to prevent entrance into such areas, and access to the Restricted Data within the areas, by unauthorized individuals.

(2) During working hours, admittance shall be controlled by an appropriately cleared individual posted at each unlocked entrance.

(3) During nonworking hours, admittance shall be controlled by protective personnel on patrol, with protective personnel posted at unlocked entrances, or by such intrusion detection system as DOE approves.

(4) Each individual authorized to enter a security area shall be issued a distinctive badge or pass when the number of employees assigned to the area exceeds thirty.

§ 1016.24 [Redesignated as § 1016.16]

■ 12. Section 1016.24 is redesignated as § 1016.16.

§ 1016.25 [Redesignated as § 1016.17]

■ 13. Section 1016.25 is redesignated as § 1016.17 and revised to read as follows:

§ 1016.17 Protective personnel.

Whenever armed protective personnel are required in accordance with § 1016.15, such protective personnel shall:

(a) Possess a "Q" or "L" access authorization or "Q(X)" or "L(X)" access authorization if the Restricted Data being protected is classified Confidential, or a "Q" access authorization or "Q(X)" access authorization if the Restricted Data being protected is classified Secret.

(b) Be armed with sidearms of 9mm or greater.

§§ 1016.31 through 1016.34 [Redesignated as §§ 1016.18 through 1016.21]

■ 14. Sections 1016.31 through 1016.34 are redesignated as §§ 1016.18 through 1016.21 and revised to read as follows:

§ 1016.18 Access to Restricted Data.

(a) Except as DOE may authorize, no person subject to the regulations in this part shall permit any individual to have access to Restricted Data in his possession unless the individual has an appropriate access authorization granted by DOE, or has been certified by DOD or NASA through DOE, and;

(1) The individual is authorized by an Access Permit to receive Restricted Data in the categories involved and the permittee determines that such access is required in the course of his duties, or

(2) The individual needs such access in connection with such duties as a DOE employee or DOE contractor employee, or as certified by DOD or NASA.

(b) Inquiries concerning the access authorization status of individuals, the scope of Access Permits, or the nature of contracts should be addressed to the cognizant DOE or NNSA office.

§ 1016.19 Review, classification and marking of classified information.

(a) *Classification.* Restricted Data generated or possessed by an Access Permit holder must be appropriately classified and marked in accordance with 10 CFR part 1045 or its successor. CG-DAR-2, "Guide to the Declassified Areas of Nuclear Energy Research U 08/98," will be furnished each permittee. In the event a permittee originates classified information which falls within the definition of Restricted Data or information for which the permittee is not positive that the information is outside of that definition and CG-DAR-2 does not provide positive classification guidance for such information, the permittee shall designate the information as Confidential, Restricted Data and request classification guidance from the DOE through the Classification Officer

at the cognizant DOE or NNSA office. If the DOE Classification Officer does not have authority to provide the guidance, he will refer the request to the Director, Office of Classification, AU-60/ Germantown Building, Office of Environment, Health, Safety and Security, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585-1290.

(b) *Challenges.* If a person receives a document or other classified matter which, in his opinion, is not properly classified, or omits the appropriate classification markings, he is encouraged to challenge the classification and there shall be no retribution for submitting a challenge. Challenges shall be submitted in accordance with 10 CFR part 1045.

(c) *Classification markings.* Restricted Data generated or possessed by an individual approved for access must be appropriately identified and marked in accordance with 10 CFR part 1045, Nuclear Classification and Declassification. Questions and requests for additional direction or guidance regarding the marking of classified matter may be submitted to the Director, Office of Classification, AU-60/ Germantown Building, Office of Environment, Health, Safety and Security, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585-1290

§ 1016.20 External transmission of Restricted Data.

(a) *Restrictions.* (1) Restricted Data shall be transmitted only to persons who possess appropriate access authorization, need to know, and are otherwise eligible for access under the requirements of § 1016.18.

(2) In addition, such classified matter containing Restricted Data shall be transmitted only to persons who possess approved facilities for their physical security consistent with this part. Any person subject to the regulations in this part who transmits such Restricted Data containing Restricted Data shall be deemed to have fulfilled his obligations under this subparagraph by securing a written certification from the prospective recipient that such recipient possesses facilities for its physical security consistent with this part.

(3) Restricted Data shall not be exported from the United States without prior authorization from DOE.

(b) *Preparation of documents.* Documents containing Restricted Data shall be prepared for transmission outside an individual installation in accordance with the following:

(1) They shall be enclosed in two sealed, opaque envelopes or wrappers.

(2) The inner envelope or wrapper shall be addressed in the ordinary manner and sealed with tape, the appropriate classification shall be marked on both sides of the envelope, and any additional marking required by 10 CFR part 1045 shall be applied.

(3) The outer envelope or wrapper shall be addressed in the ordinary manner. No classification, additional marking, or other notation shall be affixed which indicates that the document enclosed therein contains classified information or Restricted Data.

(4) A receipt which identifies the document, the date of transfer, the recipient, and the person transferring the document shall accompany the document and shall be signed by the recipient and returned to the sender whenever the custody of a document containing Secret Restricted Data is transferred.

(c) *Preparation of other classified matter.* Classified matter, other than documents, containing Restricted Data shall be prepared for shipment outside an individual installation in accordance with the following:

(1) The classified matter shall be so packaged that the classified characteristics will not be revealed.

(2) A receipt which identifies the classified matter, the date of shipment, the recipient, and the person transferring the classified matter shall accompany the classified matter, and the recipient shall sign such receipt whenever the custody of classified matter containing Secret Restricted Data is transferred.

(d) *Methods of transportation.* (1) Secret classified matter shall be transported only by one of the following methods:

(i) By messenger-courier system specifically created for that purpose and approved for use by DOE.

(ii) Registered mail.

(iii) By protective services provided by United States air or surface commercial carriers under such conditions as may be preserved by the DOE.

(iv) Individuals possessing appropriate DOE access authorization who have been given written authority by their employers.

(2) Confidential classified matter may be transported by one of the methods set forth in paragraph (d)(1) of this section or by U.S. first class, express, or certified mail.

(e) *Telecommunication of classified information.* There shall be no telecommunication of Restricted Data unless the secure telecommunication system has been approved by the DOE.

§ 1016.21 Accountability for Secret Restricted Data.

Each permittee possessing classified matter (including classified matter in electronic format) containing Secret Restricted Data shall establish accountability procedures and shall maintain logs to document access to and record comprehensive disposition information for all such classified matter that has been in his custody at any time.

§ 1016.35 [Redesignated as § 1016.22]

■ 15. Section 1016.35 is redesignated as § 1016.22.

§§ 1016.36 and 1016.37 [Redesignated as §§ 1016.23 and 1016.24]

■ 16. Sections 1016.36 and 1016.37 are redesignated as §§ 1016.23 and 1016.24 and revised to read as follows:

§ 1016.23 Changes in classification.

Classified matter containing Restricted Data shall not be downgraded or declassified except as authorized by DOE and in accordance with 10 CFR part 1045.

§ 1016.24 Destruction of classified matter containing Restricted Data.

Documents containing Restricted Data may be destroyed by burning, pulping, or another method that assures complete destruction of the information which they contain. Restricted Data contained in classified matter, other than documents, may be destroyed only by a method that assures complete obliteration, removal, or destruction of the Restricted Data.

■ 17. Add § 1016.25 to read as follows:

§ 1016.25 Storage, use, processing, transmission and destruction of classified information on computers, computer networks, electronic devices/media and mobile devices.

Storage, use, processing, and transmission of Restricted Data on computers, computer networks, electronic devices/media and mobile devices must be approved by DOE. DOE-approved methods must be used when destroying classified information that is in electronic format.

§ 1016.38 [Redesignated as § 1016.26]

■ 18. Section 1016.38 is redesignated as § 1016.26.

§ 1016.39 [Redesignated as § 1016.27]

■ 19. Section 1016.39 is redesignated as § 1016.27 and revised to read as follows:

§ 1016.27 Termination, suspension, or revocation of security facility approval.

(a) In accordance with § 1016.12, if the need to use, process, store, reproduce, transmit, or handle classified

matter no longer exists, the security facility approval will be terminated. The permittee may deliver all Restricted Data to the DOE or to a person authorized to receive them; or the permittee may destroy all such Restricted Data. In either case, the facility must submit a certification of non-possession of Restricted Data to the DOE.

(b) In any instance where security facility approval has been suspended or revoked based on a determination of the DOE that further possession of classified matter by the permittee would endanger the common defense and national security, the permittee shall, upon notice from the DOE, immediately deliver all Restricted Data to the DOE along with a certificate of non-possession of Restricted Data.

§§ 1016.40 through 1016.42 [Redesignated as §§ 1016.28 through 1016.30]

■ 20. §§ 1016.40 through 1016.42 are redesignated as §§ 1016.28 through 1016.30.

§ 1016.43 [Redesignated as § 1016.31]

■ 21. Section 1016.43 is redesignated as § 1016.31 and revised to read as follows:

§ 1016.31 Inspections.

The DOE shall make such inspections and surveys of the premises, activities, records, and procedures of any person subject to the regulations in this part as DOE deems necessary to effectuate the purposes of the Act, Executive Order 13526, and DOE orders and procedures.

§ 1016.44 [Redesignated as § 1016.32]

■ 22. Section 1016.44 is redesignated as § 1016.32.

[FR Doc. 2016-27414 Filed 11-15-16; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2016-9193; Airspace Docket No. 16-AGL-26]

Proposed Establishment of Class E Airspace; Wessington Springs, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Wessington Springs, SD. Controlled airspace is necessary to accommodate new Standard Instrument Approach

Procedures developed at Wessington Springs Airport, for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before January 3, 2017.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590; telephone (202) 366-9826 or (800) 617-5527. You must identify the docket number FAA Docket No. FAA-2016-9193/Airspace Docket No. 16-AGL-26, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at http://www.faa.gov/air_traffic/publications/. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202-267-8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202-741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: 817-222-5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that

section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace at Wessington Springs Airport, Wessington Springs, SD.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2016-9193/Airspace Docket No. 16-AGL-26." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

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

Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Wessington Springs Airport, Wessington Springs, SD, to accommodate new standard instrument approach procedures. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and

Procedures” prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air)

The Proposed Amendment

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

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

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Section 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL SD E5 Wessington Springs, SD [New]

Wessington Springs Airport, SD
(Lat. 44°03'43" N., long. 098°31'56" W.)

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

Issued in Fort Worth, TX, on November 3, 2016.

Walter Tweedy,

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

[FR Doc. 2016–27438 Filed 11–15–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–9286; Airspace Docket No. 16–ANM–13]

Proposed Establishment of Class E Airspace, Denver, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E en route airspace extending upward from 1,200 feet above

the surface to accommodate Instrument Flight Rules (IFR) aircraft under control of the Denver Air Route Traffic Control Center (ARTCC), Denver, CO.

Establishment of this airspace area would ensure controlled airspace exists in those areas where the Federal airway structure is inadequate.

DATES: Comments must be received on or before January 3, 2017.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2016–9286; Airspace Docket No. 16–ANM–13, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at http://www.faa.gov/air_traffic/publications/. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202–741–6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is

promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E en route airspace at Denver Air Route Traffic Control Center, Denver, CO.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: “Comments to Docket No. FAA–2016–9286/Airspace Docket No. 16–ANM–13.” The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during

normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

Current airspace design is primarily based on airport terminal areas and airways, often leaving small areas of uncontrolled airspace between airports. Class E en route domestic airspace provides controlled airspace in those areas where there is a requirement to provide IFR en route air traffic control services but the Federal airway structure is inadequate.

Numerous smaller Class E en route areas have been established to provide controlled airspace where the airway structure is inadequate; however, additional areas of uncontrolled airspace have been discovered due to technological improvements in locating and mapping. Also, as aging ground-based navigation aids are removed from service, the airway structure is reduced, uncovering larger areas of uncontrolled airspace.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 to establish Class E en route airspace extending upward from 1,200 feet above the surface at the Denver ARTCC, Denver, CO, to support en route IFR operations where the airway structure is inadequate. This proposal would allow the most efficient routing between airports without reducing margins of safety or requiring additional coordination and pilot/controller workload. This action is necessary to ensure the safety and management of controlled airspace within the National Airspace System as it transitions from ground based navigation aids to satellite-based Global Navigation Satellite System for navigation.

Class E airspace designations are published in paragraph 6006 of FAA

Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 6006 Class E En Route Domestic Airspace Areas.

* * * * *

ANM CO E6 Denver, CO [New]

That airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 44°57'30" N., long. 103°10'00" W.; to lat. 44°42'00" N., long. 101°29'00" W.; to lat. 43°42'30" N., long. 101°24'30" W.; to lat. 43°17'20" N., long. 100°06'00" W.; to lat. 42°00'00" N., long. 099°01'00" W.; to lat. 39°59'00" N., long. 099°03'30" W.; to lat. 39°28'00" N., long. 098°48'00" W.; to lat. 37°30'00" N., long. 102°33'00" W.; to lat. 36°43'00" N., long. 105°00'00" W.; to lat. 36°43'00" N., long. 106°05'00" W.; to lat. 36°12'00" N., long. 107°28'00" W.; to lat. 36°02'00" N., long. 108°13'00" W.; to lat. 35°42'00" N., long. 110°14'00" W.; to lat. 35°46'00" N., long. 111°50'30" W.; to lat. 36°25'15" N., long. 111°30'15" W.; to lat. 36°44'00" N., long. 111°36'30" W.; to lat. 37°24'45" N., long. 111°52'45" W.; to lat. 37°50'00" N., long. 110°53'00" W.; to lat. 38°07'45" N., long. 110°09'25" W.; to lat. 38°12'00" N., long. 109°59'00" W.; to lat. 38°56'00" N., long. 109°59'00" W.; to lat. 39°13'00" N., long. 109°59'00" W.; to lat. 39°35'00" N., long. 110°18'00" W.; to lat. 40°00'00" N., long. 109°10'00" W.; to lat. 40°51'00" N., long. 109°06'00" W.; to lat. 41°22'00" N., long. 108°16'30" W.; to lat. 41°36'30" N., long. 108°00'00" W.; to lat. 42°25'00" N., long. 107°03'00" W.; to lat. 43°53'00" N., long. 107°17'00" W.; to lat. 44°19'00" N., long. 106°16'00" W.; to lat. 45°14'15" N., long. 106°00'00" W.; to lat. 45°07'00" N., long. 104°15'00" W.; thence to the point of beginning.

Issued in Seattle, Washington, on November 2, 2016.

Tracey Johnson,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2016–27437 Filed 11–15–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–1061]

RIN 1625-AA00

Safety Zone; Vigor Industrial Drydock Movement, West Duwamish Waterway; Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone in the West Duwamish Waterway in Seattle, Washington for scheduled drydock movements at Vigor Industrial. The safety zone is necessary to ensure the

safety of the maritime public and workers involved in the drydock movements. The safety zone would prohibit any person or vessel from entering or remaining in the safety zone when a notice of enforcement is issued, unless authorized by the Captain of the Port or a Designated Representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before January 17, 2017.

ADDRESSES: You may submit comments identified by docket number USCG–2015–1061 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Commander Christina Sullivan, Waterways Management Division, Sector Puget Sound, U.S. Coast Guard; telephone (206) 217–6051, email SectorPugetSoundWWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

The Coast Guard periodically receives notification from Vigor Industrial regarding their scheduled drydock movements in the West Duwamish Waterway, and has established temporary safety zones to ensure the safety of the maritime public during Vigor Industrial’s operations. The Coast Guard published a temporary safety zone; Vigor Industrial Ferry Construction, West Duwamish Waterway, Seattle, WA on September 9, 2014 (79 FR 53297).

Due to the dangers involved with a large, slow moving drydock that will be maneuvering close to the shore, the Coast Guard proposes the establishment of a short term safety zone that is activated on a notice of enforcement to ensure the safety of the workers involved as well as the maritime public during Vigor Industrial’s operations.

The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231. Coast Guard Captains of the Port

are granted authority to establish safety and security zones in 33 CFR 1.05–1(f) for safety and environmental purposes as described in 33 CFR part 165.

Vigor Industrial periodically conducts drydock movements in support of its vessel launching operations in the West Duwamish Waterway in Seattle, Washington. The Coast Guard proposes to establish a safety zone to ensure the safety of the workers involved as well as the maritime public during Vigor Industrial’s operations, and would do so by prohibiting any person or vessel from entering or remaining in the safety zone unless authorized by the Captain of the Port (COTP) or a Designated Representative.

III. Discussion of Proposed Rule

The Coast Guard is establishing a safety zone encompassing all waters in a rectangle approximately 450-yards-by-500-yards at the mouth of the West Duwamish Waterway as it empties into Elliot Bay in Seattle, Washington. The safety zone is adjacent to the northeastern tip of Harbor Island in Seattle, WA.

To request permission to enter the zone during the times set out by the notice of enforcement contact the Joint Harbor Operations Center at 206–217–6001 or the Vessel Traffic Service Puget Sound on VHF Channel 14. If permission for entry is granted vessels would be required proceed at a minimum speed for navigation.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. This safety zone would impact a small designated area of the West Duwamish Waterway for less than 6 hours per occurrence.

From 2005 through 2015, there were a total of 10 instances in which the Coast Guard issued a safety zone for the movement of the Vigor Dry Dock. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has

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

This proposed rule was determined to have potential tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would impact vessel traffic in the West Duwamish Waterway. The Coast Guard consulted with the Muckleshoot tribe on this notice of proposed rulemaking. In order to reach an agreeable timeframe that avoids impacts to treaty fishing activities, the Coast Guard will consult with the Muckleshoot tribe and Vigor Industrial once it receives notification from Vigor Industrial concerning drydock movements that require the enforcement of the safety zone. If agreement is not reached, the Coast Guard, as a Federal trustee, will conduct consultation with the Muckleshoot tribe to ensure Vigor movements will avoid Treaty impacts.

If you believe this proposed rule has additional implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed

rule involves the establishment of a safety zone to ensure the safety of the maritime public. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified

when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.1340 to read as follows:

§ 165.1340 Safety Zone; Vigor Industrial Drydock Movement, West Duwamish Waterway; Seattle, WA.

(a) *Location.* The following area is a safety zone: All waters of the West Duwamish Waterway in Seattle, WA encompassed within the area created by connecting the following points: 47°35'04" N., 122°21'30" W. thence westerly to 47°35'04" N., 122°21'50" W. thence northerly to 47°35'19" N., 122°21'50" W. thence easterly to 47°35'19" N., 122°21'30" W. thence southerly to 47°35'04" N., 122°21'30" W.

(b) *Regulations.* (1) In accordance with the general regulations in subpart C of this part, when a notice of enforcement has been issued, no person may enter or remain in the safety zone created by this section unless authorized by the Captain of the Port or a Designated Representative. See subpart C of this part for additional safety zone information and requirements. Vessel operators wishing to enter the zone during the enforcement period must request permission for entry by contacting the Joint Harbor Operation Center at 206–217–6001 or the Vessel Traffic Service Puget Sound on VHF channel 14.

(2) In order to reach an agreeable timeframe that avoids impacts to treaty fishing activities, the Coast Guard will consult with the Muckleshoot tribe and Vigor Industrial once it receives notification from Vigor Industrial concerning drydock movements that require the enforcement of the safety zone. If agreement is not reached, the Coast Guard, as a Federal trustee, will conduct consultation with the Muckleshoot tribe to ensure Vigor movements will avoid Treaty impacts.

(c) *Enforcement periods.* The safety zone described in paragraph (a) of this section will be enforced by the Captain of the Port only upon notice. Notice of enforcement by the Captain of the Port will be provided prior to execution of the drydock movement by all appropriate means, in accordance with 33 CFR 165.7(a). Such means will include issuance of a notice of enforcement to be published in the **Federal Register**, Local Notice to Mariners, and Special Marine Information Broadcast.

Dated: November 8, 2016.

M.W. Raymond,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. 2016-27494 Filed 11-15-16; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA-HQ-TRI-2016-0222; FRL-9951-01]

RIN 2070-AK15

Addition of Nonylphenol Ethoxylates Category; Community Right-To-Know Toxic Chemical Release Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to add a nonylphenol ethoxylates (NPEs) category to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act (PPA). EPA is proposing to add this chemical category to the EPCRA section 313 list because EPA believes NPEs meet the EPCRA section 313(d)(2)(C) toxicity criteria. Specifically, EPA believes that longer chain NPEs can break down in the environment to short-chain NPEs and nonylphenol, both of which are highly toxic to aquatic organisms. Based on a review of the available production and use information, members of the NPEs category are expected to be manufactured, processed, or otherwise used in quantities that would exceed EPCRA section 313 reporting thresholds.

DATES: Comments must be received on or before January 17, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-TRI-2016-0222, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/where-send-comments-epa-dockets#hq>.

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

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Daniel R. Bushman, Toxics Release Inventory Program Division (7410M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (202) 566-0743; email: bushman.daniel@epa.gov.

For general information contact: The Emergency Planning and Community Right-to-Know Hotline; telephone numbers: toll free at (800) 424-9346 (select menu option 3) or (703) 412-9810 in the Washington, DC Area and International; or toll free, TDD (800) 553-7672; or go to <http://www.epa.gov/superfund/contacts/infocenter/>.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

You may be potentially affected by this action if you manufacture, process, or otherwise use NPEs. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Facilities included in the following NAICS manufacturing codes (corresponding to Standard Industrial Classification (SIC) codes 20 through 39): 311 *, 312 *, 313 *, 314 *, 315 *, 316, 321, 322, 323 *, 324, 325 *, 326 *, 327, 331, 332, 333, 334 *, 335 *, 336, 337 *, 339 *, 111998 *, 211112 *, 212324 *, 212325 *, 212393 *, 212399 *, 488390 *, 511110, 511120, 511130, 511140 *,

511191, 511199, 512220, 512230 *, 519130 *, 541712 *, or 811490 *.

* Exceptions and/or limitations exist for these NAICS codes.

- Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (corresponds to SIC code 12, Coal Mining (except 1241)); or 212221, 212222, 212231, 212234, 212299 (corresponds to SIC code 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221118, 221121, 221122, 221330 (Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (corresponds to SIC codes 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (Limited to facilities previously classified in SIC code 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC code 5171, Petroleum Bulk Terminals and Plants); or 562112 (Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC code 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920 (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*) (corresponds to SIC code 4953, Refuse Systems).

- Federal facilities.

To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What action is the agency taking?

EPA is proposing to add a NPEs category to the list of toxic chemicals subject to reporting under EPCRA section 313 and PPA section 6607. As discussed in more detail later in this document, EPA is proposing to add this chemical category to the EPCRA section 313 list because EPA believes NPEs meet the EPCRA section 313(d)(2)(C) toxicity criteria.

C. What is the agency's authority for taking this action?

This action is issued under EPCRA sections 313(d) and 328, 42 U.S.C. 11023 *et seq.*, and PPA section 6607, 42 U.S.C. 13106. EPCRA is also referred to as Title III of the Superfund

Amendments and Reauthorization Act of 1986.

Section 313 of EPCRA, 42 U.S.C. 11023, requires certain facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting threshold levels to report their environmental releases and other waste management quantities of such chemicals annually. These facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the PPA, 42 U.S.C. 13106. Congress established an initial list of toxic chemicals that was comprised of 308 individually listed chemicals and 20 chemical categories.

EPCRA section 313(d) authorizes EPA to add or delete chemicals from the list and sets criteria for these actions. EPCRA section 313(d)(2) states that EPA may add a chemical to the list if any of the listing criteria in EPCRA section 313(d)(2) are met. Therefore, to add a chemical, EPA must demonstrate that at least one criterion is met, but need not determine whether any other criterion is met. Conversely, to remove a chemical from the list, EPCRA section 313(d)(3) dictates that EPA must demonstrate that none of the criteria in EPCRA section 313(d)(2) are met. The listing criteria in EPCRA section 313(d)(2)(A)–(C) are as follows:

- The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

- The chemical is known to cause or can reasonably be anticipated to cause in humans: Cancer or teratogenic effects, or serious or irreversible reproductive dysfunctions, neurological disorders, heritable genetic mutations, or other chronic health effects.

- The chemical is known to cause or can be reasonably anticipated to cause, because of its toxicity, its toxicity and persistence in the environment, or its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

EPA often refers to the EPCRA section 313(d)(2)(A) criterion as the “acute human health effects criterion;” the EPCRA section 313(d)(2)(B) criterion as the “chronic human health effects criterion;” and the EPCRA section 313(d)(2)(C) criterion as the “environmental effects criterion.”

EPA published in the **Federal Register** of November 30, 1994 (59 FR

61432) (FRL–4922–2), a statement clarifying its interpretation of the EPCRA section 313(d)(2) and (d)(3) criteria for modifying the EPCRA section 313 list of toxic chemicals.

II. Background Information

A. What are NPEs?

NPEs are nonionic surfactants containing a branched nine-carbon alkyl chain bound to phenol and a chain of repeating ethoxylate units ($C_9H_{19}C_6H_4(OCH_2CH_2)_nOH$). The number of repeating ethoxylate units (n) can range from 1 to 100 (Reference (Ref.) 1). The major positional isomer is para ($\geq 90\%$), while the ortho isomer is typically less than 10% (Ref. 2). The number of ethoxylate units can be designated as NP#EO where # indicates the number of ethoxylate groups. For example, nonylphenol monoethoxylate would be NP1EO and nonylphenol diethoxylate would be NP2EO. Alternatively, NPE-# can be used where # indicates the number of ethoxylate groups. The surfactant properties of NPEs have resulted in their widespread industrial and commercial use in adhesives, wetting agents, emulsifiers, stabilizers, dispersants, defoamers, cleaners, paints, and coatings (Refs. 1, 3, 4, 5, and 6). The widespread use of NPEs surfactants has resulted in their release to surface waters (Ref. 4).

B. How does EPA propose to list NPEs?

EPA is proposing to list NPEs as a category that would include the thirteen NPEs that currently appear on the Toxic Substances Control Act inventory (<https://www.epa.gov/tsca-inventory>). The NPEs category would be defined as Nonylphenol Ethoxylates and would only include those chemicals covered by the following Chemical Abstracts Service Registry Numbers (CASRNs):

- 7311–27–5; Ethanol, 2-[2-[2-(4-nonylphenoxy)ethoxy]ethoxy]ethoxy]-
- 9016–45–9; Poly(oxy-1,2-ethanediyl), α -(nonylphenyl)- ω -hydroxy-
- 20427–84–3; Ethanol, 2-[2-(4-nonylphenoxy)ethoxy]-
- 26027–38–3; Poly(oxy-1,2-ethanediyl), α -(4-nonylphenyl)- ω -hydroxy-
- 26571–11–9; 3,6,9,12,15,18,21,24-Octaoxahexacosan-1-ol, 26-(nonylphenoxy)-
- 27176–93–8; Ethanol, 2-[2-(nonylphenoxy)ethoxy]-
- 27177–05–5; 3,6,9,12,15,18,21-Heptaoxatricosan-1-ol, 23-(nonylphenoxy)-
- 27177–08–8; 3,6,9,12,15,18,21,24,27-Nonaioxanonacosan-1-ol, 29-(nonylphenoxy)-

- 27986–36–3; Ethanol, 2-(nonylphenoxy)-
- 37205–87–1; Poly(oxy-1,2-ethanediyl), α -(isononylphenyl)- ω -hydroxy-
- 51938–25–1; Poly(oxy-1,2-ethanediyl), α -(2-nonylphenyl)- ω -hydroxy-
- 68412–54–4; Poly(oxy-1,2-ethanediyl), α -(nonylphenyl)- ω -hydroxy-, branched
- 127087–87–0; Poly(oxy-1,2-ethanediyl), α -(4-nonylphenyl)- ω -hydroxy-, branched

III. What is EPA’s evaluation of the ecological toxicity and environmental fate of NPEs?

EPA prepared two technical documents to support the listing of the NPEs category. The first document is “Chemistry and Environmental Fate of Ethoxylates (NPEs)” (Ref. 7), which provides detailed information on the chemistry and environmental fate of NPEs. The second document is “Ecological Hazard Assessment for Nonylphenol Monoethoxylate (NP1EO) and Nonylphenol Diethoxylate (NP2EO)” (Ref. 8), which provides an assessment of the ecological toxicity of short-chain NPEs. Unit III.A. provides a brief summary of the chemistry and environmental fate of NPEs and Unit III.B. provides a brief summary of the ecological toxicity of short-chain NPEs. Readers should consult the support documents (Refs. 7 and 8) for further information.

A. What is the environmental fate of nonylphenol ethoxylates?

In the environment, NPEs (in particular, those containing long ethoxylate chains) are expected to have very low volatility based on Henry’s law constant values of $< 9.8 \times 10^{-7}$ atmospheres-cubic meter per mole ($\text{atm}\cdot\text{m}^3/\text{mol}$) (Ref. 9). However, the vapor pressures of some of the degradation products of long-chain NPEs (e.g., nonylphenol, NP1EO) indicate the potential to exist in the atmosphere in the vapor phase. Although nonylphenol itself is somewhat volatile, volatilization of most NPEs from soil and water surfaces is not expected to be a significant environmental transport process. The potential for adsorption of NPEs to organic carbon in soil and to suspended solids and sediment in water is expected to increase with decreasing ethoxylation as water solubilities decrease (Ref. 9). In general, partitioning to soils and sediments is expected to be significant based on carbon-normalization partition coefficient ($\log K_{oc}$) values of 4.87–5.46 for NP1EO, NP2EO, and NP3EO and 3.61–4.63 for

NP9EO, which indicate a potential for strong adsorption to suspended solids and sediments in water and to organic matter in soils (Ref. 9). The highly water-soluble, higher molecular weight (*i.e.*, longer chain) NPEs are expected to adsorb less to organic carbon, and may therefore have some mobility in soil (Refs. 9 and 10).

Biodegradation is the dominant fate process for NPEs in the environment; abiotic degradation processes such as hydrolysis are not expected to be significant (Ref. 9). The available data indicate that NPEs undergo rapid primary biodegradation but slow ultimate biodegradation (Refs. 11, 12, 13, 14, 15, 16, 17, 18, and 19). Half-lives ranging from 2 to 57.8 days have been determined for these substances based on river water die-away studies, which report primary degradation (Ref. 13). Anaerobic biodegradation appears to proceed more slowly than aerobic biodegradation (Ref. 13). Nonylphenol ethoxylate biodegradation products include shorter chain NPEs and ethoxycarboxylates. (Refs. 9, 10, and 20). Nonylphenol ethoxycarboxylates are NPEs that terminate with a carboxylate group (-CO₂H) rather than an alcohol group (-OH). Although not commonly observed under aerobic conditions, nonylphenol is a major metabolite of NPEs under anaerobic conditions (Refs. 9, 10, 21, 22, 23, 24, 25, 26, and 27).

Well-designed and properly functioning wastewater treatment plants (WWTPs) can greatly reduce effluent concentrations of NPEs and their degradation products relative to those found in the influent (Ref. 28). However, treatment efficiency varies considerably for WWTPs depending on plant design and operating conditions (Refs. 10, 29, 30, 31, and 32). WWTP effluent remains a significant source of NPEs, nonylphenol ethoxycarboxylates, and nonylphenol in the environment, and concentrations of these compounds in surface waters, sediments, and wildlife tend to be higher near WWTP outfalls (Refs. 10, 31, 33, 34, 35, 36, and 37).

Nonylphenol ethoxylates and the degradation products, nonylphenol ethoxycarboxylates and nonylphenol, are widely distributed in surface waters, including rivers, lakes, estuaries, marine ecosystems, and their underlying sediments (Refs. 10, 31, 33, 34, 35, 38, 39, 40, and 41). The more hydrophobic of these compounds, such as nonylphenol, NP1EO, and NP2EO, tend to partition to sediments (Ref. 10). Because sediments are often anaerobic, sorbed nonylphenol ethoxylates and their degradation products undergo further biodegradation slowly,

ultimately producing nonylphenol. Through a combination of strong sorption and slow biodegradation, NPEs and nonylphenol can accumulate in sediments in concentrations that are much higher than are found in the surrounding water (Refs. 10 and 37) and can persist for years (Ref. 42).

B. What is the ecological toxicity of short-chain NPEs?

For NPEs, aquatic toxicity generally decreases as the length of the ethoxylate chain increases (Refs. 43 and 44). The available data show that NP1EO and NP2EO are significantly more toxic to aquatic organisms than the longer chain ethoxylates (*e.g.*, NP9EO). Experimental data on acute aquatic toxicity of NP1EO indicate 96-hour LC₅₀ values (*i.e.*, the concentration that is lethal to 50% of test organisms) as low as 218 µg/L in the fathead minnow (*Pimphales promelas*) (Ref. 45). The 48-hour LC₅₀ for the water flea, (*Daphnia magna*) and NP2EO was as low as 148 µg/L (Ref. 46). Longer term exposures to NP1EO resulted in a Maximum-Acceptable-Toxicant-Concentration (MATC) of 61 µg/L based on an increase of mixed secondary sex characteristics for the Japanese medaka (*Oryzias latipes*) (Ref. 47). Exposure of rainbow trout (*Oncorhynchus mykiss*) to NP2EO indicated a 22-day Lowest-Observed-Effect-Concentration (LOEC) for growth inhibition of 1 µg/L (Ref. 48). Gonadosomatic Index (GSI) (weight of testes expressed as a percentage of total body weight) in rainbow trout also decreased relative to controls with a 21-day LOEC of 38 µg/L for NP2EO (Ref. 49). Additional toxicity values are included in the ecological hazard assessment (Ref. 8).

The available experimental data demonstrate that NP1EO and NP2EO have been shown to cause acute and chronic toxicity to aquatic organisms at very low concentrations (Ref. 8). They have been shown to reduce individual survival, growth, and reproduction in aquatic organisms and NP2EO has been shown to reduce testicular growth and GSI in fish. The concentrations at which toxicity is observed are well below 1 mg/L and as low as 148 µg/L for acute effects and less than 0.1 mg/L for chronic effects. Acute and chronic toxicity values at these low concentrations show that NP1EO and NP2EO are highly toxic to aquatic organisms.

IV. Rationale for Listing NPEs

The NPEs category that EPA is proposing to add to the EPCRA section 313 toxic chemical list, contains both short and long-chain NPEs. Short-chain NPEs are highly toxic to aquatic

organisms with toxicity values well below 1 mg/L as described in Unit III. Therefore, EPA believes that the evidence is sufficient for listing short-chain NPEs on the EPCRA section 313 toxic chemical list pursuant to EPCRA section 313(d)(2)(C) based on the available ecological toxicity data. Long-chain NPEs, while not as toxic as short-chain NPEs, degrade in the environment to produce products that include highly toxic short-chain NPEs and nonylphenol. Nonylphenol is even more toxic to aquatic organisms than short-chain NPEs and was added to the EPCRA section 313 toxic chemical list based on its toxicity to aquatic organisms (79 FR 58686, FRL-9915-59-OEI, September 30, 2014). As a source of degradation products that are highly toxic to aquatic organisms, EPA believes that the evidence is sufficient for listing long-chain NPEs on the EPCRA section 313 toxic chemical list pursuant to EPCRA section 313(d)(2)(C) based on the available ecological toxicity and environmental fate data.

EPA does not believe that it is appropriate to consider exposure for chemicals that are highly toxic based on a hazard assessment when determining if a chemical can be added for environmental effects pursuant to EPCRA section 313(d)(2)(C) (see 59 FR 61440-61442). Therefore, in accordance with EPA's standard policy on the use of exposure assessments (see November 30, 1994 (59 FR 61432) (FRL-4922-2)), EPA does not believe that an exposure assessment is necessary or appropriate for determining whether NPEs meet the criteria of EPCRA section 313(d)(2)(C).

V. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not itself physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. Dow Chemical. 2010. Product safety assessment. Nonylphenol ethoxylate surfactants. The Dow Chemical Company. October 11, 2010.
2. Naylor, C.G. 2004. The environmental safety of alkylphenol ethoxylates demonstrated by risk assessment and guidelines for their safe use. In: Handbook of detergents. Part B: Environmental impact. New York, NY: Marcel Dekker. p. 429-445.
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4. USEPA. 2009. Testing of certain nonylphenol and nonylphenol ethoxylate substances. **Federal Register** 74(115):28654–28262.
 5. USEPA. 2010. Poly(oxy-1,2-ethanediy)-, -alpha. (nonylphenyl)-.omega.-hydroxy-. IUR (Inventory Update Reporting) data. Non-confidential 2006 IUR records by chemical, including manufacturing, processing and use information.
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 7. USEPA, OPPT. Chemistry and Environmental Fate of Nonylphenol Ethoxylates (NPEs). May 10, 2016.
 8. USEPA, OPPT. Ecological Hazard Assessment for Nonylphenol Monoethoxylate (NP1EO) and Nonylphenol Diethoxylate (NP2EO). May 5, 2016.
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VI. What are the Statutory and Executive Orders reviews associated with this action?

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

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action does not contain any new information collection requirements that require additional approval by OMB under the PRA, 44 U.S.C. 3501 *et seq.* OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2025–0009 and 2050–0078. Currently, the facilities subject to the reporting requirements under EPCRA section 313 and PPA section 6607 may use either EPA Toxic Chemicals Release Inventory Form R (EPA Form 1B9350–1), or EPA

Toxic Chemicals Release Inventory Form A (EPA Form 1B9350–2). The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternative threshold for facilities with low annual reportable amounts of a listed toxic chemical. A facility that meets the appropriate reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternative manufacture, process, or otherwise use threshold of 1 million pounds per year of the chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. In addition, respondents may designate the specific chemical identity of a substance as a trade secret pursuant to EPCRA section 322, 42 U.S.C. 11042, 40 CFR part 350.

OMB has approved the reporting and recordkeeping requirements related to Forms A and R, supplier notification, and petitions under OMB Control number 2025–0009 (EPA Information Collection Request (ICR) No. 1363) and those related to trade secret designations under OMB Control 2050–0078 (EPA ICR No. 1428). As provided in 5 CFR 1320.5(b) and 1320.6(a), 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 relevant to EPA's regulations are listed in 40 CFR part 9 or 48 CFR chapter 15, and displayed on the information collection instruments (e.g., forms, instructions).

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, 5 U.S.C. 601 *et seq.* The small entities subject to the requirements of this action are small manufacturing facilities. The Agency has determined that of the 178 entities estimated to be impacted by this action, 161 are small businesses; no small governments or small organizations are expected to be affected by this action. All 161 small businesses affected by this action are estimated to incur annualized cost impacts of less than 1%. Thus, this action is not expected to have a significant adverse economic impact on a substantial number of small entities. A more detailed analysis of the impacts on small entities is located in EPA's economic analysis (Ref. 50).

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. This action is not subject to the requirements of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. EPA did not identify any small governments that would be impacted by this action. EPA's economic analysis indicates that the total cost of this action is estimated to be \$619,627 in the first year of reporting (Ref. 50).

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards and is therefore not subject to considerations under section 12(d) of NTTAA, 15 U.S.C. 272 note.

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

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This action does not address any human health or environmental risks and does not affect the level of protection provided to human health or the environment. This action adds an additional chemical to the EPCRA section 313 reporting requirements. By adding a chemical to

the list of toxic chemicals subject to reporting under section 313 of EPCRA, EPA would be providing communities across the United States (including minority populations and low income populations) with access to data which they may use to seek lower exposures and consequently reductions in chemical risks for themselves and their children. This information can also be used by government agencies and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential risks to human health and the environment. Therefore, the informational benefits of the action would have positive human health and environmental impacts on minority populations, low-income populations, and children.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: November 2, 2016.

Gina McCarthy,
Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 372—[AMENDED]

■ 1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

■ 2. In § 372.65, paragraph (c) is amended by adding alphabetically an entry for “Nonylphenol Ethoxylates (This category includes only those chemicals covered by the CAS numbers listed here)” to the table to read as follows:

§ 372.65 Chemicals and chemical categories to which this part applies.

* * * * *
(c) * * *

Category name	Effective date
* * * * *	*
Nonylphenol Ethoxylates (This category includes only those chemicals covered by the CAS numbers listed here)	1/1/18
7311–27–5 Ethanol, 2-[2-[2-(4-nonylphenoxy)ethoxy]ethoxy]ethoxy]-	
9016–45–9 Poly(oxy-1,2-ethanediyl), α -(nonylphenyl)- ω -hydroxy-	
20427–84–3 Ethanol, 2-[2-(4-nonylphenoxy)ethoxy]-	
26027–38–3 Poly(oxy-1,2-ethanediyl), α -(4-nonylphenyl)- ω -hydroxy-	
26571–11–9 3,6,9,12,15,18,21,24-Octaoxahehexacosan-1-ol, 26-(nonylphenoxy)-	
27176–93–8 Ethanol, 2-[2-(nonylphenoxy)ethoxy]-	
27177–05–5 3,6,9,12,15,18,21-Heptaaxatricosan-1-ol, 23-(nonylphenoxy)-	
27177–08–8 3,6,9,12,15,18,21,24,27-Nonaoxanonacosan-1-ol, 29-(nonylphenoxy)-	
27986–36–3 Ethanol, 2-(nonylphenoxy)-	
37205–87–1 Poly(oxy-1,2-ethanediyl), α -(isononylphenyl)- ω -hydroxy-	
51938–25–1 Poly(oxy-1,2-ethanediyl), α -(2-nonylphenyl)- ω -hydroxy-	
68412–54–4 Poly(oxy-1,2-ethanediyl), α -(nonylphenyl)- ω -hydroxy-, branched	
127087–87–0 Poly(oxy-1,2-ethanediyl), α -(4-nonylphenyl)- ω -hydroxy-, branched	
* * * * *	*

[FR Doc. 2016–27547 Filed 11–15–16; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 080302361–6677–01]

RIN 0648–AU02

Protective Regulations for Hawaiian Spinner Dolphins Under the Marine Mammal Protection Act; Reopening of Public Comment Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: We, the National Marine Fisheries Service (NMFS), are reopening the public comment period on the proposed rule under the Marine Mammal Protection Act (MMPA) to prohibit swimming with and approaching a Hawaiian spinner dolphin within 50 yards (45.7 m) (for persons, vessels, and objects), including approach by interception. The comment period for the proposed rule that published on August 24, 2016 (81 FR 57854) closed on October 23, 2016. NMFS is reopening the public comment period for an additional 15 days to

provide the public with additional time to submit information and to comment on this proposed rule.

DATES: Written comments on this proposed rule must be received by December 1, 2016. Comments received between the close of the first comment period on October 23, 2016, and the reopening of the comment period November 16, 2016 will be considered timely received.

ADDRESSES: You may submit comments, information, or data on the proposed rule, identified by NOAA–2005–0226, and on the Draft Environmental Impact Statement (DEIS) by either of the following methods:

Electronic Submission: Submit all electronic comments via the Federal eRulemaking Portal. Go to

www.regulations.gov/
#!docketDetail;D=NOAA-2005-0226,
click the "Comment Now!" icon,
complete the required fields, and enter
or attach your comments.

Mail: Submit written comments to
Susan Pultz, Chief, Conservation
Planning and Rulemaking Branch,
Protected Resources Division, National
Marine Fisheries Service, Pacific Islands
Regional Office, 1845 Wasp Blvd., Bldg.
176, Honolulu, HI 96818, Attn:
Hawaiian Spinner Dolphin Proposed
Rule.

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

The DEIS and references can be found
online at [http://www.fpir.noaa.gov/PRD/
prd_spinner_EIS.html](http://www.fpir.noaa.gov/PRD/prd_spinner_EIS.html). Additionally,
copies of the DEIS are available in print
at the following libraries:

Hilo Library, 300 Waianuenue Ave., Hilo,
HI 96720;

Kailua-Kona Library, 75–138 Hualalai Rd.,
Kailua Kona, HI 96740;

Kealahou Library, 81–6619 Mamalahoa
Hwy., Kealahou, HI 96750;

Pahoa Library, 15–3070 Pahoa-Kalapana
Rd., Pahoa, HI 96778;

Kihei Library, 35 Waimahaihai St., Kihei,
HI 96753;

Lahaina Library, 680 Wharf St., Lahaina, HI
96761;

Lanai Library, 555 Fraser Ave., Lanai City,
HI 96763;

Hawaii State Library, 478 S. King St.,
Honolulu, HI 96813;

Waianae Library, 85–625 Farrington Hwy.,
Waianae, HI 96792; and

Lihue Library, 4344 Hardy St., Lihue, HI
96766;

or upon request from the Conservation
Planning and Rulemaking Branch Chief (see
ADDRESSES).

FOR FURTHER INFORMATION CONTACT:

Susan Pultz, NMFS, Pacific Islands
Region, Chief, Conservation Planning
and Rulemaking Branch, 808–725–5150;
or Trevor Spradlin, NMFS, Office of
Protected Resources, Acting Chief,
Marine Mammal and Sea Turtle
Conservation Division, 301–427–8402.

SUPPLEMENTARY INFORMATION:

Background

On August 24, 2016, we published a
proposed rule to prohibit swimming
with and approaching a Hawaiian
spinner dolphin within 50 yards (45.7
meters) (for persons, vessels, and
objects), including approach by
interception. These proposed regulatory
measures are intended to prevent take,

as defined under the Marine Mammal
Protection Act (MMPA), of Hawaiian
spinner dolphins from occurring in
marine areas where viewing pressures
are most prevalent. The proposed rule
allowed for a 60-day public comment
period, which ended on October 23,
2016.

NMFS has received several requests to
extend the public comment period.
These requests indicated that additional
time was needed to consider more fully
the proposed rulemaking and DEIS and
to provide comments on the proposed
regulations. Requests also indicated that
additional time was needed for tour
operators to compile and provide data
with regard to spinner dolphin use of
coastal habitats from multiple years of
logbook records. In response to these
requests, we are reopening the public
comment period until December 1,
2016, to receive additional information
and comments that may be relevant to
any aspect of the proposal. Comments
and information submitted during the
prior comment period will be fully
considered in the preparation of the
final rule and need not be resubmitted.

Authority: 16 U.S.C. 1361 *et seq.*

Dated: November 8, 2016.

Samuel D. Rauch III,

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

[FR Doc. 2016–27399 Filed 11–15–16; 8:45 am]

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Notices

Federal Register

Vol. 81, No. 221

Wednesday, November 16, 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.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS-2016-0030]

Nutrition Facts Label Compliance

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that while FSIS is in the process of rulemaking to update the Nutrition Facts label format for meat and poultry products, establishments may voluntarily choose to use the Nutrition Facts label format that the Food and Drug Administration (FDA) recently finalized (“Food Labeling: Revision of the Nutrition and Supplement facts labels”, May 27, 2016; 81 FR 33742; and “Food Labeling: Serving Sizes of Foods That Can Reasonably be Consumed at One-Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain Reference Amounts Customarily Consumed; Serving Size for Breath Mints; and Technical Amendments”; May 27, 2016; 81 FR 34000). As long as the information on the labels is still truthful and not misleading, FSIS will not find noncompliance if companies use the FDA format. When FSIS publishes a final rule to update the Nutrition Facts label format for meat and poultry products, companies would have to comply with that final rule by the effective date and will no longer be able to use the FDA format if it is different from the FSIS format.

DATES: Comments must be received by December 16, 2016.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by one 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 Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 1400 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-2016-0030. 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 comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E Street SW., Room 8-164, Washington, DC 20250-3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jeff Canavan, Deputy Director, Labeling and Program Delivery Staff, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, Stop Code 3784, Patriots Plaza 3, 8-161A, 1400 Independence Avenue SW., Washington, DC 20250-3700; Telephone (301) 504-0879; Fax (202) 245-4792.

SUPPLEMENTARY INFORMATION:

Background

FSIS is the public health regulatory agency in the USDA that is responsible for ensuring that the nation’s commercial supply of meat, poultry, and egg products is safe, wholesome, and accurately labeled and packaged. Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601-695, at 607), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451-470, at 457), and the Egg Products Inspection Act (21 U.S.C. 1031-1056, at 1036) (the “Acts”), the labels of meat, poultry, and egg products must be approved by the Secretary of Agriculture, who has delegated this authority to FSIS, before these products

can enter commerce. The Acts prohibit the sale or offer for sale by any person, firm, or corporation of any article in commerce under any name or other marking or labeling that is false or misleading or in any container of a misleading form or size (21 U.S.C. 607(d); 21 U.S.C. 457(c)). The Acts also prohibit the distribution in commerce of meat or poultry products that are adulterated or misbranded. The FMIA and PPIA give FSIS broad authority to promulgate such rules and regulations as are necessary to carry out the provisions of the Acts (21 U.S.C. 621 and 463(b)).

To prevent meat and poultry products from being misbranded, the meat and poultry product inspection regulations require that the labels of meat and poultry products include specific information, such as nutrition labels, and that such information be displayed as prescribed in the regulations (9 CFR part 317 and part 381). The nutrition labeling requirements for meat and meat food products are in 9 CFR 317.300-317.400, and the nutrition labeling requirements for poultry products are in 9 CFR 381.400-381.500.

Nutrition Facts Label Compliance

On May 27, 2016, FDA published two final rules, “Food Labeling: Revision of the Nutrition and Supplement Facts Labels” (81 FR 33742) and “Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed at One-Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain Reference Amounts Customarily Consumed; Serving Size for Breath Mints; and Technical Amendments” (81 FR 34000), to update the Nutrition Facts label to reflect newer nutrition and public health research and recent dietary recommendations from expert groups and to improve the presentation of nutrition information to help consumers make more informed choices and maintain healthy dietary practices. FSIS has reviewed FDA’s analysis and believes it is necessary to propose nutrition labeling regulations for meat and poultry products that will parallel, to the extent possible, FDA’s regulations. This approach will help prevent consumer confusion and nonuniformity in the marketplace. While FSIS is in the process of rulemaking to update the Nutrition Facts label format for meat and poultry

products, establishments may voluntarily choose to use the Nutrition Facts label format that FDA recently finalized (81 FR 33742 and 81 FR 34000). As long as the information on the labels is still truthful and not misleading, FSIS will not find noncompliance if companies use the FDA format. Because FDA's new Nutrition Facts format is different than FSIS's current regulations, and the new formatted labels that FSIS's Labeling and Program Delivery Staff (LPDS) has reviewed so far contained errors and needed corrections, companies that wish to use FDA's Nutrition Facts label format will need to submit at least one label sketch in that format to LPDS. A parent company for a corporation may submit only one label application for a product produced in other establishments that are owned by the corporation. Subsequent similar labels that use FDA's Nutrition Facts format for other products can be generically approved. Submitting one label and receiving approval helps ensure the rest are applied in compliance with FDA's regulations and may prevent additional problems in the future. FSIS believes that if only one label is submitted per corporation, LPDS's review would not be a large burden to FSIS or industry and wouldn't adversely affect the label review backlog. When FSIS publishes a final rule to update the Nutrition Facts label format for meat and poultry products, companies would have to comply with that final rule by the effective date and will no longer be able to use the FDA format if it is different from the FSIS format. FSIS is requesting comments on whether there are any issues or problems with allowing companies to voluntarily use FDA's Nutrition Facts label format on meat and poultry products until FSIS issues a final rule that addresses nutrition labeling requirements.

USDA Nondiscrimination 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.

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, 1400 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, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at <http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/federal-register/federal-register-notices>.

FSIS also will 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, recalls, 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 and farm groups, consumer interest groups, allied health professionals, and other individuals who have asked to be included. The update is available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an email 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 account.

Dated: November 10, 2016.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2016-27506 Filed 11-15-16; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF COMMERCE

Bureau of the Census

Federal Economic Statistics Advisory Committee

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of Advisory Committee charter renewal.

SUMMARY: The Secretary of Commerce has determined that renewal of the charter of the Federal Economic Statistics Advisory Committee (FESAC) is necessary and in the public interest in connection with the performance of duties imposed by law on the U.S. Department of Commerce, and with the concurrence of the General Services Administration, established within the Economics and Statistics Administration (ESA), Department of Commerce. The renewed FESAC charter can be found on the Bureau of the Census' (Census Bureau's) Advisory Committee Web site at the following link: <http://www.census.gov/fesac/>.

FOR FURTHER INFORMATION CONTACT: James R. Spletzer, Designated Federal Official for the Federal Economic Statistics Advisory Committee, Principal Economist, U.S. Census Bureau, Room 5K019, Washington, DC 20233, telephone 301-763-4069, James.R.Spletzer@census.gov.

SUPPLEMENTARY INFORMATION: The Committee presents advice and makes recommendations to the Department of Labor, Bureau of Labor Statistics and the Department of Commerce's bureaus consisting of ESA, the Bureau of Economic Analysis, and the Census Bureau (the Agencies) from the perspective of the professional economics and statistics community. The Committee examines the Agencies' programs and provides advice on statistical methodology, research needed, and other technical matters related to the collection, tabulation, and analysis of Federal economic statistics.

The Committee is a technical committee that is balanced in terms of the professional expertise required. It consists of approximately 16 members, appointed by the Agencies. Its members are economists, statisticians, and behavioral scientists who are recognized for their attainments and objectivity in their respective fields.

The FESAC will function solely as an advisory body and in compliance with provisions of the Federal Advisory Committee Act. Pursuant to subsection 9(c) of the Federal Advisory Committee Act, 5 U.S.C., App., as amended, this charter was filed with the Chief

Financial Officer and Assistant Secretary for Administration, Department of Commerce, on September 30, 2016. Subsequently, a copy was furnished to the Library of Congress and filed with the following Committees of Congress:

- Senate Committee on Appropriations;
- Senate Committee on Finance;
- Senate Committee on Commerce, Science and Transportation;
- Senate Committee on Homeland Security and Governmental Affairs;
- House Committee on Appropriations; and
- House Committee on Oversight and Government Reform.

Dated: November 8, 2016.

John H. Thompson,

Director, Bureau of the Census.

[FR Doc. 2016-27534 Filed 11-15-16; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Bureau of the Census

Federal Economic Statistics Advisory Committee Meeting

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (U.S. Census Bureau) is giving notice of a meeting of the Federal Economic Statistics Advisory Committee (FESAC). The Committee will advise the Directors of the Economics and Statistics Administration's (ESA) two statistical agencies, the Bureau of Economic Analysis (BEA) and the Census Bureau, and the Commissioner of the U.S. Department of Labor's Bureau of Labor Statistics (BLS) on statistical methodology and other technical matters related to the collection, tabulation, and analysis of federal economic statistics. Last minute changes to the agenda are possible, which could prevent giving advance public notice of schedule adjustments.

DATES: December 9, 2016. The meeting will begin at approximately 9:00 a.m. and adjourn at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau Conference Center, 4600 Silver Hill Road, Suitland, MD 20746.

FOR FURTHER INFORMATION CONTACT: James R. Spletzer, Designated Federal Official, Department of Commerce, U.S. Census Bureau, Research and Methodology Directorate, Room 5K019, 4600 Silver Hill Road, Washington, DC

20233, telephone 301-763-4069, email: james.r.spletzer@census.gov. For TTY callers, please call the Federal Relay Service (FRS) at 1-800-877-8339 and give them the above listed number you would like to call. This service is free and confidential.

SUPPLEMENTARY INFORMATION: Members of the FESAC are appointed by the Secretary of Commerce. The Committee advises the Directors of the BEA, the Census Bureau, and the Commissioner of the Department of Labor's BLS, on statistical methodology and other technical matters related to the collection, tabulation, and analysis of federal economic statistics. The Committee is established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2).

The meeting is open to the public, and a brief period is set aside for public comments and questions. Persons with extensive questions or statements must submit them in writing at least three days before the meeting to the Designated Federal Official named above. If you plan to attend the meeting, please register by Thursday, December 1, 2016. You may access the online registration form with the following link: https://www.regonline.com/fesac_dec2016_meeting. Seating is available to the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Designated Federal Official as soon as known, and preferably two weeks prior to the meeting.

Due to increased security and for access to the meeting, please call 301-763-9906 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Dated: November 9, 2016.

John H. Thompson,

Director, Bureau of the Census.

[FR Doc. 2016-27533 Filed 11-15-16; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: U.S. Census Bureau.
Title: Annual Capital Expenditures Survey.

OMB Control Number: 0607-0782.

Form Number(s): ACE-1(S), ACE-1(M), ACE-1(L), ACE-1(I), ACE-2, ACE-2(I).

Type of Request: Revision of a currently approved collection.

Number of Respondents: 75,035.

Average Hours per Response: 2.32 hours.

Burden Hours: 174,355.

Needs and Uses: A major concern of economic policymakers is the adequacy of investment in plant and equipment. Data on the amount of business expenditures for new plant and equipment and measures of the stock of existing facilities are critical to evaluating productivity growth, the ability of U.S. business to compete with foreign business, changes in industrial capacity, and overall economic performance. The ACES is the sole source of detailed comprehensive statistics on investment in buildings and other structures, machinery, and equipment by private nonfarm businesses in the United States.

Data users tell us that they need comprehensive and consistent data on investment by all private nonfarm businesses, by industry, by kind of investment, *i.e.*, whether in new or used structures or equipment. The objectives of the ACES are:

(a) To provide estimates of capital expenditures for all private nonfarm sectors of the economy by 3-digit and selected 4-digit North American Industry Classification System (NAICS) levels;

(b) to base the survey on a probability sample that yields measures of the statistical reliability of the survey estimates;

(c) to develop a base survey to benchmark more frequent surveys on capital expenditures that do not have complete industry coverage;

(d) to produce annual enterprise-level data with the level of detail, coverage, and quality which previously was only available as part of the quinquennial economic census;

(e) to provide detail on capital expenditures for estimating the national income and product accounts, estimating the productivity of U.S. industries, evaluating fiscal and monetary policy, and conducting research using capital expenditures data; and

(f) to provide industry analysts with capital expenditures data for market analysis, economic forecasting, identifying business opportunities,

product development, and business planning.

This request is for a revision to the currently approved collection and will cover the 2016 through 2018 ACES (conducted in fiscal years 2017 through 2019). A change from the previous ACES authorization is the addition of detailed capital expenditures by type of structure and type of equipment. These data, collected every five years, were last collected in the 2012 ACES and will be collected again in the 2017 ACES. Another change is the collection of survey data from both employer and non-employer companies solely through electronic reporting. All companies will receive a notification letter containing their User ID and password, and will be directed to report online through the Census Bureau's Business Help Site. The online reporting instruments are an electronic version of the paper data collection instruments that will no longer be used. We will no longer have paper forms but respondents have the ability to print an ACES worksheet to use as a guide and/or a record of their response once they have completed the survey.

In addition to capital expenditures, all employer businesses will be asked to provide sales and receipts information to calculate industry investment to sales ratios and to assist in verifying that consolidated company data are being reported. Asset and depreciation information, also collected, assists in measuring changes in the nation's capital stock estimates.

The capital expenditures data collected annually from a sample of non-employer businesses are intended to better represent the total capital expenditures activity of all firms.

The Census Bureau will collect and publish ACES data based on the 2012 NAICS. Industries in the survey will comprise 3-digit and 4-digit 2012 NAICS codes.

The ACES is an integral part of the Federal Government's effort to improve the quality and usefulness of National economic statistics. Federal agencies, including the Census Bureau, use these data to improve and supplement ongoing statistical programs.

The Census Bureau uses the ACES data to improve the quality of monthly economic indicators of investment. The Census Bureau's Value of New Construction Put in Place survey currently uses the ACES data to benchmark its industrial buildings data.

The Bureau of Economic Analysis (BEA) uses the ACES annual capital expenditures data for equipment and computer software to prepare estimates of private fixed investment, a major

component of gross domestic product (GDP). BEA also uses these data to prepare estimates of investment by industry in the fixed assets accounts (FAAs). Investment in structures from the ACES are used by BEA to prepare the gross domestic output of the construction industries in GDP by industry. Data collected by ACES every five years on industry capital expenditures by type of structure and type of equipment are critical inputs for preparing benchmarked estimates of private fixed investment in the national income and product accounts (NIPA), the input-output accounts, and the FAAs.

The Federal Reserve Board (FRB) uses the ACES data to improve estimates of investment indicators for monetary policy. The Bureau of Labor Statistics (BLS) uses the ACES annual data to improve estimates of capital stocks for productivity analysis and the detailed types of structures and types of equipment data collected every five years to improve estimates of manufacturing multifactor productivity measures.

The Centers for Medicare and Medicaid Services uses the data for monitoring and evaluating the healthcare industries.

The Department of the Treasury uses the data in analysis of depreciation.

In addition, the ACES data provide industry analysts with capital expenditure data for market analysts, economic forecasting, identifying business opportunities, product development, and business planning.

The capital expenditures by type of structure and type of equipment are critical to ensuring the appropriateness of capital expenditures statistics in years detailed data by types of structures and types of equipment are not collected.

Affected Public: Business & other for-profit; Not-for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 United States Code, Sections 131 and 182. Sections 224 and 225 of Title 13 make this survey mandatory.

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

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this

notice to OIRA_Submission@omb.eop.gov or fax to (202) 395-5806.

Sheleen Dumas,

PRA Departmental Lead, Office of the Chief Information Officer.

[FR Doc. 2016-27499 Filed 11-15-16; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-75-2016]

Foreign-Trade Zone (FTZ) 122—Corpus Christi, Texas; Notification of Proposed Production Activity; voestalpine Texas, LLC (Hot Briquetted Iron By-Products); Portland, Texas

The Port of Corpus Christi Authority, grantee of FTZ 122, submitted a notification of proposed production activity to the FTZ Board on behalf of voestalpine Texas, LLC (voestalpine), located in Portland, Texas. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on November 7, 2016.

voestalpine already has authority to produce hot briquetted iron using foreign-sourced iron ore pellets within Subzone 122T. The current request would add hot briquetted iron (HBI) by-products and foreign-status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components and specific by-products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt voestalpine from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, voestalpine would be able to choose the duty rates during customs entry procedures that apply to the HBI by-products—iron sludge, recycled iron briquettes, direct reduction remelt, and iron fines (duty free) for the foreign-status materials/components noted below and in the existing scope of authority. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials which may be sourced from abroad include sodium bentonite and slaked lime (duty free).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The

closing period for their receipt is December 27, 2016.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230-0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via www.trade.gov/ftz.

For further information, contact Diane Finver at Diane.Finver@trade.gov or (202) 482-1367.

Dated: November 8, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016-27571 Filed 11-15-16; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S-112-2016]

Approval of Expansion of Subzone 92B; Huntington Ingalls Industries; Pascagoula, Mississippi

On August 9, 2016, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Mississippi Coast Foreign Trade Zone, Inc., grantee of FTZ 92, requesting an additional site within Subzone 92B on behalf of Huntington Ingalls Industries. The existing subzone and the proposed site would be subject to the existing activation limit of FTZ 92.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (81 FR 54041-54042, August 15, 2016). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board's Executive Secretary (15 CFR Sec. 400.36(f)), the application to expand Subzone 92B is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 92's 2,000-acre activation limit.

Dated: November 8, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016-27568 Filed 11-15-16; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S-159-2016]

Foreign-Trade Zone 61—San Juan, Puerto Rico; Application for Subzone; Aceros de América, Inc.; San Juan, Puerto Rico

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Puerto Rico Trade & Export Company, grantee of FTZ 61, requesting subzone status for the facility of Aceros de América, Inc., located in San Juan, Puerto Rico. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on November 10, 2016.

The proposed subzone (4.49 acres) is located at State Road #1, km 25.0, Quebrada Arenas Ward, San Juan. The proposed subzone would be subject to the existing activation limit of FTZ 61. No authorization for production activity has been requested at this time.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 27, 2016. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 10, 2017.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230-0002, and in the "Reading Room" section of the Board's Web site, which is accessible via www.trade.gov/ftz.

For further information, contact Camille Evans at Camille.Evans@trade.gov or (202) 482-2350.

Dated: November 10, 2016.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2016-27574 Filed 11-15-16; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S-117-2016]

Approval of Subzone Status; ASICS America Corporation; Byhalia, Mississippi

On August 16, 2016, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Northern Mississippi FTZ, Inc., grantee of FTZ 262, requesting subzone status subject to the existing activation limit of FTZ 262, on behalf of ASICS America Corporation in Byhalia, Mississippi.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (81 FR 56582, August 22, 2016). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board's Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 262C is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 262's 680-acre activation limit.

Dated: November 8, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016-27570 Filed 11-15-16; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-850]

Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 4½ Inches) From Japan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On July 12, 2016, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain large diameter carbon and alloy seamless standard, line, and pressure pipe (over 4½ inches) from Japan. The period of review (POR) is June 1, 2014, through May 31, 2015. The review covers five producers or exporters of

subject merchandise. We invited parties to comment on the *Preliminary Results*. None were received. Accordingly, for the final results, we continue to find that that NKK Tubes (NKK) had no shipments during the POR. Further, we continue to find that subject merchandise has been sold in the United States at less than normal value by JFE Steel Corporation (JFE), Nippon Steel & Sumitomo Metal Corporation (NSSMC), Nippon Steel Corporation (NSC), and Sumitomo Metal Industries, Ltd. (SMI).

DATES: Effective November 16, 2016.

FOR FURTHER INFORMATION CONTACT: Peter Zukowski, 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) 482-0189.

SUPPLEMENTARY INFORMATION:

Background

On July 12, 2016, the Department published the *Preliminary Results* of the administrative review.¹ The Department gave interested parties an opportunity to comment on the *Preliminary Results*. We received no comments. The Department conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the order is certain large diameter carbon and alloy seamless standard, line, and pressure pipe (over 4½ inches) from Japan, which is currently classified under subheading 7304.10.10.30, 7304.10.10.45, 7304.10.10.60, 7304.10.50.50, 7304.19.10.30, 7304.19.10.45, 7304.19.10.60, 7304.19.50.50, 7304.31.60.10, 7304.31.60.50, 7304.39.00.04, 7304.39.00.06, 7304.39.00.08, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.51.50.15, 7304.51.50.45, 7304.51.50.60, 7304.59.20.30, 7304.59.20.55, 7304.59.20.60, 7304.59.20.70, 7304.59.60.00, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, and 7304.59.80.70 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 merchandise subject to the order is dispositive.²

Final Determination of No Shipments

As noted in the *Preliminary Results*, the Department received a claim of no shipments from NKK. In the *Preliminary Results*, the Department preliminarily found that NKK did not have reviewable entries during the POR. Additionally, the Department stated in the *Preliminary Results* that it was not appropriate to rescind the review with respect to NKK at that time, but rather complete the review with respect to NKK and issue appropriate instructions to U.S. Customs and Border Protection (CBP) based on the final results.

After issuing the *Preliminary Results*, the Department received no comments from interested parties, and has not received any information that would cause it to alter its preliminary determination. Therefore, for these final results, the Department continues to find that NKK did not have any reviewable entries during the POR.

Final Results of Review

Because the Department received no comments after the *Preliminary Results* for consideration for these final results, we have made no changes to the *Preliminary Results*. As a result of this review, we determine that dumping margins on certain large diameter carbon and alloy seamless standard, line, and pressure pipe (over 4½ inches) from Japan exist for the period June 1, 2014, through May 31, 2015, at the following rates:

Producer and/or exporter	Margin (percent)
JFE Steel Corporation	107.80
Nippon Steel & Sumitomo Metal Corporation	107.80
Nippon Steel Corporation	107.80
Sumitomo Metals Industries	107.80

Assessment

The Department has determined, and CBP shall assess, antidumping duties on

all appropriate entries of subject merchandise in accordance with the final results of this review.³ The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. We will instruct CBP to apply an *ad valorem* assessment rate of 107.80 percent to all entries of subject merchandise during the POR which were produced and/or exported by NSSMC, and an *ad valorem* assessment rate of 107.80 percent to all entries of subject merchandise during the POR which were produced and/or exported by the companies that were not selected for individual examination: JFE, NSC, and SMI.⁴ Additionally, because the Department determined that NKK had no shipments of subject merchandise during the POR, any suspended entries that entered under NKK's AD case number (*i.e.*, at that exporter's rate) will be liquidated at the all-others rate effective during the period of review if there is no rate for the intermediate company(ies) involved in the transaction.⁵

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of certain large diameter carbon and alloy seamless standard, line, and pressure pipe (over 4½ inches) from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates established in the final results of this review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer has its own rate, the cash deposit rate will continue to be

¹ See *Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 4½ Inches) from Japan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014–2015*, 81 FR 45126 (July 12, 2016) (*Preliminary Results*).

² For a full description of the scope of the order, see the "Preliminary Decision Memorandum for the Administrative Review of the Antidumping Duty Order on Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 4½ Inches) from Japan; 2014–2015 Administrative Review" from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, dated July 5, 2016, which can be accessed directly at <http://enforcement.trade.gov/frn> (Preliminary Decision Memorandum).

³ See 19 CFR 351.212(b).

⁴ See Preliminary Decision Memorandum at section V.b "Rate for Non-Examined Companies" (for an explanation of how we preliminarily determined the rate for non-selected companies).

⁵ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

68.88 percent, the all-others rate established in the order.⁶ These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the 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 sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 9, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016-27519 Filed 11-15-16; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 03-2A008]

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of

Review to California Pistachio Export Council ("CPEC"), Application No. 03-2A008.

SUMMARY: The U.S. Department of Commerce issued an amended Export Trade Certificate of Review to CPEC on November 1, 2016.

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director, Office of Trade and Economic Analysis ("OTEA"), International Trade Administration, by telephone at (202) 482-5131 (this is not a toll-free number) or email at *etca@trade.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2016). OTEA is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

CPEC's Export Trade Certificate of Review has been amended to:

1. Add the following companies as Members of the Certificate: ARO Pistachios, Inc., and Zymex Industries, Inc.

CPEC's amendment of its Export Trade Certificate of Review results in the following membership list:

- (a) ARO Pistachios, Inc.
- (b) Keenan Farms, Inc.
- (c) Monarch Nut Company
- (d) Nichols Pistachio
- (e) Primex Farms, LLC
- (f) Setton Pistachio of Terra Bella, Inc.
- (g) Horizon Marketing Agency in Common Cooperative Inc.

(h) Zymex Industries, Inc.

Dated: November 9, 2016.

Amanda Reynolds,

Office of Trade and Economic Analysis, International Trade Administration.

[FR Doc. 2016-27475 Filed 11-15-16; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for December 2016

The following Sunset Reviews are scheduled for initiation in December 2016 and will appear in that month's Notice of Initiation of Five-Year Sunset Reviews ("Sunset Reviews").

Antidumping duty proceedings	Department contact
Certain Cut-To-Length Carbon-Quality Steel Plate from India (A-533-817) (3rd Review)	David Goldberger, (202) 482-4136.
Stainless Steel Wire Rod from India (A-533-808) (4th Review)	David Goldberger, (202) 482-4136.
Certain Cut-To-Length Carbon-Quality Steel Plate from Indonesia (A-560-805) (3rd Review)	David Goldberger, (202) 482-4136.
Certain Cut-To-Length Carbon-Quality Steel Plate from Republic of Korea (A-580-836) (3rd Review)	David Goldberger, (202) 482-4136.

Countervailing Duty Proceedings

Certain Cut-To-Length Carbon-Quality Steel Plate from India (C-533-818) (3rd Review)	David Goldberger, (202) 482-4136.
Certain Cut-To-Length Carbon-Quality Steel Plate from Indonesia (C-560-806) (3rd Review)	David Goldberger, (202) 482-4136.

⁶ See Notice of Antidumping Duty Orders: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan; and

Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and

the Republic of South Africa, 65 FR 39360 (June 26, 2000).

Antidumping duty proceedings	Department contact
Certain Cut-To-Length Carbon-Quality Steel Plate from Republic of Korea (C-580-837) (3rd Review)	David Goldberger, (202) 482-4136.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in December 2016.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. The Notice of Initiation of Five-Year ("Sunset") Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: November 2, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016-27582 Filed 11-15-16; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-830]

Carbon and Certain Alloy Steel Wire Rod From Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on carbon and certain alloy steel wire rod (wire rod) from Mexico. The period of review (POR) is October 1, 2014 through September 30, 2015. This review covers

two producers/exporters of the subject merchandise: Deacero S.A.P.I. de C.V. (aka Deacero S.A. de C.V., hereinafter referred to as Deacero) and ArcelorMittal Las Truchas, S.A. de C.V. (AMLT). We preliminarily determine that Deacero made sales of subject merchandise at less than normal value (NV) during the POR. Additionally, we preliminarily determine that AMLT had no shipments during the POR. Interested parties are invited to comment on these preliminary results.

DATES: Effective November 16, 2016.

FOR FURTHER INFORMATION CONTACT: James Terpstra AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone 202-482-3965.

Background

On December 3, 2015, the Department published a notice of initiation¹ of an administrative review of the antidumping duty order on wire rod from Mexico.² On June 27, 2016, the Department extended the deadline for the preliminary results to November 4, 2016.³

Scope of the Order

The merchandise covered by the *Wire Rod Order* is carbon and certain alloy steel wire rod. The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7213.91.3000, 7213.91.3010, 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3090, 7213.91.3091, 7213.91.3092, 7213.91.3093, 7213.91.4500, 7213.91.4510, 7213.91.4590, 7213.91.6000,

7213.91.6010, 7213.91.6090, 7213.99.0030, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0000, 7227.20.0010, 7227.20.0020, 7227.20.0030, 7227.20.0080, 7227.20.0090, 7227.20.0095, 7227.90.6010, 7227.90.6020, 7227.90.6030, 7227.90.6035, 7227.90.6050, 7227.90.6051, 7227.90.6053, 7227.90.6058, 7227.90.6059, 7227.90.6080, and 7227.90.6085 of the HTSUS. Although the HTS numbers are provided for convenience and customs purposes, the written product description remains dispositive.⁴

On October 1, 2012, the Department determined that wire rod with an actual diameter of 4.75 mm to 5.00 mm (hereinafter referred to as narrow gauge wire rod) produced in Mexico and exported to the United States by Deacero was circumventing the *Wire Rod Order*.⁵ Specifically, the Department determined that Deacero's shipments to the United States of narrow gauge wire rod constitute merchandise altered in form or appearance in such minor respects that it should be included within the scope of the *Wire Rod Order*.⁶ The Department's affirmative finding in the *Final Circumvention Determination* applied solely to Deacero.

The Federal Circuit upheld the Department's finding in the *Final Circumvention Determination* that narrow gauge wire rod produced in Mexico and exported to the United States by Deacero was circumventing the *Wire Rod Order*.⁷ As a result, we have treated Deacero's sales of narrow

⁴ For a complete description of the scope of the order, see Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Decision Memorandum for Preliminary Results of 2014/15 Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Mexico" (Preliminary Decision Memorandum), dated concurrently with these preliminary results.

⁵ See *Carbon and Certain Alloy Steel Wire Rod From Mexico: Affirmative Final Determination of Circumvention of the Antidumping Order*, 77 FR 59892 (October 1, 2012) (*Final Circumvention Determination*) and accompanying Issues and Decision Memorandum.

⁶ *Id.*

⁷ See *Deacero S.A. de C.V. v. United States*, No. 15-1362 (Federal Circuit) (April 5, 2016) (*Deacero*) at 12.

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 75657 (December 3, 2015).

² See *Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 65945 (October 29, 2002) (*Wire Rod Order*).

³ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Carbon and Certain Alloy Steel Wire Rod from Mexico: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated June 27, 2016.

gauge wire rod to the United States as subject merchandise.

Preliminary Determination of No Shipments

AMLT reported that it made no sales of subject merchandise during the POR.⁸ On December 24, 2015, we issued a no-shipment inquiry to U.S. Customs and Border Protection (CBP) to confirm AMLT's claim of no shipments. We did not receive any contradictory information from CBP.⁹ Based on AMLT's claim of no shipments and because no information to the contrary was received by the Department from CBP, we preliminarily determine that AMLT had no shipments of subject merchandise, and, therefore, no reviewable transactions, during the POR. For a full discussion of this determination, see the Preliminary Decision Memorandum.

Methodology

The Department is conducting this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Constructed export prices or export prices are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov> and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at <http://enforcement.trade.gov/frn/index.html>. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the weighted-average dumping margin for the POR is as follows:

⁸ See AMLT's no-shipment certification letter, dated December 14, 2015.

⁹ See the Department's no-shipment inquiry message to CBP, dated December 24, 2015.

Producer/exporter	Weighted-average dumping margin (percent)
Deacero S.A.P.I. de C.V. (aka Deacero S.A. de C.V.)	17.02

Assessment Rate

Upon issuance of the final results, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. For any individually examined respondents whose weighted-average dumping margin is above *de minimis*, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).¹⁰ We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis* (i.e., 0.50 percent). Where either the respondent's weighted-average dumping margin is zero or *de minimis*, or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review where applicable.

In accordance with the Department's "automatic assessment" practice, for entries of subject merchandise during the POR produced by each respondent for which they did not know that their merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

¹⁰ In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for Deacero will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established in the completed segment for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 20.11 percent, the all-others rate established in the investigation.¹¹ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

The Department intends to disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.¹² Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹³ Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.¹⁴ All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by

¹¹ See *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Mexico*, 67 FR 55800 (August 30, 2002).

¹² See 19 CFR 351.224(b).

¹³ See 19 CFR 351.309(d).

¹⁴ See 19 CFR 351.309(c)(2) and (d)(2).

the Department's electronic records system, ACCESS.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system within 30 days of publication of this notice.¹⁵ Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.¹⁶ Parties should confirm by telephone the date, time, and location of the hearing.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their case briefs, within 120 days after issuance of these preliminary results.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 3, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. No Shipments
- IV. Scope of the Order
- V. Discussion of Methodology
 - A. Sales Reporting
 - B. Date of Sale
 - C. Comparisons to Normal Value

- D. Product Comparisons
- E. Determination of Comparison Method
- F. Results of Differential Pricing (DP) Analysis
- G. U.S. Price
- H. Normal Value
- I. Cost of Production Analysis
- J. Affiliated Respondents
- K. Currency Conversion
- VI. Recommendation

[FR Doc. 2016-27518 Filed 11-15-16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-851]

Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4½ Inches) From Japan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On July 12, 2016, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain small diameter carbon and alloy seamless standard, line, and pressure pipe (under 4½ inches) from Japan. The period of review (POR) is June 1, 2014, through May 31, 2015. The review covers five producers or exporters of subject merchandise. We invited parties to comment on the *Preliminary Results*. None were received. Accordingly, for the final results, we continue to find that that NKK Tubes (NKK) had no shipments during the POR. Further, we continue to find that subject merchandise has been sold in the United States at less than normal value by JFE Steel Corporation (JFE), Nippon Steel & Sumitomo Metal Corporation (NSSMC), Nippon Steel Corporation (NSC), and Sumitomo Metal Industries, Ltd. (SMI).

DATES: Effective November 16, 2016.

FOR FURTHER INFORMATION CONTACT: Peter Zukowski, 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) 482-0189.

SUPPLEMENTARY INFORMATION:

Background

On July 12, 2016, the Department published the *Preliminary Results* of the

administrative review.¹ The Department gave interested parties an opportunity to comment on the *Preliminary Results*. We received no comments. The Department conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the order is certain small diameter carbon and alloy seamless standard, line, and pressure pipe (under 4½ inches) from Japan, which is currently classified under subheading 7304.10.10.30, 7304.10.10.45, 7304.10.10.60, 7304.10.50.50, 7304.19.10.30, 7304.19.10.45, 7304.19.10.60, 7304.19.50.50, 7304.31.60.10, 7304.31.60.50, 7304.39.00.04, 7304.39.00.06, 7304.39.00.08, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.51.50.15, 7304.51.50.45, 7304.51.50.60, 7304.59.20.30, 7304.59.20.55, 7304.59.20.60, 7304.59.20.70, 7304.59.60.00, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, and 7304.59.80.70 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 merchandise subject to the order is dispositive.²

Final Determination of No Shipments

As noted in the *Preliminary Results*, the Department received a claim of no shipments from NKK. In the *Preliminary Results*, the Department preliminarily found that NKK did not have reviewable entries during the POR. Additionally, the Department stated in the *Preliminary Results* that it was not appropriate to rescind the review with

¹ See *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4½ Inches) from Japan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014-2015*, 81 FR 45124 (July 12, 2016) (*Preliminary Results*).

² For a full description of the scope of the order, see the "Preliminary Decision Memorandum for the Administrative Review of the Antidumping Duty Order on Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4½ Inches) from Japan; 2014-2015 Administrative Review" from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, dated July 5, 2016, which can be accessed directly at <http://enforcement.trade.gov/frn/>, (Preliminary Decision Memorandum).

¹⁵ See 19 CFR 351.310(c).

¹⁶ See 19 CFR 351.310.

respect to NKK at that time, but rather complete the review with respect to NKK and issue appropriate instructions to U.S. Customs and Border Protection (CBP) based on the final results.

After issuing the *Preliminary Results*, the Department received no comments from interested parties, and has not received any information that would cause it to alter its preliminary determination. Therefore, for these final results, the Department continues to find that NKK did not have any reviewable entries during the POR.

Final Results of Review

Because the Department received no comments after the *Preliminary Results* for consideration for these final results, we have made no changes to the *Preliminary Results*. As a result of this review, we determine that dumping margins on certain small diameter carbon and alloy seamless standard, line, and pressure pipe (under 4½ inches) from Japan exist for the period June 1, 2014, through May 31, 2015, at the following rates:

Producer and/or exporter	Margin (percent)
JFE Steel Corporation	106.07
Nippon Steel & Sumitomo Metal Corporation	106.07
Nippon Steel Corporation	106.07
Sumitomo Metals Industries	106.07

Assessment

The Department has determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.³ The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. We will instruct CBP to apply an ad valorem assessment rate of 106.07 percent to all entries of subject merchandise during the POR which were produced and/or exported by NSSMC, and an ad valorem assessment rate of 106.07 percent to all entries of subject merchandise during the POR which were produced and/or exported by the companies that were not selected for individual examination: JFE, NSC, and SMI.⁴ Additionally, because the Department determined that NKK had no shipments of subject merchandise during the POR, any suspended entries that entered under NKK's AD case number (*i.e.*, at that exporter's rate) will

³ See 19 CFR 351.212(b).

⁴ See Preliminary Decision Memorandum at section V.b "Rate for Non-Examined Companies" (for an explanation of how we preliminarily determined the rate for non-selected companies).

be liquidated at the all-others rate effective during the period of review if there is no rate for the intermediate company(ies) involved in the transaction.⁵

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of certain small diameter carbon and alloy seamless standard, line, and pressure pipe (under 4½ inches) from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates established in the final results of this review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer has its own rate, the cash deposit rate will continue to be 70.43 percent, the all-others rate established in the order.⁶ These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

⁵ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

⁶ See *Notice of Antidumping Duty Orders: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan; and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and the Republic of South Africa*, 65 FR 39360 (June 26, 2000).

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the 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 sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 9, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016-27520 Filed 11-15-16; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Smart Technologies Trade Mission to Taiwan and Hong Kong With an Optional Stop in Guangzhou (China)

April 24–28, 2017.

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Department of Commerce, International Trade Administration (ITA), is organizing a Trade Mission to Taiwan and Hong Kong, with an optional stop in Guangzhou (China), focused on Smart Technologies in the Information and Communication Technology Sector on April 24–28, 2017. The goal of this trade mission is to provide U.S. participants with first-hand market information and one-on-one meetings with technology partners in Taiwan, Hong Kong, and Guangzhou, including potential agents and distributors of smart technologies, so they can position themselves to enter or expand their presence in those markets.

The mission is intended to help expand U.S. exports to Hong Kong, Taiwan, and China for U.S. technology providers of smart transportation, smart building and financial technology (fintech). The mission will introduce these suppliers to business partners, industry representatives, and government officials in Taiwan and Hong Kong, with an optional stop in Guangzhou (for smart transportation and smart building only) to learn about

and benefit from various smart city projects and opportunities in these respective cities. Increasingly, smart city technologies are seen as means to keep metropolitan and national economies competitive. A smart city market research report published by Navigant in 2014 forecast that the annual smart city technology investment in the Greater China region (China, Taiwan and Hong Kong) will grow from US\$1 billion to US\$5 billion by 2023. This figure represents only the smart technology part of much larger smart city projects across different industries and sectors, such as:

- Smart sensors and meters
- dedicated networks
- cloud computing platforms
- data analytics, and
- integrated systems and applications

The trade mission offers a timely and cost effective way of engaging key stakeholders in the development of smart city projects in Greater China. Trade mission participants will have the opportunity to interact extensively with host government, private sector and Commercial Service (CS) officials in Taiwan and Hong Kong to discuss industry developments, business opportunities and market entry strategies. In addition, participants with smart transportation and smart building technologies may opt to receive similar briefing and meeting opportunities in Guangzhou, China for an additional cost.

In Taiwan, Hong Kong, and Guangzhou (optional), participants will meet with pre-screened distributors, corporate representatives, and other business partners and government organizations involved in the promotion of smart technologies. They will also attend market briefings by U.S. Commercial Service and Consulate officials, as well as round table discussions offering further opportunities to speak with local business and industry decision-makers.

Schedule

April 23, Sunday	Delegates arrive in Taiwan.
April 24, Monday	1 Day in Taiwan.
April 25, Tuesday	½ Day in Taiwan. Travel to Hong Kong.
April 26, Wednesday	1 Day in Hong Kong.
April 27, Thursday	½ Day in Hong Kong. Travel to Guangzhou (Optional).
April 28, Friday	1 Day in Guangzhou (Optional).
April 29, Saturday	Delegates depart.

Participation Requirements

All parties interested in participating in the trade mission to Taiwan, Hong

Kong, and Guangzhou (Optional) must complete and submit an application package for consideration by the Department of Commerce. All applicants, on a staggered basis, will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. U.S. companies or trade associations already doing business in Taiwan, Hong Kong, and China, as well as U.S. companies/trade associations seeking to enter those markets for the first time may apply. A minimum of 15 and maximum of 20 firms and/or trade associations will be selected to participate in the mission from the applicant pool.

Fees and Expenses

After a firm or trade association has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee for the Trade Mission will be \$3,700 for small or medium-sized enterprises (SME);¹ and \$4,700 for large firms or trade associations. The cost for the optional stop in Guangzhou for smart transportation and smart building firms is not included and is an additional \$750 per SME and \$2,300 per large firm and trade association/organization. The fee for each additional firm representative for the mission and optional stop (large firm or SME/trade organization) is \$1,000. Upon notification of acceptance to participate, those selected have 10 business days to submit payment or after such time the Department of Commerce reserves the right to revoke the acceptance or may offer the participant spot to other qualified applicants. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Interpreter and driver services can be arranged for additional cost. The participation fee will cover group transit from hotel to airport/train station on departure from each destination as well as local group transportation to meeting venues, where applicable. Delegation members will be able to take advantage of U.S. Embassy rates for hotel rooms.

¹ An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see <http://www.sba.gov/services/contractingopportunities/sizestandardstoc/index.html>). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (See <http://www.export.gov/newsletter/march2008/initiatives.html> for additional information).

Exclusions

The mission fee does not include any personal travel expenses such as lodging, most meals, local ground transportation and air transportation. Delegate members will, however, be able to take advantage of U.S. Government rates for hotel rooms. Government fees and processing expenses to obtain visas are also not included in the mission costs. However, the Department of Commerce will provide instructions to each participant on the procedures required to obtain necessary business visas. Trade Mission members participate in the trade mission and undertake mission-related travel at their own risk. The nature of the security situation in a given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at <https://travel.state.gov/content/passports/en/alertswarnings.html>. Any question regarding insurance coverage must be resolved by the participant and its insurer of choice.

Conditions for Participation

An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the U.S., or, if not, are marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content. In the case of a trade association or organization, the applicant must certify that for each company to be represented by the association/organization, the products and/or services the represented company seeks to export are either produced in the U.S. or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content.

In addition, each applicant must:

- Certify that the products and services that it wishes to market through the mission would be in compliance

with U.S. export controls and regulations;

- Certify that it has identified to the Department of Commerce for its evaluation any business pending before the Department that may present the appearance of a conflict of interest;

- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and

- Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

In the case of a trade association/organization, the applicant must certify that each firm or service provider to be represented by the association/organization can make the above certifications.

Selection Criteria for Participation

- Suitability of the company's (or, in the case of a trade association or trade organization, represented companies') products or services to the market.

- Company's (or, in the case of a trade association or trade organization, represented companies') potential for business in the country and region, including likelihood of exports resulting from the mission.

- Consistency of the applicant's goals and objectives with the stated scope of the mission. Balance of company size, sector or subsector, and location may also be considered during the review process.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeline for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (<http://export.gov/trademissions>) and other Internet Web sites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than January 31, 2017.

The U.S. Department of Commerce will review applications and inform applicants of selection decisions on a staggered basis during the recruitment period beginning October 7, 2016.

Applications received after January 31, 2017, will be considered only if space and scheduling constraints permit.

FOR FURTHER INFORMATION CONTACT: Gemal Brangman, Trade Promotion Programs Team Lead, U.S. Department of Commerce, Washington, DC, *Tel:* 202-482-3773, *Email:* Gemal.Brangman@trade.gov.

Frank Spector,

Trade Missions Program.

[FR Doc. 2016-27556 Filed 11-15-16; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF004

Atlantic Highly Migratory Species; Meeting of the Atlantic Highly Migratory Species Advisory Panel

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

ACTION: Notice of public meeting and webinar/conference call.

SUMMARY: NMFS will hold a 2-day Atlantic Highly Migratory Species (HMS) Advisory Panel (AP) meeting in December 2016. The intent of the meeting is to consider options for the conservation and management of Atlantic HMS, specifically Amendment 5b to the 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP). The meeting is open to the public.

DATES: The AP meeting and webinar will be held from 1:30 p.m. to 5:30 p.m. on Thursday, December 1, 2016, and from 8:30 a.m. to 11:30 a.m. on Friday, December 2, 2016.

ADDRESSES: The meeting will be held at the DoubleTree by Hilton Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814. The meeting presentations will also be available via WebEx webinar/conference call.

The meeting on Thursday, December 1, and Friday, December 2, 2016, will also be accessible via conference call and webinar. Conference call and webinar access information are available at: http://www.nmfs.noaa.gov/sfa/hms/advisory_panels/hms_ap/meetings/dec-2016/ap-meeting.html.

Participants are strongly encouraged to log/dial in 15 minutes prior to the

meeting. NMFS will show the presentations via webinar and allow public comment during identified times on the agenda.

FOR FURTHER INFORMATION CONTACT: Peter Cooper or Margo Schulze-Haugen at (301) 427-8503.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, as amended by the Sustainable Fisheries Act, Public Law 104-297, provided for the establishment of an AP to assist in the collection and evaluation of information relevant to the development of any FMP or FMP amendment for Atlantic HMS. NMFS consults with and considers the comments and views of AP members when preparing and implementing FMPs or FMP amendments for Atlantic tunas, swordfish, billfish, and sharks.

The AP has previously consulted with NMFS on: Amendment 1 to the Billfish FMP (April 1999); the HMS FMP (April 1999); Amendment 1 to the HMS FMP (December 2003); the Consolidated HMS FMP (October 2006); and Amendments 1, 2, 3, 4, 5a, 5b, 6, 7, 8, 9 and 10 to the 2006 Consolidated HMS FMP (April and October 2008, February and September 2009, May and September 2010, April and September 2011, March and September 2012, January and September 2013, April and September 2014, March and September 2015, March and September 2016), among other things.

The intent of this meeting is for NMFS to consult with the AP on the proposed management measures contained in Draft Amendment 5b to the 2006 Consolidated Atlantic HMS FMP, which proposes a range of management measures to prevent overfishing and rebuild dusky sharks. These measures are based on a recent stock assessment that determined dusky sharks—a prohibited species since 2000—are overfished and still experiencing overfishing. Draft Amendment 5b could affect any commercial fishermen with HMS permits, any recreational fishermen who catch sharks of any species, and any dealers who buy or sell sharks or shark products.

Additional information on the meeting and a copy of the draft agenda will be posted prior to the meeting at: http://www.nmfs.noaa.gov/sfa/hms/advisory_panels/hms_ap/meetings/ap_meetings.html.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to

Peter Cooper at (301) 427-8503 at least 7 days prior to the meeting.

Dated: November 9, 2016.

Jennifer M. Wallace,

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

[FR Doc. 2016-27473 Filed 11-15-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-BC69

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Elliot Bay Seawall Project in Seattle, Washington

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

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that a Letter of Authorization (LOA) has been issued to the City of Seattle's Department of Transportation (SDOT) for the take of eight species of marine mammals incidental to pile driving activities associated with the Elliot Bay Seawall Project (EBSP).

DATES: Effective for a period of one year from November 16, 2016.

ADDRESSES: The LOA and supporting documentation are available for review online at: www.nmfs.noaa.gov/pr/permits/incidental/construction.htm. Documents cited in this notice may also be viewed, by appointment, during regular business hours at the Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225, by telephoning the contact listed below.

FOR FURTHER INFORMATION CONTACT: Stephanie Egger, Office of Protected Resources, NMFS, 301-427-8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and

regulations are issued. Under the MMPA, the term "take" means to harass, hunt, capture, or kill marine mammals. Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the identified species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth in the regulations. NMFS has defined "negligible impact" in 50 CFR 216.103 as ". . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Regulations governing the taking of harbor seals (*Phoca vitulina richardii*), California sea lions (*Zalophus californianus*), Steller sea lions (*Eumetopias jubatus monteriensis*), harbor porpoise (*Phocoena phocoena vomerina*), Dall's porpoise (*Phocoenoides dalli dalli*), southern resident and transient killer whales (*Orcinus orca*), gray whales (*Eschrichtius robustus*), and humpback whales (*Megaptera novaeangliae*), by harassment, incidental to pile driving activities in Elliot Bay for the EBSP, were issued on October 21, 2013, and remain in effect until October 21, 2018. The regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during pile driving activities associated with the EBSP. For detailed information on this action, please refer to the **Federal Register** Notice for the regulations at 78 FR 63396 (October 24, 2013).

Pursuant to those regulations, NMFS issued an LOA, effective from October 22, 2013, through October 21, 2014, a second LOA, effective from October 22, 2014, through October 21, 2015, and a third LOA, effective October 22, 2015, through August 31, 2016. SDOT conducted activities as described, implemented the required mitigation methods, and conducted the required monitoring. NMFS announces here that it has issued a fourth LOA, effective for one year, beginning November 16, 2016.

Monitoring Reports

According to prior monitoring reports, no marine mammals entered the Level A harassment zone during the first year of the project (2013-2014 LOA). Two marine mammals entered the Level A harassment zone during the second year (2014-2015 LOA), but work was

stopped or not initiated until the animal left the Level A harassment zone. Six killer whales were observed in the Level A harassment zone during the third year of the project (2015-2016 LOA), but pile activity was not occurring at the time. Low-frequency cetaceans (*e.g.*, humpback whales, gray whales) have rarely been observed during the past three years of this project (one humpback in the 2015-2016 LOA and the 2014-2015 LOA). No gray whales have been observed. Low numbers of high- and mid-frequency cetaceans (*e.g.*, harbor porpoise and killer whales, respectively) have been observed within the Level A harassment zone, but only one animal of each species was documented as take (Level B harassment) during the 2015-2016 LOA, significantly below the maximum number of takes authorized per year (40 and 315, respectively). There were no observed takes of harbor porpoises or killer whales in the 2014-2015 LOA or the 2013-2014 LOA.

Pinnipeds are more likely to be present in the construction area and to approach more closely. However, California sea lions (the pinniped species with the most documented takes), rested on the mooring buoys during construction and throughout the entire monitoring period on most days. These mooring buoys are well outside the SDOT's Level A harassment zones (under NMFS' then-current thresholds) for all pinnipeds and occur approximately two miles from these zones. The total number of potentially harassed marine mammals was well below the authorized limits, with the exception of the California sea lion in the 2014-2015 LOA (Year 2 LOA). The reported take for California sea lions for the Year 2 LOA by Level B harassment only, exceeded the annually authorized level, and slightly exceeded the authorized level in the Year 1 LOA, but not in the 2015-2016 LOA (Year 3 LOA). Please see the monitoring reports at <http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm> for more detail. The exceeded take in the Year 2 LOA resulted in part because of an error in our assumptions relating to the proposed take estimates in the rule, *i.e.*, the number of California sea lions regularly hauling out on buoys in Elliot Bay.

Analysis

Based on our review of monitoring to date, we revised take estimates by assuming an estimated daily exposure of up to seven California sea lions (as compared with five assumed in regulations).

This revised estimate of take constitutes 0.14 percent of the population of California sea lions, which is 0.09 percent greater than the estimated take in the rule, and is the same kind of take anticipated in the regulations. Accordingly, the anticipated taking remains consistent with the basis for our final rule determinations of negligible impact based on the total taking and of small numbers, and our subsistence findings for the specified activity.

Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing

In August 2016, NMFS released its Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Guidance), which established new thresholds for predicting auditory injury, which equates to Level A harassment under the MMPA. In the August 4, 2016, **Federal Register** notice announcing the Guidance (81 FR 51694), NMFS explained the approach it would take during a transition period, wherein we balance the need to consider this new best available science with the fact that some applicants have already committed time and resources to the development of acoustic analyses based on our previous thresholds and have constraints that preclude the recalculation of take estimates, as well as consideration of where the agency is in the decision-making pipeline. In that notice, we included a non-exhaustive list of factors that would inform the most appropriate approach for considering the new Guidance, including: How far in the MMPA process the applicant has progressed; the scope of the effects; when the authorization is needed; the cost and complexity of the analysis; and the degree to which the Guidance is expected to affect our analysis.

In this case, SDOT submitted a timely request for an LOA that was determined to be adequate and complete prior to availability of the Guidance and indicated that they would need to receive their fourth (final) LOA (if issued) by fall 2016. The incidental take rule for SDOT's activities considered the potential for auditory injury to marine mammals, and concluded that injury would be unlikely to occur due to SDOT's mitigation measures and SDOT's observed success of those measures as implemented previously. As described in the preamble of the regulations (78 FR 63396), the SDOT calculated Level A harassment and the Level A harassment mitigation zones on the basis of NMFS' then-current

thresholds for onset of P (*i.e.*, 180/190 dB rms) (PTS).

Following release of the Guidance, we considered the updated thresholds and found that the distances at which animals might be exposed to injury fall mostly within the mitigation zones, and therefore the likelihood of auditory injury of marine mammals is still low. However, to further reduce the likelihood in light of the Guidance, the SDOT will now implement a 61meter (m) exclusion zone for high frequency cetaceans and a 25 m exclusion zone for pinnipeds (inclusive of both phocids and otariids) during vibratory pile driving, which is larger than the PTS isopleth indicated by the Guidance for otariids. As an addition to their monitoring plan, the SDOT will use Internet sites that track whale activity in Puget Sound prior to and during monitoring shifts in anticipation of any cetacean that may enter the Level A/B harassment zones. In summary, we have considered the new Guidance and believe that the likelihood of injury is adequately addressed in the analysis and appropriate protective measures are in place in the LOA.

Authorization

NMFS has issued an LOA to SDOT authorizing the Level B harassment of marine mammals incidental to pile driving activities associated with the EBSP at Seattle, WA. Take of marine mammals will be minimized through implementation of the following mitigation measures: (1) Limited impact pile driving; (2) containment of impact pile driving; (3) additional sound attenuation measures; (4) ramp-up of pile-related activities; (5) marine mammal exclusion zones; and (6) shutdown and delay procedures. SDOT will also conduct visual monitoring and underwater acoustic monitoring for mitigation and research purposes. Reports will be submitted to NMFS at the time of request for a renewal of the LOA, and a final comprehensive report, which will summarize all previous reports and assess cumulative impacts, will be submitted before the rule expires.

Issuance of this LOA takes into consideration the results of the monitoring reports as well as NMFS' Guidance on hearing impacts from anthropogenic acoustic sources. Based on that information and the information discussed in the rule making for the five-year regulations, the activities described under the LOA and the level of anticipated taking is consistent with the findings made for the total taking allowable under the regulations, the project activities will have a negligible

impact on the affected marine mammal species or stocks and will not have an unmitigable adverse impact on their availability for subsistence uses.

Dated: November 9, 2016.

Donna S. Wieting,

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

[FR Doc. 2016-27464 Filed 11-15-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Large Pelagic Fishing Survey

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.

DATES: Written comments must be submitted on or before January 17, 2017.

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 John Foster, (301) 427-8130 or john.foster@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection. The Large Pelagic Fishing Survey consists of dockside and telephone surveys of recreational anglers for large pelagic fish (tunas, sharks, and billfish) in the Atlantic Ocean. The survey provides the National Marine Fisheries Service (NMFS) with information to monitor catch of bluefin tuna, marlin and other federally managed species. Catch monitoring in these fisheries and collection of catch and effort statistics for all pelagic fish is required under the

Atlantic Tunas Convention Act and the Magnuson-Stevens Fishery Conservation and Management Act. The information collected is essential for the United States (U.S.) to meet its reporting obligations to the International Commission for the Conservation of Atlantic Tuna.

II. Method of Collection

Dockside and telephone interviews are used. In lieu of telephone interviews, respondents may also provide information online via a Web tool.

III. Data

OMB Control Number: 0648–0380.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Unduplicated Respondents: 15,024.

Estimated Time per Response: 11 minutes for a telephone interview; 5 minutes for a dockside interview; 1½ minutes to respond to a follow-up validation call for dockside interviews; 1 minute for a biological sampling of catch.

Estimated Total Annual Burden Hours: 3,608.

Estimated Total Annual Cost to Public: \$0 in recordkeeping/reporting 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: November 9, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–27465 Filed 11–15–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE943

Atlantic Highly Migratory Species; Exempted Fishing, Scientific Research, Display, Shark Research Fishery, and Chartering Permits; Letters of Acknowledgment

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

ACTION: Notice of intent; request for comments.

SUMMARY: NMFS announces its intent to issue exempted fishing permits (EFPs), scientific research permits (SRPs), display permits, letters of acknowledgment (LOAs), shark research fishery permits, and chartering permits for Atlantic highly migratory species (HMS) in 2017. EFPs and related permits would authorize collection of a limited number of tunas, swordfish, billfishes, and sharks (collectively known as HMS) from Federal waters in the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico for the purposes of scientific data collection, bycatch research, public display, and to evaluate the efficacy of environmental clean-up efforts, among other things. LOAs acknowledge that scientific research activity aboard a scientific research vessel is being conducted. Chartering permits allow the owner of a U.S. fishing vessel to fish under a chartering arrangement, which is a contract or agreement between a U.S. vessel owner and a foreign entity by which the control, use, or services of a vessel are secured for a period of time for fishing for Atlantic HMS on the high seas or in the Exclusive Economic Zone of other nations. Generally, EFPs and related permits would be valid from the date of issuance through December 31, 2017, unless otherwise specified, subject to the terms and conditions of individual permits.

DATES: Written comments on these activities received in response to this notice will be considered by NMFS when issuing EFPs and related permits and must be received on or before December 16, 2016.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Email:* nmfs.hms.efp2017@noaa.gov. Include in the subject line the following identifier: 0648–XE943.
- *Mail:* Craig Cockrell, Highly Migratory Species Management Division

(F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell, phone: (301) 427–8503.

SUPPLEMENTARY INFORMATION: Issuance of EFPs and related permits are necessary because HMS regulations (e.g., fishing seasons, prohibited species, authorized gear, closed areas, and minimum sizes) may otherwise prohibit the collection of live animals and/or biological samples for data collection and public display purposes or may otherwise prohibit certain fishing activity. Pursuant to 50 CFR parts 600 and 635, a NMFS Regional Administrator or Director may authorize, for limited testing, public display, data collection, exploratory fishing, compensation fishing, conservation engineering, health and safety surveys, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. These permits exempt permit holders from the specific portions of the regulations (e.g., fishing seasons, prohibited species, authorized gear, closed areas, and minimum sizes) that may otherwise prohibit the collection of HMS for public education, public display, or scientific research. Permit holders are not exempted from the regulations in entirety. Collection of HMS under EFPs, SRPs, LOAs, display, shark research fishery, and chartering permits represents a small portion of the overall fishing mortality for HMS, and this mortality is counted against the quota of the species harvested, as appropriate and applicable. The terms and conditions of individual permits are unique; however, all permits will include reporting requirements, limit the number and/or species of HMS to be collected, and only authorize collection in Federal waters of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

EFPs and related permits are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and/or the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Regulations at 50 CFR 600.745 and 635.32 govern scientific research activity, exempted fishing, chartering arrangements, and exempted public display and educational activities with respect to Atlantic HMS. Before issuing LOAs, EFPs, or SRPs, NMFS requests, among other things, copies of scientific research plans. Because the Magnuson-Stevens Act states that scientific research activity which is conducted on

a scientific research vessel is not fishing, NMFS issues LOAs and not EFPs for bona fide research activities (e.g., scientific research being conducted from a research vessel and not a commercial or recreational fishing vessel) involving species that are only regulated under the Magnuson-Stevens Act (e.g., most species of sharks) and not under ATCA. NMFS generally does not consider recreational or commercial vessels to be bona fide research vessels. However, if the vessels have been contracted only to conduct research and not participate in any commercial or recreational fishing activities during that research, NMFS may consider those vessels as bona fide research platforms while conducting the specified research. For example, in the past, NMFS has determined that commercial pelagic longline vessels assisting with population surveys for sharks may be considered “bona fide research vessels” while engaged only in the specified research. NMFS acknowledges that the proposed activity meets the definition of scientific research under the Magnuson-Stevens Act and not ATCA by issuing an LOA to researchers. Examples of research conducted under LOAs include tagging and releasing of sharks during bottom longline surveys to understand the distribution and seasonal abundance of different shark species, and collecting and sampling sharks caught during trawl surveys for life history and bycatch studies.

While scientific research is exempt under MSA, scientific research is not exempt from regulation under ATCA. Therefore, NMFS issues SRPs which authorize researchers to collect HMS from bona fide research vessels for collection of species managed under this statute (e.g., tunas, swordfish, billfish, and some species of sharks). One example of research conducted under SRPs consists of scientific surveys of HMS conducted from NOAA research vessels.

EFPs are issued to researchers collecting ATCA and Magnuson-Stevens Act-managed species while conducting research from commercial or recreational fishing vessels. Examples of research conducted under EFPs include collection of young-of-the-year bluefin tuna for genetic research; conducting billfish larval tows from private vessels to determine billfish habitat use, life history, and population structure; determining catch rates and gear characteristics of the swordfish buoy gear fishery and the green-stick tuna fishery; and tagging sharks caught on commercial or recreational fishing gear to determine post-release mortality rates.

NMFS is also seeking public comment on its intent to issue display permits for the collection of sharks and other HMS for public display in 2017. Collection of sharks and other HMS sought for public display in aquaria often involves collection when the commercial fishing seasons are closed, collection of otherwise prohibited species (e.g., sand tiger sharks), and collection of fish below the regulatory minimum size. Under Amendment 2 to the 2006 Consolidated Atlantic HMS Fishery Management Plan, NMFS determined that dusky sharks cannot be collected for public display.

The majority of EFPs and related permits described in this annual notice relate to scientific sampling and tagging of Atlantic HMS within existing quotas and the impacts of the activities have been previously analyzed in various environmental assessments and environmental impact statements for Atlantic HMS. NMFS intends to issue these permits without additional opportunity for public comment beyond what is provided in this notice. Occasionally, NMFS receives applications for research activities that were not anticipated, or for research that is outside the scope of general scientific sampling and tagging of Atlantic HMS, or rarely, for research that is particularly controversial. Should NMFS receive such applications, NMFS will provide additional opportunity for public comment, consistent with the regulations at 50 CFR 600.745.

In 2016, as in recent years, NMFS received several requests from researchers who were collaborating with the research group OCEARCH to conduct shark research. However, later in the year, NMFS also received an application from OCEARCH indicating its intent to conduct shark research in collaboration with a number of scientists. Specifically, OCEARCH indicated its intent to coordinate all shark research it was involved in rather than require each individual scientist to apply for and receive their own EFP or SRP. In July 2016, NMFS issued an SRP to OCEARCH to tag and collect tissue samples from a variety of sharks in Federal waters, including white, tiger, great hammerhead, smooth hammerhead, bull, sand tiger, shortfin mako, longfin mako, oceanic whitetip, blue, silky, and Caribbean reef sharks. Among other research conducted under this permit, eight juvenile white sharks were tagged with satellite or “smart position only” tags off New York in August. Because the original permit provided authorization to tag only eight white sharks, and because there were still several more research trips planned, at

the request of the research group, NMFS amended the permit to add an additional 25 white sharks in late August. In mid-September, OCEARCH moved to Federal waters off the coast of Massachusetts and began their tagging and collection activities. Earlier in 2016, because the Commonwealth of Massachusetts was in the process of conducting a mark-recapture study to assess the population and movement pattern of white sharks in their state waters, the Commonwealth of Massachusetts denied OCEARCH access to state waters. Once OCEARCH began conducting research in Federal waters just outside of Massachusetts state waters, the state and other organizations expressed concern regarding the potential impact of OCEARCH's tagging activities on the mark-recapture study. If OCEARCH requests another group collaboration permit in 2017 or if individual researchers request the addition of OCEARCH on their permit in 2017, NMFS may issue a consolidated permit for all researchers utilizing this platform and would consider the concerns regarding the mark-recapture study, any concerns expressed during the comment period of this notice, and any other relevant information when deciding to issue the permit and associated permit conditions. Note, however, that the recent final rule modifying archival tag permitting and reporting requirements (August 19, 2016, 81 FR 55376) may mean that an EFP or SRP may no longer be needed for OCEARCH tagging activities as archival tagging activities, which is a primary focus of OCEARCH research, no longer require written authorization from NMFS.

In 2017, NMFS may once again receive an application for an EFP regarding purse seine fishing for Atlantic bluefin tuna. NMFS provided such an EFP to a purse seine vessel in 2014 and 2015 to study bycatch of large medium Atlantic bluefin tuna during otherwise authorized purse seine fishing operations. Specifically, the EFPs exempted the vessel owner from the retention limits on large medium BFT during otherwise authorized fishing operations. NMFS last issued a notice of intent regarding a potential purse seine EFP in 2014 (79 FR 63896, October 27, 2014), and did not receive any comments. NMFS issued the EFP for the 2015 fishing season on June 5, exempting the vessel from the size limit, with the following terms and conditions: (1) Mandatory observer coverage on all trips, (2) all dead bluefin tuna at haul back must be available to observers for sampling, (3) sub-legal

bluefin tuna that are released alive and in good condition will not be counted against the vessel's quota, (4) any sub-legal bluefin tuna that are dead at haulback may not be released by the vessel operator, and (5) only the observer has discretion over dead sub-legal fish that may be released without sampling.

Compared to the dead discards that occurred in 2013, while fishing under an EFP in 2014 and 2015, the overall reduction in dead discards was 69 and 64 percent, respectively. In 2016, NMFS received a similar application to the 2015 request but, as of preparation of this notice, NMFS had not issued a 2016 EFP because the vessel to be used for the exempted fishing had not been issued a valid 2016 Atlantic Tunas permit in the Purse Seine category, and thus no otherwise authorized fishing could occur warranting a study of associated bycatch. NMFS may receive a similar request for an EFP in 2017 and requests comments, via this notice, on the continuation of such an EFP with similar terms and conditions should the permit holder have a properly permitted Purse Seine vessel. If such an application requests exemptions that are significantly different than those provided in the 2014 and 2015 permits, NMFS will provide additional opportunity for public comment.

NMFS is also requesting comments on chartering permits considered for issuance in 2017 to U.S. vessels fishing for HMS while operating under chartering arrangements with foreign countries. NMFS has not issued any chartering permits since 2004. A chartering arrangement is a contract or agreement between a U.S. vessel owner and a foreign entity by which the control, use, or services of a vessel are secured for a period of time for fishing for Atlantic HMS. Before fishing under a chartering arrangement, the owner of the U.S. fishing vessel must apply for a chartering permit and must also have been issued all other appropriate permits. The vessel chartering regulations can be found at 50 CFR 635.5(a)(4) and 635.32(e).

In addition, Amendment 2 to the 2006 Consolidated HMS Fishery Management Plan (FMP) implemented a shark research fishery. This research fishery is conducted under the auspices of the exempted fishing permit program. Shark research fishery permit holders assist NMFS in collecting valuable shark life history and other scientific data required in shark stock assessments. Since the shark research fishery was established in 2008, the research fishery has allowed for: The collection of fishery dependent data for current and future stock assessments; the operation of cooperative research to meet NMFS' ongoing research objectives; the collection of updated life-history information used in the sandbar shark (and other species) stock assessment; the collection of data on habitat preferences that might help reduce fishery interactions through bycatch mitigation; the evaluation of the utility of the mid-Atlantic closed area on the recovery of dusky sharks; and the collection of hook-timer and pop-up satellite archival tag information to determine at-vessel and post-release mortality of dusky sharks. Fishermen who wish to participate must fill out an application for a shark research permit under the exempted fishing program. Shark research fishery participants are subject to 100-percent observer coverage. All non-prohibited shark species brought back to the vessel dead must be retained and will count against the appropriate quotas of the shark research fishery participant. During the 2016 shark research fishery, all participants were limited to a very small number of dusky shark mortalities on a regional basis. Once the number of mortalities occurs in a specific region all shark research fishery activities must stop within that region. Also, participants are limited to two sets per trip with, one set limited to 150 hooks and the second set limited to 300 hooks. All participants are also limited to a maximum of 500 hooks onboard the vessel with on a shark research fishery trip. A **Federal Register** notice

describing the specific objectives for the shark research fishery in 2017 and requesting applications from interested and eligible shark fishermen is expected to publish in the near future. NMFS requests public comment regarding NMFS' intent to issue shark research fishery permits in 2017 during the comment period of this notice.

The authorized number of species for 2016, as well as the number of specimens collected in 2015, is summarized in Table 1. The number of specimens collected in 2016 will be available when all 2016 interim and annual reports are submitted to NMFS. In 2015, the number of specimens collected was less than the number of authorized specimens for all permit types, other than SRPs issued for shark research. The slightly higher numbers (21 sharks) are attributed to slightly more interactions with Atlantic sharpnose sharks on longline gear than anticipated. It is difficult to control the number and species of animals caught when using this gear type. These 21 sharks account for approximately 0.1 percent of the 57.2-mt ww quota available for the collection of most shark species under EFPs and related permits. Atlantic sharpnose sharks were determined to be not overfished and not experiencing overfishing in a 2013 stock assessment. Given the status of the species, the small number of Atlantic sharpnose sharks harvested above the authorized level, and the fact that the total number of sharks harvested across all permits is still less than the overall quota, this overharvest is not expected to have negative ecological impacts on the stock.

In all cases, mortality associated with an EFP, SRP, Display Permit, or LOA (except for larvae) is counted against the appropriate quota. NMFS issued a total of 36 EFPs, SRPs, display permits, and LOAs in 2015 for the collection of HMS and a total of 5 shark research fishery permits. As of October 4, 2016, NMFS has issued a total of 39 EFPs, SRPs, display permits, and LOAs and a total of 5 shark research fishery permits.

TABLE 1—SUMMARY OF HMS EXEMPTED FISHING PERMITS ISSUED IN 2015 AND 2016, OTHER THAN SHARK RESEARCH FISHERY PERMITS

["HMS" refers to multiple species being collected under a given permit type]

Permit type	2015					2016		
	Permits issued	Authorized fish (num)	Authorized larvae (num)	Fish kept/discarded dead (num)	Larvae kept (num)	Permits issued	Authorized fish (num)	Authorized larvae (num)
EFP								
HMS	4	207	0	5	0	4	247	0
Shark	11	1,192	0	79	0	12	721	0

TABLE 1—SUMMARY OF HMS EXEMPTED FISHING PERMITS ISSUED IN 2015 AND 2016, OTHER THAN SHARK RESEARCH FISHERY PERMITS—Continued

[“HMS” refers to multiple species being collected under a given permit type]

Permit type	2015					2016		
	Permits issued	Authorized fish (num)	Authorized larvae (num)	Fish kept/discarded dead (num)	Larvae kept (num)	Permits issued	Authorized fish (num)	Authorized larvae (num)
Tuna	3	928	0	0	0	4	530	0
Billfish								
SRP								
HMS	1	480	0	57	0	1	42	0
Shark	4	875	0	896	0	5	1,165	0
Tuna	1	60	0	0	0	1	60	0
Display								
HMS	1	67	0	9	0			
Shark	3	114	0	17	0	3	109	0
Total	28	3,923	0	1,063	0	30	2,874	0
LOA*								
Shark	8	2,205	0	1,776	0	9	2,906	0

* LOAs are issued for bona fide scientific research activities involving non-ATCA managed species (e.g., most species of sharks). Collections made under an LOA are not authorized; rather this estimated harvest for research is acknowledged by NMFS. Permittees are encouraged to report all fishing activities in a timely manner.

Final decisions on the issuance of any EFPs, SRPs, display permits, shark research fishery permits, and chartering permits will depend on the submission of all required information about the proposed activities, NMFS' review of public comments received on this notice, an applicant's reporting history on past permits, if vessels or applicants were issued any prior violations of marine resource laws administered by NOAA, consistency with relevant NEPA documents, and any consultations with appropriate Regional Fishery Management Councils, states, or Federal agencies. NMFS does not anticipate any significant environmental impacts from the issuance of these EFPs as assessed in the 1999 FMP, the 2006 Consolidated HMS FMP and its amendments, the Environmental Assessment for the 2012 Swordfish Specifications, and the Environmental Assessment for the 2015 Final Bluefin Tuna Quota and Atlantic Tuna Fisheries Management Measures.

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: November 9, 2016.

Jennifer M. Wallace,

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

[FR Doc. 2016-27466 Filed 11-15-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF041

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will meet December 6 through December 14, 2016 in Anchorage, AK.

DATES: The Council and its advisory committees will hold meetings Tuesday, December 6 through Wednesday, December 14, 2016. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Anchorage Hilton Hotel, 500 W. 3rd Ave., Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501-2252; telephone: (907) 271-2809.

FOR FURTHER INFORMATION CONTACT:

David Witherell, Council staff; telephone: (907) 271-2809.

SUPPLEMENTARY INFORMATION: The Council will begin its plenary session at 8 a.m. in the Aleutian Room on Thursday, December 8, continuing through Wednesday, December 14,

2016. The Scientific and Statistical Committee (SSC) will begin at 8 a.m. in the King Salmon/Iliamna Room on Tuesday, December 6 and continue through Friday December 9, 2016. The Council's Advisory Panel (AP) will begin at 8 a.m. in the Dillingham/Katmai Room on Wednesday December 7, and continue through Sunday, December 11, 2016. The Charter Halibut Management Committee will meet on Tuesday, December 6, 2016 (room to be determined) from 9 a.m. to 12 p.m. The Recreational Quota Entity Committee will meet on Tuesday, December 6, 2016, from 1 p.m. to 5 p.m. (room to be determined). The Ecosystem Committee will meet on Wednesday, December 7, 2016, from 9 a.m. to 12 p.m. (room to be determined). The Enforcement Committee will meet on Wednesday, December 7, 2016, from 1 p.m. to 4 p.m. (room to be determined).

Agenda

Tuesday, December 6, 2016 through Wednesday, December 14, 2016

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

- (1) Executive Director's Report
- (2) NMFS Management Report (including update on 2017 Observer ADP)
- (3) ADF&G Report
- (4) NOAA Enforcement Report
- (5) USCG Report
- (6) USFWS Report
- (7) Protected Species Report
- (8) IPHC Report (T)

- (9) 2017 Charter Halibut Management Measures
- (10) Charter Halibut Permit Leasing
- (11) Charter Halibut RQE Program
- (12) Am 80 Halibut PSC Measures
- (13) EFP-1 (interim report on halibut deck sorting)
- (14) BSAI Groundfish Harvest Specifications
- (15) GOA Groundfish Harvest Specifications
- (16) EFP-2 (review application for RKC Savings Area)
- (17) Electronic Monitoring Integration
- (18) GOA Trawl Bycatch Management
- (19) EFH Effects of Fishing Criteria
- (20) EFH Non-Fishing Effects Report
- (21) EFP-3 (final report on salmon excluder EFP)
- (22) Staff Tasking

The Advisory Panel will address most of the same agenda issues as the Council except B reports.

The SSC agenda will include the following issues:

- (1) BSAI Crab Harvest Specifications
- (2) GOA Harvest Specifications
- (3) EFH Effects of Fishing Criteria
- (4) EFP-2 (review application for RKC Savings Area)

In addition to providing ongoing scientific advice for fishery management decisions, the SSC functions as the Councils primary peer review panel for scientific information as described by the Magnuson-Stevens Act section 302(g)(1)(e), and the National Standard 2 guidelines (78 FR 43066). The peer review process is also deemed to satisfy the requirements of the Information Quality Act, including the OMB Peer Review Bulletin guidelines.

The Agenda is subject to change, and the latest version will be posted at <http://www.npfmc.org/>.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271-2809 at least 7 working days prior to the meeting date.

Dated: November 10, 2016.

Tracey L. Thompson,

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

[FR Doc. 2016-27495 Filed 11-15-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF DEFENSE

Office of the Secretary

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

AGENCY: Department of Defense.

ACTION: Notice of meeting.

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

DATES: A meeting of the Judicial Proceedings Panel will be held on Friday, December 9, 2016. The public session will begin at 9:00 a.m. and end at 4:30 p.m.

ADDRESSES: The location of the public meeting is yet to be determined, but will be posted on the JPP Web site at <http://jpp.whs.mil>. Please check the Web site for updates regarding the meeting location.

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

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

Purpose of the Meeting: In section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239), as amended, Congress tasked the Judicial Proceedings Panel to conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice (UCMJ) involving adult sexual assault and related offenses since the amendments made to the UCMJ by section 541 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81; 125 Stat. 1404), for the purpose of developing recommendations for improvements to such proceedings. At this meeting, the Panel will receive presentations from Subcommittee members and conduct deliberations on the recommendations

made by the subcommittee regarding defense resources and sexual assault investigations. The Panel will also receive a presentation on the proposed Military Justice Act of 2016 and conduct deliberations regarding victims' appellate rights.

Agenda:

- 8:30 a.m.–9:00 a.m. Administrative Work (41 CFR 102-3.160, not subject to notice & open meeting requirements)
- 9:00 a.m.–9:15 a.m. Welcome and Introduction
 - Designated Federal Official Opens Meeting
 - Remarks of the Chair
- 9:15 a.m.–10:45 a.m. Site Visit
 - Presentation on Defense Resources and Deliberations on Subcommittee Recommendations
 - Ms. Laurie Kepros, JPP Subcommittee Member
- 10:45 a.m.–12:15 p.m. Site Visit
 - Presentation on Sexual Assault Investigations and Deliberations on Subcommittee Recommendations
 - Ms. Lisa Friel, JPP Subcommittee Member
- 12:15 p.m.–1:15 p.m. Lunch
- 1:15 p.m.–3:15 p.m. Presentation on the Proposed Military Justice Act of 2016
 - The Honorable Andrew Effron, Director, Military Justice Review Group, Department of Defense
 - Mr. Dwight Sullivan, Senior Associate Deputy General Counsel for Military Justice and Personnel Policy, Department of Defense
- 3:15 p.m.–4:15 p.m. Deliberations on Victims' Appellate Rights
- 4:15 p.m.–4:30 p.m. Public Comment
- 4:30 p.m. Meeting Adjourned

Availability of Materials for the Meeting: A copy of the December 9, 2016 public meeting agenda and any updates or changes to the agenda, including the location and individual speakers not identified at the time of this notice, as well as other materials provided to Panel members for use at the public meeting, may be obtained at the meeting or from the Panel's Web site at <http://jpp.whs.mil>.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102-3.140 through 102-3.165, and the availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis. In the event the Office of Personnel Management closes the government due to inclement weather or any other reason, please consult the Web site for any changes to public meeting dates or time.

Special Accommodations: Individuals requiring special accommodations to

access the public meeting should contact the Judicial Proceedings Panel at whs.pentagon.em.mbx.judicial-panel@mail.mil at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Procedures for Providing Public Comments: Pursuant to 41 CFR 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Panel about its mission and topics pertaining to this public session. Written comments must be received by the JPP at least five (5) business days prior to the meeting date so that they may be made available to the Judicial Proceedings Panel for their consideration prior to the meeting. Written comments should be submitted via email to the Judicial Proceedings Panel at whs.pentagon.em.mbx.judicial-panel@mail.mil in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the Judicial Proceedings Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection. If members of the public are interested in making an oral statement pertaining to the agenda for the public meeting, a written statement must be submitted as above along with a request to provide an oral statement. After reviewing the written comments and the oral statement, the Chairperson and the Designated Federal Official will determine who will be permitted to make an oral presentation of their issue during the public comment portion of this meeting. This determination is at the sole discretion of the Chairperson and Designated Federal Official, will depend on the time available and relevance to the Panel's activities for that meeting, and will be on a first-come basis. When approved in advance, oral presentations by members of the public will be permitted from 4:15 p.m. to 4:30 p.m. on December 9, 2016 in front of the Panel members.

Committee's Designated Federal Official: The Panel's Designated Federal Official is Ms. Maria Fried, Department of Defense, Office of the General Counsel, 1600 Defense Pentagon, Room 3B747, Washington, DC 20301–1600.

Dated: November 10, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–27508 Filed 11–15–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2016–ICCD–0101]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Common Core of Data (CCD) School-Level Finance Survey (SLFS) 2016–2018

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before December 16, 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–0101. 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–343, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact NCES Information Collections at NCES.Information.Collections@ed.gov.

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: Common Core of Data (CCD) School-Level Finance Survey (SLFS) 2016–2018.

OMB Control Number: 1850–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 306.

Total Estimated Number of Annual Burden Hours: 4,938.

Abstract: In response to a growing demand, the National Center for Education Statistics (NCES), within the U.S. Department of Education, has developed and conducted a pilot, in 2015 and 2016 (OMB #1850–0803), of a new collection of finance data at the school level. The School-Level Finance Survey (SLFS) centrally collects school-level finance data from state education agencies (SEAs), and is an extension of two existing collections conducted by NCES, in collaboration with the U.S. Census Bureau, the School District Finance Survey (F–33) and the state-level National Public Education Financial Survey (NPEFS). The Every Student Succeeds Act (ESSA) signed into law on December 10, 2015, requires SEAs and local agencies to produce report cards for the 2017–18 school year that include per-pupil actual personnel and nonpersonnel expenditures of Federal, State, and local funds, disaggregated by source of funds, for each local educational agency (LEA) and each school in the State for the preceding fiscal year. SLFS collects 30 expenditure items, 12 of which are “personnel” and 18 “nonpersonnel” expenditures. The SLFS data items and definitions are consistent with those in the NPEFS and F–33 surveys. The first year of the pilot SLFS data collection (for fiscal year FY 2014) commenced on May 7, 2015, with 12 SEAs participating, and the second year of data collection (for FY 2015)

commenced on April 4, 2016, with 19 SEAs participating. This request is to annually collect national SLFS data in 2017 through 2019, covering FY 2016 through 2018, and corresponding to school years 2015/16 through 2017/18.

Dated: November 10, 2016.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016-27491 Filed 11-15-16; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Orders Granting Authority To Import and Export Natural Gas, To Import and Export Liquefied Natural Gas, and Vacating Prior Authority During September 2016

	FE Docket Nos.
Bluewater Gas Storage, LLC	16-114-NG
Energia Azteca X, S.A. DE C.V.	15-115-NG
Trafigura Trading LLC	16-107-NG

	FE Docket Nos.
Texas Eastern Transmission, LP ...	16-119-NG
Applied LNG Technologies, LLC	16-112-NG/ 16-05-NG 16-121-NG
Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.	
Alberta Northeast Gas, Limited	16-122-NG
Central Hudson Gas & Electric Corporation.	16-124-NG
Northern Utilities, Inc	16-130-NG
The Southern Connecticut Gas Company Corporation.	16-128-NG
Connecticut Natural Gas Company	16-125-NG
Yankee Gas Services Company	16-129-NG
Northeast Gas Marketing LLC	16-127-NG
Liberty Utilities (EnergyNorth Gas) Corp. d/b/a Liberty Utilities.	16-126-NG
Termoelectrica De Mexicali S. DE R.L. DE C.V.	16-120-NG
Bay State Gas Company d/b/a Columbia Gas of Massachusetts.	16-123-NG
Aliza LLC	16-111-NG
Energy Plus Natural Gas LLC	16-117-NG
Vista Energy Marketing, L.P	16-116-NG

notice that during September 2016, it issued orders granting authority to import and export natural gas, to import and export liquefied natural gas (LNG), and vacating prior authority. These orders are summarized in the attached appendix and may be found on the FE Web site at <http://energy.gov/fe/listing-doe-fe-authorizations-orders-issued-2016>.

They are also available for inspection and copying in the U.S. Department of Energy (FE-34), Division of Natural Gas Regulation, Office of Regulation and International Engagement, Office of Fossil Energy, Docket Room 3E-033, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on November 10, 2016.

John A. Anderson,

Director, Office of Regulation and International Engagement, Office of Oil and Natural Gas.

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives

APPENDIX—DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

Order No.	Date	FE Docket Nos.	Entity	Description
3885	09/08/16	16-114-NG	Bluewater Gas Storage, LLC ..	Order 3885 granting blanket authority to import/export natural gas from/to Canada.
3886	09/14/16	16-115-NG	Energia Azteca X, S.A. de C.V	Order 3886 granting blanket authority to export natural gas to Mexico.
3887	09/14/16	16-107-NG	Trafigura Trading LLC	Order 3887 granting blanket authority to import/export natural gas from/to Canada/Mexico.
3888	09/14/16	16-119-NG	Texas Eastern Transmission, LP.	Order 3888 granting blanket authority to import/export natural gas from/to Mexico.
3889/3771-A ...	09/14/16	16-112-NG/ 16-05-NG	Applied LNG Technologies, LLC.	Order 3889 granting blanket authority to import/export LNG from/to Canada/Mexico by truck, and vacating prior authority in Order 3771.
3890	09/14/16	16-121-NG	Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.	Order 3890 granting blanket authority to import/export natural gas from/to Canada.
3891	09/14/16	16-122-NG	Alberta Northeast Gas, Limited.	Order 3891 granting blanket authority to import/export natural gas from/to Canada.
3892	09/14/16	16-124-NG	Central Hudson Gas & Electric Corporation.	Order 3892 granting blanket authority to import/export natural gas from/to Canada.
3893	09/14/16	16-130-NG	Northern Utilities, Inc	Order 3893 granting blanket authority to import/export natural gas from/to Canada.
3894	09/14/16	16-128-NG	The Southern Connecticut Gas Company.	Order 3894 granting blanket authority to import/export natural gas from/to Canada.
3895	09/14/16	16-125-NG	Connecticut Natural Gas Corporation.	Order 3895 granting blanket authority to import/export natural gas from/to Canada.
3896	09/14/16	16-129-NG	Yankee Gas Services Company.	Order 3896 granting blanket authority to import/export natural gas from/to Canada.
3897	09/14/16	16-127-NG	Northeast Gas Marketing LLC	Order 3897 granting blanket authority to import/export natural gas from/to Canada.
3898	09/14/16	16-126-NG	Liberty Utilities (EnergyNorth Gas) Corp. d/b/a Liberty Utilities.	Order 3898 granting blanket authority to import/export natural gas from/to Canada.
3899	09/14/16	16-120-NG	Termoelectrica de Mexicali, S. de R.L. de C.V.	Order 3899 granting blanket authority to import/export natural gas from/to Mexico.
3900	09/14/16	16-123-NG	Bay State Gas Company d/b/a Columbia Gas of Massachusetts.	Order 3900 granting blanket authority import/export natural gas from/to Canada.
3901	09/14/16	16-111-NG	Aliza LLC	Order 3901 granting blanket authority to import/export natural gas from/to Canada/Mexico.
3902	09/14/16	16-117-NG	Energy Plus Natural Gas LLC	Order 3902 granting blanket authority to import/export natural gas from/to Canada.

APPENDIX—DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS—Continued

3903	09/20/16	16-116-NG	Vista Energy Marketing, L.P ...	Order 3903 granting blanket authority to import natural gas from Canada.
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[FR Doc. 2016-27512 Filed 11-15-16; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement

AGENCY: Office of Nonproliferation and Arms Control, Department of Energy.

ACTION: Proposed subsequent arrangement.

SUMMARY: This document is being issued under the authority of the Atomic Energy Act of 1954, as amended. The Department is providing notice of a proposed subsequent arrangement under Article 6 paragraph 2 of the Agreement for Cooperation Between the Government of the United States of America and the Government of the Argentine Republic Concerning Peaceful Uses of Nuclear Energy.

DATES: This subsequent arrangement will take effect no sooner than December 1, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Goorevich, Office of Nonproliferation and Arms Control, National Nuclear Security Administration, Department of Energy. Telephone: 202-586-0589 or email: Richard.Goorevich@nnsa.doe.gov.

SUPPLEMENTARY INFORMATION: This subsequent arrangement concerns the alteration in form or content of 17,729 g of U.S.-origin low enriched uranium (LEU), 3,502g of which is in the isotope of U-235 (19.75 percent enrichment), in cartridges containing filters, located at Ezeiza Radioactive Management Area (AGE), and 19,849g of U.S.-origin LEU, 3,925g of which is in the isotope of U-235 (19.77 percent enrichment), contained in filters, located at the Fission Plant. Comision Nacional de Energia Atomica (CNEA) plans to recover and purify the slightly irradiated U.S.-origin LEU inventories held in filters of the Mo-99 production plant into a product to be used in the manufacturing of fuel elements and irradiation targets. The remaining radioisotope inventory will be set up for waste disposal. The recovery and purification will take place in the Radiochemical Laboratory Facility and the waste will be disposed in the AGE area. Both facilities are located in the Ezeiza Atomic Center. The material was obtained originally by CNEA from Y-12 pursuant to export licenses

XSNM03348, XSNM3445, XSM3590, and XSNM3709. This will be an ongoing activity for the fission radioisotope production program at CNEA.

In accordance with section 131a. of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement concerning the alteration in form or content of nuclear material of United States origin will not be inimical to the common defense and security of the United States of America.

Dated: November 1, 2016.

For the Department of Energy.

Anne M. Harrington,

Deputy Administrator, Defense Nuclear Nonproliferation.

[FR Doc. 2016-27511 Filed 11-15-16; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement

AGENCY: Office of Nonproliferation and Arms Control, Department of Energy.

ACTION: Proposed subsequent arrangement.

SUMMARY: This document is being issued under the authority of the Atomic Energy Act of 1954, as amended. The Department is providing notice of a proposed subsequent arrangement under the Agreement for Cooperation Between the United States of America and the Republic of Kazakhstan Concerning Peaceful Uses of Nuclear Energy and the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy Between the United States of America and the European Atomic Energy Community.

DATES: This subsequent arrangement will take effect no sooner than December 1, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Goorevich, Office of Nonproliferation and Arms Control, National Nuclear Security Administration, Department of Energy. Telephone: 202-586-30589 or email: Richard.Goorevich@nnsa.doe.gov.

SUPPLEMENTARY INFORMATION: This subsequent arrangement concerns the retransfer of 2,794,512g of U.S.-origin enriched uranium oxide (UO₂), containing 114,692g of the isotope U-235 (less than five percent enrichment), from Ulba Metallurgical

Plant in Ust-Kamengorsk, Kazakhstan, to Westinghouse Springfields Fuels Limited in Salwick, United Kingdom. The material has already been retransferred from Ulba to Westinghouse Springfields for storage.

In accordance with section 131a. of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement concerning the retransfer of nuclear material of United States origin will not be inimical to the common defense and security of the United States of America.

Dated: October 27, 2016.

For the Department of Energy.

Anne M. Harrington,

Deputy Administrator, Defense Nuclear Nonproliferation.

[FR Doc. 2016-27509 Filed 11-15-16; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, December 7, 2016—9:00 a.m.–5:00 p.m. Thursday, December 8, 2016—8:30 a.m.–3:00 p.m.

ADDRESSES: Pasco Red Lion, 2525 North 20th Avenue, Pasco, WA 99301.

FOR FURTHER INFORMATION CONTACT: Kristen Holmes, Federal Coordinator, Department of Energy Richland Operations Office, 825 Jadwin Avenue, P.O. Box 550, A7-75, Richland, WA, 99352; Phone: (509) 376-5803; or Email: kristen.l.holmes@rl.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE-EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Potential Draft Advice
 - Hanford Advisory Board's (HAB) Budget

- Suggested format for upcoming State of the Site meetings
- Discussion Topics
 - Tri-Party Agreement Agencies' Updates
 - HAB Committee Reports
 - HAB letter reaffirming cleanup priorities for budget consideration
 - River Corridor Contract Successes and Challenges
 - 2016 Grand Challenge
 - Board Business

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kristen Holmes at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kristen Holmes at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Kristen Holmes's office at the address or phone number listed above. Minutes will also be available at the following Web site: <http://www.hanford.gov/page.cfm/hab>.

Issued at Washington, DC, on November 9, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016-27526 Filed 11-15-16; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15-558-000]

PennEast Pipeline Company, LLC; Notice of Revised Schedule for Environmental Review of the PennEast Pipeline 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 PennEast Pipeline Company, LLC's (PennEast) PennEast Pipeline Project. The first notice of schedule, issued on March 29, 2016, identified December 16, 2016 as the EIS issuance date. Based on new route modifications filed by PennEast. The Commission staff intend to issue a notice to newly affected landowners. 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, February 17, 2017
90-day Federal Authorization Decision Deadline, May 18, 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: November 8, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016-27450 Filed 11-15-16; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP16-1299-000]

Kinetica Energy Express, LLC; Notice of Technical Conference

The Commission's October 31, 2016 order in the above-captioned proceeding¹ directed that a technical conference be held to address the effect of the tariff changes proposed by Kinetica Energy Express, LLC in its September 30, 2016 filing in this docket.

Take notice that a technical conference will be held on Thursday December 1, 2016 at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

FERC conferences are accessible under section 508 of the Rehabilitation

Act of 1973. For accessibility accommodations please send an email to accessibility@ferc.gov or call toll free (866) 208-3372 (voice) or (202) 502-8659 (TTY), or send a fax to (202) 208-2106 with the required accommodations.

All interested persons and staff are permitted to attend. For further information please contact Omar Bustami at (202) 502-6214 or email Omar Bustami at Omar.Bustami@ferc.gov.

Dated: November 8, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016-27449 Filed 11-15-16; 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: RP17-159-000.
Applicants: Noble Energy, Inc., CNX Gas Company LLC.

Description: Joint Petition for Temporary Waiver of Capacity Release Regulations and Policies and Related Tariff Provisions and Request, *et al.* of Noble Energy, Inc., *et al.* under RP17-159.

Filed Date: 11/4/16.

Accession Number: 20161104-5207.

Comments Due: 5 p.m. ET 11/10/16.

Docket Numbers: RP17-160-000.
Applicants: Natural Gas Pipeline Company of America.

Description: § 4(d) Rate Filing: Town of Corning, IL Negotiated Rate to be effective 12/1/2016.

Filed Date: 11/7/16.

Accession Number: 20161107-5086.

Comments Due: 5 p.m. ET 11/21/16.

Docket Numbers: RP17-161-000.
Applicants: Natural Gas Pipeline Company of America.

Description: § 4(d) Rate Filing: Clean Up to be effective 12/7/2016.

Filed Date: 11/7/16.

Accession Number: 20161107-5107.

Comments Due: 5 p.m. ET 11/21/16.

Docket Numbers: RP17-162-000.
Applicants: USG Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Housekeeping Tariff Revisions to be effective 12/8/2016.

Filed Date: 11/7/16.

¹ *Kinetica Energy Express, LLC*, 157 FERC ¶ 61,072 (2016).

Accession Number: 20161107–5119.
Comments Due: 5 p.m. ET 11/21/16.

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: November 8, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016–27483 Filed 11–15–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–1912–002.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: Out-of-Merit Energy Clarification Compliance Filing to be effective 8/10/2016.

Filed Date: 11/9/16.

Accession Number: 20161109–5117.

Comments Due: 5 p.m. ET 11/30/16.

Docket Numbers: ER17–328–000.

Applicants: Sierra Pacific Power Company.

Description: § 205(d) Rate Filing: Service Agreement No. 11–00052 SPPC-Patua to be effective 11/9/2016.

Filed Date: 11/9/16.

Accession Number: 20161109–5067.

Comments Due: 5 p.m. ET 11/30/16.

Docket Numbers: ER17–329–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2016–11–09_SA 2871 NSP-North Star Solar 1st Rev. GIA (J385) to be effective 11/10/2016.

Filed Date: 11/9/16.

Accession Number: 20161109–5077.
Comments Due: 5 p.m. ET 11/30/16.

Docket Numbers: ER17–330–000.

Applicants: KCP&L Greater Missouri Operations Company.

Description: Notice of Cancellation of the Electric Interchange Agreement No. 54 of KCP&L Greater Missouri Operations Company.

Filed Date: 11/9/16.

Accession Number: 20161109–5078.

Comments Due: 5 p.m. ET 11/30/16.

Docket Numbers: ER17–331–000.

Applicants: KCP&L Greater Missouri Operations Company.

Description: Notice of Cancellation of the Electric Interchange Agreement No. 55 of KCP&L Greater Missouri Operations Company.

Filed Date: 11/9/16.

Accession Number: 20161109–5081.

Comments Due: 5 p.m. ET 11/30/16.

Docket Numbers: ER17–332–000.

Applicants: KCP&L Greater Missouri Operations Company.

Description: Notice of Cancellation of the Electric Interchange Agreement No. 56 of KCP&L Greater Missouri Operations Company.

Filed Date: 11/9/16.

Accession Number: 20161109–5084.

Comments Due: 5 p.m. ET 11/30/16.

Docket Numbers: ER17–333–000.

Applicants: KCP&L Greater Missouri Operations Company.

Description: Notice of Cancellation of the Electric Interchange Agreement No. 58 of KCP&L Greater Missouri Operations Company.

Filed Date: 11/9/16.

Accession Number: 20161109–5086.

Comments Due: 5 p.m. ET 11/30/16.

Docket Numbers: ER17–334–000.

Applicants: KCP&L Greater Missouri Operations Company.

Description: Notice of Cancellation of the Electric Interchange Agreement No. 109 of KCP&L Greater Missouri Operations Company.

Filed Date: 11/9/16.

Accession Number: 20161109–5087.

Comments Due: 5 p.m. ET 11/30/16.

Docket Numbers: ER17–335–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Rev to OATT RE: Release of Capacity in 17/18 Third Scheduled Incremental Auction to be effective 1/9/2017.

Filed Date: 11/9/16.

Accession Number: 20161109–5107.

Comments Due: 5 p.m. ET 11/30/16.

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: November 9, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016–27485 Filed 11–15–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR17–1–000]

Tesoro Great Plains Gathering & Marketing LLC; Notice of Request for Temporary Waiver

Take notice that on November 2, 2016, pursuant to Rule 204 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.204 (2016), Tesoro Great Plains Gathering & Marketing LLC (Petitioner) filed a petition for temporary waiver of the tariff filing and reporting requirements of sections 6 and 20 of the Interstate Commerce Act and parts 341 and 357 of the Commission's regulations, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (2016)) on or before 5:00 p.m. Eastern time on the specified comment date. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the

“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 23, 2016.

Dated: November 9, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016-27486 Filed 11-15-16; 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: RP17-157-000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Compliance filing 11/03/16—Implementing Settlement Rates (2016) to be effective 9/1/2016.

Filed Date: 11/3/16.

Accession Number: 20161103-5115.

Comments Due: 5 p.m. ET 11/15/16.

Docket Numbers: RP17-158-000.

Applicants: Northern Natural Gas Company.

Description: § 4(d) Rate Filing: 20161104 Negotiated Rate to be effective 11/8/2016.

Filed Date: 11/4/16.

Accession Number: 20161104-5165.

Comments Due: 5 p.m. ET 11/16/16.

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.

Filings in Existing Proceedings

Docket Numbers: RP17-19-001.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Tariff Amendment: 11/02/16 Negotiated Rates—Vitol (RTS) 7495-02 (AMD) to be effective 11/2/2016.

Filed Date: 11/2/16.

Accession Number: 20161102-5065.

Comments Due: 5 p.m. ET 11/14/16.

Docket Numbers: RP16-1285-001.

Applicants: Dominion Carolina Gas Transmission, LLC.

Description: Compliance filing DCGT—2016 FRQ & TDA Report Compliance Filing to be effective 11/1/2016.

Filed Date: 11/4/16.

Accession Number: 20161104-5158.

Comments Due: 5 p.m. ET 11/16/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission’s Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission’s eLibrary system by clicking on the links or querying the docket number.

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: November 7, 2016

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016-27482 Filed 11-15-16; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2334-056]

Essential Power Massachusetts, LLC; Nautilus Hydro, LLC; Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On October 28, 2016, Essential Power Massachusetts, LLC (transferor) and Nautilus Hydro, LLC (transferee) filed an application for the transfer of license of the Gardners Falls Project No. 2334. The project is located on the Deerfield River in Franklin County,

Massachusetts. The project does not occupy Federal lands.

The applicants seek Commission approval to transfer the license for the Gardners Falls Project from Essential Power Massachusetts, LLC to Nautilus Hydro, LLC.

Applicants Contact: For transferor and transferee: Mr. David Rosenstein, Vice President and General Counsel, Essential Power Massachusetts, LLC, 150 College Road West, Suite 300, Princeton, NJ 08540, Phone: 609-917-3904, Email: David.Rosenstein@essentialpowerllc.com and Ms. Julia S. Wood and Ms. Sharon L. White, Van Ness Feldman, LLP, 1050 Thomas Jefferson Street NW., Seventh Floor, Washington, DC 20007, Phone: 202-298-1800 and Emails: jsw@vnf.com and slw@vnf.com.

FERC Contact: Patricia W. Gillis, (202) 502-8735, patricia.gillis@ferc.gov.

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests 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-2334-056.

Dated: November 8, 2016.

Kimberly D. Bose,
Secretary.

[FR Doc. 2016-27453 Filed 11-15-16; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 199-234]

South Carolina Public Service Authority; Notice of Application Accepted for Filing and 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. *Application Type*: Shoreline Reclassification Request and Non-Project Use of Project Lands and Waters.

b. *Project No*: 199–234.

c. *Date Filed*: October 11, 2016.

d. *Applicant*: South Carolina Public Service Authority.

e. *Name of Project*: Santee Cooper Hydroelectric Project.

f. *Location*: Santee and Cooper Rivers in Berkeley and Clarendon counties, South Carolina.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact*: Elisa Furse, Property Management, P.O. Box 2946101, Moncks Corner, South Carolina, (843) 761–8000 (ext. 5142) or email at elisafurse@santeecooper.com.

i. *FERC Contact*: Jon Cofrancesco at (202) 502–8951, or email: jon.cofrancesco@ferc.gov.

j. *Deadline for filing comments, motions to intervene, and protests*: December 8, 2016.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site 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 or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–199–234) on any comments, motions, or recommendations filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears 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. *Description of Request*: South Carolina Public Service Authority (licensee) requests Commission

approval to reclassify a 3.10 acre parcel of land located on Dean Swamp Impoundment on Lake Marion, a project reservoir within the boundary of the Santee Cooper Hydroelectric Project. The licensee proposes to reclassify this land, as identified in the project's approved land use plan, from Public Vacation Recreation to Public General Recreation (quasi-public). In conjunction with the reclassification proposal, the licensee proposes to grant a lease to Clarendon County to allow the lands to be used for a new fire station and specific public recreation facilities. The licensee states the proposed use would provide improved firefighting support for the area and improved public access to an underutilized portion of the lake.

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> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field (P–199) to access the document. 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. Agencies may obtain copies of the application directly from the applicant.

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, respectively. 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 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 commenting, 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. Any filing made by an intervenor 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 385.2010.

Dated: November 8, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–27452 Filed 11–15–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–311–000]

SR South Loving 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 SR South Loving 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 28, 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: November 8, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016-27481 Filed 11-15-16; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17-7-000]

Texas Eastern Transmission, LP; Notice of Application

Take notice that on October 31, 2016, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056, filed in Docket No. CP17-7-000, an application pursuant to section 7(b) of the Natural Gas Act and Part 157 of the Commission's regulations, requesting approval to abandon certain offshore pipeline facilities located in federal offshore waters in the Gulf of Mexico near Louisiana. Specifically, Texas Eastern proposes to (i) abandon in place approximately 17.4 miles of a 20-inch diameter offshore supply lateral, designated as Line 41-B; (ii) abandon by removal metering and regulating station ("M&R") 71474; (iii) abandon the receipt point at producer owned M&R 73548; and (iv) abandon by removal all related appurtenant facilities. Texas

Eastern states abandonment of these facilities is required in light of a ruling by the United States Bankruptcy Court for the District of Texas related to Black Elk Energy Offshore Operations, LLC's requirement to remove its platform connected to Texas Eastern's Line 41-B. Texas Eastern also states that there will be no termination or reduction in firm service to any existing customers of Texas Eastern as a result of the proposed abandonment, 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, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or TTY, (202) 502-8659.

Any questions regarding this application should be directed to Lisa A. Connolly, General Manager, Rates & Certificates, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251, phone: (713) 627-4102, or fax (713) 627-5947, or email: lconnolly@spectraenergy.com.

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.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and

Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors 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 commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors 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 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

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 29, 2016.

Dated: November 8, 2016.

Kimberly D. Bose,
Secretary.

[FR Doc. 2016-27451 Filed 11-15-16; 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: EC16-146-000.

Applicants: Great Plains Energy, Westar Energy, Inc.

Description: Response of Great Plains Energy Incorporated to each question (except Item 4) of the October 7, 2016 Deficiency Letter.

Filed Date: 11/7/16.

Accession Number: 20161107-5294.

Comments Due: 5 p.m. ET 11/28/16.

Docket Numbers: EC17-19-000.

Applicants: Chisholm View Wind Project II, LLC.

Description: Supplement to October 19, 2016 Application for Authorization Under Section 203 of the Federal Power Act, et al. of Chisholm View Wind Project II, LLC.

Filed Date: 11/4/16.

Accession Number: 20161104-5213.

Comments Due: 5 p.m. ET 11/14/16.

Docket Numbers: EC17-29-000.

Applicants: West Deptford Energy, LLC.

Description: Application for Approval Under Section 203 of the Federal Power Act and Request for Expedited Action of West Deptford Energy, LLC.

Filed Date: 11/7/16.

Accession Number: 20161107-5298.

Comments Due: 5 p.m. ET 11/28/16.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG17-25-000.

Applicants: Three Peaks Power, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Three Peaks Power, LLC.

Filed Date: 11/8/16.

Accession Number: 20161108-5075.

Comments Due: 5 p.m. ET 11/29/16.

Docket Numbers: EG17-26-000.

Applicants: Fluvanna Wind Energy, LLC.

Description: Fluvanna Wind Energy, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 11/8/16.

Accession Number: 20161108-5101.

Comments Due: 5 p.m. ET 11/29/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-1819-016; ER10-1817-015; ER10-1818-014; ER10-1820-019.

Applicants: Northern States Power Company, a Minnesota corporation, Northern States Power Company, a Wisconsin corporation, Public Service Company of Colorado, Southwestern Public Service Company.

Description: Notice of Change in Status of Northern States Power Company, a Minnesota corporation, et al.

Filed Date: 11/7/16.

Accession Number: 20161107-5295.

Comments Due: 5 p.m. ET 11/28/16.

Docket Numbers: ER17-61-001.

Applicants: New York Independent System Operator, Inc.

Description: Compliance filing: Compliance Amendment Orders 827 828 tariff revisions to be effective 10/13/2016.

Filed Date: 11/8/16.

Accession Number: 20161108-5105.

Comments Due: 5 p.m. ET 11/29/16.

Docket Numbers: ER17-315-000.

Applicants: Niagara Mohawk Power Corporation.

Description: Notice of Cancellation of Interconnection Service Agreement No. 916 of Niagara Mohawk Power Corporation.

Filed Date: 11/7/16.

Accession Number: 20161107-5288.

Comments Due: 5 p.m. ET 11/28/16.

Docket Numbers: ER17-316-000.

Applicants: New England Power Company.

Description: Notice of Cancellation of Superseded Local Service Agreement No. TSA-NEP-49 of New England Power Company.

Filed Date: 11/7/16.

Accession Number: 20161107-5300.

Comments Due: 5 p.m. ET 11/28/16.

Docket Numbers: ER17-317-000.

Applicants: West Deptford Energy, LLC.

Description: Request for Waiver and for Expedited Consideration of West Deptford Energy, LLC under ER17-317.

Filed Date: 11/7/16.

Accession Number: 20161107-5301.

Comments Due: 5 p.m. ET 11/28/16.

Docket Numbers: ER17-318-000.

Applicants: Three Peaks Power, LLC.

Description: Baseline eTariff Filing: Three Peaks MBR Filing to be effective 11/14/2016.

Filed Date: 11/8/16.

Accession Number: 20161108-5124.

Comments Due: 5 p.m. ET 11/29/16.

Docket Numbers: ER17-319-000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Amendment of LGIA for the Catalina Solar Project to be effective 1/9/2017.

Filed Date: 11/8/16.

Accession Number: 20161108-5086.

Comments Due: 5 p.m. ET 11/29/16.

Docket Numbers: ER17-320-000.

Applicants: ISO New England Inc., New England Power Pool.

Description: ISO New England Inc., et. al. submits Installed Capacity Requirement, Hydro Quebec Interconnection Capability Credits and Related Values for the 2020/2021 Capacity Commitment Period.

Filed Date: 11/8/16.

Accession Number: 20161108-5106.

Comments Due: 5 p.m. ET 11/29/16.

Docket Numbers: ER17-321-000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits Informational filing for Qualification in the Forward Capacity Market.

Filed Date: 11/8/16.

Accession Number: 20161108-5108.

Comments Due: 5 p.m. ET 11/23/16.

Docket Numbers: ER17-322-000.

Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.

Description: § 205(d) Rate Filing: 2016-11-08_SA 2970 Otter Tail Power-Northern States Power FSA (J262/J263) to be effective 10/26/2016.

Filed Date: 11/8/16.

Accession Number: 20161108-5113.

Comments Due: 5 p.m. ET 11/29/16.

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: November 8, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016-27479 Filed 11-15-16; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL17-9-000]

Central Hudson Gas & Electric Corporation; Tucson Electric Power Company; UNS Electric, Inc.; UniSource Energy Development Company; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On November 8, 2016, the Commission issued an order in Docket No. EL17-9-000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into the justness and reasonableness of Central Hudson Gas & Electric Corporation's, Tucson Electric Power Company's, UNS Electric, Inc.'s, and UniSource Energy Development Company's market-based rate authority in the Tucson Electric balancing authority area. *Central Hudson Gas & Electric Corporation et al.*, 157 FERC ¶ 61,092 (2016).

The refund effective date in Docket No. EL17-9-000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL17-9-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2016), within 30 days of the date of issuance of the order.

Dated: November 8, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016-27480 Filed 11-15-16; 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 rate filings:

Docket Numbers: ER17-323-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Member/Vendor Operating Agreement Section 3.1(b)(iii) Revisions to be effective 1/8/2017.

Filed Date: 11/8/16.

Accession Number: 20161108-5130.

Comments Due: 5 p.m. ET 11/29/16.

Docket Numbers: ER17-324-000.

Applicants: Pinewood Wind, LLC, Long Prairie Wind I, LLC, Rocky Forge Wind, LLC.

Description: Petition for Limited Waiver of Tariff Provisions and Request for Expedited Action of Pinewood Wind, LLC, et al.

Filed Date: 11/8/16.

Accession Number: 20161108-5159.

Comments Due: 5 p.m. ET 11/29/16.

Docket Numbers: ER17-325-000.

Applicants: Arizona Public Service Company.

Description: Tariff Cancellation: Cancellation of Service Agreement No. 355 to be effective 10/10/2016.

Filed Date: 11/9/16.

Accession Number: 20161109-5052.

Comments Due: 5 p.m. ET 11/30/16.

Docket Numbers: ER17-326-000.

Applicants: Southwestern Public Service Company.

Description: § 205(d) Rate Filing: 2016-11-09_SPS-RWSE-ChvCtySlr-680,681-0.1.0-NOC to be effective 11/10/2016.

Filed Date: 11/9/16.

Accession Number: 20161109-5057.

Comments Due: 5 p.m. ET 11/30/16.

Docket Numbers: ER17-327-000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Service Agreement No. 356, Ocotillo Modernization Project to be effective 10/10/2016.

Filed Date: 11/9/16.

Accession Number: 20161109-5058.

Comments Due: 5 p.m. ET 11/30/16.

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: November 9, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016-27484 Filed 11-15-16; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

November 10, 2016.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission, DOE.

DATE AND TIME: November 17, 2016, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE., Washington, DC 20426.

STATUS: OPEN.

MATTERS TO BE CONSIDERED: Agenda.

* NOTE—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502-8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502-8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at <http://ferc.capitolconnection.org/> using the eLibrary link, or may be examined in the Commission's Public Reference Room.

1032ND—MEETING REGULAR MEETING

[November 17, 2016 10:00 a.m.]

Item No.	Docket No.	Company
Administrative		
A-1	AD16-1-000	Agency Administrative Matters.
A-2	AD16-7-000	Customer Matters, Reliability, Security and Market Operations.
A-3	AD07-13-010	2016 Report on Enforcement.
A-4	AD17-3-000	Presentation on the Commission's Dam Safety Program.
Electric		
E-1	RM16-23-000	Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators.
	AD16-20-000	Electric Storage Participation in Regions with Organized Wholesale Electric Markets.
E-2	RM16-5-000	Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators.
E-3	RM16-6-000	Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response.
E-4	RM16-15-000	Regulations Implementing FAST Act Section 61003—Critical Electric Infrastructure Security and Amending Critical Energy Infrastructure Information.
	RM15-25-001	Availability of Certain North American Electric Reliability Corporation Databases to the Commission.
E-5	ER16-2528-000	Midcontinent Independent System Operator, Inc.
E-6	ER17-144-000	New York Independent System Operator, Inc.
E-7	TS16-1-000	NorthWestern Corporation.
E-8	TS15-3-000	City of Rochester, Minnesota Board of Public Utilities.
E-9	ER16-2437-000	Alcoa Power Generating Inc.
E-10	ER13-108-001	Alcoa Power Generating Inc.
E-11	EL16-105-000	Goodyear Tire & Rubber Company v. Entergy Texas, Inc.
E-12	ER16-453-000	PJM Interconnection, L.L.C. and Northeast Transmission Development, LLC.
	ER16-453-001	
E-13	ER15-2294-000	Pacific Gas and Electric Company.
	ER15-2294-002	
E-14	ER05-6-124	Midwest Independent Transmission System Operator, Inc.
	EL04-135-126	Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, LLC.
	EL02-111-145	
	EL03-212-140	Ameren Services Company.
E-15	ER15-2239-000	NextEra Energy Transmission West, LLC.
	ER15-2239-001	
Miscellaneous		
M-1	RM17-5-000	Regulations Implementing the FOIA Improvement Act of 2016 and Clarifying the FOIA Regulations.
Hydro		
H-1	RM16-19-000	Annual Charges for Use of Government Lands in Alaska.
H-2	P-2307-075	Alaska Electric Light and Power.
	P-12379-051	
	P-8221-098	Alaska Energy Authority.
	P-2170-054	Chugach Electric Association.
	P-420-088	Ketchikan Public Utilities.
	P-1922-048	
	P-11841-031	
	P-2742-037	Copper Valley Electric Association.
	P-2911-042	Southeast Alaska Power Agency.
	3015-018	
H-3	RM17-4-000	Establishing the Length of License Terms for Hydroelectric Projects.

1032ND—MEETING REGULAR MEETING—Continued

[November 17, 2016 10:00 a.m.]

Item No.	Docket No.	Company
H-4	P-2114-279	Public Utility District No. 2 of Grant County, Washington.
H-5	P-14754-001	Rivertec Partners, LLC.

Certificates

C-1	CP16-18-000	Magnum Gas Storage, LLC.
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Kimberly D. Bose,*Secretary.*

A free webcast of this event is available through <http://ferc.capitolconnection.org/>. Anyone with Internet access who desires to view this event can do so by navigating to www.ferc.gov's Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit <http://ferc.capitolconnection.org/> or contact Danelle Springer or David Reininger at 703-993-3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2016-27625 Filed 11-14-16; 11:15 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 10674-016]

Kaukauna Utilities; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

- Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.
- Project No.:* 10674-016.
- Date Filed:* September 23, 2016.
- Submitted By:* Kaukauna Utilities.
- Name of Project:* Kimberly Hydroelectric Project.

f. *Location:* On the Fox River, at the U.S. Army Corps of Engineers' Cedars Dam in the Village of Kimberly in Outagamie County, Wisconsin.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Mike Pedersen, Manager of Generation and Operations, Kaukauna Utilities, 777 Island Street, P.O. Box 1777, Kaukauna, WI 54130-7077, phone: (920) 462-0220.

i. *FERC Contact:* Colleen Corballis at (202) 502-8598; or email at colleen.corballis@ferc.gov.

j. Kaukauna Utilities filed its request to use the Traditional Licensing Process on September 23, 2016. Kaukauna Utilities provided public notice of its request on October 25, 2016. In a letter dated November 8, 2016, the Director of the Division of Hydropower Licensing approved Kaukauna Utilities's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) 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; (b) NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the Wisconsin State Historic Preservation Officer, as required by section 106, National Historical 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 Kaukauna Utilities as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act; section 305 of the Magnuson-Stevens Fishery Conservation and Management Act; and section 106 of the National Historical Preservation Act.

m. Kaukauna Utilities 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. The licensee states its unequivocal intent to submit an application for a new license for Project No. 10674. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by September 30, 2019.

p. 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: November 8, 2016.

Kimberly D. Bose,*Secretary.*

[FR Doc. 2016-27448 Filed 11-15-16; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2016-0511; FRL-9954-84]

Certain New Chemicals or Significant New Uses; Statements of Findings for October 2016**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.**SUMMARY:** Section 5(g) of the Toxic Substances Control Act (TSCA) requires

EPA to publish in the **Federal Register** a statement of its findings after its review of TSCA section 5(a) notices when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA section 5. This document presents statements of findings made by EPA on TSCA section 5(a) notices during the period from September 20, 2016 to October 24, 2016.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Greg Schweer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: 202-564-8469; email address: schweer.greg@epa.gov.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitters of the PMNs addressed in this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2016-0511, is available at <http://www.regulations.gov> or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

II. What action is the agency taking?

This document lists the statements of findings made by EPA after review of notices submitted under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the period from September 20, 2016 to October 24, 2016.

III. What is the agency's authority for taking this action?

TSCA section 5(a)(3) requires EPA to review a TSCA section 5(a) notice and make one of the following specific findings:

- The chemical substance or significant new use presents an unreasonable risk of injury to health or the environment;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects of the chemical substance or significant new use;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects and the chemical substance or significant new use may present an unreasonable risk of injury to health or the environment;
- The chemical substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance; or
- The chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment.

Unreasonable risk findings must be made without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant under the conditions of use. The term "conditions of use" is defined in TSCA section 3 to mean "the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of."

EPA is required under TSCA section 5(g) to publish in the **Federal Register** a statement of its findings after its review of a TSCA section 5(a) notice when EPA makes a finding that a new chemical substance or significant new use is not likely to present an

unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use must submit a notice to EPA at least 90 days before commencing manufacture of the new chemical substance or before engaging in the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of "not likely to present an unreasonable risk of injury to health or the environment" may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

IV. Statements of Administrator Findings Under TSCA Section 5(a)(3)(C)

In this unit, EPA provides the following information (to the extent that such information is not claimed as Confidential Business Information (CBI)) on the PMNs, MCANs and SNUNs for which, during this period, EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment:

- EPA case number assigned to the TSCA section 5(a) notice.
- Chemical identity (generic name, if the specific name is claimed as CBI).
- Web site link to EPA's decision document describing the basis of the "not likely to present an unreasonable risk" finding made by EPA under TSCA section 5(a)(3)(C).

EPA Case Number: J-16-0019;
Chemical identity: *Trichoderma reesei* modified (generic name); *Web site link:* <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-20>.

EPA Case Number: J-16-0020;
Chemical identity: *Trichoderma reesei* modified (generic name); *Web site link:* <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-21>.

EPA Case Number: J-16-0021;
Chemical identity: *Trichoderma reesei* modified (generic name); *Web site link:* <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-21>.

chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-22.

EPA Case Number: J-16-0022;
Chemical identity: *Trichoderma reesei* modified (generic name); Web site link: <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-23>.

EPA Case Number: J-16-0023;
Chemical identity: *Trichoderma reesei* modified (generic name); Web site link: <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-24>.

EPA Case Number: P-16-0459;
Chemical identity: Carbomonocyclic dicarboxylic acid, polymer with alkanedioic acid, substituted heteropolycycle, substituted carbomonocycle, alkyl alkenoate, alkanedioic acid, alkoxyated substituted dicarbomonocycle, alkoxyated substituted dicarbomonocycle, alkenoic acid, oxo alkyl initiated (generic name); Web site link: <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-19>.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: November 8, 2016.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2016-27545 Filed 11-15-16; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-9030-2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7146 or <http://www.epa.gov/nepa>.
Weekly receipt of Environmental Impact Statement
Filed 11/07/2016 Through 11/11/2016
Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <http://www.epa.gov/compliance/nepa/eisdata.html>.

EIS No. 20160268, Final, OSM, PRO, Stream Protection Rule, Review Period Ends: 12/15/2016, Contact: Robin Ferguson 202-208-2802.

Dated: November 14, 2016.

Dawn Roberts,

Management Analyst, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2016-27700 Filed 11-15-16; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, November 17, 2016 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC, (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Draft Advisory Opinion 2016-16: Gary Johnson 2012

Draft Advisory Opinion 2016-17: Libertarian Party of Michigan Executive Committee, Inc.

Draft Advisory Opinion 2016-18: Ohio Green Party

Draft Advisory Opinion 2016-19: Libertarian Party of Colorado

Draft Advisory Opinion 2016-20: Christoph Mlinarchik, JD, CFCM

Draft Advisory Opinion 2016-21: Great America PAC

Proposed Amendments to Directive 52
Proposed Final Audit Report the Utah Republican Party (A13-16)
Management and Administrative Matters

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shelley E. Garr, Deputy Secretary, at (202) 694-1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION:
Judith Ingram, Press Officer, Telephone: (202) 694-1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2016-27621 Filed 11-14-16; 11:15 am]

BILLING CODE 6715-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Disease Control and Prevention

Office of Public Health Preparedness and Response (OPHPR) Board of Scientific Counselors, Office of Public Health Preparedness and Response, (BSC, OPHPR)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act

(Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

TIMES AND DATES:

10:00 a.m.–5:30 p.m., EST, December 14, 2016

8:30 a.m.–3:30 p.m., EST, December 15, 2016

PLACE: Centers for Disease Control and Prevention (CDC), Global Communications Center, Building 19, Classrooms 256/257, 1600 Clifton Road NE., Atlanta, Georgia 30329

STATUS: Open to the public limited only by the space available. The meeting room will accommodate up to 40 people. Public participants should pre-register for the meeting as described below.

Members of the public that wish to attend this meeting in person should pre-register by submitting the following information by email, facsimile, or phone (see Contact Person for More Information) no later than 12:00 noon (EST) on Tuesday, December 6, 2016:

- Full Name
- Organizational Affiliation
- Complete Mailing Address
- Citizenship
- Phone Number or Email Address

Web conferencing information:

Web ID: <https://ophpr-bsc.adobeconnect.com/december2016/>
Dial in number: 888-942-9042

Participant passcode: 3979208

PURPOSE: This Board is charged with providing advice and guidance to the Secretary, Department of Health and Human Services (HHS), the Assistant Secretary for Health (ASH), the Director, Centers for Disease Control and Prevention (CDC), and the Director, Office of Public Health Preparedness and Response (OPHPR), concerning strategies and goals for the programs and research within OPHPR, monitoring the overall strategic direction and focus of the OPHPR Divisions and Offices, and administration and oversight of peer review of OPHPR scientific programs. For additional information about the Board, please visit: <http://www.cdc.gov/phpr/science/counselors.htm>.

MATTERS FOR DISCUSSION: Day one of the meeting will cover briefings and BSC deliberation on the following topics: Interval updates from OPHPR Divisions and Offices; updates on OPHPR'S policy agenda; PHPR research agenda; CDC surveillance strategies; and BSC liaison representative updates to the Board highlighting organizational activities relevant to the OPHPR mission.

Day two of the meeting will cover briefings and BSC deliberation on the

following topics: Biosafety and biosecurity regulations; radiation threat preparedness and response; medical countermeasures; and risk communications.

CONTACT PERSON FOR MORE INFORMATION:

Dometa Ouisley, Office of Science and Public Health Practice, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop D-44, Atlanta, Georgia 30329-4027, Telephone: (404) 639-7450; Facsimile: (404)639-7977; Email: OPHPR.BSC.Questions@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention, and Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Service Office, Centers for Disease Control and Prevention.

[FR Doc. 2016-27493 Filed 11-15-16; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis Meeting (ACET)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Times and Dates: 8:30 a.m.–5:00 p.m., EST, December 12, 2016; 8:30 a.m.–12:00 p.m., EST, December 13, 2016.

Place: Corporate Square, Building 8, 1st Floor Conference Room, Atlanta, Georgia 30329, telephone (404) 639-8317.

This meeting is also accessible by Webinar:

December 12, 2016

For Participants:

URL: <https://www.mymeetings.com/nc/join/>

Conference number: PW1642870

Audience passcode: 4727233

Participants can join the event directly at: <https://www.mymeetings.com/nc/join.php?i=PW1642870&p=4727233&t=c>

USA Toll-free +1 (877) 951-7311,

Participant code: 4727233

December 13, 2016

For Participants:

URL: <https://www.mymeetings.com/nc/join/>

Conference number: PW1642897

Audience passcode: 4727233

Participants can join the event directly at: <https://www.mymeetings.com/nc/join.php?i=PW1642897&p=4727233&t=c>

USA Toll-free +1 (877) 951-7311,

Participant code: 4727233

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people. Persons who desire to make an oral statement, may request it at the time of the public comment period on December 13, 2016 at 11:40 a.m., (EDT). Public participation and ability to comment will be limited to space and time as it permits.

Purpose: This Council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters for Discussion: Agenda items include the following topics: (1) Recently Published Data on TB in Jails and Prisons in the United States; (2) Expanded Latent TB Infection (LTBI) Testing and Treatment Plans (Massachusetts Demonstration Project); (3) Update on the National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention Economic Modeling Agreement (NEEMA) TB Projects; (4) Updates from Workgroups; and (5) other tuberculosis-related issues. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Margie Scott-Cseh, Centers for Disease Control and Prevention, 1600 Clifton Road NE., M/S E-07, Atlanta, Georgia 30333, telephone (404) 639-8317.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016-27492 Filed 11-15-16; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers CMS-10287]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by *December 16, 2016*.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions:

OMB, Office of Information and Regulatory Affairs
Attention: CMS Desk Officer

Fax Number: (202) 395-5806 OR
Email: OIRA_submission@omb.eop.gov

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>.

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov.

3. Call the Reports Clearance Office at (410) 786-1326.

FOR FURTHER INFORMATION CONTACT:

Reports Clearance Office at (410) 786-1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Quality of Care Complaint Form; *Use:* In accordance with Section 1154(a)(14) of the Social Security Act, Quality Improvement Organizations (QIOs) are required to conduct appropriate reviews of all written complaints submitted by beneficiaries concerning the quality of care received. The Medicare Quality of Care Complaint Form will be used by Medicare beneficiaries to submit quality of care complaints. This form will establish a standard form for all beneficiaries to utilize and ensure pertinent information is obtained by QIOs to effectively process these complaints. *Form Number:* CMS-10287 (OMB control number: 0938-1102); *Frequency:* Occasionally; *Affected*

Public: Individuals and Households; *Number of Respondents:* 3,500; *Total Annual Responses:* 3,500; *Total Annual Hours:* 583. (For policy questions regarding this collection contact Winsome Higgins at 410-786-1835.)

Dated: November 9, 2016

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016-27455 Filed 11-15-16; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2016-N-3744]

Site Visit Training Program for Office of Pharmaceutical Quality Staff; Information Available to Industry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Center for Drug Evaluation and Research (CDER) in the Food and Drug Administration (FDA) is announcing the 2017 CDER Office of Pharmaceutical Quality (OPQ) Staff Experiential Learning Site Visit Program. The purpose of this document is to invite pharmaceutical companies interested in participating in this program to submit a site visit proposal to CDER's OPQ.

DATES: Submit either an electronic or written proposal to participate in this program by January 17, 2017. See section IV of this document for information on what to include in such proposals.

FOR FURTHER INFORMATION CONTACT:

Janet Wilson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4642, Silver Spring, MD 20993-0002, 240-402-3969, email: CDEROPQSiteVisits@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A critical part of the commitment by CDER to make safe and effective high-quality drugs available to the American public is gaining an understanding of all aspects of drug development and a drug's commercial life cycle, including the variety of drug manufacturing operations. To support this commitment, CDER has initiated various training and development programs, including the 2017 OPQ Staff Experiential Learning Site Visit

Program. This site visit program is designed to offer experiential and firsthand learning opportunities that will provide OPQ staff with a better understanding of the pharmaceutical industry and its operations, as well as of the challenges that impact a drug's development program and commercial life cycle. The goal of these visits is to provide OPQ staff exposure to the drug development and manufacturing processes in industry; therefore, a tour of pharmaceutical company facilities is an integral part of the program.

II. The Site Visit Program

In this site visit program, groups of OPQ staff—who have experience in a variety of backgrounds, including science, statistics, manufacturing, engineering and testing—will observe operations of commercial manufacturing, pilot plants, and testing over a 1- to 2-day period. To facilitate the learning process for OPQ staff, overview presentations by industry related to drug development and manufacturing may be provided, which may allow the participating sites to benefit by having an opportunity to showcase their technologies and manufacturing processes.

OPQ encourages companies engaging in the development and manufacturing of both drug substances and drug products to respond. However, please note that this site visit program is not intended to supplement or to replace a regulatory inspection, e.g., a preapproval inspection, pre-license inspection or a surveillance inspection. OPQ staff participating in this program will grow professionally by gaining a better understanding of current industry practices, processes, and procedures.

Although observation of all aspects of drug development and production would be beneficial to OPQ staff, OPQ has identified a number of areas of particular interest to its staff. The following list identifies some of these areas but is not intended to be exhaustive or to limit industry response:

- Drug products and active pharmaceutical ingredients
- Solutions, suspensions, emulsions, and semisolids
- Sustained, modified, and immediate release formulations
- Drug-device combination products, particularly inhalation, transdermal, iontophoretic, and implant formulations
- Biotechnology products
- Design, development, manufacturing, and controls
- Engineering controls for aseptic formulations
- Unique delivery technologies

- Hot melt extrusion processes
- Soft-gel encapsulation processes
- Lyophilization processes
- Blow-Fill-Seal and isolators
- Spray-drying processes
- Process analytical technology and Real Time Release Testing
- Emerging technologies
- Continuous manufacturing
- 3-dimensional printing
- Nanotechnology

III. Site Selection

Selection of potential facilities will be based on the priorities developed for OPQ staff training, the facility's current regulatory status with FDA, and on consultation with the appropriate FDA district office. All travel expenses associated with this program will be the responsibility of OPQ; therefore, selection will be based on the availability of funds and resources for the fiscal year. OPQ will not provide financial compensation to the pharmaceutical site as part of this program.

IV. Proposals for Participation

Companies interested in offering a site visit or learning more about this site visit program should respond by submitting a proposal directly to Janet Wilson (see the **DATES** and **FOR FURTHER INFORMATION CONTACT** sections of this document for more information). To aid in OPQ's site selection, your proposal should include the following information:

- A contact person
- Site visit location(s)
- Facility Establishment Identifier and DUNS numbers, as applicable
- Maximum number of OPQ staff that can be accommodated during a site visit, and
- A sample agenda outlining the proposed learning objectives and associated activities for the site visit

Proposals submitted without this minimum information will not be considered. Based on response rate and type of responses, OPQ may or may not consider alternative pathways to meeting our training goals.

Dated: November 9, 2016.

Peter Lurie,

Associate Commissioner for Public Health Strategy and Analysis.

[FR Doc. 2016-27454 Filed 11-15-16; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Advisory Committee to the Director, National Institutes of Health.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, National Institutes of Health.
Date: December 8, 2016.

Time: 9:00 a.m. to 5:15 p.m.

Agenda: NIH Director's Report, ACD Working Group Reports.

Place: National Institutes of Health, Building 31, 6th Floor Conference Room 6C, 31 Center Drive, Bethesda, MD 20892.

Date: December 9, 2016.

Time: 9:00 a.m. to 12:00 p.m.

Agenda: Other business of the Committee.

Place: National Institutes of Health, Building 31, 6th Floor Conference Room 6C, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Gretchen Wood, Staff Assistant, National Institutes of Health, Office of the Director, One Center Drive, Building 1, Room 126, Bethesda, MD 20892, 301-496-4272, Woodgs@od.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Office of the Director, National Institutes of Health, home page: <http://acd.od.nih.gov>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate

Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: November 9, 2016.

Anna Snouffer

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016-27463 Filed 11-15-16; 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: Cardiovascular Sciences.

Date: November 30–December 1, 2016.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Chee Lim, Ph.D., Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, Bethesda, MD 20892, 301-435-1850, limc4@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular and Respiratory Special Emphasis Panel.

Date: December 7, 2016.

Time: 11:00 a.m. to 1:00 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: Olga A Tjurmina, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301) 451-1375, ot3d@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Respiratory Sciences.

Date: December 7–8, 2016.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Chee Lim, Ph.D., Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, Bethesda, md 20892, 301-435-1850, limc4@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Development and Stem-cell-based Cardiac Repair and Regeneration.

Date: December 8–9, 2016.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Yuanna Cheng, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301) 435-1195, Chengy5@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Vascular and Hematology AREA Application Review.

Date: December 15, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Larry Pinkus, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435-1214, pinkusl@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and Related Research.

Date: December 15, 2016.

Time: 12:00 p.m. to 6:00 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: Jingsheng Tuo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, Bethesda, MD 20892, 301-451-8754, tuo@nei.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: November 9, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016-27460 Filed 11-15-16; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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 a meeting of the Board of Scientific Counselors, National Institute of Dental and Craniofacial Research.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Dental & Craniofacial Research, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Dental and Craniofacial Research.

Date: December 7–8, 2016.

Time: December 07, 2016, 9:00 a.m. to 4:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health Building 30, Room 117, 30 Center Drive, Bethesda, MD 20892.

Time: December 08, 2016, 8:30 a.m. to Adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health Building 30, Room 117, 30 Center Drive, Bethesda, MD 20892.

Contact Person: Alicia J. Dombroski, Ph.D., Director, Division of Extramural Activities, National Institute of Dental and Craniofacial Research National Institutes of Health, Bethesda, MD 20892.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://www.nidcr.nih.gov/about/CouncilCommittees.asp>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: November 8, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016-27462 Filed 11-15-16; 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 Meeting

Pursuant to section 10(d) the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Psychiatric Genetics and Neurogenetics.

Date: November 17, 2016.

Time: 1:15 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cheryl M Corsaro, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435-1045, corsaroc@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: November 9, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016-27461 Filed 11-15-16; 8:45 am]

BILLING CODE 4140-01-P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Adoption of Policy Statement on Historic Preservation and Community Revitalization

AGENCY: Advisory Council on Historic Preservation.

ACTION: Adoption of Policy Statement on Historic Preservation and Community Revitalization.

SUMMARY: The Advisory Council on Historic Preservation (ACHP) adopted a Policy Statement on Historic Preservation and Community Revitalization.

DATES: The final policy was adopted, and went into effect, on October 26, 2016.

FOR FURTHER INFORMATION CONTACT: Charlene Dwin Vaughn, AICP, Assistant Director, Office of Federal Agency Programs, ACHP, at 202-517-0207, or cvaughn@achp.gov.

SUPPLEMENTARY INFORMATION: The Advisory Council on Historic Preservation (ACHP) is an independent agency, created by the National Historic Preservation Act (54 U.S.C. 300101 et seq), that promotes the preservation, enhancement, and productive use of our Nation's historic resources, and advises the President and Congress on national preservation policy.

Section 106 of the National Historic Preservation Act (Section 106), 54 U.S.C. 306108), requires Federal agencies to consider the effects of projects that require federal approval, that receive federal financial assistance, or that are carried out by federal agencies, on historic properties and provide the ACHP a reasonable opportunity to comment with regard to such projects. ACHP has issued the regulations that set forth the process through which Federal agencies comply with these duties. Those regulations are codified under 36 CFR part 800.

I. Background

In March 2014, the ACHP issued the report entitled *Managing Change: Preservation and Rightsizing in America*, which can be accessed at <http://www.achp.gov//RightsizingReport.pdf>. This report focused on communities that were addressing rightsizing. The concept of rightsizing applies to communities undergoing substantial change due to economic decline population loss, increased amounts of vacancy and abandonment, decline in local services, increased homelessness and poverty, declining educational opportunities,

and systemic blight. Rightsizing has been occurring in communities around the Nation for several decades as they respond to transformative events. The report contained the findings and recommendations of extensive research, on-site visits, and ACHP participation in panels and seminars during which diverse stakeholders shared their views regarding the effect on rightsizing in the community.

As the ACHP explored options to implement the recommendations in the report, it was concluded in 2015 that the development of a policy statement would be appropriate to advance historic preservation principles. Therefore, the purpose of developing the Policy Statement on Historic Preservation and Community Revitalization is to ensure that preservation is considered as a tool that will assist federal, state, and local governments plan and implement revitalization projects and programs in a manner that will consider the reuse and rehabilitation of historic properties.

In 2014, the Chairman of the ACHP convened a Working Group to assist in developing a draft policy statement. Representatives of the Working Group included the U.S. Department of Housing and Urban Development (HUD), U.S. Department of Agriculture, U.S. Department of Health and Human Services, the National Park Service, the National Trust for Historic Preservation, the American Assembly, the Cleveland Restoration Society, Preservation Research Office, Historic Districts Council, Preservation Rightsizing Network, the Michigan State Historic Preservation Officer, and ACHP expert member Bradford White, Chair of the Working Group.

Following the development of the draft, the ACHP posted the proposed draft in the **Federal Register** on March 3, 2016, and comments from the public were accepted through April 4, 2016. Information regarding the March 3, 2016, **Federal Register** notice, was posted on the ACHP Web site. It was widely distributed by members of the Working Group to their respective constituencies through broadcast emails and electronic LISTSERVs including communities receiving Community Block Grant funds from HUD, the National Trust for Historic Preservation's Forum, the Preservation Rightsizing Network members, and the National Conference of State Historic Preservation Officers (NCSHPO). In addition, a broadcast email was sent to Tribal Historic Preservation Officers for their review. To ensure that all local communities received the draft, it was sent to organizations actively involved

in Legacy Cities and rightsizing activities.

Only thirteen (13) comments were submitted by the public on the draft policy statement. The majority of these commenters supported the draft and were eager for the ACHP to adopt the policy statement so that it could be implemented to advance local historic preservation. Four commenters, however, expressed concerns regarding a number of substantive issues and were basically critical about the ACHP's development of the draft policy. Major issues expressed by the four commenters included recommendations that the document should be revised to improve grammar and tone and references to the Section 106 process. They also took exception to the ACHP's use of flexible and programmatic solutions given their opinion that the ACHP had approved many contradictory systems over the years.

Other noteworthy comments made by the objectors to the draft policy statement included the following: (1) The sequencing of the principles needed to be changed; (2) best practices and case studies needed to be incorporated in the draft to illustrate the principles; (3) failure to encourage flexibility when applying the Secretary of Interior's Standards for Rehabilitation (Secretary Standards); (4) more communities needed to be encouraged to become Certified Local Governments (CLGs); (5) allow CLGs to determine the National Register eligibility of properties; (6) educate stakeholders about how to apply the principles in the policy statement; (7) revise the ACHP's regulations as they include a dated framework for problem-solving; (8) acknowledge the benefits of state and local tax credits to communities; (9) public-private partnerships should be creative and incentivize the revitalization of neighborhoods; (10) allow residents to identify the resources they care about; (11) the policy is overly concerned with buildings and properties instead of concepts of place and landscapes; (12) acknowledge the immense scale of challenges for vacant and distressed buildings nationwide; (13) present the principles in the format of a Section 106 document; (14) public subsidy of historic preservation projects must avoid reinvestment in unsustainable areas; (15) all mitigation should be creative; and (16) change the title to "Community Revitalization and Historic Preservation."

ACHP staff developed a Comment Matrix of the 104 substantive comments submitted by the 13 commenters. In addition to summarizing the comments and clarifying the ACHP's response, the

draft Policy Statement was extensively revised to incorporate all pertinent recommendations. The title of the Policy Statement was retained as it ensured that the document would be used as a historic preservation tool. Further, the number of principles were increased from ten (10) to 13 and the sequencing was modified to ensure that the principles addressed the comments received from the public. The Working Group was advised that the policy statement should be inclusive and applicable to all communities. As such, it does not have the urban focus that was recommended. Principle III of the draft became Principle IV in the final policy. It recognizes the importance of technology and community input in the preparation of local inventories and surveys. Principle IX was revised to acknowledge that tax credits benefit small as well as large projects, and that beyond financial benefits in the form of equity, social and other economic benefits may also be accrued.

While Section 106 applies to most projects that meet the definition of undertaking as outlined in 36 CFR 800.16(y), "when the agency determines that the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present, the official has no further obligations under section 106." 36 CFR 800.3(a)(1). Therefore, the commenter that suggested that the use of all federal dollars should require compliance with Section 106 did not consider this provision or the fact that a Section 106 program alternative may also exclude certain federal activities. Likewise, the recommendation that federal funds must be allocated to support the development of comprehensive planning and revitalization strategies is incorrect. While the ACHP agrees with this recommendation in theory, a federal agency like HUD or the Rural Development under the Department of Agriculture would have to adopt this concept into their grant programs.

The inclusion of references to Indian tribes in the policy statement was specifically requested by ACHP members. If they were excluded, the perspectives and concerns of Indian tribes would be minimized. Since Indian tribes are participants in the Section 106 consultations and provide expertise on the importance and significance of historic properties on tribal lands as well as historic properties located off-tribal lands which have religious and cultural significance to them, it is important that they be involved in the development of community revitalization strategies for

communities located throughout the Nation.

Comments submitted asserting that the National Register criteria are viewed as an impediment, and restrict effective citizen engagement were not specifically addressed in the final policy statement. These comments and the related suggestions argue that Section 106 of the NHPA is a dated framework. This is beyond the scope of the development of this policy statement. However, it should be noted that Principle V is revised to allow communities to recognize the value of places that are important to local residents. In addition, Principle VII emphasizes the need for diverse citizen engagement, which encourages that all residents should participate in the identification of historic properties.

The Working Group determined that it was important to publish a current policy statement that reaffirmed the importance of historic preservation to the revitalization of all communities that must adapt to changing physical, social, and economic conditions. Federal urban policies disseminated since 2008 have not always consistently endorsed the importance of historic preservation in assistance programs. This policy statement will continue to promote the importance of federal leadership in historic preservation. Further, the policy statement will be continually updated to illustrate for stakeholders the application of the principles, and to educate citizens about the benefits of historic preservation as part of the revitalization of their communities. In collaboration with federal agencies and preservation organizations, the policy statement will be distributed to local, area, field, and regional staff so that the principles assist staff in planning and reviewing projects and developing new programs to help reverse the loss of historic properties as cities implement public-private programs throughout the community.

The policy statement, which represents the conclusion of the research and public outreach efforts of the Working Group, ACHP staff, and deliberation of its members, was adopted by the ACHP by an unassembled meeting vote on October 26, 2016. The final text of the policy statement is provided in Section II of this notice.

II. Text of the Policy

This is the final text of the policy, as adopted by the ACHP on October 26, 2016:

Advisory Council on Historic Preservation (ACHP) Policy Statement on Historic Preservation and Community Revitalization

Introduction

The 2010 U.S. Census revealed that, as a result of the significant decline in the economy beginning in 2008, an estimated 19 million properties were abandoned throughout the nation. As a result of the economic downturn, many buildings, in particular older and often historic properties, became vacant and abandoned. This has led to blighted conditions in many communities around the nation. Economists have compared the impacts of the economic downturn in 2008 to that of the Great Depression in the 1930s. Natural disasters, economic downturns, and the mortgage foreclosure crisis all occurred at the beginning of the 21st century, collectively eroding urban, rural, and tribal communities.

While these events resulted in significant economic impacts across the country, they accelerated declines in population, tax base, industry, jobs, and housing markets caused by structural changes to the economy. Impacts were most severe in the Midwest, Northeast, Mid-Atlantic, and the South. The estimated demolition of 200,000 properties exemplifies the extreme actions taken by many communities, resulting in the loss of residences, commercial buildings, and even entire neighborhoods. Many of the properties that were lost included historic buildings that were listed in or eligible for listing on the National Register of Historic Places. The focus of media attention on these issues centered on "legacy cities," the term used to describe older, industrial communities. But research has revealed that suburban, rural, and tribal communities also have dealt with similar problems.

Communities identified as industrial centers were hit particularly hard and continue to struggle. These communities experienced shrinking population, declining property values, and high rates of residential vacancies and abandonments and required a holistic approach to bring about their revitalization.

In 1966, Congress passed the National Historic Preservation Act (NHPA) and declared that "the historical and cultural foundations of the nation should be preserved in order to give a sense of orientation to the American people." It further stated that "in the face of ever increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental

and nongovernmental historic preservation programs are inadequate to ensure future generations a genuine opportunity to appreciate and enjoy the nation's rich heritage."

The congressional findings in the NHPA remain applicable today, particularly since the economic crisis of 2008. The Advisory Council on Historic Preservation (ACHP), established by the NHPA to advise the President and Congress on matters relating to historic preservation, considers local community revitalization critical to stabilizing these economically depressed communities. In overseeing federal project reviews required by Section 106 of the NHPA, the ACHP has seen that historic preservation reviews are often not completed before federal funds are allocated. Further, the funds are often ineffectively or inappropriately used to manage redevelopment in struggling communities. Preservation options are not considered, and opportunities to reuse existing assets are missed because of the severity of the issues confronted by communities.

The ACHP sees a need to raise awareness of the potential community revitalization benefits from programs authorized by the NHPA and to provide an alternative framework for communities that have needs beyond the traditional historic preservation practices. To confront the challenge, community revitalization plans must be developed that address the disposition of vacant and abandoned properties, promote rehabilitation, create affordable housing, direct growth to target areas that have the infrastructure, and utilize new infill construction to stabilize neighborhoods or develop mixed use projects. Such plans can benefit from using the Secretary of the Interior's Standards for the Treatment of Historic Properties (1995) (Secretary's Standards), as appropriate, as the framework for revitalizing housing, infrastructure, and commercial facilities. Further, involving historic preservation professionals who meet the Secretary's Standards as employees or contractors of local, regional, and state agencies can aid in developing and implementing effective community revitalization plans that build on historic assets.

In March 2014, the ACHP issued a report entitled *Managing Change: Preservation and Rightsizing in America*, which focused on communities addressing "rightsizing." Rightsizing applies when communities have shrinking populations, rising vacancy and abandonment, and systemic blight issues. The report clarified the role of historic preservation

in rightsizing as well as noting relevant existing federal programs and policies. Reviewing extensive research, newspaper and journal articles, and organizational and institutional reports on rightsizing revealed that consideration of historic preservation issues in rightsizing decisions was often the exception. The ACHP report noted that rightsizing should include revitalization of historic fabric. Likewise, it noted that rightsizing is not uniquely an urban phenomenon. Rather, it encompasses a variety of communities, including older suburbs and rural and tribal communities. All are in need of technical assistance, education, and outreach to help residents, developers, and local officials approach revitalization using historic preservation tools that can be adapted to the 21st century.

Purpose

In accordance with Section 202 of the NHPA, the ACHP is issuing this Policy Statement to provide federal agencies; the individuals, organizations, and governments that apply for federal assistance; and their public and private partners with a flexible and creative approach to developing local community revitalization plans that involve historic properties. Likewise, the Policy Statement is intended to equip residents and community organizations with information on available tools and assist them in creating realistic strategies to integrate into revitalization plans the conservation and rejuvenation of the places and properties that define their neighborhoods.

A major goal of the Policy Statement is assisting federal agencies and their grantees and applicants, State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), Certified Local Governments (CLGs), and state and local governments in complying with the requirements of Section 106 of the NHPA. Section 106 requires federal agencies to take into account the effects of their undertakings on historic properties and afford the ACHP a reasonable opportunity to comment. With a predictable and consistent policy framework, or an alternative framework developed to address the unique circumstances faced by a community, federal agencies and applicants will be encouraged to integrate historic preservation principles in holistic community revitalization strategies. The policy acknowledges that consideration of alternatives to avoid or minimize harm to historic properties is essential when planning community revitalization

projects. Further, by engaging varied stakeholders in the early stages of project planning, community revitalization projects can achieve multiple community goals.

This Policy Statement builds on an earlier ACHP Policy Statement on Affordable Housing issued in 2006 (www.achp.gov/polstatements.html), continuing the ACHP's efforts to promote historic preservation in community revitalization and encourage the use of it as a tool to stabilize and enhance communities that have suffered from massive structural changes to their economy. It also recognizes that other communities, under less severe economic distress, could benefit from implementing the strategies described in the principles below.

An underlying premise of the Policy Statement is the essential need for and value of local inventories and surveys, particularly in older neighborhoods that may be listed in or eligible for listing in the National Register of Historic Places (National Register) as historic districts. Only when local officials and the public are aware of the historic properties in their communities can they make informed decisions about treatment and reuse of these assets. Likewise, the National Register status also determines whether proposals must be afforded consideration in federal project planning under Section 106, or whether historic properties can qualify as "certified historic structures" eligible to receive the 20 percent Federal Historic Preservation Tax Credit (FHPTC) for the rehabilitation of historic, income-producing buildings. Other tax incentives are often coupled with this credit to revitalize historic neighborhoods, such as the Federal Low-Income Housing Tax Credit and state and local historic preservation tax incentives. Recent studies have documented that these tax incentive programs contribute to economic development and job production, making them a primary tool for revitalizing neighborhoods that were once considered blighted.

The principles outlined below offer useful guidance that can assist communities in their efforts to incorporate historic preservation into planning revitalization efforts. Collaboration among federal, state, and local officials, SHPOs, THPOs, developers, residents, and other stakeholders is essential to successfully implement these principles. To foster such collaboration, this Policy Statement provides a framework that departs from traditional preservation doctrine in order to promote the effective contribution of historic assets

to achieving community revitalization goals.

Implementation Principles

These principles are interpreted below to provide context for stakeholders who may consider applying them to their communities.

I. Historic preservation principles should guide the preservation and reuse of older community assets.

II. Historic preservation should be incorporated in local planning efforts that focus on sustainability and smart growth.

III. Historic preservation should be incorporated into plans prepared by local governments that receive financial and technical assistance to build resilient communities.

IV. Historic property inventories and surveys prepared by digital mapping and other traditional methods are tools that can assist communities seeking federal, state, and local resources for planning and revitalization projects.

V. The flexibility inherent in the National Register criteria should be recognized by state and local governments when considering the significance of resources within distressed communities.

VI. Early consideration of alternatives to avoid or minimize adverse effects of projects involving historic properties is essential to ensure the proper integration of historic properties in community revitalization plans.

VII. Effective citizen engagement that reflects the diversity of the community can assist in identifying historic properties and cultural resources that should be recommended for preservation.

VIII. Indian tribes may have an interest in urban and rural community revitalization projects and the effects they may have on historic properties to which they attach religious and cultural significance.

IX. Tax credits and tax incentives can be used to promote historic preservation projects that preserve local assets.

X. Flexibility in the treatment of some historic buildings in Section 106 reviews can help achieve broader neighborhood preservation goals.

XI. Private resources can contribute to local revitalization efforts and also leverage public funds.

XII. Flexible and programmatic solutions developed as part of Section 106 reviews can expedite historic preservation reviews as well as more effectively address the chronic demolition of historic properties.

XIII. Creative mitigation that balances historic preservation values and program goals should be explored by

stakeholders and incorporated into Section 106 outcomes.

I. Historic preservation principles should guide the preservation and reuse of older community assets.

Responding to the widespread destruction of historic resources during the urban renewal programs of the 1950s and 1960s, the NHPA was established to ensure local community revitalization and economic development projects were responsive to historic preservation principles. Unfortunately, 50 years later, the provisions of the NHPA requiring consideration of historic properties in project planning are not applied consistently by federal, state, and local governments. This is particularly the case when federal funds are allocated to local communities to address

substantial amounts of vacant and abandoned buildings. Historic properties should be considered and evaluated as community assets because of their ability to endure cyclical changes and continue to provide shelter and economic development to residents of all incomes. Their treatment should be informed by an analysis of alternatives, including stabilization, rehabilitation, new infill construction, and, in certain cases, demolition. When integrated into project planning as prescribed by Section 106 of the NHPA, historic preservation tools can be beneficial to achieving local revitalization goals. Rather than being viewed as part of the problem, historic properties can be adapted and reused as a viable alternative. They should be given due consideration by federal, state, and local officials when developing comprehensive and small area plans and neighborhood vision frameworks. Although historic preservation is often ignored by stakeholders who express a desire for new construction, decades of successful historic preservation projects affirm that renewed historic assets can meet community expectations for modern uses while maintaining the character that traditionally defined the area.

II. Historic preservation should be incorporated in local planning efforts that focus on sustainability and smart growth.

The core principles in sustainability and smart growth have been embraced by urban and rural communities nationwide during the past decades. Smart growth is a cohesive group of planning principles that are focused on creating sustainable development patterns. Sustainable communities are focused on conserving and improving

existing resources, including making historic assets such as buildings, neighborhoods, and communities greener, stronger, and more livable. Both smart growth and sustainability can foster historic preservation, emphasizing the value in preserving and reusing historic properties that illustrate the character of communities rather than filling up landfills with building materials. Successful historic preservation techniques often bring together both historic properties and compatible new construction to create a dynamic and attractive environment. Preserving historic properties not only retains streetscapes and original settings but also can create a focal point for a community to embrace its history, culture, and sense of place. This can be a major contribution to achieving community revitalization goals to stabilize distressed communities and to promote long-term viability.

III. Historic preservation should be incorporated into plans prepared by local governments that receive financial and technical assistance to build resilient communities.

In the aftermath of natural disasters, climate change events, and unanticipated emergencies, disaster recovery projects are often designed to revitalize and rebuild resilient communities. Communities also adopt practices before disasters strike to make them more resilient. Resilient communities are better able to recover from disasters and disruptions in a sustainable way and maintain their vitality and viability. Achieving community resiliency goals consistent with local historic preservation priorities requires aligning federal funding with local rebuilding visions, cutting red tape for obtaining assistance, developing region-wide plans for rebuilding, and ensuring that communities are rebuilt to better withstand future threats. Maintaining, rehabilitating, and reusing existing historic buildings can contribute to stabilizing and revitalizing neighborhoods. Community recovery and revitalization plans should be specific in their use and treatment of historic properties and coordinated with plans for new construction and infrastructure. Recognizing that historic preservation strategies are compatible with resilient community goals will enable planners to create housing choices, foster a sense of place, generate jobs, maintain walkable neighborhoods, and preserve open spaces. All these factors are critical to promoting resilient communities that include integration of historic properties.

IV. Historic property inventories and surveys prepared by digital mapping and other traditional methods are tools that can assist communities seeking federal, state, and local resources for planning and revitalization projects.

Historic property inventories and surveys developed by qualified professionals documenting historic properties within a local community are frequently incomplete and dated or too often completely lacking. The absence of this basic information can result in the inadvertent loss of historic properties as well as delays in project planning and implementation. Without the historical context explaining the evolution of neighborhoods and the significance of existing building stock, decision making is uninformed. In contrast, communities that have current, up to date historic property inventories and surveys which provide historic context; identify architecture, archaeological sites, and cultural resources; and define historic districts are able to assist local officials and developers in preparing effective revitalization strategies. When local governments use this tool in advance of applying for grants and loans, they can identify areas that should be given special attention in project planning and gather input from residents on what is important to them about their neighborhoods. Also, inventory and survey information allows local officials the flexibility of de-listing National Register properties when the integrity is lost due to neglect and extensive amounts of abandonment of historic properties.

V. The flexibility inherent in the National Register criteria should be recognized by state and local governments when considering the significance of resources within distressed communities.

The National Register is broad enough to recognize and include under-represented communities and find creative approaches to recognize the history and culture of areas and resources preserved against tremendous odds. It should be recognized that as communities have aged and assets have been neglected, particularly in distressed communities, physical integrity may suffer. However, such resources may still possess cultural and social significance that may qualify them nonetheless for their associative value to the community and as embodiment of broad patterns of history. Where local communities have prepared lists of local landmarks unique to the city, those resources may very

well meet the National Register criteria for eligibility on the local level. Section 106 reviews can factor in this information when considering alternatives and mitigation. Federal and state agencies that prepare National Environmental Policy Act documents should already be including local heritage and culture under chapters on Social and Economic Conditions and Cultural Resources.

VI. Early consideration of alternatives to avoid or minimize adverse effects of projects involving historic properties is essential to ensure the proper integration of historic properties in community revitalization plans.

Effective utilization of historic properties to support community revitalization goals requires that preservation be an integral part of local planning from the outset. Strategic efforts to stabilize local neighborhoods in communities experiencing unprecedented amounts of vacancies and abandonment and substantial population loss should consider alternatives that can have a positive impact. Comprehensive neighborhood plans, small area plans, and more targeted vision frameworks should disclose the criteria and processes local officials use to determine specific treatment for buildings and sites. SHPOs can also provide technical assistance when resources are available. Likewise, communities with CLGs that work closely with SHPOs can participate in local administrative reviews and provide advice regarding how historic properties may be affected by community revitalization plans. SHPOs and CLGs can work with the local community development agencies and land banks to determine how they can facilitate building preservation, rehabilitation, and revitalization, as well as plans proposed for substantial demolitions in target areas or on a community-wide basis. Essential to effective early planning is the engagement of the local community that is affected by the proposed action.

VII. Effective citizen engagement that reflects the diversity of the community can assist in identifying historic properties and cultural resources that should be recommended for preservation.

The consultation process carried out under Section 106 is designed to elicit effective and informed citizen engagement. Public participation will help to identify places and historic properties important to the community early in the consultation process and foster creative solutions that

accommodate the community's heritage with revitalization. Special attention should be given to including diverse residents in communities that have been overlooked in prior identification efforts. Places associated with under-represented communities are not broadly listed on the National Register, so it is important that local officials make citizen engagement a priority when evaluating properties for National Register eligibility in the Section 106 process or developing surveys and inventories. SHPOs can often assist local officials in providing historic context statements for such properties and existing information on community resources. Involving local academic institutions, civic organizations, professional associations, neighborhood associations, and tribal representatives in the work of local preservation commissions and architectural review boards can help ensure that the views of all segments of the community inform the identification and evaluation of historic properties. Citizen engagement also is critical in the analysis of project alternatives to deal with adverse effects of revitalization projects on historic properties. Many of the outcomes from Section 106 reviews are shaped by recommendations from citizens who participate as consulting parties in the process. Federal and local officials provide guidance and technical assistance to facilitate citizen engagement in completing inventories and surveys, developing local project plans, and participating in the required project review processes.

VIII. Indian tribes may have an interest in urban and rural community revitalization projects and the effects they may have on historic properties to which they attach religious and cultural significance.

It is important to involve Indian tribes in Section 106 reviews, particularly in the identification and evaluation of historic properties and assessment of effects. Since THPOs and Indian tribes are required to be invited to participate in Section 106 as consulting parties, federal and local officials should become familiar with those Indian tribes that have ancestral and historic associations with their communities. It is important that planners look beyond archaeologists in assessing the significance of sites, as these resources often have traditional cultural or religious value to Native Americans. Indian tribes can also contribute to local sustainability efforts based on their ecological and environmental knowledge of geographic areas to which they have traditional ties. Involving

THPOS and Indian tribes early in Section 106 consultations allows them to advise the federal agency of protocols that should be followed in the event of unanticipated discoveries of sites. Finally, Indian tribes can provide relevant input to the agency officials in developing mitigation measures when sites cannot be avoided.

IX. Tax credits and tax incentives can be used to promote historic preservation projects that preserve local assets.

Recent research conducted on the impacts of using Federal Historic Preservation Tax Credits (FHPTC) have revealed that investments in historic rehabilitation have greater positive impact on employment, state and local taxes, and the financial strength of the state than new construction. The use of FHPTCs, Low Income Housing Tax Credits, state historic tax credits, and local historic tax credits can often be combined to provide neighborhoods with financial, social, and economic benefits. Local governments should consider how these incentives can be used to fund not only major projects but also small and mid-size neighborhood projects that involve local historic properties. SHPOs are uniquely situated to leverage FHPTC projects, having worked closely with the National Park Service and developers on previous projects. Further, local officials can collaborate with federal regional and field offices, land banks, SHPOs, and local real estate agents to identify vacant and abandoned buildings that are candidates for rehabilitation. By focusing on stabilizing anchor buildings in a neighborhood, local governments can protect these sites and make them available to developers who intend to revitalize target areas with major projects such as those for affordable housing and transit-oriented development.

X. Flexibility in the treatment of some historic buildings in Section 106 reviews can help achieve broader neighborhood preservation goals.

Sometimes historic neighborhoods confront significant abandonment and serious deterioration of building stock, such that rehabilitation and reuse becomes an overwhelming challenge. Participants in Section 106 consultations should be receptive to considering different treatment measures, including new infill construction meeting the Secretary's Standards, substitute materials, and strategic demolition, when there is concurrence that such an approach is the best approach to achieving broader community revitalization and

preservation goals. It is strongly encouraged that federal agencies and applicants utilize historic preservation professionals to help determine when and how it may be appropriate to apply flexibility in the treatment of individual buildings.

XI. Private resources can contribute to local revitalization efforts and also leverage public funds.

Private resources are instrumental in ensuring most community revitalization efforts are successful and transformative. Examples of federal grant and loan programs used in conjunction with private resources for local revitalization efforts include the Department of Transportation's TIGER Program and the Environmental Protection Agency's Brownfield Grants. These programs require local communities to provide matching funds, which are often solicited from the private sector. Local institutions such as universities, hospitals, foundations, banks, land banks, and local businesses are frequently the source for matching funds. In addition, they often partner with developers on multi-use projects that benefit the community as a whole. Banking institutions are able to get credit under the federal Community Reinvestment Act (CRA) program when they contribute to local revitalization efforts. A bank's CRA performance record is taken into account when evaluating its overall performance. Therefore, project proponents and local officials should reach out to local banking institutions to discuss strategies regarding loans for commercial and residential community revitalization projects. When using private resources to assist with revitalization projects, local officials should inform the funding entity of the importance of the local historic preservation principles to the community to ensure they are not inadvertently compromised.

XII. Flexible and programmatic solutions developed as part of Section 106 reviews can expedite historic preservation reviews as well as more effectively address the chronic demolition of historic properties.

Community revitalization projects with federal involvement require compliance with Section 106 and other federal environmental laws. Frequently, programmatic solutions that address the broad effects resulting from the implementation of multiple projects can expedite compliance with regulatory requirements, improving the efficiency of project delivery. Section 106 Programmatic Agreements, which are

quite varied, are intended to manage multiple projects that result in similar types of effects, can respond to local conditions, foster community preservation goals, and expedite project reviews. Such agreements often clarify that plans and specifications developed for local community revitalization projects should adhere to the recommended approaches in the Secretary's Standards, when feasible, and qualify for simplified reviews. When communities cannot consistently adhere to the Secretary's Standards, they should consider developing project plans that are based largely on the Secretary's Standards but provide greater flexibility. The public interest in preservation should guide planning, such as focusing reviews on exterior features and limiting reviews of interior spaces to those areas open to the public. Planning for larger scale revitalization projects should occur in advance of submitting applications for federal monies, and allow local officials to target any grants received into grants and loans to areas that can be stabilized. Given the often changing financial market and the passage of time in many communities where revitalization activities are limited, securing and stabilizing buildings may be a useful interim measure. It can avoid the loss of substantial numbers of historic properties in areas that may ultimately rebound.

XIII. Creative mitigation that balances historic preservation values and program goals should be explored by stakeholders and incorporated into Section 106 outcomes.

"Creative mitigation" is a concept that allows federal agencies, in consultation with stakeholders, to use non-traditional approaches to compensate for adverse effects that cannot be avoided or offset by using standard mitigation techniques. In Section 106 reviews, standard mitigation measures are customarily directed at the affected historic property and may include recordation, data recovery, or curation. Sometimes the public benefit of using these standard measures is minimal, and allocation of funds for other preservation activities would be prudent. Federal agencies, SHPOs, CLGs, and other consulting parties are encouraged to be open to creative mitigation when consulting to resolve adverse effects on historic properties. Any mitigation for the loss of historic properties or materials should both provide public benefit and be commensurate with the extent of loss. The activities proposed in creative mitigation measures also should

leverage the federal assistance in a manner that produces broader public benefits. Discussions about creative mitigation should be initiated early in the Section 106 review process when options can be objectively evaluated and before project plans and commitments become firm. Creative mitigation measures ultimately should advance community-wide preservation goals discussed during Section 106 reviews. Examples of creative mitigation that have been successful include the development of local historic preservation ordinances; acquisition and relocation of historic properties to alternate sites in a historic district; funding for landscaping and streetscape improvements in a district; and guidance on managing vacant and abandoned properties in the community.

Conclusion

Federal, state, and local officials; applicants; residents; and preservationists are encouraged to use the above principles when developing community revitalization plans and coordinating Section 106 reviews. Please visit the ACHP's Web site, www.achp.gov, to view helpful case studies and best management practices and to learn about webinars that can further expand knowledge of these historic preservation tools and how they are being used throughout the nation.

Authority: 54 U.S.C. 304102

Dated: November 9, 2016.

John M. Fowler,
Executive Director.

[FR Doc. 2016-27536 Filed 11-15-16; 8:45 am]

BILLING CODE 4310-K6-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2016-0021; OMB No. 1660-0110]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; FEMA Preparedness Grants: Urban Areas Security Initiative (UASI) Nonprofit Security Grant Program (NSGP)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of

Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before December 16, 2016.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to oir.submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street SW., Washington, DC 20472-3100, or email address FEMA-Information-Collections-Management@fema.dhs.gov.

SUPPLEMENTARY INFORMATION: This information collection previously published in the **Federal Register** on August 22, 2016, 81 FR 56679 with a 60 day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: FEMA Preparedness Grants: Urban Areas Security Initiative (UASI) Nonprofit Security Grant Program (NSGP).

Type of information collection: Revision of a currently approved information collection.

OMB Number: 1660-0110.

Form Titles and Numbers: FEMA Form 089-25, NSGP Investment Justification Template; FEMA Form 089-24, NSGP Prioritization of the Investment Justifications.

Abstract: The NSGP is an important tool among a comprehensive set of measures to help strengthen the Nation against risks associated with potential terrorist attacks. FEMA uses the information to evaluate applicants' familiarity with the national preparedness architecture and identify how elements of this architecture have been incorporated into regional/state/

local planning, operations, and investments. Information collected provides narrative details on proposed activities (Investments) that will be accomplished with grant funds and prioritizes the list of applicants from each requesting State. This program is designed to promote coordination and collaboration in emergency preparedness activities among public and private community representatives, State and local government agencies, and Citizen Corps Councils.

Affected Public: Not-for-profit Institutions; State, Local or Tribal Government.

Estimated Number of Respondents: 1,129.

Estimated Total Annual Burden Hours: 94,575 hours.

Estimated Cost: The estimated annual cost to respondents for the hour burden is \$3,380,775. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is \$258,006.

Dated: November 9, 2016.

Richard W. Mattison,

Records Management Program Chief, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2016-27554 Filed 11-15-16; 8:45 am]

BILLING CODE 9111-46-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA-2016-0020; OMB No. 1660-0113]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; FEMA Preparedness Grants: Tribal Homeland Security Grant Program (THSGP)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and

the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before December 16, 2016.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to oir.submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street SW., Washington, DC 20472-3100, or email address FEMA-Information-Collections-Management@fema.dhs.gov.

SUPPLEMENTARY INFORMATION: This information collection previously published in the **Federal Register** on August 22, 2016, 81 FR 56675 with a 60 day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: FEMA Preparedness Grants: Tribal Homeland Security Grant Program (THSGP).

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660-0113.

Form Titles and Numbers: FEMA Form 089-22, THSGP—Tribal Investment Justification Template.

Abstract: The THSGP provides supplemental funding to directly eligible Tribes to help strengthen the nation against risks associated with potential terrorist attacks. This program provides funds to build capabilities at the State & local levels and implement goals and objectives included in state homeland security strategies.

Affected Public: State, Local, or Tribal Government.

Estimated Number of Respondents: 60.

Estimated Total Annual Burden Hours: 18,010 hours.

Estimated Cost: The estimated annual cost to respondents for the hour burden is \$701,129.30. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or

capital costs. The cost to the Federal Government is \$399,576.50.

Dated: November 9, 2016.

Richard W. Mattison,

Records Management Program Chief, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2016-27557 Filed 11-15-16; 8:45 am]

BILLING CODE 9111-46-P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2016-0065]

The President's National Security Telecommunications Advisory Committee

AGENCY: Department of Homeland Security.

ACTION: Committee Management; Notice of partially Closed Federal Advisory Committee Meeting.

SUMMARY: The President's National Security Telecommunications Advisory Committee (NSTAC) will meet on Wednesday, December 7, 2016, in Washington, DC. The meeting will be partially closed to the public.

DATES: The NSTAC will meet on Wednesday, December 7, 2016, from 9:00 a.m. to 3:20 p.m. Eastern Standard Time (EST). Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The December 2016 NSTAC Meeting's open session will be held at the Eisenhower Executive Office Building, Washington, DC. Due to limited seating, requests to attend in person will be on a first-come basis and the public portion of the meeting will be streamed via webcast at <http://www.whitehouse.gov/live>, as an alternative option. Individuals who intend to participate in the meeting will need to register by sending an email to NSTAC@hq.dhs.gov by 5:00 p.m. EST on Wednesday, November 30, 2016. For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please contact NSTAC@hq.dhs.gov as soon as possible.

Members of the public are invited to provide comment on the issues to be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated briefing materials to be discussed at the meeting will be available at www.dhs.gov/nstac for review on Monday, November 21, 2016. Comments may be submitted at any time and must be identified by docket number DHS-2016-0065.

Comments may be submitted by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Please follow the instructions for submitting written comments.

- **Email:** NSTAC@hq.dhs.gov. Include the docket number DHS-2016-0065 in the subject line of the email message.

- **Fax:** (703) 235-5962, ATTN: Sandy Benevides.

- **Mail:** Designated Federal Officer, Stakeholder Engagement and Critical Infrastructure Resilience Division, National Protection and Programs Directorate, Department of Homeland Security, 245 Murray Lane, Mail Stop 0604, Arlington, VA 20598-0604.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at www.regulations.gov, including any personal information provided.

Docket: For access to the docket and comments received by the NSTAC, please go to www.regulations.gov and enter docket number DHS-2016-0065.

A public comment period will be held during the meeting from 2:50 p.m. to 3:20 p.m. Speakers who wish to participate in the public comment period must register in advance and can do so by emailing NSTAC@hq.dhs.gov no later than Friday, December 2, 2016, at 5:00 p.m. EST. Speakers are requested to limit their comments to three minutes. Please note that the public comment period may end before the time indicated, following the last call for comments.

FOR FURTHER INFORMATION CONTACT: Helen Jackson, NSTAC Designated Federal Officer, Department of Homeland Security, (703) 235-5321 (telephone) or helen.jackson@hq.dhs.gov (email).

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act*, 5 U.S.C. appendix (Pub. L. 92-463). The NSTAC advises the President on matters related to national security and emergency preparedness (NS/EP) telecommunications policy.

Agenda: The committee will meet in an open session on December 7, 2016, to receive remarks from Department of Homeland Security (DHS) leadership and other senior Government officials regarding the Government's current cybersecurity initiatives and NS/EP priorities. Meeting participants will: (1) Receive a keynote address regarding the Government's ongoing cybersecurity and NS/EP communications efforts; (2)

engage in a panel discussion with senior Government officials regarding the effects of new technology on NS/EP processes and procedures; and (3) discuss the progress related to the draft National Cyber Incident Response Plan. Additionally, DHS will provide NSTAC members an update on the Government's progress in implementing recent NSTAC recommendations. Finally, the NSTAC members will receive an update on the NSTAC Emerging Technologies Strategic Vision Subcommittee's study of the near- and long-term NS/EP implications of emergent and expected information and communications technologies.

The committee will also meet in a closed session to receive a classified briefing regarding cybersecurity threats and discuss future studies based on the Government's NS/EP priorities and perceived vulnerabilities.

Basis for Closure: In accordance with 5 U.S.C. 552b(c), The Government in the Sunshine Act, it has been determined that two agenda items require closure, as the disclosure of the information discussed would not be in the public interest.

The first of these agenda items, the classified briefing, will provide members with a cybersecurity threat briefing on threats to critical infrastructure. Disclosure of these threats would provide criminals who seek to compromise commercial and Government networks with information on potential vulnerabilities and mitigation techniques, weakening the Nation's cybersecurity posture. This briefing will be classified at the top secret/sensitive compartmented information level, thereby exempting disclosure of the content by statute. Therefore, this portion of the meeting is required to be closed pursuant to 5 U.S.C. 552b(c)(1)(A) & (B).

The second agenda item, the discussion of potential NSTAC study topics, will address areas of critical cybersecurity vulnerabilities and priorities for Government. Government officials will share data with NSTAC members on initiatives, assessments, and future security requirements across public and private sector networks. The information will include specific vulnerabilities within cyberspace that affect the United States' ICT infrastructures and proposed mitigation strategies. Disclosure of this information to the public would provide criminals with an incentive to focus on these vulnerabilities to increase attacks on the Nation's critical infrastructure and communications networks. As disclosure of this portion of the meeting is likely to significantly frustrate

implementation of proposed DHS actions, it is required to be closed pursuant to 5 U.S.C. 552b(c)(9)(B).

Dated: November 9, 2016.

Helen Jackson,

Designated Federal Officer for the NSTAC.

[FR Doc. 2016-27572 Filed 11-15-16; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2016-0056]

Meeting: Homeland Security Advisory Council

AGENCY: The Office of Partnership and Engagement, DHS.

ACTION: Notice of partially closed Federal Advisory Committee meeting.

SUMMARY: The Homeland Security Advisory Council ("Council") will meet in person on Thursday, December 1, 2016. Members of the public may participate in person. The meeting will be partially closed to the public.

DATES: The Council will meet Thursday, December 1, 2016, from 10:15 a.m. to 4:30 p.m. EST. The meeting will be open to the public from 1:30 p.m. to 3:30 p.m. EST. Please note the meeting may close early if the Council has completed its business. The meeting will be closed to the public from 10:15 a.m. to 12:30 p.m. and 3:45 p.m. to 4:30 p.m. EST.

ADDRESSES: The meeting will be held at the Woodrow Wilson International Center for Scholars ("Wilson Center"), located at 1300 Pennsylvania Avenue NW., Washington, DC 20004. All visitors will be processed through the lobby of the Wilson Center. Written public comments prior to the meeting must be received by 5:00 p.m. EST on Monday, November 28, 2016, and must be identified by Docket No. DHS-2016-0056. Written public comments after the meeting must be identified by Docket No. DHS-2016-0056 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* HSAC@hq.dhs.gov. Include Docket No. DHS-2016-0056 in the subject line of the message.
- *Fax:* (202) 282-9207
- *Mail:* Homeland Security Advisory Council, Attention Mike Miron, Department of Homeland Security, Mailstop 0445, 245 Murray Lane SW., Washington, DC 20528.

Instructions: All submissions received must include the words "Department of

Homeland Security" and "DHS-2016-0056," the docket number for this action. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read comments received by the Council, go to <http://www.regulations.gov>, search "DHS-2016-0022," "Open Docket Folder" and provide your comments.

FOR FURTHER INFORMATION CONTACT: Mike Miron at HSAC@hq.dhs.gov or at (202) 447-3135.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under Section 10(a) of the Federal Advisory Committee Act (FACA), Public Law 92-463 (5 U.S.C. Appendix), which requires each FACA committee meeting to be open to the public.

The Council provides organizationally independent, strategic, timely, specific, actionable advice, and recommendations to the Secretary of the Department of Homeland Security on matters related to homeland security. The Council is comprised of leaders of local law enforcement, first responders, federal, state, and local government, the private sector, and academia.

The Council will meet in an open session between 1:30 p.m. to 3:30 p.m. EST. The Council may review and deliberate on the Privatized Immigration Detention Facilities Subcommittee's interim report or final recommendations, and receive an update from the Countering Violent Extremism Subcommittee.

The Council will meet in a closed session from 10:15 a.m. to 12:30 p.m. EST, and from 3:45 p.m. to 4:30 p.m. EST, to receive sensitive operational information from senior officials on current counterterrorism threats, the Presidential transition, the Transportation and Security Administration, and cybersecurity.

Basis for Partial Closure: In accordance with Section 10(d) of the Federal Advisory Committee Act (FACA), the Secretary of the Department of Homeland Security has determined this meeting requires partial closure. The disclosure of the information relayed would be detrimental to the public interest for the following reasons:

The Council will receive closed session briefings from senior officials. These briefings will concern matters sensitive to homeland security within the meaning of 5 U.S.C. 552b(c)(7)(E) and 552b(c)(9)(B). The Council will receive operational counterterrorism updates on the current threat environment and security measures associated with countering such threats,

including those related to aviation security programs, the Presidential transition, and cybersecurity.

The session is closed under 5 U.S.C. 552b(c)(7)(E) because disclosure of that information could reveal investigative techniques and procedures not generally available to the public, allowing terrorists and those with interests against the United States to circumvent the law and thwart the Department's strategic initiatives. In addition, the session is closed pursuant to 5 U.S.C. 552b(c)(9)(B) because disclosure of these techniques and procedures could frustrate the successful implementation of protective measures designed to keep our country safe.

Participation: Members of the public will have until 5:00 p.m. EST on Monday, November 28, 2016, to register to attend the Council meeting on December 1, 2016. Due to limited availability of seating, admittance will be on a first-come first-serve basis. Participants interested in attending the meeting can contact Mike Miron at HSAC@hq.dhs.gov or (202) 447-3135. You are required to provide your full legal name, date of birth, and company/agency affiliation. The public may access the facility via public transportation or use the public parking garages located near the Wilson Center. Directions to the Wilson Center can be found at: <http://wilsoncenter.org/directions>. Members of the public will meet at 1:00 p.m. EST at the Wilson Center's main entrance for sign in and escorting to the meeting room for the public session. Late arrivals after 1:30 p.m. EST will not be permitted access to the facility.

Facility Access: You are required to present a valid original government issued ID, to include a State Driver's License or Non-Driver's Identification Card, U.S. Government Common Access Card (CAC), Military Identification Card or Person Identification Verification Card; U.S. Passport, U.S. Border Crossing Card, Permanent Resident Card or Alien Registration Card; or Native American Tribal Document.

Information of Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Mike Miron at HSAC@hq.dhs.gov or (202) 447-3135 as soon as possible.

Dated: November 10, 2016.

Sarah E. Morgenthau,
Executive Director, Homeland Security
Advisory Council, DHS.

[FR Doc. 2016-27539 Filed 11-15-16; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5855-N-04]

Small Area Fair Market Rents in Housing Choice Voucher Program Values for Selection Criteria and Metropolitan Areas Subject to Small Area Fair Market Rents

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: On June 16, 2016, HUD sought comment on applying Small Area Fair Market Rents (Small Area FMRs) to certain metropolitan areas for administration of the Housing Choice Voucher (HCV) program based on certain selection criteria and selection values. Found elsewhere in this issue of the **Federal Register** is a final rule adopting the use of Small Area FMRs for the HCV program and the selection criteria. The final rule also requires HUD to set forth the values used to determine those metropolitan areas that are subject to Small Area FMRs through a **Federal Register** notice. This notice sets forth the values for the selection criteria and lists the metropolitan areas that will be subject to Small Area FMRs implemented in the Small Area FMRs final rule.

DATES: *Effective:* January 17, 2017.

FOR FURTHER INFORMATION CONTACT: For information about this rule, contact Peter B. Kahn, Director, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 402-2409; email: SAFMR_Rule@hud.gov. The listed telephone number is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling Federal Relay Service at 1-800-877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

On June 2, 2015, at 80 FR 31332, HUD published an advance notice of final rulemaking (ANPR) entitled "Establishing a More Effective Fair Market Rent (FMR) System; Using Small Area Fair Market Rents (Small Area FMRs) in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs." In this ANPR, HUD announced its intention to amend HUD's FMR regulations applicable to the HCV program and sought public

comment on the use of certain criteria for setting Small Area FMRs for the HCV program within certain metropolitan areas.

On June 16, 2016, at 81 FR 39218, HUD published a proposed rule that would require the use of Small Area FMRs in place of the 50th percentile rent to address high levels of voucher concentration. The proposed rule addressed the issues and suggestions raised by public commenters on the ANPR, and in response to public comments proposed new criteria for setting Small Area FMRs for the HCV program.

The proposed regulation provided, in 24 CFR 888.113(c), to set Small Area FMRs for metropolitan areas where at least 2,500 HCVs are under lease; at least 20 percent of the standard quality rental stock, within the metropolitan area, is in small areas (that is ZIP codes) where the Small Area FMR is more than 110 percent of the metropolitan FMR; and the measure of the percentage of voucher holders living in concentrated low-income areas relative to all renters within these areas over the entire metropolitan area exceeds 155 percent (or 1.55).

The proposed regulation also provided, in 24 CFR 888.113(c)(2), that "concentrated low-income areas" means those census tracts in the metropolitan FMR area with a poverty rate of 25 percent or more; or any tract in the metropolitan FMR area where more than 50 percent of the households earn incomes at less than 60 percent of the area median income (AMI) and are designated as Qualified Census Tracts in accordance with section 42 of the Internal Revenue Code (26 U.S.C. 42). Lastly, the proposed regulation provided, in 24 CFR 888.113(c)(3), that if a metropolitan area meets the criteria for application of Small Area FMRs to the area, all PHAs administering HCV programs in that area will be required to use Small Area FMRs.

In addition to setting forth new proposed criteria, HUD specifically requested comment on whether HUD should codify in regulatory text the selection parameters for Small Area FMRs or if they should be incorporated into each annual FMR notice, subject to public comment, to provide HUD, PHAs, and other stakeholders with flexibility to offer changes to the selection parameters. HUD also asked for comments on the criteria that HUD selected for determining which metropolitan areas should be impacted by the shift to a Small Area FMR instead of the current 50th percentile policy.

The final rule, found elsewhere in the **Federal Register**, responded to the

public comments received on the questions posed by HUD and sets forth new selection criteria for HUD to use in determining which metropolitan areas would be impacted by the shift to a Small Area FMR and provides that the criteria values would be set by notice in the **Federal Register**. Specifically, HUD codified in the final rule the selection parameters in regulatory text for setting Small Area FMRs but provided that HUD would set the selection values through this **Federal Register** notice and that subsequent Small Area FMR Area designations will be specified through **Federal Register** notice with opportunity for public comment as new Small Area FMR designations are made.

In response to comments, HUD also adds two new selection criteria to those provided in the proposed rule. First, HUD adds the vacancy rate of an area as a criterion to the selection parameters for Small Area FMRs and excludes metropolitan areas with a certain ACS vacancy rate from being designated a Small Area FMR area. Second, HUD adds a threshold for the voucher concentration ratio to better target communities where voucher concentration is most severe. Consequently, in addition to the voucher concentration ratio included in the proposed rule, the final rule also requires the numerator of this measure, the concentration of voucher holders within concentrated low income areas, to meet a minimum standard level.

II. Selection Values for Selecting Small Area FMRs

Through this notice, HUD is setting the selection values to determine the first-set of metropolitan FMR areas subject to Small Area FMRs for use in the administration of tenant-based assistance under the HCV program. Metropolitan FMR areas that meet the following requirement will be subject to Small Area FMRs consistent with 24 CFR 888.113(c):

(i) There are at least 2,500 HCV under lease;

(ii) At least 20 percent of the standard quality rental stock, within the metropolitan FMR area is in small areas (ZIP codes) where the Small Area FMR is more than 110 percent of the metropolitan FMR;

(iii) The percentage of voucher families living in concentrated low income areas relative to all renters within the area must be at least 25 percent;

(iv) The measure of the percentage of voucher holders living in concentrated low income areas relative to all renters within these areas over the entire

metropolitan area exceeds 155 percent (or 1.55); and

(v) The vacancy rate for the metropolitan area is higher than 4 percent. The vacancy rate is calculated using data from the 1-year American Community Survey (ACS) tabulations, the vacancy rate is the number of Vacant For Rent Units divided by the sum of the number of Vacant For Rent Units, the number of Renter Occupied Units, and the number of Rented, not occupied units. The vacancy rate will be calculated from the 3 most current ACS 1 year datasets available and average the 3 values.

The metropolitan FMR Areas that meet these requirements are as follows:

Atlanta-Sandy Springs-Marietta, GA HUD Metro FMR Area
 Bergen-Passaic, NJ HUD Metro FMR Area
 Charlotte-Gastonia-Rock Hill, NC-SC HUD Metro FMR Area
 Chicago-Joliet-Naperville, IL HUD Metro FMR Area
 Colorado Springs, CO HUD Metro FMR Area
 Dallas-Plano-Irving, TX Metro Division
 Fort Lauderdale-Pompano Beach-Deerfield Beach, FL Metro Division
 Fort Worth-Arlington, TX HUD Metro FMR Area
 Gary, IN HUD Metro FMR Area
 Hartford-West Hartford-East Hartford, CT HUD Metro FMR Area
 Jackson, MS HUD Metro FMR Area
 Jacksonville, FL HUD Metro FMR Area
 Monmouth-Ocean, NJ HUD Metro FMR Area
 North Port-Bradenton-Sarasota, FL MSA
 Palm Bay-Melbourne-Titusville, FL MSA
 Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA
 Pittsburgh, PA HUD Metro FMR Area
 Sacramento-Arden-Arcade-Roseville, CA HUD Metro FMR Area
 San Antonio-New Braunfels, TX HUD Metro FMR Area
 San Diego-Carlsbad-San Marcos, CA MSA
 Tampa-St. Petersburg-Clearwater, FL MSA
 Urban Honolulu, HI MSA
 Washington-Arlington-Alexandria, DC-VA-MD HUD Metro FMR Area
 West Palm Beach-Boca Raton-Delray Beach, FL Metro Division

Dated: November 1, 2016.

Katherine M. O'Regan,
Assistant Secretary for Policy Development and Research.

[FR Doc. 2016-27112 Filed 11-15-16; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE-2016-0007; OMB Number 1014-0006; 17XE1700DX EEEE50000 EX1SF0000.DAQ000]

Information Collection Activities: Sulfur Operations; Submitted for Office of Management and Budget (OMB) Review; Comment Request

ACTION: 30-Day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Safety and Environmental Enforcement (BSEE) is notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under Subpart P, *Sulfur Operations*. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: You must submit comments by December 16, 2016.

ADDRESSES: Submit comments by either fax (202) 395-5806 or email (*OIRA_Submission@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1014-0006). Please provide a copy of your comments to BSEE by any of the means below.

- *Electronically:* go to <http://www.regulations.gov> and search for BSEE-2016-0007. Follow the instructions to submit public comments and view all related materials. We will post all comments.

- *Email:* Kelly.odom@bsee.gov, fax (703) 787-1546, or mail or hand-carry comments to: Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; Attention: Kelly Odom; 45600 Woodland Road, Sterling, VA 20166. Please reference 1014-0006 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Kelly Odom, Regulations and Standards Branch, (703) 787-1775, to request additional information about this ICR. To see a copy of the entire ICR submitted to OMB, go to <http://www.reginfo.gov> (select Information Collection Review, Currently Under Review).

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart P, *Sulfur Operations*.

OMB Control Number: 1014-0006.

Abstract: The Outer Continental Shelf (OCS) Lands Act (OCSLA) at 43 U.S.C. 1334 authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of that Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop mineral resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

In addition to the general rulemaking authority of the OCSLA at 43 U.S.C. 1334, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, section 108 of FOGRMA, 30 U.S.C. 1718, grants the Secretary broad authority to inspect

lease sites for the purpose of determining whether there is compliance with the mineral leasing laws. Section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to permit lawful inspections and for knowing or willful preparation or submission of false, inaccurate, or misleading reports, records, or other information. Because the Secretary has delegated some of the authority under FOGRMA to BSEE, 30 U.S.C. 1751 is included as additional authority for these requirements.

Regulations implementing these responsibilities are under 30 CFR part 250. Some responses are mandatory and some are required to obtain or retain a benefit. No questions of a sensitive nature are asked. BSEE will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and DOI's implementing regulations (43 CFR 2); 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection*; and 30 CFR part 252, *OCS Oil and Gas Information Program*.

BSEE uses the information collected under subpart P to:

- Ascertain that a discovered sulfur deposit can be classified as capable of production in paying quantities.
- ensure accurate and complete measurement of production to determine the amount of sulfur royalty payments due the United States; and that the sale locations are secure, production has been measured accurately, and appropriate follow-up actions are initiated.

- ensure the adequacy and safety of firefighting systems; the drilling unit is fit for the intended purpose; and the adequacy of casing for anticipated conditions.

- review drilling, well-completion, well-workover diagrams and procedures, as well as production operation procedures to ensure the safety of the proposed sulfur drilling, well-completion, well-workover and proposed production operations.

- monitor environmental data during sulfur operations in offshore areas where such data are not already available to provide a valuable source of information to evaluate the performance of drilling rigs under various weather and ocean conditions. This information is necessary to make reasonable determinations regarding safety of operations and environmental protection.

Frequency: Submissions are on occasion and generally vary by section.

Description of Respondents: Potential respondents comprise Federal OCS sulfur lessees.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this information collection is a total of 897 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart P	Reporting and recordkeeping requirement	Hour burden	Average number of annual reponses	Annual burden hours
1605(b)(3); 1617; 1622(b)	These sections contain references to information, approvals, requests, payments, etc. which are submitted with an APD, the burdens for which are covered under its own information collection.	APD burden covered under 1014-0025		0
1618(a), (b); 1619(b); 1622(a), (b), (c).	These sections contain references to information, approvals, requests, Payments etc., which are submitted with an APM, the burdens for which are covered under its own information collection.	APM burden covered under 1014-0026		0
1600; 1617	Submit exploration or development and production plan, under 30 CFR 550, Subpart B.	Burden covered under (1010-0151)		0
1603(a)	Request determination whether sulfur deposit can produce in paying quantities.	1	1 request	1
1604(f)	Check traveling-block safety device for proper operation weekly and after each drill-line slipping; enter results in log.	0.25	1 lessee × 52 wks × 2 rigs = 104.	26
1605(c)	Report oceanographic, meteorological, and drilling unit performance data upon request.	1	1 report	1
1605(d)	Submit results of additional surveys and soil borings upon request.	1	1 submission	1
1605(e)(5)	Request copy of directional survey (by holder of adjoining lease).	1	1 request	1

Citation 30 CFR 250 subpart P	Reporting and recordkeeping requirement	Hour burden	Average number of annual reponses	Annual burden hours
1605(f)	Submit application for installation of fixed drilling plat- forms or structures.	Burden covered under (1014-0011).		0
1607	Request establishment, amendment, or cancellation of field rules for drilling, well-completion, or well-workover.	8	2 requests	16
1608(a), (c)	Submit well casing and cementing plan or modification ...	5	1 plan	5
1608(b); (c); 1629(b)(3); 1600-1634.	General departure and/or alternate compliance requests not specifically covered elsewhere in Subpart P.	Burden covered under (1014-0022).		0
1609(a)	Pressure test casing; record time, conditions of testing, and test results in log.	2	1 lease × 60 tests/records = 60.	120
1610(d)(7), (8)	Request exception to ram-type blowout preventer (BOP) system components rated working pressure.	1	1 request	1
1611(b); 1625(b)	Request exception to water-rated working pressure to test ram-type and annular BOPs and choke manifold.	1	1 request	1
1611(d)(3); 1625(d)(3)	Record in driller's report the date, time, and reason for postponing pressure testings.	0.17	1 lessee × 6 recordings = 6	1
1611(f); 1625(f)	Request exception to recording pressure conditions dur- ing BOP tests on pressure charts, certify by represent- ative.	1	1 request	1
1611(f), (g); 1625(f), (g)	Conduct tests, actuations, inspections, maintenance, and crew drills of BOP systems at least weekly; record re- sults in driller's report; certify by representative; retain records for 2 years following completion of drilling ac- tivity.	6	1 lessee × 52 weeks = 52 ...	312
1612	Request exception to §250.462 requirements for well- control drills.	1	1 request	1
1613(d)	Pressure test diverter sealing element/valves weekly; ac- tuate diverter sealing element/valves/control system every 24 hours; test diverter line for flow every 24 hours; record test times and results in driller's report.	2	1 lessee (daily/weekly dur- ing drilling) × 2 rigs × 52 weeks = 104.	208
1615	Request exception to blind-shear ram or pipe rams and inside BOP to secure wells.	1	1 request	1
1616(c)	Retain training records for lessee and drilling contractor personnel.	Burden covered under 1014-0008.		0
1619(a); 1623(c)	Retain records for each well and all well operations for 2 years; calculate well-control fluid volume and post near operator's station.	12	1 lessee	12
1619(b); 1622(c)	Submit form BSEE-0125 (End of Operations Report), and all supporting documentation.	Burden covered under 1014-0018)		0
1619(c), (d), (e)	Submit copies of records, logs, reports, charts, etc., upon request.	1	8 submissions	8
1621	Conduct safety meetings prior to well-completion or well- workover operations; record date and time.	1	1 lessee × 50 meetings/ records = 50.	50
1628(b), (d)	Maintain information on approved design and installation features for the life of the facility.	1	1 lessee	1
1628(b), (d)	Submit application for design and installation features of sulfur production facilities and fuel gas safety system; certify new installation conforms to approved design.	4	1 application	4
1629(b)(1)(ii)	Retain pressure-recording charts used to determine oper- ating pressure ranges for 2 years.	12	1 lessee	12
1629(b)(3)	Request approval of firefighting systems; post firefighting system diagram.	4	1 request	4
1630(a)(6)	Notify BSEE of pre-production test and inspection of safety system and commencement of production.	0.5	2 notifications	1
1630(b)	Maintain records for each safety device installed for 2 years; make available for review.	1	1 lessee	1
1631	Conduct safety device training prior to production oper- ations and periodically thereafter; record date and time.	1	1 lessee × 52 train/records × 2 rigs = 104.	104
1633(b)	Submit application for method production measurement ..	2	1 application	2
1634(b)	Report evidence of mishandling of produced sulfur or tampering or falsifying any measurement of production.	1	1 report	1
Total Burden .....	.....	.....	511	897

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: There are no non-hour cost burdens associated with this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency “. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .” Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

To comply with the public consultation process, on June 3, 2016, we published a **Federal Register** notice (81 FR 35798) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB Control Number for the information collection requirements imposed by the 30 CFR 250, Subpart P regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We did not receive any comments in response to the **Federal Register** notice or unsolicited comments from respondents covered under these regulations.

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.

B SSE Information Collection Clearance Officer: Nicole Mason (703) 787–1607.

Robert W. Middleton,
Deputy Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2016–27501 Filed 11–15–16; 8:45 am]

BILLING CODE 4310-VH-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–345]

Recent Trends in U.S. Services Trade, 2017 Annual Report

AGENCY: United States International Trade Commission.

ACTION: Schedule for 2017 report and opportunity to submit information.

SUMMARY: The Commission has prepared and published annual reports in this series under investigation No. 332–345, *Recent Trends in U.S. Services Trade*, since 1996. The 2017 report, which the Commission plans to publish in May 2017, will provide aggregate data on cross-border trade in services for the period ending in 2015, and transactions by affiliates based outside the country of their parent firm for the period ending in 2014. The report’s analysis will focus on professional services (including accounting and auditing, architecture and engineering, legal services, and business management and consulting). The Commission is inviting interested members of the public to furnish information and views in connection with the 2017 report.

DATES: December 16, 2016: Deadline for filing written submissions.

May 19, 2017: Anticipated date for publishing the report.

ADDRESSES: All Commission offices are located in the United States International Trade Commission Building, 500 E St. SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E St. SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission’s electronic docket information system (EDIS) at <https://edis.usitc.gov/>.

FOR FURTHER INFORMATION CONTACT:

Project Leader Art Chambers (202–205–2766 or arthur.chambers@usitc.gov) or Services Division Chief Martha Lawless (202–205–3497 or martha.lawless@usitc.gov) for information specific to this investigation. For information on the legal aspects of these investigations, contact William Gearhart of the

Commission’s Office of the General Counsel (202–205–3091 or william.gearhart@usitc.gov). The media should contact Margaret O’Laughlin, Office of External Relations (202–205–1819 or margaret.olaughlin@usitc.gov). Hearing-impaired individuals may obtain information on this matter by contacting the Commission’s TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background: The 2017 annual services trade report will provide aggregate data on cross-border trade and affiliate transactions in services, and more specific data and information on trade in professional services (accounting and auditing, architecture and engineering, legal services, and business and management consulting). Under Commission investigation No. 332–345, the Commission publishes two annual reports, one on services trade (*Recent Trends in U.S. Services Trade*), and a second on merchandise trade (*Shifts in U.S. Merchandise Trade*). The Commission’s 2016 annual report in the series of reports on *Recent Trends in U.S. Services Trade* is now available online at <http://www.usitc.gov>.

The initial notice of institution of this investigation was published in the **Federal Register** on September 8, 1993 (58 FR 47287) and provided for what is now the report on merchandise trade. The Commission expanded the scope of the investigation to cover services trade in a separate report, which it announced in a notice published in the **Federal Register** on December 28, 1994 (59 FR 66974). The separate report on services trade has been published annually since 1996, except in 2005. As in past years, the report will summarize trade in services in the aggregate and provide analyses of trends and developments in selected services industries during the latest period for which data are published by the U.S. Department of Commerce, Bureau of Economic Analysis.

Written Submissions: Interested parties are invited to file written submissions and other information concerning the matters to be addressed by the Commission in its 2017 report. For the 2017 report, the Commission is particularly interested in receiving information relating to trade in professional services (accounting and

auditing, architecture and engineering, legal, and business and management consulting). Submissions should be addressed to the Secretary. To be assured of consideration by the Commission, written submissions related to the Commission's report should be submitted at the earliest practical date and should be received not later than 5:15 p.m., December 16, 2016. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures require that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 p.m. eastern time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential information must be deleted (see the paragraph below for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202-205-1802).

Confidential business information. Any submissions that contain confidential business information (CBI) must also conform with the requirements in section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are confidential or non-confidential, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

The Commission intends to prepare only a public report in this investigation. The report that the Commission makes available to the public will not contain confidential business information. However, all information, including confidential business information, submitted in this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the

Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel solely for cybersecurity purposes. The Commission will not otherwise disclose any confidential business information in a manner that would reveal the operations of the firm supplying the information.

Summaries of Written Submissions: The Commission intends to publish summaries of the positions of interested persons in this report. If you wish to have a summary of your position included in an appendix of the report, please include a summary with your written submission. The summary may not exceed 500 words, should be in MSWord format or a format that can be easily converted to MSWord, and should not include any confidential business information. The summary will be published as provided if it meets these requirements and is germane to the subject matter of the investigation. In the report the Commission will identify the name of the organization furnishing the summary, and will include a link to the Commission's Electronic Document Information System (EDIS) where the full written submission can be found.

By order of the Commission.

Issued: November 9, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016-27446 Filed 11-15-16; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-548 and 731-TA-1298 (Final)]

Welded Stainless Steel Pressure Pipe From India

Determinations

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that an industry in the United States is materially injured by reason of imports of welded stainless steel pressure pipe from India, provided for in subheadings 7306.40.50 and 7306.40.10 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce ("Commerce") to be sold in the United States at less than fair value ("LTFV"),

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

and that have been found by Commerce to be subsidized by the government of India.²

Background

The Commission, pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)), instituted these investigations effective September 30, 2015, following receipt of a petition filed with the Commission and Commerce by Bristol Metals, LLC, Bristol, Tennessee; Felker Brothers Corp., Marshfield, Wisconsin; Marcegaglia USA, Munhall, Pennsylvania; and Outokumpu Stainless Pipe, Inc., Wildwood, Florida. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of welded stainless steel pressure pipe from India were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and dumped within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on May 27, 2016 (81 FR 33706). The hearing was held in Washington, DC, on September 22, 2016, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on November 9, 2016. The views of the Commission are contained in USITC Publication 4644 (November 2016), entitled *Welded Stainless Steel Pressure Pipe from India: Investigation Nos. 701-TA-548 and 731-TA-1298 (Final)*.

By order of the Commission.

Issued: November 9, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016-27476 Filed 11-15-16; 8:45 am]

BILLING CODE 7020-02-P

² All six Commissioners voted in the affirmative.

DEPARTMENT OF JUSTICE**Bureau of Alcohol, Tobacco, Firearms, and Explosives**

[Docket No. 2016R-02]

Commerce in Explosives; 2016 Annual List of Explosive Materials

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF); Department of Justice.

ACTION: Notice of list of explosive materials.

SUMMARY: Pursuant to 18 U.S.C. 841(d) and 27 CFR 555.23, the Department must publish and revise at least annually in the **Federal Register** a list of explosives determined to be within the coverage of 18 U.S.C. 841 *et seq.* The list covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in 18 U.S.C. 841(c). In the 2016 listing, the Department amends the term “Xanthomonas hydrophilic colloid explosive mixture” to read “Xanthomonas hydrophilic colloid explosive mixture” and removes the term “Special fireworks” from the list of explosive materials. This notice publishes the 2016 Annual List of Explosive Materials.

DATES: The list becomes effective November 16, 2016.

FOR FURTHER INFORMATION CONTACT: William E. Frye Jr., Chief, Explosives Industry Programs Branch; Firearms and Explosives Industry Division; Bureau of Alcohol, Tobacco, Firearms, and Explosives; United States Department of Justice; 99 New York Avenue NE., Washington, DC 20226; 202 648-7120.

SUPPLEMENTARY INFORMATION:

The list includes all mixtures containing any of the materials on the list. Materials constituting blasting agents are marked by an asterisk. While the list is comprehensive, it is not all-inclusive. The fact that an explosive material is not on the list does not mean that it is not within the coverage of the law if it otherwise meets the statutory definitions in 18 U.S.C. 841. Explosive materials are listed alphabetically by their common names followed, where applicable, by chemical names and synonyms in brackets.

The Department amends the term, “Xanthomonas hydrophilic colloid explosive mixture” to “Xanthomonas hydrophilic colloid explosive mixture” to more accurately reflect reference to this material in the list of explosive materials. The term “Xanthomonas” was included as part of a 1967 patent of a gelled explosive containing a

Xanthomonas hydrophilic colloid and was erroneously used as synonymous with the broader class of Xanthomonas hydrophilic colloid explosive mixtures. Further, the Department removes the term “Special fireworks” that was previously used to describe those fireworks currently classified as display fireworks. The definition of “Special fireworks” was removed and the definition of “Display fireworks” was added in its place to Part 555 (formerly Part 55) in a final rule (63 FR, 45001, August 24, 1998). However, “Special fireworks” was not removed from the list of explosive materials at that time. These revisions are being made for clarity and consistency within all explosives laws and regulations. This list supersedes the List of Explosive Materials dated October 23, 2015 (Docket No. 2015R-23, 80 FR 64446).

Notice of the 2016 Annual List of Explosive Materials

Pursuant to 18 U.S.C. 841(d) and 27 CFR 555.23, I hereby designate the following as explosive materials covered under 18 U.S.C. 841(c):

A

Acetylides of heavy metals.
Aluminum containing polymeric propellant.
Aluminum ophorite explosive.
Amatex.
Amatol.
Ammonal.
Ammonium nitrate explosive mixtures (cap sensitive).
* Ammonium nitrate explosive mixtures (non-cap sensitive).
Ammonium perchlorate having particle size less than 15 microns.
Ammonium perchlorate explosive mixtures (excluding ammonium perchlorate composite propellant (APCP)).
Ammonium picrate [picrate of ammonia, Explosive D].
Ammonium salt lattice with isomorphously substituted inorganic salts.
* ANFO [ammonium nitrate-fuel oil].
Aromatic nitro-compound explosive mixtures.
Azide explosives.

B

Baranol.
Baratol.
BEAF [1, 2-bis (2, 2-difluoro-2-nitroacetoxyethane)].
Black powder.
Black powder based explosive mixtures.
Black powder substitutes.
*Blasting agents, nitro-carbo-nitrates, including non-cap sensitive slurry and water gel

explosives.
Blasting caps.
Blasting gelatin.
Blasting powder.
BTNEC [bis (trinitroethyl) carbonate].
BTNEN [bis (trinitroethyl) nitramine].
BTTN [1,2,4 butanetriol trinitrate].
Bulk salutes.
Butyl tetryl.

C

Calcium nitrate explosive mixture.
Cellulose hexanitrate explosive mixture.
Chlorate explosive mixtures.
Composition A and variations.
Composition B and variations.
Composition C and variations.
Copper acetylide.
Cyanuric triazide.
Cyclonite [RDX].
Cyclotetramethylenetetranitramine [HMX].
Cyclotol.
Cyclotrimethylenetrinitramine [RDX].

D

DATB [diaminotrinitrobenzene].
DDNP [diazodinitrophenol].
DEGDN [diethyleneglycol dinitrate].
Detonating cord.
Detonators.
Dimethylol dimethyl methane dinitrate composition.
Dinitroethyleneurea.
Dinitroglycerine [glycerol dinitrate].
Dinitrophenol.
Dinitrophenolates.
Dinitrophenyl hydrazine.
Dinitroresorcinol.
Dinitrotoluene-sodium nitrate explosive mixtures.
DIPAM [dipicramide; diaminohexanitrobiphenyl].
Dipicryl sulfone.
Dipicrylamine.
Display fireworks.
DNPA [2,2-dinitropropyl acrylate].
DNPD [dinitropentano nitrile].
Dynamite.

E

EDDN [ethylene diamine dinitrate].
EDNA [ethylenedinitramine].
Ednatol.
EDNP [ethyl 4,4-dinitropentanoate].
EGDN [ethylene glycol dinitrate].
Erythritol tetranitrate explosives.
Esters of nitro-substituted alcohols.
Ethyl-tetryl.
Explosive conitrates.
Explosive gelatins.
Explosive liquids.
Explosive mixtures containing oxygen-releasing inorganic salts and hydrocarbons.
Explosive mixtures containing oxygen-releasing inorganic salts and nitro bodies.

Explosive mixtures containing oxygen-releasing inorganic salts and water insoluble fuels.

Explosive mixtures containing oxygen-releasing inorganic salts and water soluble fuels.

Explosive mixtures containing sensitized nitromethane.

Explosive mixtures containing tetranitromethane (nitroform).

Explosive nitro compounds of aromatic hydrocarbons.

Explosive organic nitrate mixtures.

Explosive powders.

F

Flash powder.

Fulminate of mercury.

Fulminate of silver.

Fulminating gold.

Fulminating mercury.

Fulminating platinum.

Fulminating silver.

G

Gelatinized nitrocellulose.

Gem-dinitro aliphatic explosive mixtures.

Guanyl nitrosamino guanyl tetrazene.

Guanyl nitrosamino guanylidene hydrazine.

Guncotton.

H

Heavy metal azides.

Hexanite.

Hexanitrodiphenylamine.

Hexanitrostilbene.

Hexogen [RDX].

Hexogene or octogene and a nitrated

N-methylaniline.

Hexolites.

HMTD

[hexamethylenetriperoxidediamine].

HMX [cyclo-1,3,5,7-tetramethylene 2,4,6,8-tetranitramine; Octogen].

Hydrazinium nitrate/hydrazine/aluminum explosive system.

Hydrazoic acid.

I

Igniter cord.

Igniters.

Initiating tube systems.

K

KDNBF [potassium dinitrobenzofuroxane].

L

Lead azide.

Lead mannite.

Lead mononitroresorcinate.

Lead picrate.

Lead salts, explosive.

Lead styphnate [styphnate of lead, lead trinitroresorcinate].

Liquid nitrated polyol and trimethylolmethane.

Liquid oxygen explosives.

M

Magnesium ophorite explosives.

Mannitol hexanitrate.

MDNP [methyl 4,4-dinitropentanoate].

MEAN [monoethanolamine nitrate].

Mercuric fulminate.

Mercury oxalate.

Mercury tartrate.

Metriol trinitrate.

Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum].

MMAN [monomethylamine nitrate]; methylamine nitrate.

Mononitrotoluene-nitroglycerin mixture.

Monopropellants.

N

NIBTN [nitroisobutametrial trinitrate].

Nitrate explosive mixtures.

Nitrate sensitized with gelled nitroparaffin.

Nitrated carbohydrate explosive.

Nitrated glucoside explosive.

Nitrated polyhydric alcohol explosives.

Nitric acid and a nitro aromatic compound explosive.

Nitric acid and carboxylic fuel explosive.

Nitric acid explosive mixtures.

Nitro aromatic explosive mixtures.

Nitro compounds of furane explosive mixtures.

Nitrocellulose explosive.

Nitroderivative of urea explosive mixture.

Nitrogelatin explosive.

Nitrogen trichloride.

Nitrogen tri-iodide.

Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].

Nitroglycide.

Nitroglycol [ethylene glycol dinitrate, EGDN].

Nitroguanidine explosives.

Nitronium perchlorate propellant mixtures.

Nitroparaffins Explosive Grade and ammonium nitrate mixtures.

Nitrostarch.

Nitro-substituted carboxylic acids.

Nitrourea.

O

Octogen [HMX].

Octol [75 percent HMX, 25 percent TNT].

Organic amine nitrates.

Organic nitramines.

P

PBX [plastic bonded explosives].

Pellet powder.

Penthrinite composition.

Pentolite.

Perchlorate explosive mixtures.

Peroxide based explosive mixtures.

PETN [nitropentaerythrite,

pentaerythrite tetranitrate,

pentaerythritol tetranitrate].

Picramic acid and its salts.

Picramide.

Picrate explosives.

Picrate of potassium explosive mixtures.

Picratol.

Picric acid (manufactured as an explosive).

Picryl chloride.

Picryl fluoride.

PLX [95% nitromethane, 5% ethylenediamine].

Polynitro aliphatic compounds.

Polyolpolynitrate-nitrocellulose explosive gels.

Potassium chlorate and lead

sulfocyanate explosive.

Potassium nitrate explosive mixtures.

Potassium nitroaminotetrazole.

Pyrotechnic compositions.

Pyrotechnic fuses.

PYX [2,6-bis(picrylamino)] 3,5-dinitropyridine.

R

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5-trinitro-S-triazine].

S

Safety fuse.

Salts of organic amino sulfonic acid explosive mixture.

Salutes (bulk).

Silver acetylide.

Silver azide.

Silver fulminate.

Silver oxalate explosive mixtures.

Silver styphnate.

Silver tartrate explosive mixtures.

Silver tetrazene.

Slurried explosive mixtures of water,

inorganic oxidizing salt, gelling agent,

fuel, and sensitizer (cap sensitive).

Smokeless powder.

Sodatol.

Sodium amatol.

Sodium azide explosive mixture.

Sodium dinitro-ortho-cresolate.

Sodium nitrate explosive mixtures.

Sodium nitrate-potassium nitrate

explosive mixture.

Sodium picramate.

Squibs.

Styphnic acid explosives.

T

Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a tetrazapentalene].

TATB [triaminotrinitrobenzene].

TATP [triacetonetriperoxide].

TEGDN [triethylene glycol dinitrate].

Tetranitrocarbazole.

Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate].
Tetrazole explosives.

Tetryl [2,4,6 tetranitro-N-methylaniline].

Tetrytol.

Thickened inorganic oxidizer salt slurred explosive mixture.

TMETN [trimethylolethane trinitrate].

TNEF [trinitroethyl formal].

TNEOC [trinitroethylorthocarbonate].

TNEOF [trinitroethylorthoformate].

TNT [trinitrotoluene, trotyl, trilitite, triton].

Torpex.

Tridite.

Trimethylol ethyl methane trinitrate composition.

Trimethylolthane trinitrate-nitrocellulose.

Trimonite.

Trinitroanisole.

Trinitrobenzene.

Trinitrobenzoic acid.

Trinitrocresol.

Trinitro-meta-cresol.

Trinitronaphthalene.

Trinitrophenetol.

Trinitrophenol.

Trinitrophenol.

Trinitroresorcinol.

Tritonal.

U

Urea nitrate.

W

Water-bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).

Water-in-oil emulsion explosive compositions.

X

Xanthomonas hydrophilic colloid explosive mixture.

Dated: October 20, 2016.

Thomas E. Brandon,

Deputy Director.

[FR Doc. 2016-27459 Filed 11-15-16; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

On November 4, 2016, the Department of Justice lodged a proposed consent decree with the United States District Court for the Southern District of Mississippi in the lawsuit entitled *United States and Mississippi Commission on Environmental Quality v. Estate of William Troy Burford and Sonford Products Corporation*, Civil Action No. 3:16-cv-00869-CWR-FKB.

The consent decree would resolve claims under CERCLA § 107(a), 42 U.S.C. 9607(a), for recovery of response costs in connection with the Sonford Products Superfund Site in Flowood, Rankin County, Mississippi (“Site”). The consent decree also contains a covenant under CERCLA § 106, 42 U.S.C. 9606, for damages related to injury to, destruction of, or loss of natural resources at the Site. The Mississippi Commission on Environmental Quality is a co-plaintiff; the Consent Decree would resolve its claims under state law.

The six-acre Site is located in Flowood, east of Jackson, Mississippi. Defendant Sonford Products Corporation operated a chemical processing facility at the Site from 1970 to 1985. It formulated pentachlorophenol (“PCP”) for wood preserving and saw mill operations. On April 18, 1985, approximately 2,000 gallons of PCP spilled from the Sonford Products facility into wetlands on the Site. Since that time, the U.S. Environmental Protection Agency and the Mississippi Department of Natural Resources have been responding to the release or threatened release of PCP and other hazardous substances at the Site. The cost of the response is expected to exceed \$27 million.

Defendant Sonford Products Corporation has been dissolved. Defendant Estate of William Troy Burford has no assets other than proceeds from insurance policies issued to Sonford Products. The proposed consent decree would allow for the recovery of insurance proceeds from three insurers. The total value of the settlement is \$257,500. Of that amount, the Estate will receive \$2,500 plus the reasonable fees and expenses associated with administration of the Estate. The United States will receive 95 percent of the remainder and the State of Mississippi will receive 5 percent.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and Mississippi Commission on Environmental Quality v. Estate of William Troy Burford and Sonford Products Corporation*, D.J. Ref. No. 90-11-3-10806. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email	<i>pubcomment-ees.enrd@usdoj.gov.</i>
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the proposed consent decree may be examined and downloaded at this Justice Department Web site: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the proposed consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$7.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016-27537 Filed 11-15-16; 8:45 am]

BILLING CODE 4410-15-P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings

DATE AND TIME: The Legal Services Corporation’s Board of Directors will meet telephonically on November 22, 2016. The meeting will commence at 2:00 p.m., EST, and will continue until the conclusion of the Committee’s agenda. Immediately following the Board of Directors telephonic meeting, the Operations and Regulations Committee will hold a telephonic meeting.

LOCATION: John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW., Washington, DC 20007.

PUBLIC OBSERVATION: Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1-866-451-4981;
- When prompted, enter the following numeric pass code: 5907707348
- When connected to the call, please immediately “MUTE” your telephone. Members of the public are asked to keep their telephones muted to

eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the Chair may solicit comments from the public.

STATUS OF MEETINGS: Open.

MATTERS TO BE CONSIDERED:

Board of Directors

1. Approval of agenda
2. Consider and act on the Board of Directors' transmittal to accompany the Inspector General's Semiannual Report to Congress for the period of April 1, 2016 through October 31, 2016
3. Public comment
4. Consider and act on other business
5. Consider and act on adjournment of meeting

Operations and Regulations Committee—*briefing materials will be posted at <http://www.lsc.gov/about-lsc/board/board-meetings>.*

1. Approval of agenda
2. Briefing and discussion on Final Rule of Proposed Rulemaking for 45 CFR part 1627—Subgrants with consolidation of transfer provisions from 45 CFR part 1610.7
3. Public comment
4. Consider and act on other business
5. Consider and act on adjournment of meeting

CONTACT PERSON FOR INFORMATION:

Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295-1500. Questions may be sent by electronic mail to FR_NOTICE_QUESTIONS@lsc.gov.

ACCESSIBILITY: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals needing other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295-1500 or FR_NOTICE_QUESTIONS@lsc.gov, at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: November 14, 2016.

Katherine Ward,

Executive Assistant to the Vice President for Legal Affairs and General Counsel.

[FR Doc. 2016-27659 Filed 11-14-16; 4:15 pm]

BILLING CODE 7050-01-P

NATIONAL SCIENCE FOUNDATION

Research Performance Progress Report

AGENCY: National Science Foundation.
ACTION: Notice.

SUMMARY: Effective with the publication of this Notice in the **Federal Register**, agencies will be able to utilize the updated standardized Research Performance Progress Report (RPPR) format for both interim and final progress reporting.

FOR FURTHER INFORMATION CONTACT: To view the updated Standardized Research Performance Progress Report Format to be used for both Interim and Final Performance Progress Reporting, see: <http://www.nsf.gov/bfa/dias/policy/rppr/index.jsp>. For information on the RPPR, contact Jean Feldman, Head, Policy Office, Division of Institution & Award Support, National Science Foundation, 4201 Wilson Blvd., Arlington, VA, 22230, email: jfeldman@nsf.gov; telephone (703) 292-8243; FAX: (703) 292-9171.

SUPPLEMENTARY INFORMATION: The Research Performance Progress Report (RPPR) directly benefits award recipients by making it easier for them to administer Federal grant and cooperative agreement programs through standardization of the types of information required in performance reports—thereby reducing their administrative effort and costs. The RPPR also will make it easier to compare the outputs, outcomes, etc. of research and research-related programs across the government.

The RPPR resulted from an initiative of the Research Business Models (RBM), an Interagency Working Group of the Social, Behavioral & Economic Research Subcommittee of the Committee on Science (CoS), a committee of the National Science and Technology Council (NSTC). One of the RBM Subcommittee's priority areas is to create greater consistency in the administration of Federal research awards. Given the increasing complexity of interdisciplinary and interagency research, it is important for Federal agencies to manage awards in a similar fashion. The RPPR is to be used by agencies that support research and research-related activities for use in submission of progress reports. It is intended to replace other performance reporting formats currently in use by agencies. The RPPR does not change the performance reporting requirements specified in 2 CFR part 200.

On July 23, 2015 the National Science Foundation (NSF) submitted a request

for public comment on an Updated Standardized Research Performance Progress Report Format to be used for Both Interim and Final Performance Progress Reporting in the **Federal Register** [80 FR 43802, July 23, 2015]. All comments were carefully considered in developing the final version of the RPPR. A table listing the comments and responses is posted on the NSF Web site at: <http://www.nsf.gov/bfa/dias/policy/rppr/index.jsp>. It should be noted that substantive changes were not made to the RPPR as a result of the comment process.

On behalf of the RBM, NSF has agreed to continue to serve as the sponsor of the updated version of this Federal-wide performance progress reporting format. The final version of the updated Standardized Research Performance Progress Report Format to be used for both Interim and Final Performance Progress Reporting incorporates the public comments mentioned above, and may be viewed at: <http://www.nsf.gov/bfa/dias/policy/rppr/index.jsp>. Each Federal research agency that supports research and research-related activities must post their policy or an implementation plan on the NSF and RBM Web sites within nine months after issuance of the **Federal Register** Notice. Each implementation plan will address whether the agency plans to implement the RPPR in paper or electronic format, and include an anticipated implementation date.

Dated: November 10, 2016.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2016-27505 Filed 11-15-16; 8:45 am]

BILLING CODE 7555-01-P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering (CISE) (1115).

Date/Time: December 7, 2016; 12:30 p.m. to 5:30 p.m., December 8, 2016; 8:30 a.m. to 12:30 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1235, Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Brenda Williams, National Science Foundation, 4201

Wilson Boulevard, Suite 1105, Arlington, Virginia 22230; 703-292-8900.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CISE community. To provide advice to the Assistant Director for CISE on issues related to long-range planning, and to form ad hoc subcommittees and working groups to carry out needed studies and tasks.

Agenda:

Welcome and CISE updates
Program updates for CISE divisions
Presentation and discussion of the CISE AC data science report
NSF Big Ideas discussion
Closing remarks and wrap-up

Dated: November 10, 2016.

Suzanne Plimpton,

Acting Committee Management Officer.

[FR Doc. 2016-27513 Filed 11-15-16; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2016-0232]

Response of Nuclear Power Plant Instrumentation Cables When Exposed to Fire Conditions—Test Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft test plan; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is requesting public comment on the draft test plan entitled, “Response of Nuclear Power Plant Instrumentation Cables When Exposed to Fire Conditions—Test Plan,” in order to receive feedback from the widest range of interested parties and to ensure that all information relevant to developing this document is available to the NRC staff. The purpose of this draft test plan is to better understand the fire-induced failure modes of instrumentation cables and evaluate the potential effect those failure modes could have on plant instrumentation circuits (*i.e.*, circuit, component, and/or system response).

DATES: Submit comments by December 16, 2016. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2016-0232. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **Mail comments to:** Cindy Bladey, Office of Administration, Mail Stop: OWFN-12-H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Gabriel Taylor, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-0781, email: Gabriel.Taylor@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2016-0232 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2016-0232.

- **NRC’s Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The draft test plan, “Response of Nuclear Power Plant Instrumentation Cables When Exposed to Fire Conditions—Test Plan,” is available in ADAMS under Accession No. ML16309A608.

- **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.

B. Submitting Comments

Please include Docket ID NRC-2016-0232 in the subject line of your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at <http://www.regulations.gov> as well as entering the comment submissions into ADAMS.

The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

In 1990, the NRC sponsored a series of tests at Sandia National Laboratories (SNL) to investigate the effects of thermal aging on fire damageability, documented in NUREG/CR-5546, “An Investigation of the Effects of Thermal Aging on the Fire Damageability of Electric Cables” (ADAMS Accession No. ML041270223). An instrumentation cable was tested to determine the failure time and temperature for both aged and unaged cables. During the testing, levels of leakage current, on the order of 15 mA, were observed prior to the onset of catastrophic failure. In 2001, additional testing was performed by the Nuclear Energy Institute and the Electric Power Research Institute. The NRC was invited to observe and participate by sponsoring SNL to evaluate various cables and instrumentation techniques. Six tests included instrumentation cables and those results are documented in NUREG/CR-6776, “Cable Insulation Resistance Measurements Made During Cable Fire Tests” (ADAMS Accession No. ML022600316). Those results indicated pronounced differences observed between the failure of the thermoplastic and thermoset insulated cables. In previous years the NRC has published cable functionality test reports which focused on power and control cables when exposed to fire conditions including: NUREG/CR-7102, “Kerite Analysis in Thermal Environment of FIRE (KATE-Fire): Test Results” (ADAMS Accession No.

ML11333A033), NUREG/CR-7010, Volume 1, "Cable Heat Release, Ignition, and Spread in Tray Installations During Fire (CHRISTIFIRE), Phase 1: Horizontal Trays" (ADAMS Accession No. ML12213A056), NUREG/CR-7010, Volume 2, "Cable Heat Release, Ignition, and Spread in Tray Installations During Fire (CHRISTIFIRE), Phase 2: Vertical Shafts and Corridors" (ADAMS Accession No. ML13346A045), NUREG-2128, "Electrical Cable Test Results and Analysis During Fire Exposure (ELECTRA-FIRE), A Consolidation of Three Major Fire-Induced Circuit and Cable Failure Experiments Performed Between 2001 and 2011" (ADAMS Accession No. ML13253A087), NUREG/CR-7150, Volume 1, "Joint Assessment of Cable Damage and Quantification of Effects from Fire (JACQUE-FIRE)" (ADAMS Accession No. ML12313A105), NUREG/CR-7150, Volume 2, "Joint Assessment of Cable Damage and Quantification of Effects from Fire (JACQUE-FIRE)" (ADAMS Accession No. ML14141A129).

The purpose of this draft test plan is to better understand the fire-induced failure modes of instrumentation cables and evaluate the potential effect those failure modes could have on plant instrumentation circuits (*i.e.*, circuit, component, and/or system response). Specifically, this research is intended to better quantify the signal leakage characteristics that may occur before catastrophic failure in instrumentation circuits.

The NRC is requesting public comment in order to receive feedback from the widest range of interested parties and to ensure that all information relevant to developing this document is available to the NRC staff. This document is not intended for interim use. The NRC will review public comments received on the document, incorporate suggested changes as necessary, and make the final test plan available.

Dated at Rockville, Maryland, this 4th day of November, 2016.

For the Nuclear Regulatory Commission.

Mark Henry Salley,

Chief, Fire and External Hazard Analysis Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.

[FR Doc. 2016-27721 Filed 11-15-16; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket No. CP2017-34]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 17, 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
- II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states

concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s):* CP2017-34; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* November 8, 2016; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Lawrence Fenster; *Comments Due:* November 17, 2016.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016-27443 Filed 11-15-16; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79276; File No SR-CBOE-2016-075]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

November 9, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 1, 2016, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule. Particularly, the Exchange proposes to amend its fees for Firm (origin codes "F" and "L") facilitation orders. The Fees Schedule currently defines "Facilitation orders" as any order in which a Clearing Trading Permit Holder ("F" origin code) or Non-Trading Permit Holder Affiliate ("L" origin code) is contra to any other origin code, provided the same executing broker and clearing firm are on both sides of the transaction (for open outcry) or both sides of a paired order (for orders executed electronically).³ The Fees Schedule also provides that for facilitation orders (other than Underlying Symbol List A (34) excluding binary options) executed in open outcry, or electronically via the Automated Improvement Mechanism ("AIM") or as a Qualified Contingent Cross order ("QCC") or CFLEX transaction, CBOE will assess no Clearing Trading Permit Holder Proprietary transaction fees. The Exchange proposes to amend the Fees Schedule to provide that for facilitation orders executed via AIM (*i.e.*, AIM facilitation contra orders), Firms would be assessed \$0.05 per contract and for facilitation orders executed as a QCC order, Firms would be assessed \$0.17

per contract. Additionally, the Exchange would amend the Clearing Trading Permit Holder Fee Cap rate table to reflect that AIM facilitation contra orders would now count towards the Clearing Trading Permit Holder Fee Cap ("Fee Cap"). The Exchange notes that AIM and QCC orders are already subject to rebates and therefore, it does not wish to further provide free facilitation on these executions.⁴ The Exchange also notes that other Exchanges do not waive fees for facilitation orders that are executed through an electronic pairing mechanism or as a QCC order.⁵

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁸ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes that assessing \$0.05 per contract for Firm facilitation orders executed via AIM (*i.e.*, AIM facilitation contra orders) is reasonable because it is the same amount assessed to Firms for AIM Solicitation contra orders. The Exchange believes it is equitable and not unfairly

⁴ See *e.g.*, CBOE Fees Schedule, the Volume Incentive Program, which provides credits for customer AIM orders and QCC Rate Table, which provides \$0.10 per contract credit for all transaction QCC orders.

⁵ See *e.g.*, NASDAQ PHLX Pricing Schedule, Section II, Multiply Listed Options Fees and Section IV Other Transaction Fees, PIXL Pricing. See also, NYSE Amex Options ("Amex") Fees Schedule, Credits and Key Terms and Definitions and Section I, Options Transaction Fees.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78f(b)(4).

discriminatory to no longer waive transaction fees for AIM facilitation contra orders because AIM orders are already eligible for a rebate under the Volume Incentive Program ("VIP"). The Exchange also notes that transaction fees for similar facilitation transactions executed via an electronic pairing system at other exchanges are not waived.⁹ The Exchange believes amending the Fee Cap table to reflect that AIM facilitation contra orders would count towards the Fee Cap is reasonable, equitable and not unfairly discriminatory because the Exchange will now be charging for these transactions (whereas before they were listed as "\$0.00) and because AIM Solicitation contra orders are also applied to the Fee Cap.

The Exchange believes that assessing \$0.17 per contract for Firm facilitation orders executed as a QCC order is reasonable because it is the same amount all non-Customer orders are assessed for QCC order executions. The Exchange believes it is equitable and not unfairly discriminatory to no longer waive transaction fees for QCC facilitation contra orders because QCC orders already receive a rebate of \$0.10 per contract. The Exchange also notes that transaction fees for similar QCC facilitation orders executed at other exchanges are not waived.¹⁰

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because while the Exchange is eliminating its Firm Facilitation fee waiver for AIM and QCC orders, these orders are subject to the benefit of various rebates and will be assessed the same amounts charged to Firms for non-facilitation AIM contra orders and QCC orders, respectively. The Exchange does not believe that the proposed change will cause any unnecessary burden on intermarket competition because the proposed change only affects trading on CBOE. To the extent that the proposed changes make CBOE a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become CBOE market participants.

⁹ See *supra* Note 5.

¹⁰ *Id.*

³ See CBOE Fees Schedule, Footnote 11.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and paragraph (f) of Rule 19b-4¹² thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CBOE-2016-075 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR-CBOE-2016-075. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2016-075 and should be submitted on or before December 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Brent J. Fields,

Secretary.

[FR Doc. 2016-27471 Filed 11-15-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79272; File No. SR-MIAX-2016-39]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 519A, Risk Protection Monitor

November 9, 2016.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 31, 2016, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 519A, Risk Protection Monitor.

The text of the proposed rule change is available on the Exchange's Web site at http://www.miaxoptions.com/filter/wotitle/rule_filing, at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 519A, Risk Protection Monitor, to mandate the use of the Risk Protection Monitor by Members, and to state clearly in the rule that Members may establish multiple RPM Settings, as defined below.

Current Functionality

Currently, using the Risk Protection Monitor, the Exchange's System³ maintains a counting program ("counting program") for each participating Member that counts the number of orders entered and the number of contracts traded via an order entered by a Member on the Exchange within a specified time period that has been established by the Member (the "specified time period"). The maximum duration of the specified time period is established by the Exchange and announced via a Regulatory Circular. The current maximum duration of the specified time period is a trading session.

³ The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f).

Under the current rule, Members may establish an Allowable Order Rate⁴ and/or an Allowable Contract Execution Rate.⁵ When a Member's order is entered or when an execution of a Member's order occurs, the System will look back over the specified time period to determine whether the order entered or the execution that occurred triggers the Risk Protection Monitor.⁶ Members may establish whether the Risk Protection Monitor, when triggered, will (i) prevent the System from receiving any new orders in all series in all classes from the Member; or (ii) prevent the System from receiving any new orders in all series in all classes from the Member and cancel all existing Day orders in all series in all classes from the Member; or (iii) send a notification that the Risk Protection Monitor has been triggered without any further preventative or cancellation action by the System.⁷

When engaged, the Risk Protection Monitor allows the Member to interact with existing orders entered prior to triggering the Risk Protection Monitor and allows the Member to continue to send cancel messages and receive reports of executions resulting from those orders. The Risk Protection Monitor shall remain engaged until the Member communicates with the Exchange staff to enable the acceptance of new orders.⁸

The Proposal

First, the Exchange proposes to amend current Rule 519A(a) and (b) by consolidating the two paragraphs into one unified, cohesive paragraph describing the Risk Protection Monitor

⁴ The Allowable Order Rate is the number of orders entered during the specific time period that has been established by the Member.

⁵ The Allowable Contract Execution Rate is the number of contracts executed during the specific time period that has been established by the Member.

⁶ The Exchange notes that the specific time period does not need to be the same for both the Allowable Order Rate and Allowable Contract Execution Rate (*i.e.*, there can be one specified time period for Allowable Order Rate and a different specified time period for Allowable Contract Execution Rate). In order to be consistent in the rule, under the proposal there can also be one Corresponding Specified Time Period (as described below) for both the Allowable Order Rate and a different Corresponding Specified Time Period for Allowable Contract Execution Rate. See proposed Rule 519A(b).

⁷ See Exchange Rule 519A(a). As discussed below, the Risk Protection Monitor will not cancel any existing Good Til Cancelled ("GTC") orders. GTC Orders will remain in the System available for trading when the Risk Protection Monitor is engaged. See Rule 519A, Interpretations and Policies .02.

⁸ See current Exchange Rule 519A(b). The communication from the Member to Exchange staff can either be via email or phone.

feature, its functionality, the ability of Members to establish and configure multiple Risk Protection Monitor settings, and the ability of Members to determine one of three alternative actions taken by the Risk Protection Monitor once it is triggered.

Proposed Rule 519A will continue to include the basic description of the Risk Protection Monitor described above. The proposed amendments will reflect that the Risk Protection Monitor maintains one or more Member-configurable Allowable Order Rate settings and Allowable Contract Execution Rate settings (collectively, "Risk Protection Monitor settings"). The Exchange believes that providing Members with the ability to establish multiple Risk Protection Monitor settings enhances Members' ability to account for sudden market movements due to extreme market volatility, and for heightened activity in one particular option or group of options in a particular industry or segment of the market due to news or other factors affecting the activity surrounding such option or options. Members may also simultaneously account for normal or even sluggish activity in less active options by establishing higher Risk Protection Monitor settings and a longer specified time period during which the Risk Protection Monitor engages the counting program.

Amended Rule 519A(a), Voluntary Risk Protection Functionality,⁹ will also continue to include a choice of three possible outcomes for the Member once the System triggers the Risk Protection Monitor (*i.e.*, when the Risk Protection Monitor setting has been reached during the specified time period), all of which are contained in the current rule. Specifically, once engaged, the Risk Protection Monitor will then, as determined by the Member: Automatically either (A) prevent the System from receiving any new orders in all series in all classes from the Member; (B) prevent the System from receiving any new orders in all series in all classes from the Member and cancel all existing orders with a time-in-force of Day in all series in all classes from the Member; or (C) send a notification to the Member without any further preventative or cancellation action by the System. As under the current rule when engaged, the Risk Protection Monitor will still allow the Member to interact with existing orders entered prior to exceeding the Allowable Order

Rate setting or the Allowable Contract Execution Rate setting, including sending cancel order messages and receiving trade executions from those orders. The Risk Protection Monitor will remain engaged until the Member communicates with the Help Desk to enable the acceptance of new orders.

The Exchange believes that the ability of a Member to choose among three outcomes once the Risk Protection Monitor is triggered enhances the risk protections afforded to Members by the Exchange and thus provides a tool by which Members can further use the Risk Protection Monitor, once triggered, by tailoring the outcome to their acceptable risk tolerance levels.

Mandatory Use of the Risk Monitor Mechanism

In addition to the consolidation of current Rules 519A(a) and (b) into one paragraph (new paragraph (a)), the Exchange proposes to adopt new Rule 519A(b), Mandatory Participation, to state that Members must establish at least one Allowable Order Rate setting with a corresponding specified time period of not less than one second, and not to exceed ten seconds, as established by the Exchange and communicated to Members via Regulatory Circular (a "Corresponding Specified Time Period") and at least one Allowable Contract Execution Rate setting (with a Corresponding Specified Time Period). The Exchange believes that establishing the Corresponding Specified Time Period within these parameters will provide minimum and maximum guidelines for Members, making their required use of the Risk Protection Monitor more efficient and streamlined.

The Risk Protection Monitor settings must be configured by the Member such that the Risk Protection Monitor, when triggered, will perform one of two steps set forth in proposed Rule 519A(a): Either (A) prevent the System from receiving any new orders in all series in all classes from the Member; or (B) prevent the System from receiving any new orders in all series in all classes from the Member and cancel all existing orders with a time-in-force of Day in all series in all classes from the Member. Under the mandatory provision of proposed Rule 519A(b), the simple Member notification option included in section (C) of proposed Rule 519A(a) would not be available.

The purpose of this proposed provision is to mandate the use of the Risk Protection Monitor so that Members and the investing public are assured that the Risk Protection Monitor is active for all orders submitted to the

⁹ For clarity and ease of reference, the Exchange is proposing to add the heading "Voluntary Risk Protection Functionality" to new Rule 519A(a), and the heading "Mandatory Participation" to new Rule 519A(b).

Exchange. The Exchange notes that other exchanges have similar risk protection tools and one has mandated a Member's use of similar functionality.¹⁰

Proposed Rule 519A(b) would also state that Members may establish additional Allowable Order Rate settings and additional Allowable Contract Execution Rate settings, and any such additional settings may be configured to perform the step set forth in either (A), (B), or (C) of Rule 519(a) as described above, upon engagement of the Risk Protection Monitor.

As a technical matter, the Exchange proposes to amend Rule 519A, Interpretations and Policies .01(c), to make it consistent with the proposed amended Rule. The current Rule states that the Risk Protection Monitor will prevent the System from receiving any new orders in all series in all classes from the Member and, if designated by the Member's instructions, cancel all existing Day orders in all series in all classes from the Member. "Day orders" are not defined in the Exchange's rules and therefore the Exchange proposes to replace the term "Day orders" with "orders with a time-in-force of Day."

The purpose of the proposed rule change is to enhance the risk protections afforded to Members by the Exchange by mandating use of the RPM and by permitting Members to establish multiple RPM Settings which can be tailored to the Member's acceptable risk tolerance levels.

The Exchange anticipates that the proposed new Risk Protection Monitor functionality will be deployed on the Exchange beginning November 7, 2016.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the

mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that Members will benefit from the proposed mandatory use of the Risk Protection Monitor, coupled with the ability of members to tailor their use of the Risk Protection Monitor to their risk tolerance levels. Members are vulnerable to the risk from system or other error or a market event, that may cause them to send a large number of orders or receive multiple, automatic executions before they can adjust their order exposure in the market. Without adequate risk management tools, such as the Risk Protection Monitor, Members could reduce the amount of order flow and liquidity that they provide to the market. Such actions may undermine the quality of the markets available to customers and other market participants. Accordingly, the proposed amendments to the Risk Protection Monitor, especially its mandated use, should instill additional confidence in Members that submit orders to the Exchange that their risk tolerance levels are protected, and thus should encourage such Members to submit additional order flow and liquidity to the Exchange with the understanding that they must have this protection, thereby removing impediments to and perfecting the mechanisms of a free and open market and a national market system and, in general, protecting investors and the public interest.

In addition, providing Members with the ability to establish multiple RPM settings provides Members with more tools to use in managing their specific risks based on their individual risk tolerance levels. This facilitates transactions in securities because, as noted above, the Members will have more confidence that protections are in place that reduce the risks from potential system errors and market events. As a result, the modified functionality, together with the mandated use of the Risk Protection Monitor, has the potential to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. On the contrary, the Exchange believes that the amendments to the Risk Protection Monitor help promote competition by enabling Members to trade more aggressively on the Exchange, with the

understanding that there are multiple, configurable risk management tools in place in the System. The Exchange believes the proposed changes will not impose any burden on intra-market competition because the use of the Risk Protection Monitor is now required of all Members.

The Exchange further believes that the proposed mandatory risk protections should promote inter-market competition, and result in more competitive order flow to the Exchange by protecting market participants from system errors or market events that may cause them to send a large number of orders or receive multiple, automatic executions before they can adjust their order exposure in the market.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6)¹⁴ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁵ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange requests that the Commission waive the 30-day operative delay. The Exchange requests waiver of the 30-day operative delay so that Members may benefit from the proposed new functionality and so that the Exchange is able to deploy the functionality on its scheduled deployment date of November 7, 2016. For these reasons, the Commission believes that waiver of

¹⁰ International Securities Exchange LLC ("ISE") Rule 714(d) mandates the use of its Market Wide Risk Protection tool by establishing default values that apply to members that do not submit the required parameters, but does not establish exchange-mandated minimum or maximum parameters. BATS BZX Exchange ("BZX") Rule 21.16(b)(ii) lists a succession of "Specified Engagement Triggers" that may be set optionally by the BATS User, and thus does not mandate the use of its Risk Monitor Mechanism.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.¹⁶

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-MIAX-2016-39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-MIAX-2016-39. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and

printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2016-39 and should be submitted on or before December 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Brent J. Fields,

Secretary.

[FR Doc. 2016-27467 Filed 11-15-16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79274; File No. SR-Phlx-2016-79]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Partial Amendment No. 2 and Order Granting Approval of a Proposed Rule Change, as Modified by Partial Amendment No. 2, To Amend PHLX Rule 1017, Openings in Options

November 9, 2016.

I. Introduction

On August 4, 2016, NASDAQ PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its rules governing the opening of trading in options series on the Exchange. The proposed rule change was published for comment in the **Federal Register** on August 22, 2016.³ The Commission received no comment letters regarding the proposed rule change. On October 3, 2016, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute

proceedings to determine whether to disapprove the proposed rule change.⁵ On November 7, 2016, the Exchange filed Partial Amendment No. 1 to the proposed rule change ("Partial Amendment No. 1").⁶ On November 8, 2016, the Exchange filed Partial Amendment No. 2 to the proposed rule change, which superseded Partial Amendment No. 1 ("Partial Amendment No. 2").⁷ The Commission is publishing this order to approve the proposed rule change, as modified by Partial Amendment No. 2.

II. Description

The Exchange has proposed to reorganize and amend current Rule 1017, which describes the opening of trading in option series on the Exchange.⁸

A. Definitions

The Exchange proposes to revise the introductory language to Rule 1017(a) to state that it would conduct an electronic opening for all option series traded on Phlx using its trading system ("system").⁹ In addition, the Exchange proposes to revise Phlx Rule 1017(a) to define several of the terms used in proposed Phlx Rule 1017. The Exchange proposes to define "Opening Process" by cross-referencing Rule 1017(d),¹⁰ "Opening Price" by cross-referencing

⁵ See Securities Exchange Act Release No. 79024, 81 FR 69892 (October 7, 2016). The Commission designated a longer period within which to take action on the proposed rule change and designated November 20, 2016, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁶ Partial Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-phlx-2016-79/phlx201679-1.pdf>.

⁷ In Partial Amendment No. 2, Phlx amends its proposed rule change to: (1) Specify that references to "quotes" refer to two-sided quotes; (2) provide additional rationale for the OQR and for boundaries that protect the Opening Price from trading through the limit price(s) of interest within OQR, which is unable to fully execute at the Opening Price; (3) state that in the event the Exchange routes to away markets and uses the away market price as the Opening Price, the Exchange will enter on its order book any unfilled interest at a price equal to or inferior than the Opening Price and the Exchange would route orders that would execute through the Opening Price; (4) explain that each Imbalance Message would be set for the same length of time; (5) include additional rationale for proposed changes to routing during the Opening Process; (6) provide examples for how certain parts of the Opening Process operate; and (7) revise the filing and the Exhibit 5 to state that the Exchange may open with the PBBO only if there are no routable orders locking the ABBO. Partial Amendment No. 2 is available at: <https://www.sec.gov/comments/sr-phlx-2016-79/phlx201679-2.pdf>.

⁸ For a complete description on the proposal, please refer to the Notice, *supra* note 3 and Partial Amendment No. 2, *supra* note 7.

⁹ See Phlx Rule 1017(a).

¹⁰ See Phlx Rule 1017(a)(i).

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 78588 (August 16, 2016), 81 FR 56733 ("Notice").

⁴ 15 U.S.C. 78s(b)(2).

Rule 1017(i) and (k),¹¹ and “Potential Opening Price” by cross-referencing Rule 1017(h).¹² The Exchange also proposes to define the following terms:

- “ABBO” as the Away Best Bid or Offer;¹³
- “Phlx Electronic Market Maker” as a Specialist,¹⁴ Streaming Quote Trader,¹⁵ or Remote Streaming Quote Trader¹⁶ who is required to submit continuous two-sided electronics quotations pursuant to Rule 1014(b)(ii)(D);¹⁷
- “Pre-Market BBO” as the highest bid and lowest offer among Valid Width Quotes;¹⁸
- “Quality Opening Market” as the bid/ask differential applicable to the best bid and offer from all Valid Width Quotes defined in a table to be determined by the Exchange and published on the Exchange’s Web site;¹⁹
- “Valid Width Quote” as the two-sided electronic quotation submitted by a Phlx Electronic Market Maker that consists of a bid/ask differential that is compliant with Rule 1014(c)(i)(A)(1)(a);²⁰ and
- “Zero Bid Market” as where the best bid for an options series is zero.²¹

In addition, the Exchange proposes to define the “market for the underlying security” as either the primary listing market or the primary volume market (defined as the market with the most liquidity in that underlying security for the previous two calendar months), as determined by the Exchange by underlying and announced to the Exchange’s membership on the Exchange’s Web site.²² This would revise the current definition of the “market for the underlying security,” which is defined in current Rule 1017(j), and includes the first market to open.²³

B. Interest Included in the Opening Process

Under the proposal, eligible interest during the Opening Process would

¹¹ See Phlx Rule 1017(a)(ii).

¹² See Phlx Rule 1017(a)(iii).

¹³ See Phlx Rule 1017(a)(iv).

¹⁴ A Specialist is an Exchange member who is registered as an options specialist pursuant to Phlx Rule 1020(a). An options Specialist includes a Remote Specialist which is defined as an options Specialist in one or more classes that does not have a physical presence on an Exchange floor and that is approved by the Exchange pursuant to Phlx Rule 501.

¹⁵ See Phlx Rule 1014(b)(ii)(A).

¹⁶ See Phlx Rule 1014(b)(ii)(B).

¹⁷ See Phlx Rule 1017(a)(vi).

¹⁸ See Phlx Rule 1017(a)(vii).

¹⁹ See Phlx Rule 1017(a)(viii).

²⁰ See Phlx Rule 1017(a)(ix).

²¹ See Phlx Rule 1017(a)(x).

²² See Phlx Rule 1017(a)(v).

²³ See Notice, 81 FR at 56734.

include Valid Width Quotes, Opening Sweeps,²⁴ and orders.²⁵ Phlx proposes to permit Phlx Electronic Market Makers to submit quotes,²⁶ Opening Sweeps, and orders. Phlx proposes that two-sided quotes other than Valid Width Quotes would not be included in the Opening Process. Under the proposal, Non-SQT Registered Options Traders may submit orders. Phlx also proposes that all-or-none interest that can be satisfied would be considered in determining the Opening Price.²⁷

The proposed rule provides that a Phlx Electronic Market Maker assigned in a particular option may only submit an Opening Sweep if, at the time of entry of the Opening Sweep, that Phlx Electronic Market Maker has already submitted and maintained a Valid Width Quote. All Opening Sweeps in the affected series entered by a Phlx Electronic Market Maker would be cancelled immediately if that Phlx Electronic Market Maker fails to maintain a continuous quote with a Valid Width Quote in the affected series.²⁸ The Exchange is also proposing that Opening Sweeps may be entered at any price with a minimum price variation applicable to the affected series, on either side of the market, at single or multiple price level(s), and may be cancelled and re-entered. A single Phlx Electronic Market Maker may enter multiple Opening Sweeps, with each Opening Sweep at a different price level. If a Phlx Electronic Market Maker submits multiple Opening Sweeps, the system would consider only the most recent Opening Sweep at each price level submitted by that Phlx Electronic Market Maker in determining the Opening Price. Unexecuted Opening Sweeps would be cancelled once the affected series is open.²⁹

Currently, the Phlx rules provide that the system will use only Opening Sweeps submitted by Phlx Electronic Market Makers to determine the pro-rata allocation.³⁰ Phlx proposes to change its rules so that the system would aggregate the size of all eligible interest for a particular participant category (e.g., all Phlx Electronic Market Maker (a participant category) quotes, Opening Sweeps, and orders are aggregated in determining the pro-rata allocation) at a

²⁴ Phlx Rule 1017(b)(i) defines an Opening Sweep as a one-sided electronic quotation submitted for execution against eligible interest in the system during the Opening Process.

²⁵ See Phlx Rule 1017(b).

²⁶ The term “quotes” refers to two-sided quotes. See Partial Amendment No. 2, *supra* note 7.

²⁷ *Id.*

²⁸ See Phlx Rule 1017(b)(i)(A).

²⁹ See Phlx Rule 1017(b)(i)(B).

³⁰ See Notice, *supra* note 3, at 56735.

particular price level for trade allocation purposes.³¹ Additionally, the Exchange is proposing that orders represented by Floor Brokers must be entered electronically to be considered in the Opening Process.³² Under proposed Rule 1017(d), Phlx Electronic Market Maker Valid Width Quotes and Opening Sweeps received starting at 9:25 a.m. and orders entered at any time before a series opens would be included in the Opening Process.

C. Opening Processes

Under proposed Rule 1017(d), the Opening Process for an option series would be conducted pursuant to Rule 1017(f)–(k) on or after 9:30 a.m. if: (1) The ABBO, if any, is not crossed; and (2) the system has received, within two minutes of the opening trade or quote on the market for the underlying security in the case of equity options or, in the case of index options, within two minutes of the receipt of the Opening Price in the underlying index, or within two minutes of market opening in the case of U.S. dollar-settled foreign currency options, either:

- (a) The Specialist’s Valid Width Quote;
- (b) The Valid Width Quotes of at least two Phlx Electronic Market Makers other than the Specialist; or
- (c) if neither the Specialist’s Valid Width Quote nor the Valid Width Quotes of two Phlx Electronic Market Makers have been submitted within such timeframe, one Phlx Electronic Market Maker has submitted a Valid Width Quote.³³

The Exchange proposes that for all options, the underlying security, including indexes, must be open on the primary market for a certain period of time as determined by the Exchange, which shall be no less than 100 milliseconds and no more than 5 seconds.³⁴ According to the Exchange, this range is designed to allow it to respond to volatility by requiring the underlying to be open for a longer or shorter period of time prior to opening to ensure more stability in the marketplace before initiating the Opening Process.³⁵

Under proposed Rule 1017(d)(iii), the Specialist assigned in a particular equity option must enter a Valid Width Quote

³¹ See Phlx Rule 1017(b)(ii).

³² See Phlx Rule 1017(c).

³³ See Phlx Rule 1017(d)(i). The Exchange represents that these conditions are the same as those in current Rule 1017(k). See Notice, *supra* note 3, at 56736.

³⁴ Phlx Rule 1017(d)(ii). The Exchange represents that it currently applies a minimal delay of 500 milliseconds. See Notice, *supra* note 3, at 56736.

³⁵ See Notice, *supra* note 3, at 56736.

no later than one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the Opening Price in the underlying index. The Specialist assigned in a particular U.S. dollar-settled foreign currency option must enter a Valid Width Quote not later than 30 seconds after the announced market opening.³⁶ Under proposed Rule 1017(d)(iv), a Phlx Electronic Market Maker (other than a Specialist) that submits a quote pursuant to Rule 1017 in any option series when the Specialist's quote has not been submitted would be required to submit continuous, two-sided quotes in that option series until the time that the Specialist submits his or her quote, after which the Phlx Electronic Market Maker that submitted such quote would be obligated to submit quotations pursuant to Rule 1014(b)(ii)(D).³⁷

As proposed, the Opening Process would stop and an option series would not open if the away best bid or offer ("ABBO") becomes crossed or when the requisite number of Valid Width Quotes pursuant to Rule 1017(d)(i) is no longer present. The Exchange states that it would wait for the ABBO to become uncrossed before initiating the Opening Process to ensure that there is stability in the marketplace as the Exchange determines the Opening Price.³⁸ Once each of these conditions no longer exist, the Opening Process in the affected option series would start again pursuant to the Opening Process described in Rule 1017(f)–(k). The Exchange is proposing to use the process described in Rule 1017 to reopen an option series after a trading halt, irrespective of the specific times described in proposed Rule 1017(d).³⁹

D. Opening With a PBBO

Under proposed Rule 1017(f), if there are no opening quotes or orders that lock or cross each other and no routable orders locking or crossing the ABBO, Phlx would open with an opening quote by disseminating the Exchange's best bid and offer among quotes and orders ("PBBO") that exist in the system at that time, unless the following three conditions exist: (i) A Zero Bid Market; (ii) no ABBO; and (iii) no Quality

Opening Market. If all of these conditions exist, the Exchange would calculate an Opening Quote Range ("OQR") and conduct the price discovery mechanism ("PDM").⁴⁰ The Exchange believes that when these conditions exist, it would be difficult to arrive at a reasonable price, and therefore, further price discovery is warranted.⁴¹

E. Pre-Market BBO Calculation

Pursuant to proposed Rule 1017(g), the system would calculate a Pre-Market BBO if there are opening Valid Width Quotes or orders that lock or cross each other. The Exchange represents that this is provided for in the current rule text.⁴²

F. Potential Opening Price

Proposed Rule 1017(h) describes how the system calculates the Potential Opening Price once the Opening Process begins.⁴³ To calculate the Potential Opening Price, Phlx considers all Valid Width Quotes, Opening Sweeps, and orders, except all-or-none interest that cannot be satisfied, to identify the price at which the maximum number of contracts can trade ("maximum quantity criterion").⁴⁴ The Exchange states that the proposed rule, like the current rule, aims to maximize the number of contracts that can trade to find the most reasonable and suitable price.⁴⁵

Under proposed Rule 1017(h)(A), when two or more Potential Opening Prices would satisfy the maximum quantity criterion and leave no contracts unexecuted, the system would use the highest and lowest of those prices to calculate the mid-point. If the mid-point is not expressed as a permitted minimum price variation, it would be rounded to the minimum price variation that is nearest to the closing price for the affected series from the immediate prior trading session. If there is no closing price from the immediate prior trading session, the system would round the mid-point price up to the minimum price variation to determine the Opening Price. The Exchange states that this is similar to current Rule 1017(l)(ii)(B), but the Exchange has added that this method of calculating the Opening Price would occur where two or more Potential Opening Prices would leave no contracts unexecuted.⁴⁶

Under proposed Rule 1017(h)(B), the Exchange would add that if two or more Potential Opening Prices for the affected series would satisfy the maximum quantity criterion and leave contracts unexecuted, the Opening Price would be either the lowest executable bid or highest executable offer of the largest sized side. This is designed to base the Potential Opening Price on the maximum quantity of contracts that are executable.⁴⁷ As described in new Rule 1017(h)(C), the Potential Opening Price would be bounded by the away market price that may not be satisfied with the Exchange routable interest.⁴⁸ According to the Exchange, proposed Rule 1017(h)(c) would ensure that the Exchange would not open with a trade that would trade through another market.

G. Opening With Trade

Under proposed Rule 1017(i), the Exchange would open the option series for trading at the following Opening Price if: (1) The Potential Opening Price is at or within the best of the Pre-Market BBO and the ABBO; (2) the Potential Opening Price is at or within the non-zero bid ABBO if the Pre-Market BBO is crossed; or (3) where there is no ABBO, the Potential Opening Price is at or within the Pre-Market BBO that is also a Quality Opening Market. If there is more than one Potential Opening Price that would meet these conditions where no contracts would be left unexecuted and any value used for the mid-point calculation crosses either the Pre-Market BBO or the ABBO, then the Exchange would open the option series for trading and use the best price that the Potential Opening Price crosses outside as a boundary price for the purposes of the mid-point calculation. The Exchange states that the purpose of these boundaries is to help ensure that the Potential Opening Price is reasonable and does not trade through other markets.⁴⁹

H. Calculation of the Opening Quote Range

The Exchange proposes that the system would calculate an OQR for an option series that would be used in the PDM.⁵⁰ The Exchange states that the OQR is an additional boundary designed to limit the Opening Price to a reasonable price and reduce the potential for erroneous trades during the Opening Process.⁵¹ Except as provided

³⁶ *Id.* The Exchange represents that these obligations are unchanged from those in the current rule text.

³⁷ *Id.* The Exchange represents that this process is substantially unchanged from the current rule text.

³⁸ *Id.*

³⁹ Phlx Rule 1017(e). The Exchange represents that other than the reference to the specific times, the reopening process is currently described in Rule 1017(h). See Notice, *supra* note 3, at 56736.

⁴⁰ See *infra* Section II.I.

⁴¹ *Id.* The proposed rule differs from current Rule 1017(l)(i), which provides that if there are no opening quotes or orders that lock or cross each other, the system will open.

⁴² See Notice, *supra* note 3, at 56736.

⁴³ *Id.*

⁴⁴ See Phlx Rule 1017(h).

⁴⁵ See Notice, *supra* note 3, at 56737.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Phlx Rule 1017(h)(C).

⁴⁹ See Notice, *supra* note 3, at 56737.

⁵⁰ Phlx Rule 1017(j).

⁵¹ See Notice, *supra* note 3, at 56741.

in proposed Rule 1017(j)(3) and (4), to determine the minimum value for the OQR, an amount, as defined in a table to be determined by the Exchange, would be subtracted from the highest quote bid among Valid Width Quotes on the Exchange and on the away market(s), if any. Under proposed Rule 1017(j)(3), if one or more away markets have disseminated opening quotes that are not crossed, and there are Valid Width Quotes on the Exchange that cross each other or that cross away market quotes, the minimum value for the OQR would be the highest quote bid among quotes on away market(s), and the maximum value for the OQR would be the lowest quote offer among quotes on away market(s). Under proposed Rule 1017(j)(4), if there are opening quotes on the Exchange that cross each other, and there is no away market in the affected option series, the minimum value for the OQR would be the lowest quote bid among Valid Width Quotes on the Exchange, and the maximum value for the OQR would be the highest quote offer among Valid Width Quotes on the Exchange.⁵²

Under proposed Rule 1017(j)(5), if there is more than one Potential Opening Price possible where no contracts would be left unexecuted, any Potential Opening Price used for the mid-point calculation (described in Rule 1017(h)) that is outside the OQR would be restricted to the OQR price on that side of the market for the purposes of the mid-point calculation. Proposed Rule 1017(j)(6) would provide that if there is more than one Potential Opening Price possible where no contracts would be left unexecuted and any price used for the mid-point calculation (described in Rule 1017(h)) is an away market price when contracts would be routed, the system would use the away market price as the Potential Opening Price. The Exchange states that it uses the away market price as the Opening Price because the system may need to route to other markets.⁵³ Under proposed Rule 1017(j)(7), if non-routable interest can be maximum executable against Exchange interest after the system determines that routable interest satisfies the away market, then the Potential Opening Price is the price at which the maximum volume, excluding the volume that would be routed to an away market, may be executed on the Exchange as described in proposed Rule 1017(h).

⁵² *Id.* The Exchange represents that the process under Rule 1017(j)(1)–(4) is the same as the process described in current Rule 1017(l)(iii) and (iv), except that the new Rule 1017(j) combines those concepts into a single provision.

⁵³ *Id.*

The Exchange also proposes that the system would consider routable customer interest in price/time priority to satisfy the away market.

I. Price Discovery Mechanism

Current Rule 1017(l)(vi), which the Exchange proposes to delete, provides that if all opening marketable size cannot be completely executed at or within the OQR without trading through the ABBO, the Exchange would conduct a price discovery process. Under proposed Rule 1017(k), the Exchange would conduct the PDM, after the OQR calculation, if it has not opened pursuant to the processes described in Rule 1017(f) or (i). According to the Exchange, the purpose of the PDM is to satisfy the maximum number of contracts possible by applying wider price boundaries and seeking additional liquidity.⁵⁴

Under the proposal, first, the Exchange would broadcast an imbalance message (including the symbol, side of the imbalance (unmatched contracts), size of matched contracts, size of the imbalance, and price of the affected series, which must be within the Pre-Market BBO) to participants (“Imbalance Message”), and begin an “imbalance timer” (“Imbalance Timer”) that would not exceed three seconds and would be for the same number of seconds for all options traded on the Exchange. The Exchange notes that this provision is the same as in the existing rule, except that the Exchange is adding the requirement that the Imbalance Message must be within the Pre-Market BBO to ensure that the price is reasonable.⁵⁵

Under proposed Rule 1017(k)(B), any new interest received by the system would then update the Potential Opening Price. If during or at the end of the Imbalance Timer, the Opening Price is at or within the OQR, the Imbalance Timer would end and the system would execute at the Opening Price. However, this would occur only if the executions consist of Exchange interest only without trading through: (1) The ABBO and (2) the limit price(s) of interest within the OQR that is unable to be fully executed at the Opening Price. Under the proposal, if no new interest comes in during the Imbalance Timer, and the Opening Price is at or within the OQR, the Exchange would open at the end of the Imbalance Timer.

If the option series has not opened pursuant to proposed Rule 1017(k)(B),

⁵⁴ *Id.* at 56738.

⁵⁵ The Exchange represents that the Imbalance Timer will be the same number of seconds for all options traded on the Exchange. See Notice, *supra* note 3, at 56738.

the system would (1) send a second Imbalance Message with a Potential Opening Price that is bounded by the OQR (without trading through the limit price(s) of interest within the OQR which is unable to be fully executed at the Opening Price) and includes away market volume in the size of the imbalance to participants; and concurrently (2) initiate a route timer, not to exceed one second (“Route Timer”). Current Rule 1017(l)(ii)(C) provides that if the Exchange’s opening price includes away interest, the system would initiate a route timer, and then subsequently route to other markets disseminating prices better than the Exchange’s opening price, execute marketable interest at the Exchange’s opening price, and route to other markets disseminating prices equal to the Exchange’s opening price if necessary. However, under the proposed rule change, the Route Timer would be initiated during the imbalance process.

The Exchange states that the Route Timer is intended to give participants an opportunity to respond to an Imbalance Message before any opening interest is routed to away markets and thereby, maximize trading on the Exchange.⁵⁶ As proposed, the Route Timer would operate as a pause before an order is routed to an away market. If, during the Route Timer, interest is received by the system that would allow the Opening Price to be within the OQR without trading through other markets and without trading through the limit price(s) of interest within the OQR that is unable to be fully executed at the Opening Price, the system would trade and the Route Timer would end. The system would monitor quotes received during the Route Timer period and make ongoing corresponding changes to the permitted OQR to reflect them. The Exchange notes that this proposed rule change would revise the current rule requirement that there be no imbalance for the Exchange to open and widen the boundary of available Opening Prices, which the Exchange believes would make it more likely that an Opening Price be discovered.⁵⁷

Proposed Rule 1017(k)(C)(3) would provide that when the Route Timer expires, if the Potential Opening Price is within the OQR (without trading through the limit price(s) of interest within the OQR that is unable to be fully executed at the Opening Price), the system would determine if the total number of contracts displayed at better

⁵⁶ *Id.* at 56739. The Exchange represents that the system would not route away until the Route Timer ends.

⁵⁷ *Id.*

prices than the Exchange's Potential Opening Price on away markets ("better priced away contracts") would satisfy the number of marketable contracts available on the Exchange. Under the proposal, the Exchange would open the option by routing and/or trading on the Exchange, pursuant to Rule 1017(k)(C)(3)(i)–(iii). The Exchange represents that under the proposal, as under the current rule, the Exchange would apply the OQR as a boundary before considering away markets.⁵⁸

Pursuant to proposed Rule 1017(k)(C)(3)(i), if the total number of better priced away contracts would satisfy the number of marketable contracts available on the Exchange on either the buy or sell side, the system would route all marketable contracts on the Exchange to the better priced away markets as an intermarket sweep order ("ISO") designated as an immediate-or-cancel order(s) ("IOC"), and determine an opening PBBO that reflects the interest remaining on the Exchange. In contrast with the current rule, which states that contracts routed away are priced at the better away market price, under the proposed rule, the system would price any contracts routed away to other markets at the Exchange's Opening Price.

Under proposed Rule 1017(k)(C)(3)(ii), if the total number of better priced away contracts would not satisfy the number of marketable contracts the Exchange has, the system would determine how many contracts it has available at the Opening Price. If the total number of better priced away contracts plus the number of contracts available at the Opening Price would satisfy the number of marketable contracts on the Exchange on either the buy or sell side, the system would contemporaneously route a number of contracts that would satisfy interest at other markets at prices better than the Opening Price and trade available contracts on the Exchange at the Opening Price. The system would price any contracts routed to other markets at the better of the Opening Price or the order's limit price pursuant to Rule 1017(k)(C)(3)(ii) at the Opening Price. Under the current rules of the Exchange, the Exchange will execute only at the Opening Price, and does not specify that the system would use the better of the Opening Price or the order's limit price to route to away markets. The Exchange states that this proposed Rule 1017(k)(C)(3)(ii) is designed to maximize execution of interest on the Exchange or away markets.⁵⁹

Proposed Rule 1017(k)(C)(3)(iii) provides that if the total number of better priced away contracts plus the number of contracts available at the Opening Price plus the contracts available at other markets at the Opening Price would satisfy the number of marketable contracts the Exchange has on either the buy or sell side, the system would contemporaneously route a number of contracts that would satisfy interest at other markets at prices better than the Opening Price (pricing any contracts routed to other markets at the better of the Opening Price or the order's limit price), trade available contracts on the Exchange at the Opening Price, and route a number of contracts that would satisfy interest at other markets at prices equal to the Opening Price. The Exchange notes that the proposed rule adds a reference to the order's limit price. The Exchange states that routing at the better of the Opening Price or the order's limit price is intended to achieve the best possible price available at the time the order is received by the away market and that routing at the order's limit price ensures that the order's limit price is not violated.⁶⁰

Under proposed Rule 1017(k)(C)(4), after the first and second Imbalance Messages, each of which would be set for the same amount of time and would last for the length of the Imbalance Timer, the system may send up to two additional Imbalance Messages (which may occur while the Route Timer is operating) bounded by the OQR and reflecting away market interest in the volume. After the Route Timer has expired, the processes in Rule 1017(k)(C)(3) would repeat. However, unlike as provided in current Rule 1017(l)(vii)(C)(6), a new Route Timer would not be initiated.

The Exchange proposes that, pursuant to proposed Rule 1017(k)(C)(5), after all additional Imbalance Messages have occurred pursuant to proposed Rule 1017(k)(C)(4), the system would open as many contracts as possible by routing to other markets at prices better than the Opening Price for their disseminated size, trading available contracts on the Exchange at the Opening Price bounded by the OQR (without trading through the limit price(s) of interest within the OQR which is unable to be fully executed at the Opening Price), and routing contracts to other markets at prices equal to the Opening Price at their disseminated size. In this situation, the system would price any contracts routed to other markets at the better of the Opening Price or the

order's limit price. Any unexecuted contracts from the imbalance not traded or routed would be cancelled back to the entering participant if they remain unexecuted and priced through the Opening Price, unless the member that submitted the original order has instructed the Exchange in writing to re-enter the remaining size, in which case the remaining size would be automatically submitted as a new order. The Exchange notes that this is similar to the text of the current rule, but that the Exchange is deleting text that provides that before an order is cancelled back or re-entered, it would be displayed in the Exchange's quote at the Opening Price for the remaining size for a period not to exceed ten seconds.⁶¹ The Exchange represents that this does not occur as the Exchange has set this time period for zero seconds.⁶² Accordingly, the Exchange is also deleting language that provides that during the display time period, the system would disseminate, on the opposite side of the market from remaining contracts: (1) A non-firm bid for the price and size of the next available bid(s) on the Exchange if the imbalance is a sell imbalance, or (2) a non-firm offer for the price and size of the next available offer(s) on the Exchange if the imbalance is a buy imbalance. The Exchange believes that this provision is no longer necessary as there is no display time period under the proposed rule.⁶³

Under proposed Rule 1017(k)(C)(6), the system would execute orders at the Opening Price that have contingencies (such as, without limitation, all-or-none) and non-routable orders, such as a "Do Not Route" or "DNR" Orders, to the extent possible.⁶⁴ The system would only route non-contingency customer orders. The Exchange proposes that under Rule 1017(k)(D), the system would: (1) Re-price DNR orders (that would otherwise have to be routed to the exchange(s) disseminating the ABBO for an opening to occur) to a price that is one minimum trading increment inferior to the ABBO, and (2) disseminate the re-priced DNR Order as part of the new PBBO.⁶⁵

J. Other Items

Under the proposed rule change, the system would give priority to market orders first in time priority, then resting limit orders, and the allocation

⁶¹ *Id.* at 56740.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ This is substantially the same as the current rule text in existing Plx Rule 1017(l)(vi)(C)(8).

⁶⁵ This is substantially the same as the current rule text in existing Plx Rule 1017(l)(vi)(D).

⁵⁸ *Id.*

⁵⁹ See Notice, *supra* note 3, at 56739.

⁶⁰ *Id.*

provisions of Rule 1014(g)(vii) would apply.⁶⁶ Further, the Exchange proposes that when the option series opens, the system would disseminate the price and size of the PBBO.⁶⁷ In addition, the Exchange proposes to delete rule text in current Rule 1017(i), which currently provides that a limit order to buy at a higher price than the price at which the option is to be opened and a limit order to sell which is at a lower price than the price at which the option is to be opened shall be treated as market orders. The Exchange is deleting this text because it treats these orders as limit orders, which the Exchange believes is consistent with participants' expectations.⁶⁸

The Exchange also proposes to delete current Rule 1017(l)(ix), which provides for a delay to calculate the opening. The Exchange's current technology does not require a delay in order to open, and the Exchange states that therefore, this requirement is obsolete.⁶⁹ Further, the Exchange proposes to delete current Rule 1017(l)(x), which addresses when the ABBO becomes crossed. The Exchange states that the impact of the ABBO is now discussed throughout the rule, and this provision is therefore unnecessary.⁷⁰

III. Discussion

After careful review, the Commission finds that the proposed rule change, as modified by Partial Amendment No. 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷¹ In particular, for the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁷² which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

A. Definitions and Organizational Changes

The Commission notes that, generally, the Exchange is proposing changes to the definitions described in Section II.A to better organize and clearly convey for readers existing concepts that are throughout the Exchange's Opening Process rules. The Commission notes that the Exchange is proposing to eliminate from the definition of "market for the underlying security" under Rule 1017(a)(v) the phrase the "first market to open." The Exchange represents that it does not currently use the first market to open to determine the market for the underlying security and will only use the primary listing market and primary volume market to determine the underlying market.⁷³ In addition, use of the term "Phlx Electronic Market Maker," rather than "Phlx XL Participant," should reduce investor confusion because "Phlx XL Participant" includes non-SQT Registered Options Traders or ROTs,⁷⁴ who cannot submit quotes electronically, and are not subject to Rule 1017 because Rule 1017 applies only to electronic trading. The Commission notes that the Exchange is proposing to reorganize several provisions of Rule 1017, which should improve the clarity and readability of the Exchange's rules.

B. Interest Included in the Opening Process

The Commission notes that the Exchange is proposing that all-or-none interest that can be satisfied would be considered for execution and in determining the Opening Price throughout the Opening Process. The Exchange is also proposing to aggregate the size of all eligible interest for a particular participant category at a particular price level to determine the pro-rata allocation⁷⁵ rather than using only Opening Sweeps. The Commission believes that these proposed changes could benefit investors by increasing interest included in the Opening Process and potentially result in a better Opening Price. The Commission notes that the allocation methodology used would be consistent with existing Phlx rules. The Commission also notes that the proposed rule change provides for time frames for orders and quotes to be entered on the Exchange pursuant to Phlx Rule 1017(d) and the conditions under which the Opening Process would occur. The Commission believes

that these proposed rule changes could provide investors with more certainty around when interest can be submitted to the Exchange and the conditions required for the Opening Process to begin.

C. Opening Processes and Reopening After a Trading Halt

As discussed in Section II.C, proposed Phlx Rule 1017(d) sets forth the Opening Process for an option series, which the Exchange represents is the same as the requirements under current Rule 1017(k). The Exchange represents that throughout the Opening Process, there will be no different impact to any particular participants and that executions occur at the most reasonable price possible regardless of participant type.⁷⁶

The Commission believes that the Exchange's proposal to provide a delay between the opening of the underlying and the related option is not novel⁷⁷ and would provide the Exchange with flexibility to help ensure a stable Opening Process to determine the price of an option. The Commission notes that proposed Rule 1017(d)(iii) and (iv) sets forth time frames for a Specialist to enter a Valid Width Quote and the requirements for a Phlx Electronic Market Maker to enter continuous, two-sided quotes, which according to the Exchange, are unchanged from the current rule text.⁷⁸ The Commission believes that the Exchange's proposal to make explicit in Rule 1017(d)(iv) that the Opening Process would stop and an option series would not open if the ABBO becomes crossed or when the requisite number of Valid Width Quotes pursuant to Rule 1017(d)(i) are no longer present, at which time the process would be re-started, would benefit investors by clarifying the operation of the rule.

Lastly, new Rule 1017(e) states that the procedure described in Rule 1017 may be used to reopen an option after a trading halt. This concept is currently in Rule 1017(h) except that the Exchange is adding that if there is a trading halt or pause in the underlying security, the Opening Process would start again irrespective of the specific times listed in Rule 1017(d). The Commission notes that the times listed in Rule 1017(d) relate to the normal market opening at 9:30 a.m. and thus would not be appropriate for reopenings, which do not occur at the beginning of the trading day. The

⁶⁶ Phlx Rule 1017(k)(E).

⁶⁷ Phlx Rule 1017(k)(F).

⁶⁸ See Notice, *supra* note 3, at 56740.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷² 15 U.S.C. 78f(b)(5).

⁷³ See Notice, *supra* note 3, at 56734.

⁷⁴ A non-SQT ROT is an ROT who is neither an SQT nor an RSQT. See Rule 1014(b)(ii)(C).

⁷⁵ Phlx Rule 1014(g)(vii).

⁷⁶ See Notice, *supra* note 3, at 56741.

⁷⁷ See Chicago Board Option Exchange Rule 6.2B(b).

⁷⁸ See Notice, *supra* note 3, at 56736.

Commission believes that these proposals should promote an orderly opening following a trading halt.

D. Opening With a PBBO and Pre-Market BBO Calculation

As discussed in Section II.D, the Exchange is proposing that it would open with an opening quote by disseminating the PBBO only if there are no opening quotes or orders that lock or cross each other and no routable orders locking or crossing the ABBO. The Commission notes that this proposed change comports with the Exchange's existing rules,⁷⁹ and is designed to help ensure that the Exchange does not open with a price that would cross away markets. The Exchange is also proposing that in the event of a Zero Bid Market, no ABBO, and no Quality Opening Market, the Exchange would conduct the PDM and calculate an OQR. The Exchange believes that when these three conditions exist, it is difficult to arrive at a reasonable and expected price and that the proposed change is designed to avoid opening executions in very wide or unusual markets.⁸⁰ The Commission notes that the Pre-Market BBO Calculation remains substantially unchanged from Phlx's previous rules. The Commission believes that the proposal could result in a more reasonable Opening Price, to the benefit of investors.

E. Potential Opening Price and Opening With a Trade

As discussed in Section II.F, the Exchange is proposing that in calculating the Potential Opening Price, the system would consider all Valid Width Quotes, Opening Sweeps, and orders, except all-or-none interest that cannot be satisfied, and identify the maximum quantity criterion. The Commission believes that specifying the interest considered in determining the Potential Opening Price would allow market participants to better understand the operation of the rule. The Exchange is proposing that when two or more Potential Opening Prices would both satisfy the maximum quantity criterion and leave no contracts unexecuted, the system would take the highest and lowest of those prices and take the midpoint. The Commission notes that this is based on current Phlx Rule 1017(l)(ii)(B). The Commission believes that the Exchange's proposal to use the lowest executable bid or the highest executable offer of the largest sized order in the event of a tie among

Potential Opening Prices that would satisfy the maximum quantity criteria and leave contracts unexecuted could provide for more orderly opening. As further discussed in Section II.F, the Exchange has also proposed that the Potential Opening Price would be bounded by the away market price that could not be satisfied with the Exchange routable interest, which is designed to prevent opening with a trade that would trade through another market.

As discussed above in Section II.G, the proposal describes the conditions under which the Exchange would open with a trade using certain price boundaries for the Potential Opening Price. The Commission notes that the conditions specified in Rule 1017(i) are designed to identify a reasonable Opening Price for an options series to open on the Exchange without trading through the prices of other markets.⁸¹

F. Calculation of Opening Quote Range

As described in Section II.H, the Exchange is proposing to add additional criteria to the OQR, which is applied as a boundary during the PDM. According to the Exchange, the OQR is designed to act as a protection for the Opening Price because it protects away market prices and also protects against extreme volatility, which impacts the Opening Price.⁸² The Commission believes that the proposed changes to the OQR could help the Exchange better maximize the amount of interest to be considered during the Opening Process and arrive at a reasonable Opening Price in light of both interest present in the system and away market interest, to the benefit of investors. The Exchange also proposes that the system would consider routable customer interest in price/time priority to satisfy the away market, which is consistent with the priority treatment of orders the Exchange applies at other times throughout the trading day.⁸³

G. Price Discovery Mechanism

The PDM seeks to identify an Opening Price if the Exchange has not already done so through the processes provided in 1017(f) and (i). The PDM is designed to attract liquidity to improve the price at which an options series will open and maximize the number of contract that can be executed at the opening.⁸⁴ The Commission notes that, while many of the processes of the PDM under proposed Rule 1017(k) are the same under existing Rule 1017 and that many of the changes describing the

PDM process would reorganize the current rule text to add clarity, the Exchange is also proposing changes to the manner in which the PDM operates, as identified above. As described above, the Exchange has proposed to clarify when it will route interest to away markets during the Opening Process and the use of Imbalance Messages. In addition, the Exchange states that the proposed changes to price contracts that it routes to away markets at the Opening Price or the order's limit price are designed to achieve the best possible price for participants.⁸⁵ The Commission notes that the proposed changes to the PDM are designed to improve the execution prices for market participants, ensure that the Exchange does not trade-through an away market price, and add clarity to its rules by deleting obsolete rules and providing more detail. The Commission believes that the proposed changes to the PDM could help the Exchange achieve the goals of the PDM and could provide better executions to participants.

H. Other Items

The Commission notes that the Exchange's proposal to handle limit orders in the same manner at the opening as throughout the rest of the trading day is consistent with the practices of other exchanges, which do not provide that limit orders would be treated differently at different times in the trading day.⁸⁶ Finally, the Commission believes that the proposal to remove the delay to calculate the opening in current Rule 1017(l)(ix) would be in the best interest of investors because, as the Exchange represents, such delay is no longer necessary, and therefore, obsolete.

IV. Solicitation of Comments on Partial Amendment No. 2

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Partial Amendment No. 2 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-Phlx-2016-79 on the subject line.

⁷⁹ See Notice, *supra* note 3, at 56741.

⁸⁰ See, e.g., Chicago Board Option Exchange Rule 6.2B(c)(iv) and BOX Rule 7070(e)(g), each of which provide that during the opening, the system would give priority to market orders.

⁸¹ See Notice, *supra* note 3, at 56741.

⁸² *Id.*

⁸³ See, e.g., Phlx Rule 1014(g)(vii).

⁸⁴ See Notice, *supra* note 3, at 56741.

⁷⁹ See current Phlx Rule 1017(l)(x).

⁸⁰ See Notice, *supra* note 3, at 56741.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2016-79. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2016-79 and should be submitted on or before December 7, 2016.

V. Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Partial Amendment No. 2, prior to the 30th day after the date of publication of notice of Partial Amendment No. 2 in the **Federal Register**. Partial Amendment No. 2 revised the proposed rule change by: (1) Specifying that references to "quotes" refer to two-sided quotes; (2) providing additional rationale for the OQR and for boundaries that protect the Opening Price from trading through the limit price(s) of interest within OQR which is unable to fully execute at the Opening Price; (3) stating that in the event the Exchange routes to away markets and uses the away market price as the Opening Price, the Exchange will enter on its order book any unfilled interest

at a price equal to or inferior than the Opening Price and the Exchange would route orders that would execute through the Opening Price; (4) explaining that each Imbalance Message will be set for the same length of time; (5) including additional rationale for proposed changes to routing during the Opening Process; (6) providing examples for how certain parts of the Opening Process operate; and (7) revising the filing and Exhibit 5 to state that the Exchange may open with the PBBO only if there are no routable orders locking the ABBO.

Partial Amendment No. 2 supplements the proposed rule change by, among other things, clarifying the interest included in the Opening Process and providing additional explanation and detail about several aspects of the Exchange's Opening Process. It also helps the Commission evaluate whether the proposed rule change would be consistent with the protection of investors and the public interest.

Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁸⁷ to approve the proposed rule change, as modified by Partial Amendment No. 2, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸⁸ that the proposed rule change (SR-Phlx-2016-79), as amended by Partial Amendment No. 2, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸⁹

Brent J. Fields,

Secretary.

[FR Doc. 2016-27469 Filed 11-15-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79277; File No. SR-NASDAQ-2016-150]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NBBO Program

November 9, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,²

⁸⁷ 15 U.S.C. 78s(b)(2).

⁸⁸ *Id.*

⁸⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

notice is hereby given that on October 31, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's NBBO Program at Rule 7014(g) to change the qualification criteria required to receive the \$0.0004 per share executed NBBO Program rebate in NYSE-listed securities and in Securities Listed on Exchanges other than Nasdaq and NYSE.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's NBBO Program at Rule 7014(g) to change the qualification criteria required to receive the \$0.0004 per share executed NBBO Program rebate in NYSE-listed securities and in Securities Listed on Exchanges other than Nasdaq and NYSE. The NBBO Program provides two rebates per share executed with respect to all other displayed orders (other than Designated Retail Orders, as defined in Rule 7018) in securities priced at \$1 or more per share that provide liquidity, establish the NBBO,

and displayed a quantity of at least one round lot at the time of execution. The rebates provided are in addition to any rebate or credit payable under Rule 7018(a) and other programs under Rule 7014. The rebates are provided to executions from orders originating on ports that meet certain requirements. To qualify for the \$0.0004 per share executed NBBO Program rebate in NYSE-listed securities and in Securities Listed on Exchanges other than Nasdaq and NYSE a member must execute shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represents 1.0% or more of Consolidated Volume during the month and the order must have been entered on a port that has a ratio of at least 25% NBBO liquidity provided³ to liquidity provided during the month.

The Exchange is proposing to amend one of the data points used in the calculation of the ratio required for a port to qualify for the \$0.0004 per share executed NBBO Program rebate to now compare liquidity provided by displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) to NBBO liquidity provided. Thus, the Exchange is using a more limited category of liquidity (*i.e.*, displayed quotes/orders) against which NBBO liquidity provided is compared to determine a member's ratio. For example, under the current rule if a member provides 100,000 shares of displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) in a month (30,000 of which is NBBO liquidity) and it provides 100,000 of midpoint liquidity (non-displayed) during the same month, the member's ratio would be 15% (30,000 shares of NBBO liquidity divided by 200,000 shares of liquidity provided). Under the proposed change using this example, the ratio would be 30% based on 30,000 shares of NBBO liquidity provided divided by 100,000 shares of displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) provided (the member's 100,000 shares of non-displayed liquidity is not included). As a consequence, this member would not qualify for the \$0.0004 per share executed NBBO Program rebate in NYSE-listed securities and in Securities Listed on Exchanges other than Nasdaq and NYSE under the current criteria, but would under the amended criteria.

³ NBBO liquidity provided means liquidity provided from orders (other than Designated Retail Orders, as defined in Nasdaq Rule 7018), that establish the NBBO, and displayed a quantity of at least one round lot at the time of execution.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change is an equitable allocation and is not unfairly discriminatory because it makes it easier to qualify for the rebate. As a consequence, the Exchange is making the rebate more achievable for members, which may in turn, attract new members to the program. The Exchange notes that the program rewards members that provide liquidity that sets the NBBO, thus improving the market for all participants. To the extent the proposed change is successful in attracting more members to participate in the program, all participants will benefit from the increased competition in setting the NBBO. The Exchange further notes that a member that currently qualifies for the rebate would qualify for the rebate under the amended criteria. Last, the proposed change does not alter the amount of the rebate provided. Thus, the Exchange believes that the amount of the rebate continues to be reasonable for the reasons stated by the Exchange when the rebate was adopted.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and rebates in response, and because market participants may readily adjust their

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4) and (5).

order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed changes to the criteria required of members to receive a rebate under the NBBO Program make it easier for members to qualify for a rebate under the program, with the intent of making the program more attractive to members. Thus, the proposed change promotes competition for order flow among trading venues, and does not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues, which may provide similar incentives to their members. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.⁶

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2016-150 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2016-150. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2016-150 and should be submitted on or before December 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Brent J. Fields,
Secretary.

[FR Doc. 2016-27472 Filed 11-15-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79275; File No. SR-NYSEArca-2016-146]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Temporarily Widen Price Collar Thresholds for the Core Open Auction and Trading Halt Auctions

November 9, 2016.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act"),² and Rule 19b-4 thereunder,³ notice is hereby given that on November 9, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to temporarily widen price collar thresholds for the Core Open Auction and Trading Halt Auctions, which would be operative on November 9, 2016 only. The proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to temporarily widen price collar thresholds for the Core Open Auction and Trading Halt Auctions, which would be operative for November 9, 2016 only.

On November 8, 2016, the United States held an election to decide, among other things, the next President of the United States. This election result has caused market volatility. This spike in market volatility has also impacted the pricing of Exchange Traded Products ("ETP"), the majority of which are listed on the Exchange.

Because of the level of market volatility, the Exchange believes that widening the Auction Collars for the Core Open Auction and Trading Halt Auctions for November 9, 2016 only would assist the Exchange in conducting fair and orderly auctions.

As set forth in Rule 7.35(a)(10), the price collar thresholds for the Core Open Auction and Trading Halt Auctions are currently set at 10% for securities with an Auction Reference Price of \$25.00 or less, 5% for securities with an Auction Reference Price greater than \$25.00 but less than or equal to \$50.00, and 3% for securities with an Auction Reference Price greater than \$50.00.⁴

The Exchange proposes to apply Auction Collars of 10% for all Auction-Eligible Securities,⁵ regardless of the Auction Reference Price. The Exchange believes that for securities priced greater than \$25.00, the proposed wider price collar threshold will allow for additional price movements that is expected because of the volatility in the market, while continuing to prevent auctions from occurring at prices significantly away from the applicable Auction Reference Price. The proposed 10% price collar threshold for the Core Open Auction is the same as currently

⁴ The Auction Reference Price for the Core Open Auction is the midpoint of the Auction NBBO or, if the Auction NBBO is locked, the locked price. If there is no Auction NBBO, the prior trading day's Official Closing Price. The Auction Reference Price for the Trading Halt Auction is the last consolidated round-lot price of that trading day, and if none, the prior trading day's Official Closing Price. See NYSE Arca Equities Rule 7.35(a)(8).

⁵ For the Core Open Auction, Auction-Eligible Securities are all securities for which the Exchange is the primary listing market and UTP Securities designated by the Exchange. For the Trading Halt Auction, Auction-Eligible Securities are securities for which the Exchange is the primary listing market. See NYSE Arca Equities Rule 7.35(a)(1)(A) and (B).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁷ 17 CFR 200.30-3(a)(12).

used by the Nasdaq Stock Market LLC (“Nasdaq”) for its opening crosses.⁶

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

In particular, the Exchange believes that the impact of the results of the presidential election on November 8, 2016 has resulted in global market volatility and the U.S. ETP market is not immune. In response to this market volatility, the Exchange believes that it would promote the protection of investors and the public interest to temporarily widen the price collar thresholds for the Core Open Auction and Trading Halt Auctions on November 9, 2016 only because it would promote fair and orderly auctions. The Exchange further believes that widening the price collar thresholds would remove impediments to and perfect the mechanism of a national market system because it is designed to allow for greater price movement, while at the same time preventing auction trades from occurring at prices significantly away from the applicable Auction Reference Price. Accordingly, investors would be protected from executions significantly away from the last sale in a security or other applicable reference price, but natural price fluctuations resulting from the market volatility would be permitted. In addition, the Exchange believes that widening the Auction Collars could reduce the possibility of securities triggering multiple trading pauses under the Regulation NMS Plan to Address Market Volatility.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to

address any competitive issues but rather is designed to ensure a fair and orderly market by temporarily widening the price collar thresholds for the Core Open Auction and Trading Halt Auctions on a trading day with market volatility due to the results of the presidential election. In addition, the proposed rule change is intended to be in effect for November 9, 2016 only to respond to unique events relating to U.S. presidential election and therefore will not create a burden on competition.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹¹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹² permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of the operative delay would allow the Exchange to immediately implement the proposed rule change, thereby promoting the operation of a fair and orderly market on a day with market volatility due to the U.S. presidential election. The Commission believes the waiver of the operative delay is

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). The Exchange has requested that the Commission waive the requirement that the Exchange provide the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date on which the Exchange filed the proposed rule change pursuant to Rule 19b-4(f)(6)(iii). The Commission hereby grants this request.

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2016-146 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2016-146. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

¹³ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ See Nasdaq Rule 4752(d)(2)(E) and http://www.nasdaqtrader.com/content/productservices/trading/crosses/openclose_faqs.pdf.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2016-146, and should be submitted on or before December 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Brent J. Fields,
Secretary.

[FR Doc. 2016-27470 Filed 11-15-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79273; File No. SR-BatsEDGX-2016-62]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Fees for Use of the Exchange's Equity Options Platform

November 9, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 1, 2016, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members³ and non-Members of the

Exchange pursuant to EDGX Rules 15.1(a) and (c).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule to specify in new footnote 5 that when Customer⁴ orders are submitted with a Designated Give Up, as defined below, the applicable rebates for such orders when executed on the Exchange (yielding fee code NC or PC)⁵ are provided to the Member who routed the order to the Exchange.

The Exchange recently amended Rule 21.12 (Clearing Member Give Up) to expand upon the procedure related to the "give up" of a Clearing Member⁶ by Users⁷ on the Exchange.⁸ As amended, Rule 21.12 provides that, in addition to its own Clearing Member (or itself, if the firm is self-clearing), a User may identify to the Exchange a Designated Give Up, as that term is defined in the Rule. Specifically, amended Rule 21.12(b)(1) defines the term Designated Give Up as any Clearing Member that a

⁴ As defined in the Exchange's fee schedule available at http://www.bats.com/us/options/membership/fee_schedule/edgx/.

⁵ Fee codes NC and PC are appended to Customer orders in Non-Penny Pilot and Penny Pilot Securities, respectively. *Id.*

⁶ A Clearing Member is defined as "an Options Member that is self-clearing or an Options Member that clears EDGX Options Transactions for other Members of EDGX Options." See Exchange Rule 16.1(a)(15). An Option Member is defined as "a firm, or organization that is registered with the Exchange pursuant to Chapter XVII of these Rules for purposes of participating in options trading on EDGX Options as an 'Options Order Entry Firm' or 'Options Market Maker.'" See Exchange Rule 16.1(a)(38).

⁷ A User is defined as "any Options Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3 (Access)." See Exchange Rule 16.1(a)(63).

⁸ See Securities Exchange Act Release No. 79184 (October 28, 2016) (SR-BatsEDGX-2016-58).

User (other than a Market Maker⁹) identifies to the Exchange, in writing, as a Clearing Member the User requests the ability to give up. With this change, a Member acting as an options routing firm on behalf of one or more other Exchange Members (a "Routing Firm") is able to route orders to the Exchange and to immediately give up the party (a party other than the Routing Firm itself or the Routing Firm's own clearing firm) who will accept and clear any resulting transaction. Because the Routing Firm is responsible for the decision to route the order to the Exchange, the Exchange believes that such Member should be provided the rebate when orders that yield fee code NC or PC are executed. In connection with this change, the Exchange proposes to append new footnote 5 to fee codes NC and PC in the Fee Codes and Associated Fees table of the fee schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.¹⁰ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls.

The Exchange notes that the U.S. options markets are highly competitive, and the proposed fee structure is intended to provide an incentive for Members utilizing the Exchange's new give up procedure to direct orders to the Exchange. The proposal would only apply to fee codes NC and PC, related to Customer orders, because these are the primary rebates in place on the Exchange¹² and reflect the primary liquidity that the Exchange is seeking to attract from Routing Firms that are likely to utilize the give up procedure.

The Exchange believes that the proposed amendments to its fee

⁹ For purposes of this filing, Market Maker refers to Members acting in the capacity of Market Maker and includes all Exchange Market Maker capacities e.g., Primary Market Makers.

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(4).

¹² The Exchange notes that Market Maker orders yielding fee codes NM and PM do indeed receive rebates to the extent a Member qualifies for Market Maker Volume Tier 6 pursuant to footnote 2 of the fee schedule. The Exchange, however, again notes that Market Makers are expressly excluded from utilizing the give up procedure.

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." See Exchange Rule 1.5(n).

schedule will enhance the Exchange's competitive position and will result in increased liquidity on the Exchange, to the benefit of all Exchange participants. Therefore, the Exchange believes that providing rebates is equitable and reasonable and not unfairly discriminatory as it would allow the Exchange, in the context of the new give up procedure described above, to provide a rebate directly to the party making the routing decision to direct Customer orders to the Exchange (*i.e.*, the Routing Firm), which is consistent with both the Exchange's historic practice and the purpose behind a rebate (*i.e.*, to incentivize the order being directed to the Exchange).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposed amendments to its fee schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or its competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. The Exchange believes that its proposal to incentivize Routing Firms that are utilizing the new give up procedure to direct Customer orders to the Exchange, and will enhance the Exchange's competitive position by resulting in increased liquidity on the Exchange, thereby providing more of an opportunity for customers to receive best executions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and paragraph (f) of Rule 19b-4 thereunder.¹⁴ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BatsEDGX-2016-62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-BatsEDGX-2016-62. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BatsEDGX-2016-62, and should be submitted on or before December 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Brent J. Fields,
Secretary.

[FR Doc. 2016-27468 Filed 11-15-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a closed meeting on Wednesday, November 16, 2016 at 1 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(7), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matter at the closed meeting.

Commissioner Piwowar, as duty officer, voted to consider the items listed for the closed meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the closed meeting will be:

- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings; and
- Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551-5400.

Dated: November 10, 2016.

Brent J. Fields,
Secretary.

[FR Doc. 2016-27630 Filed 11-14-16; 11:15 am]

BILLING CODE 8011-01-P

Securities and Exchange Commission

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f).

¹⁵ 17 CFR 200.30-3(a)(12).

Sunshine Act, Public Law 94–409, that the Commission will host the SEC Government-Business Forum on Small Business Capital Formation on Thursday, November 17, 2016, beginning at 9:00 a.m., in the Auditorium, Room L–002.

The forum will include remarks by SEC Commissioners and a panel discussion that Commissioners may attend. The panel discussion will explore how capital formation options are working for small businesses after the implementation of the JOBS Act. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

For further information, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: November 10, 2016.

Brent J. Fields,
Secretary.

[FR Doc. 2016–27631 Filed 11–14–16; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Delegation of Authority No: 408]

Delegation to the Assistant Secretary for Political-Military Affairs of Authority To Concur With the Secretary of Defense on Certain Actions

By virtue of the authority vested in the Secretary of State, including sections 1233 and 1513 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181) (FY 2008 NDAA); 10 U.S.C. 127d; section 1226 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92) (FY 2016 NDAA); and section 1 of the State Department Basic Authorities Act (22 U.S.C. 2651a), and delegated pursuant to Delegation of Authority 245–1, dated February 13, 2009, I hereby delegate to the Assistant Secretary for Political-Military Affairs, to the extent authorized by law, the authority to concur with the Secretary of Defense on the use of the Afghanistan Security Forces Fund pursuant to section 1513 of the FY 2008 NDAA; the use of the Global Lift and Sustain authority pursuant to 10 U.S.C. 127d; and the use of the Coalition Support Fund authority pursuant to section 1233 of the FY 2008 NDAA and section 1226 of the FY 2016 NDAA.

Notwithstanding this delegation of authority, any function or authority delegated by this Delegation may be exercised by the Secretary, the Deputy Secretary, the Deputy Secretary for Management and Resources, or the Under Secretary for Arms Control and

International Security. Any reference in this delegation of authority to any statute or delegation of authority shall be deemed to be a reference to such statute or delegation of authority as amended from time to time.

This delegation of authority shall be published in the **Federal Register**.

Dated: October 19, 2016.

Heather Higginbottom,

Deputy Secretary of State for Management and Resources.

[FR Doc. 2016–27553 Filed 11–15–16; 8:45 am]

BILLING CODE 4710–25–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences: Import Statistics Relating to Competitive Need Limitations

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice is to inform the public of the availability of import statistics for the first nine months of 2016 relating to competitive need limitations (CNLs) under the Generalized System of Preferences (GSP) program. These import statistics identify some articles for which the 2016 trade levels may exceed statutory CNLs. Interested parties may find this information useful in deciding whether to submit a petition to waive the CNLs for individual beneficiary developing countries (BDCs) with respect to specific GSP-eligible articles.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman at (202) 395–2974 or gsp@ustr.eop.gov.

SUPPLEMENTAL INFORMATION:

I. Competitive Need Limitations

The GSP program provides for the duty-free importation of designated articles when imported from designated BDCs. The GSP program is authorized by Title V of the Trade Act of 1974 as amended, 19 U.S.C. 2461, *et seq.*, (1974 Act), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

Section 503(c)(2)(A) of the 1974 Act sets out the two different measures for CNLs. When the President determines that a BDC has exported to the United States during a calendar year either (1) a quantity of a GSP-eligible article having a value in excess of the applicable amount for that year (\$175 million for 2016), or (2) a quantity of a

GSP-eligible article having a value equal to or greater than 50 percent of the value of total U.S. imports of the article from all countries (50 percent CNL), the President must terminate GSP duty-free treatment for that article from that BDC by no later than July 1 of the next calendar year, unless the President grants a waiver before the exclusion goes into effect. CNLs do not apply to least-developed countries or beneficiaries of the African Growth and Opportunity Act.

Any interested party may submit a petition seeking a waiver of the 2016 CNL for individual beneficiary developing countries with respect to specific GSP-eligible articles. In addition, under section 503(c)(2)(F) of the 1974 Act, the President may waive the 50 percent CNL with respect to an eligible article imported from a BDC, if the value of total imports of that article from all countries during the calendar year did not exceed the applicable *de minimis* amount for that year (\$23 million for 2016).

II. Implementation of Competitive Need Limitations

Exclusions from GSP duty-free treatment where CNLs have been exceeded will be effective July 1, 2017, unless the President grants a waiver before the exclusion goes into effect. Exclusions for exceeding a CNL will be based on full 2016 calendar-year import statistics.

III. Interim 2016 Import Statistics

In order to provide advance notice of articles that may exceed the CNLs for 2016, the Office of the U.S. Trade Representative has compiled interim import statistics for the first nine months of 2016 relating to CNLs. This information can be viewed at: <https://ustr.gov/issue-areas/preference-programs/generalized-system-preferences-gsp/current-reviews/gsp-20162017>.

Full calendar-year 2016 data for individual tariff subheadings will be available in February 2017 on the Web site of the U.S. International Trade Commission at <http://dataweb.usitc.gov>.

The interim 2016 import statistics are organized to show, for each article, the Harmonized Tariff Schedule of the United States (HTSUS) subheading and BDC of origin, the value of imports of the article from the specified country for the first nine months of 2016, and the corresponding share of total imports of that article from all countries. The list includes the GSP-eligible articles from BDCs that, based on interim nine-month 2016 data, exceed \$110 million dollars, or an amount greater than 42 percent of

the total value of U.S. imports of that product. In all, the following 11 products met the criteria to be placed on the list:

1. 0410.00.00—Other edible products of animal origin (Indonesia)
2. 0714.90.10—Fresh or chilled dasheens, whether or not sliced or in the form of pellets (Ecuador)
3. 1104.29.90—Grains of cereals other than barley, oats or corn, hulled, pearled, clipped, sliced, kibbled or otherwise worked, but not rolled or flaked (Turkey)
4. 2909.19.18—Ethers of acyclic monohydric alcohols & derivatives, not elsewhere specified (Brazil)
5. 2933.99.22—Other heterocyclic aromatic or modified aromatic pesticides with nitrogen hereo-atom(s) only, not elsewhere specified (India)
6. 4011.20.10—New pneumatic radial tires, of rubber, of a kind used on buses or trucks (Indonesia)
7. 4409.10.05—Coniferous wood continuously shaped along any of its ends, whether or not also continuously shaped along any of its edges or faces (Brazil)
8. 6801.00.00—Setts, curbstones and flagstones, of natural stone (except slate) (Turkey)
9. 6802.99.00—Monumental or building stone & arts. thereof, not elsewhere specified, further worked than simply cut/sawn (Brazil)
10. 8525.80.30—Television cameras, not elsewhere specified (Thailand)
11. 9001.50.00—Spectacle lenses of materials other than glass, unmounted (Thailand)

The list published on the USTR Web site includes the relevant nine-month trade statistics for each of these products and is provided as a courtesy for informational purposes only. The list is based on interim 2016 trade data, and may not include all articles that may be affected by the GSP CNLs. Regardless of whether or not an article is included on the list referenced in this notice, all determinations and decisions regarding application of the CNLs of the GSP program will be based on full calendar-year 2016 import data for each GSP-eligible article. Each interested party is advised to conduct its own review of 2016 import data with regard to the possible application of GSP CNLs. Please see the notice announcing the 2016 GSP Review which was published in the **Federal Register** on August 25, 2016 (81 FR 58547), regarding submission of product petitions requesting a waiver of a CNL. The notice and comments are available at [https://](https://www.regulations.gov)

www.regulations.gov/docket?D=USTR-2016-0009.

Erland Herfindahl,

Deputy Assistant U.S. Trade Representative for the GSP Program, Chairman, GSP Subcommittee of the Trade Policy Staff Committee, Office of the U.S. Trade Representative.

[FR Doc. 2016-27542 Filed 11-15-16; 8:45 am]

BILLING CODE 3290-F7-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2016-0019]

Renewal Package From the State of California to the Surface Transportation Project Delivery Program and Proposed Memorandum of Understanding (MOU) Assigning Environmental Responsibilities to the State

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (USDOT).

ACTION: Notice of proposed MOU and request for comments.

SUMMARY: This notice announces that FHWA has received and reviewed a renewal package from the California Department of Transportation (Caltrans) requesting renewed participation in the Surface Transportation Project Delivery Program (Program). This Program allows for FHWA to assign, and States to assume, responsibilities under the National Environmental Policy Act (NEPA), and all or part of FHWA's responsibilities for environmental review, consultation, or other actions required under any Federal environmental law with respect to one or more Federal highway projects within the State. The FHWA has determined the renewal package to be complete, and developed a draft renewal MOU with Caltrans outlining how the State will implement the program with FHWA oversight. The public is invited to comment on Caltrans' request, including its renewal package and the proposed renewal MOU, which includes the proposed assignments and assumptions of environmental review, consultation and other activities.

DATES: Please submit comments by December 16, 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 comments.

- *Facsimile (Fax):* 1-202-493-2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave. SE., West Building Ground Floor Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery:* West Building Ground Floor, Room W12-140, 1200 New Jersey Ave. SE., Washington, DC 20590 between 9:00 a.m. and 5:00 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Shawn Oliver by email at shawn.oliver@dot.gov or by telephone at (916) 498-5048. The FHWA California Division Office's normal business hours are 8 a.m. to 4:30 p.m. (Pacific Time), Monday-Friday, except for Federal holidays. For the State of California: Tammy Massengale by email at tammy.massengale@dot.ca.gov or by telephone at (916) 653-5157. State business hours are the same as above although State holidays may not completely coincide with Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the **Federal Register's** home page at <http://www.archives.gov>. An electronic version of the application materials and proposed MOU may be downloaded by accessing the DOT DMS docket, as described above, at <http://www.regulations.gov>.

Background

Section 327 of title 23, United States Code (23 U.S.C. 327), allows the Secretary of the DOT (Secretary) to assign, and a State to assume, the responsibilities under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and all or part of the responsibilities for environmental review, consultation, or other actions required under certain Federal environmental laws with respect to one or more Federal-aid highway projects within the State. The FHWA is authorized to act on behalf of the Secretary with respect to these matters.

Caltrans entered the Surface Transportation Project Delivery Pilot

Program on July 1, 2007, after submitting its application to FHWA, obtaining FHWA's approval, and entering into a Memorandum of Understanding (MOU) in accordance with Section 6005 of the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (Pub. L. 109–59, 119 Stat. 1898) (23 U.S.C. 327) and FHWA's application regulations for the pilot program (the original 23 CFR part 773). On July 6, 2012, President Obama signed into law the *Moving Ahead for Progress in the 21st Century Act* (MAP–21) (Pub. L. 112–141, 126 Stat. 545–547). Section 1313 of MAP–21 made the Program permanent, required that the MOU between FHWA and a State have a term of not more than 5 years, and allowed FHWA to renew a States' participation in the Program. The MAP–21 also required the Secretary to amend, as appropriate, the Program's application regulations to account for the amendments to the Program. On September 25, 2012, FHWA and Caltrans entered into a MOU allowing Caltrans to continue to participate in the Program under the terms of the existing MOU until 18 months from the effective date of the final Program application regulations. This timeframe would allow enough time for the U.S. Department of Transportation to develop the process for renewing a State's participation and for Caltrans to follow any steps required by the new regulations. The final rule establishing the revised Program application and the renewal process (the amended 23 CFR part 773) became effective on October 16, 2014, making April 16, 2016, the expiration date for Caltrans' participation under the existing MOU.

On June 22, 2015, after coordination with FHWA, Caltrans submitted the renewal package in accordance with the renewal regulations in 23 CFR 773.115. On December 4, 2015, President Obama signed into law the *Fixing America's Surface Transportation Act* (FAST Act) (Pub. L. 114–94, 129 Stat. 1390–1392) making further amendments to the Program. On April 1, 2016, FHWA extended the terms of the NEPA Assignment MOU from the expiration date of April 16, 2016, to December 31, 2016, to allow additional time for the negotiation of the terms of the renewal MOU to be consistent with the changes in the FAST Act. This extension was authorized under 23 CFR 773.115(h).

Under the proposed renewal MOU, FHWA would assign to the State, through Caltrans, the responsibility for making decisions on the following types of highway projects:

1. All Class I, or environmental impact statement (EIS) projects, both on the State highway system (SHS) and local government projects off the SHS that are funded by FHWA or require FHWA approvals. This assignment does not include the environmental review associated with the development and approval of the Draft EIS, Final EIS, and ROD for the following project: District 1: Eureka/Arcata Corridor Improvement.

2. All Class II, or categorically excluded (CE), projects, both on the SHS and local government projects off the SHS that are funded by FHWA or require FHWA approvals, and that do not qualify for assignment of responsibilities pursuant to the MOU for environmental reviews and decisions for actions qualifying for CEs pursuant to the 23 U.S.C. 326 program.

3. All Class III, or environmental assessment (EA) projects, both on the SHS and local government projects off the SHS that are funded by FHWA or require FHWA approvals with the exception of the following projects: District 5: Highway 1 Congestion Management–Santa Cruz HOV Lanes and District 9: Inyo–395 Olancho to Cartago 4 Lane.

4. Projects funded by other Federal agencies [or projects without any Federal funding] of any Class that also include funding by FHWA or require FHWA approvals. For these projects, Caltrans would not assume the NEPA responsibilities of other Federal agencies.

Excluded from assignment are highway projects authorized under 23 U.S.C. 202 and 203, highway projects under 23 U.S.C. 204 unless the project will be designed and constructed by Caltrans, projects that cross State boundaries, and projects that cross or are adjacent to international boundaries.

The assignment also would give Caltrans the responsibility to conduct the following environmental review, consultation, and other related activities:

Air Quality

- Clean Air Act (CAA), 42 U.S.C. 7401–7671q, with the exception of any project level conformity determinations

Noise

- Noise Control Act of 1972, 42 U.S.C. 4901–4918
- Compliance with the noise regulations in 23 CFR 772

Wildlife

- Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531–1544

- Marine Mammal Protection Act, 16 U.S.C. 1361–1423h
- Anadromous Fish Conservation Act, 16 U.S.C. 757a–757f
- Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d
- Migratory Bird Treaty Act, 16 U.S.C. 703–712
- Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801–1891d *et seq.*, with Essential Fish Habitat requirements at 1855(b)(2)

Hazardous Materials Management

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. 9601–9675
- Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. 9671–9675
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992k

Historic and Cultural Resources

- Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306101 *et seq.*
- 23 U.S.C. 138 and Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303 and implementing regulations at 23 CFR part 774
- Archeological Resources Protection Act of 1979, 16 U.S.C. 470aa–470mm
- Title 54, Chapter 31—Preservation of Historical and Archeological Data, 54 U.S.C. 312501–312508
- Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001–30131; 18 U.S.C. 1170

Social and Economic Impacts

- American Indian Religious Freedom Act, 42 U.S.C. 1996
- Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201–4209

Water Resources and Wetlands

- Clean Water Act, 33 U.S.C. 1251–1387 (Section 404, Section 401, Section 319)
- Coastal Barrier Resources Act, 16 U.S.C. 3501–3510
- Coastal Zone Management Act, 16 U.S.C. 1451–1466
- Safe Drinking Water Act (SDWA), 42 U.S.C. 300f–300j–26
- Rivers and Harbors Act of 1899, 33 U.S.C. 401–406
- Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287
- Emergency Wetlands Resources Act, 16 U.S.C. 3901 and 3921
- Wetlands Mitigation, 23 U.S.C. 119(g) and 133(b)(14)
- FHWA wetland and natural habitat mitigation regulations, 23 CFR part 777

- Flood Disaster Protection Act, 42 U.S.C. 4001–4130

Parklands

- Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303
- Land and Water Conservation Fund (LWCF) Act, 54 U.S.C. 200302–200310

FHWA-Specific

- Planning and Environmental Linkages, 23 U.S.C. 168, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135
- Programmatic Mitigation Plans, 23 U.S.C. 169 with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135

Executive Orders Relating to Highway Projects

- E.O. 11990, Protection of Wetlands
- E.O. 11988, Floodplain Management (except approving design standards and determinations that a significant encroachment is the only practicable alternative under 23 CFR 650.113 and 650.115)
- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
- E.O. 13112, Invasive Species

The proposed renewal MOU would allow Caltrans to continue to act in the place of FHWA in carrying out the environmental review-related functions described above, except with respect to government-to-government consultations with federally recognized Indian tribes. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian tribes, which is required under some of the listed laws and executive orders. Caltrans will continue to handle routine consultations with the tribes and understands that a tribe has the right to direct consultation with FHWA upon request. Caltrans also may assist FHWA with formal consultations, with consent of a tribe, but FHWA remains responsible for the consultation. The FHWA and Caltrans have received requests for formal consultations with several tribes regarding the proposed renewal of the MOU and currently are engaged in ongoing consultations. Caltrans also will not assume FHWA's responsibilities for conformity determinations required under Section 176 of the Clean Air Act (42 U.S.C. 7506) or any responsibility under 23 U.S.C. 134 or 135, or under 49 U.S.C. 5303 or 5304.

The MOU content reflects Caltrans' desire to continue its participation in the Program without any changes (that is, no new responsibilities were requested). The FHWA and Caltrans have agreed to modify some of the provisions in the MOU to: Establish the monitoring process required by the permanent Program; accommodate changes specified in Section 1308 of the FAST Act; clarify, the role of the Department of Justice and FHWA in settlements and appeals; and to make the renewed MOU notice and review time frames consistent with other States in this program. The FHWA and Caltrans have also agreed on a process to address a possible temporary lapse in the State's statutory consent to Federal court jurisdiction and waiver of sovereign immunity waiver. If the State does not provide consent to Federal court jurisdiction and waive sovereign immunity by December 31, 2016, this MOU will be suspended and Caltrans will not be able to make any NEPA decisions or implement any of the environmental review responsibilities assigned under the MOU. The FHWA and Caltrans propose a temporary suspension not to exceed 90 days to provide time for the State to address the deficiency. In the event that the State does not take the necessary action and Caltrans does not provide adequate certification within the time period provided, the State's participation in the Program will be terminated.

A copy of the proposed renewal MOU and renewal package may be viewed on the DOT DMS Docket, as described above, or may be obtained by contacting FHWA or the State at the addresses provided above. A copy also may be viewed on Caltrans' Web site at <http://www.dot.ca.gov/hq/env/nepa/>. The FHWA California Division, in consultation with FHWA Headquarters, will consider the comments submitted when making its decision on the proposed MOU revision. Any final renewal MOU approved by FHWA may include changes based on comments and consultations relating to the proposed renewal MOU and will be made publicly available.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 327; 42 U.S.C. 4331, 4332; 23 CFR 771.117; 40 CFR 1507.3, 1508.4.

Dated: November 9, 2016.

Gregory G. Nadeau,
Administrator, Federal Highway
Administration.

[FR Doc. 2016-27502 Filed 11-15-16; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2016-0031]

Application From the State of Utah to the Surface Transportation Project Delivery Program and Proposed Memorandum of Understanding (MOU) Assigning Environmental Responsibilities to the State

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed MOU and request for comments.

SUMMARY: This notice announces that FHWA has received and reviewed an application from the Utah Department of Transportation (UDOT) requesting participation in the Surface Transportation Project Delivery Program (Program). This Program allows for FHWA to assign, and States to assume, responsibilities under the National Environmental Policy Act of 1969 (NEPA), and all or part of FHWA's responsibilities for environmental review, consultation, or other actions required under any Federal environmental law with respect to one or more Federal highway projects within the State. The FHWA has determined the application to be complete and developed a draft MOU with UDOT outlining how the State would implement the program with FHWA oversight. The FHWA invites the public to comment on UDOT's request, including its application and the proposed MOU, which includes the proposed assignments and assumptions of environmental review, consultation, and other activities.

DATES: Please submit comments by December 16, 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 comments.
- *Facsimile (Fax):* 1-202-493-2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave. SE., West Building

Ground Floor Room W12-140, Washington, DC 20590-0001.

• *Hand Delivery:* West Building Ground Floor, Room W12-140, 1200 New Jersey Ave. SE., Washington, DC 20590 between 9:00 a.m. and 5:00 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

Edward Woolford, Right of Way and Environmental Manager, Federal Highway Administration Utah Division, 2520 West 4700 South, Suite 9A, Salt Lake City, UT 84129, 7:00 a.m.–4:30 p.m. (MT), (801) 955-3524, Edward.Woolford@dot.gov.

Brandon Weston, Director, Environmental Services, Utah Department of Transportation, 4501 South 2700 West, P.O. Box 148450, Salt Lake City, UT 84114, 8:00 a.m.–5:00 p.m. (MT), (801) 965-4603, brandonweston@utah.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the **Federal Register's** home page at <http://www.archives.gov>. An electronic version of the application materials and proposed MOU may be downloaded by accessing the DOT DMS docket, as described above, at <http://www.regulations.gov/>.

Background

Section 327 of title 23, United States Code (23 U.S.C. 327), allows the Secretary of the U.S. Department of Transportation (Secretary) to assign, and a State to assume, responsibility for all or part of FHWA's responsibilities for environmental review, consultation, or other actions required under any Federal environmental law with respect to one or more Federal-aid highway projects within the State pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). The FHWA is authorized to act on behalf of the Secretary with respect to these matters.

Under the proposed MOU, FHWA would assign to the State, through UDOT, the responsibility for making decisions on the following types of highway projects:

1. Highway projects within the State of Utah that are proposed to be funded with title 23 funds or otherwise require

FHWA approval, and that require preparation of an environmental impact statement (EIS) or environmental assessment (EA) with the exception of the following EIS project: West Davis Corridor EIS—This project is in UDOT Region 1 in western Davis and Weber Counties.

2. Highway projects qualifying for categorical exclusions (CE) within the State of Utah that are proposed to be funded with title 23 funds or that otherwise require FHWA approvals, and that do not qualify for assignment of responsibilities pursuant to the MOU for environmental review assignment for projects qualifying for CEs (23 U.S.C. 326 MOU) executed on June 30, 2014.

3. Projects funded by other Federal agencies (or projects without any Federal funding) that also require FHWA approvals. For these projects, UDOT would not assume the NEPA responsibilities of other Federal agencies. However, UDOT may use or adopt other Federal agencies' NEPA analyses consistent with 40 CFR parts 1500-1508, and DOT and FHWA regulations, policies, and guidance.

4. Excluded from assignment are highway projects authorized under 23 U.S.C. 202, 203, and 204 unless the project will be designed and/or constructed by UDOT, projects that cross State boundaries, and projects that cross or are adjacent to international boundaries.

The assignment also would give the State the responsibility to conduct the following environmental review, consultation, and other related activities for project delivery:

Air Quality

- Clean Air Act (CAA), 42 U.S.C. 7401-7671q, with the exception of any conformity determinations

Noise

- Noise Control Act of 1972, 42 U.S.C. 4901-4918
- Compliance with the noise regulations in 23 CFR part 772

Wildlife

- Endangered Species Act of 1973, 16 U.S.C. 1531-1544
- Fish and Wildlife Coordination Act, 16 U.S.C. 661-667d
- Migratory Bird Treaty Act, 16 U.S.C. 703-712

Hazardous Materials Management

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601-9675
- Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. 9671-9675

- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901-6992k

Historic and Cultural Resources

- National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306101, *et seq.*
- Archeological and Historic Preservation Act of 1966, as amended, 16 U.S.C. 470aa-479mm
- Title 54, Chapter 3125—Preservation of Historical and Archeological Data, 54 U.S.C. 312501-312508
- Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001-3013; 18 U.S.C. 1170

Social and Economic Impacts

- American Indian Religious Freedom Act, 42 U.S.C. 1996
- Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201-4209

Water Resources and Wetlands

- Clean Water Act, 33 U.S.C. 1251-1387 (Section 401, 402, 404, 408, and Section 319)
- Safe Drinking Water Act (SDWA), 42 U.S.C. 300f-300j-26
- Rivers and Harbors Act of 1899, 33 U.S.C. 401, 403-04, and 406
- Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287
- Emergency Wetlands Resources Act, 16 U.S.C. 3921
- Wetlands Mitigation, 23 U.S.C. 119(g), 133(b)(14)
- Flood Disaster Protection Act, 42 U.S.C. 4001-4130
- General Bridge Act of 1946, 33 U.S.C. 525-533
- FHWA wetland and natural habitat mitigation regulations, 23 CFR part 777

Parklands and Other Special Land Uses

- 23 U.S.C. 138 and 49 U.S.C. 303 (Section 4(f)) and implementing regulations at 23 CFR part 774
- Land and Water Conservation Fund (LWCF) Act, 54 U.S.C. 200302-200310

FHWA-Specific

- Planning and Environmental Linkages, 23 U.S.C. 168, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135
- Programmatic Mitigation Plans, 23 U.S.C. 169 with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135

Executive Orders Relating to Highway Projects

- E.O. 11990, Protection of Wetlands
- E.O. 11988, Floodplain Management (except approving design standards)

and determinations that a significant encroachment is the only practicable alternative under 23 CFR 650.113 and 650.115)

- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
- E.O. 13112, Invasive Species.

The MOU would allow UDOT to act in the place of FHWA in carrying out the environmental review-related functions described above, except with respect to government-to-government consultations with federally recognized Indian tribes. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian tribes, which is required under some of the listed laws and executive orders. The UDOT will continue to handle routine consultations with the tribes and understands that a tribe has the right to direct consultation with the FHWA upon request. The UDOT also may assist FHWA with formal consultations, with consent of a tribe, but FHWA remains responsible for the consultation.

The UDOT also will not assume FHWA's responsibilities for conformity determinations required under Section 176 of the CAA (42 U.S.C. 7506), or any responsibility under 23 U.S.C. 134 or 135, or under 49 U.S.C. 5303 or 5304.

A copy of the proposed MOU may be viewed on the DOT DMS Docket, as described above, or may be obtained by contacting FHWA or the State at the addresses provided above. A copy also may be viewed on UDOT's Web site at: <https://www.udot.utah.gov/go/neaassignment>.

The FHWA Utah Division, in consultation with FHWA Headquarters, will consider the comments submitted when making its decision on the proposed MOU revision. Any final MOU approved by FHWA may include changes based on comments and consultations relating to the proposed MOU and will be made publicly available.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 327; 42 U.S.C. 4331, 4332; 23 CFR 771.101–139; 23 CFR 773.109; and 40 CFR 1507.3.

Issued on: November 9, 2016.

Gregory G. Nadeau,
Administrator, Federal Highway Administration.

[FR Doc. 2016–27507 Filed 11–15–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2016–0029]

FAST Act Section 1422 Study on Performance of Bridges

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comment.

SUMMARY: Section 1422 of the Fixing America's Surface Transportation (FAST) Act directs the Administrator of the Federal Highway Administration (FHWA) to commission the Transportation Research Board of the National Academy of Sciences to conduct a study on the performance of bridges that received funding under the Innovative Bridge Research and Construction program in meeting the goals of that program. Section 1422 also directs the Administrator of FHWA to provide an opportunity for public comment on the study proposal before commissioning the study. This notice provides the study proposal and the opportunity for public comment.

DATES: Comments must be received on or before December 16, 2016.

ADDRESSES: Mail or hand deliver comments to Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590. You may also submit comments electronically at www.regulations.gov. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). The DOT posts these comments, without edit, including any personal information the commenter

provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Mr. Derek Constable, Office of Bridges and Structures, (202) 366–4606, or via email at derek.constable@dot.gov; Mr. Shay Burrows, Office of Bridges and Structures, (202) 366–4675, or via email at shay.burrows@dot.gov; for legal questions, Mr. Robert Black, (202) 366–1359, or via email at robert.black@dot.gov, 1200 New Jersey Ave. SE., Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the specific docket page at www.regulations.gov.

Background

As directed by FAST Act Section 1422, FHWA will commission the Transportation Research Board to conduct a study on the performance of bridges funded by the Innovative Bridge Research and Construction (IBRC) program as provided under section 503(b) of Title 23, United States Code, and in effect on the day before the date of enactment of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). The IBRC program was originated by the Transportation Equity Act for the 21st Century (TEA–21) with the purpose of demonstrating the application of innovative material technology in the construction of bridges and other structures. Seven goals were identified in TEA–21. SAFETEA–LU continued the program, but amended the program name, purpose, and goals. The program was then discontinued with the passage of the Moving Ahead for Progress in the 21st Century (MAP–21) Act. The FAST Act directs FHWA to commission the Transportation Research Board to conduct a study on the performance of bridges that received funding under the IBRC program. The IBRC program provided funding to help defray costs on more than 400 projects.

The study will include an analysis of the performance of bridges that received funding under the IBRC program in meeting the program goals;

(A) The development of new, cost-effective innovative material highway bridge applications;

(B) the reduction of maintenance costs and lifecycle costs of bridges, including the costs of new construction, replacement, or rehabilitation of deficient bridges;

(C) the development of construction techniques to increase safety and reduce construction time and traffic congestion;

(D) the development of engineering design criteria for innovative products and materials for use in highway bridges and structures;

(E) the development of cost-effective and innovative techniques to separate vehicle and pedestrian traffic from railroad traffic;

(F) the development of highway bridges and structures that will withstand natural disasters, including alternative processes for the seismic retrofit of bridges; and

(G) the development of new nondestructive bridge evaluation technologies and techniques.

The study also will include an analysis of the utility, compared to conventional materials and technologies, of each of the innovative materials and technologies used in projects for bridges under the program in meeting the needs of the United States in 2015 and in the future for a sustainable and low lifecycle cost transportation system; recommendations to Congress on how the installed and lifecycle costs of bridges could be reduced through the use of innovative materials and technologies, including, as appropriate, any changes in the design and construction of bridges needed to maximize the cost reductions; and a summary of any additional research that may be needed to further evaluate innovative approaches to reducing the installed and lifecycle costs of highway bridges.

The FAST Act requires each State that received funds under the program to provide to the Transportation Research Board any relevant data needed to carry out the study.

The FHWA proposes to focus the study on only the technologies implemented by the IBRC program and will only include bridges that received IBRC program funding. The FHWA's Recommendations to Congress on how to reduce the installed and life cycle costs of bridges will also be based upon the IBRC program study and improvements inspired by the program. In addition, FHWA proposes to focus the study on the effect of the designs, materials, and construction methods on the performance of bridges while they are in service.

The FHWA proposes that the assessment of the performance of bridges while they are in service will use existing information and data that is known or has already been collected by the bridge owners. The FHWA proposes the TRB contact recipients of IBRC

funding to provide information and data by interview, survey, and/or release of records. Interviews and surveys may be required to determine which projects to focus the study on and to gather relevant background, cost, and performance information. Records required may include data, documents, and reports associated with design, construction, in-service inspection, maintenance, evaluation, monitoring, and other relevant phases or activities.

Interested parties are invited to provide comment on this study proposal.

Authority: Sec. 1422, Pub. L. 114-94, 129 Stat. 1312; 49 CFR 1.85.

Dated: November 9, 2016.

Gregory G. Nadeau,
Administrator, Federal Highway
Administration.

[FR Doc. 2016-27504 Filed 11-15-16; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2010-0029]

National Railroad Passenger Corporation's (Amtrak) Request for Positive Train Control Safety Plan (PTCSP) Approval and System Certification

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that Amtrak submitted via FRA's Secure Information Repository a letter dated September 14, 2016, requesting FRA approval of its PTCSP Revision 4.0, dated August 2016, for Amtrak's Advanced Civil Speed Enforcement System II (ACSES II).

DATES: FRA will consider comments received by December 16, 2016 before taking final action on the PTCSP. FRA may consider comments received after that date if practicable.

ADDRESSES: All comments concerning this proceeding should identify Docket Number 2010-0029 and may be submitted by any of the following methods:

- **Web site:** <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Fax:** 202-493-2251.
- **Mail:** Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590.

- **Hand Delivery:** 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mark Hartong, Senior Scientific Technical Advisor, at (202) 493-1332, or Mark.Hartong@dot.gov; or Mr. David Blackmore, Staff Director, Positive Train Control, at (312) 835-3903, or David.Blackmore@dot.gov.

SUPPLEMENTARY INFORMATION: In its PTCSP, Amtrak asserts that the ACSES II system it is implementing is designed as a vital overlay positive train control (PTC) system as defined in 49 CFR 236.1015(e)(2). The PTCSP describes Amtrak's ACSES II implementation and the associated ACSES II safety processes, safety analyses, and test, validation, and verification processes used during the development of ACSES II. The PTCSP also contains Amtrak's operational and support requirements and procedures.

Amtrak's PTCSP and the accompanying request for approval and system certification are available for review online at www.regulations.gov (Docket Number FRA-2010-0029) and in person at DOT's Docket Operations Facility, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to comment on the PTCSP by submitting written comments or data. During its review of the PTCSP, FRA will consider any comments or data submitted. However, FRA may elect not to respond to any particular comment and, under 49 CFR 236.1009(d)(3), FRA maintains the authority to approve or disapprove the PTCSP at its sole discretion. FRA does not anticipate scheduling a public hearing regarding Amtrak's PTCSP because the circumstances do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, the party should notify FRA in writing before the end of the comment period and specify the basis for his or her request.

Privacy Act Notice

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. 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 you can review at www.dot.gov/privacy. See <https://www.regulations.gov/privacyNotice> for the privacy notice of www.regulations.gov.

Issued in Washington, DC, on November 2, 2016.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2016-27522 Filed 11-15-16; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2016-0002-N-25]

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 this information collection request (ICR) 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 January 17, 2017.

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, RRS-21, Federal Railroad Administration, 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 2130-0010," and should also include

the title of the collection of information. 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 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. See 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: Track Safety Standards.

OMB Control Number: 2130-0010.

Abstract: Part 213 prescribes minimum safety requirements for railroad track that is part of the general railroad system of transportation. While the requirements prescribed in this part generally apply to specific track conditions existing in isolation, a combination of track conditions, none of which individually amounts to a deviation from the requirements in this part, may require remedial action to provide safe operations over that track. Qualified persons inspect track and take action to allow safe passage of trains and ensure compliance with prescribed Track Safety Standards. In March 2013, FRA amended the Track Safety Standards and Passenger Equipment Safety Standards applicable to high-speed and high cant deficiency train operations to promote the safe interaction of rail vehicles with the tracks over which they operate. The final rule revised limits for vehicle response to track perturbations and added new limits as well. The rule accounts for a range of vehicle types that are currently used and may likely be used in future high-speed or high cant deficiency rail operations, or both. The rule is based on the results of simulation studies designed to identify track geometry irregularities associated with unsafe wheel/rail forces and accelerations, thorough reviews of vehicle qualification and revenue service test data, and consideration of international practices. The information collection associated with the Track Safety Standards is used by FRA to ensure and enhance rail safety by monitoring complete compliance with all regulatory requirements.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 728 railroads.

Frequency of Submission: On occasion.

Affected Public: Businesses.

Reporting Burden:

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response	Total annual burden hours
213.14—Excepted track—Identification—Notification to FRA—Removal of Track.	236	20 orders	15 minutes	5
Segment From Excepted Statues	236	15 notices	10 minutes	3
213.5—Responsibility of for Compliance—Track Owners—Assignment to Another Person—Notice to FRA.	728	10 notices	8 hours	80
213.7—Designation of qualified persons to supervise certain renewals and inspect track.	728	1,500 names	10 minutes	250
—Individuals Designated under paragraphs (a) or (b) of this section who inspect CWR and have completed CWR Training Course.	37	80,000 trained Employees	8 hours	640,000
—Employees authorized by Track Owner to prescribe CWR Remedial Actions.	37	80,000 auth. + 80,000 exams.	10 min. + 60 min	93,333
—Designations (Partially Qualified under Paragraph c).	37	250 names	10 min.	2
213.17—Waiver: Petitions	728	6 petitions	24 hours	144
213.57—Curves; elevations and speed limits—Requests for higher curving speeds.	728	2 requests	40 hours	80
—Implementation Notification to FRA	728	2 notifications	8 hours	16
—Written Consent of Track Owner to RR provide service over track w/same equip.	728	2 consents	45 minutes	2
213.110—Gage restraint measurement systems—Implementing GRMS—Notice to FRA and Technical Report.	728	5 notices + 1 tech. report	45 minutes + hours	8
—GRMS Output Reports	728	50 reports	5 minutes	4
—GRMS Exception Reports	728	50 reports	5 minutes	4
—Procedures For Maintaining GRMS Data	728	4 procedures	2 hours	8
—GRMS Training to Qualified Employees	728	2 tr. programs + 5 sessions.	16 hours/session or program.	112
—GRMS Inspections—Two Most Recent Records.	728	50 records	2 hours	100
213.118—Continuous weld rail (CWR); plan review and approval—Track Owner Plans to FRA.	279	279 revised plans	4 hours	1,116
—Notice to FRA & to Affected Employees of Plan's Effective Date.	279	279 notices + 80,000 notices.	15 minutes + 2 minutes ...	2,737
—FRA Required Revisions to CWR Plans; Further FRA Amendments to CWR Plans.	279	20 revisions	2 hours	40
—Annual Retraining of CWR Employees	279	20 plans	1 hour	20
213.119—Continuous weld rail (CWR); plan contents—Annual Retraining of CWR Employees.	37	80,000 worker	30 minutes	40,000
—Records of CWR Installations and CWR Maintenance.	279	2,000 records	10 minutes	333
—Records of Rail Joint Inspections	279	360,000 rcds	2 minutes	12,000
—Records of CWR Periodic Inspections	279	480,000 rcds	1 minute	8,000
—CWR Procedures Manual	279	279 Manuals	10 minutes	47
213.233—Track Inspections By Person/Vehicle—Records.	728	12,500 notations	1 minute	208
213.237—Inspection of rail—RR request to Change Designation of a Rail Inspection Segment or establish a New Segment.	10	50 requests	15 minutes	13
—After FRA approval, RR Notice to FRA and RR Employees of Effective Date.	10	50 notices + 120 notices	15 minutes + 15 minutes	43
—RR/Track Owner Notice to FRA that Service Failure Rate Target Identified in 213.237(a) is not Achieved.	10	12 notices	15 minutes	3
—RR/Track Owner Letter of Explanation Why Service Failure Target Rate has not been Achieved and Provision of Remedial Action Plan to FRA.	10	12 letters + 12 plans	15 minutes	6
213.241—Track and Rail Inspection Records	728	1,542,089 records	Varies with Inspection Type.	1, 672,941
213.303—Responsibility for compliance—High Speed Track: Notice to FRA of Assignment of Responsibility.	2	1 notice	8 hours	8
213.305—Designation of qualified individuals	2	20 designation	10 minutes	3
213.317—Waiver Petitions	2	1 petition	80 hours	80
213.329—Curves; elevation, and speed limitations—Submission of Testing Results Specified in 213.329(d) to FRA for Each Type of Vehicle RR/Track Owner requests Approval.	2	2 documents	80 hours	160

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response	Total annual burden hours
—Notification to FRA by RR/Track Owner of Implementation of Higher Curving Speeds at least 30 calendar days before Proposed Implementation.	2	3 notifications	40 hours	120
—Written Consent of Track Owner to Another RR that provides Service w/Same Vehicle Type.	2	3 written consents	45 minutes	2
213.333—RR Request to FRA concerning Track Geometry Measurement taken from a distance different from that Specified under 213.333(b)(1).	728	1 request	8 hours	8
—RR TGMS Output Reports	10	18 reports	20 hours	360
—RR Copy of plot and exception report by qualifying TGMS performing inspection.	10	13 reports	20 hours	260
—Notification to Track Personnel when Onboard Accelerometers indicate possible track-related problems.	10	10 notices	40 hours	400
213.333—RR Request to FRA for Alternative Location of Devices Measuring Lateral Accelerations Mounted on a Truck Frame.	10	10 requests	40 hours	400
—RR Track Owner Monitoring Data Calendar Year Report to FRA.	10	4 data reports	8 hours	32
213.341—Initial inspection of new rail and welds: Mill Inspection—Report.	2	2 reports	16 hours	32
—Welding Plant Inspection—Report	2	2 reports	16 hours	32
—Inspection of Field Welds—Records	2	125 records	20 minutes	42
213.343—Continuous welded rail (CWR)—History—Records.	2	150 records	10 minutes	25
213.345—Vehicle Qualification Testing—Qualification Program for All Vehicle Types intended to Operate at Class 6 Speeds or Above or at Any Curving Speed more than 5 Inches of Cant Deficiency.	10	10 programs	120 hours	1,200
—Qualification Program for All Vehicle Types intended to Operate at Class 7 Speeds or Above or at Any Curving Speed more than 6 Inches of Cant Deficiency.	10	10 programs	80 hours	800
—Track Owner Consent for Another Railroad that Provides Service with Same Vehicle Type Over Its Track to Submit Documents to FRA.	728	1 written consent	8 hours	8
213.347—Automotive or railroad crossings at grade—Protection Plans.	1	2 plans	8 hours	16
213.369—Inspection records	2	500 records	1 minute	8
—Inspection Records of Defects and Remedial Actions.	2	50 records	5 minutes	4

Total Estimated Annual Responses: 2,800,634.

Total Estimated Annual Burden: 2,475,698 hours.

Type of Request: Extension of a Currently Approved Collection.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that 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 November 7, 2016.

Patrick T. Warren,

Acting Executive Director.

[FR Doc. 2016–27521 Filed 11–15–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC). The meeting will be held from 2 p.m. to 4 p.m.(EDT) on Wednesday, December 14, 2016 via conference call at the SLSDC’s Policy Headquarters, 55 M Street SE., Suite 930, Washington, DC 20003. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Quarterly Report; Old and New Business; Closing Discussion; Adjournment.

Attendance at the meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact, not later than Friday, December 9, 2016, Wayne Williams, Acting Chief of Staff, Saint Lawrence Seaway Development Corporation, 1200 New Jersey Avenue SE., Washington, DC 20590; 202–366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on November 9, 2016.

Carrie Lavigne,

Chief Counsel.

[FR Doc. 2016–27524 Filed 11–15–16; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****Agency Information Collection Activities: Revision of an Approved Information Collection; Comment Request; Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions With Total Consolidated Assets of \$50 Billion or More Under the Dodd-Frank Wall Street Reform and Consumer Protection Act**

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a revision to this information collection, as required by the Paperwork Reduction Act of 1995 (PRA). An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Currently, the OCC is soliciting comment concerning a revision to a regulatory reporting requirement for national banks and federal savings associations titled, "Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions With Total Consolidated Assets of \$50 Billion or More under the Dodd-Frank Wall Street Reform and Consumer Protection Act." **DATES:** Comments must be received by January 17, 2017.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557-0319, 400 7th Street SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465-4326 or by electronic mail to prainfo@occ.treas.gov. 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 submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. **FOR FURTHER INFORMATION CONTACT:** Shaquita Merritt, OCC Clearance Officer, (202) 649-5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649-5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th St. SW., Washington, DC 20219. In addition, copies of the templates referenced in this notice can be found on the OCC's Web site under News and Issuances (<http://www.occ.treas.gov/tools-forms/forms/bank-operations/stress-test-reporting.html>).

SUPPLEMENTARY INFORMATION: The OCC is requesting comment on the following revision to an approved information collection:

Title: Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions With Total Consolidated Assets of \$50 Billion or More Under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

OMB Control No.: 1557-0319.

Description: Section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act¹ (Dodd-Frank Act) requires certain financial companies, including national banks and federal savings associations, to conduct annual stress tests² and requires the primary financial regulatory agency³ of those financial companies to issue regulations implementing the stress test requirements.⁴ A national bank or federal savings association is a "covered institution" and therefore subject to the stress test requirements if its total consolidated assets are more than \$10 billion. Under section 165(i)(2), a covered institution is required to submit to the Board of Governors of the Federal Reserve System (Board) and to its primary financial regulatory agency a report at such time, in such form, and containing such information as the primary financial regulatory agency may require.⁵ On October 9, 2012, the OCC published in the **Federal Register** a final

rule implementing the section 165(i)(2) annual stress test requirement.⁶ This rule describes the reports and information collections required to meet the reporting requirements under section 165(i)(2). These information collections will be given confidential treatment to the extent permitted by law (5 U.S.C. 552(b)(4)).

In 2012, the OCC first implemented the reporting templates referenced in the final rule. See 77 FR 49485 (August 16, 2012) and 77 FR 66663 (November 6, 2012). The OCC is now revising them as described below.

The OCC intends to use the data collected to assess the reasonableness of the stress test results of covered institutions and to provide forward-looking information to the OCC regarding a covered institution's capital adequacy. The OCC also may use the results of the stress tests to determine whether additional analytical techniques and exercises could be appropriate to identify, measure, and monitor risks at the covered institution. The stress test results are expected to support ongoing improvement in a covered institution's stress testing practices with respect to its internal assessments of capital adequacy and overall capital planning.

The OCC recognizes that many covered institutions with total consolidated assets of \$50 billion or more are required to submit reports using reporting form FR Y-14A.⁷ The OCC also recognizes the Board has proposed to modify the FR Y-14A and, to the extent practical, the OCC will keep its reporting requirements consistent with the Board's FR Y-14A in order to minimize burden on covered institutions.⁸ Therefore, the OCC is proposing to revise its reporting requirements to mirror the Board's proposed FR Y-14A for covered institutions with total consolidated assets of \$50 billion or more.

The OCC also recognizes that the Board has proposed to modify its Capital Plan and Stress Testing rule which included modified reporting requirements for bank holding companies (BHCs) categorized by the Board as large and noncomplex firms.⁹

⁶ 77 FR 61238 (October 9, 2012) (codified at 12 CFR 46).

⁷ <http://www.federalreserve.gov/reportforms>.

⁸ 81 FR 49653 (July 28, 2016).

⁹ 81 FR 67239 (September 30, 2016) ("Under the proposal, large and noncomplex firms would no longer be required to complete several elements of the FR Y-14A Schedule A (Summary), including the Securities OTTI methodology sub-schedule, Securities Market Value source sub-schedule, Securities OTTI by security sub-schedule, the Retail repurchase sub-schedule, the Trading sub-schedule,

¹ Public Law 111-203, 124 Stat. 1376, July 2010.

² 12 U.S.C. 5365(i)(2)(A).

³ 12 U.S.C. 5301(12).

⁴ 12 U.S.C. 5365(i)(2)(C).

⁵ 12 U.S.C. 5365(i)(2)(B).

The OCC is reviewing whether to apply similar changes to reporting requirements for a subset of covered institutions. In particular, the OCC is considering not requiring national banks that are subsidiaries of large, non-complex firms as defined by the Board to complete the sub-schedules identified in the Board's proposal.

In addition to the changes that parallel the Board's proposed changes to the FR Y-14A, the OCC is also proposing to implement a new supplemental schedule to collect certain items not included in the Board's FR Y-14A.

Proposed Revisions to Reporting Templates for Institutions With \$50 Billion or More in Assets

The proposed revisions to the DFAST-14A reporting templates consist of the following:

- Adding line items to the Regulatory Capital Instruments schedule.
- Updating the Summary schedule to collect items related to the supplementary leverage ratio.
- Removing and adding sub-schedules to the Operational Risk schedule.
- Creating a new supplemental schedule to collect certain items not included in the Board's FR Y-14A.
- Requiring a bank-specific scenario. Covered institutions would be required to submit bank-specific baseline and stress scenarios.
- Requiring the assumption of largest counterparty default. The largest trading covered institutions that also submit the Global Market Shock scenario would be required to assume the default of their largest counterparty in the supervisory severely adverse and adverse scenarios.

Bank-Specific Scenarios

Covered institutions would be required to submit bank-specific baseline and bank-specific stress scenarios and associated projections for the 2017 annual stress testing submission. While supervisory scenarios provide a homogeneous scenario and a consistent market-wide view of the condition of the banking sector, these prescribed scenarios may not fully capture all of the risks that may be associated with a particular institution. The proposed revisions would require covered institutions to provide bank-specific baseline and bank-specific stress scenarios.

The OCC recognizes that the Board requires BHCs to submit BHC-specific baseline and stress scenarios and

Counterparty sub-schedule, and Advanced RWA sub-schedule.".)

projections. Where OCC covered institutions also submit BHC-specific scenarios, the OCC would require that bank-specific scenarios would be consistent with the BHC-specific scenarios.

Largest Counterparty Default

Covered institutions that currently complete the Global Market Shock would also be required to complete the Largest Counterparty Default component. This is currently required by the Board, and the OCC would adopt a similar requirement to enhance consistency and reduce regulatory burden.

OCC Supplemental Schedule

The proposed revisions include a new supplemental schedule that would collect additional information not otherwise included in the FR Y-14A. This schedule would collect, among other information, additional data on auto lending, commercial exposures, and non-U.S. exposures. The schedule would also collect information relevant to the calculation of the Supplementary Leverage Ratio.¹⁰

Other Reporting Template and Instruction Changes

The other proposed revisions to the DFAST-14A consist of clarifying instructions, adding and removing schedules, adding, deleting, and modifying existing data items, and altering the as-of dates. These proposed changes would increase consistency between the DFAST-14A and the FR Y-14A and Call Report.

Summary Schedule, Standardized RWA Worksheet

The proposed revision includes multiple line item changes intended to promote consistency with the FR Y-14A and ensure the collection of accurate information.

Summary Schedule, Capital Worksheet

Covered institutions would be required to estimate their supplementary leverage ratio for the planning horizon beginning on January 1, 2018. The OCC proposes adding two items to the Summary Schedule: Supplementary Leverage Ratio Exposure (SLR Exposure) and Supplementary Leverage Ratio (the SLR). The SLR would be a derived field.

¹⁰ For the OCC Supplemental Schedule, the OCC anticipates that covered institutions will use existing models and methodologies to furnish the requested information. Covered institutions should not develop new models/methodologies just to provide the loss, balance, provision, and allowance numbers requested in the OCC Supplemental Schedule.

In addition, to collect more precise information regarding deferred tax assets (DTAs), the OCC proposes modifying one existing item on the Capital—DFAST worksheet of the Summary schedule as-of December 31, 2016. The OCC proposes changing existing item 112 on the Capital—DFAST worksheet of the Summary schedule, "Deferred tax assets arising from temporary differences that could not be realized through net operating loss carrybacks, net of DTLs, but before related valuation allowances," to "Deferred tax assets arising from temporary differences, net of DTLs." A covered institution in a net deferred tax liability (DTL) position would report this item as a negative number. This modification would provide more specific information about the components of the "DTAs arising from temporary differences that could not be realized through net operating loss carrybacks, net of related valuation allowances and net of DTLs" subject to the common equity tier 1 capital deduction threshold.

The proposed revisions would also remove certain items that pertained to the capital regulations in place before the adoption of the Basel III final rule.

Summary Schedule, Counterparty Worksheet

The OCC proposes adding the item "Other counterparty losses" to the counterparty worksheet of the Summary schedule.

Operational Risk Schedule

The proposed revisions would remove and add sub-schedules to the Operational Risk Schedule to ensure the collection of accurate information. The OCC proposes adding two sub-schedules and modifying the supporting documentation requirements for this schedule effective with the reports as-of December 31, 2016. First, new sub-schedule Material Risk Identification would collect information on a firm's material operational risks included in loss projections based on their risk management framework. Second, new sub-schedule Operational Risk Scenarios would collect a covered institution's operational risk scenarios included in the BHC Baseline and BHC Stress projections, a fundamental element of the framework.

The Operational Risk Historical Capital sub-schedule would be removed from the reporting template.

Type of Review: Regular.
Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 23.

Estimated Total Annual Burden:
16,466 hours.

The OCC believes that the systems covered institutions use to prepare the FR Y-14 reporting templates to submit to the Board will also be used to prepare the reporting templates described in this notice. Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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.

Dated: November 10, 2016.

Karen Solomon,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2016-27555 Filed 11-15-16; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[OCC Charter Number 700646]

Mutual to Stock Conversion; Community Savings, Caldwell, Ohio; Approval of Conversion Application

Notice is hereby given that on November 9, 2016, the Office of the Comptroller of the Currency (OCC) approved the application of Community Savings, Caldwell, Ohio, to convert to the stock form of organization. Copies of the application are available on the OCC Web site at the FOIA Reading Room (<https://foia-pal.occ.gov/palMain.aspx>) under Mutual to Stock Conversion Applications. If you have any questions, please contact Licensing Activities at (202) 649-6260.

Dated: November 9, 2016.

By the Office of the Comptroller of the Currency.

Stephen A. Lybarger,

Deputy Comptroller for Licensing.

[FR Doc. 2016-27528 Filed 11-15-16; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 9, 2016.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104-13, on or after the date of publication of this notice.

DATES: Comments should be received on or before December 16, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at OIRA_Submission@OMB.EOP.gov and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8142, Washington, DC 20220, or email at PRA@treasury.gov.

FOR FURTHER INFORMATION CONTACT:

Copies of the submissions may be obtained by emailing PRA@treasury.gov, calling (202) 622-0934, or viewing the entire information collection request at www.reginfo.gov.

Internal Revenue Service (IRS)

OMB Control Number: 1545-0057.

Type of Review: Extension without change of a currently approved collection.

Title: Form 1024—Application for Recognition of Exemption Under Section 501(a).

Form: 1024.

Abstract: Organizations seeking exemption from Federal Income tax under Internal Revenue Code section 501(a) as an organization described in most paragraphs of section 501(c) must use Form 1024 to apply for exemption. The information collected is used to determine whether the organization qualifies for tax-exempt status.

Affected Public: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 291,542.

OMB Control Number: 1545-0874.

Type of Review: Extension without change of a currently approved collection.

Title: Carryforward Election of Unused Private Activity Bond Volume Cap.

Form: 8328.

Abstract: Section 146(f) of the Internal Revenue Code requires that issuing authorities of certain types of tax-exempt bonds must notify the IRS if they intend to carry forward the unused limitation for specific projects. The IRS uses the information to complete the required study of tax-exempt bonds (required by Congress).

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 132,200.

OMB Control Number: 1545-0908.

Type of Review: Extension without change of a currently approved collection.

Title: Form 8282—Donee Information Return; Form 8283—Noncash Charitable Contributions, and Form 8283-V—Payment Voucher for Filing Fee Under Section 170(f)(13).

Forms: 8282, 8283, 8283-V.

Abstract: Internal Revenue Code section 170(a)(1) and regulation section 1.170A-13(c) require donors of property valued over \$5,000 to file certain information with their tax return in order to receive the charitable contribution deduction. Form 8283 is used to report the required information. Code section 6050L requires donee organizations to file an information return with the IRS if they dispose of the property received within two years. Form 8282 is used for this purpose. Form 8283-V is used to send along with the filing fee that is required if a taxpayer claims a deduction of more than \$10,000 for a charitable contribution of an easement on the exterior of a building in a registered historic district.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 7,806,097.

OMB Control Number: 1545-1717.

Type of Review: Extension without change of a currently approved collection.

Title: Tip Rate Determination Agreement (TRDA) for Most Industries.

Abstract: Information is required by the Internal Revenue Service in its tax compliance efforts to assist employers and their employees in understanding and complying with section 6053(a), which requires employees to report all their tips monthly to their employers.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 1,897.

OMB Control Number: 1545-2197.

Type of Review: Extension without change of a currently approved collection.

Title: Election to Expense Certain Depreciable Assets.

Form: 1097-BTC.

Abstract: This is an information return for reporting tax credit bond credits distributed to holders of tax credit bonds. The taxpayer holding a tax credit bond on an allowance date during a tax year is allowed a credit against federal income tax equivalent to the interest that the bond would otherwise pay. The bondholder must include the amount of the credit in gross income and treat it as interest income. The issuers and holders of the tax credit bond will send Form 1097-BTC to the bond holders quarterly and file the return with the IRS annually.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 67.

Bob Faber,

Acting Treasury PRA Clearance Officer.

[FR Doc. 2016-27490 Filed 11-15-16; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee November 17, 2016, Public Meeting

ACTION: Notification of Citizens Coinage Advisory Committee November 17, 2016, public meeting.

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for November 17, 2016.

Date: November 17, 2016.

Time: 12:00 p.m. to 1:00 p.m. EST.

Location: This meeting will occur via teleconference. Interested members of the public may dial in to listen to the meeting at (866) 564-9287/Access Code: 62956028.

Subject: Review and consideration of candidate designs for the Secretary of the Treasury "list" medal honoring Secretary Jacob J. Lew.

Interested persons should call the CCAC HOTLINE at (202) 354-7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.

- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.

- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT:

Betty Birdsong, Acting United States Mint Liaison to the CCAC; 801 9th Street NW.; Washington, DC 20220; or call 202-354-7770.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202-756-6525.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: November 9, 2016.

Richard A. Peterson,

Deputy Director for Manufacturing and Quality, United States Mint.

[FR Doc. 2016-27527 Filed 11-15-16; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0749]

Agency Information Collection Activity Under OMB Review: (Ischemic Heart Disease (IHD) Disability Benefits Questionnaire (VA Form 21-0960A-1), Hairy Cell and Other B-Cell Leukemia Disability Benefits Questionnaire (VA Form 21-0960B-1), and Parkinson's Disease Disability Benefits Questionnaire (VA Form 21-0960C-1))

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed

revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

VA Forms 21-0960A-1, 21-0960B-1, and 21-0960C-1 are used to gather necessary information from a claimant's treating physician regarding the results of medical examinations.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 17, 2017.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900-0749" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT:

Nancy J. Kessinger at (202) 632-8924 or FAX (202) 632-8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Ischemic Heart Disease (IHD) Disability Benefits Questionnaire (VA Form 21-0960A-1), Hairy Cell and Other B-Cell Leukemias Disability Benefits Questionnaire (VA Form 21-0960B-1), and Parkinson's Disease Disability Benefits Questionnaire (VA Form 21-0960C-1)).

OMB Control Number: 2900-0749.

Type of Review: Revision of an approved collection.

Abstract: VA Forms 21-0960A-1, 21-0960B-1, and 21-0960C-1 are used to

gather necessary information from a claimant's treating physician regarding the results of medical examinations.

Affected Public: Individuals or households.

Estimated Annual Burden: 15,500 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 62,000.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016-27489 Filed 11-15-16; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App.

2, that a meeting of the Veterans' Advisory Committee on Rehabilitation (VACOR) will be held on December 12th-13th, 2016 in Conference Room 542 at the Department of Veterans Affairs, 1800 G Street NW., Washington, DC 20006. The meeting will begin at 9:00 a.m. (EST) and adjourn at 5:00 p.m. (EST) each day. The meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary on the rehabilitation needs of Veterans with disabilities and on the administration of VA's rehabilitation programs.

During the meeting, Committee members will be provided updated briefings on various VA programs designed to enhance the rehabilitative potential of recently-discharged Veterans. Members will also begin consideration of potential recommendations to be included in the Committee's next annual report.

Although no time will be allocated for receiving oral presentations from the public, members of the public may submit written statements for review by the Committee to Anthony Estelle, Designated Federal Officer, Veterans

Benefits Administration (28), 810 Vermont Avenue NW., Washington, DC 20420, or via email at anthony.estelle@va.gov. In the communication, writers must identify themselves and state the organization, association or person(s) they represent. Individuals who wish to attend the meeting should RSVP to Anthony Estelle at (202) 461-9912, no later than close of business, December 5, 2016. Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as a part of the clearance process. Due to an increase in security protocols, and in order to prevent delays in clearance processing, you should allow an additional 30 minutes before the meeting begins. Any member of the public seeking additional information should contact Anthony Estelle at the phone number or email address noted above.

Dated: November 9, 2016.

LaTonya L. Small,

Advisory Committee Management Officer.

[FR Doc. 2016-27457 Filed 11-15-16; 8:45 am]

BILLING CODE 8320-01-P



FEDERAL REGISTER

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Wednesday,

No. 221

November 16, 2016

Part II

Department of Housing and Urban
Development

24 CFR Parts 5, 91, 92, et al.

Violence Against Women Reauthorization Act of 2013: Implementation in
HUD Housing Programs; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 91, 92, 93, 200, 247, 574, 576, 578, 880, 882, 883, 884, 886, 891, 905, 960, 966, 982, and 983

[Docket No. FR-5720-F-03]

RIN 2501-AD71

Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs

AGENCY: Office of the Secretary, HUD.
ACTION: Final rule.

SUMMARY: This final rule implements in HUD's regulations the requirements of the 2013 reauthorization of the Violence Against Women Act (VAWA), which applies for all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation, and which must be applied consistent with all nondiscrimination and fair housing requirements. The 2013 reauthorization (VAWA 2013) expands housing protections to HUD programs beyond HUD's public housing program and HUD's tenant-based and project-based Section 8 programs (collectively, the Section 8 programs) that were covered by the 2005 reauthorization of the Violence Against Women Act (VAWA 2005). Additionally, the 2013 law provides enhanced protections and options for victims of domestic violence, dating violence, sexual assault, and stalking. Specifically, this rule amends HUD's generally applicable regulations, HUD's regulations for the public housing and Section 8 programs that already pertain to VAWA, and the regulations of programs newly covered by VAWA 2013.

In addition to this final rule, HUD is publishing a notice titled the Notice of Occupancy Rights under the Violence Against Women Act (Notice of Occupancy Rights) that certain housing providers must give to tenants and applicants to ensure they are aware of their rights under VAWA and these implementing regulations, a model emergency transfer plan that may be used by housing providers to develop their own emergency transfer plans, a model emergency transfer request form that housing providers could provide to tenants requesting an emergency transfer under these regulations, and a new certification form for documenting incidents of domestic violence, dating violence, sexual assault, and stalking that must be used by housing providers.

This rule reflects the statutory changes made by VAWA 2013, as well

as HUD's recognition of the importance of providing housing protections and rights to victims of domestic violence, dating violence, sexual assault, and stalking. By increasing opportunities for all individuals to live in safe housing, this will reduce the risk of homelessness and further HUD's mission of utilizing housing to improve quality of life.

DATES: *Effective Date:* These regulations are effective on December 16, 2016.

Compliance Date: Compliance with the rule with respect to completing an emergency transfer plan and providing emergency transfers, and associated recordkeeping and reporting requirements, is required no later than May 15, 2017.

FOR FURTHER INFORMATION CONTACT: For information about: HUD's Public Housing program, contact Monica Shepherd, Director Public Housing Management and Occupancy Division, Office of Public and Indian Housing, Room 4204, telephone number 202-402-5687; HUD's Housing Choice Voucher program and Project-Based Voucher, contact Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public and Indian Housing, Room 4216, telephone number 202-402-6050; HUD's Multifamily Housing programs, contact Yvette M. Viviani, Director, Housing Assistance Policy Division, Office of Housing, Room 6138, telephone number 202-708-3000; HUD's HOME Investment Partnerships program, contact Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Room 7164, telephone number 202-708-2684; HUD's Housing Opportunities for Persons With AIDS (HOPWA) program, contact Rita Flegel, Director, Office of HIV/AIDS Housing, Office of Community Planning and Development, Room 7248, telephone number 202-402-5374; and HUD's Homeless programs, contact Norman Suchar, Director, Office of Special Needs Assistance, Office of Community Planning and Development, telephone number 202-708-4300. The address for all offices is the Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. The telephone numbers listed above are not toll-free numbers. Persons with hearing or speech impairments may access these numbers through TTY by calling the Federal Relay Service, toll-free, at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action

This rule implements the HUD housing provisions in VAWA 2013, which are found in Title VI of the statute. (See Pub. L. 113-4, 127 Stat. 54, approved March 7, 2013, at 127 Stat. 101). VAWA 2005 (Pub. L. 109-162, 119 Stat. 2959, approved January 5, 2006) applied VAWA protections to certain HUD programs by amending the authorizing statutes for HUD's public housing and section 8 programs to provide protections for victims of domestic violence, dating violence, and stalking. VAWA 2013 removes these amendments from the public housing and section 8 authorizing statutes, and in its place provides stand-alone VAWA protections that apply to these programs, as well as additional HUD programs, and also to victims of sexual assault. In addition, VAWA 2013 expands protections for victims of domestic violence, dating violence, sexual assault, and stalking by amending the definition of domestic violence to include violence committed by intimate partners of victims, and by providing that tenants cannot be denied assistance because an affiliated individual of theirs is or was a victim of domestic violence, dating violence, sexual assault, or stalking (collectively VAWA crimes). The new law also expands remedies for victims of domestic violence, dating violence, sexual assault, and stalking by requiring covered housing providers to have emergency transfer plans, and providing that if housing providers allow for bifurcation of a lease, then tenants should have a reasonable time to establish eligibility for assistance under a VAWA-covered program or to find new housing when an assisted household has to be divided as a result of the violence or abuse covered by VAWA.

VAWA 2013 provides protections for both applicants for and tenants of assistance under a VAWA-covered housing program. VAWA 2013 covers applicants, as well as tenants, in the statute's nondiscrimination and notification provisions. However, the emergency transfer and bifurcation provisions of the rule are applicable solely to tenants. The statutory provisions of VAWA that require a notice of occupancy rights, an emergency transfer plan, and allow for the possibility of bifurcation of a lease, support that it is a rental housing situation that is the focus of the VAWA protections. However, as described in this final rule, the core statutory protections of VAWA that prohibit

denial or termination of assistance or eviction solely on the basis that an individual is a victim of domestic violence, dating violence, stalking or sexual assault apply to certain housing programs subsidized by HUD even where there is no lease. HUD funds many shelters, temporary housing, short-term supported housing, and safe havens, and no person is to be denied access to such facility or required to leave such facility solely on the basis that the person is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. It is equally important to note, as was noted in HUD's proposed rule, that the core statutory protections of VAWA 2013 that apply to applicants and tenants, were applicable upon enactment of VAWA 2013. As was discussed in HUD's proposed rule and reiterated in this final rule, regulations were not necessary to mandate adherence to this nondiscrimination requirement. That is, if an individual meets all eligibility requirements and complies with all occupancy requirements, the individual cannot be denied assistance or have assistance terminated solely on the basis that the individual is a victim of domestic violence, dating violence, stalking, or sexual assault.

This rule better enables housing providers to comply with the mandates of VAWA 2013, and it reflects Federal policies that recognize that all individuals should be able to live in their homes without fear of violence. The implementation of VAWA protections in HUD programs increases opportunities for all individuals to live in safe housing and reduces the risk of homelessness for individuals who might otherwise be evicted, be denied housing assistance, or flee their homes.

Summary of the Major Provisions of This Regulatory Action

Major provisions of this rule include:

- Specifying "sexual assault" as a crime covered by VAWA in HUD-covered programs.
- Establishing a definition for "affiliated individual" based on the statutory definition and that is usable and workable for HUD-covered programs.
- Applying VAWA protections to all covered HUD programs as well as the Housing Trust Fund, which was not statutorily listed as a covered program.
- Ensuring that existing tenants, as well as new tenants, of all HUD-covered programs receive notification of their rights under VAWA and HUD's VAWA regulations.
- Establishing reasonable time periods during which a tenant who is a

victim of domestic violence, dating violence, sexual assault, or stalking may establish eligibility to remain in housing, where the tenant's household is divided due to a VAWA crime, and where the tenant was not the member of the household that previously established eligibility for assistance.

- Establishing that housing providers may, but are not required to, request certain documentation from tenants seeking emergency transfers under VAWA.
- Providing for a six-month transition period to complete an emergency transfer plan and provide emergency transfers, when requested, under the plan.
- Revising and establishing new program-specific regulations for implementing VAWA protections in a manner that is workable for each HUD-covered program.

Please refer to section II of this preamble, entitled "This Final Rule" for a more detailed discussion of all the changes made to HUD's existing regulations by this rule. In developing this rule, HUD identified outdated terminology in its regulations (for example, the use of the term "alcohol abuser" in part 982). HUD will be issuing a future rule to update and correct such terms.

Costs and Benefits

The benefits of HUD's rule include codifying in regulation the protections that VAWA 2013 provides applicants to and tenants of HUD programs covered by VAWA; strengthening the rights of victims of domestic violence, dating violence, sexual assault, or stalking in HUD-covered programs, including notification and confidentiality rights; and possibly minimizing the loss of housing by such victims through the bifurcation of lease provision and emergency transfer provisions. With respect to rental housing, VAWA was enacted to bring housing stability to victims of domestic violence, dating violence, sexual assault or stalking. It was determined that legislation was needed to require protections for such victims because housing providers often responded to VAWA crimes occurring in one of their rental units or on their property by evicting the tenant regardless of whether the tenant was a victim of domestic violence, dating violence, sexual assault, or stalking, and refusing to rent to such victims on the basis that violence would erupt in the victim's unit or on a housing provider's property if the individual was accepted as a tenant. To ensure that housing providers administering HUD assistance did not respond to domestic violence,

dating violence, or stalking by denying or terminating assistance, VAWA 2005 brought HUD's public housing and Section 8 programs under the statute's purview, and VAWA 2013 covered the overwhelming majority of HUD programs providing rental assistance.

The costs of the regulations are primarily paperwork costs. These are the costs of providing notice to applicants and tenants of their occupancy rights under VAWA, the preparation of an emergency transfer plan, and documenting an incident or incidents of domestic violence, dating violence, sexual assault, and stalking. The costs, however, are minimized by the fact that VAWA 2013 requires HUD to prepare the notice of occupancy rights to be distributed to applicants and tenants; to prepare the certification form that serves as a means of documenting the incident or incidents of domestic violence, dating violence, sexual assault, and stalking; and to prepare a model emergency transfer plan that guides the entities and individuals administering the rental assistance provided by HUD in developing their own plans. In addition, costs to covered housing providers will be minimized because HUD will translate the notice of occupancy rights and certification form into the most popularly spoken languages in the United States, and HUD has prepared a model transfer request form that housing providers and tenants requesting emergency transfer may use. There may also be costs with respect to a tenant claiming the protections of VAWA and a covered housing provider responding to such incident, although these costs will vary depending on the incidence of claims in a given year and the nature and complexity of the situation.

I. Background

On March 7, 2013, President Obama signed into law VAWA 2013 (Pub. L. 113-4, 127 Stat. 54). VAWA 2013 reauthorizes and amends VAWA 1994 (Title IV, sec. 40001-40703 of Pub. L. 103-322), which was previously reauthorized by VAWA 2000 (Pub. L. 106-386) and VAWA 2005 (Pub. L. 109-162, approved January 5, 2006, with technical corrections made by Pub. L. 109-271, approved August 12, 2006).

The VAWA 2005 reauthorization brought HUD's public housing program and HUD's Section 8 programs under coverage of VAWA by amending the authorizing statutes for those programs, sections 6 and 8 of the United States Housing Act of 1937 (the 1937 Act) (42 U.S.C. 1437 *et seq.*). VAWA 2005 established that being a victim of domestic violence, dating violence, or

stalking cannot be the basis for denial of assistance or admission to public or Section 8 housing, and provided other protections for victims. VAWA 2005 also contained requirements for notification to tenants of the rights and protections provided under VAWA, provisions on the rights and responsibilities of public housing agencies (PHAs) and owners and managers of assisted housing, and provisions pertaining to acceptable documentation of incidents of VAWA crimes and maintaining the confidentiality of the victim. HUD regulations pertaining to VAWA 2005 protections, rights, and responsibilities are codified in 24 CFR part 5, subpart L.

Title VI of VAWA 2013, “Safe Homes for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking,” contains the provisions that are applicable to HUD programs. Specifically, section 601 of VAWA 2013 removes VAWA protections from the 1937 Act and adds a new chapter to Subtitle N of VAWA 1994 (42 U.S.C. 14043e *et seq.*) entitled “Housing Rights.” As applicable to HUD, this chapter provides additional protections for tenants beyond those provided in VAWA 2005, and expands VAWA protections to other HUD programs.

On August 6, 2013, at 78 FR 47717, HUD published a **Federal Register** notice that provided an overview of the applicability of VAWA 2013 to HUD programs. This notice listed the new HUD housing programs covered by VAWA 2013, described the changes that VAWA 2013 made to existing VAWA protections, and identified certain issues for which HUD specifically sought public comment. HUD solicited public comment for a period of 60 days, and the public comment period closed on October 7, 2013. HUD appreciates the public comments submitted in response to the August 6, 2013, notice, and these public comments were taken into consideration in the development of this rule. The public comments on the August 6, 2013, notice can be found at the www.regulations.gov government-wide portal, under docket number FR-5720-N-01, at <http://www.regulations.gov#!docketDetail;D=HUD-2013-0074>.

Many of the comments submitted in response to the August 6, 2013, notice asked HUD to advise program participants that certain VAWA protections are in effect without the necessity of rulemaking. In response to these comments, HUD offices administering HUD-covered programs reached out to participants in their programs to advise them that the core

statutory protections of VAWA—not denying or terminating assistance to, or evicting an individual solely on the basis that an individual is or has been a victim of domestic violence, dating violence, stalking, or sexual assault—were effective upon enactment and do not require notice and comment rulemaking for implementing these protections and that they should proceed to provide the basic VAWA protections.¹

On April 1, 2015, HUD published its proposed rule that provided the amendments to HUD’s existing regulations that HUD determined necessary to fully implement VAWA 2013. The public comment period on the April 1, 2015, rule closed on June 1, 2015. HUD received 94 comments, including duplicate mass mailings, resulting in 68 distinct comments. The comments were submitted by housing authorities, other housing providers, organizations that represent or provide services to specific groups of housing providers, organizations that advocate for victims and survivors of domestic and sexual violence, state coalitions against domestic violence, other advocacy and not-for-profit organizations and associations, state and local government agencies, a tribal organization, and numerous unaffiliated individuals. All public comments can be viewed at: <http://www.regulations.gov#!docketDetail;D=HUD-2015-0028>.

Most commenters expressed support for the rule, with different questions and comments about specific provisions. There were many comments regarding emergency transfers, lease bifurcation, and documentation requirements, as well as comments on eligibility for and limitations on VAWA protections, the roles and responsibilities of different housing providers under different HUD programs, the notice of occupancy rights, implementation and enforcement of the rule, confidentiality, and other issues. In addition, there were a number of program-specific comments. HUD responds to issues raised by the public comments in Section II.B. of this preamble.

¹ See, for example, the letter to Executive Directors of public housing agencies from the Assistant Secretary for Public and Indian Housing, issued September 30, 2013, at http://portal.hud.gov/hudportal/documents/huddoc?id=sept2013vawaltr_phas.pdf, as well as communications from HUD’s HOME Investment Partnerships Programs (HOME) at <https://www.onecpd.info/resources/documents/HOMEfires-Vol11-No1-Violence-Against-Women-Reauthorization-Act-2013.pdf>, and from HUD’s Office of Special Needs Assistance Programs at <https://www.onecpd.info/news/reauthorization-of-the-violence-against-women-act-vawa/>.

This final rule reflects the Federal government’s recognition that all people have a right to live their lives safely. On September 9, 2014, in Presidential Proclamation 9164—Twentieth Anniversary of the Violence Against Women Act, and on September 30, 2014, in Presidential Proclamation 9181—National Domestic Violence Awareness Month, 2014, President Obama discussed the “basic human right to be free from violence and abuse.” The implementation of the policies laid out in this rule will help to enforce this basic human right.

HUD notes that, in addition to utilizing housing protections in VAWA, victims of domestic violence, dating violence, sexual assault, and stalking, and those assisting them, may wish to consider other available protections and assistance. On the Federal level, for example, the U.S. Department of Justice (DOJ) administers programs that provide funding for victims of crime, including victims covered by VAWA. The Office for Victims of Crime (OVC), part of DOJ, administers the Crime Victims Fund, which provides direct reimbursement to crime victims for financial losses from crimes including medical costs, mental health counseling, and lost wages or loss of support. This provides reimbursement for victims during a time when they may be facing financial constraints. The Crime Victims Fund may also be used to fund transitional housing and shelter for victims of domestic violence, dating violence, sexual assault, or stalking who need the transitional housing or shelter because they were a victim of one of these crimes, and to fund relocation expenses for those who need to move because they were a victims of domestic violence, dating violence, sexual assault, or stalking. OVC also provides grants to public and non-profit organizations for essential services to victims of crime, including emergency shelter, and the Office of Violence Against Women (OVW), also part of DOJ, administers 24 grant programs where funds are provided to states, territories, local government, non-profit organizations, and community organizations for various targeted persons. Information about the Crime Victims Fund is available at: <http://www.ovc.gov/pubs/crimevictimsfundfs/intro.html#VictimAssist> and information about OVW grants is available at <http://www.justice.gov/ovw/grant-programs>. Victims of domestic violence, dating violence, sexual assault, and stalking may consult with local victim services providers and state and local social service agencies to

determine whether funding and other forms of help and support may be available.

Further, victims of domestic violence, dating violence, sexual assault, and stalking should be aware that State and local laws may provide greater protections than Federal law, and local victim service providers and social service agencies may have further information regarding this.

II. This Final Rule

A. Overview of Changes Made at the Final Rule Stage

After review and consideration of the public comments and upon HUD's further consideration of VAWA 2013 and the issues raised in the proposed rule, HUD has made certain changes in this final rule. The following highlights the substantive changes made by HUD in this final rule from the proposed rule.

The final rule:

- Clarifies that, consistent with HUD's nondiscrimination and equal opportunity requirements, victims of domestic violence, dating violence, sexual assault, and stalking cannot be discriminated against on the basis of any protected characteristics (including race, color, religion, sex, disability, familial status, national origin, or age), and HUD programs must also be operated consistently with HUD's Equal Access Rule (HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals and families without regard to actual or perceived sexual orientation, gender identity or marital status). (See § 5.2001(a).)

- Provides that in regulations governing short-term supported housing, emergency shelters, and safe havens, these forms of shelter are subject to the core protections of VAWA that prohibit denial of admission or eviction or termination to an individual solely on the basis that the individual is a victim of domestic violence, dating violence, or stalking, or sexual assault. (See §§ 574.604(a)(2), 576.409(f), and 578.99(j)(9).)

- Revises the definition of "affiliated individual" to incorporate situations where an individual has guardianship over another individual who is not a child. (See § 5.2003.)

- Revises the definition of "domestic violence" to incorporate a definition of "spouse or intimate partner" rather than cross-reference to another definition of the term, and to eliminate the cross-reference to "crime of violence," a more restricting term. (See § 5.2003.)

- Provides that existing tenants in HUD-covered programs receive HUD's

Notice of Occupancy Rights and accompanying certification form no later than one year after this rule takes effect, during the annual recertification or lease renewal process, if applicable, or through other means if there will be no annual recertification or lease renewal process for a tenant. (See § 5.2005(a)(2)(iv).)

- Retains the provision of HUD's regulations implementing VAWA 2005, for those HUD programs covered by VAWA 2005, which states that the HUD-required lease, lease addendum, or tenancy addendum must include a description of the specific protections afforded to the victims of VAWA crimes. (See § 5.2005(a)(4).)

- Clarifies that applicants may not be denied assistance and tenants may not have assistance terminated under a covered housing program for factors resulting from the fact that the applicant or tenant is or has been a victim of a VAWA crime. (See § 5.2005(b)(1).)

- Emphasizes that victims of sexual assault may qualify for an emergency transfer if they either reasonably believe there is a threat of imminent harm from further violence if they remain in their dwelling unit, or the sexual assault occurred on the premises during the 90-calendar-day period preceding the date of the request for transfer. (See § 5.2005(e)(2)(ii).)

- Provides that emergency transfer plans must detail the measure of any priority given to tenants who qualify for an emergency transfer under VAWA in relation to other categories of individuals seeking transfers or placement on waiting lists. (See § 5.2005(e)(3).)

- Provides that emergency transfer plans must allow for a tenant to transfer to a new unit when a safe unit is immediately available and the tenant would not have to apply in order to occupy the new unit (§ 5.2005(e)(5)).

- Provides that emergency transfer plans must describe policies for assisting tenants to make emergency transfers when a safe unit is not immediately available, both for situations where a tenant would not have to apply in order to occupy the new unit, and where the tenant would have to apply in order to occupy the new unit. (See § 5.2005(e)(6), § 5.2005(e)(7), and § 5.2005(e)(8).)

- Provides that the emergency transfer plans must describe policies for assisting tenants who have tenant-based rental assistance to make emergency moves with that assistance.

- Adds a provision that emergency transfer plans may require documentation, as long as tenants can

establish eligibility for an emergency transfer by submitting a written certification to their housing provider, and no other documentation is required for tenants who have established that they are victims of domestic violence, dating violence, sexual assault, or stalking to verify eligibility for a transfer. (See § 5.2005(e)(10).)

- Requires housing providers to make emergency transfer plans available upon request, and to make them publicly available whenever feasible. (See § 5.2005(e)(11).)

- Provides for a six-month transition period to complete an emergency transfer plan and provide emergency transfers, when requested, under such plan. (See § 5.2005(e) or applicable program regulations)

- Emphasizes that tenants and applicants may choose which of the forms of documentation listed in the rule to give to housing providers to document the occurrence of a VAWA crime. (See § 5.2007(b)(1).)

- Provides that in cases of conflicting evidence, tenants and applicants who may need to submit third-party documentation to document occurrence of a VAWA crime have 30 calendar days to submit the third-party documentation. (See § 5.2007(b)(2).)

- Provides that if a covered housing provider bifurcates a lease under VAWA, any remaining tenants who had not already established eligibility for assistance must be given either the maximum time permitted by statute, or, if there are no statutory prohibitions, at least 90 calendar days from the date of bifurcation of the lease or until expiration of the lease, depending on the covered housing program, to establish eligibility for a covered housing program, or find alternative housing (See § 5.2009(b)(2).)

- Provides that if a family in a HOME-assisted rental unit separates under § 5.2009(a), the remaining tenant(s) will retain the unit. (See § 92.359(d)(1).)

- Provides that if a family receiving HOME tenant-based rental assistance separates under § 5.2009(a), the tenant(s) who are not removed will retain the HOME tenant-based rental assistance, and the participating jurisdiction must determine whether a tenant who was removed from the unit will receive HOME tenant-based rental assistance. (See § 92.359(d)(2).)

- Establishes VAWA regulations for the Housing Trust Fund, based on the regulations for the HOME program. (See 24 CFR part 93.)

- Emphasizes that VAWA protections apply to eviction actions for tenants in

housing under a HUD-covered housing program. (See 24 CFR 247.1(b).)

- Clarifies in the HOPWA regulations that the grantee or project sponsor is responsible for ensuring that the owner or manager of a facility assisted under HOPWA develops and uses a VAWA lease addendum. (See part 574.)

- Clarifies who is the covered housing provider for HUD's multifamily Section 8 project-based programs and the Section 202 and Section 811 programs, by providing that the covered housing provider is the owner for the Section 8 Housing Assistance Payments Programs for New Construction (part 880), for Section 515 Rural Rental Housing Projects (part 884), and for Special Allocations (part 886), as well as for the Section 202 and Section 811 programs (part 891) and that PHAs and owners each have certain responsibilities as covered housing providers for the Section 8 Moderate Rehabilitation Program (part 882), and the Section 8 State Housing Agencies Program for State Housing Agencies (part 883).

- Updates various section 8 and public housing VAWA 2005 regulations to broadly state that VAWA protections apply, so that all tenants and applicants, and not only those determined to be victims of VAWA crimes, receive statutorily required notification of their VAWA rights. (See parts 880, 882, 883, 884, 886, 891, 960, 966, and 982.)

- Clarifies that VAWA protections and requirements apply to mixed finance developments. (See § 905.100(g).)

- Clarifies that public housing agencies (PHAs), like other covered providers, may establish preferences for victims of dating violence, sexual assault, and stalking, in addition to domestic violence, consistent with their statutory authority. (See §§ 960.206(b)(4), 982.207(b)(4).)

- Clarifies that for the Section 8 Housing Choice Voucher and Project-Based Voucher programs, the PHA is the housing provider responsible for complying with VAWA emergency transfer provisions. (See §§ 982.53(e), 983.3(b).)

B. Summary of Public Comments and HUD Responses

As noted earlier in this preamble, the majority of the commenters expressed support for the rule, but they also presented questions and comments about specific provisions of the rule. The primary provisions of the rule on which commenters posted comments pertained to emergency transfers, lease bifurcation, documentation requirements, eligibility for and

limitations on VAWA protections, the roles and responsibilities of different housing providers under different HUD programs, the notice of occupancy rights, implementation and enforcement of the rule, and confidentiality requirements. The following presents the significant issues raised by the commenters and HUD's response to the comments.

1. Applicability

a. Eligibility for VAWA Protections

Comment: Ensure proper evaluation of individuals who are or have been victims of domestic violence, dating violence, sexual assault, or stalking. Commenters stated that HUD's final rule should ensure applicants are not denied assistance or housing for independent bases that result from their status as a victim of domestic violence, dating violence, sexual assault, or stalking. Commenters said that HUD's currently codified regulations do not address how to evaluate when an applicant who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking can show that denial of assistance or housing is on that basis. Commenters stated that survivors may have negative credit, housing, or criminal records based on the violence committed against them that then disqualifies them in the housing application process. Commenters said that HUD acknowledged this barrier in its 2003 Public Housing Occupancy Guidebook,² which encouraged staff to exercise discretion and inquire about the circumstances that may have contributed to the negative reporting to determine whether domestic violence was a factor. Commenters recommended that the final rule contain similar guidance and asked HUD to include language in § 5.2005 that applicants be provided with an opportunity to show that domestic violence, dating violence, sexual assault, or stalking was a factor in any negative rental, tenancy, or criminal records that would result in denial of admission or assistance; and, if it is determined such is the case, and the applicant otherwise qualifies, the covered housing provider must grant the application.

A commenter stated that HUD's final rule's definitions of domestic violence, dating violence, sexual assault or stalking must be sufficiently clear so as not to cause survivors to be punished for ancillary crimes as a result of the abuse they have suffered or cause survivors to be blamed for the abuse. Commenters said some survivors have

been evicted because they "invited" the perpetrator into the home and subsequently received an eviction notice under Crime Free Drug Free policies³ or a Crime Free Lease Addendum.⁴ Commenters said victims of VAWA crimes are disadvantaged because landlords typically do not mention domestic violence, sexual violence or stalking in the eviction notice.

Some commenters asked that HUD revise § 5.2005(b) to state that an applicant may not be denied assistance, or a tenant have assistance terminated or be evicted "on the basis or as a result of the fact that the applicant or tenant is or has been a victim of domestic violence . . ." in order to clarify that victims are protected from the results of economic abuse, such as poor credit.

HUD Response: HUD interprets the term "on the basis" in VAWA 2013's statutory prohibitions against denying admission to, denying assistance under, terminating a tenant from participation in, or evicting a tenant from housing "on the basis" that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, to include factors directly resulting from the domestic violence, dating violence, sexual assault, or stalking. For example, if an individual has a poor rental or credit history, or a criminal record, or other adverse factors that directly result from being a victim of domestic violence, dating violence, sexual assault, or stalking, the individual cannot be denied assistance under a HUD program if the individual otherwise qualifies for the program. To

³ Crime Free Drug Free policies generally refer to policies set forth in lease addendum in which a renter agrees to maintain their rental residence crime free or face eviction. See, for example, the following lease addendum. http://www.cityofkasson.com/vertical/sites/%7BC3C7597A-7E80-4164-9E1A-84A37B5D7AAF%7D/uploads/Crime_Free_Lease_Addendum.pdf. A provision pertaining to domestic violence may be worded as follows: Any resident, or member of the resident's household, who is or has been a victim of domestic violence, is encouraged to take reasonable action to safeguard themselves, other members of the community, and property from future injury or damage. This may include obtaining a protection order against potential abusers, filing a copy of said protection order and a picture of the respondent with management, report any violation of the protection order to the police and management, and prepare and file a personal safety plan with management. and that a violation of this provision shall be cause for termination of the tenancy. See http://www.cityofportorchard.us/docs/police/Crime_Free_Addendum.pdf.

⁴ A Crime Free Lease Addendum is a lease addendum that puts potential tenants on notice that they are liable for any criminal activity within their units, and if criminal activity does occur, the lease can be terminated and eviction action initiated.

² See <http://www.hud.gov/offices/pih/programs/ph/rhiip/phguidebooknew.pdf>.

clarify this understanding, HUD accepts the commenters' suggestion to amend proposed § 5.2005(b), and the section now states that an applicant or tenant may not be denied admission to, denied assistance under, terminated from participation in, or evicted from housing or a housing program on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.

In addition to revising § 5.2005(b), HUD will provide guidance for covered housing providers to aid how they may determine whether factors that might otherwise serve as a basis for denial or termination of assistance or eviction have directly resulted from the fact that an applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. As commenters noted, HUD has already provided in its Public Housing Occupancy Guidebook that PHAs should inquire about the circumstances that may have contributed to negative reporting to determine whether that negative reporting was a consequence of domestic violence.

Rule Change: HUD revises § 5.2005(b) to state that an applicant or tenant may not be denied admission to, denied assistance under, terminated from participation in, or evicted from housing or a housing program on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.

Comment: Include victims of "economic abuse" as covered by VAWA protections. Commenters stated that VAWA 2013 was meant to protect victims of economic abuse, the legislative history of the statute contains many references to the effects of economic abuse, and the final rule should clarify that VAWA protections apply to victims of economic abuse. Commenters said economic abuse includes a broad range of conduct, including but not limited to, interfering with the victim's employment, controlling how money is spent, forcing the victim to write bad checks, incurring significant debt in the victim's name, or otherwise harming the victim's financial security. Commenters stated that persons who have poor credit, no credit or an inability to access money can be denied housing, which often results in homelessness. Commenters said the

proposed definition of "stalking" eliminates the harassment and intimidation considerations that arguably make economic abuse a form of stalking under current regulations, and the consequence is removing protections available to current tenants, and this runs counter to VAWA 2013, which is intended to increase not reduce protections.

Commenters suggested that HUD add economic abuse to the scope of VAWA protections in § 5.2001 and to the list of protected victims throughout § 5.2005. A commenter said that, should HUD determine not to revise the text of the regulations to address economic abuse, HUD should nevertheless clarify that VAWA covers economic abuse.

Commenters also suggested that HUD establish a notification and certification process to ensure that victims of economic abuse receive VAWA protections. Commenters said a victim of economic abuse could supply a certification regarding such abuse when applying for a HUD program. Commenters said that whenever an individual's ability to participate in a HUD program is compromised due to economic factors, the individual must be notified that VAWA protections may apply.

HUD Response: As previously discussed, HUD interprets VAWA to prohibit covered housing providers from denying admission to, denying assistance under, terminating a tenant from participation in, or evicting a tenant from housing as a result of factors directly resulting from the domestic violence, dating violence, sexual assault, or stalking. Where an individual faces adverse economic factors, such as a poor credit or rental history, that result from being a victim of domestic violence, dating violence, sexual assault, or stalking, the individual cannot be denied assistance under a HUD program if the individual otherwise qualifies for the program. HUD declines, however, to explicitly state in regulation that victims of economic abuse receive the protections of VAWA. Such expansion would be beyond the scope of HUD's VAWA rulemaking, which is intended to implement the housing protections in VAWA 2013, as enacted. VAWA 2013 does not independently provide protections for victims of economic abuse who are not also victims of domestic violence, dating violence, sexual assault, or stalking. HUD also declines to implement a process in this rule where applicants who are denied admission to or assistance under a HUD program specifically due to their economic situations will then receive

notice that they may be protected under VAWA and be provided an opportunity to show that their economic situation is a result of economic abuse. Both VAWA 2013 and this final rule provide that applicants will be provided with notice when they are denied assistance or admission under a covered housing program for any reason. Applicants would then have the opportunity to assert that they are or were victims of domestic violence, dating violence, sexual assault, or stalking, and that they are eligible for VAWA protections.

As described in the proposed rule, VAWA 2013 removed the statutory definition of stalking that HUD incorporated into the rule implementing VAWA 2005, but maintained a universal definition of stalking that applies throughout VAWA, as codified in 42 U.S.C. 13925(a)(30). As a result, this rule replaces the statutorily removed definition of stalking with the universal definition of stalking in VAWA. HUD disagrees with the commenters' assertion that this change reduces VAWA protections by eliminating harassment and intimidation considerations. The previous definition of "stalking" included specific actions (including harassment and intimidation) that either placed a person in reasonable fear of death or serious bodily injury or caused substantial emotional harm. The universal definition of "stalking," provided in this final rule, involves any course of conduct directed at a specific person that would cause a reasonable person to fear for their own safety or the safety of others, or suffer substantial emotional distress.

Comment: Clarify which individuals are entitled to VAWA protections: Commenters stated that the rule and related documents provided to tenants and applicants must be clear about which individuals are entitled to VAWA protections. A commenter stated that the final rule should clarify that VAWA protections do not apply to guests, unauthorized residents, or service providers hired by the resident, such as live-in aides. In contrast to these commenters, other commenters stated that live-in aides should be covered by VAWA protections under certain circumstances. Commenters stated that, although live-in aides are not parties to the lease they are listed as household members on tenant certifications and subject to the covered property's "house rules," and HUD requires that the covered property be their sole residence. The commenters concluded that under these circumstances live-in aides are similar to tenants. Commenters further said that in the case where a tenant is abusing the live-in aide, the aide can

leave the tenant's employ and VAWA protections would not apply, but in the case where the live-in aide is a victim of abuse by someone living outside the unit and the tenant continues to require the aide's services, the housing provider should be required to offer the household all VAWA protections and the entire household (including the aide) should qualify for an emergency transfer.

Another commenter stated that the proposed rule advised that if an unreported member of the household is the victim of domestic violence, dating violence, sexual assault, or stalking, the tenant may not be evicted because of such action as long as the tenant was not the perpetrator. The commenter stated that, in the proposed rule, HUD agreed with comments that VAWA protections should not extend to individuals violating program regulations, such as housing unauthorized occupants. The commenter stated that HUD's statement seems contradictory because HUD is in effect extending VAWA protections to a tenant who violates program regulations by allowing a person who is not authorized to reside in the unit. The commenter asked HUD to advise how to respond if a housing provider learns of the existence of an unreported member of the household in violation of program regulations, based solely on a tenant's reporting of a VAWA incident against the unreported member. The commenter said HUD's rule does not establish a clear nexus for the prohibition against denial or termination of assistance "on the basis" that an applicant or tenant is or has been a domestic violence victim.

Other commenters stated that the preamble to the proposed rule created confusion when it stated that affiliated individuals do not receive VAWA protections if they are not on the lease and that the protections of VAWA are directed to tenants. Commenters stated that specific protections, however, may extend to affiliated individuals or be limited to tenants or lawful occupants. In support of this statement, the commenters stated that no individual may be denied housing in a covered program based on the individual's status as a survivor, but the right to bifurcate the lease and preserve the subsidy is limited to tenants or lawful occupants. Commenters asked HUD to correct language in the preamble to the proposed rule that they stated incorrectly construed the protections of VAWA as applying only to those named on the lease, and added that whether an individual is a "tenant" or a "lawful occupant" is a question of State law on which HUD should not take a position,

as this could conflict with State law. Commenters further stated that, as part of the dynamics of an abusive relationship, a survivor will often not be listed as a tenant on the lease but may be a lawful occupant. Commenters concluded their comments stating that, to limit protections to "tenants" or to individuals specifically named on the lease, without regard for how a lawful occupant might be characterized under State or local laws, undermines the very purpose of VAWA.

HUD Response: Only tenants who are assisted by a covered housing program can invoke the VAWA protections that apply solely to tenants. Several provisions in VAWA 2013, including the prohibited basis for denial or termination of assistance or eviction and the emergency transfer protection, apply to "tenants," a term that VAWA 2013 does not define. The term "tenant" refers to an assisted family and the members of the household on their lease, but does not include guests or unreported members of a household. In addition, a live-in aide or caregiver is not a tenant, unless otherwise provided by program regulations, and cannot invoke VAWA protections. However, as is the case for anyone, a live-in aide or other service provider is entitled to VAWA protections if the person becomes an applicant for HUD assistance; that is, one does not have to have been a tenant in HUD subsidized housing to invoke VAWA protections in later applying to become a tenant in HUD subsidized housing.

A live-in aide or a guest could be an affiliated individual of a tenant, and if that aide or guest is a victim of domestic violence, dating violence, sexual assault, or stalking, the tenant with whom the affiliated individual is associated cannot be evicted or have assistance terminated on the basis that the affiliated individual was a victim of a VAWA crime. Moreover, where a live-in aide is a victim of domestic violence, dating violence, sexual assault, or stalking, and the tenant seeks to maintain the services of the live-in aide, the housing provider cannot require that the live-in aide be removed from the household on the grounds of being a victim of abuse covered by VAWA. The live-in aide resides in the unit as a reasonable accommodation for the tenant with a disability. Indeed, to require removal of the live-in aide solely because the aide is a victim of abuse covered by VAWA likely would violate Section 504 of the Rehabilitation Act, the Fair Housing Act, and the Americans with Disabilities Act, as applicable, which require housing providers to permit such reasonable

accommodations. In addition, if a tenant requests and qualifies for an emergency transfer on the grounds that the live-in aide is a victim of domestic violence, dating violence, sexual assault, or stalking, the tenant's entire household, which includes the live-in aide, can be transferred.

Section 5.2005(d)(2) of this final rule states that covered housing providers can evict or terminate assistance to a tenant for any violation not premised on an act of domestic violence. However, if an individual, who is a victim of domestic violence, has an unreported member residing in the individual's household and the individual is afraid of asking the unreported member to leave because of the individual's domestic violence experience, then terminating the individual's tenancy because of the unreported household member would be "premiered on an act of domestic violence." Therefore, depending on the situation, a tenant who violates program regulations by housing a person not authorized to reside in the unit could be covered by VAWA's anti-discrimination provisions, and eligible for remedies provided under VAWA.

As discussed above, HUD interprets the term "on the basis" in VAWA 2013's prohibitions against denying admission to, denying assistance under, terminating a tenant from participation in, or evicting a tenant from housing "on the basis" that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, to include factors directly resulting from the domestic violence, dating violence, sexual assault, or stalking.

With respect to the comments about applying the VAWA protections to survivors of domestic violence, dating violence, sexual assault, and stalking whether they are named on the lease or not, HUD notes that the term "lawful occupant" is not defined in VAWA 2013 and appears in the statute four times in the following contexts: (i) In the definition of "affiliated individual" as a type of "affiliated individual"; (ii) in the documentation section of the statute as those who could be evicted if they commit violations of the lease if the applicant or tenant does not provide requested documentation; (iii) in the bifurcation section, as those who could be evicted for engaging in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking; and (iv) as those who might not be negatively affected if a lease is bifurcated. Other than stating that a housing provider may, at the provider's discretion, bifurcate a lease

without penalizing a lawful occupant, VAWA 2013 does not provide protections or benefits for lawful occupants.

Comment: Clarify whether housing providers who have a mixed portfolio of projects and units will be required to offer protection for some tenants but will not be required to offer them to others. Commenters asked whether housing providers that have both covered and non-covered projects will be faced with offering protections for tenants in only some of their properties. Other commenters stated that certain HUD-assisted properties have some units that must abide by HUD regulations, while others are not subject to HUD regulations. Commenter asked HUD to confirm whether, in such a complex, some tenants would be eligible for VAWA protections while others would not be.

HUD Response: VAWA 2013 and HUD's rule apply only to HUD-covered housing programs. Therefore, covered housing providers will be required to provide VAWA protections to tenants and applicants under the covered housing programs, but will not be required to provide such protections to other tenants and applicants. Although this rule only applies to tenants in and applicants to HUD-covered housing programs, housing providers may choose to offer VAWA protections and remedies to all tenants and applicants, where applicable. HUD encourages housing providers to provide VAWA's core protections—not denying or terminating assistance to victims of domestic violence, dating violence, sexual assault, and stalking—to all tenants and applicants. HUD also encourages housing providers to offer all VAWA protections, such as emergency transfer and bifurcation provisions, to all tenants where possible.

All housing providers should be aware of other Federal, State and local laws that may provide similar or more extensive rights to victims of domestic violence, dating violence, sexual assault, and stalking. For example, properties funded with Low-Income Housing Credits (LIHTCs) are also subject to VAWA requirements, and housing providers should look to the regulatory agency responsible for LIHTCs—the Department of Treasury—for how to implement VAWA protections in those properties.

Housing providers should also be aware more generally of other Federal fair housing and civil rights laws that may be applicable, including, but not limited to, the Fair Housing Act, Section 504 of the Rehabilitation Act, the

Americans with Disabilities Act, and Title VI of the Civil Rights Act. For example, housing providers might violate the Fair Housing Act under a discriminatory effects theory if they have an unjustified policy of evicting victims of domestic violence, as such a policy might disproportionately harm females or individuals that have another protected characteristic.

Comment: Clarify whether VAWA protections can be invoked on multiple occasions and whether other limits to protections could apply. Commenters asked whether there is a limit to the number of times covered housing providers must provide VAWA protections when the victim continues to allow the perpetrator access to the property. Another commenter said that one of the recurring issues for housing providers is that victims may evoke VAWA protections repeatedly but then invite or allow the perpetrator into their unit, often leading to repeated instances of abuse and danger or disturbance for other households at the property. Commenter asked whether, in order to continue to invoke VAWA protections, VAWA allows covered housing providers to require that a victim obtain a restraining order against the perpetrator, notify local law enforcement if a restraining order is being violated, or refuse to invite or allow the perpetrator onto the property.

In contrast to this comment, another commenter stated that HUD's final rule should make clear that a tenant or family can be entitled to VAWA protection on more than one occasion and cannot be subjected to additional conditions that adversely affect their tenancy because they have invoked VAWA protections. The commenter said it has dealt with covered housing providers that decided to impose additional requirements on tenants who sought VAWA protections, such as requiring tenants to obtain protective orders or call the police, conditions they do not impose on other tenants, including those who are victims of other crimes (non-VAWA crimes), and this violates VAWA.⁵ The commenter said these requirements conflict with recognized best practices that affirm that the most effective way to ensure a survivor's safety is to respect the survivor's autonomy in deciding whether to obtain a protective order or to call the police.

HUD Response: HUD agrees that a tenant or family may invoke VAWA protections on more than one occasion and cannot be subjected to additional

⁵ See footnotes 2 and 3, which provide examples of these types of lease provisions.

conditions that adversely affect their tenancy because they have invoked VAWA protections. Individuals and families may be subject to abuse or violence on multiple occasions and it would be contrary to the intent of VAWA to say that the protections no longer apply after a certain point, even if violence or abuse continues, or the victim and the victim's family members are still in danger. In cases where the presence of the perpetrator on the property will endanger others, not solely the unit in which the perpetrator resides, this final rule maintains the provision that a housing provider may evict or terminate assistance to a tenant if the housing provider can demonstrate an actual and imminent threat to other tenants, or those employed at or providing services to the property, if the tenant is not evicted or assistance is not terminated. However, as discussed elsewhere in this rule, housing providers should only take such actions when there are no other actions that could be taken to reduce or eliminate the threat.

Allowing housing providers to apply a different occupancy standard to survivors of domestic violence, dating violence, sexual assault, and stalking than that applied to victims of other crimes violates the intent of VAWA, which provides that housing providers cannot discriminate against survivors and victims of a VAWA crime. HUD also agrees that survivors do not have to contact authorities, such as police, or initiate legal proceedings against an abuser or perpetrator in order to qualify for VAWA protections. The statute has no such requirements and instead allows survivors to provide self-certification about the VAWA incident(s).

Comment: Eliminate or better explain the provision that eviction or termination of assistance should only be used as a last resort. A commenter stated that HUD retains paragraph (d)(3) of currently codified § 5.2005, which encourages a covered housing provider to evict or terminate assistance only when there are no other actions that could be taken to reduce or eliminate the threat of domestic violence. The commenter said the ability of housing providers to avoid eviction or termination will vary widely depending on factors that are generally out of the control of the provider, and that HUD inserted paragraph (d)(3) of § 5.2005 during a prior rulemaking. The commenter stated that this language is not in the VAWA statute, and should be stricken. With respect to this provision, another commenter asked how far a landlord is expected to go to keep the

property safe, how much the landlord is expected to expend to ensure the safety of tenants, and what responsibility the tenants have in ensuring their own safety.

HUD Response: As the commenter noted, § 5.2005(d)(3)—now designated as § 5.2005(d)(4)—is already in HUD's VAWA regulations and is in effect. HUD has no reason to eliminate this provision now, as VAWA 2013 was meant to expand, and not to retract VAWA protections. HUD agrees with the commenter that the ability and resources of the housing provider to provide alternatives to evictions will vary, just as the circumstances of the abuse and the safety needs of the victim will vary. This variation, however, does not preclude a policy that sets eviction as the last resort.

b. Covered Programs

Comment: List all program/subsidy types to which VAWA regulations apply. Commenters said HUD regulations should specifically list all programs and subsidy types to which VAWA protections apply, and not solely those listed in the statute. A commenter said this is necessary because there are many HUD programs that fall under the multifamily umbrella and, in the past, VAWA requirements for the Section 8 programs differed from other program types. Another commenter said it does not appear that VAWA applies to certain Section 202 Direct Loan Projects that do not have project-based Section 8 assistance, or to certain Section 221(d)(3)/(d)(5) Below Market Interest Rate (BMIR) projects, or to certain Section 236 projects. Commenter asked whether these programs would be included. Another commenter said there should be an easier way to explain which programs do not fall under VAWA.

HUD Response: HUD's final rule lists all HUD programs covered by VAWA 2013 in the definition of covered housing program, and addresses questions about specific programs below.

Comment: The Housing Trust Fund was not listed in VAWA as a covered program. Commenters expressed concern about HUD's coverage of the Housing Trust Fund (HTF) program, which was not specifically identified as a "covered housing program" in the VAWA statute, and, said that without specific statutory authority to apply VAWA to HTF, either a tenant or housing provider could challenge the rule and its application, which could lead to litigation expenses for all parties. Other commenters stated that HTF should be a covered program.

Commenters stated that such coverage is consistent with Congressional intent, which, through VAWA 2013, sought to expand VAWA protections to all HUD programs that provide rental assistance. The commenters further stated that maintaining similarity in the regulatory treatment of HOME and HTF is efficient for program participants and appropriate because many of the HTF's program requirements are similar to those that apply to the HOME program.

HUD Response: HUD maintains the HTF program as a covered program in this final rule. HUD has authority to establish regulations for its programs where they do not conflict with other laws. Rather than conflicting with VAWA 2013, including the HTF program as a covered program aligns with the intent of the law, which expanded the protections of VAWA to HUD's programs that provide rental assistance. As noted in the preamble to the proposed rule and, as commenters have themselves said, the HTF program is very similar to the HOME program and to HUD, it is not logical to exclude the HTF program.

Rule Change: This final rule adds § 93.356 (VAWA requirements) to the HTF interim regulations, which generally applies the same VAWA requirements to HTF as apply to the HOME program at 92.359. This final rule also revises § 93.303 (Tenant protections and selection) by revising § 93.303(a) and adding § 93.303(d)(7) to mirror § 92.253 (a) and § 92.253(d)(7) of this final rule's HOME regulations. In addition, this rule revises § 93.404(c) to state that written agreements with subgrantees and eligible recipients must set forth all obligations the grantee imposes on them in order to meet the VAWA requirements under § 93.356, including notice obligations and obligations under the emergency transfer plan.

Comment: All Section 202 Direct Loan projects should be subject to VAWA protections. Commenters said the proposed rule was not clear as to why Section 202 Direct Loan projects without project-based rental assistance were excluded from VAWA protections, and recommended that HUD include these properties. Another commenter said that HUD's decision to exclude the Section 202 Direct Loan program from VAWA's coverage is based on an interpretation that is unnecessarily restrictive and violates the VAWA statute. A commenter stated VAWA 2013's plain statutory language is broad in scope, expressing no further limitation or ambiguity, and any property funded under Section 202 qualifies. Other commenters said that

covering Section 202 Direct Loan properties without Section 8 contracts extends these important protections to all similar HUD-supported housing programs, which follows congressional and HUD intent.

HUD Response: HUD maintains that its interpretation provided in the proposed rule with respect to Section 202 Direct loans is correct, but includes additional information to elaborate on HUD's proposed rule statement. In the proposed rule, at 80 FR 17752, HUD stated that section 202 of the National Housing Act of 1959 authorized HUD to make long-term loans directly to multifamily housing projects and the loan proceeds are to be used to finance the construction of multifamily rental housing for persons age 62 years or older and for persons with disabilities. The Section 202 Direct Loan program ran from 1959 to 1990.⁶ The purpose of the program was primarily to provide direct Federal loans for the development or substantial rehabilitation of housing for the elderly or for persons with disabilities. Amendments to Section 202 Direct Loan program in 1990, made by the Cranston-Gonzalez National Affordable Housing Act, replaced this program with capital advance programs for owners of housing designed for the elderly or residents with disabilities, and established two parallel programs for the elderly and for persons with disabilities—the Section 202 Supportive Housing for the Elderly program and the Section 811 Supportive Housing for Persons with Disabilities Program.⁷ These two programs, which are rental programs, and which reflect the majority of the legacy of the Section 202 Direct Loan program, are covered by VAWA. Further, all projects that received Section 202 direct loans and receive project-based assistance under Section 8 are required to comply with VAWA protections.

However, as mentioned in the proposed rule, there have been no new Section 202 direct loans since 1990. All Section 202 direct loan projects, as with projects under other HUD programs, that received any type of direct assistance prior to VAWA 2013 are not subject to new statutory requirements on HUD programs unless there is some ongoing contractual agreement with HUD or the statute specifically speaks to retroactive application for existing projects. Therefore, unless the Section

⁶ See <https://www.hudexchange.info/course-content/hud-multifamily-affordable-housing-preservation-clinics/Preservation-Clinic-Workshop-Section-202-Direct-Loan.pdf>.

⁷ See Public Law 101–625, 104 Stat. 4079, approved November 28, 1990. See specifically Title VIII at 104 Stat. 4297.

202 direct loan project has an agreement or contract with HUD otherwise, such as with project-based assistance under Section 8, those direct loans entered into prior to 2013 would not be subject to VAWA requirements because VAWA did not specifically apply its requirements retroactively.

Comment: Encourage, if not require, housing providers under additional Federally-financed programs to offer VAWA protections. Commenters asked HUD to make clear that housing providers in programs not covered by HUD's VAWA regulations can offer VAWA protections, and to encourage these providers to offer VAWA protections. Commenters also urged HUD to ensure that all affordable units with HUD funds are subject to VAWA, including existing units that undergo affordable housing preservation efforts by HUD, such as the Rental Assistance Demonstration (RAD) units, Choice Neighborhood units, and multifamily units in the Rent Supplement Program. Commenters asked that the final rule's description of public housing explicitly include public housing that has been assisted by, for example, HOPE VI, Mixed Finance, Choice Neighborhoods, or converted under the RAD program. Another commenter asked that HUD generally state in its regulations that VAWA applies to affordable units that HUD preserves and, where applicable, that the VAWA obligation be set forth in any relevant Notice of Funding Availability (NOFA). Other commenters further recommended that HUD's regulations reflect HUD's authority to expand VAWA protections to other types of HUD affordable housing that may be established in the future and the agency will do so by HUD or **Federal Register** notice.

A commenter also said that the proposed regulations in 24 CFR 574.604(a)(2) and 578.99(j) are too broad, and where rental assistance is provided and there is a written agreement or a lease, VAWA should apply to short-term supported housing and McKinney-Vento Safe Havens. Another commenter asked for guidance that clearly allows senior housing providers the option to extend VAWA protections to victim residents, even if their program type was not specifically included in the statute.

HUD Response: HUD's VAWA regulations apply only to HUD-covered housing programs, but, as HUD has earlier stated in this preamble, housing providers have discretion to apply the rule's provisions to all tenants and applicants and HUD indeed encourages housing providers to provide VAWA protections to all tenants not only to

those covered in HUD subsidized units. With respect to HUD's authority to expand coverage to other HUD programs not listed in the statute, HUD has such authority and the inclusion of the HTF program in this rule evidences such authority.

Tenants in units under a HUD-covered program maintain their VAWA protections where their units are converted to coverage under a new HUD program. The conversion does not eliminate their VAWA protections. With respect to RAD, tenants in converted units continue to be covered by VAWA's protections provided under HUD's Section 8 Project-Based Voucher program or Project-Based Rental Assistance Program.

Choice Neighborhoods is a development tool that uses grant funds to develop housing to address struggling neighborhoods with distressed public or HUD-assisted housing. The assistance may come from public housing, RAD or HOME funds. Therefore, tenants residing in units developed with Choice funds receive VAWA protections under the relevant rental subsidy programs where assistance comes from a HUD-covered housing program.

The Rent Supplement program provides continued assistance on active or newly expired original term contracts. Though the program is no longer active, families continue to be supported until each Rent Supplement contract expires. For the VAWA protections to apply, tenants need to be residing in a project that receives Rent Supplement payments and is also subject to VAWA, such as section 221(d)(3)/(d)(5) project or section 236 project. Once a Rent Supplement contract expires, families may receive tenant protection vouchers and are then under the Housing Choice Voucher (HCV) program (*i.e.*, the Section 8 tenant-based program), a covered housing program.

Tenants in public housing that received funding under the HOPE VI program would continue to have the same VAWA rights as other public housing residents.

To ensure tenants in mixed-finance projects receive VAWA protections, this final rule adds a new provision at 24 CFR 905.100(g) that provides that PHAs must apply the VAWA protections under part 5 for mixed finance developments.

This rule maintains the provisions in §§ 574.604(a)(2) and 578.99(j) that state the requirements in 24 CFR part 5, subpart L, that are specific to tenants or those who are applying to become tenants (such as the notice of occupancy rights for tenants and applicants, and

bifurcation of leases and emergency transfer plans for tenants) do not apply to short-term supported housing and McKinney-Vento Safe Havens, as the regulations for tenants could not be applied in those contexts. However, in response to commenters' concerns, the regulations in this final rule explicitly provide that safe havens and short-term supported housing are subject to the core protections of VAWA (the prohibitions against denying admission or terminating assistance on the basis that the individual is or has been a victim of domestic violence, dating violence, stalking or sexual assault).

Rule Change: This rule includes a new provision at 24 CFR 905.100(g) for mixed finance developments in 24 CFR part 905, subpart F, which provides that public housing agencies must apply the VAWA protections in 24 CFR part 5, subpart L.

This rule clarifies, in the HOPWA regulations at 24 CFR 574.604(a)(2), and the regulations for the Continuum of Care (CoC) program at 578.99(j), that, although the requirements in 24 CFR part 5, subpart L, do not apply to short-term supported housing or safe havens, no individual may be denied admission to or removed from the short-term supported housing or safe haven on the basis or as a direct result of the fact that the individual is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the individual otherwise qualifies for admission or occupancy.

Comment: The Rural Housing Stability Assistance Program final rule should incorporate VAWA protections and obligations. Commenters stated that the proposed rule does not provide any amendments to the Rural Housing Stability Assistance Program (RHSP), and commenters urged HUD to ensure that the RHSP final rule comprehensively incorporates VAWA's protections and obligations. Commenters said that the RHSP proposed rule provided an exception for VAWA victims who needed to relocate for safety reasons by allowing victims with tenant-based assistance to move out of the county, but the requirements are inconsistent with VAWA and there is no mention of VAWA in the RHSP rule governing termination of assistance. Commenters asked HUD to make sure that the VAWA obligations and policies of the RHSP program are consistent within HUD's homeless assistance programs, as well as across all programs administered by HUD's Office of Community Planning and Development. Commenters recommended amending 24 CFR 579.418 and 579.424 to include references to VAWA.

HUD Response: HUD appreciates these comments, and notes that the VAWA Reauthorization Act of 2013 occurred prior to the publication of the RHSP proposed rule. HUD will include the applicable VAWA provisions in the RHSP final rule.

Comment: HUD's rule should cover McKinney-Vento homeless shelters. Commenters said the proposed rule did not include emergency shelters, as it limits the types of assistance to short or medium-term rental assistance and permanent or transitional housing. Commenters urged HUD to include emergency shelters in the final rule interpreting programs covered under Title IV of the McKinney Vento/ Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act, and to include program-specific amendments to Emergency Solutions Grants (ESG) and CoC regulations that clarify that emergency shelter is part of a VAWA covered housing program. A commenter asked HUD specifically to address, in the shelter context, the applicability of VAWA's notice of occupancy rights, and the prohibition against denial of admission or assistance and termination from participation in shelter.

Commenters stated that the plain language of VAWA does not exclude shelters, and said that "applicable assistance," which cannot be denied or terminated pursuant to VAWA, does not necessarily have to be tied to rental assistance. Commenters said admission and termination policies and practices at homeless shelters can often exclude survivors of domestic violence, dating violence, sexual assault and stalking, and victims report having to recount the violence and report being subject to a higher standard of admission and conditions of stay than other participants, such as producing orders of protection. Commenters said these victims are also denied admission if they are considered "unsafe" for the program, and in family shelters, domestic violence survivors are sometimes terminated from the program along with the perpetrator if they are abused on the property.

Commenters said Continuums of Care often choose homeless shelter programs as the main entry point into coordinated assessment, and if shelters' exclusionary practices continue without VAWA's protections, survivors may be excluded from access not only to emergency shelter, but also to other resources and housing. Commenters said such practices undermine HUD's efforts to end homelessness to exclude shelters from VAWA protection because, in many CoCs, they will be the entry point

through which victims experiencing homelessness access tenant-based rental assistance, transitional housing and other HUD-funded homelessness programs.

HUD Response: HUD agrees with the commenters that the core VAWA nondiscrimination protections should apply to emergency shelters subsidized by HUD, and individuals are not to be denied shelter because they are victims of domestic violence, dating violence, sexual assault, or stalking. In this final rule, HUD adds language to the ESG program regulation to make the VAWA core protections apply to emergency shelter.

However, as HUD stated in its proposed rule, the regulatory requirements in 24 CFR part 5, including the notice of occupancy rights, apply to assistance for rental housing, which generally involves a tenant, a landlord (the individual or entity that owns and/or leases rental units) and a lease specifying the occupancy rights and obligations of the tenant. This is because, as explained elsewhere in this rule, those VAWA protections are directed to rental housing.

Rule Change: In this final rule, HUD provides in 24 CFR 576.409(f) that for emergency shelters funded under 24 CFR 576.102, no individual or family may be denied admission to or removed from the emergency shelter on the basis or as a direct result of the fact that the individual or family is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the individual or family otherwise qualifies for admission or occupancy.

Comment: Explain how housing providers should coordinate multiple forms of assistance for a single housing unit. Commenters stated that HUD's proposed rule did not address the ways in which multiple forms of assistance covered by VAWA requirements may be coordinated under the HTF program, in other mixed finance properties or when multiple forms of assistance apply to a given housing unit.

HUD Response: HUD provides in § 5.2001(b)(2) of this final rule that, when assistance is provided under more than one covered housing program and there is a conflict between VAWA protections or remedies under those programs, the individual seeking the VAWA protections or remedies may choose to use the protections or remedies under any or all of those programs, as long as the protections or remedies would be feasible and permissible under each of the program statutes. As explained later in this preamble, where housing is covered

under multiple HUD programs, the responsible housing provider under each program will provide the required Notice of Occupancy Rights and certification form, and tenants may request emergency transfers or lease bifurcations under any applicable program, unless prohibited from doing so because of statutory constraints. For example, if a lease is bifurcated for a permanent supportive housing unit that is assisted under both HOME and the CoC Program, and the CoC Program rule would prohibit the remaining family member from continuing to reside in the unit beyond the existing lease term, because the family member does not have a disability, then the family member cannot depend on the bifurcation regulations for the HOME program to remain in the unit for longer than the existing lease term.

Rule Change: HUD revises § 5.2001(b)(2) to clarify that, when assistance is provided under more than one covered housing program and there is a conflict between VAWA protections or remedies under those programs, the individual seeking the VAWA protections or remedies may choose to use the protections or remedies under any or all of those programs, as long as the protections or remedies would be feasible and permissible under each of the program statutes.

2. Definitions and Terminology

a. General Terminology

Comment: Clarify that VAWA does not apply solely to women. A commenter stated that while the name of VAWA cannot be changed, references to VAWA could instead be made to a housing violence policy to encourage more individuals to seek protections.

HUD Response: HUD appreciates this comment and has repeatedly stated in its rule, documents, and in guidance that VAWA applies regardless of sex, gender identity, or sexual orientation. In the very first paragraph of the first regulatory section (24 CFR 5.2001(a)) HUD states that notwithstanding the title of the statute victims covered by VAWA protections are not limited to women. However, HUD declines to change references to VAWA out of concern that this will cause confusion as to whether HUD's regulations are associated with the statute. It is important that the public are aware that these protections are mandated by statute.

HUD emphasizes in this final rule that victims cannot be discriminated against on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial

status, disability, or age, and HUD programs must also be operated consistently with HUD's Equal Access Rule at 24 CFR 5.105(a)(2), which requires that HUD-assisted and HUD-insured housing are made available to all otherwise eligible individuals and families regardless of actual or perceived sexual orientation, gender identity, or marital status.

Rule Change: In this final rule, HUD adds a provision in § 5.2001 that states that, consistent with the nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a), victims cannot be discriminated against on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age, and HUD programs must also be operated consistently with HUD's Equal Access Rule at 24 CFR 5.105(a)(2)

Comment: Use terminology that applies to all VAWA victims. In order to support housing providers in considering the needs of sexual assault victims, commenters recommended that HUD always list the four protected crimes separately (domestic violence, dating violence, sexual assault and stalking) rather than using umbrella terms like "domestic and sexual violence." Commenters stated that the self-certification form collectively refers to domestic violence, dating violence, sexual assault, and stalking as "domestic violence," but they advised that this can cause confusion for a survivor of stalking or sexual assault whose perpetrator may have been a stranger, and to ensure all survivors covered under VAWA protections are aware of their rights, "domestic violence" should not be used as a catch-all term, and each term should be used separately. Commenters further suggested that HUD use terms like "perpetrator" rather than "abuser" to fit a multiple crimes context. Commenters also said that HUD should not solely reference victims fleeing from abuse, but also those recovering from violence in order to better address the nature of trauma from the impact of sexual violence.

HUD Response: HUD appreciates these comments and agrees with the concerns expressed by the commenters. HUD has revised the certification form, notice of occupancy rights, and model emergency transfer plan to list the four protected crimes separately, and to use the term "perpetrator" in lieu of, or in addition to the term "abuser" when referencing a person who commits one of the VAWA crimes. HUD has also revised the notice of rights and model emergency transfer plan to provide

resources for victims of sexual assault and stalking, in addition to resources for victims of domestic violence.

b. Affiliated Individual

Comment: The definition of "affiliated individual" and its use in the proposed rule is not clear. Commenters said HUD's proposed rule indicated that HUD's replacement of, "immediate family members," with "affiliated individual" will include any legitimate household member, whether a family member or not. Commenters said the language in the proposed rule appeared to reach beyond that as the proposed rule included "any individual, tenants, or lawful occupants." Commenters stated that inclusion of "any individual" is separate from "lawful occupant," further stating that these two classes are not identical. A commenter said that if "any individual" refers to an unauthorized occupant, then the regulations must explain what protections, if any, such individuals may receive if the individual is a victim of a VAWA crime or is an innocent household member in a household where a VAWA crime was committed. The commenter asked, for example, if those who are not tenants or lawful occupants would be afforded a reasonable time to establish eligibility for a covered housing program following a lease bifurcation. Commenters said that if the term "any individual" refers to an unauthorized occupant, the regulation should state that this individual has no rights to the unit. Another commenter said the definition of "any individual" must explicitly exclude guests or illegitimate occupants. Another commenter said the final rule should clarify that an affiliated individual can only be somebody lawfully living in the household. The commenter said that while VAWA protections apply only to lawful tenants, the rule asserts an affiliated individual may receive indirect benefits, but the final rule should clarify VAWA benefits do not apply to unreported or unauthorized members of the household.

HUD Response: Under VAWA 2013 and HUD's regulations, the term "affiliated individual" does not refer to the tenant who requests or is eligible for VAWA protections. Rather, an affiliated individual refers to a person who has a certain relationship to a tenant who is eligible for VAWA protections and remedies.

Under both VAWA 2013 and HUD's regulations, a tenant may not be denied tenancy or occupancy rights solely on the basis of criminal activity directly relating to domestic violence, dating

violence, sexual assault, or stalking if that tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault or stalking. In essence, the inclusion of affiliated individual is to add a further protection for tenants by providing that a VAWA crime committed against an affiliated individual, an individual without VAWA protections, is not a basis for denying or terminating assistance to the tenant. HUD declines to change or limit the definition of "affiliated individual" to exclude "any individual." The statute provides that the term includes any individual "living in the household of the person who is eligible for VAWA protections."

Comment: HUD's language change from "in loco parentis" may not include guardianships of non-competent adults. Commenters stated that the definition of "affiliated individual" refers repeatedly to relationships with children, but the definition should include all circumstances where a household member has some form of guardianship over a non-competent household member of any age.

HUD Response: The statutory definition of "affiliated individual" includes any individual living in the household of a person, and therefore a non-competent household member would be included as an affiliated individual. However, the familial and close relationships in the first part of the definition of affiliated individual do not require that the affiliated individual live in the same household as the person seeking VAWA protections. HUD appreciates the commenter's concern that HUD's change from the statutory phrase "in loco parentis" to language regarding a relationship like that of a parent to a child may be under-inclusive. HUD has revised the definition of "affiliated individual" to include a relationship where an individual has a guardianship of another individual, regardless of age.

Rule Change: HUD revises the definition of "affiliated individual" in § 5.2003 to provide that affiliated individual, with respect to an individual, means: (A) A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or (B) any individual, tenant, or lawful occupant living in the household of that individual.

c. Covered Housing Provider

Comment: Clarify which covered housing provider has which responsibilities under VAWA.

Commenters stated that in sections of the proposed regulation on HUD's multifamily Section 8 project-based programs in 24 CFR parts 880, 882, 883, 884, 886, and 891, the covered housing provider is defined as either the PHA or the owner, depending on the circumstances; for example, the commenter stated, the definition provides that the PHA would be responsible for providing the notice of occupancy rights and certification form. The commenters questioned this responsibility since PHAs under these programs do not have the contact with applicants or tenants that owners have, and said this is more properly an owner's responsibility, particularly when serving a notice of eviction. A commenter said that HUD should provide copies of the notice and certification form to the owner, and then the owner must provide the notice and form when required.

Commenters also said HUD's proposed rule identifies the PHA as the entity responsible for providing the reasonable time to establish eligibility for assistance following bifurcation of a lease for HUD's multifamily Section 8 project-based programs, but § 5.2009(b) of the rule defines the time that a tenant has to establish eligibility for assistance and does not give a covered housing provider flexibility in that regard. A commenter said that, it is the owner, not the PHA that establishes eligibility, and therefore, it should be the owner, not the PHA, to provide the reasonable time to establish eligibility.

A commenter stated that the definition of "covered housing provider" in 24 CFR parts 880, 882, 884, 886, 891, 982, and 983 was proposed, in the April 1, 2015, proposed rule to be the same as in 24 CFR part 883. The commenter encouraged HUD to review the definition of covered housing provider in the context of how each of the programs is actually administered and reevaluated whether the definition is appropriate. A commenter recommended that any activity that requires an interaction with a tenant should be assigned to the owner or its manager; and a State housing agency should be responsible only for monitoring the delivery of appropriate notices and that correct policies are in place and being followed. The commenter stated that, if model forms for use by an owner are required, the State housing agency, if not HUD, could provide them.

Other commenters stated that, for the Moderate Rehabilitation Single Room Occupancy (SRO) program, the proposed rule stated that the owner is the covered housing provider, but it is unclear why the PHA is not also considered the covered housing provider since the PHA has duties in administering the program. The commenters stated that it is unclear which entity is responsible for adopting, administering, and facilitating the emergency transfer plan, which entity is responsible for maintaining confidentiality and lease bifurcation, and which entity is responsible for providing the VAWA housing rights notice and certification form. Commenters stated that confidentiality must be maintained by the entity that obtains the information about the victim, and when a lease bifurcation occurs, the owner and the PHA must coordinate to provide a reasonable time for the tenant to establish eligibility for the same covered program or another covered program.

Another commenter said that the State recipient should be the conduit and responsible party for implementation. The commenter said that, because CoCs operate distinctly across a State and PHAs have considerable local control, it is important that the implementation of VAWA be consistent and equally applied to survivors, regardless of where they may reside in a State, and the State recipient could serve in an ombudsman-type role in order to ensure that all organizations and individuals understand their roles and obligations. The commenter said State recipients should specifically be tasked with developing model notices, forms, and the emergency transfer plans in collaboration with the statewide domestic violence and sexual assault coalition(s), which then can be adopted and implemented by local CoCs. Commenters recommended that HUD's final rule clarify the duties of housing providers under Emergency Solutions Grants (ESG) and CoC programs with regard to enacting VAWA protections.

Commenters further stated that the proposed rule did not address how the various VAWA obligations will be delegated or shared among the various parties—recipient, subrecipient, owner or landlord—that may be responsible for ensuring the delivery of VAWA obligations and protections, particularly regarding evictions and establishing a reasonable time for an individual to establish eligibility or find alternative housing.

A commenter stated that proposed § 960.102 provides the definition of

"covered housing provider" for public housing and states that it is the PHA, but this is not appropriate or effective in those situations where another entity owns the public housing units and the PHA manages the units, for example, in mixed finance units, HOPE VI units, or Choice Neighborhoods developments. For the public housing units that are not owned by the PHA, the commenter said the responsibilities to comply with court orders, request documentation, maintain confidentiality of documentation, determine the appropriateness of lease bifurcation, and reasonable times to provide an individual to establish program eligibility, must apply to both the PHA and the owner. The commenter said the owner, who has the lease with the tenant, must be responsible for providing the notice and certification form, determining whether to evict or terminate for reasons other than those protected by VAWA, or if there is an "actual or imminent threat," and to assist victims to remain in their unit and bear the cost of transfer, where permissible. In addition, the commenter said the PHA must adopt an emergency transfer plan with which the owner must comply, and owners should be restricted from taking any steps toward evicting or terminating a tenant until the PHA notifies the owner that the documentation from a claimed victim has not been received or conflicting claims of victimization have been resolved.

Commenters recommended that HUD amend §§ 960.102, 960.103(d), 960.203(c)(4), 966.4(e) to acknowledge situations where the public housing units are owned by a private owner and are managed by a PHA. The commenters further recommended that HUD state generally that the entity taking the action (*i.e.* denying admission, evicting, terminating assistance) is the entity responsible for providing the notice and form, and further clarify these roles in the regulation, guidance, and training.

HUD Response: HUD understands and appreciates the concerns expressed by the commenters. For several of the HUD programs added by VAWA 2013, there is more than one entity administering the assistance, and it is not always immediately obvious which entity is responsible for which actions mandated by VAWA. HUD sought to clarify which entities undertake which responsibilities but given the concerns raised by the commenters, HUD acknowledges further clarification is called for.

For HUD's multifamily Section 8 project-based programs in 24 CFR parts 880, 884, and 886, and for the Section

202 and Section 811 programs in part 891, this final rule provides that the owner is the covered housing provider for all purposes related to this rule. Unless a PHA is the owner of a project, PHAs plays no role under these programs for which they could have responsibilities pertaining to granting VAWA protections, providing notice of VAWA protections, administering emergency transfer plans, or bifurcating leases. Where PHAs are owners of projects under these programs, they will be the covered housing provider for all purposes related to this rule.

For the multifamily Section 8 programs under parts 882 and 883, however, the PHA (which would be a state agency for part 883) administers the programs. Therefore, it is the PHA that has primary oversight responsibilities under VAWA, and it is the PHA that has the contract with the owner of the housing (not HUD) and consequently the PHA must set the housing policy to be followed and must ensure that the owner and all of the owners with whom the PHA has a contract comply with the VAWA regulations and those VAWA policies that the PHA has been given discretion to determine. For these reasons, in these programs HUD maintains the provision in the proposed rule that identifies the PHA as the covered housing provider responsible for providing the notice of occupancy rights under VAWA and the certification form to tenants and applicants. In this final rule, HUD further clarifies that the PHA is responsible for providing the notice and form to owners to give to tenants and applicants. In addition, for parts 882 and 883, including the Moderate Rehabilitation SRO program, HUD further clarifies in this final rule that both the PHA and the owner are responsible for ensuring an emergency transfer plan is in place for the covered housing, but it is the owner that has responsibility for implementing the emergency transfer plan when an emergency arises, since the PHA does not have a direct relationship with the tenant. Since both PHAs and owners are covered housing providers for these programs, both PHAs and owners must adhere to this rule's basic provisions regarding denial or termination of assistance or occupancy rights and the construction of lease terms in § 5.2005(b) and (c), and the limitations of VAWA protection in § 5.2005(d) also apply to both PHAs and owners. Similarly, the documentation and confidentiality provisions in § 5.2007 of this rule also apply to both owners and PHAs.

HUD agrees with commenters that the provisions in the proposed rule that the PHA is responsible for providing the reasonable time to establish eligibility for assistance following bifurcation of a lease in the definition of covered housing provider in parts 880, 882, 883, 884, 886, and 891, as well as in § 982.53(e) and § 983.3, was unclear and unnecessary. HUD removes these provisions in this final rule. In each of these programs, this final rule clarifies that the owner is the covered housing provider that may choose to bifurcate a lease and, if the owner chooses to do so, must follow any applicable regulations relating to lease bifurcation.

For the regulations in part 982 (the housing choice voucher program) and in part 983 (the project-based voucher program), this final rule clarifies that it is the PHA that is the covered housing provider responsible for complying with the emergency transfer plan requirements in § 5.2005(e). Unlike the case with HUD's multifamily Section 8 project-based programs, PHAs do have a direct relationship with tenants in the housing choice voucher and project-based voucher program, and it is appropriate for tenants to contact the PHA about emergency transfers under VAWA, as they would contact the PHA about other matters related to administration of their housing assistance. In addition, given the relationship between the tenant and the PHA in these programs, this rule maintains the provisions in the proposed rule that the PHA is responsible for providing the notice of occupancy rights and the certification form. As is the case for HUD's multifamily Section 8 programs under parts 882 and 883, for the housing choice voucher and project-based voucher programs, both PHAs and owners are covered housing providers who must adhere to this rule's basic provisions regarding denial or termination of assistance or occupancy rights and the construction of lease terms in § 5.2005(b) and (c), and the limitations of VAWA protection in § 5.2005(d) also apply to both PHAs and owners. Similarly, the documentation and confidentiality provisions in § 5.2007 of this rule also apply to both owners and PHAs.

For the CoC and ESG programs, the proposed rule and this final rule lay out the responsibilities of recipients, subrecipients, and housing owners in § 576.407(g) (for ESG) and § 578.99(j) (for CoC).

For mixed finance units and public housing developments that received public housing assistance under the Choice Neighborhoods and HOPE VI

programs' NOFAs, the PHA is the covered housing provider because these units are generally administered in the same manner as other public housing units.

For FHA multifamily programs, HUD revises the definition of covered housing provider under this rule in § 200.38(b) to remove the provision that HUD will provide guidance as to who the covered housing provider is. HUD clarifies in this rule that the covered housing provider is generally the mortgagor for FHA multifamily programs covered by VAWA. However, where an existing mortgagor/owner sells the project to a new entity "subject to" the mortgage, in which case the new entity would own the project but not be the mortgagor under the mortgage, then the owner would be the covered housing provider.

Rule Change: In this final rule, HUD has revised § 200.38(b) to remove the provision that HUD will provide guidance as to who the covered housing provider is for FHA multifamily programs administered under section 236 and under sections 221(d)(3) and (d)(5) of the National Housing Act.

Further, HUD has revised the regulations for HUD's multifamily Section 8 project-based programs in 24 CFR parts 880, 884, and 886 to specify that the owner is the covered housing provider. HUD has also revised the regulations for the Section 202 and Section 811 programs in part 891 to clarify that the owner is the covered housing provider.

HUD has revised the definition of covered housing provider in 24 CFR part 883, as well as the definition of covered housing provider in § 882.102 for Section 8 Moderate Rehabilitation Programs, other than the Single Room Occupancy Program for Homeless Individuals, to clarify that the PHA is the covered housing provider responsible for providing the notice of occupancy rights and certification form under VAWA, and that the PHA may provide this notice and form to owners, and charge an owner with distribution to tenants. HUD also revises the regulations in these parts to eliminate the provision that the PHA is the covered housing provider responsible for providing the reasonable time to establish eligibility for assistance following bifurcation of a lease, and to clarify that the PHA and owner are both responsible for ensuring that an emergency transfer plan is in place, and it is the owner that is responsible for implementing the emergency transfer plan when an emergency occurs. HUD retains the provision in § 882.802 that the owner is the covered housing

provider for the Section 8 Moderate Rehabilitation Single Room Occupancy program for Homeless Individuals.

In addition, HUD has revised regulations for the Housing Choice Voucher program, at § 982.53(e) and the project-based voucher program, at § 983.3, to remove the provision that the PHA is the covered housing provider responsible for providing the reasonable time to establish eligibility for assistance following bifurcation of a lease. HUD also revises the regulations in these parts to clarify that the PHA is responsible for complying with this rule's provisions on emergency transfer plans.

Comment: Clarify responsibility for implementing VAWA requirements when there are multiple housing providers. Similar to the above comments, commenter asked who the covered entity is if a family uses voucher assistance in otherwise covered rental housing where another entity also may be a covered housing provider. The commenter asked which entity is responsible for providing VAWA protections and implementing VAWA requirements in circumstances such as these. The commenter stated that in essence, it was asking whether each covered housing provider would have to provide notices of occupancy rights and obtain certifications. The commenter stated that the providers may implement different policies concerning, for example, the time a tenant will be given to establish program eligibility, and therefore further clarity in this area is necessary.

Another commenter stated that, if PHAs are collaborating with ESG and CoC program grantees, PHAs would still be subject to the lease requirements currently imposed by HUD with respect to the public housing and Section 8 programs, and if HUD seeks to impose different lease requirements on these programs when overlaid with ESG and CoC programs, HUD will need to provide additional guidance to the PHAs.

HUD Response: The program-specific regulations in this rule explain which housing provider has responsibility for which VAWA requirements when there are multiple housing providers within a single program. More importantly, however, the notice of occupancy rights to be given to each applicant and tenant identify the covered housing provider that will interact with the tenant.

Where housing is covered under multiple HUD programs, such as under the HOME and Section 8 Project-Based programs, the responsible housing provider under each program will provide the required notice of

occupancy rights and certification form, and tenants may request emergency transfers or lease bifurcations under either program. Where there is a conflict between different program regulations, § 5.2001(b)(2) of HUD's VAWA regulation applies. As discussed earlier in this preamble, § 5.2001(b)(2) states that, where assistance is provided under more than one covered housing program and the VAWA protections or remedies under those programs conflict, the individual seeking the VAWA protections or remedies may choose to use the protections or remedies under any or all of those programs, as long as the protections or remedies would be feasible and permissible under each of the program statutes.

d. Domestic Violence

Comment: Do not include a limiting definition of "crimes of violence" in the definition of "domestic violence" and provide a more expansive definition. Commenters recommended that HUD eliminate the cross-reference to 18 U.S.C. 16 in the proposed rule, as the term "crimes of violence" in 18 U.S.C. 16, is too limiting for VAWA protections. Commenters stated that, recently, the U.S. Supreme Court found in *U.S. v. Castleman*, 134 S. Ct. 1405 (2014), that "domestic 'violence' is not merely a type of violence; it is a term of art encompassing acts that one might not characterize as 'violent' in a nondomestic context." The commenters state that, in *Castleman*, the Supreme Court recognized that under an appropriate definition of "domestic violence," a seemingly "minor" act, in combination with other acts, whether seriously violent or merely harassing, could result in the complete victimization of an intimate partner, and that appropriate remedies should be available as a result. Some commenters urged HUD to follow the Supreme Court's discussion in *Castleman* and build upon that definition to define "domestic violence" in these regulations as a pattern of behavior involving the use or attempted use of physical, sexual, verbal, emotional, economic, or other abusive behavior by a person to harm, threaten, intimidate, harass, coerce, control, isolate, restrain, or monitor a current or former intimate partner.

A commenter stated that the definition of "domestic violence" should not be tied to 18 U.S.C. 16 because that definition excludes a great deal of domestic violence crimes under State and tribal laws, as well as common law definitions of "battery." The commenter stated that with the proposed rule's definition, there will be

a great deal of uncertainty as to whether a particular conviction actually constitutes a crime under 18 U.S.C. 16.

Another commenter said that the matter of domestic violence has specific legal implications in most jurisdictions. The commenter stated that the proposed rule includes felony or misdemeanor crimes of violence in the definition, which implies formal charges filed by a prosecutor. The commenter said that in the locality in which the commenter resides, all cases initially thought to meet the test for domestic violence are further reviewed by prosecutors and are often re-classified to different charges.

HUD Response: HUD agrees that the definition of "domestic violence" should not include a cross-reference to the definition of "crimes of violence" in 18 U.S.C. 16. On further consideration, HUD agrees that the cross-reference has the consequence of making HUD's definition of "domestic violence" too limiting and could well exclude, as commenters pointed out, domestic violence crimes under tribal, State, or local laws. The term "crimes of violence" is not new to VAWA 2013. The term has been in the definition of "domestic violence" since VAWA was first enacted in 1994, and was in HUD's regulations implementing VAWA 2005, and has not previously referred to 18 U.S.C. 16. Therefore, HUD withdraws its proposal to define crimes of violence in accordance with 18 U.S.C. 16, and implements the definition of domestic violence as it appears in VAWA 2013.

Rule Change: HUD revises the definition of domestic violence to remove the reference to 18 U.S.C. 16.

Comment: The term intimate partner is too broad as defined in HUD regulations. Commenters stated that in the revised definition of "domestic violence," HUD included "intimate partner" as defined in title 18 of U.S.C. Commenters said that definition appears to bestow this status on any person who has ever cohabited or been in a romantic or intimate relationship in perpetuity, and asked HUD to indicate how long a person may have this status.

HUD Response: HUD's proposed definition of "domestic violence" tracks the statutory definition from VAWA, which, as amended by VAWA 2013, defines "domestic violence" as including the following: Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the

victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. VAWA does not limit domestic violence to those acts committed by an individual who is a current spouse or intimate partner of the victim, but rather expressly provides domestic violence is a crime of violence committed by a current or former spouse or intimate partner. As the statute does not place a time restriction on what it means to be a former spouse or intimate partner, HUD declines to do so. However, HUD is removing the proposed cross-reference to 18 U.S.C. 2266 in defining "intimate partner." The definition of "spouse or intimate partner" in 18 U.S.C. 2266(7) provides that this person includes: (i) A spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; or (ii) a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

On further consideration, HUD determined that a cross-reference to 18 U.S.C. 2266(7) may be confusing, as the term "domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, or others, and 18 U.S.C. 2266(7) defines "intimate partner" as the victim and not the abuser. As a result, the cross reference reads as if domestic violence is a crime of violence committed by the victim, rather than the perpetrator.

Rule Change: HUD revises its definition of "domestic violence" to remove the cross-reference to 18 U.S.C. 2266. In its place, HUD clarifies that the term "spouse or intimate partner of the victim" includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

e. Lawful Occupant and Tenant

Comment: Define "lawful occupant" and "tenant" and clarify how each is affected by the rule. Commenters asked for HUD to include in its final rule definitions of "lawful occupant" and "tenant." The commenters said

proposed 24 CFR 5.2005(b) discusses termination of the "tenant" or "affiliated individual" and, unlike proposed § 5.2003 that addresses definitions and § 5.2009 that addresses bifurcation of leases, there is no mention of "lawful occupants." The commenters said the omission of defining "lawful occupant" and "tenant" may cause confusion as to lawful occupants' rights if crimes covered by VAWA occur. The commenters said proposed § 5.2005(d)(2) similarly omits reference to lawful occupant, and § 5.2005 (d)(3) may create confusion because this section permits a covered housing provider to "terminate assistance to or evict a tenant" if that tenant or lawful occupant presents an actual and imminent threat to others.

HUD Response: The usage of the terms "lawful occupant" and "tenant" in the proposed rule reflect their usage in VAWA 2013. VAWA 2013 does not define these terms, and HUD declines to define them in this final rule. Generally, while the term "lawful occupant" as defined by state law would be applicable in determining whether or not someone would be an affiliated individual, it would not be for lease bifurcations. The term "lawful occupant" for lease bifurcations would be whether or not the person is a lawful occupant (beneficiary or tenant, or recognized member of the household) per the program regulations of the specific HUD program. Therefore, while someone may be a "lawful occupant" under state law, if they are not on the lease or receiving assistance under the HUD program regulations they are not eligible for lease bifurcation.

f. Stalking

Comment: Provide a clearer definition of stalking. Commenters asked that there be a more detailed definition of "stalking." The commenters questioned whether the definition applies to all stalking situations, or only when the individual is being stalked by someone with whom the individual was in a "domestic relationship"?

HUD Response: The definition of "stalking" in this rule is the same definition that is in title I of VAWA. It applies to all situations where an individual, the perpetrator, engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for their own safety or the safety of others, or suffer substantial emotional distress. Stalking is not limited to situations where the perpetrator is someone with whom the victim was in any specific type of relationship.

g. Victim

Comment: The definition of "victim" needs further clarity. Commenters said the definition of "victim" needs further clarification. The commenters said there is some confusion within the industry as to the definition of a "victim"—whether this term is defined as someone who is abused by another individual living at the property, or is abused on the property grounds, and must be known and named by the victim, or, that a tenant can be a victim regardless of whether the abuse was perpetrated by a tenant living on the property, or it was on the property grounds, and that the tenant is not required to know or name the abuser.

HUD Response: A tenant or an applicant may be a victim of domestic violence, dating violence, sexual assault, or stalking regardless of whether the act was perpetrated by a tenant living on the property, or whether the act occurred on the property grounds, or, in cases of sexual assault or stalking, whether the tenant knows the perpetrator. The rule's definitions of "domestic violence," "dating violence," "sexual assault," and "stalking" should not be read to include any additional restrictions on these acts are, or who qualifies as a victim of such acts beyond what is explicitly stated in the definitions.

3. Emergency Transfers

a. Emergency Transfer Documentation Requirements

Comment: Clearly specify emergency transfer documentation requirements, specifically documentation requirements. There were many comments on documentation requirements associated with emergency transfer plans, and the comments raised the following issues.

The VAWA statute does not apply documentation requirements to emergency transfers. Commenters stated that VAWA's documentation requirements do not apply to the emergency transfer provisions and therefore HUD should not apply any documentation requirements to emergency transfers.

Need further rulemaking to impose additional documentation requirements for emergency transfer plans.

Commenters said that if HUD seeks to impose documentation requirements for emergency transfer requests beyond those described in the proposed rule, HUD must do so through additional notice and comment rulemaking. Other commenters said documentation requirements for emergency transfers should be the same as the rule's other

documentation requirements and not exceed those requirements. Commenters said requiring additional documentation requirements will expose victims and housing providers to inconsistency and confusion.

Prohibit housing providers from requiring documentation for emergency transfers beyond requirements established by HUD. Other commenters said HUD must establish the documentation requirements for transfers across all HUD-covered housing programs and not permit covered housing providers to establish documentation requirements separate from those mandated in HUD's rule. Commenters said HUD must continue to prohibit covered housing programs from requiring a victim to submit third-party proof, as this documentation cannot always be easily secured, and eligibility should be determined by whether a person in the victim's shoes would reasonably believe he or she is threatened with imminent harm from further violence.

Do not assume victims requesting emergency transfers were previously determined to be VAWA victims. Another commenter said the preamble to the proposed rule unfairly assumed that persons seeking emergency transfers have already been determined to be victims covered by VAWA's protections. The commenter said that in many cases, the first indication that a tenant is a victim of violence may be the request for an emergency transfer.

Requiring documentation in order to determine if an emergency transfer is appropriate. Some commenters said that HUD should require documentation before a landlord makes a decision about emergency transfers. Commenters said documentation should be required prior to transfer to ensure the appropriate use of resources and to ensure that tenants qualify, considering that transfers are costly and families must wait while transfers are processed for others. Other commenters said it is unclear what would happen after a transfer if the tenant did not provide sufficient documentation of the need for an emergency transfer. Another commenter expressed its support for requiring a tenant seeking a transfer to provide some form of documentation, provided the documentation is not so complex and burdensome as to deter a pro-se victim from seeking assistance. A commenter stated that, because victims have the option of signing a self-certification form, which can be done in minutes, requiring documentation prior to transfer should not cause any delay in obtaining an emergency transfer. A commenter said that third-party

documentation prior to an emergency transfer is necessary unless the situation of violence is observable by a responsible entity. Commenter recommended that the specific type of third-party documentation required for an emergency transfer should be established through local and regional policy. Commenter also said that, for homeless assistance programs, documentation is vital when transferring a tenant because victims may need to be relocated to another safe place that may require documentation for when this person first became homeless in order to qualify.

A delay in emergency transfer until certain documentation is received jeopardizes the safety of the victim. Commenters said victims needing the protections of VAWA should not be required to submit documentation before a transfer. A commenter stated that the emergency transfer plan already requires the tenant to submit a written request for a transfer, and documentation beyond this requirement may be difficult to access and is vulnerable to being obtained or destroyed by the perpetrator. Commenters said that gathering the requested documentation, particularly when violence is imminent, can unduly delay the transfer process and further endanger the victim.

Allow post-transfer documentation. Other commenters asked that a tenant requesting a transfer be permitted to submit documentation at least 14 days after the transfer has been completed, so that the provider's focus is on expeditiously completing the transfer.

Require documentation beyond self-certification. Commenters stated that victims should provide documentation other than self-certification when seeking an emergency transfer. Commenters stated that documentation could include police reports, court orders, incident reports, notarized witness statements, verification from a domestic violence shelter, 911 calls, or a statement from a service provider. Some commenters stated that official government documentation should be required, while others said the documentation could be a written or oral statement from a witness.

A commenter stated that third-party documentation may help to eliminate transfer of the same situation to a new location, and that this documentation is necessary for the housing provider to document the case in detail. The commenters said that documentation other than self-certification is necessary to verify the need for an emergency transfer, as the form's provisions regarding penalties for fraud would be

difficult to enforce, and some victims may attempt to use an incident of domestic violence to obtain a superior housing unit or break their current lease, even if this is unrelated to a VAWA incident. A commenter pointed to a State law allowing a tenant who is the victim of domestic violence to legally break a lease, but only with some type of third-party documentation. Commenters said requiring additional documentation is logical because housing providers will take a monetary and temporal loss for transfers. Other commenters stated that statements from legal, medical, psychological or social service providers stating their belief that a transfer will have a strong probability of reducing a recurrence of the violence should be required for emergency transfers. Another commenter stated that landlords should request a detailed statement from the victim, and then interview the victims after the transfer and obtain a written statement from regarding whether the violence stopped or the transfer benefited the resident.

Allow the housing provider to determine when and what type of documentation may be needed for emergency transfers. Commenters said that HUD should allow housing providers to determine whether documentation is necessary for emergency transfers and what documentation may be necessary. A commenter stated that many PHAs have very high occupancy rates and relocation should be reserved for individuals with the highest level of need. A commenter said that allowing somebody to submit a self-certifying form with no supporting documentation could leave PHAs susceptible to fraud. The commenter said documentation serves to protect both the housing provider and the program participants by ensuring that there are standards that guide these decisions, and HUD should allow housing providers to determine what supporting information would be sufficient. The commenter said that rather than HUD establishing documentation standards for emergency transfers that HUD allow the housing providers to use their discretion to make determinations on a case-by-case basis because the circumstances that can lead a tenant to request an emergency transfer under VAWA are highly personal and individual.

HUD Response: HUD appreciates all of the comments received on whether and how to document emergency transfer requests. HUD has considered all of these comments and has included in this final rule specific provisions on emergency transfer documentation. HUD understands that housing

providers may incur costs when transferring tenants and that other families may need available units. Therefore, for the reasons further described below, this final rule allows housing providers, at their discretion, to require that tenants requesting transfers submit a written request before a transfer occurs certifying that they meet the criteria for an emergency transfer under this rule. To minimize burden, HUD has created a model emergency transfer request. Housing providers may accept third-party documentation if that documentation is offered by tenants, but housing providers will not be allowed to require any third-party documentation in order to determine whether a tenant seeking an emergency transfer is eligible for an emergency transfer.

HUD understands that tenants seeking emergency transfers may not have already submitted to their housing provider documentation of any occurrence of domestic violence, dating violence, sexual assault, or stalking, and HUD did not intend to indicate that there is an assumption that a tenant seeking an emergency transfer has already been previously determined to be a victim of domestic violence, dating violence, sexual assault, or stalking. HUD clarifies in this final rule that housing providers may require tenants seeking emergency transfers to document an occurrence of domestic violence, dating violence, sexual assault, or stalking, in addition to documenting eligibility for an emergency transfer, consistent with the HUD requirement that individuals certify eligibility in order to establish that the tenant is a victim of domestic violence, dating violence, sexual assault, or stalking, if the individual has not already provided documentation of that occurrence. HUD notes as part of certifying eligibility for VAWA protections an individual may provide self-certification in lieu of any other documentation to document an occurrence of a VAWA-protected incident. Because self-certification can be submitted fairly quickly, submission of a self-certification should not delay any requests for an emergency transfer.

In addition to documentation—which could be self-certification—of the occurrence of domestic violence, dating violence, sexual assault, or stalking, the final rule allows housing providers to require that tenants seeking emergency transfers provide documentation—which could be a written request—that they meet the requirements for a transfer. HUD is allowing housing providers to request this additional documentation because an individual may be a victim of violence covered by

VAWA, and yet not meet the requirements for an emergency transfer that are specified in VAWA 2013. Those requirements are that the individual expressly request the transfer and either reasonably believe there is a threat of imminent harm from further violence if the tenant remains in the same dwelling unit that the tenant is currently occupying or, in the case of a tenant who is a victim of sexual assault, the tenant also qualifies for a transfer if the assault occurred on the premises during the 90-calendar-day period preceding the date of request for the transfer.

HUD appreciates commenters' concerns that third-party proof cannot always be easily obtained, that it may not be available to some tenants who qualify for emergency transfers, and the requirement to obtain third-party documentation could delay transfers, resulting in harm to tenants. It is for these reasons that the final rule stipulates that housing providers may not require third-party documentation for an emergency transfer.

As noted above, housing providers may, however, require that tenants submit a written request for an emergency transfer where they certify their need for a transfer. This is a change from the proposed rule. Although the proposed model emergency transfer plan stated that tenants should submit a written request for a transfer, the proposed rule did provide that housing providers may require this request. HUD disagrees with commenter's interpretation of VAWA 2013 that because the statute does not discuss documentation requirements for emergency transfers, HUD may not allow housing providers to require that tenants submit any documentation whatsoever.

HUD also does not agree with some of the arguments that commenters presented in favor of requiring third-party documentation for an emergency transfer. HUD does not believe that a failure to require third-party documentation would result in negating the benefits of a transfer, and leave the tenant in an endangered situation. Rather, strict confidentiality measures to prevent a perpetrator from learning the new location of the transferred tenant would help to reduce the possibility of future violence.

HUD understands that some housing providers expressed concern that there may be tenants who request an emergency transfer for the purpose of obtaining a superior housing unit or to break their current lease. This situation may occur but, for the following reasons, HUD does not agree that this justifies a third-party documentation

requirement that could endanger the lives of those tenants who are victims of VAWA crimes and for whom safety and security is a real threat.

First, third-party documentation of a VAWA-protected incident would not necessarily help a housing provider determine whether a victim reasonably believes that the victim is in imminent harm from further violence without a transfer. Second, the housing provider may request that the tenant sign a written request for the transfer that states that the information in the request is accurate, and that submission of false information could jeopardize program eligibility and be the basis for denial of admission, termination of assistance, or eviction. HUD further disagrees with commenters who suggested that landlords should request a detailed statement from, and interview, victims. There are housing providers who may have experience working with victims of domestic violence, dating violence, sexual assault, or stalking, but there are also housing providers who do not. Regardless, under this rule, housing providers will not judge the merits of the claims of victims of domestic violence, dating violence, sexual assault, or stalking. HUD understands that the documentation of homelessness may be important when transferring a tenant, but this does not require third-party documentation of the need for a transfer due to domestic violence, dating violence, sexual assault, or stalking.

HUD agrees with those commenters who said that providers should be permitted to use their discretion to determine whether documentation is needed, and housing providers will not be required to request documentation from those seeking an emergency transfer due to an incident of domestic violence, dating violence, sexual assault, or stalking, just as housing providers are not required to request documentation of the VAWA-related incidence. However, as previously discussed, under this final rule, housing providers will not be allowed to require that tenants requesting an emergency transfer under VAWA submit third-party documentation to qualify for an emergency transfer. HUD understands that many PHAs have high occupancy rates, but notes that transfers are only required where there is a safe and available unit to transfer the tenant to, and, where there is a transfer, the unit from which the tenant is transferring will become available. Further, allowing housing providers to decide for themselves what documentation is sufficient for an emergency transfer could leave them more legally

vulnerable than they would be under this rule, which clearly requires covered housing providers to accept self-certification, if they require documentation.

Rule Change: This final rule revises § 5.2005(e) to specify that housing providers may, at their discretion, require tenants seeking emergency transfers to submit written requests expressly requesting the emergency transfer, in which the tenants must certify that they meet the requirements for an emergency transfer. This written request is different from any self-certification or documentation that an individual may have given, or the housing provider may ask for, to document the occurrence of domestic violence, dating violence, sexual assault, or stalking in accordance with § 5.2007. HUD has developed a model emergency transfer request that housing providers may give to tenants who ask for an emergency transfer.

This final rule also revises § 5.2007(a)(1) to remove the provision that the documentation requirements in the section are not applicable to a request made by the tenant for an emergency transfer. This provision was removed because housing providers may require tenants seeking emergency transfers to document an occurrence of domestic violence, dating violence, sexual assault, or stalking, if they have not done so already, in addition to documenting eligibility for an emergency transfer.

Comment: Housing providers that create a preference for VAWA transfers should be permitted to establish their own criteria for verification for a transfer. Commenters said that if a PHA establishes a preference for housing VAWA victims, the PHA should be permitted to establish criteria for the verification of domestic violence for purposes of honoring the preference. A commenter said many PHAs may already give a priority to victims of domestic violence who need to relocate from public housing through assistance from the HCV program and for those PHAs the documentation requirements to implement the transfer are already set forth in their Section 8 Administrative Plan. Commenters suggested that PHAs be allowed to continue to utilize the verification requirements as set forth within their Section 8 Administrative Plans⁸ for preferences for victims of domestic violence necessitating said transfer.

HUD Response: HUD understands the concerns raised by the commenters in

not altering requirements that are already in place for PHAs that give preference in housing to victims of domestic violence. However, providing preferences in housing to certain groups, and PHAs have authority to establish such preferences, is not the same as complying with the emergency transfer provisions of VAWA 2013. Providing preferences to certain groups may help meet emergency housing needs of these groups but do not constitute a need for an emergency transfer as is contemplated by VAWA 2013.

As previously discussed, under this final rule, covered housing providers may require in their emergency transfer plans that victims of domestic violence, dating violence, sexual assault, or stalking submit a written request to their housing provider, where the tenants certify that they meet the requirements for an emergency transfer, in addition to any self-certification or other documentation of an occurrence of domestic violence, dating violence, sexual assault or stalking. This means that if the tenant provides these self-certifications, and the covered housing provider has another safe and available unit for which the victim qualifies, the housing provider must allow the tenant to transfer. If the covered housing provider has a VAWA emergency transfer waiting list, the only documentation that a housing provider could require the tenant to submit in order to be placed on the waiting list is a written emergency transfer request, where the tenant certifies to meeting the requirements for an emergency transfer under VAWA, in addition to any self-certification or other documentation of an occurrence of domestic violence, dating violence, sexual assault or stalking, as described in § 5.2005(e)(6).

Comment: Owners and agents should maintain documentation of an emergency transfer. Commenters said owners and agents should have to maintain documentation of emergency transfers to provide records for the covered housing provider as to why a move was necessary.

HUD Response: HUD agrees that covered housing providers should maintain documentation of emergency transfer requests and the outcomes of such requests, and HUD believes that, in order to ensure compliance with the emergency transfer provisions of this rule, covered housing providers should have to report this information to HUD in the aggregate. Accordingly, in this final rule, HUD adds to the regulations governing emergency transfer plans that covered housing providers must keep a record of all emergency transfers

requested, and the outcomes of such requests, and retain these records for a period of three years, or for the period of time specified in program regulations, and report them to HUD annually. HUD understands that this may entail additional costs for covered housing providers, and HUD will solicit comment on this provision through separate notice before covered housing providers must comply with this provision.

Rule Change: This final rule revises 24 CFR 5.2005 to state that the covered housing provider must keep a record of all emergency transfers requested under its emergency transfer plan, and the outcomes of such requests, and retain these records for a period of three years, or for a period of time as specified in program regulations. HUD's proposed changes aligns to the record retention periods of each covered programs to the extent possible. The rule also provides that requests and outcomes of such requests must be reported to HUD annually. Further, this rule revises the following program regulations to include documentation and reporting of VAWA emergency transfer requests and outcomes: 24 CFR 91.520, which details performance report requirements for HOME participating jurisdictions and jurisdictions receiving funding under the HOPWA, ESG, and HTF programs; HOME program regulations at 24 CFR 92.508 (Recordkeeping); HTF program regulations at 24 CFR 93.407 (Recordkeeping); HOPWA regulations at 24 CFR 574.520 (Performance reports) and 24 CFR 574.530 (Recordkeeping); ESG regulations at 24 CFR 576.500 (Recordkeeping and reporting requirements); CoC regulations at 24 CFR 578.103 (Recordkeeping requirements); and Multifamily program regulations at 24 CFR 882.407 (Other Federal requirements) and § 882.804 (Other Federal requirements). The rule also includes in newly added regulations for Multifamily programs in 24 CFR 880.613, 884.226, 886.139, 886.339, and 891.190 (Emergency transfer for victims of domestic violence, dating violence sexual assault, and stalking) reporting requirements for emergency transfers requested under VAWA. All public housing agencies will be required to comply with the general reporting and recordkeeping requirements in 24 CFR 5.2005(e).

Comment: Updated documentation of need for emergency transfer may be necessary. Commenters stated that updated documentation for an emergency transfer may be necessary in cases where a period of time has passed between the date a family submitted domestic violence verification and the

⁸ The requirements for the Section 8 Administrative Plan are found in 24 CFR 982.54.

date they ask for an emergency transfer. Commenters provided an example in which a family was admitted to a program based on a Federal preference for domestic violence in 1995, and in 2015 the family requests an emergency transfer under VAWA. The commenters said that it would be reasonable for the housing provider to request updated documentation in such a case.

HUD Response: In order to qualify for an emergency transfer under VAWA 2013, a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking must reasonably believe there is a threat of imminent harm from further violence. It does not matter when an initial act occurred if the current belief of a threat of imminent harm is reasonable, or, in cases of sexual assault, the assault occurred on the premises during the 90-calendar-day period preceding the transfer request. Housing providers may require that tenants who request emergency transfers under VAWA submit a written transfer request where the tenant certifies that he or she believes there is a threat of imminent harm from further violence, or that he or she was a victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the transfer request.

b. Emergency Transfer Costs

Comment: Transfers have costs. Commenters stated that emergency transfers could be costly and time-consuming for housing providers and could include costs related to utilities, packing and moving, damage repairs, painting, cleaning, inspections, lease execution and explanation and assuring housing eligibility. A commenter stated that ordinary turnover costs for the landlord, with no renovation, may include new carpet, new paint, cleaning fees, damage remediation, time involved by a project's service team, and time involved by a leasing team. The commenter further stated that rehabilitating a unit is costly, but that in all cases paperwork is minimal—a new lease and a new certification. The commenter stated that, overall, the work and cost to transfer a resident is minimal, though it is not recoverable, and asked if HUD could provide some reimbursement when an emergency transfer arises.

Other commenters said costs can be substantial. A commenter said costs also include criminal background and drug tests. Another commenter said it currently employs an entire team dedicated to processing emergency transfers for public housing tenants and HCV participants and, in addition to

these personnel costs, the commenter said that it spends approximately \$14,000 on preparing each public housing unit for a new occupant, and \$200 in administrative costs for each HCV emergency transfer. Commenter said that if the perpetrator is not removed from the apartment before transferring the victim, subsidizing the perpetrator in one apartment and the victim in a second apartment could occur, thereby greatly increasing the transfer costs.

A commenter said that an informal poll of its PHA members finds that unit transfers cost between \$500 and \$5500, depending on the amount of work that needs to be undertaken upon turnover. The commenter explained that an estimate of \$3000–\$4000 would include painting, carpet or tile replacement, cleaning costs, lock changes, possible appliance replacement or repair, and shade replacement, and an additional \$500 should be added for each additional bedroom.

Another commenter estimated that relocation of a public housing tenant through HCV assistance costs between 5 and 17 staff hours and \$50 to \$100 in subcontractor fees for inspections. The commenter said that, at best, relocation through the HCV program involves staff time spent issuing a voucher, reviewing the “Request for Tenancy Approval,” inspection and rent reasonableness determination of a new unit, preparation of a new lease and housing assistance payments contract (HAP), and recertification of the family. The commenter added that costs may increase for a PHA due to additional inspections, since an initially chosen unit may not be affordable or appropriate, and the processing of multiple Requests for Tenancy Approval forms. The commenter further stated that, if the perpetrator is a member of the assisted household, the PHA may also be undergoing the process of terminating the perpetrator's individual assistance, which could result in hearing costs and potential legal fees.

A commenter said public housing costs include moving costs and damage caused by the tenant beyond normal wear and tear, an average turnaround time of 8 days during which time the unit is not occupied while it is being made ready for the next family, and an average cost in parts and labor of \$215 plus an additional \$200 for cleaning. For the HCV program, the commenter said moving costs and damage caused by the tenant and any additional costs to make the unit ready for the next occupant is born by the landlord. The commenter said that HCV staff spend about 8 hours processing moves, and the

total cost of their time and the resources expended is about \$200.

Another commenter said that if there are damages beyond normal wear and tear, and if the participant fails to pay those costs, landlords must not only incur these costs but face the costs of pursuing collection. This commenter said lost rent on each unit while it is vacant could amount to 60 or 90 days, which could result in the loss of Operating Fund eligibility in the subsequent year for public housing, and in the voucher program, costs include the loss of renewal funding in subsequent years for lost unit months leased (UMLs) and lost fees.

A commenter said that in the past 5 years it has spent over \$339,000 on 118 emergency transfers for temporary hotel accommodations as well as moving expenses. Commenter said it has been experiencing a steady annual increase in the number of emergency transfer requests in general and in VAWA specifically.

HUD Response: HUD appreciates the information on costs provided by the commenters. HUD understands that housing providers face administrative and unit turnover costs for transfers, and where there is an increase in transfers, regardless of the reason, the costs to housing providers may rise. HUD recognizes that VAWA's provision for emergency transfers may result in an increase in transfer costs. HUD notes, however, that transfers may not be a unique occurrence for PHAs and owners and management agents, but a part of administering public and assisted housing. Further, PHAs can utilize the limited vacancy provision of 24 CFR 990.150 that allows operating subsidy to be paid for a limited number of vacant units under an annual contributions contract (ACC).

Comment: Housing providers should not be required to pay for transfers. Commenters stated that the rule should make clear that housing providers are not required to pay for transfers and either HUD or tenants should be required to pay for, or provide reimbursement for, costs. A commenter said housing providers should not be responsible for costs since this is not a reasonable accommodation covered under section 504 of the Rehabilitation Act of 1973 (Section 504). Another commenter said that a PHA would bear the cost of all paperwork and issuing vouchers and inspecting units, but other costs associated with moving into a new unit, such as application fees to owners, deposits, and moving costs, should not be allowed as they are above the statutory requirements of the HCV program. Another commenter said that

covering expenses such as utility deposits and moving costs would be devastating to small PHAs.

A commenter said that if the tenant and management agree that the tenant cannot afford transfer costs, services representatives can seek assistance from local resources, or, management could put forth the costs and allow the tenant to repay them under a payment plan. A commenter said departing residents paying costs under a repayment plan is consistent with HUD's policy with respect to other resident-initiated transfers as set forth in the Public Housing Occupancy Guidebook.⁹ Another commenter said it is not aware of a situation where the housing provider would pay transfer costs, but suggested it would be beneficial to tenants to be given an extended period of time to pay off fees. A commenter suggested that, in the case of emergency transfers, any damage to the unit or unpaid rent should still be the responsibility of the departing resident, but, any financial penalties for breaking a lease could be waived by the owner based upon a confirmed instance of domestic violence, stalking or sexual assault.

Commenters suggested that HUD establish a special fee to ensure that PHAs are able to withstand the financial implications of transfers under VAWA. Others commenters said moving costs should be considered to be permissible program expenses. Commenters said HUD should reimburse covered housing providers for costs associated with these transfers and such requirement should be provided for in the rule and could be established in a PIH notice.

HUD Response: For HUD programs that have existing guidance related to paying costs of transfers, housing providers should follow that guidance and may follow any existing transfer policies and procedures they have, including those for repayment plans. Under this final rule, housing providers will not be required to bear moving costs that tenants and their household members generally pay, including application fees and deposits, in addition to costs to physically move households and their belongings.

In response to commenters who stated housing providers should not be responsible for costs since this is not a reasonable accommodation covered under Section 504, the issue of whether housing providers must pay for emergency transfers is a separate issue from reasonable accommodation

requests under Section 504. Section 504 pertains to providing and paying for structural modifications that may be necessary as a reasonable accommodation for individuals with disabilities.

Comment: A specific process is needed for ESG or CoC funds to be used pay for damages caused by early lease termination. Commenters expressed support that the rule allows the use of ESG and CoC funds to pay for damages resulting from early lease terminations if the tenant meets the emergency transfer requirements under VAWA, but they expressed concern that this will deplete limited funds for homeless families. Commenters further expressed concern that owners or landlords might turn to these funds before attempting to mitigate damages caused by the lease terminations. Commenters recommended that HUD develop a process for housing providers to apply for these funds where they must document the hardship, explain why the funds are needed, and report efforts to mitigate damages.

HUD Response: In this rule HUD does not intend to restrict currently available resources that could fund emergency transfers. As a result, HUD maintains that paying for damages is an eligible cost of ESG and CoC funds, and declines to develop the process that the commenter suggested.

Comment: Housing providers should pay transfer costs. A commenter applauded HUD for including a provision that encourages covered housing providers to bear emergency transfer costs. The commenter said only about half the States have protections for victims who terminate their leases to escape from violence and recommended that HUD require that covered housing providers not penalize victims who exercise their transfer rights. The commenter suggested that covered housing providers be responsible for covering the costs of emergency transfers, such as moving costs, which are often prohibitive for survivor tenants. The commenter stated that, under the Philadelphia Housing Authority lease agreement, the housing authority agrees to pay for reasonable costs related to mandatory transfers and reasonable accommodation transfers.

HUD Response: HUD understands that moving costs may be prohibitive for some victims of domestic violence, dating violence, sexual assault, or stalking, and encourages housing providers to bear these costs where possible, or to work with victims to identify possibilities for funding transfers. Local victim service providers may be able to provide help with

funding transfers. As discussed earlier in this preamble, the U.S. Department of Justice (DOJ) administers programs that provide funding for victims covered by VAWA, and the Victims Crime Fund could be used to pay for relocation expenses of these victims, or to provide other sources of support, which could free up funding to pay for moving costs.

As noted in the proposed rule, HUD's CoC regulations, in addition to containing regulations that provide for a victim of domestic violence, dating violence, sexual assault, or stalking to retain their tenant-based rental assistance and move to a different CoC geographic area, include reasonable one-time moving costs as eligible supportive services cost. (See 24 CFR 578.53(e)(2).) In addition, under this rule's HOME regulations at § 92.359 (e), HOPWA regulations at § 574.604(f), and CoC regulations at § 578.99(j), leases and occupancy agreements must include a provision that tenants may terminate their leases without penalty if they meet the conditions for an emergency transfer under this rule.

c. Model Transfer Requests

Comment: HUD should issue a model emergency transfer request. Commenters recommended that HUD create a model emergency transfer request, and that issuance of such a model would help facilitate the transfer. Another commenter said that issuance of such a model would help ensure consistency across HUD-covered programs. A commenter stated a model transfer request is important since a less experienced landlord may doubt a victim's claims. Another commenter said a model transfer request would be beneficial to housing providers as it would provide specific guidance for them on what a request should contain, and would enable them to quickly identify the type of transfer being requested, with the hope that a transfer of this nature would be prioritized over other types of requests.

Commenters said HUD should prepare a model emergency transfer request that includes the following information: The eligibility criteria for requesting the emergency transfer, the definition of a "safe and available" unit, a checklist for the required documentation the victim must provide to support the need for such a transfer, including a statement that the tenant reasonably believes he or she is imminently threatened by harm and documentation of the violence and the basis for that belief, and any conditions the tenant must meet to continue to receive VAWA protections, such as not inviting/allowing the perpetrator into

⁹ See http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/rhiip/phguidebook.

the new unit or not revealing the location of the new unit to the perpetrator. Another commenter stated that the model should specify the location to be transferred, time of transfer, and other pertinent information for the emergency transfer.

Another commenter said the model request should allow the survivor to assert either an imminent threat of violence or a sexual assault that occurred on the premises within the last 90 days and should reflect the date on which the survivor submitted the request to transfer. Commenter said additional recommendations for inclusion in the model included: Establishment of a grievance plan when transfers are denied, or are granted but unsafe; a provision that survivors incur no costs other than their own expenses to move; a provision that transfer requests be considered mandatory; and a requirement that covered housing programs not penalize survivors who meet the emergency transfer requirements for exercising their rights. A commenter said a model request should include name of the perpetrator, if known, name of the victim(s), names of the family members who would be transferring with the victim, a brief description of why the victim would fear imminent harm or personal threat if made to remain in the unit, and/or self-identification as a sexual assault survivor.

HUD Response: HUD appreciates these comments and has created a model emergency transfer request that housing providers may use if they choose to require that tenants requesting emergency transfers submit documentation. The model emergency transfer request includes the requirements that victims of domestic violence, dating violence, sexual assault, and stalking must meet to qualify for an emergency transfer under VAWA; information about other types of documentation that those requesting a transfer may submit if the victim has such documentation and it is safe to provide; information on maintaining confidentiality of information the victim submits to the housing provider; and it requests information from victims about their households, the accused perpetrators if this is known and can be safely disclosed, and about why the victims qualify for an emergency transfer under VAWA. The model emergency transfer request also notes that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction, and has a line for the person filling out the form to sign and date it.

The model emergency transfer request does not include details about a housing provider's emergency transfer policy because it is incumbent on the housing provider to provide such information in its emergency transfer plan.

Comment: A model emergency transfer request should not be mandatory. Commenters said a model transfer request form would be helpful but should not be mandatory. Commenters said this could lessen the burden on housing providers and ensure providers are using a standard product that satisfies the rule's requirements, but housing providers should be free to develop and use their own forms if they so desire, which could be tailored to the individual requirements of the covered housing provider, and any model request should be optional.

HUD Response: The model transfer request form is only a model form and housing providers are not required to use it. *Comment:* Any model request should include certain aspects and should be considered documentation. Some commenters suggested that if HUD develops a model emergency transfer request form, any description of the need for a transfer by a tenant must be brief and in the tenant's own words, and have a date the request was made and the date it was granted or denied, and a description of where the tenant believes she or he will be safe or unsafe to move. Additionally, commenters said if HUD develops a model emergency transfer request form, this form should be used as documentation of the need for a transfer, and the existing documentation requirements under § 5.2007 should be supplanted by this form and this should be adopted in regulations under § 5.2005.

HUD Response: HUD agrees that the model emergency transfer request form may serve as documentation of the need for a transfer. As described earlier in this preamble § 5.2005(e) of this final rule specifies that housing providers may, at their discretion, require tenants seeking emergency transfers to submit written requests and housing providers may ask tenants who request an emergency transfer to fill out the model transfer request form. However, as also described earlier, this form will not supplant documentation requirements under § 5.2007, because the first criteria a tenant requesting an emergency transfer under VAWA must meet is that the tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. Therefore, housing providers may, but do not need to, request documentation in accordance with § 5.2007 to document the

occurrence of the VAWA incident or incidents. This model transfer request form also does not ask the tenant to identify areas where he or she feels safe or unsafe, although housing providers are welcome to include that on their own forms.

Comment: There could be problems with including criteria for requesting an emergency transfer in a model request. A commenter expressed concerns about including criteria for requesting the emergency transfer within a model emergency transfer request. According to commenter, different situations could justify an emergency transfer so any language around criteria would need to be broad and give providers the flexibility to interpret the criteria based on a tenant's situation. The commenter also recommended that HUD seek out domestic violence experts for their suggestions on appropriate criteria and language to avoid language like "reasonable belief that the tenant is being threatened" which is overly restrictive and not that helpful for providers new to this issue in understanding what merits reasonable belief.

HUD Response: HUD reiterates that the model emergency transfer request is a model request and is not required to be used. The model emergency transfer request form developed by HUD asks those who request an emergency transfer under VAWA to certify that they meet the criteria for an emergency transfer under VAWA. The model form explains, consistent with the language of VAWA, that a reasonable belief that the tenant is threatened with imminent harm from further violence means that the tenant has a reason to fear that, without a transfer, the tenant would suffer violence in the very near future.

d. Transfer Plans

Comment: HUD should provide separate model emergency transfer plans for different housing programs. Commenters recommended that HUD provide separate model emergency plans for public housing, the voucher program, project-based rental assistance, and other programs in recognition of the various laws and regulations applicable to different housing programs. A commenter said that, as an alternative to formulating specific plans, there could be one plan that provides specific applications for each program.

HUD Response: HUD's emergency transfer plan contains specific elements, described in § 5.2005(e), that must be adopted by all housing providers, regardless of the HUD housing program in which they participate, in formulating their own plans. However,

housing providers have discretion as to other elements that should be included in their plans, subject to program-specific requirements that supplement the requirements in § 5.2005(e), as the plan is to be tailored to specific capabilities of the provider and any specific requirements of the HUD housing program in which they participate that may affect the ability of a housing provider to facilitate a transfer on an emergency basis. HUD program offices will provide assistance to housing providers in developing emergency transfer plans.

Comment: HUD should allow flexibility for housing providers to determine what their emergency transfer plans look like. Commenter stated that thoughtful screening and implementation are required and an emergency transfer may take different forms and timelines depending on resources and process. Another commenter expressed support for HUD providing a model emergency transfer plan for housing providers, as an example only, and recommended allowing providers the flexibility to develop or continue implementing their own plans based on local needs and resources to manage emergency transfer requests. Another commenter said the regulation should make clear that covered housing providers do not have to utilize the exact language in HUD's model plan, so long as the housing provider's plan includes all mandatory components. To ease administrative burden and to assist housing providers in implementing or amending their emergency transfer plans, commenter said the regulation should also identify mandatory and discretionary components. A commenter said providers must adopt an emergency transfer policy substantively the same as HUD's model, so a provider's plan could eliminate the irrelevant paragraph on introductory matter in HUD's model and remain substantively the same.

Another commenter said that VAWA 2013 does not require housing providers to adopt the agencies' plans and it may be that providers will write, or will have written, their own plans. Other commenters cited a Senate Committee report from 2012 that said it is the Committee's intent that emergency transfer policies should be tailored to the various types of housing programs covered by the bill, recognizing that housing providers have varying abilities to transfer occupants based on the volume and availability of dwelling units under their control.

HUD Response: As described above, HUD's model emergency transfer plan is a model plan that presents the basic

elements set out in § 5.2005(e) of this rule to be included in any plan. Housing providers, however, will adopt their own plans that incorporates such other elements specific to the HUD housing program in which the housing provider participates that may need to be addressed in the emergency transfer plan.

Comment: Emergency transfer plans should provide more guidance. Commenters stated that a 2012 Senate Committee report said that the emergency transfer plans should include guidance for use in situations where it is not feasible for a housing provider to provide a transfer. The commenters said that, for example, HUD should consider including a HUD resource person in each HUD hub or HUD program center to assist tenants with alternate housing options, including, assisted housing properties with local preferences for victims of domestic violence, referral to the local PHA, and access to and use of tenant protection vouchers. Another commenter said the plan should also provide more detailed explanations of the protections afforded to victims and provide specific examples of transfers in order to help ensure conformity among housing providers when responding to emergency requests to transfer.

A commenter said HUD's model transfer plan must address the obligations of a covered housing provider that receives a request to relocate a survivor to their jurisdiction from another covered housing provider. The commenter said that, at the very least, the model transfer plan should provide guidance for how a covered housing provider should analyze the request and set forth a time frame for responding to the request.

HUD Response: HUD appreciates these suggestions, but declines to require that a housing provider address each of these suggestions in its emergency transfer plan. However, HUD encourages housing providers to consider these suggestions. Housing providers should be familiar with and, if they have not already done so, establish relationships with organizations that assist survivors of domestic violence, particularly those that offer help in locating safe housing for victims of domestic violence. HUD is fully aware of the shortage of available units assisted by HUD under all of its covered HUD programs, and these organizations can be a valuable resource in helping victims of domestic violence. HUD will provide assistance to help housing providers develop their own emergency transfer plans, and further assist in helping to identify HUD

housing providers located in the same jurisdiction that may be able to assist one another in helping, even on a temporary basis, a victim of domestic violence, dating violence, sexual assault, or stalking who has been residing in or occupying housing covered by this rule.

Comment: The model transfer plan should include reasonable timeframes for tenants and providers regarding submission of documents and responding to requests. Commenters said HUD should require housing providers to give tenants a status update on their request within a reasonable amount of time. A commenter stated that, because of the urgent nature of the situation, there should be time periods set out for effecting emergency transfers. The commenters said, for example, that all transfer applications submitted because of a household member's status as a victim of domestic or sexual violence should be processed and responded to within 48 to 72 hours. A commenter said, if granted, the housing provider should be required to show the household an available unit at least 1.5 miles from the current unit and current address of the perpetrator within one week; and if the resident accepts, the housing provider must sign a lease and allow the tenant to move within 24 hours of acceptance. The commenters suggested that if a unit is not available, then the housing provider should be required to make a referral to other housing providers or the agency administering Section 8 vouchers within 48 to 72 hours of the request.

HUD Response: HUD appreciates these suggestions and emphasizes that housing providers should process emergency transfer requests as quickly as possible to protect the health and safety of those requesting emergency transfers under VAWA. The housing providers should also give tenants a status update of their request if the emergency transfer cannot be provided immediately. However, in this final rule, HUD does not mandate specific time periods for responding to emergency transfer requests, but may consider establishing timelines in future rulemaking after time to determine the effectiveness of different emergency transfer policies implemented in accordance with this rule. HUD declines to mandate that housing providers show tenants requesting an emergency transfer an available unit that is a specific distance away from the current unit as closer available units may be safe, and may be more desirable to the tenant requesting the transfer, depending on different circumstances.

Comment: The model transfer plan should include a provision explaining that tenants are not responsible for rent if they have to relocate to a shelter. A commenter suggested that the model transfer plan include language saying that, in cases where the family is in immediate danger and needs to relocate to a domestic violence shelter or other temporary housing while waiting for a housing provider to process the transfer, the tenant will not be responsible for ongoing rent so long as the tenant has removed all belongings and returned the keys to the unit. The commenter further suggested that the model plan state that, under these circumstances, the housing provider will waive any normally required notice of lease termination.

HUD Response: HUD's model emergency transfer plan outlines generally applicable requirements under VAWA and this rule. The authority to exempt a tenant, who is a victim of domestic violence, dating violence, sexual assault, or stalking from payment of rent after the tenant departs the unit or the authority to waive any required notification of lease termination is program-specific. Not all HUD programs have this authority. However, where a housing provider has such authority, the housing provider should include this information in its own emergency transfer plan. Where any requirement that may impede the emergency transfer of a victim of domestic violence is a HUD regulation, and not a statutory requirement, HUD stands ready to consider waiving the regulation for good cause shown, which would be the need to transfer a victim of domestic violence, dating violence, sexual assault, or stalking to a safe location as quickly as possible. Please see the table, set out later in this preamble, which lists the covered HUD programs and which programs have the authority to allow remaining family members to remain in the subsidized unit after the tenant who established eligibility for the unit has left.

Comment: HUD should add language for clarity to the model emergency transfer plan. Commenters recommended that HUD add language about "sexual assault" and "eligibility to all victims, regardless of sex or gender identity" to the model emergency transfer plan. Another commenter said there is a paragraph in the model emergency transfer plan that indicates that requests must be "explicit," but participants must request emergency transfers in writing and the paragraph should expressly state that the request has to be in writing. Another commenter said the plan should clarify that the size of the housing provider

may affect the ability of the housing provider to execute emergency transfer requests; that is a housing provider with a small number of units may be limited in its ability to find a safe available unit.

HUD Response: HUD has revised the title of the model emergency transfer plan to read "Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking." HUD has also moved discussion of the fact that eligibility extends to all victims regardless of sex, gender identity, or sexual orientation into the main body of the document rather than only providing this information in a footnote. HUD has also inserted a footnote stating that housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age, and that HUD-assisted and HUD-insured housing programs must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

HUD declines, however, to revise the model plan in the other ways suggested by the commenters. This final rule clarifies, in § 5.2005(e), that housing providers may request that participants request emergency transfers in writing, but they are not required to do so, and housing providers may process emergency transfers requests that are not in writing as long as the tenant expressly requests the transfer. As to reference to the size of the housing provider, the model plan already indicates that the housing provider, regardless of size, cannot guarantee that a transfer request will be approved. As HUD noted earlier, HUD is aware of the limited availability of units assisted by HUD under its programs. HUD reiterates that HUD's emergency transfer plan is a model plan and that each housing provider will adopt its own plan. HUD encourages all housing providers to include as much specific information applicable to the transfer as possible, consistent with the requirements of the HUD program in which the housing provider participates.

Comment: The emergency transfer plan must incorporate strict confidentiality measures. Commenters strongly expressed support for HUD's language in the model emergency transfer plan to maintain "strict" confidentiality measures for emergency transfer. The commenters said that, at a minimum, these measures must meet the standards outlined in § 5.2007(c), including prohibitions against employee access to confidential information,

entering information into shared databases, or disclosing, revealing or releasing information except for as provided in § 5.2007(c). Commenters said that inclusion of this language is necessary to ensure that the covered housing provider does not disclose the location of the dwelling unit of the tenant to a person who committed or threatened to commit an act of domestic violence, dating violence sexual assault or stalking against the tenant.

HUD Response: HUD agrees with commenters about the importance of strict confidentiality, and retains language in the model emergency transfer plan that the housing provider keep confidential any information that the tenant submits in requesting an emergency transfer, and information about the emergency transfer, unless the tenant gives the housing provider written permission to release the information, or disclosure is required by law or required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program. The confidentiality required includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person(s) that committed an act(s) of domestic violence, dating violence, sexual assault, or stalking against the tenant. HUD has added to the model emergency transfer form that tenants should see the Notice of Occupancy Rights Under the Violence Against Women Act for more information about a housing provider's responsibility to maintain the confidentiality of information related to incidents of domestic violence, dating violence, sexual assault, or stalking.

Comment: Transfer plans should be developed with the consultation of State and local experts on domestic violence, dating violence, sexual assault, and stalking. Commenters said that the emergency transfer plans and other VAWA policies are greatly improved when developed in consultation with victim advocacy experts. Commenters recommended inserting a statement in § 5.2005(e) that all plans must be developed in consultation with state and local experts.

HUD Response: HUD agrees with the commenters' suggestion and, although HUD is not mandating consultation, HUD strongly encourages housing providers to consult with victim advocacy experts in developing their emergency transfer plans. In this final rule, HUD lists outreach activities to organizations that assist or provide resources to victims of domestic violence, dating violence, sexual assault, or stalking, as one of the efforts

covered housing providers may take to assist tenants in making emergency transfers. Please see HUD's response to an earlier comment in which HUD stressed the importance of housing providers becoming familiar and establishing relationships with victim advocacy organizations, and with becoming familiar with other housing providers, whether providing private market units, or other government-assisted units, not solely HUD-assisted, to establish a network of support which a housing provider could use to help a victim of domestic violence, dating violence, sexual assault, or stalking who needs to move quickly.

Comment: Correct error in ESG program regulation and clarify who is responsible for developing and implementing the emergency transfer plan. Commenters identified a paragraph numbering error in the proposed VAWA regulations for the ESG program, at § 576.407(g)(3)(i) (where the section is listed twice), but also stated that the second occurrence of the provision gives the recipient several options for designating which entity is responsible for developing and implementing the emergency transfer plan. The commenter recommended changing this proposed provision to say that the recipient must develop an emergency transfer plan to meet VAWA requirements and each CoC, in which subrecipients are located, must submit their own plan for approval by the recipient. The plan would be a CoC-specific plan in compliance with the recipient's plan, which provides CoC implementation detail. The commenter further said that all plans must be developed in consultation with State and local experts on domestic violence, dating violence, sexual assault, and stalking.

Another commenter asked which of HUD's housing programs must adopt an emergency transfer plan based on HUD's model plan.

HUD Response: HUD appreciates the commenter advising HUD of the error in § 576.407(g) in the proposed rule and HUD corrects this in this final rule. The final rule also makes clarifying changes to the new § 576.409(d) to clearly establish who is responsible for developing emergency transfer plans in ESG. This provision is consistent with the existing ESG requirements for developing written standards for administering ESG assistance. HUD emphasizes that all emergency transfer plans must incorporate the components listed in § 5.2005(e) of this rule, and for ESG it must also include the requirements provided under § 576.409. As discussed in § 5.2005(e) and later in

this preamble, all emergency transfer plans must describe policies to assist tenants who qualify for emergency transfers under VAWA, such as any outreach activities to organizations that assist or provide resources to victims. HUD encourages all housing providers to work with victim service providers to develop emergency transfer plans, wherever feasible. Covered housing providers in each of HUD's housing programs must adopt an emergency transfer plan. Where there are multiple covered housing providers within a program, the program-specific regulations identify which housing providers are responsible for developing and carrying out emergency transfer plans.

Rule Change: HUD moves the ESG VAWA requirements from § 576.407(g) to § 576.409 and clarifies the responsibility for developing emergency transfer plans to be more consistent with existing ESG requirements on developing written standards for ESG assistance.

Comment: Emergency transfer plans should provide "approval" criteria housing providers can reference to guide as the basis for approving a request for emergency transfer. Commenters stated that HUD should provide criteria in the model emergency transfer plan for covered housing providers to reference when approving an emergency transfer, which should include factors that take into consideration a wide range of possible scenarios and that can be uniformly standardized for each specific covered housing provider. Commenters said standardized criteria will help covered housing providers to evaluate transfer requests and to demonstrate their reasonable attempt to qualify a tenant for an emergency transfer, affording them some degree of safe harbor from litigation. Commenters said HUD's model emergency transfer plan should include required criteria for requesting an emergency transfer to an "available and safe unit."

HUD Response: As previously discussed, and with this final rule, HUD presents a generally applicable model emergency transfer plan. HUD's program offices will be able to assist housing providers in covered programs that they administer with creating their own emergency transfer plans. HUD understands the requests for more specific criteria in a model transfer plan. The request made by these commenters for more specific criteria is one of several that HUD has already addressed in this preamble. VAWA 2013 brought under coverage HUD programs that are very different from each other. The housing providers under these programs

are not always direct grantees, such as the case with PHAs, but may be subrecipients receiving assistance from governmental entities that received HUD assistance through formula programs. Consequently, the program requirements vary because of the varied nature of HUD programs. As HUD has further stated, although HUD is providing a general model emergency transfer plan, one designed to incorporate the key protections of VAWA 2013, housing providers not only should but are expected to design emergency transfer plans that not only incorporate the key protections of VAWA 2013, but reflect unique requirements or features of their programs. Again, HUD program staff will be available to assist covered housing providers or other grantees or recipients charged with the development of an emergency transfer plan. As to standardized criteria for evaluating transfer requests, HUD discussed earlier in this preamble that, under this final rule, housing providers may request that individuals submit written requests certifying that they meet the criteria for an emergency transfer under VAWA, as well as documentation that they qualify for VAWA protections, but cannot require victims requesting emergency transfers to provide third-party or other additional forms of documentation in order to qualify for an emergency transfer.

Comment: Transfer plans should contain more information about protection for victims. Commenters said that in order to better notify victims of their rights under VAWA, a provision should be added under the title "Emergency Transfer Request Documentation" that if a victim verbally requests an emergency transfer, the housing provider must notify the victim within 24 hours that a written request for a transfer must be submitted, and the notice to the victim should include information on how to submit a written request for a transfer and what information must be provided. Commenters said the plan should also state that third-party verification of the person's status as a victim is not required until after the transfer and only self-certification is required prior to it. Commenters also said HUD's model emergency transfer plan should include a provision that the victim may reject an offered unit that does not reduce the risk of harm and request that the housing provider offer another unit if available. Commenters further said a provision should be added to the plan stating that a housing provider may not

require a tenant to pay certain costs in order to transfer, which include but are not limited to paying off a previous balance or paying an additional security deposit if the tenant relocates to another unit from the same housing provider, and a victim should not bear the costs associated with the transfer.

HUD Response: As previously discussed in this preamble, HUD amends § 5.2005(e) of this rule, and also amends the Notice of Occupancy Rights Under VAWA that all tenants will receive, to clarify that housing providers may require written requests for emergency transfers. Housing providers should explain in their emergency transfer plans whether they will require written requests for transfers, and, if so, whether a specific form will be required or any written request will suffice. If a written request is required, HUD has developed a model form to help facilitate the submission and processing of a request. However, HUD encourages housing providers not to require written requests in exigent circumstances where an individual's health or safety is at risk. As also explained previously, housing providers may not require third-party documentation in order for a tenant to be eligible for an emergency transfer.

As commenter suggested, HUD has revised its model plan to include a statement that if a tenant reasonably believes a proposed transfer would not be safe, the tenant may request a transfer to a different unit. HUD has also revised its model plan to add a provision stating that tenants who are not in good standing may still request an emergency transfer if they meet the eligibility requirements in this section. As explained elsewhere in this preamble, however, tenants may have to pay certain costs associated with transfers.

Comment: Transfer plans should be readily available to tenants. Commenters said the covered housing program's emergency transfer plan must be publicly available and prominently displayed at the project site, so that tenants understand they have this option.

HUD Response: HUD agrees and requires housing providers to make emergency transfer plans publicly available whenever feasible, and, in all circumstances, available upon request.

Rule Change: Section 5.2005(e) is revised in this final rule to state that housing providers must make emergency transfer plans available upon request, and must make them publicly available whenever feasible.

e. Transfer Eligibility

Comment: Residents should be allowed to transfer even if their incomes are too high. Commenters stated that residents should be allowed to transfer if they are currently receiving a subsidy even if the household is receiving income in excess of published limits. The commenter said that, for example, the Tenant Rental Assistance Certification System (TRACS) allows for a transfer even if an individual no longer meets the income limit required for a new move-in, but not exceeds those limits. A commenter stated that victims should not fail to exercise their protections because they are afraid of losing their housing/subsidy.

HUD Response: This rule does not establish any new requirements for determining program eligibility, or include requirements pertaining to transfers other than the requirements with respect to emergency transfers that are implemented by this final rule. Existing program regulations govern transfers apart from emergency transfers requests by victims of domestic violence, dating violence, sexual assault or stalking.

Comment: Explain whether minors are eligible for emergency transfers. Commenters asked if a VAWA claim is made by an individual under the age of 18, whether management can transfer the victim to another unit, or whether a third party should be involved.

HUD Response: Un-emancipated minors would not be eligible to sign leases under HUD programs. Housing providers should consider contacting child welfare or child protective services, or law enforcement when a minor claims to be the victim of domestic violence, dating violence, sexual assault, or stalking.

Comment: Clarify whether housing providers may or must establish eligibility preferences for victims under VAWA, or waive program requirements. Commenters asked how VAWA emergency transfer plans impact covered housing providers' waiting lists. A commenter stated that the rule should clarify that housing providers are allowed, but not required to establish preferences for victims under VAWA, and that any preferences do not waive eligibility requirements. The commenter also stated that housing providers should be allowed to provide preferences for VAWA victims that are existing residents without providing preferences to individuals who have no relationship with the housing provider. Other commenters asked if agencies that administer vouchers would be required to give absolute priority for the next

available voucher to satisfy an emergency transfer request. These commenters also asked whether, if there are no vouchers available at the time of an emergency transfer request, or the waiting list for the voucher program is closed, there would be legal ramifications or other consequences for being unable to satisfy such a request.

Another commenter said HUD should clearly specify how covered housing providers are to balance the interests of applicants and current tenants who may need VAWA protections. Some commenters said HUD should expressly state that housing providers' obligation to help tenants transfer to safe housing supersedes wait list, tenant preference, or prioritization obligations and non-emergency transfers. Commenter said the negative effects of delay in transfers include forced homelessness and seeking emergency shelter, which can affect one's employment and getting children to school.

Other commenters said that HUD should require a preference for victims who have met emergency transfer documentation requirements so that they may move to the top of the waiting list for a transfer to another property under the covered housing provider's control. Other commenters asked that HUD address the implementation of emergency transfers as they relate to other competing tenant preferences such as disability and homelessness.

Commenters said HUD should clarify that housing providers can establish a voluntary preference for the emergency transfer of VAWA-related victims, which could help facilitate a relocation that may require an effective termination at one property, and enable priority move-in at another site that may be separately owned or operated. A commenter asked that HUD articulate how housing providers may adopt a preference for VAWA.

A commenter stated that HUD's model emergency transfer plan does not clarify what the housing provider is required or allowed to do to expedite the transfer process, and requested that HUD expressly state how a PHA and owner should comply with the transfer requirement given the covered providers' obligation to observe waitlist rules. A commenter recommended that HUD expressly state whether the waitlist rules under the HOME program are violated by complying with a VAWA emergency transfer policy.

HUD Response: HUD commends these commenters who raise concerns that reflect the desire to help victims of those crimes addressed in VAWA without interfering with the housing needs of individuals and families

residing in units administered by the housing provider or on the housing provider's applicant waitlist. HUD acknowledges the difficulty of achieving the right balance. This is the reason that VAWA 2013 requires an emergency transfer plan so that covered housing providers may plan in advance, what actions to take when a victim of domestic violence, dating violence, sexual assault, or stalking needs an emergency transfer. The goal is for the plan to facilitate an emergency transfer under VAWA as expeditiously as possible. The suggestion by one commenter that housing providers establish a preference for victims that need an emergency transfer, not all victims but again those that need an emergency transfer, may be one way to achieve that goal.

Consistent with program requirements and allowances, housing providers in covered programs are allowed to establish preferences for victims of domestic violence, dating violence, sexual assault, and stalking. These preferences, if established, must be established in accordance with statutory or regulatory requirements that govern the establishment of preferences.¹⁰ HUD notes that existing regulations for the public housing and housing choice voucher programs (in 24 CFR 960.206(b)(4) and 24 CFR 982.207(b)(4)) provide that PHAs should consider adoption of a local preference for admission of families that include victims of domestic violence. Such adoption would be an admission preference, admitting individuals as new tenants to a covered program, and not to be confused with a transfer priority list, which a housing provider could use to assist existing tenants. While HUD's final rule does not require housing providers to establish admission preferences for victims of VAWA incidents or transfer priority lists to aid existing tenants in a covered housing program to make an emergency transfer, HUD encourages housing providers to do so. Whether a housing provider chooses an admission preference or establishes a transfer priority list, or chooses not to or is unable to choose these approaches because of statutory provisions, the fact

remains that a housing provider must prepare a workable emergency transfer plan; that is, if a housing provider cannot provide a tenant who needs an emergency transfer with an available safe unit immediately, the housing provider must have resources and policies that it can turn to help this tenant.

HUD further clarifies in this final rule that covered housing providers must detail in their emergency transfer plans the measure of any priority that those who qualify for an emergency transfer under VAWA will receive. Existing tenants of a housing provider who request a transfer to another unit for which they would not be required to submit an application (what this rule calls an internal emergency transfer, and an example would be where no application would be required for a public housing tenant to transfer from one building within a PHA's portfolio to another building within the PHA's portfolio) should not be placed on applicant waiting lists, as these tenants are not new applicants. Where a tenant requests a transfer to a housing unit where an application would be required (what this rule calls an external emergency transfer, and an example would be a transfer to a different program or to a unit that the housing provider does not control), each covered housing provider's emergency transfer plan must provide measures to assist these tenants. For example, under the plan a provider may have established relationships with other covered housing providers in the same jurisdiction where they share updated information on available units, or relationships with victim service providers who can assist tenants in locating, and quickly moving to, a safe and available unit.

The purpose of these clarifications is to ensure individuals who qualify for an emergency transfer under VAWA receive a meaningful opportunity to transfer as expeditiously as possible and to avoid the possibility that such individuals may, for example, be placed on the bottom of an applicant waiting list with no other measures taken to assist the individuals, counter to the intent of the emergency transfer provision. The provider, through their emergency transfer plan, must develop a plan for what actions to take when a victim of domestic violence, dating violence, sexual assault, or stalking needs an emergency transfer while balancing the needs of other eligible individuals.

HUD understands that housing providers receive requests for emergency transfers other than by those

who may be victims of VAWA crimes, and therefore housing providers may maintain a list of those requesting emergency transfers. Where a housing provider maintains such a list, an individual seeking an emergency transfer under VAWA must be placed on this list or on a separate list for emergency transfers under VAWA. Such lists for providing emergency transfers must be maintained consistent with program confidentiality requirements and HUD's confidentiality requirements at § 5.2007(c). Alternatively, if there is no list, an individual requesting an emergency transfer under VAWA must, at a minimum, be given any priority as an emergency transfer requestor that is consistent with the mechanism the housing provider has in place to track emergency transfer or general transfer requests.

In cases where there are multiple individuals who need and qualify for a vacant unit, HUD strongly encourages housing providers to transfer applicants who qualify for an emergency transfer under VAWA as quickly as possible, and to prioritize between multiple individuals that need transfers when there are vacant units for which the tenant requesting the emergency transfer qualifies. Housing providers may give priority to VAWA emergency transfer requests regardless of whether the housing provider prioritizes other types of emergency transfer requests. HUD encourages consideration of the danger to the victim of a VAWA crime until a transfer can be made.

Emergency transfer obligations under VAWA do not supersede any eligibility or other occupancy requirements that may apply under a covered housing program. For example, the tenancy priority for an available accessible unit required to be accessible under HUD's Section 504 regulation must still be applied to maximize the utilization of accessible units by individuals who need the accessibility features. The objective of the emergency transfer plan is to develop a plan for how to fill an available unit cognizant of the need to transfer an individual who qualifies for an emergency transfer as quickly as possible while meeting other obligations and balancing competing needs.

As for the HOME program, owners must continue to comply with existing statutory requirements when it comes to admitting tenant but are encouraged to implement preferences in their HOME-funded projects for victims of domestic violence, dating violence, sexual assault, and stalking so to assist those needing emergency transfers. HUD will issue guidance on implementing the

¹⁰ For example, the Quality Housing and Work Responsibility Act of 1998 repealed mandatory Federal preferences for public housing and Section 8 programs. Under HUD's regulations at 24 CFR 960.206(a)(1) and 24 CFR 982.207(a)(2), a PHA's system of local preferences must be based on local housing needs and priorities, and, in determining such needs and priorities, PHAs must use generally accepted data sources. Regarding the HOME program, housing providers must follow the procedures described in their written selection policies.

VAWA emergency transfer plan in state and local HOME programs.¹¹

Rule Change: Section 5.2005(e) of this final rule requires that emergency transfer plans must describe how covered housing providers will assist tenants in making an emergency relocation to another unit where the tenant would not be a new applicant (an internal emergency transfer) when a safe unit is not immediately available for the tenant, and how covered housing providers will assist tenants in making an emergency relocation to another unit where the tenant would have to undergo an application process to reside in the new unit (an external emergency transfer) when a safe unit is not immediately available.

The rule specifies that tenants must be able to seek an internal emergency transfer and an external emergency transfer concurrently if a safe unit is not immediately available so that the tenant has a greater opportunity to move to a safe unit as quickly as possible. For example, if a tenant is not able to immediately relocate to a safe unit because there is none available for which the tenant would not have to go through an application process, emergency transfer plans must have policies that assist the tenant in making an internal emergency transfer as expeditiously as possible, for example, by placing that tenant on an emergency transfer list, and simultaneously provide the tenant with resources or assistance to seek an external emergency transfer to a unit that may be under a different provider or different program. The rule specifies that policies for assisting tenants to make external emergency transfer include arrangements with other covered housing providers to facilitate moves. These arrangements could be those that allow housing providers to share tenant files, if the tenant provides written consent to do so and any applicable confidentiality requirements are met, in order to expedite a tenant's new application process, and arrangements where covered housing providers alert one another when a unit becomes newly available for occupancy. The rule also

specifies that policies may include outreach activities to organizations that assist or provide resources to victims of domestic violence, dating violence, sexual assault, or stalking. For example, as discussed earlier, covered housing providers could develop relationships with groups that assist victims covered by VAWA in making emergency transfers.

Section 5.2005(e)(3) of this final rule provides that, for purposes of notification to existing tenants, and overall public awareness, the emergency transfer plan must describe any measure of priority given to individuals who qualify for an emergency transfer under VAWA in relation to other categories of transfers and waiting lists. Under the final rule at 5.2005(e)(6) tenants who request and qualify for an internal emergency transfer must, at a minimum, be given any priority that housing providers may already provide to other types of emergency transfer requests. The rule also requires, in § 5.2005(e)(9), that emergency transfer plans must describe policies for tenants who have tenant-based rental assistance to make emergency moves with that assistance if this is something that the covered housing provider may encounter.

Additionally, HUD's regulations at 24 CFR 982.207(b)(4) and 960.206(b)(4) are revised to include victims of dating violence, sexual assault, and stalking, as well as victims of domestic violence, as those whose families should be considered for admission preferences.

Comment: Explain whether a victim always has to be eligible for a program in order to receive a transfer, or whether requirements could be waived.

Commenters stated that it is unclear whether an emergency transfer can be provided to a victim who is not eligible for a unit or whether the VAWA transfer requirement supersedes the eligibility requirements for special populations, such as elderly or disabled. Other commenters stated that, after the first year of assistance at a PBV site, families are eligible to receive a tenant-based voucher, and asked whether the one-year requirement would be waived for VAWA. A commenter suggested that HUD allow families needing an emergency transfer under VAWA to request a voucher within the first year of assistance at the PBV development, and said PHAs could be required to create a priority on their tenant-based HCV waiting list for these transfers from a PBV development due to domestic violence. A commenter asked which of its housing resources should be prioritized for victims of domestic violence requesting an emergency transfer and requested confirmation

from HUD of any waivers it may need from HUD to grant an emergency tenant transfer request that may require tenant assignment procedures to operate outside of the agency's standard practices and policies.

HUD Response: The provisions in VAWA on emergency transfer requests do not supersede eligibility requirements for HUD housing serving specific populations, or for any HUD housing covered by VAWA 2013. Unlike VAWA 2005, VAWA 2013 did not revise the underlying statutes governing the HUD programs covered by VAWA 2013, and therefore, the eligibility requirements for each of the covered HUD programs are unchanged by VAWA 2013. Housing providers must continue to comply with the HUD program regulations regarding eligibility, as may be supplemented by guidance that aids covered housing providers in addressing specific fact situations. Although VAWA 2013 does not override the specific program requirements for the HUD programs covered by VAWA 2013, VAWA 2013 requires housing providers in each of the HUD-covered programs to develop and issue an emergency transfer plan. As discussed above, to fulfill this requirement, each housing provider must develop a plan that does its best to transfer a victim of domestic violence to a safe, available unit as quickly as possible. HUD recognizes that because of statutory requirements, a victim receiving assistance under one HUD program may not be eligible for assistance under another HUD program because of the different eligibility requirements. It is for these reasons that, under this final rule, housing providers must take measures to assist victims who may not be eligible to transfer to an available unit, such as engaging in outreach to other organizations, such as domestic advocacy organizations, faith-based organizations and State and local government entities, to measure the availability of assistance that can be provided on an emergency basis. HUD housing providers should also reach out to other housing providers, private market providers and other government-assisted providers to determine where they may be able to assist each other in domestic violence situations. While a housing provider may not have an available safe unit at a point in time when a victim of domestic violence may need one, HUD expects that housing providers' emergency transfer plans will provide for other means to help keep victims of domestic violence safe.

With respect to the comments about project-based voucher housing, commenters are correct that, after the

¹¹ The HOME statute at 42 U.S.C. 12755(d) permits owners of HOME-assisted rental projects to establish certain preferences for HOME-assisted units, but requires them to admit applicants in chronological order from the waiting list. Consequently, absent a specific project preference for victims of domestic violence, a victim who is not already at the top of a waiting list for a project may not be admitted to a vacant HOME-assisted unit before other eligible applicants on the waiting list. HUD encourages participating jurisdictions to implement such preferences in their HOME-funded projects, but cannot dictate that establishment of any specific preferences in HOME projects.

first year of assistance at a PBV site, families are eligible to receive a tenant-based voucher. This is a statutory provision that is not changed by HUD's VAWA regulations. HUD allows, but does not require, PHAs to establish reasonable transfer policies that do not conflict with statutory provisions, HUD occupancy regulations, or housing goals. However, this final rule does alter the family right to move provisions for project-based vouchers in 24 CFR 983.261, which provides that families will not be required to notify a PHA before they leave a unit if they are leaving because a member of the family is the victim of a VAWA crime and the move is needed to protect the health and safety of a family member, or a family member was a victim of sexual assault that occurred on the premises during the 90-calendar-day period before the family requests to move. In such a case, the family will have to notify the PHA as soon as possible after they leave the unit, and the PHA will have to offer the family assistance to a different unit, or the PHA may offer the family a housing choice voucher if the family had been in the unit for at least a year. Under this final rule, 24 CFR 983.261 also now specifies that a PHA may offer a victim tenant-based rental assistance if a family breaks up as a result of domestic violence, dating violence, sexual assault, or stalking.

With respect to prioritizing victims of domestic violence, dating violence, sexual assault, or stalking for placement in housing, HUD does not mandate that housing providers create preferences for victims of domestic violence, but encourages housing providers to provide preferences for victims of domestic violence, dating violence, sexual assault, and stalking consistent with any regulations that govern the establishment of preferences. For example, a PHA's system of local preferences must be based on local housing needs and priorities by using general accepted data sources and information obtained through the PHA Plan public comment process (24 CFR 960.206(a)(1) for public housing and 24 CFR 982.207(a)(2) for the HCV program.

Rule Change: 24 CFR 983.261 is revised in this final rule to specify that requirements that families contact PHAs in advance of terminating a lease to request comparable tenant-based rental assistance if the family wishes to move do not apply if a member of the family is the victim of a VAWA crime and the move is needed to protect the health and safety of a family member, or a family member was a victim of sexual assault that occurred on the premises during the 90-calendar-day period

before the family requests to move. Under this final rule, a PHA may not terminate assistance if the family, with or without prior notification to the PHA, moves out of a unit in violation of the lease, if such move occurs to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move. This section is also revised to specify that if a family breaks up as a result of an occurrence of domestic violence, dating violence, sexual assault, or stalking, the PHA may offer the victim the opportunity for continued tenant-based rental assistance.

f. Effectiveness of Transfers

Comment: Emergency transfers may be ineffective if they are within the same property, or if victims or survivors compromise their new locations to perpetrators. Commenters stated that emergency relocation to other units within the same development may not be effective in protecting a victim, and housing providers should not transfer a victim to a unit in the same development. A commenter asked whether management could refuse to allow a victim to transfer back to the perpetrator's unit if the victim sought such transfer. Another commenter said that rather than provide transfers, it would be more effective to evaluate every victim's situation on a case-by-case basis and use domestic violence shelters where necessary.

Commenters also expressed concern about the victims themselves disclosing their new location to perpetrators. The commenters said that a victim, as well as other household members, should be required to self-certify a declaration that they will not disclose the location of a new unit to the perpetrator (if known) nor to anyone known to the victim, and that if they do disclose the new unit's location, the family will not be entitled to any additional unit transfers under the umbrella of VAWA protections. Commenters further suggested that any tenant who invites a perpetrator that the tenant knows is not permitted on property grounds into the tenant's unit should receive a lease violation notice.

HUD Response: HUD appreciates commenters' concerns, but declines to place restrictions on emergency transfers that would be contrary to the

intent of VAWA 2013. VAWA provides that individuals are eligible for emergency transfers if they expressly request the transfer and reasonably believe there is a threat of imminent harm from further violence if they remain in the same dwelling unit, or, for sexual assault victims, the assault occurred on the premises during the 90-calendar-day period preceding the date of the transfer request. There are no other restrictions on eligibility that are in the statute.

HUD is not in a position to speculate on why a survivor might return to live in the perpetrator's unit, or how or why a perpetrator might come to know of a survivor's new address. Each victim's situation will be unique to the victim. If an individual reasonably believes that there is a threat of imminent harm, or if an individual has been sexually assaulted on the premises, and that individual requests a transfer, then that individual is eligible for a transfer under VAWA to an available unit that they believe to be safe.

Regarding transfers within the same property, HUD understands that a transfer to a unit within the same development in which the perpetrator resides might not be safe for victims. However, if the unit in the same development is the only one available, the victim should be allowed to consider transferring to the unit. This option should not be foreclosed to the victim. The victim is in the best position to make this decision. Accordingly, HUD does not prohibit emergency transfers within the same property, but encourage housing providers to endeavor to identify an available unit in another property.

g. Emergency Transfers for Sexual Assault

Comment: Clarify the requirements for an emergency transfer for victims of sexual assault. Commenters asked HUD to clarify whether the condition that the sexual assault occurred on the premises and happened during a 90-day period preceding the tenant request for transfer is intended to waive the requirement of reasonable belief of imminent harm for other emergency transfers. A commenter said that language in HUD's regulation should explicitly state the conditions under which a victim of sexual assault can request an emergency transfer. A commenter also asked if a victim of sexual assault expressly requests a transfer and reasonably believes that there is a threat of imminent harm, whether it matters when the sexual assault occurred.

Other commenters said HUD should rescind the specifications that the

assault must have occurred within 90 days of the emergency transfer request, and that it must have occurred on the premises in order for the victim to be provided an emergency transfer. A commenter said HUD's model emergency transfer plan appears to outline stricter guidelines for victims of sexual assault to access protections as compared to victims of domestic violence, dating violence and stalking. A commenter stated that victims of sexual violence may experience delayed or long-lasting reactions to the trauma and there are many reasons why victims may not report the sexual assault immediately.

Another commenter stated that if an individual is dragged off the premises and sexually assaulted elsewhere, that individual should be able to ask for an emergency transfer. A commenter said that, in the case of children at the very least, who may not disclose the assault for some period of time out of fear, it should not matter if the sexual assault occurred more than 90 days prior. A commenter said that it should not matter if a rape occurred off premises if the perpetrator of the rape is on the lease and the victim is a tenant.

Other commenters said that covered housing providers should be encouraged to apply a longer time frame when necessary, and, at a minimum, the language of HUD's proposed regulation at § 5.2005(e)(1)(b)(ii) should be changed so it is clear that nothing in the regulations prohibits housing providers from considering and approving transfers for victims of sexual assault when the assault occurred more than 90 days before the transfer request was made or the sexual assault did not occur on the premises. Commenters said the proposed regulatory provision, as written, may cause some confusion or be misinterpreted to suggest that moves to protect the health and safety of the family also must be within the 90-day time frame or experienced on the premises.

HUD Response: HUD's regulations on emergency transfer for victims of sexual assault mirror the provisions in VAWA 2013. The 90-day time frame is from the statute. However, the statutory provisions are the minimum requirements that covered housing providers must meet. Covered housing providers may allow more time. They are not confined to the 90-day period, and should consider additional time, as commenters suggested, given that certain victims of sexual assault may fear disclosure.

Under VAWA 2013, victims of sexual assault qualify for an emergency transfer if they either reasonably believe there is

threat of imminent harm from further violence if they remain in their dwelling unit, or, the sexual assault occurred on the premises during the 90-calendar-day period preceding the date of the request for transfer. Thus, emergency transfer plans must provide that victims of sexual assault will be eligible for an emergency transfer if they expressly request the transfer and they either reasonably believe there is threat of imminent harm from further violence if they remain in their unit, regardless of where or when the sexual assault occurred, or, the sexual assault occurred on the premises during the 90-calendar-day period preceding the date of the request for transfer, regardless of whether they reasonably believe there is a threat of imminent harm from further violence if they remain in their unit. HUD has revised the Notice of Occupancy Rights under VAWA and the Model Emergency Transfer Plan to clarify that there are two ways that victims of sexual assault may qualify for an emergency transfer under VAWA. HUD also clarifies this in the rule.

With respect to a commenter's statement that a victim who was attacked by a perpetrator on the grounds of the covered housing provider but dragged from the property and sexually assaulted elsewhere should be considered as meeting the VAWA requirements for a sexual assault occurring on the premises, HUD finds that this situation would meet the requirement because, in essence, the start of the assault occurred on the premises.

Rule Change: Section 5.2005(e)(2)(ii)(B) is revised to clarify that in the case of a tenant who is a victim of sexual assault, the tenant qualifies for a transfer if either the tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same unit that the tenant is currently occupying, or the sexual assault occurred on the premises during the 90-calendar-day period preceding the date of the request for transfer.

h. The Scope of the Transfer Provision

Comment: Clarify whether a transfer can happen between different properties and different programs, and whether such transfer would be required and how it would be achieved. Commenters asked for clarification on the meaning of "transfer"—whether a transfer means a transfer within a property, within properties that a housing provider administers, or includes properties not in the housing provider's control. A commenter asked if survivors would be able to establish eligibility across

different HUD programs, different covered housing providers, different geographies, and housing programs in other agencies, or whether they would be limited to the program and housing provider where they currently reside.

Commenters asked how a transfer between properties would be coordinated and sought more guidance from HUD on transfers. Commenters asked how a PHA that administers the HCV program should effect a transfer and whether the PHA will be responsible for finding the victim a new unit. A commenter asked whether it would be acceptable for a PHA to process an expedited "move with continued assistance" (MWCA) or allow a MWCA when it would otherwise not be allowed.

Commenters asked whether it is mandatory or discretionary for PHAs to transfer a family from public housing to Section 8 housing. A commenter said that flexibility in this area would facilitate a transfer by giving PHAs the ability to transfer the household to the first unit or voucher that is available for the household's size regardless of program. A commenter also asked whether PHAs would be expected to issue a voucher to a project-based participant at risk of domestic violence.

A commenter asked what a housing provider should do if there are no units available on the current property to transfer the victim to, or there is a unit available but it does not have enough bedrooms to accommodate the victim and the victim's family.

HUD Response: In this final rule, HUD clarifies that covered housing providers must allow tenants who meet the rule's criteria for an emergency transfer to make an internal emergency transfer, which, as discussed above, is one where a tenant could reside in a new unit without having to undergo an application process, when a safe unit is immediately available. A significant obligation of every housing provider is to keep its own tenants safe, and where an existing tenant meets the eligibility requirements and would not have to undergo an application process in order to move to an available unit that is safe, the tenant must be offered the transfer to this unit.

As discussed in the proposed rule, HUD reads "under a covered housing program" to mean the covered housing provider must, at a minimum, transfer the tenant to a unit under the provider's control and assisted under the same covered program as the unit in which the tenant was residing, if a unit is available and is safe. This means housing providers may be required to transfer certain tenants to different

properties that are under the housing providers' control, provided that these properties are under the same program in which the tenant is assisted, and the properties are subject to one wait list. If there is a separate wait list for each of these properties, then the housing provider may not, depending upon program requirements, be able to easily transfer a tenant to another property.

The proposed rule stated that, in addition, covered housing providers must allow tenants who qualify for emergency transfers to transfer to a safe and available unit that is under their control and under another covered housing program, if such transfer is permissible under applicable program regulations. This means the program regulations for both the program that the tenant is leaving and the program regulations for the program the tenant would be joining allow for a transfer between programs. After further review, HUD has removed this language from the final rule, as at the present time, there are no HUD programs to which an individual could transfer from another program without applying for housing under a new program. Tenants seeking to move to a unit covered by a different program may apply for housing under the new program. However, a housing provider is not fulfilling its emergency transfer obligation if the only relief offered to a tenant is to be placed at the bottom of a waiting list for a new program. The housing provider that administered the unit in which the tenant became a victim of domestic violence must have in its emergency transfer plan a process through which the provider will assist the victim in finding alternative housing. For example, the plan could include providing the victim with names, addresses, or phone numbers of domestic advocacy organizations that stand ready to assist victims of domestic violence on an emergency basis, and a list of other housing providers, whether private market providers or other government-assisted housing providers, that may have offered their availability to be contacted by the housing provider who has a tenant who is a victim of domestic violence, and may possibly be able to offer assistance to a victim of domestic violence.

Certain HUD programs have additional specific requirements under this rule as to actions that housing providers must take to assist tenants in transferring when a safe unit is not immediately available for victims who qualify for emergency transfers under VAWA. HOME and HTF require that the participating jurisdiction (in the case of HOME) or the grantee (in the case of

HTF) must provide a list of properties in the jurisdiction that include HOME or HTF-units (depending on which program the tenant is currently under) to tenants in these programs that request and qualify for external emergency transfers under VAWA. Under this rule, the list must include for each property: The property's address, contact information, the unit sizes (number of bedrooms) for the HOME or HTF-assisted units, and, to the extent known, any tenant preferences or eligibility restrictions for the HOME or HTF-assisted units. In addition, the participating jurisdiction or the grantee may establish a preference under the program for tenants who qualify for emergency transfers, and coordinate with victim service providers and advocates to develop the emergency transfer plan, make referrals, and facilitate emergency transfers to safe and available units. For the HOME program, the participating jurisdiction may provide HOME tenant-based rental assistance to tenants who qualify for emergency transfers under 24 CFR 5.2005(e). Under the ESG and CoC programs, tenants who live in assisted units and qualify for emergency transfers under VAWA but cannot make an immediate internal emergency transfer to a safe unit receive priority over all other applicants for new assistance or housing, subject to certain eligibility restrictions. Additionally, given that 24 CFR 5.2005(e)(9) provides for tenants who are receiving tenant-based rental assistance and qualify for an emergency transfer to move quickly with that assistance, the ESG and CoC program rules require the emergency transfer plan to specify what will happen with respect to the non-transferring family member(s), if the family separates in order to effect an emergency transfer. Under HUD's Section 8 programs and Section 202 and Section 811 programs, this final rule provides that covered housing providers may adopt or modify existing admission preferences or transfer waitlist priorities to facilitate emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking, and must review their existing inventory of units and determine when the next vacant unit may be available, and provide a list of nearby HUD subsidized rental properties to tenants who qualify for emergency transfers under VAWA.

As noted earlier in this preamble and provided in § 5.2005(e)(12), emergency transfer obligations under VAWA do not supersede any eligibility or other

occupancy requirements that may apply under a covered housing program.

Housing providers are strongly encouraged to accept emergency transfers from different housing providers, including transfers from other HUD-covered programs as long as program eligibility requirements are met, even though they are not required to do so. HUD strongly encourages housing providers who accept emergency transfer requests from other housing providers to prioritize those requests from other providers in the same manner that they prioritize VAWA emergency transfer requests that they receive from their own tenants. However, where there may be a conflict between a tenant of a housing provider needing an emergency transfer and a tenant of another housing provider needing an emergency transfer, the housing providers' first obligation is to its own tenants.

With regard to carrying out a transfer for an HCV participant, the transfer would follow current PHA policies regarding transfers. Pursuant to existing regulations, the PHA must allow the family in the tenant-based voucher program to move with continued tenant-based assistance (24 CFR 982.354(b)(4), 982.353(b)). The PHA must issue the victim a voucher allowing the victim to search for another unit in its jurisdiction, or begin the portability process if the victim wishes to move outside of the PHA's jurisdiction.

Under the PBV program, the assistance is tied to the unit as opposed, in the case of tenant-based assistance, to the family. Therefore, PBV families cannot move with their PBV assistance. However, if the victim seeks to move from the victim's unit, has been living in the PBV unit for more than one year, and has given the owner advance written notice of intent to vacate (with a copy to the PHA) in accordance with the lease, the PHA must give the victim priority to receive the next available opportunity for continued tenant-based rental assistance (24 CFR 983.261).

In response to the comment about transferring tenants between public housing and Section 8 housing, these are different programs, with separate statutory and regulatory requirements, and in order for a tenant to receive assistance through a program in which they are not currently participating, they would have to apply for housing under the new program. However, owners may, and HUD strongly encourages owners to, assist tenants in facilitating moves to other programs. Housing providers may be able to facilitate tenant transfers between different programs and different providers by

establishing a preference for victims of domestic violence, dating violence, sexual assault, or stalking.

Rule Change: Section 5.2005 is revised to state that the emergency transfer plan must allow tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to make an internal emergency transfer under VAWA when a safe unit is immediately available. The statement regarding transfers to a unit in another covered housing program if such transfer is permissible under applicable program regulations has been removed. Additionally, as previously discussed, § 5.2005 requires that emergency transfer plans describe policies for assisting tenants in making internal and external emergency transfers when a safe unit is not immediate available.

Additionally, this rule revises HUD's HOME and HTF regulations in § 92.359 and § 93.356, respectively, to require that participating jurisdictions or grantees must provide a list of properties in the jurisdiction that include HOME or HTF-assisted units, and information about each property, to tenants who qualify for, and wish to make, an external emergency transfer under VAWA. The regulations provide additional actions the participating jurisdiction or grantee may take to comply with this rule. The rule also revises HUD's ESG and CoC regulations, in §§ 576.400(e) and 576.409 (for ESG) and §§ 578.7 and 578.99 (for CoC), to provide that families living in units assisted under these programs who qualify for emergency transfers under VAWA but cannot make an immediate internal emergency transfer must be provided with priority over all other applicants for a new unit under these programs or other assistance under these programs, subject to certain restrictions.

Under HUD's Section 8 programs and Section 202 and Section 811 programs, this final rule provides, in §§ 880.613, 882.407, 882.804, 884.226, 886.139, and 891.190, that covered housing providers may adopt or modify existing admission preferences or transfer waitlist priorities to facilitate emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking, and must review their existing inventory of units and determine when the next vacant unit may be available, and provide a list of nearby HUD subsidized rental properties to tenants who qualify for emergency transfers under VAWA.

Comment: Clarify that a housing provider cannot guarantee safety in a new unit, or that a perpetrator will not learn the new unit's location.

Commenters stated that there is no way a housing provider can guarantee safety, and a commenter asked that references to an owner's obligation to transfer a victim to a "safe" dwelling unit be removed from the rule. Another commenter expressed concern that most HOME-funded developments are single-building, 50- to 100-unit building, and for transfers made to another unit in the same building where the victim's perpetrator continues to live, the perpetrator could very quickly learn the location of the victim's emergency transfer unit. Commenter asked HUD to make explicit acknowledgment of this scenario in the final regulation.

HUD Response: Neither the VAWA statute nor HUD's regulations require a housing provider to guarantee safety. As noted in § 5.2005 (e)(1), this rule defines a safe unit for emergency transfer purposes as one that the victim of domestic violence, dating violence, sexual assault, or stalking believes is safe. The VAWA statute specifies that the unit to which a housing provider transfers a victim, under an emergency transfer request, is to be available and safe. Accordingly, HUD is not removing reference to the unit being "safe" from the regulations. Housing providers do not have to guarantee safety, but should do their best to identify an available unit that the victim considers safe.

Rule Change: Section 5.2005(e)(1) of this final rule is revised to state that for purposes of VAWA emergency transfers, a safe unit refers to a unit that the victim of domestic violence, dating violence, sexual assault, or stalking believes is safe.

Comment: Units should be left vacant for a period of time. A commenter stated that units should remain vacant for a reasonable period of time after the victim has moved because the perpetrator may not know that the victim moved, thus endangering a new resident.

HUD Response: HUD declines to require housing providers to keep units vacant for a period of time after a victim has moved from a unit. Consistent with program requirements, housing providers may choose to leave units vacant if they believe that will be in the best interest of the property's residents, but HUD is not requiring housing providers take this action.

Comment: Clarify that "emergency transfer" applies only to truly emergency situations. Commenters stated that HUD's rule should be clear that an emergency transfer should be in response to an imminent danger, where removal of the victim from the victim's current residence is necessary for the victim's safety. Commenter also stated

that the proposed rule referred to an emergency transfer being authorized in the case of sexual assault that occurred within 90 days of the date of the request, but a 90-day delay seems inconsistent with the common understanding of the word "emergency."

HUD Response: VAWA 2013 provides that tenants are allowed to transfer if they expressly request the transfer and reasonably believe they are threatened with imminent harm from further violence if they remain within the same dwelling unit; or in the case of a tenant who is a victim of sexual assault, the sexual assault occurred on the premises during the 90-calendar-day period preceding the request for transfer. This rule tracks these statutorily required conditions.

Comment: The proposed rule and notice of rights and model emergency transfer plan should guarantee the ability to transfer that is provided in VAWA 2013. Commenters stated that the rule and associated documents should be revised to require covered housing providers to transfer tenants who are victims under VAWA to another unit in any covered housing program, instead of only requiring covered housing providers to transfer such tenants to a unit under the control of the covered housing provider and assisted under the same covered program.

Commenters further stated that the permissive language in the rule, notice, and model emergency transfer plan that emergency transfers may occur if a tenant is eligible for housing in the unit to which the tenant would be transferred should be changed to mandatory language that emergency transfers shall occur if a tenant is eligible for housing. A commenter suggested that the rule should be revised to eliminate provisions that a transfer is contingent on if such transfer is permissible under applicable program regulations and that waiting lists or tenant preferences or prioritization must be considered. The commenter stated that these changes are necessary because the text, purpose, and legislative history of VAWA 2013 require that, under the statutory emergency transfer provisions, a transfer must be provided to an available and safe unit under any covered housing program. The commenter stated that the text of VAWA requires agencies to adopt a model plan that allows tenants to transfer to another available and safe unit that is assisted under "a" and not "the" covered housing program.

HUD Response: As was discussed previously in response to an earlier

comment, this rule does not require that covered housing providers transfer tenants who are victims of domestic violence to another unit in any HUD-covered housing program. A tenant who moves to a unit covered under a different housing program or a different provider would be a new applicant, and not a transferee, and certain application procedures would need to be followed. In addition, VAWA does not override the eligibility or occupancy requirements of the different covered programs. Therefore, a transfer cannot disregard the eligibility or occupancy requirements of the different covered housing programs, unless the authorities governing an individual covered program allow those eligibility and occupancy requirements to be set aside or waived under certain circumstances. The specific eligibility requirements in program-specific statutes still apply, and housing providers must comply with those requirements. HUD therefore maintains the provision in the proposed rule that emergency transfer requirements do not supersede any eligibility or other occupancy requirements that may apply under a covered housing program.

HUD is committed to developing ways to facilitate emergency transfers among different providers and different covered housing programs, and will continually examine ways to improve the efficacy of the current policies. For example, HUD will examine the variations in eligibility requirements and strive to identify those programs that have eligibility requirements that are comparable but not identical to see if HUD can develop a “fast-track” admission process, so to speak, for facilitating a tenant of one HUD-covered program and who is a victim of a VAWA crime to quickly meet the eligibility requirements of another HUD-covered program. Further, HUD is considering developing a model “collaborative” emergency plan in which covered housing providers in a given area work together and commit to aid one another in finding available safe units for their tenants who are victims of domestic violence.

HUD encourages housing providers to assist those who qualify for emergency transfers under VAWA to expedite applications for new housing units, in situations where a new application would be required, and to explain such measures in their emergency transfer plans. To facilitate adoption of this proposal, this rule revises the standards for PHA tenant selection criteria in public housing to state that PHAs may accept and use a prior covered housing provider’s determination of eligibility

and tenant screening and verification information so that victims of domestic violence, dating violence, sexual assault, or stalking who qualify for emergency transfers under VAWA can move more quickly. HUD notes that portability procedures for the Housing Choice Voucher Program in 24 CFR 982.355(c)(7) already state that when a family moves under portability to an area outside the initial PHA’s jurisdiction, the initial PHA must promptly notify the receiving PHA to expect the family, and the initial PHA must give the receiving PHA the most recent form HUD 50058 (Family Report) for the family, and all related verification information.

Rule Change: This rule revises 24 CFR 960.203 to include a provision that, in cases of requests for emergency transfers under VAWA, with the written consent of the victim of domestic violence, dating violence, sexual assault, or stalking, the receiving PHA may accept and use the prior covered housing provider’s determination of eligibility and tenant screening and all related verification information, including form HUD 50058 (Family Report).

Comment: Housing providers should work with victims to ensure they are placed in a housing unit. Commenters said that emergency homeless shelters are not viable, long-term alternatives for re-housing domestic violence survivors, and a survivor and their affiliated individuals should be placed in a housing unit whenever possible. Commenters said if housing is not available at the time that the victim seeks to move, housing providers should demonstrate they are immediately and continually working to find new housing for survivors.

HUD Response: HUD agrees with commenter that emergency homeless shelters may provide immediate accommodation but are not long-term alternatives for rehousing anyone who needs housing. Victims who are eligible for emergency transfers should be moved to a safe housing unit if one is available as soon as possible. The requirement to transfer victims, who seek to move from their unit, does not end at a specific time, but remains until the victim, who requested the transfer, informs the housing provider that the victim no longer seeks the transfer, or the victim, no longer receives housing or housing assistance through a covered housing program.

Comment: Clarify that transfers will not be guaranteed, especially to a particular site. A commenter said language in HUD’s model emergency transfer plan that the housing provider cannot guarantee that a transfer request

will be approved or how long it will take to process a transfer request should be reiterated and emphasized repeatedly so that tenants fully understand this is not a guarantee. Other commenters said plans and guidelines should not suggest that a tenant will be transferred to a specific site, and the family should accept an appropriate unit. A commenter said it has experienced residents trying to use emergency transfer procedures to get into a specific site.

HUD Response: The language in the model emergency transfer plan stating that the housing provider cannot guarantee that a transfer request will be approved or how long it will take to process is sufficient. Having said that however, because it is an emergency transfer plan required by VAWA 2013, the expectation is that housing providers address every emergency transfer request as an emergency and move as expeditiously as possible to place the victim of domestic violence in a safe unit, either one that is in the housing provider’s control, or one that is made available by the network of support that HUD encourages every housing provider to establish. Protecting victims of domestic violence should be a collaborative effort of the public sector and private sector in every community.

As for the safety issue, housing providers may add in their own emergency transfer plans additional language noting the inability to guarantee the safety of a specific unit or site. It is also important to note that although housing providers may believe that they have identified a safe unit, the housing provider may not force victims of domestic violence, dating violence, sexual assault, or stalking to transfer to a site where the victim does not feel safe. Such a move would not be a transfer to a “safe” unit in accordance with VAWA 2013 and HUD’s final rule.

Comment: Provide for appeals if a tenant is denied a transfer. A commenter said that when a tenant is denied a transfer under VAWA, or offered an unsafe unit, the tenant seeking the transfer must have the ability to challenge the action irrespective of the particular covered housing program. The commenter said all transfer denials should be in writing and explain the basis for the denial of the housing transfer and, if the transfer is not granted within 72 hours, the tenant can assume it has been denied and grieve or appeal the decision.

HUD Response: Tenants will be made aware of their rights regarding emergency transfers through the Notice of Occupancy Rights, and as described in § 5.2005(e), tenants will have the

right to review their housing provider's emergency transfer plan. A tenant should feel free to ask to talk to their housing provider about any provision of the emergency transfer for which the tenant may have questions. If a victim feels that there has been an unfair denial of an emergency transfer and is unable to resolve this situation with their housing provider, the victim should contact HUD.

Comment: Explain whether there are limitations to transfers. A commenter asked how often a covered housing provider must transfer a victim and whether it matters if the need for a subsequent transfer results from the victim informing the perpetrator of where the victim lives. The commenter also asked, if there are multiple victims in a household, is there is any limit to the number of transfers that must occur if different household members request transfers.

HUD Response: Housing providers may not deny transfers to a safe and available unit if the transfer is necessary because a perpetrator learned of the victim's new location, regardless of how the perpetrator learned of the location. In addition, housing providers may not limit transfers based on the number of household members who request transfers, provided the victims meet the statutory requirements for an emergency transfer.

i. Emergency Transfer Logistics

Comment: Explain how emergency transfers will work, particularly when a housing provider does not have other available and safe units or cannot afford the transfer. Commenters asked how a small PHA could transfer a victim if it does not have another safe unit and there are no other forms of assistance available. Commenters asked whether HUD has considered alternative ways to fund transfers other than tenant protection vouchers, if these are not available. Another commenter said that HUD should consider what resources it can provide to victims when housing providers are not able to accommodate a transfer request based on the availability of units under their control. Another commenter asked whether, if a PHA bifurcates a lease and offers an emergency transfer, the PHA will be penalized if it cannot grant a transfer for lack of funding.

Commenters said that it is particularly important to recognize the differing characteristics, roles and capabilities of various housing providers and property types. Commenters said that, while a PHA may be able to relocate tenants upon request, private property owners and managers are generally not in a

position to transfer tenants or assist tenants in making alternative housing choices. A commenter said emergency transfer provisions should acknowledge the limitations of transfer policies and reflect the practical realities of the rental housing sector. Another commenter said that it can provide a voucher, if funding is available, to accommodate an emergency transfer request from one of its public housing units, but, due to different eligibility criteria, it cannot readily transfer public housing families to its project-based Section 8 properties.

Another commenter said that if the housing provider does not have a unit available under another covered program it administers, then the housing provider should make a referral to the appropriate agency administering HCV vouchers so that the victim may be provided with a voucher. A commenter said HUD should develop rules and procedures for the agency administering vouchers to accept referrals from covered housing providers in the agency's area to streamline the process and reduce the time in which a victim receives a tenant protection voucher. The commenter also said housing providers should make referrals to other local or regional housing providers when no appropriate units are immediately available.

A commenter asked what recourse an owner has in the event that a VAWA victim declines to move to the proposed transfer unit. Another commenter said a tenant's rejection of the proposed transfer cannot serve as a basis for good cause termination of assistance or lease termination.

HUD Response: HUD has addressed similar comments already in this preamble. HUD recognizes the challenges of finding available units in its covered housing programs. Waiting lists are long and units are not available in abundance. If there is no safe and available unit to which a victim can transfer, then the housing provider will not be able to provide an emergency transfer, but as also stated earlier in this preamble, VAWA requires each housing provider to develop and issue an emergency transfer plan. The emergency nature of such a plan must be taken seriously. HUD has acknowledged the limitation of available units in all of HUD's covered housing programs, which is why HUD has encouraged emergency transfer plans that are in consultation with and work in collaboration with other public and private organizations and entities that are dedicated to helping victims of domestic violence. HUD also encourages housing providers to reach out to other housing providers in their jurisdiction,

and strive to establish a relationship in which the housing providers, whether private market providers or government-assisted providers, help one another to the extent feasible address emergency domestic violence situations. Reference to such other resources in an emergency transfer plan reflects that the plan is designed to facilitate a transfer as quickly as possible. The purpose of a lease bifurcation is to remove the perpetrator from a unit without evicting, removing, terminating assistance to, or otherwise penalizing a victim who seeks to remain in the unit. The purpose of an emergency transfer is to transfer a victim to a unit away from the perpetrator where the victim feels safe. An emergency transfer is not required as a result of a lease bifurcation.

With respect to the question of what recourse is available to an owner in the event that a VAWA victim declines to move to a proposed transfer unit, there is no HUD program where a tenant's rejection of a proposed transfer in accordance with § 5.2005(e) would serve as a basis for good cause termination of a lease.

Comment: Housing providers should consider units with different ownership for emergency transfers. Commenters said HUD must make clear to housing providers that management entities have the option of considering units with different ownership and that individual HAP contracts, or ownership distinctions, are not unmovable barriers to transfers.

HUD Response: HUD agrees with commenters and emphasizes that housing providers should consider, for emergency transfer requests, safe and available units with different ownership where such a transfer is feasible, and adheres to statutory requirements that may govern the transfer.

Comment: Housing providers should only be required to consider units that are under their control and that are part of the same housing program in which the victim participates. Commenters said allowing transfers to other housing programs would open the door to abuse as many might use this as a way to circumvent long waiting lists for their program of choice. Another commenter said various program limitations, including funding considerations, voucher availability, and fairness concerns in waiting list administration, may limit a provider's flexibility in transferring a victim from one of its programs to the other, and the rule should state that a housing provider is not required to transfer a victim to a different covered housing program it operates or administers.

HUD Response: As previously discussed, under this final rule, covered housing providers must allow tenants to transfer to units that are available and safe when the tenant may reside in the new unit without having to undergo an application process. This means that transfers will not be required to units outside of a provider's control and in a different program. However, as also previously discussed in greater depth, this final rule requires housing providers to establish procedures in their emergency transfer plan for transferring tenants who qualify for an emergency transfer under VAWA when the provider does not have a safe and available unit for which the tenant requesting the transfer can immediately transfer. HUD believes these requirements ensure that emergency transfer plans seriously consider the needs of victims of domestic violence, dating violence, sexual assault, and stalking, and have measures in place to assist such victims, while giving housing providers flexibility as to how they will be best able to handle VAWA emergency transfer requests.

As provided in § 5.2005(e)(12) of this final rule, and already stated in this preamble, emergency transfer obligations do not supersede any eligibility or other occupancy requirements that may apply under a covered housing program. Housing providers are strongly encouraged to accept emergency transfers from different housing providers, as long as all program requirements that affect the transfer, those applicable to the housing provider seeking assistance and those applicable to the housing provider willing to accept the tenant, are followed.

Comment: HUD should issue tenant protection vouchers and establish policies and procedures related to tenant protection vouchers. Commenters asked that HUD issue tenant protection vouchers to assist victims of VAWA crimes. A commenter asked that these vouchers be issued with reference to PHA size and to the number of emergency transfers issued during the immediately preceding fiscal year. A commenter said such vouchers give victims the ability to transfer to a unit in another jurisdiction, where they may feel there is greater safety. A commenter said that it is unlikely other HUD-funded units will be available for emergency transfers, and HUD should provide vouchers to jurisdictions that do not have extra vouchers, although this could lead to false allegations of victimization. Other commenters asked HUD to encourage its Congressional appropriators to increase funding for

tenant protection vouchers and/or to encourage a separate set-aside of vouchers for victims of VAWA crimes.

Commenters said that, under VAWA 2013, HUD is required to establish policies and procedures for how victims requesting an emergency transfer may receive tenant protection vouchers, subject to their availability. Commenters stated that the proposed rule did not provide policies and procedures for these vouchers, and said it makes sense to spell out a policy for these vouchers in the context of HUD's model emergency transfer plan.

HUD Response: The fiscal year 2016 appropriations for HUD does not provide funding specifically for tenant protection vouchers for victims of domestic violence, dating violence, sexual assault, or stalking. If future appropriations provide funding for tenant protection vouchers for victims of VAWA crimes, HUD will issue policies and procedures for the provision and use of the vouchers.

Comment: The rule should define "safe and available" and explain who determines whether a unit is safe and available. Commenters asked that HUD provide a definition of "safe" and "available." Commenter said a definition of "safe" would allow housing providers to document that they reasonably met this standard and limit their vulnerability to litigation. A commenter said that the definition of a "safe dwelling unit" should take into account the realities of tribal and rural housing agencies that cannot predict vacancies.

Commenters emphasized that a "safe" dwelling unit could be defined as a unit in a different property, stating that a unit in the same property would not be safe, and a unit in an adjacent property may not be safe. A commenter suggested a safe unit be defined as a unit in a different property that is managed by the same owner and/or managing agent or that is within the same assisted housing program. A commenter said that in some situations, transferring to a different unit within the property may be helpful, but may not be sufficient for every situation. Another commenter said the unit should be inspected to ensure that all locks are in good working order, and the tenant should be permitted, at the tenant's expense, to add additional locks. Commenters further said the definition should include that the location of the safe unit will not be disclosed to the perpetrator by either the housing provider or anyone in the victim's household.

A commenter suggested that a "safe" unit should refer to the existing definition in 24 CFR 5.703, regarding

physical condition standards for HUD housing, and if the resident declines the offer to transfer because the only available unit is next door to the tenant's current unit, then HUD must take the leading role in helping the resident find new housing. Another commenter stated that any unit receiving subsidy is subject to HUD's prevailing physical inspection standards. A commenter said a "safe" unit should be defined based on objective criteria and should not impose unrealistic requirements, and housing providers should be allowed to adopt additional transfer guidelines to enhance safety (such as neighborhood restrictions).

Other commenters said that the consideration of what is a "safe" dwelling unit should be determined by the tenant who is requesting the transfer, based on the tenant's personal knowledge and reasonable belief about what areas of the city, or what developments, would be safe for the tenant. Commenters said that establishing both physical and psychological safety can be a critical factor for survivors to recover from violence they experienced.

A commenter suggested that an "available" dwelling unit can be defined as a vacant unit of appropriate unit size, located in a different apartment complex that is covered by VAWA protections and is managed by the same owner and/or managing agent. A commenter said the word "available" refers to a subsidized unit under the same program and under the control of the provider. Another commenter said the definition of "available" should encompass any units owned or managed by the housing provider even if the unit is under a different program.

Another commenter asked if "available" has a specific time period as to when the unit will be available. Other commenters said "available" means that all options must be explored for finding a safe and available unit, in and outside of the covered housing program's control or program before denying a transfer request.

Commenters said that, overall, criteria to be considered as to what is a safe and available dwelling unit are: Expressed safety concerns; availability of safe housing, as determined by these concerns, within the housing providers' control; the availability of safe housing of the same covered housing program type; and availability of safe housing of a different covered housing program type. Other commenters said that the rule's provision that available and safe dwelling units are those controlled by the provider with the same form of

assistance as the prior unit sufficiently avoid undue burdens on providers while offering domestic violence victims reasonable opportunities to transfer. A commenter said that while it is administratively easier to remain in the covered program, HUD should provide guidance and tools on how providers could look to possible units across their portfolio and also across programs to help providers understand when such moves could be feasible and allowed. A commenter asked that the rule state that a PHA may use its discretion to determine what “available and safe dwelling units” means.

Another commenter asked that, in situations where a tenant is transferred to a different unit under a different covered housing provider, which covered housing provider will be expected to fulfill the VAWA responsibility of determining a unit as “safe.”

A commenter asked that Section 504-modified apartments otherwise reserved for households with a mobility-impaired individual, not be considered “available” to those seeking a transfer under VAWA.

HUD Response: HUD declines to set a specific standard for what is “safe,” as the meaning of this term may vary greatly in different situations. HUD agrees with commenters who said that what is a “safe” dwelling unit should be primarily determined by the tenant-victim who is requesting the transfer, based on the tenant’s personal knowledge and reasonable belief about what is safe. HUD believes that limiting “safe” to physical condition standards, as suggested by some commenters, is too limiting and is contrary to the intent of VAWA. Program regulations and policies for physical condition standards will still apply for emergency transfers, in the same manner that they apply to other housing under those programs. What is a “safe” distance from a perpetrator is one factor that housing providers and victims may consider, but HUD again declines to provide a specific definition of the term “safe” that would exclude certain units, such as those within the same property, or include other units, such as those at different properties.

Similarly, what is an “available” unit will vary in different situations. Generally, an available unit is one that is not occupied and is available to tenants given program requirements and possible considerations that may be applicable, such as eligibility requirements, unit restrictions, or term limitations. HUD will assist housing providers in identifying available units

under the different HUD programs covered by VAWA.

HUD’s Section 504 implementing regulations at 24 CFR part 8 describe the process by which accessible units required to be accessible under HUD’s Section 504 regulation must be occupied. In order to maximize the utilization of such units by eligible individuals who require the accessibility features of the particular unit, the housing owner or manager must first offer such a unit to a current occupant of another unit of the same project or comparable projects under common control who needs the accessibility features of the vacant unit, and then to an eligible qualified individual on the waiting list needing such features. After this, the owner or manager may then offer the unit to individuals without disabilities, including individuals who need an emergency transfer under VAWA. In other words, if there remains a vacant accessible unit after engaging in this priority placement, the unit would qualify as an available unit for an emergency transfer under VAWA.

Comment: Housing owners and managers, not participating jurisdictions or State agencies, will have control over property and be in the best position to determine whether an emergency transfer is warranted. Commenters said that, in most cases, participating jurisdictions will not have control over housing for which HOME funds have been provided, and the rule needs to be clear about how a covered housing provider’s control of property establishes the provider’s responsibility to provide alternative housing when a transfer is needed. A commenter stated that § 92.359(e) in the proposed rule requires the participating jurisdiction to develop a VAWA lease term/addendum that must permit the tenant to terminate the lease without penalty if the participating jurisdiction “or its designee” determines that the tenant has met the conditions for an emergency transfer. The commenter said participating jurisdictions are not in a position to evaluate and make timely judgments about a tenant’s eligibility for an emergency transfer and asked that participating jurisdictions be permitted to designate the owner of HOME-assisted rental housing as the entity that determines whether a tenant has met the conditions for an emergency transfer.

Commenters said HUD’s interpretation of “under a covered housing program” is reasonable and fair if applied only to an owner of a property, and noted that a state housing agency administering project-based section 8 under 24 CFR part 883 does

not “control” assisted units, nor does a HOME participating jurisdiction. Commenter said this notion of control should be explicitly stated in the regulatory text.

HUD Response: This final rule maintains the provisions in the proposed rule that the participating jurisdiction is the covered housing provider for purposes of developing and issuing an emergency transfer plan. The final rule also iterates that the participating jurisdiction must determine whether a tenant qualifies for an emergency transfer under the plan, as provided under the proposed rule. Individual project owners, however, will be involved in implementing the emergency transfer plan, including at a minimum transferring tenants to other units as provided in the emergency transfer plan and the written agreements required under section 92.504. The final rule includes changes to reflect this owner involvement. In this final rule, HUD removes language that was in the proposed rule’s HOME regulations about the participating jurisdiction’s designee. The HOME regulations do not discuss a participating jurisdiction’s designee. Section 92.504(a) of the HOME regulations explains how a participating jurisdiction can carry out its program. HUD also removes language about a participating jurisdiction or its designee from the proposed HTF regulations, as the HTF regulations in 24 CFR part 93 place responsibilities on a “grantee.” In this final rule, the HTF regulations for VAWA explain the responsibilities of grantees and owners, rather than participating jurisdictions, or their designees, and owners.

More generally, as explained earlier, this final rule no longer uses the term control to describe which units individuals may transfer to, and instead uses defined terms, internal emergency transfer and external emergency transfer, to describe transfer possibilities.

Rule Change: Section 92.359 of this final rule discusses VAWA responsibilities in the HOME program only for owners and participating jurisdictions. Section 93.356 of this final rule discusses VAWA responsibilities in the HTF program only for owners and grantees.

Comment: Any required recertification should only occur after a tenant has been transferred. Commenters said HUD should clarify that any required recertification, for example due to the change in household composition if the perpetrator no longer lives in the unit, should occur only after the tenant has been transferred. A commenter said that the covered

housing provider would, however, be free to change the size of the unit, if unit size eligibility is altered.

HUD Response: This rule does not impose any new requirements regarding recertification. Existing program regulations and policies govern.

Comment: Residents should be allowed to transfer without losing their subsidy. Commenters suggested that where there is no “safe and available” unit subsidized under the same covered program and under the administration of the tenant’s current housing provider, but a unit is available in a separate property or in another property where the provider has made an agreement with the other property’s housing owner, then the transfer should be accomplished through a negotiated “termination, or move out” and priority “move-in” at another site. A commenter said this could be accomplished using Tenant Rental Assistance Certification System (TRACS) database codes that will not require establishing new eligibility, but will enable a transfer of subsidy to another property so that the tenant will not have to risk loss of subsidy by having to meet income limits as required for a first-time eligibility determination.

HUD Response: HUD appreciates the suggestions of these commenters. Because HUD is unable to provide regulatory text that will address every feasible scenario, HUD program offices will supplement the regulatory text on how specific fact scenarios should be addressed under the requirements of the HUD-covered program at issue.

Comment: Residents requesting emergency transfer should be offered a reasonable time to establish eligibility for other programs. A commenter recommended that HUD provide a victim seeking an emergency transfer a reasonable time period, consistent with lease bifurcation provisions, to establish eligibility for other covered housing programs.

HUD Response: In this rule, HUD declines to set a time period for victims seeking emergency transfers to establish eligibility for other programs. In the case of bifurcation, the reasonable time period applies so that tenants may be protected from immediate eviction when a perpetrator leaves a unit. In the case of tenants requesting emergency transfers under VAWA, the tenant is not facing eviction, and although it may be unsafe for tenants to remain in their units, emergency transfers are subject to whether there is a safe and available unit to which the tenant may transfer. As discussed earlier in this preamble, the requirement to transfer victims who qualify for and request an emergency

transfer does not end at a specific time, but remains until the victim informs the housing provider that the victim no longer seeks the transfer, or the victim no longer receives housing or assistance under a covered housing program. As also stated earlier in this preamble, tenants seeking emergency transfers may apply for housing under a new program, but emergency transfer obligations under VAWA do not supersede any eligibility or other occupancy requirements that may apply under a covered housing program.

Comment: Tenants should generally remain responsible for rent while temporarily relocated. A commenter said it has been its practice that, for all emergency transfers, the tenant remains responsible for the rent of its unit during the period of the tenant’s temporary relocation. The commenter said any mitigating circumstance to having the tenant remain responsible for the rent during temporary relocation would be addressed on a case-by-case basis to ensure that the victim does not lose eligibility for continued housing assistance.

HUD Response: HUD appreciates the commenter’s suggestion on how the commenter handles emergency transfers. This final rule does not set requirements for recovery of lost rent for tenants who may be temporarily relocated. The program regulations that apply to the covered housing govern who bears the cost of lost rent.

Comment: Explain whether a housing provider can terminate assistance to a perpetrator when an emergency transfer happens. Commenters asked whether management can terminate assistance to the perpetrator. A commenter asked if termination is permitted whether the termination would take place when the emergency transfer happens or when the victim asserts a VAWA crime has been committed.

HUD Response: Housing providers that seek to terminate assistance to a perpetrator or an alleged perpetrator must ensure they are following existing program regulations and policies, including lease policies, which allow for such termination, as well as any applicable state and local laws. Housing providers should also ensure that tenants are aware that commission of crimes under VAWA may result in termination.

Comment: HUD should work with other organizations and agencies to transfer victims. Commenters stated that HUD needs to make use of available local and State resources for emergency transfer, and suggested that contacts be made with local shelters that house VAWA victims, as well as sheriffs’

offices that have relationships with shelters, for advice and direction. Commenters stated that tenants should be informed of these resources and assistance should be provided to tenants to use these resources, if a tenant becomes a victim of a VAWA crime. Commenters stressed the importance of sharing the personal information of tenants only when necessary and then only to protect the victim.

HUD Response: HUD appreciates the suggestion of working with other organizations experienced in helping victims of domestic violence, dating violence, sexual assault, or stalking, to help facilitate transfers to a safe location or to provide a safe location for victims. In this final rule, HUD requires emergency transfer plans to describe policies to assist a tenant to make an emergency move when a safe unit is not immediately available for transfer, and encourages policies that include outreach activities to organizations that assist or provide resources to victims of domestic violence, dating violence, sexual assault, or stalking. As to sharing personal information, this final rule maintains the provisions in the proposed rule that emergency transfer plans must incorporate strict confidentiality measures, and HUD’s model emergency plan contains a section on confidentiality that specifies that the housing provider will keep confidential any information that the victim submits about an emergency transfer unless the victim gives the housing provider written permission to release the information or disclosure is required by law.

Comment: HUD and housing providers should take proactive steps to implement emergency transfer plans. Commenters said HUD should oversee and ensure accountability for each covered housing program’s emergency transfer plan. Commenters said tenants seeking transfers may be directed differently depending on the covered housing program and covered housing provider, and suggested that HUD Regional offices could lead transfer efforts within their area, similar to efforts undertaken by HUD’s Chicago Multifamily Regional Office. HUD’s Chicago Regional Multifamily Office help to facilitate transfers needed by victims of domestic violence by helping to identify vacancies and striving to have the transfer occur between 48 hours and 2 weeks depending upon the victim’s need and the availability of safe units.¹² Commenter said HUD

¹² See page 11 of the following PowerPoint presentation <http://nhlp.org/files/00%20Slides%20>

multifamily field offices, PHAs, or the contract administrator can assist in identifying assisted housing within different properties. Commenters also said HUD should encourage PHAs to work regionally to identify available units.

Other commenters said HUD can provide guidance to covered housing programs so that emergency transfer policies are institutionalized and implemented at all levels of the agency and survive employee turnover. Commenters said housing agencies should take measures to shorten transfer wait times, and to give survivors specific timeframes on when they can expect to be transferred. Commenters cited an example of a transfer policy that is working is from the Philadelphia Housing Authority. Commenters further suggested said that HUD encourage regional planning for emergency transfers and regional cooperative agreements or working groups between various housing providers of different housing programs and victim advocates.

HUD Response: HUD appreciates the information on how certain HUD offices and PHAs have addressed emergency transfer situations, and such information will aid HUD in development of guidance and best practices.

Comment: HUD needs to better explain how emergency transfers will work for the HCV program. A commenter said that HUD's discussion of emergency transfers in conjunction with the HCV program's portability feature oversimplifies the issues faced by the covered provider administering the HCV program and needs further explanation. The commenter said HUD conflates a tenant's use of portability (moving with assistance between jurisdictions) and moving from one housing unit to another in the same jurisdiction. The commenter said the rule indicates that a provider may not terminate assistance if a family leaves subsidized privately owned housing without notifying the PHA. The commenter asked if this means that a PHA may not terminate assistance based on the family moving out of the unit without notice to the PHA that may consider such a move as a material violation of the lease and pursue remedies such as recovering costs for reoccupying the unit from the former tenant.

HUD Response: HUD's HCV program regulations at 24 CFR 982.353(b) provide an exception to the prohibition against a family moving under

portability provisions in violation of the lease. This exception provides that if the family has complied with all other obligations of the voucher program and has moved out of the assisted dwelling unit in order to protect the health or safety of a household member who is or has been the a victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believes the household member to be threatened with imminent harm from further violence by remaining in the dwelling unit (or if any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's move or request to move), and has otherwise complied with all other obligations under the Section 8 program, the family may receive a voucher from the initial PHA and move to another jurisdiction under the HCV Program.

For example, a program participant is a victim of dating violence and moves out of the assisted dwelling unit and into an emergency shelter because the victim reasonably believes to be threatened with imminent harm from further violence by remaining in the unit. The victim fails to promptly notify the PHA of the absence in violation of the PHA's policy on absence from the unit. The PHA determines that the victim has violated PHA policy on absence from a unit. The PHA undertakes proceedings to terminate assistance and terminates the Housing Assistance Payment (HAP) contract with the owner. The program participant also notifies the PHA that the program participant is a victim of dating violence and moved out of the unit because the program participant reasonably believes to be threatened with imminent harm from further violence by remaining in the dwelling unit. The PHA makes a written request to the program participant to submit documentation about the incident or incidents of dating violence. In response to the request, a Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking is submitted to the PHA. Because the absence from the unit was a result of domestic violence, dating violence, sexual assault, or stalking and the victim reasonably believed to be threatened with imminent harm from further violence by remaining in the dwelling unit, the PHA halts proceedings to terminate assistance. The PHA would then issue a new voucher allowing the program participant to search for housing. If the program participant indicates the desire to move to an area outside of the PHA's

jurisdiction, the PHA follows the provisions for portability under 24 CFR 982.355. The program participant moves to the jurisdiction of another PHA with continued assistance. This move, however, does not relieve the family of any financial obligations on the original lease.

4. Documentation and Verifications

Comment: Clarify what forms are required for implementation of VAWA. Commenters requested information about forms required for non-project-based section 8 households to use VAWA. Another commenter asked whether housing providers have discretion to determine documentation requirements.

HUD Response: Except for documentation for emergency transfers, as previously discussed, documentation provisions and requirements are set out in § 5.2007 of this rule, and reflect the statutory documentation provisions in VAWA 2013. Housing providers must accept any one of the forms of documentation listed in § 5.2007, at the discretion of the victim of domestic violence, dating violence, sexual assault, or stalking. Under the statute and this rule, housing providers may accept another form of documentation provided by the applicant or the tenant, but the provider must still accept all of the other forms of documentation described in the rule. In the case of conflicting evidence, housing providers must accept one of the three forms of third-party documentation described in § 5.2007.

Comment: Certification forms should not differ for different programs. Commenters said there should be one VAWA certification form, and the exact same form should be used by both Public and Indian Housing and Multifamily Housing, because using different forms, which may expire or be changed at different times, is confusing and unnecessary.

HUD Response: HUD agrees and has created a certification form that will be used for all covered programs.

Comment: The 14-day time period should not strictly apply to all third-party documentation requirements in cases of conflicting evidence. Commenters stated that some VAWA victims may not be able to acquire the proper documentation within 14 business days. Commenters suggested there be a longer period of time for victims to be able to provide third-party documentation. A commenter said this is especially important in large cities where there is often a waiting period for supportive services. Another commenter said law enforcement, court, or

administrative agency records can take a long time to obtain, as could medical documentation from a hospital. The commenter recommended that 60 days is a more reasonable period to obtain such documentation. Commenters said HUD should consider adding language to address what should occur when a tenant seeks requested documentation but cannot obtain the documentation due to a nonresponsive third party. A commenter said that if the tenant tries, but cannot procure the requested information, the housing provider should be instructed to make a decision based on the available evidence.

Commenters said that when victims are fleeing or have fled abuse, they can lack access to records and it can take time to understand their legal rights when information is shared. The commenters recommended that HUD allow 28 business days from the date the written request for documentation was received to obtain third-party documentation, and allow housing providers to use their discretion to extend the deadline past 28 days.

Other commenters said that the 14-day time period should also apply to third-party documents, but the covered housing provider should be able to extend this time period, particularly if the tenant demonstrates that the tenant has begun the process of obtaining the third-party documentation. A commenter suggested that the victim be required to request any extension within the initial 14-day time period. Another commenter said the time period is appropriate with the understanding that local agencies have the discretion to set a longer locally appropriate time period and that policies governing these time periods for PHAs are subject to public review and board approval as part of agencies' planning processes.

HUD Response: HUD understands that some VAWA victims may not be able to acquire third-party documentation within 14 business days. Under this final rule, tenants will have 30 days—generally the period of one rent cycle—to submit third-party documentation in cases of conflicting evidence. Housing providers may grant extensions where appropriate.

Rule Change: Section 5.2007(b)(2) of the proposed rule is revised to state that, in cases of conflicting information, covered housing providers may require an applicant or tenant to submit third-party documentation within 30 calendar days of the date of the request for the third-party documentation.

Comment: The 14-day time period should apply to third-party documentation requirements. In contrast to the above commenters, other

commenters stated that 14 days is reasonable. A commenter stated that if an individual is in an unsafe situation, submission of documentation should be complete in 14 business days (or less) to ensure a prompt response to a request for relocation. Another commenter said that if this is a true emergency and the family needs to be relocated, 10 business days, excluding holidays and weekends, should be sufficient, and if there are mitigating circumstances the housing provider can allow for additional days.

HUD Response: The third-party documentation requirements are not requirements for an emergency transfer, but are requirements for documenting an occurrence of domestic violence, dating violence, sexual assault, or stalking when there is conflicting evidence.

Comment: Clarify that housing providers can require third-party certification when it is unclear whether domestic violence occurred, or who is the victim. Commenters said that HUD's implementing guidance and forms should reflect that housing providers can require third-party certification when there is not clear evidence that domestic violence incident occurred, or there is a question about which occupant is the victim.

HUD Response: This rule and HUD's Notice of Occupancy Rights that will be distributed to tenants and applicants both advise that housing providers have the right to request third-party documentation in order to resolve conflicts in situations where the housing providers have received conflicting evidence. With that exception, HUD does not read VAWA 2013 as allowing for housing providers to request third-party documentation. Housing providers should speak to the victim to try and clarify any information the housing provider believes is not clear. In accordance with VAWA 2013, HUD declines to allow housing providers to require third-party documentation of an occurrence of domestic violence, dating violence, sexual assault, or stalking in any situation except for those involving conflicting evidence.

Comment: HUD should provide clarification regarding situations where housing providers receive conflicting evidence. Commenters said that HUD should explain that the party providing third-party documentation when two parties claim VAWA protections in the same incident is not automatically deemed the victim, as perpetrators sometimes obtain a restraining order, protective order, or file a police report as forms of continued abuse, control, or

retaliation. A commenter said many survivors are unable to timely access courts or law enforcement due to language barriers, disabilities, cultural norms, or safety concerns. Another commenter said that, rather than terminate the tenancy of the party who fails to provide third-party verification when conflicting evidence is received from both parties claiming VAWA protections, housing providers should use a grievance hearing or administrative review process to determine which party is the victim to be protected by VAWA.

Another commenter said HUD should clarify protocol for addressing equally compelling and competing claims, including ones with court actions pending. The commenter said that, frequently, households with competing VAWA claims also have court actions pending simultaneously and those cases may continue for years without a final resolution, and statuses that are apparently final can later change or have to be reconsidered.

Another commenter said situations in which cross-complainants submit conflicting third-party documentation, such as opposing orders of protection, create intractable situations for housing providers, which are not in a position to adjudicate family disputes or identify the primary aggressor. The commenter asked that HUD relieve PHAs of the obligation to afford VAWA protections to either complainant if documentation fails to identify a primary aggressor, or if third-party documents are themselves in conflict as to which complainant is the victim and which complainant is the perpetrator.

HUD Response: HUD appreciates the points raised by the commenters and will consider them in drafting guidance to assist housing providers who receive conflicting evidence.

Comment: Any form of third-party documentation should be acceptable in cases where there is conflicting evidence. Commenters said that, based upon the proposed list of acceptable alternative documentation, victims could encounter difficulty documenting evidence of a crime committed under VAWA in conflicting statement cases when, at the discretion of the covered housing provider, "statements or other evidence" are not accepted, and the victim is required to submit documentation from a professional or law enforcement. Commenters said that, in many cases, a victim of domestic violence, dating violence, stalking, or sexual assault does not report the incidents to law enforcement and may not utilize the assistance of a professional and, therefore, the only

form of third-party documentation available may be witness statements or other evidence which, under the proposed regulations, may not be acceptable forms of documentation if left to the discretion of the covered housing provider.

HUD Response: The list of acceptable third-party documentation provided in this rule is the list provided in VAWA 2013. The statute provides that, if a covered housing provider receives documentation that contains conflicting information, the covered housing provider may require an applicant or tenant to submit third-party documentation in one of the forms described in the statute, which are the same forms HUD describes in this rule.

Comment: Emphasize that survivors can choose which form of documentation to submit under the law, without further specifications.

Commenters stated that the use of “or” in the section of VAWA 2013 that lists forms of documentation means that neither HUD nor a covered housing provider can eliminate the acceptability of one of the three listed documentation forms. Another commenter said that because many victims are reluctant to report abuse for fear of retaliations or other repercussions, self-certifications that the tenants are victims of domestic violence based solely on their own-signed attestation on a HUD-approved certification form should be recognized as an available option. Another commenter stated that, in the preamble to HUD’s final rule implementing VAWA 2005, HUD asserted that victims could choose whether to submit self-certification or third-party documentation, and this still applies.

Commenters stated that PHAs and project owners are demanding Orders of Protection, Harassment orders, Trespass Orders, or police reports, contrary to HUD’s directive to PHAs and project owners that third-party documentation cannot be required. Commenter said some PHAs and project owners require documentation that is “current,” such as a less than 30-day old police report. Additionally, commenters said some PHAs and project owners are requiring multiple forms of proof. Commenter said the regulations must be clear on this section in order to reduce these unlawful and onerous documentation practices, as they were in 2005.

Other commenters suggested adding to proposed § 5.2007 language that provides that nothing should be construed to require a participant to provide documentation other than the self-certification form, except in the case of conflicting evidence.

HUD Response: HUD appreciates commenters pointing out that the rule could more clearly state that victims of domestic violence, dating violence, sexual assault, and stalking can choose, at their discretion, which form of documentation to submit, including self-certifications, except in the case of conflicting evidence. HUD has clarified this in § 5.2007, as well as in the housing rights notice, and the self-certification form.

Rule Change: Section 5.2007(b) of the proposed rule is revised in this final rule to state that applicants or tenants may submit, at their discretion, any one of the listed forms of documentation.

Comment: Housing providers should not have to accept self-certification. Commenters said housing providers should have discretion in determining the documentation requirements. A commenter said this is particularly the case with respect to the ability for housing providers to accept self-certification and the ability to determine when third-party documentation will be required, such as in instances when a housing authority receives conflicting information. The commenter said these documentation requirements can be maintained in the housing authority’s written policies in order to ensure consistent application of documentation requirements. Other commenters stated that housing providers should be able to create their own certification form that could be used instead of the HUD-approved form.

A commenter said relying on self-certifications to qualify applicants leaves the housing provider vulnerable to penalties that may be imposed as a result HUD program audits, and the imposition of penalties causes disruptions and delays in the program, which adversely affect the program’s ability to provide services to those that need them. The commenter recommended that the rule should state that responsible entities accept self-certification as a last resort. Another commenter said self-certification, even if supported by a police report, should not be mandated as sufficient proof, and that housing providers must be permitted to require third-party verification or other documentation signed by a professional from whom the victim has sought assistance directly relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. Another commenter said that the statute does not establish a hierarchy of documentation, so the rule should not limit the circumstances under which a housing provider can seek third-party documentation. A commenter said that if a program is

allowed to accept self-certification then it is likely that parties will make an allegation, withdraw the allegation days later, and then make another allegation when the relationship is challenged again. The commenter said this will generate a considerable investment of time to identify alternate housing, determine eligibility, and bifurcate the lease—all to have the allegation withdrawn or proven false.

HUD Response: HUD appreciates the commenters’ concerns, but HUD interprets VAWA to require that housing providers accept self-certification if that is the form that a tenant or applicant provides, except in cases involving conflicting evidence. In addition, as HUD noted in response to an earlier comment, this is not a new policy. In implementing VAWA 2005, HUD explained that victims could choose whether to submit self-certification or third-party documentation.

The statute also requires that HUD, or other appropriate housing agency covered under the law, approve the certification form. In order to avoid inconsistent requirements, HUD declines to allow housing providers to use their own certification forms in lieu of HUD’s form. Under VAWA 2013 and this final rule, however, housing providers may allow victims of domestic violence, dating violence, sexual assault, or stalking to use a certification form that the housing provider has created, as long as it is clear that victims do not need to use that form and can use the HUD form instead (again, except for cases where there is conflicting evidence).

Comment: Housing providers should not have discretion to evaluate truthfulness of allegations. A commenter stated that housing providers may not have the necessary expertise and experience to evaluate whether there is a credible threat of domestic violence or other crime under VAWA that may be mitigated by a move, and training housing providers to help them gain that experience could be costly. This commenter further stated that victims may be reluctant to disclose their victimization to owners or management agents for a variety of reasons, including shame, embarrassment, or fear of retribution, and it would be more appropriate for housing providers to refer the tenants to their caseworkers to evaluate the truthfulness of the victim’s allegations.

HUD Response: HUD understands and appreciates commenter’s point that victims may be reluctant to disclose incidents of domestic violence, dating violence, sexual assault or stalking to

housing providers, but the rule maintains the documentation requirements that are provided in VAWA 2013. Housing providers must accept signed self-certification forms for documenting incidents of domestic violence, dating violence, sexual assault, or stalking, so they will not be evaluating the truthfulness of allegations. Similarly, as described in the section on emergency transfers, housing providers must accept a signed written statement from VAWA victims that they qualify for emergency transfers, so housing providers will not be evaluating whether a threat of domestic violence may be mitigated by a move.

Comment: Housing providers should not have to request certification in writing. A commenter said it is overly burdensome to require the housing provider to have to put in writing a request to the victim to provide certification following a request from the victim for assistance under VAWA. The commenter said to make this a requirement of housing providers may result in unintended consequences if the provider fails to document but continues to assist the victim.

HUD Response: HUD's rule follows VAWA 2013 in stating that housing providers may request documentation in writing and lay out procedures for how a housing provider may respond if it does not receive a timely response to the request.

Comment: Explain how housing providers can verify VAWA claims in light of confidentiality concerns. Commenters questioned how, considering confidentiality concerns, a housing provider could verify a claim that an individual owes money to a former housing provider (for damages to a unit, for example) for VAWA-related reasons, and not for another reason. A commenter asked what would happen if the applicant and previous management company have different stories as to whether the money was owed for a VAWA-related reason or another reason.

HUD Response: As previously stated in this preamble, HUD will provide guidance to covered housing providers as to how to determine whether domestic violence, dating violence, sexual assault, or stalking was the reason behind adverse factors that could jeopardize tenancy or participation in a HUD program.

5. Content of the Certification Form and the Notice of Occupancy Rights

a. Certification Form

Comment: The certification form should be readable and define necessary

terms. Commenters said that HUD's increased use of plain language and precise regulatory language throughout the proposed certification form significantly improves readability and comprehension of the rights conveyed, as compared to the previous forms. Commenters said these improvements should be incorporated into the final version of the certification form.

In contrast, another commenter said that the certification form is not designed to be comprehensible to applicants and participants, and Microsoft Office 365 Word reports a poor Flesch Readability Ease measure. The commenter also said that the form uses the term "responsible entity" without ever indicating who or what that entity is.

HUD Response: HUD has revised the certification form to make it easier to understand. In addition, the revised certification form does not use the term "responsible entity."

Comment: The certification form should be changed in certain ways. Commenters commended HUD for abbreviating the space for descriptive text and discouraging disclosure of unnecessary details, but suggested the form should be changed in other ways. The commenters said the introductory paragraph regarding "Alternate Documentation" should be modified to explain that the victim or someone acting on behalf of the victim has the option of submitting alternative documentation instead of the certification form and, only in cases where the responsible entity receives conflicting statements, may the responsible entity require third-party documentation. Commenters said the form should also indicate that a responsible entity's request for third-party documentation must be made in writing. Additionally, commenters said the list of available alternate documentation should mirror the proposed regulatory language at § 5.2007(b)(1). Other commenters said that the form should direct responsible entities to accept self-certification as a last resort, or the form should include information on whether an individual has third-party documentation and a space to provide information on any barriers that exist to obtaining third-party documentation.

Another commenter said that the language used on the form to indicate the time period to submit documentation should mirror the proposed regulatory language. According to the commenter, the form says the deadline to submit documentation to a responsible entity is 14 days from the date that the entity

submits a written request, rather than the proposed regulatory deadline of 14 days from the date that the tenant/applicant receives a written request. The commenter stated that the proposed certification form currently requests both the date and time of the incident(s), and said the request for the time is overly burdensome, as the victim may not recall it, or may be seeking certification based on a series of incidents. Similarly, other commenters said victims may not be able to recall dates, particularly if multiple events are involved. The commenters recommended that the form be revised to request date(s) and time and location of incident(s) "if known." Similarly, a commenter recommended the certification line read that it is to certify that the information provided on this form is true and correct "to the best of my knowledge and recollection."

In addition, commenters said the confidentiality clause at the end of the certification form should be amended to say that employees may not disclose, reveal, or release information, except to the extent that disclosure is consented to by the victim in a time-limited written release. The commenters said that the proposed form's inclusion of the "Public Reporting Burden" paragraph should be removed, but if this paragraph has to be on the form, it should be moved to the end of the form and the confidentiality paragraph should be moved higher on the form.

Another commenter said that the signature block should include the warning that the signatory is making such statements under penalty of perjury.

A commenter said that the certification should specially call out that the resident or participant is to take steps to ensure that the perpetrator does not learn of the new unit location, and if the victim allows the perpetrator back into the new unit then the victim may be denied a future emergency transfer if requested again.

In the interest of lessening the administrative burden on housing providers, a commenter suggested HUD allow the responsible entity to make an oral, rather than written, request for documentation. The commenter said this is especially important in emergency situations where there may not be a contact address for the victim, and when the alleged perpetrator may be put on notice of the victim's request for assistance should a written request be sent to the household.

HUD Response: HUD's revised certification form clarifies that victims may complete the certification form, or may submit third-party documentation,

for reasons described elsewhere in this preamble. In addition, the Notice of Occupancy Rights, which all tenants and applicants will receive at the same time they receive the certification form, explains that it is the tenant or applicant's choice, which form of documentation to submit, except for cases where there is conflicting evidence. HUD declines to amend the certification form to discuss that a request for third-party documentation must be in writing, since the provider may only ask for third party documentation in cases of conflicting evidence, and then the certification form would not be applicable at that point.

HUD appreciates commenters pointing out that the list of available alternate documentation in the proposed certification form differed from the types of alternate documentation described in VAWA 2013 and the proposed rule. As a result, HUD has amended this language on the certification form so that it properly reflects the statutory and regulatory text. HUD has also revised the form to clarify that the deadline to submit documentation to a responsible entity is 14 business days from the date that the tenant or applicant receives a written request. Further, HUD has revised the certification form to incorporate commenters' suggestion that victims should specify the date(s) and time(s) of incidents if known. In addition, the certification signature block is revised to say that the information provided is true and correct to the best of the knowledge and recollection of the person who fills out the form. HUD has also accepted commenters' suggestion of moving the confidentiality paragraph higher on the form and moving down the paragraph in the public reporting burden, in order to emphasize the confidentiality provisions.

HUD declines to amend the certification form to say that employees may not reveal or release information, as HUD uses the term "disclose" to encompass revealing, or releasing. Because it is standard for waivers of confidentiality provisions to be time-limited, HUD accepts the proposal to add that victims must consent to disclosure in a time-limited written release. HUD also makes this change in 24 CFR 5.2007(c)(2)(i). However, HUD declines to alter the signature block to say that the signatory is making statements under penalty of perjury. The signature block states that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction, as

terminating or denying assistance are actions within HUD's jurisdiction.

HUD also will not revise the certification form to say that the resident or participant is to take steps to ensure that the perpetrator does not learn of the new unit location. This purpose of this certification form is to document incidents of domestic violence, dating violence, sexual assault, or stalking, and is not documentation for emergency transfers. The model emergency transfer plan explains that the resident is urged to take all reasonable precautions to be safe.

HUD understands commenter's rationale for the request to allow housing providers to make oral, rather than written, requests for documentation. However, the provision requiring a written request is in VAWA 2013, and such requirement provides a record for tenants and applicants and housing providers as to compliance with the documentation provisions of this rule. HUD notes that, where possible, housing providers should give written documentation requests to victims in person.

b. Notice of Occupancy Rights

Comment: The notice of occupancy rights should be more readable and accessible. Commenters said that the notice of occupancy rights in the proposed rule is inaccessible to many and should be shortened or simplified. A commenter said that Web sites that measure text readability determined that the notice required the reader to have advanced education. Commenters said the notice must use simple, direct language. Another commenter said the use of statutory language and terms is appropriate and necessary in some contexts, but inclusion of the statutory provisions can decrease the reader's ability to understand and use the information. The commenter recommended including definitions for particularly complex terms used in the notice.

Other commenters suggested that the notice use plain-language. A commenter explained that someone may not relate to the words "victim" or "perpetrator," but they may relate to this language: "if someone has harmed another person in the home, there are options available." Commenters stated that a number of sentences in the notice are lengthy, with complicated sentence structures, and they include more detail than necessary. Commenters provided examples of sentences in the notice that could be simplified, including changing: "Also attached is a HUD-approved certification form for documenting an

incident of domestic violence, dating violence, sexual assault, or stalking for a tenant who seeks the protections of VAWA as provided in this notice of occupancy rights and in HUD's regulations" to "A form is attached to this notice. You can fill out this form to show that you are a victim of domestic violence, dating violence, sexual assault, or stalking, and that you wish to use your rights under VAWA." A commenter said simpler wording would also facilitate translation into other languages.

HUD Response: HUD appreciates commenters' suggestions and has revised the notice of occupancy rights to make it more easily readable. However, as discussed below, the notice does use the terms "abuser" and "perpetrator." HUD believes language that "somebody may have harmed another" is too vague and that the terms "abuser" and "perpetrator" are easily understandable.

Comment: The notice should use different language for accuracy and effect. Commenters said that the term "abuser" is used throughout the Notice of Occupancy Rights, but that HUD's notice needs to also include the term "perpetrator," in order to reference perpetrators of sexual assault or stalking. A commenter further said the notice should not use language that excludes victims who are not fleeing or escaping abuse, such as victims of sexual assault, and should thus use words such as "looking for help," "healing" or "recovering" in referencing their current circumstances.

Commenters also said the text of the notice itself, and not a footnote, should make it clear that despite the name of the law, VAWA protection is available regardless of sex, gender identity, sexual orientation, disability, or age. A commenter further stated that sections of the notice use the phrase "may not," such as "you may not be denied admission or denied assistance," and that changing the language to "must not" sends a stronger message about the degree to which VAWA prohibits such discrimination.

A commenter recommended that the section of the notice on removing the abuser from the household, the notice should say "HP can (rather than "may") choose to divide your lease. . ." to more clearly convey that the housing provider has the discretion to bifurcate a lease. The commenter said that the notice does not mention that the remaining tenant can try to establish eligibility for another housing program covered by VAWA, and tenants may not be aware of this option. The commenter further said the notice should be clarified to say the housing provider

may, but is not required to, ask for documentation. Another commenter stated that it did not know whether “divide” means to “bifurcate” and requested that HUD clarify. The commenter said that if “divide” does mean “bifurcate,” the notice should make clear to tenants that an owner, and not a PHA, can divide the lease. A commenter said that, in the section on documenting that one has been a victim, the notice should clarify when a housing provider is exercising discretion, and ensure that tenants and applicants understand that the housing provider is not required to, but is merely allowed to, extend the 14-day time period to submit documentation.

Commenters said the notice also needs to make clear that the tenant or applicant asserting VAWA protections can choose which form of acceptable documentation to provide, except in circumstances where there is conflicting evidence. The commenter further said that in discussing the types of documentation that could be provided as a record of Federal, State, tribal, territorial, or local law enforcement agency, providing one or two examples (e.g., restraining order, protective order, etc.) would be helpful.

A commenter stated that, in the section of the notice of reasons a tenant may be evicted, it should be clear that victims can be evicted or terminated if the housing provider demonstrates that the victim’s continued tenancy poses an “actual and imminent threat” to other tenants or employees, and should explain what this means. The commenter suggested this section also note that eviction or termination should be pursued only when there are no other actions that could be taken to reduce or eliminate the threat.

Commenters said the notice is addressed to “all tenants and prospective tenants,” and this appears to cover even eligible households that have not applied for assistance. Commenters said HUD should only require providers to notify existing participants and applicants. A commenter said the notice grossly oversimplifies the process required to remove a member from the household. The commenter said the provider and other household members must cooperate to remove a member who has some property rights to the housing or assistance, and it is not the provider alone who can divide the lease or remove the abuser from the household.

Other commenters said the form contains extraneous information. A commenter stated that the first bullet describing documentation includes a description of the information contained

in the certification, but if participants and applicants receive the certification form, the notice need not describe its contents. The commenter further stated that after listing professionals who may provide documentation, the notice contains a parenthetical that says, “(collectively, “professional”).” and this extra language adds nothing.

A commenter said the transfer right must be described in the proposed notice in more detail for a tenant to sufficiently be able to act on that right and to understand that this is an emergency transfer and not a traditional, slow transfer process, and the notice should explain any necessary documentation requirements. A commenter said the language should not use the term “another unit” because it gives the impression that the move is only to a unit within the existing covered housing project. The commenter said the language should state that “if you reasonably believe there is a threat of imminent harm from violence if you stay in the same unit or development where you live now, or if you are a victim of sexual assault that recently happened at your development, you have the right to ask for an emergency transfer to a different unit, including a unit in a different development, different type of affordable housing, and in a different location.” The commenter said the notice should also emphasize that requests for transfers and the location of the move will be kept confidential.

Another commenter said the notice should include language that informs an applicant of the possibility of overcoming a negative rental, tenant, or criminal history if that history relates to their victimization. The commenter said this will allow a survivor to obtain and provide appropriate information to the covered housing program at the outset of the application process.

HUD Response: HUD appreciates these comments and has revised the Notice of Occupancy Rights to more accurately reflect the scope of VAWA protections. The revised notice states in the text, and not only in a footnote that the VAWA protections are not only available to women, but are available equally to all individuals. Further, the notice uses the term “perpetrator” in addition to “abuser” in order to reference perpetrators of sexual assault and stalking. The proposed notice did not use the term “fleeing” and only referred to “escaping” an abusive relationship when providing victims of domestic violence with a resource, but the revised notice no longer discusses “escaping” an abusive relationship. The revised notice now notes that after a

lease bifurcation, remaining tenants can try to establish eligibility for another housing program covered by VAWA.

HUD has also revised the notice as suggested by commenters to improve clarity. The notice now explicitly states that dividing a lease means the same thing as bifurcating a lease, but the notice does not specify which housing provider would bifurcate a lease, as this differs across programs. Housing providers that issue the notice of rights should clarify who is responsible for lease bifurcation. The revised notice also clarifies that a housing provider can, but is not required to, ask for documentation, and may but is not required to, extend the deadline to submit documentation. The revised notice also states that except for cases where there is conflicting evidence, it is the choice of the victim of domestic violence, dating violence, sexual assault, or stalking which form of documentation to submit. The notice also now states that examples of reports from law enforcement agencies and courts include police reports, protective orders, and restraining orders, among others.

In response to the comment that the notice should explain when a tenant could be evicted or assistance could be terminated, the revised notice states that the VAWA protections may not apply if the housing provider can demonstrate that not evicting a tenant or terminating the tenant’s assistance would present a real physical danger that would occur within an immediate time frame, and could result in death or serious bodily harm to other tenants or those who work on the property. The notice explains that housing providers should only evict tenants or terminate assistance when they cannot take other actions to reduce or eliminate the threat. Further, the revised notice is addressed to tenants and applicants, rather than tenants and prospective tenants. The revised notice also explains the criteria for requesting an emergency transfer, but it does not provide further information on emergency transfers, which vary across housing programs and providers, and instead notifies tenants that their housing provider has an emergency transfer plan that contains more information, and tenants have a right to see the plan.

There are some changes suggested by commenters that HUD did not make to the revised notice. HUD has not replaced the phrase “may not” throughout the notice to “must not.” HUD maintains that “may not” sufficiently denotes that an action is prohibited. HUD also declines to replace the word “may” in the sentence that

says a housing provider “may” bifurcate a lease with the word “can,” because HUD believes “may” better signifies that the housing provider has discretion whether to bifurcate a lease. The notice does not provide additional language regarding the mechanics of the bifurcation process, and the role of other household members. The notice says that the housing provider must follow Federal, State, and local eviction procedures, and that the housing provider may ask for documentation of the VAWA-covered incident(s). HUD declines to place additional responsibilities for removal of a perpetrator on a victim who has asked for that removal, as, due to household violence, the victim may be unable to provide it. Additionally, this notice includes the description of the certification form that will be attached, so that tenants and applicants know that they have a right to use that specific form. The form also retains the parenthetical that explains the use of the word “professional” later in the paragraph. Further, HUD declines to provide detail in this notice of basic protections about different ways in which somebody could be denied assistance, terminated from participation in, or be evicted from rental housing because somebody has been a victim of domestic violence, dating violence, sexual assault, or stalking.

Comment: The notice should provide more resources and information. Commenters said the notice should also include the Rape, Abuse and Incest National Network (RAINN) hotline for victims of sexual assault to supplement the hotline number already provided for victims of domestic violence. A commenter also suggested the notice include a blank space where the housing provider can insert contact information for local legal services and victim services providers. Another commenter recommended that HUD revise the notice to indicate to tenants that the notice is not an exhaustive list of tenant protections, and they are entitled to many additional protections at the state, local, and administrative level, and that they should consult their local PHA for information on rights afforded in their respective jurisdiction.

A commenter suggested that the notice encourage tenants or applicants who think they may qualify for VAWA protections to seek the assistance of a legal services attorney or victim services provider.

HUD Response: HUD’s Notice of Occupancy Rights has been revised to include spaces for housing providers to fill in contact information for relevant

organizations, including victim service providers or legal aid attorneys, that may be able to assist victims of domestic violence, dating violence, sexual assault, or stalking. HUD encourages housing providers to include contact information on the notice for local organizations, as these organizations may be in the best position to understand the victim’s situation and available options. In addition, or where housing providers do not know of local organizations or none are available, housing providers should include national resources, such as: The National Domestic Violence Hotline, which was listed on the proposed notice and is still listed on this final notice; the Rape, Abuse & Incest National Network’s National Sexual Assault Hotline at 800-656-HOPE, or at <https://ohl.rainn.org/online/> for victims of sexual assault; and the National Center for Victims of Crime’s Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>, for victims of stalking.

The revised notice now explicitly states that tenants and applicants may be entitled to additional housing protections for victims of domestic violence, dating violence, sexual assault, or stalking under other Federal laws, as well as under State and local laws.

Comment: The notice should be more specific on rights and responsibilities. Commenters said that rather than state that tenants may stay “in the unit for a period of time” until they can find alternate housing or establish eligibility under the HUD program, the notice of occupancy rights should be specific as to what this time is to ensure the victimized tenant is not left without secure housing. A commenter also stated that the notice should be clear about when a housing provider can request proof that an individual is requesting to move because of a VAWA-related incident. The commenter said that the notice states a housing provider “may” ask for proof. Another commenter said that HUD’s discussion of confidentiality in the notice is overly simplified. The commenter said the notice states that information may be released if, “A law requires HP or your landlord to release the information.” The commenter said this phrase includes a broad array of possible disclosures not necessarily obvious to an ordinary reader, for instance, in connection with reviews by HUD staff, audits by HUD’s Inspector General, and to an independent public auditor, among other possibilities. Commenter said it may be unreasonable for HUD to

develop a comprehensive list of how information may be disclosed in this notice, but the notice currently understates the potential for such disclosures.

HUD Response: HUD’s Notice of Occupancy Rights describes basic VAWA protections that apply across all programs, which is why the notice states that tenants may stay in units for a period of time if a housing provider chooses to bifurcate a lease. The revised notice explains that housing providers may ask for documentation that an individual qualifies for an emergency transfer. The notice provides the criteria for qualifying for an emergency transfer, and it directs tenants to the housing provider’s emergency transfer plan for further information. HUD believes that providing notice that confidential information may be released if a law requires it is sufficiently broad to alert tenants and applicants of that possibility.

Comment: HUD should create different notices for different housing programs to account for necessary variations. Commenters said HUD, and not a housing provider, is in the best position to create a series of different notices that outline how VAWA rights will apply in different housing programs. Other commenters said that permitting housing providers to customize the notice is very concerning because there is no mechanism for quality control and no way to ensure that the notices being distributed accurately reflect the VAWA protections, resulting in confusion and inconsistency. A commenter said that HUD should create different notices to prevent additional burdens on covered housing providers that would otherwise be expected to determine how VAWA 2013 protections play out in their programs. Commenters said that, to the extent that HUD wishes for there to be a local point of contact for tenants and applicants, HUD should include blanks that would allow the housing provider to add contact information, but housing providers should not be “filling in the blanks” regarding programmatic operations. Another commenter specifically recommended that HUD create two separate notices, one targeting tenant-based recipients and another that targets households with a subsidy that is tied to the unit. Commenter said the current notice refers to “rental assistance,” which may be confusing to tenants subsidized by covered housing programs other than HCVs.

HUD Response: HUD’s Notice of Occupancy Rights contains basic information that apply across all

programs, and the only information housing providers provide is the name of the housing provider, the relevant HUD program, and contact information for local organizations that may be able to assist victims of domestic violence, dating violence, sexual assault, and stalking. Therefore, HUD will not create notices for different housing programs. HUD has revised the notice to clarify that it applies to assistance under HUD-covered housing programs.

Comment: The notice of occupancy rights is so important that it should be reissued for public comment with any changes after the issuance of the final rule. Commenters stated that creation of the Notice of Occupancy Rights is a crucial step in the VAWA 2013 implementation process, particularly since the U.S. Department of Treasury and the U.S. Department of Agriculture will also utilize this notice in their housing programs. Commenters said that since the regulation has not yet been finalized, and changes will likely arise out of the notice and comment period, HUD should reissue the Notice for public comment after the issuance of the Final Rule.

HUD Response: The changes that HUD has made to the Notice of Occupancy Rights respond to concerns by commenters that the language in the rule should be simplified and better explain protections provided under VAWA 2013 and HUD's implementing regulations. HUD appreciates the comments and suggestions on changes to improve the Notice of Occupancy Rights, and has incorporated many of the changes. As a result, and because HUD maintains that there should be no further delay in providing tenants and applicants with the Notice of Occupancy Rights, HUD declines to seek further comment on the notice.

6. Provision of the Notice of Occupancy Rights and Certification Form

Comment: Include notice of VAWA protections in leases and other existing materials. A commenter stated that the legal rights of tenants can be ensured by attaching a copy of the statute to the tenant lease. Another commenter asked that any additions to leases about VAWA rights be written in simple, direct language and avoid legal jargon. Other commenters recommended that HUD incorporate the notification language into existing materials, such as the Tenants' Rights and Responsibilities brochure.

Other commenters said that while VAWA 2013 requires HUD to develop a notice of rights, the form of the notice is not prescribed in the statute. Commenters suggested that a separate

notice is not required, and the commenters referenced a 2012 Senate Committee report saying that the Committee intended that notification be incorporated into existing standard notification documents that are provided to tenants. Commenters said that such incorporation would reduce administrative burden. A commenter said owners could be required to include language about VAWA protections in any notice of rejection or termination. The commenter said that since such notices must provide residents and applicants an opportunity to appeal eviction or termination, these notices would be an appropriate place to explain that being a victim of an act covered under VAWA would be grounds for reconsideration. According to the commenter, incorporation of VAWA protections into existing notification documents would dispense with the need for a separate document on VAWA protections.

Another commenter stated that the notification process conflicts with the Paperwork Reduction Act by requiring more paper, and adding an individual document, rather than incorporating the notice into other documents, increases the chances that a tenant will not see the notification because a housing provider may forget to provide it, or because the tenant will not read it. Commenter further stated that housing providers should not be required to provide the entire VAWA policy in tenant selection plans or in House Rules.

HUD Response: Regardless of the legislative history of VAWA 2013, the statute itself as enacted requires HUD to develop a notice of rights under VAWA and requires covered housing providers to submit that notice to a tenant or applicant at three specific times: (1) When an individual is denied residency under an assisted program; (2) when an individual is admitted to a dwelling unit assisted under the covered housing program; and (3) with any notification of eviction or termination of assistance. HUD believes that it is important to provide a separate notice of occupancy rights under VAWA to ensure applicants and residents are aware of these rights. Therefore, HUD requires that housing providers give a separate notice of housing rights to tenants at the times specified in this rule.

HUD maintains the provisions in the proposed rule that require descriptions of VAWA protections in leases, lease addendum or contracts, as specified in the regulations for the HOME, HOPWA, ESG, and CoC programs. For public housing and section 8 programs covered by VAWA 2005, this rule does not

eliminate any existing notification requirements. Prior to this rule becoming effective, 24 CFR 5.2005(a)(4) provided that a HUD-required lease, lease addendum, or tenancy addendum, as applicable, must include a description of specific protections afforded to the victims of domestic violence, dating violence, or stalking, as provided in this subpart. This final rule clarifies that this remains a requirement, and adds that a description of protections afforded to victims of sexual assault is also required.

Rule Change: This final rule maintains existing 24 CFR 5.2005(a)(4) for programs covered by VAWA prior to the 2013 reauthorization, and adds sexual assault to the list of the types of victims covered by VAWA.

Comment: HUD should not mandate including attachments with the notice of housing rights or certification form. Commenters said HUD should not require that the VAWA regulations be included with the notice of housing rights. Commenters said it is unlikely that many tenants or prospective tenants have the time or background knowledge to understand the full scope of their rights by reading the VAWA regulations and doing so may confuse or overwhelm them or cause them to ignore the entire document. Commenters suggested that, instead of providing a copy of the regulations, the notice should make the regulations available to tenants and applicants. Some commenters suggested providing a link to the regulations, perhaps in a footnote that would include the **Federal Register** citation for the final rule.

Some commenters said that requiring providers to send copies of regulations is an overly burdensome requirement that would impose considerable cost on providers for printing and mailing without adding anything to most recipients' understanding of their protections under VAWA. A commenter stated that tenants and applicants could potentially receive copies of the rule multiple times (as an applicant, if denied assistance, or if notified of termination or eviction), and there is no need to receive multiple copies of the regulations. Another commenter said including attachments of the regulations and a listing of local organizations offering assistance to victims of domestic violence is unnecessary and can lead to greater confusion for victims during a stressful time.

HUD Response: HUD agrees that housing providers should not have to include a copy of the VAWA regulations every time they give a tenant or applicant the notice of housing rights and certification form, but the

regulations should be made available to tenants and applicants who request to see the regulations. Therefore, HUD revised the Notice of Occupancy Rights to provide a link to HUD's VAWA regulations. Because not every tenant or applicant will be able to access these regulations on-line, the revised Notice of Occupancy Rights states that housing providers must make a copy of the regulations available to tenants and applicants who ask to see them. HUD also revised its model emergency transfer plan to remove the reference to an attachment of the regulations. The final model emergency transfer plan, however, maintains the reference to the attachment that lists local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, and stalking, and HUD encourages housing providers to make this list available to tenant and applicants who ask for the list.

Comment: The timing for submission of notification of occupancy rights should be changed. Commenters asked if, rather than distributing the notice of occupancy rights on three occasions, the notice could be provided to all applicants at the time they submit their original application. Other commenters said the notification process in the proposed regulations is burdensome and unnecessary because the vast majority of terminations and evictions are for reasons unrelated to VAWA. A commenter suggested that the notice be provided at the following times: When an application is rejected; at the time of entry into a covered program; and upon tenant request. Another commenter said that adding this notice and its attachments to each eviction notice adds an unwarranted due process procedure to an already overly burdened due process. The commenter stated that failure to serve such notice should not be grounds to appeal termination or eviction. Another commenter said providing the notice when an individual is provided assistance or admission is overkill because they will not be exercising VAWA rights at that time.

Other commenters said that submitting these notices to all denied applicants could be administratively prohibitive. A commenter stated that for its HOME projects, it currently administers an online housing lottery that frequently results in tens of thousands of applications, many of which are pre-determined to be ineligible based on measures like income. Commenter said that such applicants do not receive rejection letters and it would be unreasonable, impracticable, administratively burdensome, and confusing to

applicants, for commenter to send these families a VAWA notice. The commenter stated that it would more reasonable to provide the VAWA notice to those applicants who have been selected by the lottery and were subsequently interviewed but found to be ineligible. The commenter asked that the final rule provide such clarification for the benefit of agencies that are responsible for marketing units of covered programs.

HUD Response: The VAWA statute itself requires the notice of occupancy rights and specifies when this notice must be submitted to tenants and applicants, and HUD has no authority to change these statutory requirements. However, for purposes of the HOME program, the final rule clarifies that notice is not required upon any denial of HOME rental housing but rather any denial based on the owner's tenant selection policies and criteria.

Comment: Notification and certification forms should be given to existing tenants. Commenters stated that to reduce costs and time burdens to housing providers, VAWA forms should not have to be distributed to existing tenants outside of routine contacts in the year following the effective date of HUD's final rule, and some suggested that the information could be given to tenants during the annual recertification process. Commenters said that generally every existing tenant undergoes recertification during any 12-month period, and while this means some tenants would not be notified for nearly one year after the effective date of the final rule, the VAWA protections are only relevant for existing tenants in response to a notice of termination or eviction, which would trigger the legal requirement to provide the VAWA notice and form anyway. Commenters said that HUD could post VAWA rights on its Web site for interested parties to access at any time.

A commenter said that covered housing providers may not know which tenants are due a notice, or the provider may not know which program applies, so the notice should not be given to existing tenants until either recertification or lease renewal. Another commenter said that to lessen the rule's administrative and financial burden, housing providers should be permitted to provide the notice at lease renewal.

Other commenters recommended that HUD give housing providers flexibility regarding how to distribute the notices to existing tenants, in accordance with existing procedures. Other commenters emphasized that notice be given to all current tenants, regardless of whether their programs were previously covered

by VAWA, because under VAWA 2005 there was no uniform notice received by all tenants and VAWA 2013 includes new housing protections. Another commenter suggested that a general mailing to all of the tenants may be the only way to reach everyone in a timely manner.

HUD Response: HUD agrees with some of the recommendations made by the commenters and under the final rule, housing providers must give all tenants the notice of occupancy rights and the certification form at annual recertification or lease renewal, or if there is no annual recertification or lease renewal, then at some other time, during the 12-month period following the effective date of this rule.

Rule Change: This final rule includes new § 5.2005(a)(2)(iv) that states that during the 12-month period following the effective date of this rule, housing providers must give tenants the notice of occupancy rights and the certification form either during the annual recertification or lease renewal process, or, if there will be no recertification or lease renewal for a tenant during the first year after the rule takes effect, through other means.

Comment: Notification should be provided annually at recertification, and at additional times. Commenters said the final rule should instruct housing providers to distribute the notice at additional times, including upon family break-up and as part of a tenant's recertification or reexamination process. Commenters said that HUD should provide in the final rule that covered housing providers have discretion to provide the notice to tenants in other contexts, such as when a tenant raises safety concerns with the housing provider, but does not explicitly reference a VAWA crime. The commenters stated that submission in this context would provide housing providers and tenants with additional time to explore housing options—such as locating a victim services provider or legal services attorney, lease bifurcation, or emergency transfers, before an eviction or termination notice for a violation has been issued.

Commenters also recommended that, at minimum, tenants should receive notice on an annual basis as a matter of course going forward to ensure distribution is not simply limited to times where the existing tenants are facing eviction or termination. A commenter suggested that HUD require housing providers to host routine information sessions, about tenants' and covered program participants' rights pursuant to VAWA and should require housing providers to review VAWA

rights at all annual program recertifications.

Another commenter stated that short notices indicating that more information is available in housing providers' offices would aid disseminating information about VAWA protections, as would posting these notices in common area locations. Commenter also stated that it should be clear that staff of the housing provider is available to review this material with tenants and to answer questions. The commenter further suggested using all available media to alert tenants of VAWA protections, and to do so in easy to understand language.

HUD Response: As discussed above, under this final rule, housing providers must give tenants the notice of occupancy rights and the certification form during either the recertification or lease renewal processes for the 12-month period following the effective date of this rule, or if there will be no recertification or lease renewal process during that 12-month period, through other means, in addition to providing the notice and form at the times specified in VAWA 2013, which times are included in HUD's VAWA regulations. HUD believes these required distribution times are sufficient to inform all tenants in a HUD-covered housing program of their rights under VAWA, and therefore the final rule does not require housing providers to give tenants the notice of occupancy rights and the certification form on other occasions. Housing providers are free and encouraged to provide the notice and form to tenants at any additional times determined to be helpful in informing tenants of their rights under VAWA. HUD also encourages housing providers to post the notice of occupancy rights under VAWA in public areas such as waiting rooms, community bulletin boards, and lobbies, where all tenants may view them. HUD further encourages, but does not require, housing providers with Web sites to post the certification form and notice of occupancy rights under VAWA online. HUD also encourages housing providers to work with tenants, and applicants, who need help understanding their rights under VAWA, either directly, or by providing information about local organizations that could help. In addition, housing providers should be able to answer any questions about emergency transfer plans that they have developed.

Comment: Notification and certification forms do not need to be submitted at recertification or to existing tenants. A commenter stated that Section 8 property managers are already required to include VAWA

policies in tenant selection plans and house rules, and such a requirement could be added for other covered programs. The commenter stated that existing tenants are already aware of VAWA protections, so there should be no requirement to provide new information other than modifying house rules to incorporate new VAWA protections. Another commenter said HUD should refrain from imposing additional financial obligations onto HUD-covered housing programs beyond what is stipulated in the VAWA statute.

HUD Response: This final rule does not require housing providers to give tenants the notice of occupancy rights and certification form on an annual basis, but only to give tenants the notice and form during the 12-month period following the effective date of this rule, either during recertifications or lease renewals, or if there will be no recertification or lease renewal process during that 12-month period, through other means. This requirement will help to ensure all tenants receive notice of their rights under VAWA 2013.

Comment: HUD should translate the notice of occupancy rights and the certification form. Commenters asked who would have responsibility for translating VAWA-related documents. Many commenters requested that HUD, rather than the housing providers, translate the notice of occupancy rights and the certification form. A commenter said that forms should be translated based on project occupancy. Other commenters said that with 208,000 covered providers, it would be a huge administrative burden and cost, and potentially create confusion and inconsistency if each provider were to create its own translation of these forms. A commenter said providing translated versions of the documents will help housing providers save limited resources, and perhaps apply these resources toward other language access needs. Commenters requested translation into languages including Arabic, Bengali, Bhutanese, Chinese, Egyptian Arabic, French, French Creole, Italian, Korean, Polish, Nepalese, Russian, Spanish and Vietnamese.

Commenters said it would be very helpful if HUD translated the documents and posted them on HUD's Web site. Commenters said that HUD's translation of the notice and forms would be an important step towards ensuring that victims with limited English proficiency (LEP victims) would be aware of their rights under VAWA 2013. Commenters said they believe that HUD is in a much better position than individual housing providers to provide translations expeditiously, particularly for

languages with smaller constituencies. Commenters said that, in some areas, housing providers would not otherwise be directed by the LEP Guidance to provide translated copies of the notice, but would instead be directed by the LEP Guidance to orally interpret the notice's contents. Commenters said that HUD has previously provided translations of forms, including the self-certification forms issued under VAWA 2005 (in 13 languages), and translated versions of the VAWA 2005 lease addendum, as well as non-VAWA-related documents.

The commenters said that centralizing translation responsibility at HUD imposes consistency and uniformity in translation, and allows for quality control, and would create a central place whereby advocates can express concerns about any inaccuracies with the translations. Commenters also said that it is important for HUD consider not only direct translation of notification/forms, but also transcreation¹³ to ensure that the intended meaning resonates across cultures and languages. Another commenter said the version of the notice, as provided in the proposed rule, as written and in English, poses readability issues for those who do not read at more advanced levels. The commenter said that in translating the notice and certification form, HUD should ensure that they can be easily understood by those who read at different levels. Commenters encouraged HUD to not merely translate each word, but instead ensure the information is conveyed in a meaningful way for the average reader in other languages, which would include ensuring documents are written in plain language and are culturally competent.

Another commenter said that it believes VAWA 2013's mandate that HUD develop a notice of housing rights includes developing translated versions of the notice. Commenter said covered housing providers should not be charged with developing any version of the notice or the VAWA self-certification form, including these forms' non-English-language counterparts.

HUD Response: As HUD provided following enactment of VAWA 2005, HUD will translate the notice of housing rights and certification form and post them on HUD's Web site. HUD appreciates commenters' request on ensuring the notice of occupancy rights certification forms are understandable

¹³ Transcreation refers to the process of adapting a message from one language to another while maintaining its intent, style, tone and context.

across languages and cultures. Housing providers who have LEP applicants and tenants who do not read a language that HUD has translated the form and notice into may have to provide those applicants and tenants with a notice and form translated into languages they do understand, in accordance with HUD's LEP guidance.

Comment: The rule should provide ways to ensure all individuals, regardless of language or reading ability, understand the protections of VAWA. A commenter stated that, because not all LEP applicants and tenants can read their native language, and certain LEP individuals communicate in languages that are unwritten, HUD should emphasize in the final rule the importance of providing culturally competent, sensitive interpretation of the notice when any LEP individual requires oral interpretation. Commenter asked that housing providers make available interpreters who are qualified to do sight translation and that, for languages that do not meet the HUD threshold requirement for translating vital documents, tenants be given a document stating: "This is an important document that could affect your housing rights. If you read this language, please call for further assistance." A commenter said this would allow those populations with smaller numbers to understand they need to call to receive oral interpretation of important information. Similarly, the commenter said, appropriate notification should be placed on documents indicating that sign language interpretation is available. Other commenters asked HUD to provide additional guidance for housing providers on how to provide VAWA information in a culturally competent way that would not jeopardize victims' safety or confidentiality.

HUD Response: HUD appreciates commenters' concerns about ensuring that tenants understand VAWA protections. Housing providers must comply with all applicable fair housing and civil rights laws and requirements in the implementation of VAWA requirements. This includes, but is not limited to, the Fair Housing Act, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act. See 24 CFR 5.105(a). For example, housing providers must provide reasonable accommodations for individuals with disabilities, such as a reasonable accommodation to any requirement that the emergency transfer request be in writing, and must help certain survivors put their request in writing, if requested or where the need for such assistance is obvious. Individuals with disabilities

may request a reasonable accommodation at any time to any program rules, policies, or practices that may be necessary.

Housing providers must also ensure that communications and materials are provided in a manner that is effective for persons with hearing, visual, and other communication-related disabilities consistent with Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and their implementing regulations. Housing providers must provide appropriate auxiliary aids and services necessary to ensure effective communication, which includes ensuring that information is provided in appropriate accessible formats as needed, e.g., Braille, audio, large type, assistive listening devices, and sign language interpreters.

With respect to LEP obligations, providers must take reasonable steps to ensure meaningful access to their programs and activities to LEP individuals. Please see the Department's *Final Guidance to Federal Financial Assistance Recipients: Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (LEP Guidance), http://www.lep.gov/guidance/HUD_guidance_Jan07.pdf. This final rule does not require housing providers to do more than is required by HUD's LEP guidance. However, HUD encourages housing providers to strive to ensure that all applicants and tenants have notice of their rights under VAWA.

Rule Change: In this final rule, HUD has inserted a new subsection under Subpart L at 24 CFR 5.2011 that references fair housing and civil rights statutes and requirements.

Comment: Clarify housing providers' responsibilities related to providing notice of occupancy rights and the certification form. Commenters asked whether housing authorities must provide the actual certification form in the Notice of Occupancy Rights or whether including language in the letter is sufficient. Commenters also asked whether housing providers need to document in tenant files that they provided the required VAWA notices to tenants at the required times, or whether adopting and implementing the policy of providing the notices at admission is sufficient. Another commenter suggested the notice of occupancy rights include an "acknowledgement of receipt" section to be signed by household members age 16 and above when the notice is provided at admission, recertification, or upon the threat of eviction or termination, but obtaining a signature after being denied housing seems impractical.

A commenter said that all adult family members should be given notice of any proposed action by the housing provider due to a VAWA-related incident, and said a minimum of 30 days' notice should be provided. The commenter said that if the victim has fled the unit and given the housing provider a new address, then the provider should send notice to the new address.

Another commenter asked if there a timeframe by which HUD will be required to develop this notice, and whether covered housing providers will be required to use, distribute, and abide by this notice, or whether it will be optional.

A commenter said that HUD's proposed rule would have required covered housing providers to give the notice of occupancy rights and certification form to applicants and tenants along with "any notification of eviction or notification of termination of assistance," but many different notifications are generated in the course of holdover, licensee, and termination of tenancy proceedings. The commenter asked HUD to specify which documents constitute a "notification of eviction" or "notification of termination of assistance," and clarify that housing providers are only required to give a tenant the notice once during the course of any tenancy termination or eviction proceeding.

HUD Response: VAWA 2013 and HUD's VAWA regulations require covered housing providers to give tenants and applicants both the certification form and the notice of rights. The certification form and the notice of rights that housing providers will use are being published with this final rule. It is a statutory requirement to provide both the form and the notice of rights at the times specified in VAWA 2013 and in HUD's VAWA regulations. Housing providers that do not comply with the statutory and regulatory requirements are in violation of program requirements. Among the other times specified in this rule, housing providers are required to give the notice of rights and the certification form to tenants with any initial notification of eviction or termination of assistance. However, housing providers do not need to provide the notice and rights and certification form with subsequent notices sent for the same infraction.

HUD's final rule does not require housing providers to document in tenant files that they provided the required notice at the required times, nor does HUD's final rule require an "acknowledgement of receipt." Further, this final rule does not provide

additional notification requirements for housing providers that take actions due to a VAWA-related incident, as housing providers may not know that an incident is VAWA-related. As described elsewhere in this preamble, under VAWA 2013 and HUD's final rule, housing providers are prohibited from denying or terminating assistance to or evicting a victim protected under VAWA, solely on the basis that the tenant is a victim under VAWA. Housing providers, however, may ask tenants or applicants to provide a form of documentation specified in the statute and in this rule to show they are subject to VAWA protections.

Comment: The notice of occupancy rights should be distributed to all persons, and not just heads of households. Commenters urged HUD to distribute the notice of occupancy rights to all persons and to find various means and times at which to distribute a copy of the notice to every existing individual adult tenant, not just the head of household, to ensure the notice is not only seen by an abuser or perpetrator. Commenters suggested distributing the notice during such meetings as an in-person recertification or reexamination increases the likelihood that all adult members of the household are present and will receive copies of the notice. The commenters said that HUD's final rule should require covered housing providers to prominently post the notice in visible, regularly-used common areas where other information is made available (e.g., community bulletin boards, housing authority waiting areas, laundry rooms etc.), and HUD should encourage housing providers to take advantage of other community events as opportunities to distribute the notice of occupancy rights. Another commenter suggested HUD consider allowing applicants to designate an alternate "safe address" to receive the VAWA notice.

HUD Response: HUD appreciates these suggestions and agrees with commenters that housing providers should do their best to ensure that all adult members of a household and not just the head of household receive the notice of rights and certification form. Section 5.2005 of this rule requires that the notice and certification form be provided to each applicant and to each tenant. In addition, as discussed earlier in this preamble, housing providers will

be required to give the notice and form to existing tenants during the recertification and lease renewal processes for the 12-month period following the effective date of this rule. In the limited circumstances where there may be no recertification or lease renewal process for a tenant during the 12-month period following the effective date of this rule, housing providers will be required to give the notice and form to tenants through some other means within the 12-month period after this rule becomes effective.

7. Lease Bifurcation

a. Reasonable Time Periods To Establish Eligibility and Find New Housing

Comment: 90 days to establish eligibility for a program or find new housing after a lease is generally reasonable. Some commenters expressed agreement with the time periods to establish eligibility for assistance provided in the proposed rule, saying they are sufficient to establish eligibility for a covered program or find alternative housing. Other commenters stated that the time periods are reasonable but extensions should be permitted. Commenters stated that this time period should be at least 90 days, with one commenter saying it should be up to one year. Commenters stated that in areas where there are housing shortages it may take longer to find other housing, that it can be complicated to navigate the housing system, and victims may stay with their abusers for fear of losing their housing. Other commenters suggested a minimum of 90 days should be allowed with an extension of 90 days in 30-day increments, each at the discretion of the housing provider on a case-by-case basis, based on a victim's documented progress being made toward establishing eligibility to remain in the property, determining if an emergency transfer can be arranged, or finding alternative housing.

HUD Response: This final rule maintains the combined 90-day time period for establishing eligibility for a program and finding new housing, and the combined 60-day extension period. Unlike the proposed rule, this final rule does not divide the time to (1) establish eligibility for a HUD program, and (2) find new housing into 60 and 30-day time periods, nor does the final rule divide the allowable extension for

establishing eligibility and finding new housing into two 30-day time periods. HUD removes the divisions so that victims have the flexibility to use the overall time period allowed to establish eligibility and find new housing in a way that most benefits the victim.

However, as explained further below, HUD clarifies in this final rule that the 90-day time period will not apply in situations where there are statutory prohibitions to its application. The 90-day period also will not apply where the lease will expire prior to termination of the 90-day period, and, as a result of the lease expiration, assistance is terminated. However, the expiration of the lease will not necessarily terminate assistance in the HOPWA program.

HUD stresses that the reasonable time period to establish eligibility following a lease bifurcation is triggered only in situations where the tenant removed from the unit is the one family member whose characteristics qualified the rest of the family to live in the unit or receive assistance. In many covered housing programs, including HOME, HTF, ESG, RHSP, and Section 221(d)(3), the reasonable time period provisions of this rule related to lease bifurcation will never be triggered because the family's eligibility is based on the characteristics of the family as a whole, not the characteristics of any one family member. Therefore, the eligibility of remaining tenants in these covered housing programs will have already been established at the time of bifurcation. For the Section 236, public housing, and Section 8 programs, which allow pro-ration of rent or assistance for certain families where eligibility has not been established for all members, the remaining tenants following a VAWA lease bifurcation might still need to establish their eligibility for the covered housing program if they have not provided documentation of satisfactory immigration status.¹⁴

For each covered housing program, HUD has reviewed the governing statutes and explains in the below chart why remaining tenants might not have established eligibility for a program, and in those circumstances, specifically what may impact the prescribed 90-day time period for those remaining family members to either establish eligibility for a covered housing program or to find new housing following a VAWA lease bifurcation.

¹⁴ In some rare cases, a student status may make be an additional reason why someone would be ineligible for continued Section 8 assistance. See "Final Rule Eligibility of Students for Assisted

Housing Under Section 8 of the U.S. Housing Act of 1937" at 70 FR 77742 implementing Section 327 of HUD's Fiscal Year 2006 appropriations, Title III of Public Law 109-115, and HUD's guidance

"Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance" at 71 FR 18146.

	Possible eligibility limitations	Regulatory provision	Reasonable time period to remain in unit
Sections 202/811 PRAC and SPRAC.	Age (for Section 202) and Disability (for Section 811).	24 CFR 5.2009	90 days or when the lease expires, whichever is first.
Section 202/8	Age; Immigration Status	24 CFR 5.2009	90 days or when the lease expires, whichever is first; 30 days if immigration status is an eligibility limitation.
HOPWA	HIV/AIDS	24 CFR 574.460	90 days to 1 year.
HOME .....	.....	24 CFR 92.359	All residents already meet eligibility.
HTF .....	.....	24 CFR 93.356	All residents already meet eligibility.
ESG .....	.....	24 CFR 576.409	All residents already meet eligibility.
CoC	Qualifying Disability (for Permanent Supportive Housing); Chronically Homeless Status.	24 CFR 578.75	Until expiration of the lease.
RHSP .....	.....	24 CFR 5.2009	All residents already meet eligibility.
Section 221(d)(3)/(d)(5) .....	.....	24 CFR 5.2009	All residents already meet eligibility.
Section 236 (including RAP)	Immigration Status	24 CFR 5.2009	30 days to meet eligibility.
Public Housing	Immigration Status	24 CFR 5.2009	30 days to meet eligibility.
Section 8 HCV Voucher	Immigration Status	24 CFR 5.2009	30 days to meet eligibility.
Section 8 PBV Voucher	Immigration Status	24 CFR 5.2009	30 days to meet eligibility.
Section 8 PBRA and Mod Rehab/SRO.	Immigration Status	24 CFR 5.2009	30 days to meet eligibility.

As shown in the above chart, under the Section 202 and Section 811 programs, there are requirements that the tenant be 62 or older (section 202) or disabled (section 811). Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) (section 202) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013) (section 811) require units to be leased to eligible low-income disabled persons or families. Under the Section 202 and Section 811 statutes, HUD cannot continue to subsidize a unit for remaining family members after a lease has been bifurcated if at least one of the remaining family members has not established eligibility for the program. Therefore, although this regulation provides that if a landlord chooses to bifurcate a lease under VAWA for a unit with a Project Rental Assistance Contract (PRAC) under the Section 202 or Section 811 programs, and the remaining family members have not established eligibility for the program, the landlord must provide a reasonable time period of 90 days for the remaining family members to remain in the unit, HUD will no longer be able to provide a subsidy to that unit during the time when it has not been established that an eligible individual is residing in the unit.

The above chart also provides a shorter reasonable time period in cases where the remaining tenant in a unit covered under the 202/8 program, Section 236 program, public housing, or a Section 8 assisted unit is not eligible because of immigration status. This is

because Section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a(d)(4)) requires that assistance under these programs be terminated after 30 days if the remaining family member has not submitted documentation evidencing a satisfactory immigration status or a pending appeal of a verification determination of the family member's immigration status.

Rule Change: This final rule revises § 5.2009(b) to combine the paragraphs and respective time periods that provide reasonable time periods for establishing eligibility for a covered housing program and finding new housing after a lease bifurcation. HUD revises this section to clarify that covered housing providers who choose to bifurcate a lease must provide remaining tenants who have not already established eligibility for the program 90 calendar days to establish eligibility for a covered housing program or find alternative housing. Further, HUD revises this section to state that this 90-calendar-day period will not be available to a remaining household member if statutory requirements of the covered program prohibit it, and that the 90-day calendar period also will not apply beyond the expiration of a lease, unless program regulations provide for a longer time period.

Comment: The time periods set out in the rule need to be changed or clarified. Some commenters said the reasonable time periods for establishing eligibility after bifurcation or finding new housing

should be lengthened. Commenters recommended that the reasonable time to establish eligibility to remain in housing after bifurcation be extended to 120 days, consistent with HUD policies that allow 120 days for tenants in HUD's multifamily programs to provide information to maintain continued housing assistance. Commenters also said the extension is necessary because survivors may have poor credit, prior arrests, or a prior eviction as a result of the abuse, and may be unable to access identification documents taken by abusers. A commenter said that HUD justified using 90 days for reasons related to obtaining a social security number, but if it can take up to 90 days just to provide a single piece of information, additional time is necessary to apply for and establish eligibility for a program.

Commenters said that there are certain parts of the eligibility process that are out of the control of the housing provider as well as the household members, such as income verifications by third parties. In instances where the survivor cannot establish eligibility, commenters recommended that an additional 60 days or more be granted. Commenters cited a critical shortage of affordable and public housing as the reason for a need for a longer time period. Another commenter said that, under the HCV program, 30 calendar days to find alternative housing is not a reasonable timeframe, taking into account voucher holders' success rate and low local vacancy rates. Commenter

said that, for the HCV Program, the initial term of the voucher issued to the family to find an eligible unit is 60 days, and for HUD-Veterans Affairs Supportive Housing (HUD-VASH), it is 120 days.

A commenter said it understands the desire to establish uniform time periods to ensure that expectations are clear for both survivors and housing providers, but a system that focuses on activities and goals, rather than strict timelines, would better recognize the external and domestic violence-related barriers to housing. The commenter said that, if an explicitly-defined time limit is necessary, HUD allow housing providers to waive the requirement whenever needed.

In contrast to the above comments, other commenters said an eligibility determination can generally be completed in significantly less than 60 days, and suggested that 90 days should be established as the maximum amount of time allowed to establish eligibility. A commenter suggested that once a family is determined to be ineligible for a program, the family should be given 30 days to vacate the unit. Some commenters said the rationale for the combined 90-day time period is unclear. Another commenter asked when the victim would not be able to establish eligibility, and when a reasonable time period to find other housing would be necessary.

Other commenters suggested that it should not take long to establish eligibility for the HUD program as properties have the household's most recent certification and necessary information. A commenter said that 60 days is too long for the initial period to establish eligibility, given the current waiting lists for individuals and families already determined to be eligible and, in the interest of lessening the burden on housing providers, HUD should permit PHAs the discretion to shorten the initial period to establish eligibility up to 30 days. Other commenters said it would take more time to find new housing than it would to establish eligibility in tight housing markets, and suggested that HUD reverse the timeframes to provide remaining occupants 30 calendar days to establish eligibility and, if they cannot, 60 calendar days to find alternative housing. Commenters said that, whatever time period is granted, it should not be separated into two distinct time periods since that is confusing and the potential is high that the family will not start looking until after they are determined to not be eligible. Commenters said these time periods provided in the proposed rule

appear to ignore the complexity of bifurcation of a lease under the HCV program where, in addition to establishing eligibility and locating alternative housing, a household may also need to negotiate a new lease.

A commenter requested clarification from HUD regarding the PHA's responsibilities during this initial period and whether only the tenant's eligibility needs be established, and it is not the case that the PHA must have processed the new paperwork and have either the unit ready for move-in or the assistance ready for the tenant's use within this initial period. A commenter said the burden should be on the tenant to meet their obligation to provide the required information to establish eligibility within this initial period.

Another commenter said that, in an era of greatly diminished financial resources to administer existing housing programs, housing providers should be able to choose at their discretion to provide the tenant time to establish eligibility and find new housing as the housing provider determines reasonable given housing market conditions in the area of the housing provider. In contrast to this comment, another commenter said that there should be consistency across HUD programs to provide certainty as to how much time a tenant would be given to relocate in the event of bifurcation.

HUD Response: In the final rule, HUD maintains the time period in the proposed rule of 90 days to establish eligibility for a covered housing program or find new housing, with the possibility of a 60-day extension, at the discretion of the housing provider. As discussed above, in this final rule the time periods are not separated into two different periods, and the time periods do not apply under certain programs and circumstances.

HUD declines to expand or eliminate these time periods because, under VAWA 2013, lease bifurcation is not mandatory, and HUD does not want to dissuade housing providers from considering this as an option by requiring housing providers to allow those who may be ineligible for a covered housing program—because they do not meet income or age or any other program requirement—to remain in their units for lengthy time periods. Given the high demand for housing subsidized by HUD by numerous populations, including the homeless, persons with disabilities, and the elderly, as well as other victims of crimes, HUD declines to provide for further extensions. HUD also declines to abbreviate these time periods in the interest of providing greater numbers of

tenants with sufficient time to establish eligibility for a covered program, or find new housing after a lease is bifurcated. For similar reasons, HUD eliminates in this final rule the provision that housing providers may extend the reasonable time period subject to authorization under the regulations of the applicable housing program.

For the HCV program, the victim and PHA do not have to wait for an owner to bifurcate the lease for the PHA to offer continued assistance for a new unit. While the family would not have to wait for bifurcation to occur, it would have to wait for eligibility to be determined.

The period to establish eligibility and find new housing is limited to those activities, and does not include any possible additional processing or inspection time.

Rule Change: HUD removes § 5.2009(b)(1)(iii) and (b)(2)(ii) from the proposed rule, which stated that housing providers may extend the reasonable time period “subject to authorization under the regulations of the applicable housing program.” HUD revises this language to state that housing providers have the option of extending the reasonable time period by up to 60 calendar days, unless prohibited by the governing statute of the covered program or unless the time period would extend beyond termination of the lease. In addition, HUD revises § 982.314 in the proposed rule to reflect this section's redesignation as § 982.354 by HUD's August 2015 Portability Rule.

Comment: Extensions to reasonable time periods should be allowed for public housing and HCV programs. Commenters stated that the preamble to the proposed rule provided little justification for withholding the discretion to extend the reasonable time period from administrators of public housing or a HCV program because all housing programs, and not just those two programs, face severe shortages of units, and housing agencies should have local discretion to extend the time in public housing and HCV programs, the same as in other assistance programs. Another commenter proposed there be an initial 30-day period to establish eligibility for public housing and section 8 programs, but, at the sole discretion of the PHA, this period may be extended for two, additional 30-day periods.

HUD Response: As discussed above, family members remaining in a unit after lease bifurcation under the HCV and Section 8 programs will often already be eligible to remain in the unit and, where an individual would be

ineligible is because of immigration status, HUD is statutorily prohibited from permitting that family member to stay in the unit beyond 30 days if satisfactory immigration status cannot be proven.

Comment: Those with tenant-based assistance should have the opportunity to remain in their housing while attempting to establish eligibility for the program and finding new housing. A commenter said that HUD stated in the preamble to the proposed rule that the reasonable time period does not apply to tenant-based assistance, but made this statement with no comprehensible justification. The commenter stated that HUD did not explain its assertion that the reasonable time period resulting from lease bifurcation may only be provided to tenants by covered housing providers that remain subject to the requirements of the other covered housing program once the eligible tenant departs the unit.

Another commenter said it does not understand why HUD, in application of VAWA rights and protections, makes the distinction between project-based assistance and tenant-based assistance. The commenter recommended that tenants be allowed to stay in their units while attempting to establish eligibility, and that there be no time period imposed on remaining tenants trying to transfer to tenant-based assistance. The commenter said its recommendation is particularly important because the evicted perpetrator who has the tenant-based assistance is entitled to due process rights, and if the abuser or perpetrator chooses to exercise these rights, the timeline of when a victim can establish eligibility for the tenant-based assistance becomes very unpredictable.

Another commenter asked HUD to identify the HUD's programs to which it refers when referencing HUD "tenant-based rental assistance" and "project-based assistance," and to clarify which programs are subject to the reasonable time period accommodation. The commenter stated that the proposed rule advised that agencies administering Section 8 voucher programs should provide the reasonable time period for a maximum period of 90 days, but then said that the reasonable time period does not apply, generally, if the only assistance provided is tenant-based rental assistance.

HUD Response: HUD agrees with commenters that those with tenant-based assistance should have the opportunity to remain in their housing while attempting to establish eligibility for a covered program or find new housing. HUD clarifies in this final rule that the reasonable time periods

specified in this rule apply to tenant-based assistance.

Comment: Clarify the interaction between the reasonable time period provided in the proposed rule and reasonable time periods in different programs. A commenter stated that proposed § 5.2009(b)(1)(ii) provided that the reasonable time to establish eligibility for assistance can only be provided to remaining tenants if the governing statute of the covered program authorizes an ineligible tenant to remain in the unit without assistance. The commenter strongly urged HUD to remove this sentence from the rule because such statement is contrary to Congressional intent to require covered housing providers to give tenants who remain after a lease bifurcation the right to have "reasonable time" to establish eligibility. The commenter said that by mandating a "reasonable time" in this context, Congress chose to suspend, for a limited time, applicable program eligibility requirements so that victims do not lose housing assistance. The commenter also said it is unclear which program statutes HUD was referring to, and whether there are any statutes that authorize an ineligible person to remain in units without assistance. The commenter stated that proposed § 5.2009(b)(1)(ii) said the 60 days does not supersede any time period to establish eligibility that may already be provided by the covered housing program. The commenter expressed confusion about whether this statement referred to existing time period requirements for remaining family members to establish eligibility, in which case the longer time period applies, or whether the statement was indicating that there are programs with regulations implementing VAWA that outline their own "reasonable time" periods.

HUD Response: HUD agrees that the language in § 5.2009(b)(1)(ii) of the proposed rule was not as clear as HUD intended when HUD stated that the reasonable time to establish eligibility could only be provided to a remaining tenant if the governing statute of the covered program authorizes an ineligible tenant to remain in the unit without assistance. As discussed above, in this final rule, HUD revises § 5.2009(b) to clarify that covered housing providers who choose to bifurcate a lease must provide remaining tenants who have not already established eligibility for the program 90 calendar days to establish eligibility for a covered housing program or find alternative housing. Further, HUD revises this section to state that this 90-calendar-day period will not be

available to a remaining household member if the governing statute of the covered program prohibits it, and that the 90-day calendar period also will not apply beyond the expiration of a lease, unless program regulations provide for a longer time period. See the chart and explanation earlier in this preamble that explains applicable reasonable time periods for covered housing programs.

Comment: For the CoC Program, reasonable time requirements of VAWA should apply in the scenario where the time remaining on the lease is shorter than the reasonable time to establish eligibility. Commenters said proposed § 578.75(i)(2), which addresses treatment of remaining program participants following bifurcation of a lease or eviction as a result of domestic violence, should be clarified to include transitional housing, and HUD should direct programs to use whatever period is longer—the rest of the time on the lease or the amount of time permitted by the general VAWA lease bifurcation provision—on occasions where the time left on the lease is shorter than the reasonable time allowed to establish eligibility or find new housing. Other commenters suggested striking § 578.99(j)(8), which states that HUD's generally applicable bifurcation requirements pertaining to reasonable time periods under VAWA in 24 CFR 5.2009(b) do not apply, and the reasonable time period for the CoC program is set forth in § 578.75(i)(2).

HUD Response: Section 578.75(i)(2) applies to permanent supportive housing projects, in which the qualifying member of the household must have a qualifying disability. This final rule does not change this section to include transitional housing because transitional housing does not have the same qualifying member requirement. Once determined eligible, the entire household is considered eligible under transitional housing.

This final rule does not maintain § 578.99(j)(8) of the proposed rule, which, as noted above, says that the reasonable time periods in 24 CFR 5.2009 do not apply to the CoC program, but instead drafts a separate bifurcation section at § 578.99(j)(7). However, HUD maintains that the reasonable time requirements do not apply because they would conflict with other CoC program requirements.

With the exception of permanent supportive housing projects, the eligibility of the household is based on the entire household, not just one member, so in the event of a lease bifurcation the household would retain the housing for the length of time remaining in their original period of

assistance. Once the period of assistance has ceased then the household would re-certify or re-apply. In the event of lease bifurcation in transitional housing, covered housing providers have the ability to extend the assistance beyond 24 months, on a case-by-case basis, where it is necessary to facilitate the movement to permanent housing. HUD will continue to allow covered housing providers the discretion that they currently have in assisting families when the families' circumstances change during their original period of assistance. Existing CoC regulations state that surviving members of a household living in a permanent supportive housing unit have a right to rental assistance until the lease expires.

Rule Change: HUD removes the requirement in § 578.99(j)(8) and provides for a new section on lease bifurcations at § 578.99(j)(7).

b. Bifurcation Logistics

Comment: Clarify how bifurcation applies to affiliated individuals and lawful occupants. Commenter stated that the definition of bifurcation in the regulations explains that if a VAWA act occurs, "certain tenants or lawful occupants" can be evicted while the remaining "tenants or lawful occupants" can continue to reside in the unit. Commenter said this section should specify whether the phrase "tenants or lawful occupants" includes "affiliated individuals." Commenter also requested clarification on the meaning of the terms "affiliated individual" and "other individual" in proposed § 5.2009(a)(1). A commenter asked the following questions: (1) If a member of a household is a lawful occupant and not a signatory to the lease, but is also the abuser, is "bifurcation" an appropriate remedy to terminate the abuser's occupancy rights; (2) is bifurcation an appropriate remedy if an "affiliated individual" is the abuser; (3) if a member of a household is an unauthorized occupant and is also the abuser, what actions may the covered housing provider take against the abuser; (4) if a member of a household is an unauthorized occupant and also the abuser, may the covered housing provider take action against the tenant-lease signatory for permitting an unauthorized occupant to reside in the unit without violating VAWA; (5) can a lease be bifurcated if the abuser is a tenant or lawful occupant of the unit, but the victim lives elsewhere; and (6) what remedies does an "affiliated individual" have, if any, if the affiliated individual is the victim of a VAWA act, or a non-victim household member?

HUD Response: The phrase "tenants or lawful occupants" does not include affiliated individuals who are neither tenants nor lawful occupants. Affiliated individuals are not themselves afforded protections or remedies under VAWA 2013 or HUD's VAWA regulations. Rather, a tenant may be entitled to VAWA protections and remedies because an affiliated individual of that tenant is or was a victim of domestic violence, dating violence, sexual assault, or stalking. However, an affiliated individual cannot seek remedies from the housing provider.

HUD's proposed language in § 5.2009(a)(1), which provides that a covered housing provider may bifurcate a lease in order to evict, remove, or terminate assistance to an individual who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault or stalking against an "affiliated individual or other individual," mirrors language in VAWA 2013. HUD interprets this statutory language to mean that a housing provider may bifurcate a lease to remove a member of the household who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking, against any individual.

Generally speaking, a lawful occupant will not have rights to a unit under a covered housing program unless the lawful occupant is a tenant on the lease. Bifurcation is not the appropriate remedy to remove a household member who is not on the lease and who is not a tenant. There would be no need to divide the lease to remove a household member who is not on the lease. As explained elsewhere in this preamble, under VAWA, a covered housing provider may not evict or terminate assistance to a tenant solely on the basis that the tenant has an unauthorized abuser or perpetrator in the household, where the unreported household member is in the unit because he or she has committed an act of domestic violence against the tenant, and the tenant is afraid to report him or her.

Comment: HUD should outline a process for victims to establish eligibility and find new housing. Commenter said it is important for HUD to outline a process and timeframe for victims to exercise their right to establish eligibility for the current program, and the process should be modeled off of one that already exists for the multifamily programs in the recertification context. Commenter suggested the covered housing provider should immediately provide a notice to the remaining tenants stating their right to establish eligibility under the current

program within a specified time period, and the time period should not start to run unless the required notice has been provided. Commenter suggested the notice describe how the tenants can apply for the program and include a deadline by which the tenants must submit the information necessary to apply for the program, with the possibility of an extension. Commenter said the housing provider should have to determine the household's eligibility for the program and issue a notice of determination well before the time period for the tenant to remain in the housing expires, and there should be an opportunity for a tenant to appeal an adverse decision. Commenter said the time period for establishing eligibility should not be tolled until an appeal decision is final. The commenter said that alternatively, for remaining tenants who do not respond to the initial notice in a timely manner, the housing provider must send a notice stating that the tenants have waived their right to establish eligibility for the current program under VAWA, but such waiver does not preclude the tenants from applying for the program in the future.

HUD Response: Because lease bifurcation is an option and housing providers are not required to bifurcate a lease, HUD declines to impose requirements, at this time, beyond those specified in § 5.2009 of this rule, as to how a bifurcation of lease process should occur. State and local laws may address lease bifurcation and, where they do address lease bifurcation, covered housing providers must follow these laws. Housing providers, however, are free to establish their own policies on steps to be taken when a lease is bifurcated, and HUD encourages housing providers to establish such policies and make these policies known to tenants.

Comment: Explain how lease bifurcation will work. A commenter requested clarification of whether the reasonable time period begins upon an owner's initiation of a lease bifurcation, the date of eviction, or another point in the bifurcation process. A commenter asked where a PHA administers an HCV program, and terminates assistance to a family member after determining that the family member committed criminal acts of physical violence against others in the household, and that family member has signed the lease, the PHA is required to bifurcate the lease. The commenter further asked whether the PHA, by the action of terminating assistance to the family member who committed domestic violence, could require the owner of the housing in which the family resides to bifurcate the

lease. Another commenter asked whether a housing provider would be able to terminate the assistance and tenancy of the abuser immediately, and whether law enforcement would need to be involved. Another commenter asked whether the housing provider would need to obtain a court order to remove a tenant from the unit and remove the tenant's name from the lease without the tenant's permission. A commenter requested that HUD clarify a PHA's specific responsibilities when a lease bifurcation is initiated by an owner, and how an owner should decide that a lease bifurcation is appropriate and that an individual can be legally evicted.

A commenter said that, given that the termination of occupancy rights must be carried out in accordance with State and/or local laws, the rule's bifurcation provision does not provide a helpful tool for housing providers to expedite dividing the family if both the victim and perpetrator have property rights to the unit and, in such cases, the housing provider could only relocate the victim to another unit and follow a separate track to evict or terminate the perpetrator in accordance with due process procedures. Commenters asked for advice on how to address a situation where the tenant and owner disagree about bifurcation of a lease.

HUD Response: As stated in § 5.2009, the reasonable time period begins on the date of bifurcation of the lease; that is, the date when bifurcation of the lease is legally effective, and not at the start of the process to bifurcate a lease.

If a PHA terminates assistance to an individual because that individual was a perpetrator of a crime under VAWA, that does not mean that an owner must bifurcate the lease if the unit has other household members. Similarly, a PHA cannot require an owner to terminate or bifurcate a lease where the PHA has terminated assistance for reasons unrelated to VAWA. Further, § 982.53 of this rule provides that the owner, and not the PHA, is the covered housing provider that may choose to bifurcate a lease.

For housing choice and project-based vouchers, if an owner bifurcates a lease, the owner must immediately notify the PHA of the change in the lease and provide a copy of all such changes to the PHA. This requirement is in 24 CFR 982.308(g) for the tenant-based voucher program and 24 CFR 983.256(e) for the project-based voucher program. With the exception of PHA-owned units, the PHA is not a party to the lease and therefore cannot bifurcate a lease agreement between an owner and a tenant. It is up to the owner to bifurcate the family's lease and to evict or remove

the perpetrator from the unit. Under VAWA 2013 and as reflected in this rule, bifurcation of a lease is an option and not a requirement, so an owner would not be required to bifurcate a lease.

HUD notes that any eviction, removal, termination of occupancy rights, or termination of assistance must be undertaken in accordance with the procedures prescribed by Federal, State, or local law for termination of leases.

Comment: Clarify whether subsidies continue and who is responsible for housing costs during the reasonable time period when tenants try to establish eligibility or find other housing. Commenters asked HUD to clarify whether housing providers would continue to subsidize units for those who are found to be ineligible after a lease is bifurcated. Commenters said that if the remaining family members cannot pay the rent, the loss of rental revenue and possible eviction costs is an additional financial burden for housing providers and asked for clarity as to who pays the housing costs in this event.

Commenters said housing providers should work with victims to determine if they are eligible for a HUD program, and HUD should continue to provide housing assistance to tenants who are trying to establish eligibility for a program or find new housing. Commenters said that at the end of the eligibility period, owners or agents should prepare a recertification showing any changes in household composition or HUD assistance and, if the victim is not eligible for assistance, the termination of subsidy or tenancy should not be effective until the last day of the month following a 30-day notice period. Commenter said that not ensuring assistance for victims and their families will lead to evictions and homelessness. A commenter said housing providers should continue to pay subsidies until the reasonable time period has elapsed.

Another commenter said that tenants who remain in the units after lease bifurcation should pay the same amount of rent owed before the bifurcation, or, the minimum rents as outlined in applicable program rules, until the time periods in the regulations to establish eligibility and find other housing runs out or until the family is able to establish eligibility for a covered housing program or has found other housing. The commenter said that, for those covered housing programs that do not have minimum rents, HUD should require that the remaining tenants in these units to pay 30 percent of the remaining tenants' income while

attempting to establish eligibility or while looking for new housing. The commenter also said these interim rents should include exemptions for remaining tenants who cannot pay because of the violence or abuse.

Commenters said the final rule should be clear that housing providers are not responsible for rent payments, and should not otherwise incur losses, after a lease is bifurcated. Commenters said HUD should clarify that remaining tenants are responsible for rent payments and other lease obligations during the period when individuals are trying to establish eligibility for a covered housing program or find alternative housing, or HUD should commit to continuing assistance to the unit during the reasonable time period. A commenter said HUD should continue to provide assistance for the amount shown on the tenant certification.

Another commenter said HUD should give housing providers additional financial resources commensurate with the reasonable period, and housing providers should not be forced to forgo rent, housing assistance payments, operating funds, or other funds that they would otherwise receive. A commenter said the rule should include language that housing providers are not required to provide housing and utilities free of charge during reasonable time periods.

HUD Response: HUD is able to and will continue to subsidize units or families, as appropriate under different programs, after a lease bifurcation during the time periods specified in this rule (see chart explaining applicable time periods earlier in this preamble). As previously discussed, HUD cannot continue to subsidize a Section 202 or a Section 811 unit that does not contain an individual who is not eligible for that program during the 90-calendar-day period following a lease bifurcation. HUD stresses that it is the covered housing provider's decision whether or not to bifurcate a lease under VAWA. HUD also notes that section 5.2009(c) of this rule encourages housing providers to help victims of VAWA incidents remain in their units or move to other units in a covered housing program whenever possible.

Comment: Clarify any interim rent obligations that may arise from bifurcation of a lease. Commenters offered various suggestions on how to address any interim rent obligations that may arise following bifurcation of a lease. A commenter said that rent should not be changed for remaining tenants who are eligible for assistance because any tenant in the unit should already have been determined to be

eligible. Another commenter recommended that housing providers be allowed to follow their existing policy for when a head of household or other adult is removed for any other reason when determining interim rent obligations after bifurcation. A commenter stated that after a tenancy ends, remaining tenants have to pay the lower of either (1) an amount equal to the rent of the former tenant, or (2) an amount based on the income of the current occupant(s).

Other commenters said an interim recertification should be completed during the reasonable time period and interim rent should be established based on the income of remaining family members. A commenter said that, if the remaining tenant is ineligible to receive a subsidy, the rent could be set at current market rate for a section 8 or PBV tenant and flat rent limits for public housing tenants. A commenter said that use of these rents would provide incentive for participants to resolve eligibility issues quickly and help protect providers from revenue losses.

A commenter said that while eligibility approval is pending after a lease bifurcation, HUD's rule should require that any increase in the remaining family's share of rent be effective the first day of the month following a 30-day notice of changes to the rent obligation. The commenter said this time frame is consistent with current rules governing interim rent increases for HUD Multifamily Housing and should be implemented in other Federal housing programs.

HUD Response: HUD appreciates these suggestions, but existing program regulations govern interim rent obligations, and HUD is not altering the existing requirements for purposes of implementing VAWA.

Comment: Housing providers should have some latitude in allowing victims who do not qualify for a program to remain in a unit when a lease is bifurcated. Commenters stated that if a tenant is at the threshold of being eligible for certain housing, for example, a survivor who will qualify for age-restricted housing in a year, the housing provider should be allowed to let the survivor remain in the housing. Another commenter said housing providers should be allowed to continue to provide subsidy to a victim who is ineligible for a program based on such factors as age or disability.

HUD Response: The statutes authorizing the covered housing programs determine basic program eligibility requirements. Tenants who are victims of domestic violence, dating

violence, sexual assault, or stalking, will not be eligible for programs for which they would be ineligible if they had not been victims of domestic violence, dating violence, sexual assault, or stalking. HUD and housing providers do not have the discretion to depart from statutory requirements.

Comment: Housing providers should not be expected to allow an ineligible family to remain in an assisted unit or to retain assistance. A commenter said HUD should not expect a PHA to allow an ineligible family to remain in an assisted unit, or in a market rate landlord's unit receiving tenant-based assistance, especially if HUD may not cover the assistance. The commenter said that assisting an ineligible family creates a hardship and denies a unit or voucher to an eligible waiting list applicant. The commenter said that HUD does not allow PHAs to maintain any funding overages that could be used to assist an ineligible family for any period of time.

HUD Response: Under VAWA 2013 and this final rule, housing providers that exercise the option of bifurcating a lease must give remaining tenants a reasonable period of time, as specified in § 5.2009 of this rule and applicable program regulations, to remain in a unit to establish eligibility for a HUD program or find new housing. Housing providers may evict or terminate assistance to those who are unable to establish eligibility at the expiration of the applicable reasonable time period.

Comment: Procedures to certify a new head of household should impose minimal burden on the family. A commenter said that where the abuser was the eligible head of household and leaves, the housing provider's procedures for certification of a new head of household should impose minimal burden on the family. The commenter suggested that where there is only one remaining adult member of the household, there should be a presumption that that adult should be the new head of household and, where there is more than one adult, the housing provider should be required to send notice to all eligible members, have the family select the head of household, and establish procedures for when the family cannot. The commenter said that where the removal of the abuser leaves the family with no member who can qualify, a qualified person with physical custody of the children should be added to the household to become the head of household. The commenter said the rules should absolve the new head of household from responsibility for any funds owed prior to the removal of the

abuser and PHAs should continue paying subsidies until the substitution of the new head of household is made. The commenters further said victims may not be aware of their rights to have rent recalculated when the abuser is removed from the household and should not have to report a change of household income, but rent should be recalculated and effective the first month after the abuser leaves.

HUD Response: HUD will not require PHAs to deviate from their current procedures to certify a new head of household. Procedures for certifying a new head of household may be similar to the procedures for any family break up or death of the head of household, or for adding a new person to the family, and must be described in the PHA's administrative plan and other policy documents.

Comment: Explain how bifurcation will work with families with mixed immigration status. Commenters requested that HUD explain or issue guidance on how to provide assistance to mixed family households where the sole household member with citizenship or eligible immigration status is the perpetrator and has been removed from the household through bifurcation. A commenter stated that, in this scenario, the remaining household members who lack eligible citizenship status would not be eligible for assistance and would risk losing their housing based on reporting the abuse. The commenter said that certain families will be able to apply for nonimmigrant status and seek temporary immigration benefits under the Immigration and Nationality Act, but might require much longer than a 90-day period to establish eligibility, and they should be given additional time. The commenter said that any extensions granted to mixed families under this section should be harmonized with § 5.518, which establishes the requirements for temporary deferral of termination of assistance for families lacking eligible immigration status, and affords eligible families an initial deferral period of up to six months. The commenters said that for those families who do not qualify for nonimmigrant status, HUD should implement procedures to waive its mixed family requirements to authorize victims without eligible immigration status to continue receiving assistance, and HUD should either waive prorated rent payment requirements for such victims, or issue special subsidies to assist them.

HUD Response: HUD appreciates commenters' concerns, but altering existing program regulations regarding

mixed families is outside of the scope of this rule.

Comment: Clarify whether section 8 assistance can be bifurcated.

Commenters asked whether a housing provider can bifurcate Section 8 assistance and, if so, requested procedural guidance on how this would be done. Commenters said that, absent the ability to bifurcate assistance, PHAs would be left in an untenable position in cases where a voucher is issued to two individuals and one commits a VAWA act against the other.

HUD Response: Tenant-based Section 8 assistance cannot be bifurcated because bifurcation relates to the division of a lease, not the division of assistance. The PHA's family break-up policies will apply in situations where a household divides due to domestic violence, dating violence, sexual assault, or stalking.

Comment: Clarify that housing providers should not pressure victims to remain in unit. A commenter commended HUD for including a provision that encourages covered housing providers to assist victims, but recommended that HUD clarify that covered housing providers should only provide assistance to victims and their household members who want to remain in their units, and should not pressure those who do not feel safe in these units to remain there. The commenter said that, in these situations, the covered housing providers should be encouraged to work with the victims to find safe and affordable units elsewhere.

HUD Response: HUD agrees that covered housing providers should only provide assistance to victims and their household members who want to remain in the units, and should not pressure those who do not feel safe in these units to remain there. HUD emphasizes that bifurcation of a lease is one option of possible remedy to address a family divided by domestic violence, and HUD's final rule at § 5.2009(c) encourages covered housing providers to undertake whatever actions are permissible and feasible under their respective programs to assist individuals to remain in their unit or other units under the covered housing program. Individuals who do not feel safe in their unit may wish to request an emergency transfer if they meet the rule's criteria for requesting emergency transfer in § 5.2005(e).

Comment: Clarify that covered providers may bifurcate a lease under VAWA regardless of whether State law specifically provides for lease bifurcation. A commenter asked that HUD clarify that housing providers may

bifurcate a lease under VAWA regardless of whether State law specifically provides for lease bifurcation, but that the providers must do so using processes consistent with Federal, State, and local law.

HUD Response: Section 5.2009(a)(2) of the final rule provides that bifurcation is an option as long as it is carried out in accordance with any requirements or procedures as may be prescribed by Federal, State, or local law for termination of assistance or leases and in accordance with any requirements under the relevant covered housing program. Where State or local laws address lease bifurcation, and these laws require bifurcation, permit bifurcation or prohibit bifurcation, and, where permitted or required, specify processes to be followed, the housing providers must follow these laws.

Comment: Clarify that housing providers are not expected to act in ways that are not accord with Federal, State and local laws. A commenter stated that housing providers cannot guarantee that a judge will grant, or a local agency will enforce, an eviction where a lease is bifurcated. Another commenter asked how a PHA that operates in a State that requires that public housing residents be evicted in court in order to terminate tenancy can only require the HUD self-certification form when initiating the bifurcation of a lease. Other commenters stated that, since bifurcation of a lease is subject to State and local laws, this may create inconsistencies in actual application.

HUD Response: As addressed in the response to the preceding comment, § 5.2009(a)(2) of the final rule provides that bifurcation must be carried out in accordance with any requirements or procedures as may be prescribed by Federal, State, or local law. Where a PHA operates in a State where public housing residents must be evicted in court, then the PHA must follow that procedure, but that does not change the fact that in order to establish eligibility for VAWA protections, the PHA must accept self-certification, unless there are conflicting certifications. HUD recognizes that this means that there will be differences in how bifurcation operates in different States or localities.

Comment: There should be a database or other online management tool to assist individuals in locating new housing. A commenter stated that an individual who is seeking to bifurcate a lease and look for alternative housing would benefit from being able to search for housing options on a government Web site.

HUD Response: HUD's Web page, entitled Rental Assistance, at the

following Web site http://portal.hud.gov/hudportal/HUD?src=/topics/rental_assistance provides nationwide information on how to find affordable rental housing.

Comment: Do not mandate requirements to help remaining tenants stay in housing after bifurcation, but offer guidance. A commenter said HUD should not mandate a specific set of requirements that covered housing providers must take to help remaining tenants stay in housing, as these may be burdensome and costly depending on the housing provider's internal and community resources. The commenter, however, supported HUD providing guidance to housing providers, including recommendations on a quick response plan for eligibility determinations of remaining tenants, and coordinating with community resources to prioritize these families for rapid re-housing and other programs.

HUD Response: Unless discussed elsewhere in the preamble, the only provisions on bifurcation in HUD's final rule are those required by statute. As provided throughout this section of the preamble that addresses the issues raised by commenters, HUD intends to supplement its VAWA regulations with program guidance.

Comment: After bifurcation, housing providers should take steps to ensure perpetrators are kept away from the victim's unit. Commenters said that when a lease is bifurcated the owner or agent should work with the local police and legal system to ensure, to the extent possible, that the perpetrator is not allowed on property grounds, with limited exceptions. A commenter said that once the lease has been bifurcated, unit locks should be changed immediately.

HUD Response: As has also been stated through this section of the preamble that addresses issues raised by commenters, HUD strongly supports covered housing providers taking whatever actions they can to keep victims safe.

Comment: Advise how housing providers can rehouse both victims and offenders. A commenter stated that in determining bifurcation policies, there should be consideration of how housing providers can rapidly house the household in question including both victim and offender, where the offender is not incarcerated or otherwise apprehended for their involvement in a crime. The commenter suggested offering referrals to the offender when alternate living arrangements are not feasible, such as a referral to a community shelter service. Another commenter stated that after evicting an

abuser, a housing provider has the right to reject any future application where the abuser is part of the household, including adding an abuser to an existing household on the property.

HUD Response: As discussed in this preamble, victims of VAWA incidents in HUD-covered housing will generally be provided a reasonable time to establish eligibility for housing in their current units after a lease bifurcation. HUD appreciates commenters' suggestion for rehousing everyone in a household after a lease bifurcation, but declines in this rule to require housing providers to take specific steps for rehousing household members after a lease bifurcation. HUD does not wish to discourage housing providers from choosing to bifurcate leases where it is appropriate to do so.

This rule does not adopt a policy that, after evicting an abuser, a housing provider has the right to reject any future application where that abuser is part of this household, as this may be prohibited by State, local, and Federal laws, as well as HUD program requirements, and is outside the scope of this rulemaking.

8. Implementation and Enforcement

Comment: Strong enforcement of the rule is important considering the strong connection between VAWA crimes and homelessness. Commenters said that 92 percent of homeless women report having experienced severe physical or sexual violence at some point in their lives, and upwards of 50 percent of all homeless women report that domestic violence was the immediate cause of their homelessness. Another commenter cited statistics that 28 percent of families reported to be homeless because of domestic violence. Other commenters further stated that nearly 1 in 5 women has been the victim of an attempted or completed rape, and over 80 percent of women who were victimized experienced significant impacts such as post-traumatic stress disorder, injury, and missed time at work or school. Commenters said economic insecurity and the trauma that often follows sexual assault make it difficult, if not impossible, for many victims to access safe, affordable housing options. Commenters stated that when survivors have access to safe and affordable housing, such access reduces their risk of homelessness, which reduces their risk of future violence. A commenter said that that women and men who experience housing insecurity reported a higher prevalence of sexual violence, physical violence, and stalking.

HUD Response: HUD agrees with the commenters regarding the connection between VAWA-related crimes and homelessness. Such connection underscores the importance of HUD and its housing providers taking all actions, consistent with VAWA 2013, to protect victims of domestic violence, dating violence, sexual assault, and stalking, and to house them in the safest locations possible. Further, HUD strongly encourages housing providers to take actions beyond the minimum required by VAWA 2013, where possible and consistent with Federal, State, and local laws.

To ensure implementation, HUD is requiring that covered housing provider keep a record of all emergency transfers requested under its emergency transfer plan, and the outcomes of such requests, and retain these records for a period of three years, or for a period of time as specified in program regulations. HUD is also providing in the "Notice of Occupancy Rights" contact information for individuals to report a covered housing provider that fails to comply with this regulation.

Comment: Provide clear and robust guidance and technical assistance to housing providers. Commenters stated that HUD must give housing providers clear and robust guidance so that VAWA is fully and correctly implemented. Another commenter said that housing providers should be aided by manuals that cover the emergency transfer process and applicable time frames, and with manuals to connect victims with counseling, legal aid, and other services to bolster social work efforts. Other commenters said that HUD should work closely with DOJ to develop VAWA guidance for HUD staff, including staff of HUD's Office of Fair Housing and Equal Opportunity (FHEO), for housing providers, and for housing judges and legal aid.

A commenter said HUD staff and housing providers should be required to participate in annual training to ensure compliance with VAWA. Another commenter urged HUD to consider significant technical assistance to PHAs around domestic violence and the VAWA regulations—including education on financial abuse, as this may manifest itself as "nonpayment of rent" for housing providers, notification of housing rights under VAWA, and translating forms and notices into other languages.

A commenter said HUD will also need to provide program-specific guidance, as implementation of certain provisions will vary between programs. The commenter said, for example, HOME grantees and LIHTC owners may need to

add language to their tenant selection plans to handle transfer requests and allow a domestic violence survivor to have access to an available unit. The commenter said HUD will also need to provide clear guidance to each field office on how VAWA 2013 should be implemented across the various HUD programs, especially in regards to unit transfers, and provide a path for escalation if there are unclear or confusing situations.

HUD Response: HUD appreciates the commenters emphasizing the importance of guidance and technical assistance to aid covered housing providers in implementing VAWA, and, as HUD has already stated in the preamble, HUD intends to provide such.

Comment: HUD and housing providers should collaborate with others in implementing VAWA. A commenter stated that HUD should work with law enforcement and justice officials to determine the best remedy for a victim and a remedy that is consistent with the needs and wishes of the victim through a shared informational database. The commenter emphasized the importance of a collaborative approach to client case management issues and stated that information data bases could be an important tool, where individuals consent to the sharing of information. Another commenter said that owners and agents should be strongly encouraged to develop a resource folder of sources within a 15-mile radius of the property providing help and counseling services to victims of domestic violence, dating violence, sexual assault and stalking. Commenters said covered housing providers should work with local law enforcement to take all legal means to ensure that the perpetrator does not come onto the property grounds, including getting a restraining order.

A commenter says there should not be separate duplicative requirements for LIHTCs, administered by the Department of Treasury, as HUD's HCV and PBV programs often coexist with the LIHTCs.

Another commenter said that many of the multifamily developments funded with HOME funds and expected to be funded with HTF funds are also constructed or operated with resources from other Federal agencies. Commenters urged HUD to coordinate with these agencies so that, within statutory limits, a development is not subjected to inconsistent VAWA 2013 compliance requirements.

Commenters asked that HUD clarify that communities need to include the full participation of domestic violence and sexual assault experts in their

Continuums of Care, and HUD or the State recipient should monitor how PHAs and CoCs have partnered with these experts. Commenters said HUD should release further guidance directing communities to ensure that the safety needs of survivors are met and that survivors can have preference in allocating housing resources. Commenters expressed concern that housing assessment tools that under-assess the housing needs of survivors can reduce the number of survivors prioritized for housing.

HUD Response: HUD agrees with commenters on the importance of working with housing providers and other agencies to implement VAWA effectively. With respect to establishing databases, HUD cautions that VAWA 2013 and HUD's regulations prohibit entering VAWA-related information documenting or certifying to the occurrence of a VAWA-related incident into shared databases for confidentiality reasons, although this will not apply if the disclosure is requested or consented to in a time-limited written release by the individual who submitted the documentation.

Comment: Victims of domestic violence should be supported with portable housing funding. A commenter stated that the importance of housing individuals in violence-free environments requires a new approach to community housing that precludes housing families in low-income neighborhoods. Commenter stated that victims of violence should be supported with portable housing funding that can be applied to market rents to prevent the development of crime-riddled low-income neighborhoods. Another commenter said housing programs should attach assistance to the tenant rather than the unit in order for the tenant to obtain continued, unbroken assistance in HUD programs. This commenter said this is important for lesbian, gay, bisexual, or transgender (LGBT) persons who are uniquely vulnerable to limitations on where they may live and find work.

HUD Response: HUD agrees that tenant-based assistance may provide certain victims of domestic violence, dating violence, sexual assault, or stalking with more options for transferring to a different unit than project-based assistance provides. However, as noted earlier in this preamble, the fiscal year 2016 appropriations for HUD does not provide funding specifically for tenant protection vouchers for victims of domestic violence, dating violence, sexual assault, or stalking.

Comment: Issue guidance for housing providers working with LGBT victims of domestic violence, dating violence, sexual assault, and stalking.

Commenters said guidance is necessary to ensure that people working with LGBT victims are equipped with the knowledge and cultural competence to fully implement VAWA protections. Commenters said LGBT victims have often been denied access to domestic violence services, due to misconceptions. A commenter stated that transgender survivors of domestic violence are four times as likely to suffer harassment and intimidation by law enforcement officers, and these numbers were even higher for transgender women and transgender people of color. The commenter said that it is for these reasons that many LGBT survivors are less likely to seek help from the authorities or claim the protections that VAWA has to offer.

Another commenter expressed appreciation for the inclusion of LGBT persons within the description of individuals covered by the statute in § 5.2001 and throughout the accompanying appendix. The commenter said that, in order to ensure that LGBT victims receive the full protection intended by the statute, housing providers implementing these regulations must be able to recognize LGBT victims seeking assistance, or facing termination on the basis of criminal activity linked to a domestic violence incident, as victims may be arrested alongside their abusers. The commenter said housing providers should receive adequate training to recognize such abuse and to ensure victims are eligible for an emergency transfer and are not unnecessarily denied housing.

HUD Response: HUD emphasizes that housing providers must provide LGBT victims of domestic violence, dating violence, sexual assault, and stalking, with the protections and remedies that VAWA 2013 directs be provided to all tenants and applicants. Failure to do so not only violates VAWA 2013 and HUD's regulations, but also may violate HUD's 2012 Equal Access Rule, which requires that HUD-assisted and HUD-insured housing are made available without regard to actual or perceived sexual orientation, gender identity, or marital status.

Comment: Provide clear guidance regarding confidentiality measures. Commenters said that HUD, in consultation with confidentiality and victim advocacy experts, should provide very direct and clear guidance, regulations, training, protocols and policies that help all entities maintain

confidentiality within their practices, and HUD should also establish a complaint process for alleged breaches of confidentiality. Commenters said that CoCs that utilize Homeless Management Information Systems (HMIS)/shared databases for their admissions and distribution of resources often exclude victims of violence from accessing the housing resources because the survivor is being served by a victim service program barred from entering information into HMIS or because the survivor chooses to not have their information entered in HMIS for safety reasons. Commenters said service providers entering information into HMIS are not asking the appropriate questions regarding domestic violence prior to entering information into the shared database, and victims are often confused about what information they are "required" to provide and fear they won't receive these vital housing supports if they refuse to give this information. A commenter said confidentiality regulations must be cross-referenced in the governing regulations of the housing provider.

HUD Response: Confidentiality measures will be discussed in guidance on VAWA. HUD takes seriously any complaints regarding alleged breaches of confidentiality in violation of VAWA, and violations of the confidentiality provisions of this rule are program violations that could jeopardize the receipt of HUD funding.

Comment: Provide mechanisms for review for victims who believe their VAWA rights have been violated. Commenters said victims who have been denied, terminated, or evicted from housing currently do not have a federal administrative remedy for VAWA violations, leaving many with no recourse in cases where they have been improperly denied their housing rights under VAWA. A commenter stated that many covered housing providers have not complied with VAWA's requirements to address violence in their planning documents, permit survivors to move with their vouchers to a new jurisdiction for safety reasons, and provide notice to subsidized tenants regarding their VAWA rights. Commenters asked that HUD formalize mechanisms for enforcing VAWA rights so that such rights are available to all who need them, and urged HUD to provide additional guidance for specific programs on the available review mechanisms.

Commenters said formalized administrative remedies are required for several reasons. Commenters said that HUD's Office of FHEO's regional offices will only investigate VAWA violations

that sufficiently present an allegation of discrimination under the Fair Housing Act. Commenters said there is no publicly available information regarding which staff at HUD, either in headquarters or the regional offices, will handle VAWA requests. Commenters further said there are instances where local HUD offices and housing authorities do not recognize the application of VAWA.

Commenters recommended that a special assistant or advisor within the Office of the Secretary be named who would oversee coordination of VAWA implementation, including with programs not covered by HUD, and resolution of complaints of VAWA violations, and staff persons within each program covered by VAWA should be designated in HUD headquarters to respond to questions and issues with VAWA implementation and to address complaints of VAWA violations, in conjunction with regional offices. Commenters asked that the names and contact information for these staff be made public.

HUD Response: The “For Further Information” section of this rule identifies points of contact in the covered HUD programs. Additionally, HUD intends to identify points of contact in HUD’s regional and field offices.

Comment: HUD should coordinate investigation of VAWA violations with Fair Housing Act violations. Commenters recommended that HUD create a mechanism to ensure that complaints regarding a VAWA violation or a Fair Housing Act violation based on domestic violence, dating violence, sexual assault, or stalking are screened for violations of both laws in order to ensure that survivors receive all of the legal relief to which they are entitled. Commenters said a potential model would be the joint review process established by the HUD Offices of FHEO and PIH in cases relating to public housing demolition and disposition. The commenters stated that because members of the public who experience violation of federal housing law most often pursue their grievances through the fair housing process, all FHEO investigators should receive training on the intersection of VAWA 2013 and the Fair Housing Act. Commenters also recommended that HUD’s Office of FHEO receive and investigate complaints of VAWA violations, as it is the component of HUD that regularly receives and investigates complaints from the public.

HUD Response: HUD appreciates the commenters’ suggestions. Because of the variation in program requirements and

the need for familiarity with these requirements, each HUD program office that administers a covered housing program will oversee enforcement of VAWA and all HUD staff in these offices—at Headquarters and in HUD’s Regional and Field Offices will be trained on VAWA’s requirements. HUD’s Office of FHEO will be involved in complaints where complaints also involve violations of the Fair Housing Act.

Comment: Ensure immigrant victims are able to utilize VAWA protections and access emergency shelters and transitional housing. A commenter stated that the likelihood that an immigrant or LEP woman will become a victim of domestic violence or sexual assault falls in the range of 30 percent to 52 percent, and immigrant victims face additional difficulties than other victims, such as potential dependence on an abuser because of immigration status. The commenters said immigrants, LEP individuals, and certain racial and ethnic minorities have received services from transitional housing programs at lower rates than white and African American victims, and a large number of immigrant domestic and sexual violence victims have been turned away from these programs.

The commenter said that one reason why immigrant victims have had difficulties accessing transitional housing services is because several programs have imposed means testing as a way to evaluate eligibility, even though this is not required by HUD or other Federal law. The commenter said this is problematic for immigrant victims because they may be incapable of producing the required documentation, such as the ability to secure work or proof of legal employment. The commenter recommended that HUD include a provision in the implementing regulations for VAWA 2013 that prohibits all means-testing from programs that provide short term emergency shelter and transitional housing programs for up to 2 years. The commenter said access to emergency shelter and up to 2 years of transitional housing is essential for immigrant victims because it can take up to 2 years for an immigrant crime victim to prepare, file, and receive an adjudication that provides work authorization. The commenter said this inclusion would reflect VAWA 2013’s new anti-discrimination protections.

The commenter asked that HUD require all HUD-funded emergency shelter and transitional housing programs to be open to all victims of

domestic violence, dating violence, sexual assault, stalking, human trafficking, child abuse, elder abuse and other U visa criminal activity without regard to the victim’s immigration status.¹⁵ The commenter said that, in 2001, HUD issued a policy letter implementing the Attorney General’s Order regarding Programs Necessary to Protect Life and Safety, which stated that HUD-funded programs that provide emergency shelter and transitional housing for up to 2 years, are to make these services equally available to all needy persons, including individuals who are not ‘qualified aliens’ without verification of citizenship, nationality or immigration status.¹⁶ The commenter asked that this letter be updated to: Extend applicability to all Federal agencies funding emergency shelter and transitional housing, and not just HUD; to reflect the full range of VAWA, T¹⁷ and U visa crimes covered by VAWA and the Trafficking Victims Protection Act; to impose any credible evidence standards, where no specific documents to types of documentation should be required to support a crime victim’s application for emergency shelter or transitional housing; and to incorporate federal anti-discrimination law requirements.

The commenter also recommended that HUD and other Federal agencies establish grant conditions for transitional housing programs that require compliance with Federal anti-discrimination laws and nondiscrimination against victims

¹⁵ A U visa is a nonimmigrant status visa set aside for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. Congress created the U nonimmigrant visa with the passage of the Victims of Trafficking and Violence Protection Act (including the Battered Immigrant Women’s Protection Act) in October 2000. The legislation was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes, while also protecting victims of crimes who have suffered substantial mental or physical abuse due to the crime and are willing to help law enforcement authorities in the investigation or prosecution of the criminal activity. The legislation also helps law enforcement agencies to better serve victims of crimes. See <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>.

¹⁶ See http://www.vawnet.org/Assoc_Files_VAWnet/ImmigrantAccess.pdf.

¹⁷ The T Nonimmigrant Status (T visa) is a set aside for those who are or have been victims of human trafficking, protects victims of human trafficking and allows victims to remain in the United States to assist in an investigation or prosecution of human trafficking. See <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status>.

defined as underserved by VAWA. The commenter said that HUD and other Federal agencies that fund transitional housing could require grant recipients to revise their admission and eligibility policies to incorporate best practices for promoting greater access to transitional housing for victims of VAWA crimes, or provide additional points in competitive grant processes for recipients that have adopted such best practices. The commenter further said that all programs receiving Federal funding for transitional housing should be required to report to their funder the extent to which they are providing services to immigrant, LEP, individual racial and ethnic minority, and other underserved victims.

HUD Response: HUD appreciates these comments and notes that HUD, HHS and DOJ recently updated its guidance regarding Programs Necessary to Protect Life and Safety on August 5, 2016.¹⁸ HUD will also review the other proposals and consider them for guidance or future rulemaking.

Comment: HUD should classify VAWA victims as “chronically homeless.” A commenter stated that HUD should classify victims of domestic violence, dating violence, sexual assault, stalking, human trafficking, child abuse, elder abuse, and other U visa listed crimes as “chronically homeless.” The commenter said that, because of the high likelihood that domestic violence and other life-threatening crimes can cause homelessness, these individuals and families should automatically qualify as chronically homeless and be eligible for transitional housing programs and not be required to provide income eligibility documentation in order to receive services. The commenter said that HUD’s final VAWA rule should consider extending the chronically homeless definition to this category of immigrant and LEP crime victims even if they have not at the time of application to the transitional housing program left their abusive home for a safe haven or emergency shelter.

HUD Response: HUD published its final rule on Defining Chronically Homeless on December 4, 2015, at 80 FR 75791. This final rule results from four years of careful consideration of public comments and discussions with experts on how “chronically homeless” should be defined based on the statutory definition of “chronically homeless” in the McKinney-Vento Homeless Assistance Act. Public comments were solicited in response to a December 5,

2011 interim rule establishing regulations for Emergency Solutions Grants Program (see 76 FR 75954), in the Continuum of Care Continuum of Care Program interim rule, published July 31, 2012 (77 FR 45422), from a May 30, 2012 convening with nationally recognized experts, which was described in the Rural Housing Stability Assistance Program proposed rule, and the March 27, 2013 proposed rule establishing regulations for the Rural Housing Stability Assistance Program (see 78 FR 18726). The final rule defining “chronically homeless” explains the rationale for HUD’s definition.

Comment: Instruct grantees to update documents to account for VAWA protections. A commenter said HUD should instruct PHAs to amend planning documents, leases, and house rules to incorporate a model emergency transfer policy. The commenter said HUD should also instruct owners of Sections 221d3, 236, 202 and 811 properties and project-based Section 8 properties to revise their tenant selection plans and review all tenant leases to ensure they contain language regarding VAWA protections. Commenters said that HUD should require State and local governments to revise their consolidated plans to address the VAWA emergency transfer policy obligations as they relate to HOME properties. Commenters further said that HUD should urge recipients of HUD financing to work with the entity responsible for developing Qualified Allocation Plans¹⁹ to include a plan that allows for emergency transfers between housing types. Another commenter said the final rule should require HUD funding recipients to include steps taken to implement VAWA 2013’s protections in consolidated plans and PHA annual and five-year plans.

HUD Response: As described earlier in this preamble, under this final rule, descriptions of VAWA protections will be required in lease terms or addenda or contracts, as specified in the regulations

¹⁹ A Qualified Allocation Plan (QAP) is a federally mandated planning requirement that states annually use to explain the basis upon which they distribute their LIHTC allocations. Based on their QAP, states establish preferences and set-asides within their tax credit competitions so as to target the credits towards specific places (such as rural areas) or types of people (such as elderly households). Analysis of State Qualified Allocation Plans for the Low-Income Housing Tax Credit Program examines how those preferences and set-asides were used and changed based on content analysis of 1990 and 2000 Qualified Allocation Plans from nearly every state along with discussions with the staff that prepared the plans. See https://www.huduser.gov/portal/publications/hsgfin/analysis_of_sqa_plans.html.

for the HOME, HOPWA, ESG, CoC, and public housing and section 8 programs. Owners would only be required to revise their tenant selection plans in relation to this rule if there are changes to the plans resulting from this rule.

HUD’s final rule does not require PHAs to amend their documents, or require State and local governments to revise their consolidated plans, to address emergency transfer obligations. HUD notes that the HOME regulations require participating jurisdiction to have written policies and procedures that address several program requirements (for example, underwriting and subsidy layering or rehabilitation standards) while not requiring submission of those policies and procedures to HUD the participation jurisdiction will need to comply with the new requirements. HUD reviews all of its grantees to ensure compliance with its regulations, and such reviews will include compliance with these new VAWA regulations. VAWA emergency transfer policies may be reviewed during onsite monitoring of the HOME program by staff of HUD’s Office of Community Planning and Development (CPD) in the Field Offices. As described earlier in this preamble, this final rule provides that emergency transfer plans must be made publicly available, whenever feasible, and always available upon request.

Comment: HUD should update its guidance and documents to reflect VAWA protections, and should update regulations when necessary. Commenters said once HUD has developed an emergency transfer policy, the relevant handbooks and guidebooks should be revised and a HUD notice applicable to all of the programs issued. The commenter said HUD should develop lease language applicable to all of the programs and require that recipients of HUD funds adopt such leases that reference the transfer policy. A commenter recommended that HUD amend the applicable rules relating to lease provisions for each of the HUD-covered programs and urged that HUD set forth specifically the regulatory language that is required to incorporate VAWA’s protections and requirements into the leases and to publish the required VAWA lease addenda. In addition, the commenter asked that translations of these leases and lease addenda continue to be provided by HUD. A commenter said HUD should be careful to add or include VAWA provisions whenever changes to programs are made.

HUD Response: HUD will update existing guidance to reflect new VAWA provisions. As noted in response to the preceding comment and earlier in this

¹⁸ See <https://www.justice.gov/ovw/file/883641/download>.

preamble, under this final rule, descriptions of VAWA protections will be required in lease terms or addenda or contracts, as specified in the regulations for the HOME, HOPWA, ESG, CoC, and public housing and section 8 programs.

9. Costs and Burden

Comment: Housing providers should have some means of recuperating costs for damages to property associated with a VAWA-related incident. A commenter stated that if damages to a unit are caused by an instance of VAWA violence, the housing provider should be authorized to use reserves for replacement or residual receipts to repair such damage if charging the resident is not appropriate or if a resident does not pay.

HUD Response: Means of recuperating costs for damages will vary depending on the HUD-covered program. HUD notes that under CoC program regulations, at 24 CFR 578.51(j), recipients and subrecipients may use grant funds in an amount not to exceed one month's rent to pay for any damage to housing due to the action of a program participant.

Comment: Changes to existing regulations will result in increased burden for housing providers. Commenters stated that, previously, VAWA protections had to be incorporated into the Housing Choice Voucher Administrative Plan, the Public Housing Admissions and Continued Occupancy Plan, and the public housing lease. Commenters said that altering these plans or the public housing lease to reflect updated definitions and requirements involves providing adequate public notice and board approval, and changes in the public housing lease also require that every household in public housing sign a new revised lease.

Commenters expressed concern that HUD is publishing new regulations in a time of historically low funding, and said that it would be difficult to comply with new requirements. Commenters said that language in the proposed rule suggests that the added cost to the housing provider is primarily paperwork, but the costs of administering the notification and documentation requirements will be significant, and there will be costs in evaluating how resident's needs must then be addressed, and then taking steps to address those needs. The commenters said providers must establish an organizational framework to ensure compliance with HUD's VAWA regulations, including the creation of a document management system, adoption of policies, and the training of

staff, and the costs of these activities are in addition to emergency transfer costs. Commenters asked HUD to consider how requirements to implement VAWA could be made more efficient and effective. A commenter said HUD's estimates of burden hours should take into account the impact on the housing providers that must take various steps following receipt of these forms.

A commenter said that, according to HUD's estimates, these new regulations will impact over 208,000 covered housing providers implementing assisted rental housing programs, and will impose an additional administrative burden on those institutions of 4,392,189 hours annually, which amount to almost 2,112 full time equivalents each year. The commenters said that, since no new funding is available, as a result of VAWA's reauthorization and the new requirements imposed, housing providers' human resources will require a substantial reallocation of personnel to assure procedural compliance with VAWA and such reallocation will be at the expense of core assisted housing management tasks at a time when funding for assisted housing programs is under extreme pressure. The commenter said housing agencies already must make difficult decisions allocating human resources among competing critical tasks, and this proposed rule will add to those difficulties.

HUD Response: HUD is cognizant of the constraints within which program participants must operate in the current budgetary environment, and in this rule has sought to minimize burdens on housing providers while implementing VAWA 2013. HUD notes that PHAs are required to include any changes in the ACOF in the Annual Plan, and even Qualified PHAs²⁰ that only submit five-year plans must still hold annual public hearings.

Comment: Clarify whether housing providers bear the costs for transfers. A commenter said that language in

²⁰ The Housing and Economic Recovery Act (HERA), Title VII, Small Public Housing Authorities Paperwork Reduction Act exempted qualified PHAs from the requirement to prepare and submit an annual plan. A Qualified PHA is a PHA that: (1) Has a combined unit total of 550 or less public housing units and section 8 vouchers; and (2) is not designated troubled under section 6(j)(2) of the 1937 Act, the Public Housing Assessment System (PHAS), as a troubled public housing agency during the prior 12 months; and (3) does not have a failing score under the Section 8 Management Assessment Program (SEMAP) during the prior 12 months. Although HERA exempts qualified PHAs from the requirement to prepare and submit an annual plan, qualified PHAs must carry out certain other annual requirements, including an annual public hearing. See http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/pha/qualified.

proposed § 5.2009(c) stating, “. . . and for the covered housing provider to bear the costs of any transfer, where permissible,” is problematic, creates uncertainty and risk of litigation, and should be deleted, even though the language appears to be non-binding. The commenters said that the term “covered housing provider” is not defined for this section and could be construed to mean a State entity. Commenter said that a mandate to have the State pay for costs associated with transfers is not supported by statute, would be contrary to Executive Order 13132, and could be unconstitutional. Commenters further said that “costs of transfer” is not defined, and this phrase could mean many things.

HUD Response: The commenter is correct that § 5.2009(c) is non-binding. The section says that covered housing providers are encouraged to take whatever actions are permissible and feasible, including bearing the costs of transfers. As previously stated in this preamble, housing providers will not be required to bear the costs of transfers, but HUD maintains § 5.2009(c) in the final rule to encourage housing providers to take whatever actions they feasibly can to assist victims of domestic violence, dating violence, sexual assault, and stalking.

Comment: HUD should clarify the obligations of small entities. A commenter said HUD provided only a cursory discussion of the rule's impact on small entities, and a passing acknowledgement that small providers may be unable to carry out emergency transfer plans or bifurcation of leases. The commenter said this concept should be highlighted in the preamble of the appropriate section and also covered in the regulations. The commenter also said that if HUD refuses to translate the required certification forms, the cost of providing translations would fall disproportionately on small entities, a potential violation of the Regulatory Flexibility Act.

A commenter said the rule's definition of “covered housing provider” should clarify that small providers may be exempt from certain requirements due to infeasibility, or at the very least acknowledge that there are limitations based on the size of the covered provider. In contrast, another commenter was concerned about language in the proposed rule that states small entities “are not required to carry out” bifurcation and emergency transfers “that may be more burdensome, and, indeed may not be feasible given the fewer number of units generally managed by small entities” Commenters were concerned that this

language conflicts with the statute, which does not exempt any covered housing provider from bifurcating leases or carrying out transfers based on their size. The commenters said that, depending on the situation, a small housing provider could be required to carry out a lease bifurcation, even though doing so is technically discretionary (e.g., in cases where there is a permanent protective order that excludes the abuser from the premises). Other commenters said they do not believe that “small entity” housing providers should automatically be excused of any emergency transfer obligation and should, at a minimum be required to examine whether there are safe and available transfer options in their portfolios that could be offered to survivors. The commenters said HUD must also include a definition of a small entity.

HUD Response: As HUD noted in the proposed rule, VAWA 2013 does not allow for covered housing providers who could be considered to be small entities to provide fewer protections than covered entities that are larger. HUD’s assertion in the proposed rule that bifurcation is not a mandate under VAWA 2013 or under these regulations does not preclude the possibility that any provider, including a small entity, may be required to bifurcate a lease in certain circumstances under State or local laws. In addition, the fact that tenant transfers under the emergency transfer plan are contingent upon whether there are safe and available units to which victims of domestic violence, dating violence, sexual assault, or stalking may transfer, and smaller housing providers that own or manage fewer properties may not have the same abilities to transfer victims, does not mean that smaller housing providers are excused from emergency transfer obligations. Small housing providers must transfer tenants who meet the criteria for an emergency transfer when there is a safe and available unit to which they could transfer the tenant, and must describe in their emergency transfer plans policies to assist a tenant to make an emergency move when a safe unit is not immediately available for a transfer. As small entities are not statutorily exempt from any VAWA protections, HUD declines to define them for purposes of this rule.

With respect to the issue of translation of documents, as noted earlier in this preamble, HUD has stated that it will provide versions of the certification form and notice of housing rights in different languages.

10. Other Requirements and Protections for Victims and Survivors

Comment: The rule and notification provided to tenants and applicants should provide that individuals can terminate a lease for VAWA-related reasons. A commenter suggested that a housing provider should be allowed to waive requirements for 30-day notices to vacate where victims have provided documentation to certify their status as a victim and want to move to escape abuse. This commenter also suggested permitting housing providers to waive requirements for a review of landlord history where contacting a previous landlord could put a survivor at risk by exposing the survivor’s current location.

HUD Response: HUD’s final rule maintains the provisions in the proposed rule at §§ 92.359(e), 574.604(f), and 578.99(j), and adds a provision for the Housing Trust Fund at 93.359(e), that a VAWA lease term/addendum must provide that the tenant may terminate the lease without penalty if a determination is made that the tenant has met the conditions for an emergency transfer under this rule.

Comment: Clarify that housing providers should work with LEP victims to ensure they understand their rights under VAWA. A commenter stated that, in the preamble to the proposed rule, HUD said its LEP guidance “contains a four-part individualized assessment for recipients to use to determine the extent of their obligations . . .” The commenter said that, though this is an accurate description of the guidance, such language could encourage housing providers to do only what they determine is the minimum required. The commenter said HUD should insert additional language that states that, in situations involving domestic violence, dating violence, sexual assault, and stalking, housing providers should do their best, given current resources, to work with LEP victims to ensure that they are apprised of their VAWA protections, even if those attempts go beyond steps generally included in the recipient’s language access plan. The commenters urged HUD to emphasize that housing providers are to use qualified, trained, and professional interpreters when interpreting information concerning VAWA protections to LEP applicants and tenants. Commenters further said that it should be clear that covered housing providers have to orally communicate with LEP individuals in their language, either through bilingual staff or interpreters. A commenter said this is extremely important because LEP victims will likely have follow-up

questions, require assistance with filling out forms, and/or need help accessing other rights and remedies. The commenter also said that housing providers should be strongly discouraged from using friends or family members to interpret, absent an emergency; and alleged perpetrators and minor children should be completely prohibited from interpreting. Commenters said that the final rule should require housing providers to update existing language access plans to include provisions for specifically serving LEP victims and their families.

HUD Response: Executive Order 13166 directs all federal agencies to ensure that programs receiving Federal financial assistance provide meaningful access to LEP persons. To ensure compliance with this direction, DOJ’s LEP Guidance four-factor analysis applies to the programs and activities of Federal agencies.²¹ HUD’s LEP guidance complies with Executive Order 13166, and is consistent with the DOJ LEP Guidance.²² Therefore, HUD cannot require recipients to go beyond that which is required by law. The HUD-issued LEP guidance does require that recipients take reasonable steps to ensure meaningful access to LEP persons. This may include providing oral interpretation services, hiring bilingual staff, and providing notices to staff and served populations of the availability of LEP services.

HUD does require all recipients to provide the appropriate language assistance to the populations that they serve, and adequately serve LEP persons without delay. As the population needs and capacity of each recipient differs, the four-factor analysis is intended to be flexible to balance the need to ensure meaningful access by LEP persons, while not imposing an undue burden on recipients, which includes small businesses, small local governments and small nonprofit organizations. HUD does encourage that LEP persons utilize the language assistance services expressly offered to them by the HUD recipients, rather than family or acquaintances.

Comment: VAWA protections should serve mixed status immigrant families. A commenter asked that HUD extend VAWA protections to mixed-status immigrant families, and noted that mixed-status LGBT immigrant families are less likely to report unauthorized family members, and survivors of domestic violence, dating violence,

²¹ See http://www.lep.gov/guidance/guidance_DOJ_Guidance.html.

²² See <https://www.gpo.gov/fdsys/pkg/FR-2007-01-22/pdf/07-217.pdf>.

sexual assault, and stalking may not seek appropriate action if they fear a negative immigration result.

HUD Response: VAWA protections apply to tenants in mixed status immigrant families as they apply to other tenants.

Comment: *Abusive parties should be responsible for VAWA-related costs.* A commenter suggested that the abusive party in a household be held responsible for the full amount of back rent, if any, and for the current and upcoming rent so that the victim can move on to other housing or remain in the home with a clean record.

HUD Response: HUD appreciates this suggestion but would need to study its feasibility and effects before creating such a policy.

Comment: *Clarify that VAWA 2013 provides the same or greater protections than previously existed.* A commenter said proposed § 5.2011 should be amended to clarify that VAWA 2013 provides the same or greater protections to survivors than those that existed at the time of enactment of the first VAWA statute.

HUD Response: HUD agrees that VAWA 2013 provides expanded protections to victims of domestic violence, dating violence, sexual assault, and stalking, but HUD declines to add this statement in the regulatory text.

11. Limitations of VAWA Protections

Comment: Explain the change that VAWA protections do not apply for lease violations “unrelated to” an act of domestic violence to VAWA protections do not apply for lease violations “not premised on” an act of domestic violence. A commenter asked why HUD made this change in terminology in the proposed rule, stating that the change substantially limits the reach of VAWA protections by removing from such protection those lease violations or incidents that may be in some way related to domestic violence, and instead requires that VAWA protections be premised on an actual act of domestic violence, dating violence, sexual assault, or stalking.

HUD Response: VAWA 2013 uses the phrase “not premised on” to clarify that VAWA protections do not limit the authority of housing providers to evict or terminate assistance to a tenant for any violation of a lease “not premised on” the act of violence in question. The change in HUD’s proposed rule tracks the statutory change by providing in § 5.2005 that nothing in the section limits any authority of a covered housing provider to evict or terminate assistance to a tenant for any violation

not premised on an act of domestic violence, dating violence, sexual assault, or stalking that is in question against the tenant or an affiliated individual of the tenant.

HUD disagrees that the new language limits VAWA protections. The term “premiered” better conveys that there must be a connection between the alleged violation and the domestic violence to trigger the protections of VAWA. In contrast, the term “unrelated” made it more difficult for a covered housing provider to determine whether a tenant’s lease violation was related to an act of violence necessitating VAWA protections. “Premiered” is more exact, less discretionary, and less open to misinterpretation. The term provides covered housing providers with uniform guidance to protect victims of domestic violence, while continuing to administer their program.

Comment: *There is inconsistency when VAWA protections will or will not apply and clarification is needed.* A commenter stated that HUD’s proposed rule seems to apply a different standard of applicability of the VAWA protections in defining those instances where the housing provider is prohibited from denying or terminating assistance, and the exceptions where the PHA or housing provider may deny or terminate assistance. The commenter stated that proposed § 5.2005(b) says that the VAWA protections apply to victims of domestic violence (applicants) and criminal activity “directly related to” domestic violence (tenants); but proposed § 5.2005(d)(2) now says the VAWA protections do not apply to any violation that is not “premiered on” an act of domestic violence. The commenter stated that, in deciding whether the VAWA protections apply, housing providers must determine whether the underlying act was “directly related” to domestic violence, or “premiered on an act” of domestic violence, but the act could be directly related to domestic violence without being premiered on an act of domestic violence.

HUD Response: The usage of the terms “not premiered on” and “directly related” in the proposed rule reflect the usage of these terms in VAWA 2013. HUD disagrees that the usage of these terms create a conflict in terminology. As noted in response to the preceding comment, HUD interprets “premiered on” to mean that a logical nexus must exist between the alleged violation and the domestic violence. Therefore, the term “not premiered on” means that there is not a logical nexus between an alleged violation and domestic violence.

12. Confidentiality

Comment: *Provide technical assistance on maintaining the privacy of VAWA documentation.* Commenters emphasized the importance of maintaining confidentiality and privacy with respect to a victim of a VAWA crime, as the most dangerous time for a victim of domestic violence is when the victim takes steps to leave a relationship with the abuser. Commenters said many victims are stalked for years after having escaped from their partners, and the severity of this “separation violence” often compels the victim to stay in abusive relationships rather than risk greater injury. Commenters said victims need assurances of confidentiality in order to believe they can safely access their rights and supportive options, and asked HUD to stress the importance of confidentiality to housing providers. Commenters said that, as the transfer processes begins to be used, it is extremely important that all owners, managers, landlords, and PHAs understand their confidentiality obligations.

Another commenter said it would be helpful for HUD to provide technical assistance on matters such as: How to maintain an auditable trail while also protecting the privacy of details of a tenant’s status; whether VAWA documentation should be retained separately from the tenant file, and if so how actions such as transfers should be documented in the tenant file (for example, listed as VAWA or “emergency circumstances” more broadly); and how to maintain privacy in electronic records, including the new address for the household, and establishing safeguards for information accessible to agency staff.

HUD Response: HUD understands the importance of maintaining confidentiality under VAWA and thanks commenters for these comments and will take steps to ensure that housing providers understand their obligations with respect to maintaining confidentiality.

Comment: *All entities should be required to maintain confidentiality.* A commenter said that, at various points, the conforming regulations for the covered housing programs state that confidentiality must be maintained by the entity that obtains the information from the victim. The commenters said this language must be expanded so that confidentiality is guaranteed even if a victim gives the information to the wrong party or a housing provider mistakenly gains access to this information. Commenters recommended that HUD’s VAWA regulations state that

any entity that receives the information concerning the victim's status as a victim should be required to maintain confidentiality under VAWA.

HUD Response: HUD believes that the confidentiality provisions in VAWA 2013 and in this rule sufficiently protect information that individuals might otherwise not share with their housing providers, out of fear of disclosure, and HUD thus declines to change the confidentiality provisions in the rule as commenter suggested.

Comment: Clarify how VAWA's confidentiality protections will apply to shared databases. Commenters commended HUD for saying, in proposed § 5.2007(c)(2) that covered housing providers shall not enter information into any shared databases. Other commenters stated that, as coordinated access becomes a core component of the housing process in Continuums of Care, there has been a move to utilize shared databases/HMIS. Commenters said HUD should clarify, in the regulations, that covered housing providers shall not enter confidential information under VAWA into shared databases, including HMIS. A commenter expressed concerns about the reduced access to homelessness services for survivors who receive services from the domestic violence program and do not enter the survivor's information into an HMIS/shared database. The commenter recommended including a provision in the regulation that states a covered housing provider cannot deny a survivor access to services for refusing to permit the inclusion of confidential information in a shared database.

Other commenters recommended clarifying, in proposed § 5.2007(c)(2), that all methods of information sharing are prohibited, and cross referencing this prohibition in the Notice of Occupancy Rights. Commenters said § 5.2007(c)(2) should be revised to say that covered housing providers shall not disclose, or "reveal or release" such (confidential) information. Commenter recommended revising § 5.2007(c)(2)(i) to say that such information could be disclosed when requested or consented to "by an individual in an informed, written, and reasonably time-limited release."

In contrast to these commenters, a commenter said that the prohibition against entering "any" information submitted by the tenant to the covered housing provider into a shared database raises practical operating concerns. Commenters said that while maintaining confidentiality is important, covered housing providers must be able to demonstrate compliance

with occupancy requirements, including documenting requests for unit transfers, for example. A commenter said many housing providers make use of software programs to manage tenant information, and, presumably, a simple notation of "VAWA" entered into a database field to denote the reason for a unit transfer request would not violate the victim's confidentiality, and such documentation should be re-considered by HUD.

HUD Response: Housing providers must comply with any existing confidentiality provisions that apply to them, in addition to confidentiality provisions provided under this rule and any relevant guidance issued in accordance with this rule.

HUD declines to amend the Notice of Occupancy Rights and these regulations to broadly state that all methods of information sharing are prohibited and to say that covered housing providers shall not reveal or release (in addition to disclosing) confidential information. However, as discussed above, HUD has revised 24 CFR 5.2007(c)(2)(i) to state that disclosure must be requested or consented to in writing by the individual in a time-limited release. As discussed above, HUD believes that the confidentiality provisions in VAWA 2013 and in this rule sufficiently protect information that individuals might otherwise not share with their housing providers, out of fear of disclosure. As discussed earlier in this preamble, HUD uses the term "disclose" to encompass revealing or releasing.

Rule Change: HUD has revised 24 CFR 5.2007(c)(2)(i) to state that disclosure must be requested or consented to in writing by the individual in a time-limited release.

Comment: Disclosure of confidential information may be necessary under certain circumstances. A commenter stated that the confidentiality provisions in the rule should be revised to permit disclosure of the fact that the individual is a victim of domestic violence to law enforcement and other government or social services agencies, as necessary, in order to secure the protections set forth in the proposed rule. Another commenter said blanket statements about total non-disclosure are not realistically tenable, and perhaps some redacted version of the VAWA-related need for an emergency transfer or negotiated "termination," and some certification about non-disclosure of the new location can and should be placed in the tenant file. The commenter suggested that this should be the topic of a facilitated stakeholder discussion to more clearly identify and explore options and recommendations from

housing providers, victim advocates and others.

A commenter said that, because HOME-grantees are responsible for ensuring HOME-funded developments are complying with all program requirements, HUD must clarify how the housing provider can responsibly share information about a VAWA claim with its regulatory oversight agency without violating any confidentiality concerns. Another commenter said it is common practice for housing providers to document in their business system requests and actions taken for administrative purposes, and covered housing providers may also consult with sources of third-party documentation regarding VAWA incidents, including but not limited to police, court officials and/or medical/social service providers. The commenter said the documentation of such incidences in business systems or communications with third-party verification sources should not be considered a violation of the confidentiality provision.

HUD Response: This final rule maintains the confidentiality provisions from VAWA 2013. Of the exceptions to the confidentiality provisions that were enumerated in VAWA 2013, there is no specific exception for disclosure to law enforcement or government agencies. However, where disclosure of that fact that somebody is a victim of a VAWA crime is necessary to secure VAWA protections, the individual requesting VAWA protections may consent to the disclosure.

Comment: Clarify the scope of VAWA's confidentiality provisions. A commenter asked whether the HCV's prohibition from disclosing information about the specific covered act, which prompted the move, applies to the owner of the property being vacated. Another commenter said it is unclear why HUD is proposing to elevate confidentiality of VAWA information above that of Enterprise Income Verification (EIV), which is arguably of equal importance, and this raises liability concerns for covered providers who may make an unintentional error.

HUD Response: VAWA's confidentiality provisions apply to covered housing providers, which, for the HCV program, include both the PHA and the owner. This rule's confidentiality provisions are mandated by VAWA 2013 and do not conflict with EIV system.

Comment: Explain where a housing provider must keep VAWA-related documents. A commenter asked whether VAWA documents have to be kept in a separate location, outside of a

manager's office, or have the information maintained in a file separate from a resident's file.

HUD Response: This rule does not require housing providers to maintain VAWA-related documents in a particular location. Housing providers, using the resources they have, should determine the best strategy for maintaining confidentiality in accordance with VAWA 2013.

Comment: Programs should honor and keep confidential a tenant's different name or gender identity marker. A commenter expressed concern that individuals or covered housing providers may not understand the importance of an LGBT individual's necessity for privacy when dealing with gender identity markers or the individual's name change. The commenter stated that disclosure may lead to possible harm, more trauma, and a reluctance to seek help if the survivor believes that they will be "outed." The commenter said disclosure by family members, the perpetrator, or others should be limited by the survivor's right to confidentiality, and housing providers should not be able to share information provided by parties who are not the tenant seeking protections.

HUD Response: The rule's confidentiality provisions are those provided in VAWA 2013, and are designed to protect information that any tenant or applicant shares with housing providers in order to obtain VAWA protections and remedies. All such information is subject to very strict confidentiality requirements.

Comment: Confidentiality provisions should be included in program-specific regulations. A commenter said recordkeeping is an essential element in ensuring confidentiality, and confidentiality and documentation regulations should be built into existing regulations for covered housing programs. The commenter said that, without the cross-references, the housing providers could maintain recordkeeping and information entering, storage, and disclosure practices that are built into their practices.

A commenter said existing regulations require PHAs to provide available information to a landlord regarding the prior residence of a tenant and information regarding prior tenancy history, and this can threaten the health and safety of an individual or family that is fleeing violence or abuse. The commenters recommended changing HCV and PBV regulations on tenant screening at § 982.307(b)(4) and § 983.255(d) to say that the PHA shall maintain the confidentiality of any information provided by the applicant

relating to domestic violence, dating violence, sexual assault, or stalking, and if the applicant is a victim, the PHA shall not provide any information to an owner or landlord regarding current or prior landlords, addresses, or tenancy history subject to 24 CFR 5.2007(c).

The commenter recommended that § 91.325(c)(3) of HUD's existing regulations be changed to say that the State will develop and implement procedures to ensure the confidentiality of records pertaining to any individual who is a victim of family violence, domestic violence, dating violence, sexual assault or stalking under any project assisted under the ESG program, including those who have received VAWA protections. The commenter also recommended amending § 578.103(b) to say that all records containing protected information of those who apply for Continuum of Care assistance will be kept confidential and that VAWA-related information will not be entered into shared databases, and to reference VAWA regulations in part 5 and the VAWA statute, and to reference VAWA regulations and the statute in §§ 580.31(g), 579.304, and 579.504 of HUD's regulations.

HUD Response: HUD declines to revise the regulations to broadly state that if an applicant is a victim of domestic violence, dating violence, sexual assault or stalking, a PHA shall not provide any information to an owner or landlord regarding current or prior landlords, addresses, or tenancy history. This prohibition could limit a PHA from providing other landlords and owners with relevant and necessary information about a tenancy that is unrelated to a VAWA crime. Sections 982.307(b)(4) and 983.255(d) of this rule state that the VAWA protections apply in cases involving a victim of domestic violence, dating violence, sexual assault, or stalking for tenant screening in the HCV and PBV programs.

Section 91.325(c)(3), pertaining to certifications for the ESG program, and the parallel provision in § 91.225, implement a certification requirement in the McKinney-Vento Act that is separate from VAWA protections. The ESG and CoC program rules at §§ 576.409 and 578.99(j), respectively, contain provisions about the applicability of VAWA's general confidentiality requirements in § 5.2007, and provide that the recipient or subrecipient can limit receipt of documentation by an owner to protect an individual's confidentiality. HUD declines to include additional confidentiality provisions for the ESG and CoC programs, as described by the commenter.

13. Program-Specific Concerns

a. Community Planning and Development (CPD) Programs

Comment: Documentation and transfer requirements for the CoC and RHSP programs should be consistent with general VAWA requirements. Commenters said the preamble states that CoC regulations currently provide for transfer of tenant-based rental assistance for a family fleeing domestic violence, dating violence, sexual assault, or stalking at § 578.51(c)(3) and documentation requirements at § 578.103, and a similar option is provided in the Rural Housing Stability Assistance program at § 579.216(c)(2). The commenters stated that, as these regulations pre-date the passage of VAWA, it is important that they be amended to reflect the transfer and documentation requirements in VAWA, and HUD should ensure that the requirements are consistent to improve compliance and provide greater protection for survivors.

Commenters said the documentation requirements in the CoC and RHSP rules far exceed the VAWA standard and will likely further endanger victims. Commenters said this rule should not maintain different and more demanding documentation requirements for "original incidence" and "reasonable belief of imminent threat of further domestic violence," but rather should simply allow a victim to attest to the violence or assault. Specifically, commenters requested that §§ 578.51, 578.103, 579.216, and 579.504 be amended to reference VAWA requirements.

The commenters said that once these documents are collected it is essential that records are kept confidential, not included in shared databases, and any records to establish status as a victim should be noted in files by employees and then destroyed or returned to the victim.

HUD Response: Section 578.7 of this rule provides that CoCs must develop an emergency transfer plan to coordinate emergency transfers within the geographic area. Existing regulations, as cited by the commenters, allow for the transfer of tenant based assistance to a separate geographic area. HUD maintains these provisions for moving with tenant based rental assistance as a separate, but complementary, option that is available to victims who are at imminent risk of future harm. In some situations, it may be easier to move an existing voucher than to invoke the emergency transfer track, and HUD wishes to maintain this flexibility.

As explained earlier in this preamble, the 2013 reauthorization of VAWA occurred prior to the publication of the RHSP proposed rule and HUD will include applicable VAWA provisions on the RHSP final rule.

Comment: The ESG and CoC regulations should provide that recipients and subrecipients must establish a written policy that allows victims to seek their assistance, and HUD should draft such model policy. Commenters pointed to the “optional policy” in the proposed CoC and ESG regulations regarding how a survivor might prevent a landlord from taking unlawful actions against the survivor, and asked HUD to draft a model policy to maintain consistency. Commenters recommended amending §§ 576.407(g)(4) and 578.99(j)(5) to say that recipients or subrecipients “must,” and not “may”, establish a written policy that allows program participants (the individual beneficiary) to seek the recipient’s assistance in invoking VAWA protections, and adding that nothing in this policy prohibits the participant from seeking legal counsel.

HUD Response: This final rule maintains the option for recipients and subrecipients in ESG and CoC to limit receipt of documentation by an owner to protect an individual’s confidentiality. See §§ 576.409 and 578.99. However, HUD no longer includes regulatory language discussing the “optional policy” because whether the recipient or subrecipient establishes such a policy, the program participant would not be prohibited from asking for the recipient’s or subrecipient’s help to ensure owners comply with the VAWA requirements that are incorporated into their contractual agreements. Establishing such a policy is not a requirement in other HUD-covered programs involving intermediary parties, and requiring such a policy could result in administrative confusion for providers administering multiple types of HUD assistance.

To assist tenants, HUD adds to the “Notice of Occupancy Rights” a provision notifying tenants that if a covered housing provider fails to comply with the requirements in the notice, or the tenant needs assistance, the tenant can contact any applicable intermediary or HUD.

Comment: VAWA incidents must be considered when determining whether a program participant is in compliance with RHSP and CoC regulations. A commenter said that, in both the RHSP and CoC program, participants must be in compliance with the program in order to have the option to transfer their assistance to another community. The

commenter said it is important for HUD to provide guidance and training on the reasons why someone might seem out of compliance with a program, as the actions of perpetrators can cause a victim to seem out of “program compliance.” The commenters said that for example many perpetrators control finances, which could cause victims to miss rent payments, and abusers may also damage property and exert other controls over the victim that result in violations of program rules.

HUD Response: HUD thanks commenters for these suggestions and will take them into account for guidance and training to program participants.

Comment: Clarify whether additional lease requirements apply when tenant-based rental assistance is used for homelessness prevention under the ESG and CoC programs. Commenters recommended that in instances where the lease would be amended to reflect the rental assistance, the same VAWA amendments that are in the leases and rental agreements at proposed §§ 576.106(e) and (g) and § 578.99(j)(6) should apply. Commenters said that in instances where no changes are made to the lease, recipients and subrecipients should include the notice of VAWA rights in communication with the participant and in any communication to the landlord or owner. Commenters further stated that in §§ 576.106 and 578.99(j)(6), HUD should clarify that owners and landlords may continue to include the VAWA protections after the assistance has ended, as this will benefit survivors and also keep consistency across owners’ properties.

Another commenter recommended that there be a lease requirement that the perpetrator cannot be listed on the new lease, and if there is a restraining order placed on the perpetrator by the victim, the victim should be required to honor that restraining order. The commenter also said the lease should require that the unit must not be substandard housing.

Other commenters said they do not support including additional lease requirements, as this can discourage private landlord participation in programs and have the unintended effect of making it more difficult for all families, and not just victims, to find housing. A commenter stated that, for ESG tenant-based rental assistance, the subrecipient is currently not responsible for reviewing the lease between the program participant and the owner, and, structurally, it makes more sense to have conditions of ESG program participation in the rental assistance agreement, as HUD has outlined in proposed § 576.106(e), and not require

provisions in a lease. The commenter said that, alternatively, HUD could elect to not require either the rental assistance agreement or the lease to contain VAWA 2013 requirements where there is only short-term assistance, which would be in alignment with requirements in the HOPWA program where per proposed § 574.330, VAWA does not apply to short-term housing.

HUD Response: If a participant is receiving ongoing homelessness prevention in an existing unit, the rental agreement between the landlord and the recipient or subrecipient will contain the required VAWA provisions. In instances where a participant is receiving homelessness prevention in a new unit or a new lease will be executed, then the VAWA protections will be incorporated with the lease and the participant will be covered by both the rental agreement and a lease and the recipient will have the option of extending the VAWA protections after the provision of assistance ends. However, HUD will not require the recipient to have to extend the provisions after the assistance ends. Some landlords are reluctant to work with individuals and families that are homeless or formerly homeless and imposing additional lease requirements as a condition of accepting our funds that then continue after HUD funds are made available makes it more difficult to recruit landlords.

HUD declines to impose additional lease requirements, including that the perpetrator cannot be listed on the new lease and victims must honor restraining orders.

Comment: It is unclear how certain VAWA requirements would apply to ESG assistance. Commenters said that, in the case of homeless prevention, funds are used to maintain persons in their rental housing, such persons are already under a lease agreement, and it is not clear how VAWA provisions apply in this instance or how violations would be handled. Commenters said that providing notice to recipients of ESG rental assistance should be limited to the period for which the assistance is provided, and the requirement to create an emergency transfer plan should not apply to short term ESG assistance.

Another commenter said that it administers ESG funding for shelter operations, rapid re-housing and homeless prevention. The commenter said that, in the case of the rapid re-housing, it processes payments to owners and will assume responsibility for providing the recipient with a copy of the agreements with private owners who will provide permanent housing for

the participant. The commenter said that it has no problem requiring the owner to advise when a notice to vacate is issued during the term of the agreement, but there is no mention of a penalty if the private owner fails to provide this notice and, since payment will have been made by then, there would be no recourse to the commenter.

HUD Response: If a tenant requests homelessness prevention assistance for a new unit, then VAWA protections would be included in the new lease they are signing. The tenant lease will also supplement the ESG recipient rental agreement in this case. In a scenario where a new lease must be executed, then the recipient or subrecipient is required to put the requirements into the lease. The recipient or subrecipient has the option of writing the lease in such a way so that those extra requirements expire when the ESG assistance ends. In a homelessness prevention assistance scenario, the protections are in the rental assistance agreement so they would cease to apply when the rental assistance agreement ends, which is when the assistance ends. However, the recipient or subrecipient has the option of writing the lease so that the protections continue to apply even after the assistance ends.

This rule's requirements, including the emergency transfer requirements, apply to both short-term and medium-term ESG rental assistance. Even short-term rental assistance is assistance that would trigger the requirements of this rule.

Comment: Clarify whether tenants in HOME-assisted units are covered by VAWA. Commenters said the notice of occupancy rights refers only to tenants who are receiving rental assistance, but the commenters expressed belief that tenants in HOME-assisted units (who are not receiving rental assistance) are also covered by VAWA protections. The commenters encouraged HUD to review the proposed rule through the eyes of a HOME-grantee to ensure that all provisions apply appropriately when the federal assistance is used solely for development assistance.

HUD Response: Section 5.2001(b)(1) of this rule explains that, for project-based assistance, the assistance may consist of such assistance as operating assistance, development assistance, and mortgage interest rate subsidy. Further, the revisions to the HOME regulations state that the VAWA requirements apply to "all HOME tenant based rental assistance and rental housing assisted with HOME funds." Under the HOME program, rental housing assisted with HOME funds is rental housing that has

been newly constructed or acquired or rehabbed with HOME funds. Therefore, when HOME assistance is provided "solely for development assistance," VAWA would apply. HUD has revised the Notice of Occupancy Rights and the model emergency transfer plan to clarify that the VAWA rights, rules and remedies apply to HUD assistance generally for covered programs.

Comment: Confirm that HOME-funded rental projects begun prior to the effective date of the rule are not subject to the rule, and provide time to implement requirements. A commenter asked for confirmation that § 92.359(b) exempts HOME-funded rental projects begun prior to the effective date of HUD's final rule from the rule's requirements. Another commenter asked that HUD provide an implementation period of at least four months to draft loan, grant, and covenant documents, policies, lease addendums, and other necessary documents.

HUD Response: Section 92.359(b) provides that compliance with the regulations set forth in this rule is required for any tenant-based rental assistance or rental housing project for which the date of the HOME funding commitment is on or after the effective date of this rule. However, as HUD has stated several times, in publicly issued documents since 2013, and in the preamble to the proposed rule and in the preamble to this final rule, basic statutory core protections of VAWA were effective upon enactment of VAWA 2013. HUD has made clear that regulations are not needed to make these core statutory protections applicable, and the core requirements do apply to HOME funding commitments made prior to the effective date of this rule. Therefore, HUD has amended § 92.359 to make clear the application of the core protections at the time the statute passed.

As discussed in the **DATES** section of this rule and overview of changes, the compliance date for completing an emergency transfer plan, under § 5.2005(e) or applicable program regulations, and then providing emergency transfers under the emergency transfer plan is no later than May 15, 2017.

Rule Change: HUD has revised 24 CFR 92.359 to provide that the core statutory protections of VAWA applied upon enactment of VAWA 2013, and compliance with the VAWA requirements that require regulations apply to tenant-based rental assistance or rental housing project for which the date of the HOME funding commitment

is made on or after the effective date of this rule.

Comment: Remove proposed effective dates for CPD programs. Commenters urged HUD to remove the proposed effective dates for VAWA compliance that appear in the proposed rules for the programs administered by the Office of Community Planning and Development (CPD) that restrict VAWA implementation to applicants and tenants in future assisted units or with future tenant-based contracts and rental assistance. A commenter said that HUD does not explain why any HUD program would require such effective dates, and there is no indication that Congress anticipated or directed HUD to implement VAWA 2013 only for future tenants and applicants, especially since HUD implemented VAWA 2005 for all applicants and tenants in existing as well as future assisted units.

The commenter said the proposed CPD effective dates are contrary to current HUD policy, as HUD has already reached out to participants in the HUD programs to advise them that the basic protections of VAWA were currently in effect, and do not require notice and comment rulemaking for compliance. The commenter said that in December 2013, HUD advised housing providers with HOME funds to comply with the basic VAWA protections, so it is contradictory for HUD to indicate in the Proposed Rule that VAWA only applies to units funded by the HOME program prospectively.

HUD Response: As HUD noted in response to the preceding comment, the core statutory protections of VAWA applied upon enactment of VAWA 2013, to all covered HUD programs without the necessity of rulemaking. The HOME Program is different than many other covered programs in that: (1) HOME funds the construction or rehabilitation of housing and does not provide ongoing operating or rental assistance; and (2) HUD does not have a contractual relationship with the housing provider—the HOME written agreement is executed by the housing provider and the HOME participating jurisdiction. The HOME agreement reflects the regulations in effect at the time HOME funds are committed to the project. There is not now and never was a requirement that HOME written agreements require project owners to comply with "HOME regulations as they may be amended." HUD cannot require participating jurisdictions to amend existing HOME agreements and participating jurisdictions would have no power to compel project owners to agree to amendments. In 2013, HUD made comprehensive changes to the

HOME regulations. Those changes are only applicable to projects to which HOME funds were committed after the effective date of the rule. The applicability of the VAWA in HOME is consistent with HUD's regulatory authority. The remaining VAWA requirements apply prospectively to all HOME rental housing for which a commitment of HOME funds is made (meaning, the required written agreement is executed) after the regulation becomes effective. While HUD recognizes that, except for the core statutory protections of VAWA HOME-assisted rental housing is not subject to the regulatory requirements unless included in the written agreement with the participating jurisdiction, HUD strongly encourages owners of HOME-assisted rental housing to comply with the regulations to the maximum extent feasible.

For similar reasons, except for the core statutory protections of VAWA, compliance with the VAWA requirements are not required for HOPWA projects with funding commitments earlier than the effective date of this rule, CoC grants awarded prior to the effective date of this rule, or ESG rental assistance agreements that are not executed or renewed after the effective date of this rule.

Rule Change: HUD has revised 24 CFR 574.604, 576.106, 576.409, and 578.99 to state that the core statutory protections of VAWA applied upon enactment of VAWA 2013, and compliance with the VAWA requirements that required regulations apply prospectively to HOPWA funding commitments, CoC awards, and ESG rental assistance agreements.

Comment: Clarify applicability of certain VAWA provisions to the HOME program. A commenter said that in order to make clear that VAWA applies in the context of evictions in the HOME program, HUD should add a reference to VAWA in current § 92.253(c), which provides that there must be good cause for tenancy terminations. The commenter recommended that HUD state that an owner's tenant selection policies may not deny a family admission to the HOME program solely on the basis of criminal activity directly relating to domestic violence. In addition, the commenter stated that proposed § 92.359(c)(2) provides that the entity administering the HOME tenant-based assistance program must provide the tenant with the VAWA rights notice when "the entity learns that the tenant's housing owner intends to provide the tenant with notification of eviction." The commenter recommended that HUD's final rule add

the requirement that the owner provide to the family the VAWA rights notice along with the eviction notice. The commenter said it would be simpler and more efficient to impose the notice obligation on both the owner and the entity administering the program.

The commenter also said HUD's proposed regulations for lease bifurcation in the HOME program must be amended to ensure that victims' protections after lease bifurcations are consistent. The commenter said HUD does not explain why the general "reasonable time" provisions in 24 CFR part 5 do not apply to the HOME program and why the different system in proposed § 92.359(d) is necessary. The commenter said that by allowing participating jurisdictions to craft their own bifurcation policies, victims in the HOME program can have different lease bifurcation rights, and this will cause great confusion among victims. The commenter said proposed § 92.359(d) does not reflect VAWA's requirement that tenants who remain after bifurcations be provided with a "reasonable time" to establish eligibility for the existing program or for other covered housing programs, and this latter requirement must be added to the HOME regulations. In addition, commenters said that while proposed § 92.359(d)(2) mentions that remaining tenants who cannot establish eligibility for HOME project-based assistance are entitled to at least 60 days to find other housing, this additional time to find other housing is not available for HOME tenant-based assistance. The commenter also suggested adding language to the HOME regulations similar to what exists for the HCV program—the housing provider must ensure that the victim retains the assistance.

The commenter said it is unclear why HUD included proposed § 92.359(d)(1)(iii), and recommended its deletion. The commenters advised that it did not understand why the VAWA protections for the remaining tenants would differ if the existing assistance were tenant-based versus project-based. In addition, the commenter cited proposed § 92.359(e) and urged that HUD, and not the participating jurisdiction, develop the VAWA lease addendum, as this may be the only opportunity for tenants to become aware of their housing responsibilities and rights under the law and is important for quality control. The commenter said the basic elements of the lease addendum can be modeled after the VAWA 2005 lease addenda for the Section 8 housing programs, and this could serve as a template for other programs newly covered by VAWA. The

commenter said that issues that must be decided locally can be identified and the unique information left blank to be completed by the appropriate covered housing provider. The commenter also commended HUD for allowing victims who receive emergency transfers to terminate their leases without penalty, and recommended that this provision be expanded for the HOME program to permit a victim in VAWA-covered housing to terminate the lease upon a 30-day written notice, except this 30-day notice would not be required in emergency transfer situations.

In addition, the commenter said proposed § 92.359(e) states that the owner must notify the entity administering HOME tenant-based program prior to starting a lease bifurcation, but the commenter is concerned this will cause unnecessary delay. The commenter recommended the provision say that when HOME tenant-based rental assistance is provided, the lease term/addendum must require the owner to notify the entity administering the HOME tenant-based rental assistance when the owner bifurcates a lease and in non-lease bifurcation circumstances before the owner provides notification of eviction to the tenant.

HUD Response: It is unnecessary to add a reference to § 92.253(c) to make it clear that VAWA applies to terminations of tenancy, as § 92.359 of this rule clearly specifies that VAWA requirements apply to HOME tenant-based rental assistance (TBRA) and rental housing assisted with HOME funds. Similarly, it is unnecessary to specify that an owner's tenant selection policies may not deny a family admission to the HOME program solely on the basis of criminal activity directly relating to domestic violence because § 92.253(d)(7) includes this in stating that tenant selection policies must comply with VAWA requirements.

Further, because a housing owner must notify the participating jurisdiction prior to initiating an eviction, the participating jurisdiction will be able to provide the notice in a timely manner and HUD believes it is unnecessary to require that the housing owner also provide the notice along with the eviction notice.

This final rule revises § 92.359 to reflect the fact that, for both HOME-assisted rental projects and HOME TBRA, it is unnecessary for the participating jurisdiction to establish or implement a policy that specifies the reasonable time period for a remaining tenant to establish eligibility. The entire household must be qualified to reside in a HOME-assisted unit or to receive

HOME TBRA, so any members of the household are already determined to be eligible. Further, being over income is not a permitted basis for eviction under the HOME program. The owner will review the household's income as usual at recertification. Thus, there is no need to establish a reasonable time period for remaining tenants to establish eligibility for the housing if a lease is bifurcated. HUD agrees with commenter that § 92.359(d)(1)(iii) in the proposed rule should be deleted and has done so in this final rule. Similar to the provision in § 982.315, regarding family break-up in the housing choice voucher program, which states that the housing provider must ensure that the victim retains assistance, § 92.359(d)(2) of this rule provides that if a tenant receiving HOME tenant-based rental assistance is removed from the lease through the bifurcation, any remaining tenant(s) are eligible to retain the HOME tenant-based rental assistance.

HUD declines to implement commenters' suggestions regarding the VAWA lease term/addendum. The requirement in § 92.359(e) that a participating jurisdiction must develop the lease term/addendum is consistent with HOME regulations, but this rule specifies what the lease term/addendum must include. Further, HUD declines to include a section in this rule permitting a victim in VAWA-covered housing to terminate the lease upon a 30-day written notice, which would not be required in emergency transfer situations. Such a provision may conflict with State and local law and HUD will not implement it at this time without seeking further comment. In addition, this final rule does not revise the provision in the proposed rule that the owner must notify the participating jurisdiction prior to starting a lease bifurcation. The participating jurisdiction is responsible for compliance with the HOME requirements and, given this oversight role, a housing provider cannot initiate such changes without prior notification to the participating jurisdiction.

Rule Change: This final rule revises § 92.359(d) to provide that if a family living in a HOME-assisted rental unit separates under 24 CFR 5.2009(a), the remaining tenant(s) may remain in the HOME-assisted unit, and if a family who is receiving HOME tenant-based rental assistance separates under 24 CFR 5.2009(a), the remaining tenant(s) will retain the HOME tenant-based rental assistance and the participating jurisdiction must determine whether the tenant that was removed from the unit will receive HOME tenant-based rental assistance.

Comment: Clarify applicability of certain VAWA requirements to the HOPWA program. A commenter cited proposed § 574.604(c), pertaining to protections for victims of domestic violence, dating violence, sexual assault, and stalking, and said that when authorizing the HOPWA program, Congress emphasized the similarity to Section 8 and commanded that the HOPWA program "shall be provided in the manner provided under [U.S.C.] 1437f." The commenter said that, therefore, as with the Section 8 program, VAWA must be immediately applicable to all current and future HOPWA units and tenant-based assistance, and proposed § 574.604(c) should be removed.

The commenter said proposed § 574.604(f) provides that the HOPWA facility or housing owner is obligated to develop the lease addendum, but urged HUD to develop the required basic elements of the lease addendum for the HOPWA program. In addition, the commenter said proposed § 5.2005(c) must be cross-referenced in proposed § 574.604(f). Commenters recommended that this section permit a victim in VAWA-covered housing to terminate the lease upon a 30-day written notice, which would not be required in emergency transfer situations.

The commenters said proposed §§ 574.604(b)(1)(i)(B) and 574.604(b)(2)(i)(B) must be amended to ensure that the responsible entity provides the VAWA rights notice and the self-certification form at all three mandated junctures, and the "or" in this paragraph should be substituted with "and."

The commenter also said current HOPWA program regulations permit the owner to terminate a "participant's assistance . . . only in the most severe cases," and this should be expanded with a reference to the obligation to comply with VAWA, and the current limitations on eligibility should be expanded to prohibit a denial of assistance to a VAWA victim. The commenter suggested amending § 574.310 to include these references to VAWA.

The commenter said language regarding admissions/eligibility for VAWA victims should be added to either the definition of an "eligible person" at § 574.3 or a new section in § 574.310.

HUD Response: HUD disagrees that the requirements of this rule should be applied retroactively. As stated in the proposed rule, VAWA 2005 provided VAWA protections for victims under HUD's public housing and Section 8 programs. Those protections were only

expanded to the HOPWA program when Congress enacted VAWA 2013. This was the case notwithstanding the provision in the HOPWA statute, which provides that rental assistance under HOPWA "shall be provided to the extent practicable in the manner provided under section 8 of the United States Housing Act of 1937." (42 U.S.C. 12908(a)(1)). Nothing in VAWA 2013 suggests that Congress intended these VAWA protections to be applied retroactively by HUD. Accordingly, HUD is retaining the proposed regulation at § 574.604(c).

This final rule amends § 574.604(c) to clarify that, for competitive grants, VAWA requirements apply to awards made on or after this rule becomes effective. The proposed rule stated that VAWA requirements are incorporated in the annual notice of funding availability and made applicable through the grant agreement or Renewal Memorandum, but the VAWA requirements are incorporated into the program's regulatory framework and will apply to competitive grants awarded on or after the rule's effective date because the grant agreement will subject the award to the entirety of 24 CFR part 574 in effect at the time of the award. The requirements do not need to be in the NOFA or made applicable through the Renewal Memorandum to apply to competitive awards.

HUD appreciates the commenter's suggestion regarding basic elements of a lease addendum, and HUD is taking these suggestions under consideration. In this final rule, HUD clarifies that, consistent with other HOPWA requirements for grantees and project sponsors, the grantee or project sponsor is responsible for ensuring that the housing or facility owner or manager adds the VAWA lease term/addendum to leases for HOPWA-assisted units and eligible persons receiving HOPWA tenant-based rental assistance. Further, HUD agrees that including a cross-reference to § 5.2005(c) in § 574.604(f) adds clarity to the rule, and accepts the commenter's recommended change. However, as discussed in relation to the HOME program, HUD declines to include a section in this rule permitting a victim in VAWA-covered housing to terminate the lease upon a 30-day written notice, which would not be required in emergency transfer situations. Such a provision may conflict with state and local law and HUD will not implement it at this time without seeking further comment.

HUD appreciates commenter's suggestion of amending §§ 574.604(b)(1)(i)(B) and 574.604(b)(2)(i)(B) to ensure that the

housing provider provides the VAWA rights notice and the self-certification form at all junctures mandated by VAWA 2013. This final rule revises these two sections to say that the housing providers must provide the notice of occupancy rights and the certification form at the times listed in paragraph (d) of the section, and revises paragraph (d) to state that the grantee is responsible for ensuring that the notice of occupancy rights and certification form is provided to each person in a HOPWA-assisted unit or receiving HOPWA assistance at each of the times listed in the statute, as well as during the 12-month period following the date that this rule becomes effective, either during annual recertification or lease renewal, or if there will be no recertification or lease renewal for a tenant during the first year after the rule takes effect, through other means. This is consistent with the general notification requirements in part 5 of this final rule.

HUD accepts commenter's suggestion to amend § 574.310 to include references to VAWA protections.

Eligibility of HOPWA program participants is governed by HOPWA's program statute. HOPWA assistance is limited to an "eligible person" which the statute defines as "a person with acquired immunodeficiency syndrome or a related disease and the family of such person." 42 U.S.C. 12902(12). HUD is not authorized to expand program eligibility to VAWA victims, as the commenter suggests. VAWA victims are eligible for assistance under the program if they can also meet the definition of an "eligible person." However, HUD has provided some relief to victims in cases where the abuser is the person with HIV/AIDS. Section 574.460 allows victims in those cases a grace period to continue to receive HOPWA assistance, and an opportunity to demonstrate program eligibility.

Rule Change: This final rule revises § 574.604(f) from the proposed rule to include a cross-reference to § 5.2005(c), in addition to the reference to § 5.2005(b). This rule also amends § 574.310 to include references to VAWA protections. HUD also revises proposed § 574.460 and § 574.604, at this final rule stage, to include dating violence, sexual assault, and stalking. HUD also revises these sections to more closely track the VAWA provisions in 24 CFR part 5, subpart L, for consistency with other HOPWA program regulations in 24 CFR part 574 and other regulations of other program covered by this rule, and for clarity. For example, this final rule clarifies the following with respect to the HOPWA program: That the

grantee or project sponsor is responsible for ensuring that the housing or facility owner or manager develops and uses a VAWA lease addendum; that the reasonable grace period begins at the date of bifurcation of the lease rather than the date of eviction of the person with AIDS, and that housing assistance and supportive services under the HOPWA program shall continue for the remaining persons residing in the unit during the grace period; that the grantee must develop the emergency transfer plan; that persons in HOPWA-assisted units or receiving HOPWA assistance must be given the notice of occupancy rights and accompanying certification form during the 12-month period following the date that this rule becomes effective, as well as at each of the times required by statute; and that the grantee or project sponsor is responsible for ensuring that the housing or facility owner or manager is made aware of the option to bifurcate a lease. Additionally, this rule revises proposed § 574.604(c) to state that, for competitive grants, VAWA requirements apply to awards made on or after the date that this rule becomes effective.

b. Public Housing and Voucher Programs

Comment: VAWA regulations for public housing and voucher programs should mirror and reference the generally applicable regulations and those that apply to other programs. A commenter said the public housing and housing choice voucher regulations refer to criminal activity "related to" domestic violence" and said HUD should include "directly," in its discussion, as the generally applicable regulations refer to criminal activity "directly related" to VAWA incidents. The commenter said HUD must describe how VAWA protections apply to tenuous allegations of domestic violence.

A commenter said that the language concerning lease requirements in HUD's regulations in 24 CFR part 966 applies VAWA protections if a "current or future tenant" is or becomes a victim of domestic violence, but HUD must explain its inclusion of future tenants here, as this section concerns requirements for leases with existing tenants. Commenters asked if the term "future tenants" refers to a different set of households than "applicants." A commenter said the proposed VAWA provisions applicable to public housing tenant leases is limited to an individual who becomes a victim, but stated that VAWA requires covered housing providers to provide the VAWA notice and self-certification form to all

applicants and tenants at three junctures, regardless of whether that tenant is a victim or an affiliated member of a victim.

A commenter said that under the current regulations, a PHA may exclude certain tenants from a grievance hearing because of criminal activity, but such exclusion should not apply to victims of domestic violence, dating violence, sexual assault and stalking, and § 966.51 should be amended to reflect this.

A commenter recommended that HUD add language to § 983.253 (Leasing of contract units) to clarify that owners cannot discriminate against VAWA victims and their affiliated individuals.

For the HCV program, a commenter recommended changing § 982.202(d) to include that the PHA admission policy must state the system of admission preferences that the PHA uses, including preferences for victims of domestic violence, dating violence, sexual assault, or stalking. The commenter said the current HCV lease and tenancy rules and § 982.308 must be amended to reference the VAWA protections and any notice of eviction shall include a notice of occupancy rights and self-certification form, and that the notice and form are required as attachments to the lease.

HUD Response: HUD agrees with commenters that the program regulations should reflect the general VAWA regulations in part 5. HUD recognizes that the proposed regulations do not adequately reflect the notification requirements in part 5, in that they limit the responsibility to comply with part 5 protections to cases where domestic violence, dating violence, sexual assault, or stalking is involved or claimed to be involved, and the notice of VAWA rights must be provided to all tenants and applicants at the times described in this statute and rule. Therefore, this final rule revises § 880.504(f), 880.607(c)(5), 882.511(g), 883.605, 884.216(c), 884.223(f), 886.128, 886.132, 886.328, 886.329(f), 891.575(f), 891.610(c), 891.630(c), 960.103(d), 966.4(a)(1)(vi), 982.53(e), 982.201(a), and 982.553(e) to generally note that the VAWA regulations in 24 CFR part 5, subpart L apply. HUD will provide assistance to housing providers to aid in determining whether criminal activity is directly related to a VAWA crime. In addition, HUD adds a paragraph to § 983.253 to clarify that VAWA regulations apply to the leasing of contract units in the project-based voucher program.

This final rule does not revise § 966.51 as a commenter suggested. If a tenant is excluded from a grievance hearing, under § 966.51, that tenant is

still entitled to a due process determination and the opportunity for a hearing in court.

This rule also does not amend § 982.202(d), as § 982.207(b)(4) already states that PHAs should consider whether to adopt a local preference for admission of families that include victims of domestic violence. This final rule does, however, amend § 982.207(b)(4) (on preferences for victims of domestic violence in the housing choice voucher program), as well as § 960.206(b)(4) (on preferences for victims of domestic violence in public housing) to clarify that preferences may be established not only for victims of domestic violence, but also for victims of dating violence, sexual assault, or stalking.

It is unnecessary to amend § 982.308 as a commenter suggested because, as explained earlier in this preamble, this final rule maintains existing 24 CFR 5.2005(a)(4), which says that the HUD-required lease, lease addendum, or tenancy addendum must include a description of specific protections for victims of VAWA crimes, for programs covered by VAWA prior to the 2013 reauthorization. Further, § 982.53(e) specifies that the PHA must apply VAWA protections, which includes the provision of the notice of VAWA rights and certification form with notification of eviction.

Rule Change: Sections 880.504(f), 880.607(c)(5), 882.511(g), 883.605, 884.216(c), 884.223(f), 886.128, 886.132, 886.328, 886.329(f), 891.575(f), 891.610(c), 891.630(c), 960.103(d), 966.4(a)(1)(vi), 982.53(e), and 982.553(e) are revised to generally state that 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies.

This final rule adds § 983.253(a)(4), which says that in selecting tenants, an owner must comply with HUD's regulations in 24 CFR part 5, subpart L (Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

This rule amends § 982.207(b)(4) (preferences for victims of domestic violence in the housing choice voucher program), as well as § 960.206(b)(4) (on preferences for victims of domestic violence in public housing) to clarify that preferences may be established not only for victims of domestic violence, but also for victims of dating violence, sexual assault, or stalking.

Comment: Portability requirements should not be overly restrictive for victims of sexual assault. A commenter said the HUD rules on portability of vouchers allow a victim of sexual

assault to be protected if the assault occurred within the prior 90 days and on the project premises. The commenter said this requirement is too restrictive because the presence or proximity of an offender can cause continued or new safety concerns for the victim after 90 days and PHAs should be encouraged to apply a longer time frame when necessary. The commenter recommended amending § 982.353 to say it does not prohibit a PHA or owner from increasing the protections for victims of sexual assault by increasing the time period within which the sexual assault occurred or expanding the location within which the sexual assault occurred.

HUD Response: Section 982.314(b)(4) of the proposed rule, which as described earlier, has been redesignated as § 982.354(b)(4) following publication of HUD's August, 2015 Portability Rule at 80 FR 50564, follows the transfer provisions in VAWA 2013 and this rule. The provision applies to victims of sexual assault if they either reasonably believe they are threatened with imminent harm from further violence if they remain in the unit, or if the sexual assault occurred on the premises during the 90-calendar-day period preceding the family's move or request to move. Therefore, victims of sexual assault who have safety concerns might be able to move under this provision even if the sexual assault occurred more than 90 days before the move or the request to move.

Rule Change: HUD revises redesignated § 982.354(b)(4) in this final rule to clarify that the provision applies if the family or a member of the family, is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), and the move is needed to protect the health or safety of the family or family member, or if any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move.

Comment: Certain public housing and voucher program regulations are unclear. A commenter said proposed §§ 982.314, 982.315, and 982.353 are overly complicated in that housing providers may need to determine if a move is necessary to protect health and safety; if a family believed that the move was for that purpose; and if family members believed that they were in imminent threat of harm, and housing providers need guidance on this. Another commenter questioned the use

of the words "applicable" and "allegedly" in proposed § 960.103(d), and said that use of the word "allegedly" raises issues about whether acts should first be proven. A commenter asked HUD to distinguish more clearly a PHA's responsibilities under tenant-based and project-based rental assistance programs.

HUD Response: As noted earlier in this preamble, this final rule revises § 960.103(d), which no longer includes the words "applicable" or "allegedly." Covered housing providers must consider tenants and applicants to be victims of domestic violence, dating violence, sexual assault, or stalking if they submit documentation in accordance with § 5.2007 of this rule. In addition, as stated earlier in this preamble, HUD will provide guidance on the responsibilities of housing providers in different HUD programs where necessary.

Comment: The rule may discourage owners from participating in the HCV program. A commenter said proposed §§ 982.53, 982.310, 982.314 contain clarifications as to which responsibilities for compliance rest with the PHA and which ones rest with the owner. The commenter said that while the burden is on the PHA, the impact on the owner may still reduce the number of participating owners.

HUD Response: HUD has sought to minimize the burden on owners participating in the HCV program while still adhering to the requirements of VAWA.

Comment: Ensure regulatory policies are incorporated in PHA documents. A commenter stated that proposed § 982.315(a)(2) states in part that the PHA must ensure that the victim retains assistance. The commenter said this language should be mandatory in administrative plans and other policies.

HUD Response: PHAs may incorporate the language of § 982.315(a)(2) or similar language into their administrative plans. PHAs must comply with all HCV program requirements whether or not they are specified in their administrative plans, and HUD does not mandate that all applicable regulations are included in plans.

Comment: The regulations should incorporate proposed guidance on VAWA in the HUD-VASH program. Commenters said HUD should incorporate into the proposed regulations the guidance it has issued in its Q&As on the HUD-VASH program; specifically, that in cases where the VASH voucher recipient has been terminated for committing a VAWA act, the remaining victim should be issued

a Section 8 voucher if one is available, or, if one is not available, should be authorized to continue utilizing the VASH voucher up until the voucher's turnover.

HUD Response: Guidance is generally not appropriate for regulatory text. The regulatory text is to advise what actions are required. As HUD has stated throughout the preamble, HUD intends to supplement its VAWA regulations with guidance.

c. FHA Programs

Comment: Ensure that VAWA protections apply to all parts of the Section 236 and 221(d)(3) and (d)(5) BMIR programs. A commenter said the program regulations for the Section 236 program do not explicitly cross reference to the regulations in 24 CFR part 200, and recommended that in 24 CFR 236.1, HUD insert a cross-reference to proposed § 200.38. The commenter also said the eviction rules in 24 CFR part 247 that are explicitly made applicable to the Section 236, 221(d)(3) & (d)(5) BMIR, and 202 programs by § 247.2 must be amended to include VAWA protections, particularly the primary rule governing good cause for eviction at 24 CFR 247.3.

HUD Response: Section 200.38 explicitly provides that VAWA applies to the Section 236 program and the cross-reference in § 236.1 is unnecessary. For greater clarity, however, this rule adds a provision in § 247.1 that notes that covered housing providers are subject to VAWA requirements. HUD also notes that while VAWA applies to Section 221(d)(3)/221(d)(5) and Section 236, these programs are no longer active programs (*i.e.* no new grants are being distributed). However, there may be a few of such projects still in existence and a number of section 236 projects enter new contracts with HUD when they decouple their Interest Reduction Payment (IRP), enter into a five-year use agreement extension required in an IRP decoupling, or choice to participate in RAD. Many 221(d)(3)/(d)(5) and 236 projects also receive Section 8 funding. In the case that a project is participating in RAD or receives Section 8 funding, the requirements for those programs would govern the treatment of tenants for purposes of VAWA. In cases where there is no Section 8 funding, and a 236 project is entering into a new contract with HUD, the owner must ensure that VAWA requirements are being followed.

Rule Change: Section 247.1 (Applicability) is revised to include a paragraph explaining that landlords of subsidized projects that are listed as covered housing programs in 24 CFR

5.2003 must comply with 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

d. Multifamily Programs

Comment: Section 811 regulations should allow for continued assistance in the event of a VAWA incident. A commenter said that, for Section 811, HUD should provide a period of stability for those households that have experienced domestic violence and should amend its regulations and guidance to state that if the qualifying tenant leaves the unit, the owner can continue to receive the assistance for the remaining members of the household during the requalification period. The commenter said this approach would align with the change that HUD proposed to make for HOPWA program, where previously continuance of assistance was only allowed in the case of the death of the qualified tenant.

HUD Response: The HOPWA program allows for tenants to retain assistance under certain circumstances when the qualifying tenant no longer resides in the unit, but, as explained earlier in this preamble, the Section 811 program does not provide that flexibility.

Comment: Integrate VAWA into the program-specific regulations. A commenter recommended changing the program-specific regulations at 24 CFR parts 880, 882, 883, 884, 886, and 891 so that the VAWA requirements are fully implemented in all the programs.

HUD Response: The references to 24 CFR part 5, subpart L, in these regulations ensure that VAWA requirements are implemented in specific programs.

Comment: Clarify VAWA protections in project-based section 8 regulations and lease addenda. A commenter said that for all project-based section 8 programs, HUD should identify correctly who the covered housing provider(s) are, and the VAWA lease addenda for these programs should include copies of the VAWA rights notice and certification form, as well as language informing tenants that they must be given the notice and form at the three junctures required by the statute.

HUD Response: This final rule revises the definition of covered housing provider for the project-based section 8 programs. As also discussed earlier in the preamble, this final rule maintains existing 24 CFR 5.2005(a)(4) for programs covered by VAWA prior to the 2013 reauthorization, which include the project-based section 8 regulations. This provision states that the HUD-required lease, lease addendum, or tenancy addendum, as applicable, must include

a description of specific protections afforded to the victims of domestic violence, dating violence, or stalking, as provided in 24 CFR part 5, subpart L.

e. Cross-Cutting Program Comments

Comment: The "family breakup" rule set forth in the HCV and HOME regulations should be included in the rules for all of the HUD-covered housing programs. A commenter said the most critical aspect of the HCV "family breakup" rule is that it clearly states that if the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, or stalking, the housing provider must ensure that the victim retains the assistance. The commenter said the factors to be considered in the event of family breakup in making the decision to allocate assistance should be included in VAWA rules for all HUD-covered housing programs. The commenter said the HOME rule at proposed § 92.359 permits the housing provider to determine that after a family breakup, both newly formed families could receive assistance.

HUD Response: HUD agrees that clear standards would help to expedite allocation of a family's TBRA and preserve that assistance for the victim when a family receiving TBRA separates during an emergency transfer. Therefore, this final rule provides that, where applicable, the emergency transfer plan must describe policies for a tenant who has tenant-based rental assistance and qualifies for an emergency transfer to move quickly with that assistance. The program rules for the ESG and CoC programs are also amended to ensure that the emergency transfer plan addresses what happens with respect to any family member(s) excluded from the emergency transfer. The final rule further specifies that when a family receiving TBRA splits via bifurcation the family's TBRA will continue for the family member(s) who qualified for the VAWA remedy.

For HOME, this rule, similar to ESG and CoC program language, clarifies that if a family living in a HOME-assisted rental unit separates under the rule's bifurcation provisions, the remaining tenant(s) are eligible to remain in the HOME-assisted unit, and if a family who is receiving HOME tenant-based rental assistance separates under the rule's bifurcation provisions, the remaining tenant(s) will retain the HOME tenant-based rental assistance and the participating jurisdiction must determine whether the tenant that was removed from the unit will receive HOME tenant-based rental assistance.

Rule Change: HUD changes the emergency transfer provision in 24 CFR 5.2005(e)(9) to provide that, where applicable, the emergency transfer plan must describe policies for a tenant who has tenant-based rental assistance and qualifies for an emergency transfer to move quickly with that assistance. HUD also makes related changes to the ESG and CoC regulations to both protect the victim's housing or assistance and address what happens to the non-transferring family member(s) when a family separates in those programs at §§ 576.409(d)–(e) and 578.99(j)(7)–(8).

Comment: Ensure consistent VAWA occupancy requirements and rights. A Commenter said the proposed rules conforming VAWA to the individual programs fairly consistently address the applicability of VAWA at admission, eviction, and termination, but there is less consistency to the applicability of VAWA to occupancy rights. The commenter recommended that HUD ensure that language concerning occupancy requirements and rights under VAWA is consistent.

HUD Response: HUD appreciates commenter's concern and has maintained consistency across program requirements where possible, while trying to afford victims of domestic violence, dating violence, sexual assault, and stalking, with the greatest level of protections possible under both VAWA and particular program requirements.

Comment: Provided that in the event of conflict with other regulations, VAWA regulations control. A commenter asked HUD to adopt an overarching policy statement indicating that any interpretation of a covered housing program's regulations should include a presumption that the VAWA regulations govern in the event of conflict. The commenter said many HUD programs have regulations with multiple or overlapping provisions relating to admission, selection, and occupancy rights, eviction and termination, and HUD's proposed VAWA rule did not apply VAWA requirements to all. The commenter said that to ensure that VAWA is fully implemented in all aspects of these programs; each program regulation should have a clause stating that in the event of conflict, the VAWA regulations shall control.

HUD Response: Unlike VAWA 2005, which amended the laws for public housing and Section 8 programs, VAWA 2013 did not amend the statutory authority for any housing program, and therefore HUD is unable to include the language the commenters recommend.

III. Paperwork Reduction Act

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) for review and approval.

IV. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

OMB reviewed this rule under Executive Order 12866 (entitled, “Regulatory Planning and Review”). This rule was determined to be a “significant regulatory action,” as defined in section 3(f) of the order but not economically significant, as provided in section 3(f)(1) of the order. In accordance with the Executive order, HUD has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting primarily from the statute's documentation requirements.

Need for Regulatory Action

This regulatory action is required to conform the provisions of HUD's VAWA regulations to those of title VI of VAWA 2013, codified at 42 U.S.C. 14043e *et seq.* The 2013 statutory changes both expand the HUD programs to which VAWA applies and expand the scope of the VAWA protections. Therefore, this regulatory action is necessary for HUD's regulations to reflect and implement the full protection and coverage of VAWA.

The importance of having HUD's VAWA regulations updated cannot be overstated. The expansion of VAWA 2013 to other HUD rental assistance programs emphasizes the importance of protecting victims of domestic violence, dating violence, sexual assault, and stalking, in all HUD housing offering rental assistance. By having all covered housing providers be aware of the protections of VAWA and the actions that they must take to provide such protections if needed, HUD signals to all tenants in the covered housing programs that HUD is an active part of the national response to prevent domestic violence, dating violence, sexual assault, and stalking.

In addition to expanding the applicability of VAWA to HUD programs beyond HUD's Section 8 and public housing programs, VAWA 2013 expands the protections provided to victims of domestic violence, dating violence, sexual assault, and stalking,

which must be incorporated in HUD's codified regulations. For example, under VAWA 2013, victims of sexual assault are specifically protected under VAWA for the first time in HUD-covered programs. Another example is the statutory replacement of the term “immediate family member” with the term “affiliated individual.” Where HUD's current VAWA regulations provided that a non-perpetrator tenant would be protected from being evicted or denied housing because of acts of domestic violence, dating violence, or stalking committed against a family member (see current 24 CFR 5.2005(c)(2)), under VAWA 2013, the same protections apply to a non-perpetrator tenant because of acts of domestic violence, dating violence, sexual assault, or stalking committed against an “affiliated individual.” The replacement of “immediate family member” with “affiliated individual” reflects differing domestic arrangements and must be incorporated in HUD's regulations.

VAWA 2013 also increases protection for victims of domestic violence, dating violence, sexual assault, and stalking by requiring HUD to develop a model emergency transfer plan to guide covered housing providers in the development and adoption of their own emergency transfer plans. VAWA also changes the procedures for the notification to tenants and applicants of their occupancy rights under VAWA. Prior to VAWA 2013, public housing agencies administering HUD's public housing and Section 8 assistance were responsible for the development and issuance of such notification to tenants. Under VAWA 2013, HUD must develop the notice. Thus, HUD's VAWA regulations must reflect that HUD will prescribe the notice of occupancy rights to be distributed by covered housing providers.

In addition, certain provisions of VAWA 2013, particularly those pertaining to emergency transfer plans and lease bifurcations, require further clarification in order to be implemented in HUD programs. For example, this regulatory action is needed to explain whether and what documentation requirements may apply in the case of emergency transfers, and what a reasonable time period for a tenant to establish eligibility for housing under a covered housing program, or to find new housing, after a lease bifurcation would be.

Costs and Benefits

As noted in the Executive Summary of this preamble, this rule provides several benefits, including expanding

the protections of VAWA to applicants and tenants beyond those in HUD's public housing and Section 8 programs; strengthening the rights, including confidentiality rights, of victims of domestic violence, dating violence, sexual assault, and stalking in HUD-covered programs; and possibly minimizing the loss of housing by such victims through the bifurcation of lease and emergency transfer plan provisions. The notice of occupancy rights to be distributed to all applicants and tenants signals the concern of HUD and the covered housing provider about the serious consequences of domestic violence, dating violence, sexual assault, and stalking on the individual tenant victim and, at times, the victim's family or individuals affiliated to the victim, and confirms the protections to be afforded to the tenant victim if such violence occurs. The notice of occupancy rights is presented with the goal of helping applicants and tenants understand their occupancy rights under VAWA. Awareness of such rights is an important benefit.

The costs of the regulations, as also noted earlier in this preamble, are primarily paperwork costs. These are the costs of providing notice to applicants and tenants of their occupancy rights under VAWA, the preparation of an emergency transfer plan, and documenting the incident or incidents of domestic violence, dating violence, sexual assault, and stalking. The costs, however, are minimized to some extent by the fact that VAWA 2013 requires HUD to prepare the notice of occupancy rights, the certification form, and the model emergency transfer plan. In addition, as discussed in the preamble, costs to covered housing providers will be minimized because HUD will translate the notice of occupancy rights and certification form into the most popularly spoken languages in the United States, and HUD has prepared a model transfer request form that housing providers and tenants requesting emergency transfer may use.

In addition to the costs related to these documents, which HUD submits is not significant given HUD's role in creating the documents, there may be a cost with respect to a tenant claiming the protections of VAWA and a covered housing provider responding to such incident. This cost will vary, however, depending on the incidence of claims in a given year and the nature and complexity of the situation. The costs will also depend on the supply and demand for the available and safe units in the situation of an emergency transfer request. HUD's covered housing

providers did not confront such "movement" costs under VAWA 2005, so it remains to be seen, through implementation of VAWA 2013, if the transfer to a safe and available unit can be realized in most situations in which such a request is made, and the costs a housing provider may face as a result.

The reporting and recordkeeping matrix that accompanies HUD's Paperwork Reduction Act statement, provided above, provides HUD's estimate of the workload associated with the reporting and recordkeeping requirements.

The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m., weekdays, in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Persons with hearing or speech impairments may access the telephone number above via TTY by calling the Federal Relay Service, toll-free, at 800-877-8339.

Impact on Small Entities

The Regulatory Flexibility Act (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 rule implements the protections of VAWA 2013 in all HUD-covered housing programs. These protections are statutory and statutorily directed to be implemented. The statute does not allow for covered housing providers who are, or may qualify as small entities to not provide such protections to its applicants or tenants or provide fewer protections than covered entities that are larger entities. However, with respect to processes that may be found to be burdensome to small covered housing providers—such as bifurcation of the lease and the emergency transfer plan—bifurcation of the lease is a statutory option not a mandate, and transferring a tenant under the emergency transfer plan is contingent upon whether a housing provider has a safe and available unit to which a victim of domestic violence, dating violence, sexual assault, or stalking can transfer may seek transfer. Therefore, small entities are not required to carry out the bifurcation option, and emergency

transfers may not be feasible given the fewer number of units generally managed by smaller entities.

Environmental Impact

This rule involves a policy document that sets out nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3) this 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 an agency from publishing any rule that has federalism implications if the rule either (i) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (ii) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. 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. The scope of this rule is limited to HUD-covered housing programs, as such term is defined in the rule.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531-1538) 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 mandates on any State, local, or tribal government, or the private sector within the meaning of UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers applicable to the programs that would be affected by this rule are: 14.103, 14.135, 14.157, 14.181, 14.195, 14.231, 14.267, 14.268, 14.239, 14.241, 14.850, 14.856, and 14.871.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social

security, Unemployment compensation, Wages.

24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 93

Administrative practice and procedure, Grant programs—housing and community development, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping, Social Security, Unemployment compensation, Wages.

24 CFR Part 247

Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 574

Community facilities, Grant programs—housing and community development, Grant programs—social programs, HIV/AIDS, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 576

Community facilities, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 578

Community development, Community facilities, Grant programs—housing and community development, Grant program—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 891

Aged, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 905

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Pets, Public housing.

24 CFR Part 966

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Grant programs—Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, and in accordance with HUD's authority in 42 U.S.C. 3535(d), HUD amends 24 CFR parts 5, 92, 93, 200, 247, 574, 576, 578, 880, 882, 883, 884, 886, 891, 905, 960, 966, 982, and 983, as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

- 1. The authority citation for part 5 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), Sec. 327, Pub. L. 109–115, 119 Stat. 2936, and 42 U.S.C. 14043e *et seq.*, Sec. 601, Pub. L. 113–4, 127 Stat. 101.

- 2. Revise Subpart L to read as follows:

Subpart L—Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

Sec.

- 5.2001 Applicability.
- 5.2003 Definitions.
- 5.2005 VAWA protections.
- 5.2007 Documenting the occurrence of domestic violence, dating violence, sexual assault, or stalking.
- 5.2009 Remedies available to victims of domestic violence, dating violence, sexual assault, or stalking.
- 5.2011 Effect on other laws.

Subpart L—Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

§ 5.2001 Applicability.

(a) This subpart addresses the protections for victims of domestic violence, dating violence, sexual assault, or stalking who are applying for, or are the beneficiaries of, assistance under a HUD program covered by the Violence Against Women Act (VAWA), as amended (42 U.S.C. 13925 and 42 U.S.C. 14043e *et seq.*) (“covered housing program,” as defined in § 5.2003). Notwithstanding the title of the statute, protections are not limited to women but cover victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation. Consistent with the nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a), victims cannot be discriminated against on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD programs must also be operated consistently with HUD's Equal Access Rule at § 5.105(a)(2), which requires that HUD-assisted and HUD-insured housing are made available to all otherwise eligible individuals and families regardless of actual or perceived sexual orientation, gender identity, or marital status.

(b)(1) The applicable assistance provided under a covered housing program generally consists of two types of assistance (one or both may be provided): Tenant-based rental assistance, which is rental assistance that is provided to the tenant; and project-based assistance, which is assistance that attaches to the unit in which the tenant resides. For project-based assistance, the assistance may consist of such assistance as operating assistance, development assistance, and mortgage interest rate subsidy.

(2) The regulations in this subpart are supplemented by the specific regulations for the HUD-covered housing programs listed in § 5.2003. The program-specific regulations address how certain VAWA requirements are to be implemented and whether they can be implemented (for example, reasonable time to establish eligibility for assistance as provided in § 5.2009(b)) for the applicable covered housing program, given the statutory and regulatory framework for the program. When there is conflict between the regulations of this subpart and the program-specific regulations, the program-specific regulations govern. Where assistance is provided under more than one covered housing program and there is a conflict between VAWA protections or remedies under those programs, the individual seeking the VAWA protections or remedies may choose to use the protections or remedies under any or all of those programs, as long as the protections or remedies would be feasible and permissible under each of the program statutes.

§ 5.2003 Definitions.

The definitions of *PHA*, *HUD*, *household*, and *other person under the tenant's control* are defined in subpart A of this part. As used in this subpart L:

Actual and imminent threat refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: The duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.

Affiliated individual, with respect to an individual, means:

(1) A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a

person in the care, custody, or control of that individual); or

(2) Any individual, tenant, or lawful occupant living in the household of that individual.

Bifurcate means to divide a lease as a matter of law, subject to the permissibility of such process under the requirements of the applicable HUD-covered program and State or local law, such that certain tenants or lawful occupants can be evicted or removed and the remaining tenants or lawful occupants can continue to reside in the unit under the same lease requirements or as may be revised depending upon the eligibility for continued occupancy of the remaining tenants and lawful occupants.

Covered housing program consists of the following HUD programs:

(1) Section 202 Supportive Housing for the Elderly (12 U.S.C. 1701q), with implementing regulations at 24 CFR part 891.

(2) Section 811 Supportive Housing for Persons with Disabilities (42 U.S.C. 8013), with implementing regulations at 24 CFR part 891.

(3) Housing Opportunities for Persons With AIDS (HOPWA) program (42 U.S.C. 12901 *et seq.*), with implementing regulations at 24 CFR part 574.

(4) HOME Investment Partnerships (HOME) program (42 U.S.C. 12741 *et seq.*), with implementing regulations at 24 CFR part 92.

(5) Homeless programs under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360 *et seq.*), including the Emergency Solutions Grants program (with implementing regulations at 24 CFR part 576), the Continuum of Care program (with implementing regulations at 24 CFR part 578), and the Rural Housing Stability Assistance program (with regulations forthcoming).

(6) Multifamily rental housing under section 221(d)(3) of the National Housing Act (12 U.S.C. 17151(d)) with a below-market interest rate (BMIR) pursuant to section 221(d)(5), with implementing regulations at 24 CFR part 221.

(7) Multifamily rental housing under section 236 of the National Housing Act (12 U.S.C. 1715z-1), with implementing regulations at 24 CFR part 236.

(8) HUD programs assisted under the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*); specifically, public housing under section 6 of the 1937 Act (42 U.S.C. 1437d) (with regulations at 24 CFR Chapter IX), tenant-based and project-based rental assistance under section 8 of the 1937 Act (42 U.S.C. 1437f) (with regulations at 24 CFR

chapters VIII and IX), and the Section 8 Moderate Rehabilitation Single Room Occupancy (with implementing regulations at 24 CFR part 882, subpart H).

(9) The Housing Trust Fund (12 U.S.C. 4568) (with implementing regulations at 24 CFR part 93).

Covered housing provider refers to the individual or entity under a covered housing program that has responsibility for the administration and/or oversight of VAWA protections and includes PHAs, sponsors, owners, mortgagors, managers, State and local governments or agencies thereof, nonprofit or for-profit organizations or entities. The program-specific regulations for the covered housing programs identify the individual or entity that carries out the duties and responsibilities of the covered housing provider as set forth in part 5, subpart L. For any of the covered housing programs, it is possible that there may be more than one covered housing provider; that is, depending upon the VAWA duty or responsibility to be performed by a covered housing provider, the covered housing provider may not always be the same individual or entity.

Dating violence means violence committed by a person:

(1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(2) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

- (i) The length of the relationship;
- (ii) The type of relationship; and
- (iii) The frequency of interaction between the persons involved in the relationship.

Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. The term "spouse or intimate partner of the victim" includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of

interaction between the persons involved in the relationship.

Sexual assault means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (1) Fear for the person's individual safety or the safety of others; or
- (2) Suffer substantial emotional distress.

VAWA means the Violence Against Women Act of 1994, as amended (42 U.S.C. 13925 and 42 U.S.C. 14043e *et seq.*).

§ 5.2005 VAWA protections.

(a) *Notification of occupancy rights under VAWA, and certification form.* (1) A covered housing provider must provide to each of its applicants and to each of its tenants the notice of occupancy rights and the certification form as described in this section:

(i) A "Notice of Occupancy Rights under the Violence Against Women Act," as prescribed and in accordance with directions provided by HUD, that explains the VAWA protections under this subpart, including the right to confidentiality, and any limitations on those protections; and

(ii) A certification form, in a form approved by HUD, to be completed by the victim to document an incident of domestic violence, dating violence, sexual assault or stalking, and that:

(A) States that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking;

(B) States that the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection under this subpart meets the applicable definition for such incident under § 5.2003; and

(C) Includes the name of the individual who committed the domestic violence, dating violence, sexual assault, or stalking, if the name is known and safe to provide.

(2) The notice required by paragraph (a)(1)(i) of this section and certification form required by paragraph (a)(1)(ii) of this section must be provided to an applicant or tenant no later than at each of the following times:

(i) At the time the applicant is denied assistance or admission under a covered housing program;

(ii) At the time the individual is provided assistance or admission under the covered housing program;

(iii) With any notification of eviction or notification of termination of assistance; and

(iv) During the 12-month period following *December 16, 2016*, either during the annual recertification or lease renewal process, whichever is applicable, or, if there will be no recertification or lease renewal for a tenant during the first year after the rule takes effect, through other means.

(3) The notice required by paragraph (a)(1)(i) of this section and the certification form required by paragraph (a)(1)(ii) of this section must be made available in multiple languages, consistent with guidance issued by HUD in accordance with Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency, signed August 11, 2000, and published in the **Federal Register** on August 16, 2000 (at 65 FR 50121)).

(4) For the Housing Choice Voucher program under 24 CFR part 982, the project-based voucher program under 24 CFR part 983, the public housing admission and occupancy requirements under 24 CFR part 960, and renewed funding or leases of the Section 8 project-based program under 24 CFR parts 880, 882, 883, 884, 886, as well as project-based section 8 provided in connection with housing under part 891, the HUD-required lease, lease addendum, or tenancy addendum, as applicable, must include a description of specific protections afforded to the victims of domestic violence, dating violence, sexual assault, or stalking, as provided in this subpart.

(b) *Prohibited basis for denial or termination of assistance or eviction—*

(1) *General.* An applicant for assistance or tenant assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.

(2) *Termination on the basis of criminal activity.* A tenant in a covered housing program may not be denied tenancy or occupancy rights solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking if:

(i) The criminal activity is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, and

(ii) The tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault or stalking.

(c) *Construction of lease terms and terms of assistance.* An incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as:

(1) A serious or repeated violation of a lease executed under a covered housing program by the victim or threatened victim of such incident; or

(2) Good cause for terminating the assistance, tenancy, or occupancy rights under a covered housing program of the victim or threatened victim of such incident.

(d) *Limitations of VAWA protections.*

(1) Nothing in this section limits the authority of a covered housing provider, when notified of a court order, to comply with a court order with respect to:

(i) The rights of access or control of property, including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, or stalking; or

(ii) The distribution or possession of property among members of a household.

(2) Nothing in this section limits any available authority of a covered housing provider to evict or terminate assistance to a tenant for any violation not premised on an act of domestic violence, dating violence, sexual assault, or stalking that is in question against the tenant or an affiliated individual of the tenant. However, the covered housing provider must not subject the tenant, who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, or is affiliated with an individual who is or has been a victim of domestic violence, dating violence, sexual assault or stalking, to a more demanding standard than other tenants in determining whether to evict or terminate assistance.

(3) Nothing in this section limits the authority of a covered housing provider to terminate assistance to or evict a tenant under a covered housing program if the covered housing provider can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to property of the covered housing provider would be present if that tenant or lawful occupant is not evicted or terminated from assistance. In this context, words, gestures, actions, or other indicators will be considered an "actual and imminent threat" if they meet the standards provided in the definition of "actual and imminent threat" in § 5.2003.

(4) Any eviction or termination of assistance, as provided in paragraph (d)(3) of this section should be utilized

by a covered housing provider only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents.

(e) *Emergency transfer plan.* Each covered housing provider, as identified in the program-specific regulations for the covered housing program, shall adopt an emergency transfer plan, no later than June 14, 2017 based on HUD's model emergency transfer plan, in accordance with the following:

(1) For purposes of this section, the following definitions apply:

(i) *Internal emergency transfer* refers to an emergency relocation of a tenant to another unit where the tenant would not be categorized as a new applicant; that is, the tenant may reside in the new unit without having to undergo an application process.

(ii) *External emergency transfer* refers to an emergency relocation of a tenant to another unit where the tenant would be categorized as a new applicant; that is the tenant must undergo an application process in order to reside in the new unit.

(iii) *Safe unit* refers to a unit that the victim of domestic violence, dating violence, sexual assault, or stalking believes is safe.

(2) The emergency transfer plan must provide that a tenant receiving rental assistance through, or residing in a unit subsidized under, a covered housing program who is a victim of domestic violence, dating violence, sexual assault, or stalking qualifies for an emergency transfer if:

(i) The tenant expressly requests the transfer; and

(ii)(A) The tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit that the tenant is currently occupying; or

(B) In the case of a tenant who is a victim of sexual assault, either the tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit that the tenant is currently occupying, or the sexual assault occurred on the premises during the 90-calendar-day period preceding the date of the request for transfer.

(3) The emergency transfer plan must detail the measure of any priority given to tenants who qualify for an emergency transfer under VAWA in relation to other categories of tenants seeking transfers and individuals seeking placement on waiting lists.

(4) The emergency transfer plan must incorporate strict confidentiality measures to ensure that the covered housing provider does not disclose the location of the dwelling unit of the tenant to a person who committed or threatened to commit an act of domestic violence, dating violence, sexual assault, or stalking against the tenant.

(5) The emergency transfer plan must allow a tenant to make an internal emergency transfer under VAWA when a safe unit is immediately available.

(6) The emergency transfer plan must describe policies for assisting a tenant in making an internal emergency transfer under VAWA when a safe unit is not immediately available, and these policies must ensure that requests for internal emergency transfers under VAWA receive, at a minimum, any applicable additional priority that housing providers may already provide to other types of emergency transfer requests.

(7) The emergency transfer plan must describe reasonable efforts the covered housing provider will take to assist a tenant who wishes to make an external emergency transfer when a safe unit is not immediately available. The plan must include policies for assisting a tenant who is seeking an external emergency transfer under VAWA out of the covered housing provider's program or project, and a tenant who is seeking an external emergency transfer under VAWA into the covered housing provider's program or project. These policies may include:

(i) Arrangements, including memoranda of understanding, with other covered housing providers to facilitate moves; and

(ii) Outreach activities to organizations that assist or provide resources to victims of domestic violence, dating violence, sexual assault, or stalking.

(8) Nothing may preclude a tenant from seeking an internal emergency transfer and an external emergency transfer concurrently if a safe unit is not immediately available.

(9) Where applicable, the emergency transfer plan must describe policies for a tenant who has tenant-based rental assistance and who meets the requirements of paragraph (e)(2) of this section to move quickly with that assistance.

(10) The emergency transfer plan may require documentation from a tenant seeking an emergency transfer, provided that:

(i) The tenant's submission of a written request to the covered housing provider, where the tenant certifies that they meet the criteria in paragraph (e)(2)(ii) of this section, shall be sufficient documentation of the requirements in paragraph (e)(2) of this section;

(ii) The covered housing provider may, at its discretion, ask an individual seeking an emergency transfer to document the occurrence of domestic violence, dating violence, sexual assault, or stalking, in accordance with § 5.2007, for which the individual is seeking the emergency transfer, if the individual has not already provided documentation of that occurrence; and

(iii) No other documentation is required to qualify the tenant for an emergency transfer.

(11) The covered housing provider must make its emergency transfer plan available upon request and, when feasible, must make its plan publicly available.

(12) The covered housing provider must keep a record of all emergency transfers requested under its emergency transfer plan, and the outcomes of such requests, and retain these records for a period of three years, or for a period of time as specified in program regulations. Requests and outcomes of such requests must be reported to HUD annually.

(13) Nothing in this paragraph (e) may be construed to supersede any eligibility or other occupancy requirements that may apply under a covered housing program.

§ 5.2007 Documenting the occurrence of domestic violence, dating violence, sexual assault, or stalking.

(a) *Request for documentation.* (1) Under a covered housing program, if an applicant or tenant represents to the covered housing provider that the individual is a victim of domestic violence, dating violence, sexual assault, or stalking entitled to the protections under § 5.2005, or remedies under § 5.2009, the covered housing provider may request, in writing, that the applicant or tenant submit to the covered housing provider the documentation specified in paragraph (b)(1) of this section.

(2)(i) If an applicant or tenant does not provide the documentation requested under paragraph (a)(1) of this section within 14 business days after the date that the tenant receives a request in writing for such documentation from

the covered housing provider, nothing in § 5.2005 or § 5.2009, which addresses the protections of VAWA, may be construed to limit the authority of the covered housing provider to:

(A) Deny admission by the applicant or tenant to the covered housing program;

(B) Deny assistance under the covered housing program to the applicant or tenant;

(C) Terminate the participation of the tenant in the covered housing program; or

(D) Evict the tenant, or a lawful occupant that commits a violation of a lease.

(ii) A covered housing provider may, at its discretion, extend the 14-business-day deadline under paragraph (a)(2)(i) of this section.

(b) *Permissible documentation and submission requirements.* (1) In response to a written request to the applicant or tenant from the covered housing provider, as provided in paragraph (a) of this section, the applicant or tenant may submit, as documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking, any one of the following forms of documentation, where it is at the discretion of the tenant or applicant which one of the following forms of documentation to submit:

(i) The certification form described in § 5.2005(a)(1)(ii); or

(ii) A document:

(A) Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, “professional”) from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse;

(B) Signed by the applicant or tenant; and

(C) That specifies, under penalty of perjury, that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection and remedies under this subpart, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking under § 5.2003; or

(iii) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or

(iv) At the discretion of a covered housing provider, a statement or other evidence provided by the applicant or tenant.

(2) If a covered housing provider receives documentation under paragraph (b)(1) of this section that contains conflicting information (including certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator), the covered housing provider may require an applicant or tenant to submit third-party documentation, as described in paragraphs (b)(1)(ii), (b)(1)(iii), or (b)(1)(iv) of this section, within 30 calendar days of the date of the request for the third-party documentation.

(3) Nothing in this paragraph (b) shall be construed to require a covered housing provider to request that an individual submit documentation of the status of the individual as a victim of domestic violence, dating violence, sexual assault, or stalking.

(c) *Confidentiality.* Any information submitted to a covered housing provider under this section, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking (confidential information), shall be maintained in strict confidence by the covered housing provider.

(1) The covered housing provider shall not allow any individual administering assistance on behalf of the covered housing provider or any persons within their employ (e.g., contractors) or in the employ of the covered housing provider to have access to confidential information unless explicitly authorized by the covered housing provider for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

(2) The covered housing provider shall not enter confidential information described in paragraph (c) of this section into any shared database or disclose such information to any other entity or individual, except to the extent that the disclosure is:

(i) Requested or consented to in writing by the individual in a time-limited release

(ii) Required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program; or

(iii) Otherwise required by applicable law.

(d) A covered housing provider’s compliance with the protections of §§ 5.2005 and 5.2009, based on documentation received under this section shall not be sufficient to constitute evidence of an unreasonable act or omission by the covered housing provider. However, nothing in this

paragraph (d) of this section shall be construed to limit the liability of a covered housing provider for failure to comply with §§ 5.2005 and 5.2009.

§ 5.2009 Remedies available to victims of domestic violence, dating violence, sexual assault, or stalking.

(a) *Lease bifurcation.* (1) A covered housing provider may in accordance with paragraph (a)(2) of this section, bifurcate a lease, or remove a household member from a lease in order to evict, remove, terminate occupancy rights, or terminate assistance to such member who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual:

(i) Without regard to whether the household member is a signatory to the lease; and

(ii) Without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant.

(2) A lease bifurcation, as provided in paragraph (a)(1) of this section, shall be carried out in accordance with any requirements or procedures as may be prescribed by Federal, State, or local law for termination of assistance or leases and in accordance with any requirements under the relevant covered housing program.

(b) *Reasonable time to establish eligibility for assistance or find alternative housing following bifurcation of a lease—(1) Applicability.* The reasonable time to establish eligibility under a covered housing program or find alternative housing is specified in paragraph (b) of this section, or alternatively in the program-specific regulations governing the applicable covered housing program. Some covered housing programs may provide different time frames than are specified in this paragraph (b), and in such cases, the program-specific regulations govern.

(2) *Reasonable time to establish eligibility assistance or find alternative housing.* (i) If a covered housing provider exercises the option to bifurcate a lease as provided in paragraph (a) of this section, and the individual who was evicted or for whom assistance was terminated was the eligible tenant under the covered housing program, the covered housing provider shall provide to any remaining tenant or tenants that were not already eligible a period of 90 calendar days from the date of bifurcation of the lease to:

(A) Establish eligibility for the same covered housing program under which the evicted or terminated tenant was the recipient of assistance at the time of bifurcation of the lease; or

(B) Establish eligibility under another covered housing program; or

(C) Find alternative housing.

(ii) The 90-calendar-day period provided by paragraph (b)(2) of this section will not be available to a remaining household member if the statutory requirements for the covered housing program prohibit it. The 90-day calendar period also will not apply beyond the expiration of a lease, unless this is permitted by program regulations. The 90-calendar-day period is the total period provided to a remaining tenant to establish eligibility under the three options provided in paragraphs (b)(2)(i)(A), (B), and (C) of this section.

(iii) The covered housing provider may extend the 90-calendar-day period in paragraph (b)(2) of this section up to an additional 60 calendar days, unless prohibited from doing so by statutory requirements of the covered program or unless the time period would extend beyond expiration of the lease.

(c) *Efforts to promote housing stability for victims of domestic violence, dating violence, sexual assault, or stalking.* Covered housing providers are encouraged to undertake whatever actions permissible and feasible under their respective programs to assist individuals residing in their units who are victims of domestic violence, dating violence, sexual assault, or stalking to remain in their units or other units under the covered housing program or other covered housing providers, and for the covered housing provider to bear the costs of any transfer, where permissible.

§ 5.2011 Effect on other laws.

(a) Nothing in this subpart shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, sexual assault, or stalking.

(b) All applicable fair housing and civil rights statutes and requirements apply in the implementation of VAWA requirements. See § 5.105(a).

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

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

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

■ 4. In § 91.520, revise paragraphs (e), (f), (g), and (h) to read as follows:

§ 91.520 Performance reports.

* * * * *

(e) *HOME.* For HOME participating jurisdictions, the report shall include the results of on-site inspections of affordable rental housing assisted under the program to determine compliance with housing codes and other applicable regulations, an assessment of the jurisdiction’s affirmative marketing actions and outreach to minority-owned and women-owned businesses, data on the amount and use of program income for projects, including the number of projects and owner and tenant characteristics, and data on emergency transfers requested under 24 CFR 5.2005(e) and 24 CFR 92.359, pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests.

(f) *HOPWA.* For jurisdictions receiving funding under the Housing Opportunities for Persons With AIDS program, the report must include the number of individuals assisted and the types of assistance provided, as well as data on emergency transfers requested under 24 CFR 5.2005(e), pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests.

(g) *ESG.* For jurisdictions receiving funding under the ESG program provided in 24 CFR part 576, the report, in a form prescribed by HUD, must include the number of persons assisted, the types of assistance provided, the project or program outcomes data measured under the performance standards developed in consultation with the Continuum(s) of Care, and data on emergency transfers requested under 24 CFR 5.2005(e) and 24 CFR 576.409, pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests.

(h) *HTF.* For jurisdictions receiving HTF funds, the report must describe the HTF program’s accomplishments, and the extent to which the jurisdiction complied with its approved HTF allocation plan and the requirements of 24 CFR part 93, as well as data on emergency transfers requested under 24 CFR 5.2005(e) and 24 CFR 93.356, pertaining to victims of domestic violence, dating violence, sexual

assault, or stalking, including data on the outcomes of such requests.

* * * * *

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

■ 5. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

■ 6. In § 92.253, paragraph (a) is revised, the word “and” is removed from the end of paragraph (d)(5), the period is removed and “; and” is added at the end of paragraph (d)(6), and paragraph (d)(7) is added to read as follows:

§ 92.253 Tenant protections and selection.

(a) *Lease.* There must be a written lease between the tenant and the owner of rental housing assisted with HOME funds that is for a period of not less than 1 year, unless by mutual agreement between the tenant and the owner a shorter period is specified. The lease must incorporate the VAWA lease term/addendum required under § 92.359(e), except as otherwise provided by § 92.359(b).

* * * * *

(d) * * *

(7) Comply with the VAWA requirements prescribed in § 92.359.

■ 7. Section 92.359 is added to subpart H to read as follows:

§ 92.359 VAWA requirements.

(a) *General.* (1) The Violence Against Women Act (VAWA) requirements set forth in 24 CFR part 5, subpart L, apply to all HOME tenant-based rental assistance and rental housing assisted with HOME funds, as supplemented by this section.

(2) For the HOME program, the “covered housing provider,” as this term is used in HUD’s regulations in 24 CFR part 5, subpart L, refers to:

(i) The housing owner for the purposes of 24 CFR 5.2005(d)(1), (d)(3), and (d)(4) and § 5.2009(a); and

(ii) The participating jurisdiction and the owner for purposes of 24 CFR 5.2005(d)(2), 5.2005(e), and 5.2007, except as otherwise provided in paragraph (g) of this section.

(b) *Effective date.* The core statutory protections of VAWA that prohibit denial or termination of assistance or eviction solely because an applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking became applicable upon enactment of VAWA 2013 on March 7, 2013. Compliance with the VAWA regulatory requirements under this section and 24 CFR part 5, subpart L, are

required for any tenant-based rental assistance or rental housing project for which the date of the HOME funding commitment is on or after *December 16, 2016*.

(c) *Notification requirements.* The participating jurisdiction must provide a notice and certification form that meet the requirements of 24 CFR 5.2005(a) to the owner of HOME-assisted rental housing.

(1) *For HOME-assisted units.* The owner of HOME-assisted rental housing must provide the notice and certification form described in 24 CFR 5.2005(a) to the applicant for a HOME-assisted unit at the time the applicant is admitted to a HOME-assisted unit, or denied admission to a HOME-assisted unit based on the owner's tenant selection policies and criteria. The owner of HOME-assisted rental housing must also provide the notice and certification form described in 24 CFR 5.2005 with any notification of eviction from a HOME-assisted unit.

(2) *For HOME tenant-based rental assistance.* The participating jurisdiction must provide the notice and certification form described in 24 CFR 5.2005(a) to the applicant for HOME tenant-based rental assistance when the applicant's HOME tenant-based rental assistance is approved or denied. The participating jurisdiction must also provide the notice and certification form described in 24 CFR 5.2005(a) to a tenant receiving HOME tenant-based rental assistance when the participating jurisdiction provides the tenant with notification of termination of the HOME tenant-based rental assistance, and when the participating jurisdiction learns that the tenant's housing owner intends to provide the tenant with notification of eviction.

(d) *Bifurcation of lease requirements.* For the purposes of this part, the following requirements shall apply in place of the requirements at 24 CFR 5.2009(b):

(1) If a family living in a HOME-assisted rental unit separates under 24 CFR 5.2009(a), the remaining tenant(s) may remain in the HOME-assisted unit.

(2) If a family who is receiving HOME tenant-based rental assistance separates under 24 CFR 5.2009(a), the remaining tenant(s) will retain the HOME tenant-based rental assistance. The participating jurisdiction must determine whether the tenant that was removed from the unit will receive HOME tenant-based rental assistance.

(e) *VAWA lease term/addendum.* The participating jurisdiction must develop a VAWA lease term/addendum to incorporate all requirements that apply to the owner or lease under 24 CFR part

5, subpart L, and this section, including the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.2005(b) and (c). This VAWA lease term/addendum must also provide that the tenant may terminate the lease without penalty if the participating jurisdiction determines that the tenant has met the conditions for an emergency transfer under 24 CFR 5.2005(e). When HOME tenant-based rental assistance is provided, the lease term/addendum must require the owner to notify the participating jurisdiction before the owner bifurcates the lease or provides notification of eviction to the tenant. If HOME tenant-based rental assistance is the only assistance provided (*i.e.*, the unit is not receiving project-based assistance under a covered housing program, as defined in 24 CFR 5.2003), the VAWA lease term/addendum may be written to expire at the end of the rental assistance period.

(f) *Period of applicability.* For HOME-assisted rental housing, the requirements of this section shall apply to the owner of the housing for the duration of the affordability period. For HOME tenant-based rental assistance, the requirements of this section shall apply to the owner of the tenant's housing for the period for which the rental assistance is provided.

(g) *Emergency Transfer Plan.* (1) The participating jurisdiction must develop and implement an emergency transfer plan and must make the determination of whether a tenant qualifies under the plan. The plan must meet the requirements in 24 CFR 5.2005(e), as supplemented by this section.

(2) For the purposes of § 5.2005(e)(7), the required policies must specify that for tenants who qualify for an emergency transfer and who wish to make an external emergency transfer when a safe unit is not immediately available, the participating jurisdiction must provide a list of properties in the jurisdiction that include HOME-assisted units. The list must include the following information for each property: The property's address, contact information, the unit sizes (number of bedrooms) for the HOME-assisted units, and, to the extent known, any tenant preferences or eligibility restrictions for the HOME-assisted units. In addition, the participating jurisdiction may:

(i) Establish a preference under the participating jurisdiction's HOME program for tenants who qualify for emergency transfers under 24 CFR 5.2005(e);

(ii) Provide HOME tenant-based rental assistance to tenants who qualify for emergency transfers under 24 CFR 5.2005(e); or

(iii) Coordinate with victim service providers and advocates to develop the emergency transfer plan, make referrals, and facilitate emergency transfers to safe and available units.

■ 8. Section 92.504(c) is amended by adding a sentence to the end of paragraphs (c)(1)(vi) and (c)(2)(iv), adding paragraph (c)(3)(v)(F), and adding a sentence to the end of paragraph (c)(4)(ii), to read as follows:

§ 92.504 Participating jurisdiction responsibilities; written agreements; on-site inspection.

* * * * *

(c) * * *

(1) * * *

(vi) * * * If HOME funds are provided for development of rental housing or provision of tenant-based rental assistance, the agreement must set forth all obligations the State imposes on the State recipient in order to meet the VAWA requirements under § 92.359, including notice obligations and any obligations with respect to the emergency transfer plan (including whether the State recipient must develop its own plan or follow the State's plan).

* * * * *

(2) * * *

(iv) * * * If HOME funds are being provided to develop rental housing or provide tenant-based rental assistance, the agreement must set forth all obligations the participating jurisdiction imposes on the subrecipient in order to meet the VAWA requirements under § 92.359, including notice obligations and obligations under the emergency transfer plan.

* * * * *

(3) * * *

(v) * * *

(F) If HOME funds are being provided to develop rental housing, the agreement must set forth all obligations the participating jurisdiction imposes on the owner in order to meet the VAWA requirements under § 92.359, including the owner's notice obligations and owner obligations under the emergency transfer plan.

* * * * *

(4) * * *

(ii) * * * If applicable to the work under the contract, the agreement must set forth all obligations the participating jurisdiction imposes on the contractor in order to meet the VAWA requirements under § 92.359, including any notice obligations and any obligations under the emergency transfer plan.

* * * * *

■ 9. In § 92.508, paragraph (a)(7)(x) is added to read as follows:

§ 92.508 Recordkeeping.

- (a) * * *
- (7) * * *

(x) Records of emergency transfers requested under 24 CFR 5.2005(e) and 92.359 pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of those requests.

* * * * *

PART 93—HOUSING TRUST FUND

■ 10. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12 U.S.C. 4568.

■ 11. In § 93.303, paragraph (a) is revised, paragraph (d)(5) is amended by removing the “and” at the end, paragraph (d)(6) is amended by removing the period and adding “:and” in its place, and paragraph (d)(7) is added to read as follows:

§ 93.303 Tenant protections and selection.

(a) *Lease.* There must be a written lease between the tenant and the owner of rental housing assisted with HTF funds that is for a period of not less than one year, unless by mutual agreement between the tenant and the owner a shorter period is specified. The lease must incorporate the VAWA lease term/addendum required under § 93.356(d).

* * * * *

- (d) * * *

(7) Comply with the VAWA requirements prescribed in § 93.356.

■ 12. Section 93.356 is added to subpart H to read as follows:

§ 93.356 VAWA requirements.

(a) *General.* (1) The Violence Against Women Act (VAWA) requirements set forth in 24 CFR part 5, subpart L, apply to all rental housing assisted with HTF funds, as provided in this section.

(2) For the HTF program, the “covered housing provider,” as this term is used in HUD’s regulations in 24 CFR part 5, subpart L, refers to:

(i) The owner of HTF-assisted rental housing for the purposes of 24 CFR 5.2005(d)(1), (2), (3), and (4) and 5.2009(a); and

(ii) The owner and the grantee for purposes of 24 CFR 5.2005(e) and 5.2007, except as otherwise provided in paragraph (f) of this section.

(b) *Notification requirements.* The grantee must provide a notice and certification form that meet the requirements of 24 CFR 5.2005(a) to the owner of HTF-assisted rental housing.

The owner of HTF-assisted rental housing must provide the notice and certification form described in 24 CFR 5.2005(a) to the applicant for a HTF-assisted unit at the time the applicant is admitted to an HTF-assisted unit, or denied admission to a HTF-assisted unit based on the owner’s tenant selection policies and criteria. The owner of HTF-assisted rental housing must also provide the notice and certification form described in 24 CFR 5.2005 with any notification of eviction from a HTF-assisted unit.

(c) *Bifurcation of lease requirements.*

For purposes of this part, the requirements of 24 CFR 5.2009(b) do not apply. If a family who lives in a HTF-assisted rental unit separates under 24 CFR 5.2009(a), the remaining tenant(s) may remain in the HTF-assisted unit.

(d) *VAWA lease term/addendum.* The grantee must develop a VAWA lease term/addendum to incorporate all requirements that apply to the owner or lease of HTF-assisted rental housing under 24 CFR part 5, subpart L, and this section, including the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.2005(b) and (c). This VAWA lease term/addendum must also provide that the tenant may terminate the lease without penalty if the grantee determines that the tenant has met the conditions for an emergency transfer under 24 CFR 5.2005(e).

(e) *Period of applicability.* The requirements of this section shall apply to the owner of the HTF-assisted rental housing for the duration of the affordability period.

(f) *Emergency transfer plan.* The grantee must develop and implement an emergency transfer plan and must make the determination of whether a tenant qualifies for an emergency transfer under the plan. The plan must meet the requirements in 24 CFR 5.2005(e), where, for the purposes of § 5.2005(e)(7), the required policies must specify that for tenants who qualify for an emergency transfer and who wish to make an external emergency transfer when a safe unit is not immediately available, the grantee must provide a list of properties in the jurisdiction that include HTF-assisted units. The list must include the following information for each property: The property’s address, contact information, the unit sizes (number of bedrooms) for the HTF-assisted units, and, to the extent known, any tenant preferences or eligibility restrictions for the HTF-assisted units. In addition, the grantee may:

- (1) Establish a preference under the grantee’s HTF program for tenants who

qualify for emergency transfers under 24 CFR 5.2005(e); and

(2) Coordinate with victim service providers and advocates to develop the emergency transfer plan, make referrals, and facilitate emergency transfers to safe and available units.

■ 13. In § 93.404, paragraphs (c)(1)(vi) and (c)(2)(vi) are revised to read as follows:

§ 93.404 Grantee responsibilities; written agreements; onsite inspections; financial oversight.

* * * * *

- (c) * * *

- (1) * * *

(vi) *Other program requirements.* The agreement must require the subgrantee to carry out each project in compliance with all Federal laws and regulations described in §§ 93.350 through 93.356. The agreement must set forth all obligations the grantee imposes on the subgrantee in order to meet the VAWA requirements under § 93.356, including notice obligations and obligations under the emergency transfer plan.

* * * * *

- (2) * * *

(vi) *Other program requirements.* The agreement must require the eligible recipient to carry out each project in compliance with all Federal laws and regulations described in §§ 93.350 through 93.356. The agreement must set forth all obligations the grantee imposes on the recipient in order to meet the VAWA requirements under § 93.356, including notice obligations and obligations under the emergency transfer plan.

* * * * *

■ 14. In § 93.407, add paragraph (a)(5)(ix) to read as follows:

§ 93.407 Recordkeeping.

- (a) General. * * *

- (5) * * *

(ix) Documentation on emergency transfers requested under 24 CFR 5.2005(e) and § 93.356 pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests.

* * * * *

PART 200—INTRODUCTION TO FHA PROGRAMS

■ 15. The authority citation for Part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21 and 42 U.S.C. 3535(d).

■ 16. Add § 200.38 to read as follows:

§ 200.38 Protections for victims of domestic violence.

(a) The requirements for protection for victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to programs administered under section 236 and under sections 221(d)(3) and (d)(5) of the National Housing Act, as follows:

(1) Multifamily rental housing under section 221(d)(3) of the National Housing Act (12 U.S.C. 17151(d)) with a below-market interest rate (BMIR) pursuant to section 221(d)(5), with implementing regulations at 24 CFR part 221. The Section 221(d)(3) BMIR program insured and subsidized mortgage loans to facilitate new construction or substantial rehabilitation of multifamily rental cooperative housing for low- and moderate-income families. The program is no longer active, but Section 221(d)(3) BMIR properties that remain in existence are covered by VAWA. Coverage of section 221(d)(3) and (d)(5) BMIR housing does not include section 221(d)(3) and (d)(5) BMIR projects that refinance under section 223(a)(7) or 223(f) of the National Housing Act where the interest rate is no longer determined under section 221(d)(5).

(2) Multifamily rental housing under section 236 of the National Housing Act (12 U.S.C. 1715z-1), with implementing regulations at 24 CFR part 236. Coverage of the section 236 program includes not only those projects with FHA-insured project mortgages under section 236(j), but also non-FHA-insured projects that receive interest reduction payments (“IRP”) under section 236(b) and formerly insured section 236 projects that continue to receive interest reduction payments through a “decoupled” IRP contract under section 236(e)(2). Coverage also includes projects that receive rental assistance payments authorized under section 236(f)(2).

(b) For the programs administered under paragraph (a) of this section, “covered housing provider” as such term is used in 24 CFR part 5, subpart L, refers to the mortgagor, or owner, as applicable.

PART 247—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS

■ 17. The authority citation for part 247 continues to read as follows:

Authority: 12 U.S.C. 1701q, 1701s, 1715b, 1715l, and 1715z-1; 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

■ 18. In § 247.1, redesignate the undesignated paragraph as paragraph (a) and add paragraph (b) to read as follows:

§ 247.1 Applicability.

* * * * *

(b) Landlords of subsidized projects that have been assisted under a covered housing program listed in 24 CFR 5.2003 must comply with 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), as described in § 200.38.

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

■ 19. The authority citation for part 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901-12912.

■ 20. In § 574.310, revise paragraph (e)(2)(i) to read as follows:

§ 574.310 General standards for eligible housing activities.

* * * * *

(e) * * *

(2) * * * (i) *Basis.* Assistance to participants who reside in housing programs assisted under this part may be terminated if the participant violates program requirements or conditions of occupancy, subject to the VAWA protections in 24 CFR 5.2005(b) and 24 CFR 5.2005(c). Grantees must ensure that supportive services are provided, so that a participant’s assistance is terminated only in the most severe cases.

* * * * *

■ 21. Add § 574.460 to subpart E to read as follows:

§ 574.460 Remaining participants following bifurcation of a lease or eviction as a result of domestic violence, dating violence, sexual assault, or stalking.

When a covered housing provider exercises the option to bifurcate a lease, as provided in 24 CFR 5.2009(a), in order to evict, remove, terminate occupancy rights, or terminate assistance to a person with AIDS or related diseases that receives rental assistance or resides in rental housing assisted under the HOPWA program for engaging in criminal activity directly relating to domestic violence, dating violence, sexual assault or stalking, the covered housing provider shall provide the remaining persons residing in the unit a reasonable grace period to establish eligibility to receive HOPWA assistance or find alternative housing. The grantee or project sponsor shall set

the reasonable grace period, which shall be no less than 90 calendar days, and not more than one year, from the date of the bifurcation of the lease. Housing assistance and supportive services under the HOPWA program shall continue for the remaining persons residing in the unit during the grace period. The grantee or project sponsor shall notify the remaining persons residing in the unit of the duration of the reasonable grace period and may assist them with information on other available housing programs and with moving expenses.

■ 22. Revise § 574.520(b) to read as follows:

§ 574.520 Performance reports.

* * * * *

(b) *Competitive grants.* A grantee shall submit to HUD annually a report describing the use of the amounts received, including the number of individuals assisted, the types of assistance provided, data on emergency transfers requested under 24 CFR 5.2005(e), pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests, and any other information that HUD may require. Annual reports are required until all grant funds are expended.

■ 23. Add § 574.530(c) to read as follows:

§ 574.530 Recordkeeping.

* * * * *

(c) Data on emergency transfers requested under 24 CFR 5.2005(e), pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests.

■ 24. Add § 574.604 to read as follows:

§ 574.604 Protections for victims of domestic violence, dating violence, sexual assault, and stalking.

(a) *General*—(1) *Applicability of VAWA requirements.* Except as provided in paragraph (a)(2) of this section, the Violence Against Women Act (VAWA) requirements set forth in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), apply to housing assisted with HOPWA grant funds for acquisition, rehabilitation, conversion, lease, and repair of facilities to provide housing; new construction; and operating costs, as provided in § 574.300. The requirements set forth in 24 CFR part 5, subpart L, also apply to project-based and tenant-based rental assistance, as provided in §§ 574.300 and 574.320,

and community residences, as provided in § 574.340.

(2) Limited applicability of VAWA requirements. The VAWA requirements set forth in 24 CFR part 5, subpart L do not apply to short-term supported housing, as provided in § 574.330, except that no individual may be denied admission to or removed from the short-term supported housing on the basis or as a direct result of the fact that the individual is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the individual otherwise qualifies for admission or occupancy.

(3) The terms “affiliated individual,” “dating violence,” “domestic violence,” “sexual assault,” and “stalking” are defined in 24 CFR 5.2003.

(b) *Covered housing provider.* As used in this part, the term, “covered housing provider,” which is defined in 24 CFR 5.2003, refers to the HOPWA grantee, project sponsor, or housing or facility owner, or manager, as described in this section.

(1)(i) For housing assisted with HOPWA grant funds for acquisition, rehabilitation, conversion, lease, and repair of facilities to provide housing; new construction; operating costs; community residences; and project-based rental assistance, the HOPWA grantee is responsible for ensuring that each project sponsor undertakes the following actions (or, if administering the HOPWA assistance directly, the grantee shall undertake the following actions):

(A) Sets a policy for determining the “reasonable grace period” for remaining persons residing in the unit to establish eligibility for HOPWA assistance or find alternative housing, which period shall be no less than 90 calendar days nor more than one year from the date of bifurcation of a lease, consistent with 24 CFR 574.460;

(B) Provides notice of occupancy rights and the certification form at the times listed in paragraph (d) of this section;

(C) Adopts and administers an emergency transfer plan, as developed by the grantee in accordance with 24 CFR 5.2005(e) of this section, and facilitates emergency transfers; and

(D) Maintains the confidentiality of documentation submitted by tenants requesting emergency transfers and of each tenant’s housing location consistent with § 574.440 and 24 CFR 5.2007(c).

(ii)(A) If a tenant seeks VAWA protections, set forth in 24 CFR part 5, subpart L, the tenant must submit such request through the project sponsor (or the grantee if the grantee is directly

administering HOPWA assistance). Grantees and project sponsors will work with the housing or facility owner or manager to facilitate protections on the tenant’s behalf. Project sponsors must follow the documentation specifications in 24 CFR 5.2007, including the confidentiality requirements in 24 CFR 5.2007(c).

(B) The grantee or project sponsor is responsible for ensuring that the housing or facility owner or manager develops and uses a HOPWA lease addendum with VAWA protections and is made aware of the option to bifurcate a lease in accordance with § 574.460 and 24 CFR 5.2009.

(2)(i) For tenant-based rental assistance, the HOPWA grantee is responsible for ensuring that each project sponsor providing tenant-based rental assistance undertakes the following actions (or, if administering the HOPWA assistance directly, the grantee shall undertake the following actions):

(A) Sets policy for determining the “reasonable grace period” for remaining persons residing in the unit to establish eligibility for HOPWA assistance or find alternative housing, which period shall be no less than 90 calendar days and no more than one year from the date of bifurcation of a lease, consistent with 24 CFR 574.460;

(B) Provides notice of occupancy rights and the certification form at the times listed in paragraph (d) of this section;

(C) Adopts and administers an emergency transfer plan, as developed by the grantee in accordance with 24 CFR 5.2005(e) of this section, and facilitates emergency transfers; and

(D) Maintains the confidentiality of documentation submitted by tenants requesting emergency transfers and of each tenant’s housing location consistent with § 574.440 and 24 CFR 5.2007(c).

(ii)(A) If a tenant seeks VAWA protections set forth in 24 CFR part 5, subpart L, the tenant must submit such request through the project sponsor (or the grantee if the grantee is directly administering HOPWA assistance). The project sponsor will work with the housing owner or manager to facilitate protections on the tenant’s behalf.

Project sponsors must follow the documentation specifications in 24 CFR 5.2007, including the confidentiality requirements in 24 CFR 5.2007(c). The project sponsor (or the grantee if the grantee is directly administering HOPWA assistance) is also responsible for determining on a case-by-case basis whether to provide new tenant-based rental assistance to a remaining tenant

if lease bifurcation or an emergency transfer results in division of the household.

(B) The grantee or project sponsor is responsible for ensuring that the housing owner or manager develops and uses a HOPWA lease addendum with VAWA protections and is made aware of the option to bifurcate a lease in accordance with § 574.460 and 24 CFR 5.2009.

(c) *Effective date.* The core statutory protections of VAWA that prohibit denial or termination of assistance or eviction because an applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking applied upon enactment of VAWA 2013 on March 7, 2013. For formula grants, compliance with the VAWA regulatory requirements under this section and 24 CFR part 5, subpart L, are required for any project covered under § 574.604(a) for which the date of the HOPWA funding commitment is made on or after *December 16, 2016*. For competitive grants, compliance with the VAWA regulatory requirements under this section and 24 CFR part 5, subpart L, are required for awards made on or after *December 16, 2016*.

(d) *Notification requirements.* (1) As provided in paragraph (b) of this section, the grantee is responsible for ensuring that the notice of occupancy rights and certification form described in 24 CFR 5.2005(a) is provided to each person receiving project-based or tenant-based rental assistance under HOPWA or residing in rental housing assisted under the eligible activities described in § 574.604(a) at the following times:

(i) At the time the person is denied rental assistance or admission to a HOPWA-assisted unit;

(ii) At the time the person is admitted to a HOPWA-assisted unit or is provided rental assistance;

(iii) With any notification of eviction from the HOPWA-assisted unit or notification of termination of rental assistance; and

(iv) During the 12-month period following *December 16, 2016*, either during annual recertification or lease renewal, whichever is applicable, or, if there will be no recertification or lease renewal for a tenant during the first year after the rule takes effect, through other means.

(2) The grantee is responsible for ensuring that, for each tenant receiving HOPWA tenant-based rental assistance, the owner or manager of the tenant’s housing unit commits to provide the notice of occupancy rights and certification form described in 24 CFR 5.2005 with any notification of eviction

that the owner or manager provides to the tenant during the period for which the tenant is receiving HOPWA tenant-based rental assistance. This commitment, as well as the confidentiality requirements under 24 CFR 5.2007(c), must be set forth in the VAWA lease term/addendum required under paragraph (f) of this section.

(e) *Definition of reasonable time.* For the purpose of 24 CFR 5.2009(b), the reasonable time to establish eligibility or find alternative housing following bifurcation of a lease is the reasonable grace period described in § 574.460.

(f) *VAWA lease term/addendum.* As provided in paragraph (b) of this section, the grantee or project sponsor is responsible for ensuring that the housing or facility owner or manager, as applicable, develops and uses a VAWA lease term/addendum to incorporate all requirements that apply to the housing or facility owner or manager under 24 CFR part 5, subpart L, and this section, including the prohibited bases for eviction under 24 CFR 5.2005(b), the provisions regarding construction of lease terms and terms of assistance under 24 CFR 5.2005(c), and the confidentiality of documentation submitted by tenants requesting emergency transfers and of each tenant's housing location consistent with 24 CFR 5.2007(c). The VAWA lease term/addendum must also provide that the tenant may terminate the lease without penalty if a determination is made that the tenant has met the conditions for an emergency transfer under 24 CFR 5.2005(e). The grantee or project sponsor is responsible for ensuring that the housing or facility owner, or manager, as applicable, adds the VAWA lease term/addendum to the leases for all HOPWA-assisted units and the leases for all eligible persons receiving HOPWA tenant-based rental assistance.

PART 576—EMERGENCY SOLUTIONS GRANTS PROGRAM

■ 25. The authority citation for part 576 continues to read as follows:

Authority: 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

■ 26. In § 576.105, add paragraph (a)(7) to read as follows:

§ 576.105 Housing relocation and stabilization services.

(a) * * *

(7) If a program participant receiving short- or medium-term rental assistance under § 576.106 meets the conditions for an emergency transfer under 24 CFR 5.2005(e), ESG funds may be used to pay amounts owed for breaking a lease to effect an emergency transfer. These

costs are not subject to the 24-month limit on rental assistance under § 576.106.

* * * * *

■ 27. In § 576.106, paragraphs (e) and (g) are revised to read as follows:

§ 576.106 Short-term and medium-term rental assistance.

* * * * *

(e) *Rental assistance agreement.* The recipient or subrecipient may make rental assistance payments only to an owner with whom the recipient or subrecipient has entered into a rental assistance agreement. The rental assistance agreement must set forth the terms under which rental assistance will be provided, including the requirements that apply under this section. The rental assistance agreement must provide that, during the term of the agreement, the owner must give the recipient or subrecipient a copy of any notice to the program participant to vacate the housing unit or any complaint used under State or local law to commence an eviction action against the program participant. Each rental assistance agreement that is executed or renewed on or after *December 16, 2016* must include all protections that apply to tenants and applicants under 24 CFR part 5, subpart L, as supplemented by § 576.409, except for the emergency transfer plan requirements under 24 CFR 5.2005(e) and 576.409(d). If the housing is not assisted under another “covered housing program”, as defined in 24 CFR 5.2003, the agreement may provide that the owner's obligations under 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), expire at the end of the rental assistance period.

* * * * *

(g) *Lease.* Each program participant receiving rental assistance must have a legally binding, written lease for the rental unit, unless the assistance is solely for rental arrears. The lease must be between the owner and the program participant. Where the assistance is solely for rental arrears, an oral agreement may be accepted in place of a written lease, if the agreement gives the program participant an enforceable leasehold interest under state law and the agreement and rent owed are sufficiently documented by the owner's financial records, rent ledgers, or canceled checks. For program participants living in housing with project-based rental assistance under paragraph (i) of this section, the lease must have an initial term of 1 year. Each lease executed on or after *December 16,*

2016 must include a lease provision or incorporate a lease addendum that includes all requirements that apply to tenants, the owner or lease under 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), as supplemented by 24 CFR 576.409, including the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.2005(b) and (c). If the housing is not assisted under another “covered housing program,” as defined in 24 CFR 5.2003, the lease provision or lease addendum may be written to expire at the end of the rental assistance period.

* * * * *

■ 28. In § 576.400, revise paragraph (e)(3)(vi) to read as follows:

§ 576.400 Area-wide systems coordination requirements.

* * * * *

(e) * * *

(3) * * *

(vi) Policies and procedures for determining and prioritizing which eligible families and individuals will receive homelessness prevention assistance and which eligible families and individuals will receive rapid re-housing assistance (these policies must include the emergency transfer priority required under § 576.409);

* * * * *

■ 29. Add § 576.409 to subpart E to read as follows:

§ 576.409 Protection for victims of domestic violence, dating violence, sexual assault, or stalking.

(a) *Applicability of VAWA protections.* The core statutory protections of VAWA that prohibit denial or termination of assistance or eviction solely because an applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking applied upon enactment of VAWA 2013 on March 7, 2013. The VAWA regulatory requirements under 24 CFR part 5, subpart L, as supplemented by this section, apply to all eligibility and termination decisions that are made with respect to ESG rental assistance on or after *December 16, 2016*. The recipient must ensure that the requirements under 24 CFR part 5, subpart L, are included or incorporated into rental assistance agreements and leases as provided in § 576.106(e) and (g).

(b) *Covered housing provider.* For the ESG program, “covered housing provider,” as such term is used in HUD's regulations in 24 CFR part 5, subpart L, refers to:

(1) The recipient or subrecipient that administers the rental assistance for the purposes of 24 CFR 5.2005(e);

(2) The housing owner for the purposes of 24 CFR 5.2005(d)(1), (d)(3), and (d)(4) and 5.2009(a);

(3) The housing owner and the recipient or subrecipient that administers the rental assistance for the purposes of 24 CFR 5.2005(d)(2); and

(4) The housing owner and the recipient or subrecipient that administers the rental assistance for the purposes of 24 CFR 5.2007. However, the recipient or subrecipient may limit documentation requests under 24 CFR 5.2007 to only the recipient or subrecipient, provided that:

(i) This limitation is made clear in both the notice described under 24 CFR 5.2005(a)(1) and the rental assistance agreement;

(ii) The entity designated to receive documentation requests determines whether the program participant is entitled to protection under VAWA and immediately advise the program participant of the determination; and

(iii) If the program participant is entitled to protection, the entity designated to receive documentation requests must notify the owner in writing that the program participant is entitled to protection under VAWA and work with the owner on the program participant's behalf. Any further sharing or disclosure of the program participant's information will be subject to the requirements in 24 CFR 5.2007.

(c) *Notification.* As provided under 24 CFR 5.2005(a) each recipient or subrecipient that determines eligibility for or administers ESG rental assistance is responsible for ensuring that the notice and certification form described under 24 CFR 5.2005(a)(1) is provided to each applicant for ESG rental assistance and each program participant receiving ESG rental assistance at each of the following times:

(1) When an individual or family is denied ESG rental assistance;

(2) When an individual or family's application for a unit receiving project-based rental assistance is denied;

(3) When a program participant begins receiving ESG rental assistance;

(4) When a program participant is notified of termination of ESG rental assistance; and

(5) When a program participant receives notification of eviction.

(d) *Emergency transfer plan.* (1) The recipient must develop the emergency transfer plan under 24 CFR 5.2005(e) or, if the recipient is a state, require its subrecipients that administer ESG rental assistance to develop the emergency transfer plan(s) required under 24 CFR

5.2005(e). If the state's subrecipients are required to develop the plan(s), the recipient must specify whether an emergency transfer plan is to be developed for:

(i) The state as a whole;

(ii) Each area within the state that is covered by a Continuum of Care; or

(iii) Each subrecipient that administers ESG rental assistance. (2) Once the applicable plan is developed in accordance with this section, the recipient and each subrecipient that administers ESG rental assistance must implement the plan in accordance with 24 CFR 5.2005(e).

(3) Each emergency transfer plan must meet the requirements in 24 CFR 5.2005(e) and include the following program requirements:

(i) For families living in units receiving project-based rental assistance (assisted units), the required policies must provide that if a program participant qualifies for an emergency transfer, but a safe unit is not immediately available for an internal emergency transfer, that program participant shall have priority over all other applicants for tenant-based rental assistance, utility assistance, and units for which project-based rental assistance is provided.

(ii) For families receiving tenant-based rental assistance, the required policies must specify what will happen with respect to the non-transferring family member(s), if the family separates in order to effect an emergency transfer.

(e) *Bifurcation.* For the purposes of this part, the following requirements shall apply in place of the requirements at 24 CFR 5.2009(b):

(1) When a family receiving tenant-based rental assistance separates under 24 CFR 5.2009(a), the family's tenant-based rental assistance and utility assistance, if any, shall continue for the family member(s) who are not evicted or removed.

(2) If a family living in a unit receiving project-based rental assistance separates under 24 CFR 5.2009(a), the family member(s) who are not evicted or removed can remain in the assisted unit without interruption to the rental assistance or utility assistance provided for the unit.

(f) *Emergency shelters.* The following requirements apply to emergency shelters funded under § 576.102:

(1) No individual or family may be denied admission to or removed from the emergency shelter on the basis or as a direct result of the fact that the individual or family is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if

the individual or family otherwise qualifies for admission or occupancy.

(2) The terms "affiliated individual," "dating violence," "domestic violence," "sexual assault," and "stalking" are defined in 24 CFR 5.2003.

■ 30. In § 576.500, revise the introductory text of paragraph (s) and add paragraph (s)(5) to read as follows:

§ 576.500 Recordkeeping and reporting requirements.

* * * * *

(s) *Other Federal requirements.* The recipient and its subrecipients must document their compliance with the Federal requirements in § 576.407 and § 576.409, as applicable, including:

* * * * *

(5) Data on emergency transfers requested under § 576.409, pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests.

* * * * *

PART 578—CONTINUUM OF CARE PROGRAM

■ 31. The authority citation for part 578 continues to read as follows:

Authority: 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

■ 32. In § 578.7, paragraphs (a)(9)(ii), (iii) and (v) are revised and paragraph (d) is added to read as follows:

§ 578.7 Responsibilities of the Continuum of Care.

(a) * * *

(9) * * *

(ii) Policies and procedures for determining and prioritizing which eligible individuals and families will receive transitional housing assistance (these policies must include the emergency transfer priority required under § 578.99(j)(8));

(iii) Policies and procedures for determining and prioritizing which eligible individuals and families will receive rapid rehousing assistance (these policies must include the emergency transfer priority required under § 578.99(j)(8));

* * * * *

(v) Policies and procedures for determining and prioritizing which eligible individuals and families will receive permanent supportive housing assistance (these policies must include the emergency transfer priority required under § 578.99(j)(8)); and

* * * * *

(d) *VAWA emergency transfer plan.* The Continuum of Care must develop the emergency transfer plan for the

Continuum of Care that meets the requirements under § 578.99(j)(8).

■ 33. In § 578.51, add paragraph (m) to read as follows:

§ 578.51 Rental assistance.

* * * * *

(m) *VAWA emergency transfer plan costs.* Recipients and subrecipients of grants for tenant-based rental assistance may use grant funds to pay amounts owed for breaking the lease if the family qualifies for an emergency transfer under the emergency transfer plan established under § 578.99(j)(8).

■ 34. In § 578.75, add paragraph (j) to read as follows:

§ 578.75 General operations.

* * * * *

(j) *Remaining program participants following bifurcation of a lease or eviction as a result of domestic violence.* For permanent supportive housing projects, members of any household who were living in a unit assisted under this part at the time of a qualifying member's eviction from the unit because the qualifying member was found to have engaged in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking, have the right to rental assistance under this section until the expiration of the lease in effect at the time of the qualifying member's eviction.

■ 35. In § 578.99, add paragraph (j) to read as follows:

§ 578.99 Applicability of other Federal requirements.

* * * * *

(j) *Protections for victims of domestic violence, dating violence, sexual assault, or stalking—(1) General.* The requirements set forth in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), implementing the requirements of VAWA apply to all permanent housing and transitional housing for which Continuum of Care program funds are used for acquisition, rehabilitation, new construction, leasing, rental assistance, or operating costs. The requirements also apply where funds are used for homelessness prevention, but only where the funds are used to provide short- and/or medium-term rental assistance. Safe havens are subject only to the requirements in paragraph (j)(9) of this section.

(2) *Definition of covered housing provider.* For the Continuum of Care program, “covered housing provider,” as such term is used in HUD’s

regulations in 24 CFR part 5, subpart L refers to:

(i) The owner or landlord, which may be the recipient or subrecipient, for purposes of 24 CFR 5.2005(d)(1) and 5.2009(a);

(ii) The recipient, subrecipient, and owner or landlord for purposes of 24 CFR 5.2005(d)(2) through (d)(4); and

(iii) The recipient, subrecipient, and owner or landlord for purposes of 24 CFR 5.2007. However, the recipient or subrecipient may limit documentation requests under § 5.2007 to only the recipient or subrecipient, provided that:

(i) This limitation is made clear in both the notice described under 24 CFR 5.2005(a)(1) and the rental assistance agreement;

(ii) The entity designated to receive documentation requests determines whether the program participant is entitled to protection under VAWA and immediately advise the program participant of the determination; and

(iii) If the program participant is entitled to protection, the entity designated to receive documentation requests must notify the owner in writing that the program participant is entitled to protection under VAWA and work with the owner on the program participant's behalf. Any further sharing or disclosure of the program participant's information will be subject to the requirements in 24 CFR 5.2007.

(3) *Effective date.* The core statutory protections of VAWA that prohibit denial or termination of assistance or eviction solely because an applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking, applied upon enactment of VAWA 2013 on March 7, 2013. Compliance with the VAWA regulatory requirements under this section and at 24 CFR part 5, subpart L, is required for grants awarded pursuant to NOFAs published on or after December 16, 2016.

(4) *Notification requirements.* (i) The recipient or subrecipient must provide each individual or family applying for permanent housing and transitional housing and each program participant the notice and the certification form described in 24 CFR 5.2005 at each of the following times:

(A) When an individual or family is denied permanent housing or transitional housing;

(B) When a program participant is admitted to permanent housing or transitional housing;

(C) When a program participant receives notification of eviction; and

(D) When a program participant is notified of termination of assistance.

(ii) When grant funds are used for rental assistance, the recipient or subrecipient must ensure that the owner or manager of the housing provides the notice and certification form described in 24 CFR 5.2005(a) to the program participant with any notification of eviction. This commitment and the confidentiality requirements under 24 CFR 5.2007(c) must be set forth in a contract with the owner or landlord.

(5) *Contract, lease, and occupancy agreement provisions.* (i) Recipients and subrecipients must include in any contracts and leases between the recipient or subrecipient, and an owner or landlord of the housing:

(A) The requirement to comply with 24 CFR part 5, subpart L; and

(B) Where the owner or landlord of the housing will have a lease with a program participant, the requirement to include a lease provision that include all requirements that apply to tenants, the owner or the lease under 24 CFR part 5, subpart L, as supplemented by this part, including the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.2005(b) and (c).

(ii) The recipient or subrecipient must include in any lease, sublease, and occupancy agreement with the program participant a provision that include all requirements that apply to tenants, the owner or the lease under 24 CFR part 5, subpart L, as supplemented by this part, including the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.2005(b) and (c). The lease, sublease, and occupancy agreement may specify that the protections under 24 CFR part 5, subpart L, apply only during the period of assistance under the Continuum of Care Program. The period of assistance for housing where grant funds were used for acquisition, construction, or rehabilitation is 15 years from the date of initial occupancy or date of initial service provision.

(iii) Except for tenant-based rental assistance, recipients and subrecipients must require that any lease, sublease, or occupancy agreement with a program participant permits the program participant to terminate the lease, sublease, or occupancy agreement without penalty if the recipient or subrecipient determines that the program participant qualifies for an emergency transfer under the emergency transfer plan established under paragraph (j)(8) of this section.

(iv) For tenant-based rental assistance, the recipient or subrecipient must enter into a contract with the owner or landlord of the housing that:

(A) Requires the owner or landlord of the housing to comply with the provisions of 24 CFR part 5, subpart L; and

(B) Requires the owner or landlord of the housing to include a lease provision that include all requirements that apply to tenants, the owner or the lease under 24 CFR part 5, subpart L, as supplemented by this part, including the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.005(b) and (c). The lease may specify that the protections under 24 CFR part 5, subpart L, only apply while the program participant receives tenant-based rental assistance under the Continuum of Care Program.

(6) *Transition.* (i) The recipient or subrecipient must ensure that the requirements set forth in paragraph (j)(5) of this section apply to any contracts, leases, subleases, or occupancy agreements entered into, or renewed, following the expiration of an existing term, on or after the effective date in paragraph (j)(2) of this section. This obligation includes any contracts, leases, subleases, and occupancy agreements that will automatically renew on or after the effective date in paragraph (j)(3) of this section.

(ii) For leases for tenant-based rental assistance existing prior to the effective date in paragraph (j)(2) of this section, recipients and subrecipients must enter into a contract under paragraph (j)(6)(iv) of this section before the next renewal of the lease.

(7) *Bifurcation.* For the purposes of this part, the following requirements shall apply in place of the requirements at 24 CFR 5.2009(b):

(i) If a family who is receiving tenant-based rental assistance under this part separates under 24 CFR 5.2009(a), the family's tenant-based rental assistance and any utility assistance shall continue for the family member(s) who are not evicted or removed.

(ii) If a family living in permanent supportive housing separates under 24 CFR 5.2009(a), and the family's eligibility for the housing was based on the evicted individual's disability or chronically homeless status, the remaining tenants may stay in the project as provided under § 578.75(i)(2). Otherwise, if a family living in a project funded under this part separates under 24 CFR 5.2009(a), the remaining tenant(s) will be eligible to remain in the project.

(8) *Emergency transfer plan.* The Continuum of Care must develop an emergency transfer plan for the Continuum of Care, and recipients and subrecipients in the Continuum of Care must follow that plan. The plan must

comply with 24 CFR 5.2005(e) and include the following program requirements:

(i) For families receiving tenant-based rental assistance, the plan must specify what will happen with respect to the non-transferring family member(s), if the family separates in order to effect an emergency transfer.

(ii) For families living in units that are otherwise assisted under this part (assisted units), the required policies must provide that for program participants who qualify for an emergency transfer but a safe unit is not immediately available for an internal emergency transfer, the individual or family shall have priority over all other applicants for rental assistance, transitional housing, and permanent supportive housing projects funded under this part, provided that: The individual or family meets all eligibility criteria required by Federal law or regulation or HUD NOFA; and the individual or family meets any additional criteria or preferences established in accordance with § 578.93(b)(1), (4), (6), or (7). The individual or family shall not be required to meet any other eligibility criteria or preferences for the project. The individual or family shall retain their original homeless or chronically homeless status for the purposes of the transfer.

(9) *Protections with respect to safe havens.* The following requirements apply to safe havens funded under this part:

(i) No individual may be denied admission to or removed from the safe haven on the basis or as a direct result of the fact that the individual is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the individual otherwise qualifies for admission or occupancy.

(iii) The terms "affiliated individual," "dating violence," "domestic violence," "sexual assault," and "stalking" are defined in 24 CFR 5.2003.

■ 36. In § 578.103, revise the heading of paragraph (a)(6), redesignate paragraphs (a)(6)(i) and (ii) as paragraphs (a)(6)(i)(A) and (B), respectively, redesignate paragraph (a)(6) introductory text as (a)(6)(i) introductory text, and add new paragraph (a)(6)(ii) to read as follows:

§ 578.103 Recordkeeping requirements.

(a) * * *

(6) *Moves for victims of domestic violence, dating violence, sexual assault, and stalking.* * * *

(ii) Data on emergency transfers requested under 24 CFR 5.2005(e) and § 578.99, pertaining to victims of domestic violence, dating violence,

sexual assault, or stalking, including data on the outcomes of such requests.

* * * * *

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENT PROGRAM FOR NEW CONSTRUCTION

■ 37. The authority citation for part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

■ 38. In § 880.201, a definition of "covered housing provider" is added in alphabetical order to read as follows:

§ 880.201 Definitions.

* * * * *

Covered housing provider. For the Section 8 Housing Assistance Payment Program for New Construction, "covered housing provider," as such term is used in HUD's regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), refers to the owner.

* * * * *

■ 39. Revise § 880.504(f) to read as follows:

§ 880.504 Leasing to eligible families.

* * * * *

(f) *Protections for victims of domestic violence, dating violence, sexual assault, or stalking.* The regulations of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), apply to this section.

■ 40. In § 880.607, revise paragraph (c)(5) to read as follows:

§ 880.607 Termination of tenancy and modification of lease.

* * * * *

(c) * * *

(5) In actions or potential actions to terminate tenancy, the owner shall follow 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

* * * * *

■ 41. Add § 880.613 to subpart F to read as follows:

§ 880.613 Emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking.

(a) Covered housing providers must develop and implement an emergency transfer plan that meets the requirements in 24 CFR 5.2005(e).

(b) In order to facilitate emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking, covered housing providers have discretion to adopt new,

and modify any existing, admission preferences or transfer waitlist priorities.

(c) In addition to following requirements in 24 CFR 5.2005(e), when a safe unit is not immediately available for a victim of domestic violence, dating violence, sexual assault, or stalking who qualifies for an emergency transfer, covered housing providers must:

(1) Review the covered housing provider's existing inventory of units and determine when the next vacant unit may be available; and

(2) Provide a listing of nearby HUD subsidized rental properties, with or without preference for persons of domestic violence, dating violence, sexual assault, or stalking, and contact information for the local HUD field office.

(d) Each year, covered housing providers must submit to HUD data on all emergency transfers requested under 24 CFR 5.2005(e), including data on the outcomes of such requests.

PART 882—SECTION 8 MODERATE REHABILITATION PROGRAMS

■ 42. The authority citation for part 882 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535d.

■ 43. In § 882.102(b), a definition of “covered housing provider” is added in alphabetical order to read as follows:

§ 882.102 Definitions.

* * * * *

(b) * * *

Covered housing provider. For the Section 8 Moderate Rehabilitation Programs, as provided in subparts A, D, and E of this part, “covered housing provider,” as such term is used in HUD’s regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), refers to the PHA or owner, as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L. For example, the PHA is the covered housing provider responsible for providing the notice of occupancy rights under VAWA and certification form described at 24 CFR 5.2005(a), though the PHA may provide this notice and form to owners, and charge owners with distributing the notice and form to tenants. In addition, the owner is the covered housing provider that may choose to bifurcate a lease as described at 24 CFR 5.2009(a), while both the PHA and owner are both responsible for ensuring that an emergency transfer plan is in place in accordance with 24 CFR 5.2005(e), and the owner is responsible for

implementing the emergency transfer plan when an emergency occurs.

* * * * *

■ 44. Revise § 882.407 to read as follows:

§ 882.407 Other Federal requirements.

(a) The moderate rehabilitation program is subject to applicable Federal requirements in 24 CFR 5.105 and to the requirements for protection for victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

(b) In order to facilitate emergency transfers for victims of domestic violence, dating violence, sexual assault, or stalking, covered housing providers have discretion to adopt and modify any existing admission preferences or transfer waitlist priorities for victims of domestic violence, dating violence, sexual assault, or stalking.

(c) Covered housing providers must develop and implement an emergency transfer plan that meets the requirements in 24 CFR 5.2005(e), and when a safe unit is not immediately available for a victim of domestic violence, dating violence, sexual assault, and stalking who qualifies for an emergency transfer, covered housing providers must, at a minimum:

(1) Review the covered housing provider's existing inventory of units and determine when the next vacant unit may be available; and

(2) Provide a listing of nearby HUD subsidized rental properties, with or without preference for persons of domestic violence, dating violence, sexual assault, or stalking, and contact information for the local HUD field office.

(d) Each year, the covered housing provider must submit to HUD data on all emergency transfers requested under 24 CFR 5.2005(e), pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests.

■ 45. Revise § 882.511(g) to read as follows:

§ 882.511 Lease and termination of tenancy.

* * * * *

(g) In actions or potential actions to terminate tenancy, the owner shall follow 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

■ 46. In § 882.514(c), revise the fourth sentence, to read as follows:

§ 882.514 Family participation.

* * * * *

(c) *Owner selection of families.* * * *

However, the owner must not deny program assistance or admission to an applicant based on the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant otherwise qualifies for assistance or admission. * * *

* * * * *

■ 47. In § 882.802, a definition of “covered housing provider” is added, in alphabetical order, to read as follows:

§ 882.802 Definitions.

* * * * *

Covered housing provider. For the Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals, “covered housing provider,” as such term is used in HUD’s regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), refers to the owner.

* * * * *

■ 48. In § 882.804, paragraph (a) is revised, paragraphs (b) and (c) are redesignated as paragraphs (e) and (f), respectively, and new paragraphs (b), (c), and (d) are added to read as follows:

§ 882.804 Other Federal requirements.

(a) Participation in this program requires compliance with the Federal requirements set forth in 24 CFR 5.105, with the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*), and with the regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

(b) In order to facilitate emergency transfers for victims of domestic violence, dating violence, sexual assault, or stalking, covered housing providers have discretion to adopt and modify any existing admission preferences or transfer waitlist priorities for victims of domestic violence, dating violence, sexual assault, or stalking.

(c) Covered housing providers must develop and implement an emergency transfer plan that meets the requirements in 24 CFR 5.2005(e), and when a safe unit is not immediately available for a victim of domestic violence, dating violence, sexual assault, and stalking who qualifies for an emergency transfer, covered housing providers must, at a minimum:

(1) Review the covered housing provider's existing inventory of units and determine when the next vacant unit may be available; and

(2) Provide a listing of nearby HUD subsidized rental properties, with or without preference for persons of domestic violence, dating violence, sexual assault, or stalking, and contact information for the local HUD field office.

(d) Each year, the covered housing provider must submit to HUD data on all emergency transfers requested under 24 CFR 5.2005(e), pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests.

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS—STATE HOUSING AGENCIES

■ 49. The authority citation for part 883 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

■ 50. In § 883.302, a definition of “covered housing provider” is added, in alphabetical order, to read as follows:

§ 883.302 Definitions.

* * * * *

Covered housing provider. For the Section 8 Housing Assistance Payments Programs—State Housing Agencies, “covered housing provider,” as such term is used in HUD’s regulations at 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), refers to the HFA or owner, as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L. For example, the PHA is the covered housing provider responsible for providing the notice of occupancy rights under VAWA and certification form described at 24 CFR 5.2005(a), though the PHA may provide this notice and form to owners, and charge owners with distributing the notice and form to tenants. In addition, the owner is the covered housing provider that may choose to bifurcate a lease as described at 24 CFR 5.2009(a), while both the PHA and owner are both responsible for ensuring that an emergency transfer plan is in place in accordance with 24 CFR 5.2005(e), and the owner is responsible for implementing the emergency transfer plan when an emergency occurs.

* * * * *

■ 51. Revise § 883.605 to read as follows:

§ 883.605 Leasing to eligible families.

The provisions of 24 CFR 880.504 apply to this section, including

reference at 24 CFR 880.504(f) to the requirements of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), subject to the requirements of § 883.105.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING

■ 52. The authority citation for part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

■ 53. In § 884.102, a definition of “covered housing provider” is added, in alphabetical order, to read as follows:

§ 884.102 Definitions.

* * * * *

Covered housing provider. For the Section 8 Housing Assistance Payments Programs, New Construction Set-Aside for Section 515 Rural Rental Housing, “covered housing provider,” as such term is used in HUD’s regulations at 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), refers to the owner

* * * * *

■ 54. Revise § 884.216(c) to read as follows:

§ 884.216 Termination of tenancy.

* * * * *

(c) In actions or potential actions to terminate tenancy, the owner shall follow 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

■ 55. Revise § 884.223(f) to read as follows:

§ 884.223 Leasing to eligible families.

* * * * *

(f) The regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to this section.

■ 56. Add § 884.226 to subpart B to read as follows:

§ 884.226 Emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking.

(a) Covered housing providers must develop and implement an emergency transfer plan that meets the requirements in 24 CFR 5.2005(e).

(b) In order to facilitate emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking, covered housing

providers have discretion to adopt new, and modify any existing, admission preferences or transfer waitlist priorities.

(c) In addition to following requirements in 24 CFR 5.2005(e), when a safe unit is not immediately available for a victim of domestic violence, dating violence, sexual assault, or stalking who qualifies for an emergency transfer, covered housing providers must:

(1) Review the covered housing provider’s existing inventory of units and determine when the next vacant unit may be available; and

(2) Provide a listing of nearby HUD subsidized rental properties, with or without preference for persons of domestic violence, dating violence, sexual assault, or stalking, and contact information for the local HUD field office.

(d) Each year, covered housing providers must submit to HUD data on all emergency transfers requested under 24 CFR 5.2005(e), including data on the outcomes of such requests.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

■ 57. The authority citation for part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

■ 58. In § 886.102, a definition of “covered housing provider” is added, in alphabetical order, to read as follows:

§ 886.102 Definitions.

* * * * *

Covered housing provider. For the Section 8 Housing Assistance Payments Programs—Special Allocations, subpart A of this part, “covered housing provider,” as such term is used in HUD’s regulations at 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) refers to the owner.

* * * * *

■ 59. Revise § 886.128 to read as follows:

§ 886.128 Termination of tenancy.

Part 247 of this title (24 CFR part 247) applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of 24 CFR parts 247 and 5 shall apply. The provisions of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence,

Sexual Assault, or Stalking), apply to this section. The provisions of 24 CFR part 5, subpart E, of this title concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and concerning deferral of termination of assistance, also shall apply.

- 60. Revise § 886.132 to read as follows:

§ 886.132 Tenant selection.

Subpart F of 24 CFR part 5 governs selection of tenants and occupancy requirements applicable under this subpart A of part 886. Subpart L of 24 CFR part 5 (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies to this section.

- 61. Add § 886.139 to subpart A to read as follows:

§ 886.139 Emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking.

(a) Covered housing providers must develop and implement an emergency transfer plan that meets the requirements in 24 CFR 5.2005(e).

(b) In order to facilitate emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking, covered housing providers have discretion to adopt new, and modify any existing, admission preferences or transfer waitlist priorities.

(c) In addition to following requirements in 24 CFR 5.2005(e), when a safe unit is not immediately available for a victim of domestic violence, dating violence, sexual assault, or stalking who qualifies for an emergency transfer, covered housing providers must: (1) Review the covered housing provider's existing inventory of units and determine when the next vacant unit may be available; and

(2) Provide a listing of nearby HUD subsidized rental properties, with or without preference for persons of domestic violence, dating violence, sexual assault, or stalking, and contact information for the local HUD field office.

(d) Each year, covered housing providers must submit to HUD data on all emergency transfers requested under 24 CFR 5.2005(e), including data on the outcomes of such requests.

- 62. In § 886.302, a definition of “covered housing provider” is added, in the alphabetical order to read as follows:

§ 886.302 Definitions

* * * * *

Covered housing provider. For the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects, under subpart C of this part, “covered housing provider,” as such term is used in HUD’s regulations at 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), refers to the owner.

* * * * *

- 63. Revise § 886.328 to read as follows:

§ 886.328 Termination of tenancy.

Part 247 of this title (24 CFR part 247) applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of 24 CFR part 247 and 24 CFR part 5 shall apply. The provisions of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to this section. The provisions of 24 CFR part 5, subpart E, concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and concerning deferral of termination of assistance, also shall apply.

- 64. Revise § 886.329(f) to read as follows:

§ 886.329 Leasing to eligible families.

* * * * *

(f) The regulations of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to this section.

- 65. Add § 886.339 to subpart C to read as follows:

§ 886.339 Emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking.

(a) Covered housing providers must develop and implement an emergency transfer plan that meets the requirements in 24 CFR 5.2005(e).

(b) In order to facilitate emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking, covered housing providers have discretion to adopt new, and modify any existing, admission preferences or transfer waitlist priorities.

(c) In addition to following requirements in 24 CFR 5.2005(e), when

a safe unit is not immediately available for a victim of domestic violence, dating violence, sexual assault, or stalking who qualifies for an emergency transfer, covered housing providers must:

(1) Review the covered housing provider’s existing inventory of units and determine when the next vacant unit may be available; and

(2) Provide a listing of nearby HUD subsidized rental properties, with or without preference for persons of domestic violence, dating violence, sexual assault, or stalking, and contact information for the local HUD field office.

(d) Each year, covered housing providers must submit to HUD data on all emergency transfers requested under 24 CFR 5.2005(e), including data on the outcomes of such requests.

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

- 66. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

- 67. In § 891.105 a definition of “covered housing provider” is added, in alphabetical order, to read as follows:

§ 891.105 Definitions.

* * * * *

Covered housing provider. For the Supportive Housing for the Elderly and Persons with Disabilities Program, “covered housing provider,” as such term is used in HUD’s regulations at 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), refers to the owner (as defined in §§ 891.205 and 891.305).

* * * * *

- 68. Add § 891.190 to subpart A to read as follows:

§ 891.190 Emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking.

(a) Covered housing providers must develop and implement an emergency transfer plan that meets the requirements in 24 CFR 5.2005(e).

(b) In order to facilitate emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking, covered housing providers have discretion to adopt new, and modify any existing, admission preferences or transfer waitlist priorities.

(c) In addition to following requirements in 24 CFR 5.2005(e), when a safe unit is not immediately available for a victim of domestic violence, dating

violence, sexual assault, or stalking who qualifies for an emergency transfer, covered housing providers must:

(1) Review the covered housing provider's existing inventory of units and determine when the next vacant unit may be available; and

(2) Provide a listing of nearby HUD subsidized rental properties, with or without preference for persons of domestic violence, dating violence, sexual assault, or stalking, and contact information for the local HUD field office.

(d) Each year, covered housing providers must submit to HUD data on all emergency transfers requested under 24 CFR 5.2005(e), including data on the outcomes of such requests.

■ 69. Revise § 891.575(f) to read as follows:

§ 891.575 Leasing to eligible families.

* * * * *

(f) The regulations of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to this section.

■ 70. Revise § 891.610(c) to read as follows:

§ 891.610 Selection and admission of tenants.

* * * * *

(c) *Determination of eligibility and selection of tenants.* The borrower is responsible for determining whether applicants are eligible for admission and for selection of families. To be eligible for admission, an applicant must be an elderly or handicapped family as defined in § 891.505; meet any project occupancy requirements approved by HUD; meet the disclosure and verification requirement for Social Security numbers and sign and submit consent forms for obtaining wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5, subpart B; and, if applying for an assisted unit, be eligible for admission under subpart F of 24 CFR part 5, which governs selection of tenants and occupancy requirements. The provisions of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to this section.

* * * * *

■ 71. Revise § 891.630(c) to read as follows:

§ 891.630 Denial of admission, termination of tenancy, and modification of lease.

* * * * *

(c) In actions or potential actions to terminate tenancy, the owner shall

follow 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM

■ 72. The authority citation for part 905 continues to read as follows:

Authority: 42 U.S.C. 1437g, 42 U.S.C. 1437z-2, 42 U.S.C. 1437z-7, and 3535(d).

■ 73. In § 905.100, add paragraph (g) to read as follows:

§ 905.100 Purpose, general description, and other requirements.

* * * * *

(g) *Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault and Stalking.* Public housing agencies must apply the Violence Against Women Act (VAWA) requirements set forth in 24 CFR part 5, subpart L, to mixed finance developments covered under § 905.604.

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

■ 74. The authority citation for part 960 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, 1437z-3, and 3535(d).

■ 75. In § 960.102(b) a definition of “covered housing provider” is added in alphabetical order to read as follows:

§ 960.102 Definitions.

* * * * *

(b) * * *

Covered housing provider. For HUD's public housing program, “covered housing provider,” as such term is in used HUD's regulations at 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), is the PHA.

* * * * *

■ 76. In § 960.103, revise the section heading and paragraph (d) to read as follows:

§ 960.103 Equal opportunity requirements and protection for victims of domestic violence, dating violence, sexual assault, or stalking.

* * * * *

(d) *Protection for victims of domestic violence, dating violence, sexual assault, or stalking.* The PHA must apply the requirements in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

■ 77. In § 960.200, revise paragraph (b)(8) to read as follows:

§ 960.200 Purpose.

* * * * *

(b) * * *

(8) Protection for victims of domestic violence, dating violence, sexual assault, or stalking, 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

■ 78. In § 960.203, revise paragraph (c)(4) to read as follows:

§ 960.203 Standards for PHA tenant selection criteria.

* * * * *

(c) * * *

(4) PHA tenant selection criteria are subject to 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking). In cases of requests for emergency transfers under VAWA, with the written consent of the victim of domestic violence, dating violence, sexual assault, or stalking, the receiving PHA may accept and use the prior covered housing provider's determination of eligibility and tenant screening and all related verification information, including form HUD 50058 (Family Report).

* * * * *

■ 79. In § 960.206, revise paragraph (b)(4) to read as follows:

§ 960.206 Waiting List: Local preferences in admission to public housing program.

* * * * *

(b) * * *

(4) *Preference for victims of domestic violence, dating violence, sexual assault, or stalking.* The PHA should consider whether to adopt a local preference for admission of families that include victims of domestic violence, dating violence, sexual assault, or stalking.

* * * * *

PART 966—PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURE

■ 80. The authority citation for part 966 continues to read as follows:

Authority: 42 U.S.C. 1437d and 3535(d).

■ 81. In § 966.4, revise paragraphs (a)(1)(vi) and (e)(9) to read as follows:

§ 966.4 Lease requirements.

* * * * *

(a) * * *

(1) * * *

(vi) HUD's regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply.

* * * * *

(e) * * *

(9) To consider lease bifurcation, as provided in 24 CFR 5.2009, in circumstances involving domestic violence, dating violence, sexual assault, or stalking addressed in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), provided that, if a PHA chooses to bifurcate a lease, no assistance will be given for an individual who does not meet public housing eligibility and 24 CFR 5.508(h)(2) applies to submission of evidence of citizenship or eligible immigration status.

* * * * *

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

■ 82. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535d.

■ 83. In § 982.53, revise the section heading and paragraph (e) to read as follows:

§ 982.53 Equal opportunity requirements and protection for victims of domestic violence, dating violence, sexual assault, or stalking.

* * * * *

(e) *Protection for victims of domestic violence, dating violence, sexual assault, or stalking.* The PHA must apply the requirements in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking). For purposes of compliance with HUD’s regulations in 24 CFR part 5, subpart L, the covered housing provider is the PHA or owner, as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L. For example, the PHA is the covered housing provider responsible for providing the Notice of occupancy rights under VAWA and certification form described at 24 CFR 5.2005(a). In addition, the owner is the covered housing provider that may choose to bifurcate a lease as described at 24 CFR 5.2009(a), while the PHA is the covered housing provider responsible for complying with emergency transfer plan provisions at 24 CFR 5.2005(e).

■ 84. In § 982.201, revise paragraph (a) to read as follows:

§ 982.201 Eligibility and targeting.

(a) *When applicant is eligible: General.* The PHA may admit only eligible families to the program. To be eligible, an applicant must be a “family;” must be income-eligible in accordance with paragraph (b) of this section and 24 CFR part 5, subpart F;

and must be a citizen or a noncitizen who has eligible immigration status as determined in accordance with 24 CFR part 5, subpart E. If the applicant is a victim of domestic violence, dating violence, sexual assault, or stalking, 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies.

* * * * *

■ 85. In § 982.202, revise paragraph (d) to read as follows:

§ 982.202 How applicants are selected: General requirements.

* * * * *

(d) *Admission policy.* The PHA must admit applicants for participation in accordance with HUD regulations and other requirements, including, but not limited to, 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), and with PHA policies stated in the PHA administrative plan and the PHA plan. The PHA admission policy must state the system of admission preferences that the PHA uses to select applicants from the waiting list, including any residency preference or other local preference.

■ 86. In § 982.207, revise paragraph (b)(4) to read as follows:

§ 982.207 Waiting List: Local preferences in admission to program.

* * * * *

(b) * * *

(4) *Preference for victims of domestic violence, dating violence, sexual assault, or stalking.* The PHA should consider whether to adopt a local preference for admission of families that include victims of domestic violence, dating violence, sexual assault, or stalking.

* * * * *

■ 87. In § 982.307, revise paragraph (b)(4) to read as follows:

§ 982.307 Tenant screening.

* * * * *

(b) * * *

(4) In cases involving a victim of domestic violence, dating violence, sexual assault, or stalking, 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies.

■ 88. In § 982.310, revise paragraph (h)(4) to read as follows:

§ 982.310 Owner termination of tenancy.

* * * * *

(h) * * *

(4) *Nondiscrimination limitation and protection for victims of domestic*

violence, dating violence, sexual assault, or stalking. The owner’s termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions of 24 CFR 5.105, and with the provisions for protection of victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

■ 89. In § 982.315, revise paragraphs (a)(2) and (b) to read as follows:

§ 982.315 Family break-up.

(a) * * *

(2) If the family break-up results from an occurrence of domestic violence, dating violence, sexual assault, or stalking as provided in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), the PHA must ensure that the victim retains assistance.

(b) The factors to be considered in making this decision under the PHA policy may include:

(1) Whether the assistance should remain with family members remaining in the original assisted unit.

(2) The interest of minor children or of ill, elderly, or disabled family members.

(3) Whether family members are forced to leave the unit as a result of actual or threatened domestic violence, dating violence, sexual assault, or stalking.

(4) Whether any of the family members are receiving protection as victims of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, and whether the abuser is still in the household.

(5) Other factors specified by the PHA.

* * * * *

■ 90. In § 982.353, revise paragraph (b) and add paragraph (c)(4) to read as follows:

§ 982.353 Where family can lease a unit with tenant-based assistance.

* * * * *

(b) *Portability: Assistance outside the initial PHA jurisdiction.* Subject to paragraph (c) of this section, and to § 982.552 and § 982.553, a voucher-holder or participant family has the right to receive tenant-based voucher assistance, in accordance with requirements of this part, to lease a unit outside the initial PHA jurisdiction, anywhere in the United States, in the jurisdiction of a PHA with a tenant-based program under this part. The

initial PHA must not provide such portable assistance for a participant if the family has moved out of the assisted unit in violation of the lease except as provided for in this subsection. If the family moves out in violation of the lease in order to protect the health or safety of a person who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believes him- or herself to be threatened with imminent harm from further violence by remaining in the dwelling unit (or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's move or request to move), and has otherwise complied with all other obligations under the Section 8 program, the family may receive a voucher from the initial PHA and move to another jurisdiction under the Housing Choice Voucher Program.

(c) * * *

(4) Paragraph (c) of this section does not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), and the move is needed to protect the health or safety of the family or family member, or any family member who has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move.

* * * * *

■ 91. In § 982.354, revise paragraph (b)(4), remove "and" from the end of paragraph (c)(2)(i), remove the period and add "; and" in its place at the end of paragraph (c)(2)(ii), and add paragraph (c)(2)(iii) to read as follows:

§ 982.354 Move with continued tenant-based assistance.

* * * * *

(b) * * *

(4) The family or a member of the family, is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), and the move is needed to protect the health or safety of the family or family member, or if any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move. A PHA may not terminate assistance if the family, with or without prior

notification to the PHA, moves out of a unit in violation of the lease, if such move occurs to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit. However, any family member that has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's move or request to move is not required to believe that he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit.

(c) * * *

(2) * * *

(iii) The above policies do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, and the move is needed to protect the health or safety of the family or family member, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move.

* * * * *

■ 92. In § 982.452, revise the second sentence of paragraph (b)(1) to read as follows:

§ 982.452 Owner responsibilities.

* * * * *

(b) * * *

(1) * * * The fact that an applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking is not an appropriate basis for denial of tenancy if the applicant otherwise qualifies for tenancy.

* * * * *

■ 93. In § 982.551, revise paragraphs (e) and (l) to read as follows:

§ 982.551 Obligations of participant.

* * * * *

(e) *Violation of lease.* The family may not commit any serious or repeated violation of the lease. Under 24 CFR 5.2005(c), an incident or incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking will not be construed as a serious or repeated lease violation by the victim, or threatened victim, of the domestic violence, dating violence, sexual assault, or stalking, or as good cause to terminate the tenancy,

occupancy rights, or assistance of the victim.

* * * * *

(l) *Crime by household members.* The members of the household may not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises (see § 982.553). Under 24 CFR 5.2005(b)(2), criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking, engaged in by a member of a tenant's household, or any guest or other person under the tenant's control, shall not be cause for termination of tenancy, occupancy rights, or assistance of the victim, if the tenant or an affiliated individual of the tenant, as defined in 24 CFR 5.2003, is the victim.

* * * * *

■ 94. In § 982.552, revise paragraph (c)(2)(v) to read as follows:

§ 982.552 PHA denial or termination of assistance for the family.

* * * * *

(c) * * *

(2) * * *

(v) *Nondiscrimination limitation and protection for victims of domestic violence, dating violence, sexual assault, or stalking.* The PHA's admission and termination actions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105, and with the requirements of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

* * * * *

■ 95. In § 982.553, revise paragraph (e) to read as follows:

§ 982.553 Denial of admission and termination of assistance for criminals and alcohol abusers.

* * * * *

(e) The requirements in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to this section.

■ 96. In § 982.637, revise paragraphs (a)(2) and (3) to read as follows:

§ 982.637 Homeownership option: Move with continued tenant-based assistance.

(a) * * *

(2) The PHA may not commence continued tenant-based assistance for occupancy of the new unit so long as any family member owns any title or other interest in the prior home.

However, when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), and the move is needed to protect the health or safety of the family or family member (or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move), such family or family member may be assisted with continued tenant-based assistance even if such family or family member owns any title or other interest in the prior home.

(3) The PHA may establish policies that prohibit more than one move by the family during any one-year period. However, these policies do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, and the move is needed to protect the health or safety of the family or family member, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move.

* * * * *

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

■ 97. The authority citation for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

■ 98. In § 983.3(b), add the definition of “covered housing provider,” in alphabetical order, to read as follows:

§ 983.3 PBV definitions.

* * * * *

(b) * * *

Covered housing provider. For Project-Based Voucher (PBV) program, “covered housing provider,” as such term is used in HUD’s regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) refers to the PHA or owner (as defined in 24 CFR 982.4), as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L. For example, the PHA is the covered housing provider responsible for providing the notice of occupancy rights under VAWA and certification form described at 24 CFR 5.2005(a). In addition, the owner is the covered housing provider that may

choose to bifurcate a lease as described at 24 CFR 5.2009(a), while the PHA is the covered housing provider responsible for complying with emergency transfer plan provisions at 24 CFR 5.2005(e).

* * * * *

■ 99. In § 983.4, remove the paragraph “Protection for victims of domestic violence, dating violence or stalking” and add a paragraph “Protection for victims of domestic violence, dating violence, sexual assault, or stalking” in alphabetical order to read as follows:

§ 983.4 Cross-reference to other Federal requirements.

* * * * *

Protection for victims of domestic violence, dating violence, sexual assault, or stalking. See 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking). For purposes of compliance with HUD’s regulations in 24 CFR part 5, subpart L, the covered housing provider is the PHA or owner, as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L.

* * * * *

■ 100. In § 983.251, revise paragraph (a)(3) to read as follows:

§ 983.251 How participants are selected.

(a) * * *

(3) The protections for victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR part 5, subpart L, apply to admission to the project-based program.

* * * * *

■ 101. In § 983.253, add paragraphs (a)(4) and (c) to read as follows:

§ 983.253 Leasing of contract units.

(a) * * *

(4) The owner must comply with 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

* * * * *

(c) The protections for victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR part 5, subpart L, apply to tenant screening.

■ 102. In § 983.255, revise paragraph (d) to read as follows:

§ 983.255 Tenant screening.

* * * * *

(d) The protections for victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR part 5, subpart L, apply to tenant screening.

■ 103. In § 983.257, revise the last sentence of paragraph (a) to read as follows:

§ 983.257 Owner termination of tenancy and eviction.

(a) * * * 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies to this part.

* * * * *

■ 104. In § 983.261, add paragraphs (c)(1) and (2) to read as follows:

§ 983.261 Family right to move.

* * * * *

(c) * * *

(1) The above policies do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, and the move is needed to protect the health or safety of the family or family member, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move. A PHA may not terminate assistance if the family, with or without prior notification to the PHA, moves out of a unit in violation of the lease, if such move occurs to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move.

(2) If a family breaks up as a result of an occurrence of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, the PHA may offer the victim the opportunity for continued tenant-based rental assistance.

* * * * *

Dated: October 20, 2016.

Julián Castro,
Secretary.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A

[Insert Name of Housing Provider²³]

Notice of Occupancy Rights Under the Violence Against Women Act²⁴

To all Tenants and Applicants

The Violence Against Women Act (VAWA) provides protections for victims of domestic violence, dating violence, sexual assault, or stalking. VAWA protections are not only available to women, but are available equally to all individuals regardless of sex, gender identity, or sexual orientation.²⁵ The U.S. Department of Housing and Urban Development (HUD) is the Federal agency that oversees that [insert name of program or rental assistance] is in compliance with VAWA. This notice explains your rights under VAWA. A HUD-approved certification form is attached to this notice. You can fill out this form to show that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking, and that you wish to use your rights under VAWA.”

Protections for Applicants

If you otherwise qualify for assistance under [insert name of program or rental assistance], you cannot be denied admission or denied assistance because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Protections for Tenants

If you are receiving assistance under [insert name of program or rental assistance], you may not be denied assistance, terminated from participation, or be evicted from your rental housing because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Also, if you or an affiliated individual of yours is or has been the victim of domestic violence, dating violence, sexual assault, or stalking by a member of your household or any guest, you may not be denied rental assistance or occupancy rights under [insert name of program or rental assistance] solely on the basis of criminal activity directly relating to that domestic violence, dating violence, sexual assault, or stalking.

Affiliated individual means your spouse, parent, brother, sister, or child, or a person to whom you stand in the place of a parent or guardian (for example, the affiliated individual is in your care, custody, or control); or any individual, tenant, or lawful occupant living in your household.

²³ The notice uses HP for housing provider but the housing provider should insert its name where HP is used. HUD’s program-specific regulations identify the individual or entity responsible for providing the notice of occupancy rights.

²⁴ Despite the name of this law, VAWA protection is available regardless of sex, gender identity, or sexual orientation.

²⁵ Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

Removing the Abuser or Perpetrator From the Household

HP may divide (bifurcate) your lease in order to evict the individual or terminate the assistance of the individual who has engaged in criminal activity (the abuser or perpetrator) directly relating to domestic violence, dating violence, sexual assault, or stalking.

If HP chooses to remove the abuser or perpetrator, HP may not take away the rights of eligible tenants to the unit or otherwise punish the remaining tenants. If the evicted abuser or perpetrator was the sole tenant to have established eligibility for assistance under the program, HP must allow the tenant who is or has been a victim and other household members to remain in the unit for a period of time, in order to establish eligibility under the program or under another HUD housing program covered by VAWA, or, find alternative housing.

In removing the abuser or perpetrator from the household, HP must follow Federal, State, and local eviction procedures. In order to divide a lease, HP may, but is not required to, ask you for documentation or certification of the incidences of domestic violence, dating violence, sexual assault, or stalking.

Moving to Another Unit

Upon your request, HP may permit you to move to another unit, subject to the availability of other units, and still keep your assistance. In order to approve a request, HP may ask you to provide documentation that you are requesting to move because of an incidence of domestic violence, dating violence, sexual assault, or stalking. If the request is a request for emergency transfer, the housing provider may ask you to submit a written request or fill out a form where you certify that you meet the criteria for an emergency transfer under VAWA. The criteria are:

(1) You are a victim of domestic violence, dating violence, sexual assault, or stalking.

If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation, as described in the documentation section below.

(2) You expressly request the emergency transfer. Your housing provider may choose to require that you submit a form, or may accept another written or oral request.

(3) You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit. This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are

seeking your transfer, and that assault happened within the 90-calendar-day period before you expressly request the transfer.

HP will keep confidential requests for emergency transfers by victims of domestic violence, dating violence, sexual assault, or stalking, and the location of any move by such victims and their families.

HP’s emergency transfer plan provides further information on emergency transfers, and HP must make a copy of its emergency transfer plan available to you if you ask to see it.

Documenting You Are or Have Been a Victim of Domestic Violence, Dating Violence, Sexual Assault or Stalking

HP can, but is not required to, ask you to provide documentation to “certify” that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking. Such request from HP must be in writing, and HP must give you at least 14 business days (Saturdays, Sundays, and Federal holidays do not count) from the day you receive the request to provide the documentation. HP may, but does not have to, extend the deadline for the submission of documentation upon your request.

You can provide one of the following to HP as documentation. It is your choice which of the following to submit if HP asks you to provide documentation that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

- A complete HUD-approved certification form given to you by HP with this notice, that documents an incident of domestic violence, dating violence, sexual assault, or stalking. The form will ask for your name, the date, time, and location of the incident of domestic violence, dating violence, sexual assault, or stalking, and a description of the incident. The certification form provides for including the name of the abuser or perpetrator if the name of the abuser or perpetrator is known and is safe to provide.

- A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency that documents the incident of domestic violence, dating violence, sexual assault, or stalking. Examples of such records include police reports, protective orders, and restraining orders, among others.

- A statement, which you must sign, along with the signature of an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional or a mental health professional (collectively, “professional”) from whom you sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, and with the professional selected by you attesting under penalty of perjury that he or she believes that the incident or incidents of domestic violence, dating violence, sexual assault, or stalking are grounds for protection.

- Any other statement or evidence that HP has agreed to accept.

If you fail or refuse to provide one of these documents within the 14 business days, HP does not have to provide you with the protections contained in this notice.

If HP receives conflicting evidence that an incident of domestic violence, dating

violence, sexual assault, or stalking has been committed (such as certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the abuser or perpetrator), HP has the right to request that you provide third-party documentation within thirty 30 calendar days in order to resolve the conflict. If you fail or refuse to provide third-party documentation where there is conflicting evidence, HP does not have to provide you with the protections contained in this notice.

Confidentiality

HP must keep confidential any information you provide related to the exercise of your rights under VAWA, including the fact that you are exercising your rights under VAWA.

HP must not allow any individual administering assistance or other services on behalf of HP (for example, employees and contractors) to have access to confidential information unless for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

HP must not enter your information into any shared database or disclose your information to any other entity or individual. HP, however, may disclose the information provided if:

- You give written permission to HP to release the information on a time limited basis.
- HP needs to use the information in an eviction or termination proceeding, such as to evict your abuser or perpetrator or terminate your abuser or perpetrator from assistance under this program.
- A law requires HP or your landlord to release the information.

VAWA does not limit HP's duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

Reasons a Tenant Eligible for Occupancy Rights Under VAWA May Be Evicted or Assistance May Be Terminated

You can be evicted and your assistance can be terminated for serious or repeated lease violations that are not related to domestic violence, dating violence, sexual assault, or stalking committed against you. However, HP cannot hold tenants who have been victims of domestic violence, dating violence, sexual assault, or stalking to a more demanding set of rules than it applies to tenants who have not been victims of domestic violence, dating violence, sexual assault, or stalking.

The protections described in this notice might not apply, and you could be evicted and your assistance terminated, if HP can demonstrate that not evicting you or terminating your assistance would present a real physical danger that:

- 1) Would occur within an immediate time frame, and
- 2) Could result in death or serious bodily harm to other tenants or those who work on the property.

If HP can demonstrate the above, HP should only terminate your assistance or

evict you if there are no other actions that could be taken to reduce or eliminate the threat.

Other Laws

VAWA does not replace any Federal, State, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking. You may be entitled to additional housing protections for victims of domestic violence, dating violence, sexual assault, or stalking under other Federal laws, as well as under State and local laws.

Non-Compliance With The Requirements of This Notice

You may report a covered housing provider's violations of these rights and seek additional assistance, if needed, by contacting or filing a complaint with **[insert contact information for any intermediary, if applicable]** or **[insert HUD field office]**.

For Additional Information

You may view a copy of HUD's final VAWA rule at **[insert Federal Register link]**.

Additionally, HP must make a copy of HUD's VAWA regulations available to you if you ask to see them.

For questions regarding VAWA, please contact **[insert name of program or rental assistance contact information able to answer questions on VAWA]**.

For help regarding an abusive relationship, you may call the National Domestic Violence Hotline at 1-800-799-7233 or, for persons with hearing impairments, 1-800-787-3224 (TTY). You may also contact **[insert contact information for relevant local organizations]**.

For tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

For help regarding sexual assault, you may contact **[insert contact information for relevant organizations]**.

Victims of stalking seeking help may contact **[insert contact information for relevant organizations]**.

Attachment: Certification form HUD-XXXXX [form approved for this program to be included]

Appendix B

[Insert name of covered housing provider]

Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

Emergency Transfers

[Insert name of covered housing provider (acronym HP for purposes of this model plan)] is concerned about the safety of its tenants, and such concern extends to tenants who are victims of domestic violence, dating violence, sexual assault, or stalking. In accordance with the Violence Against Women Act (VAWA),²⁶ HP allows tenants

²⁶ Despite the name of this law, VAWA protection is available to all victims of domestic violence, dating violence, sexual assault, and stalking,

who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the tenant's current unit to another unit. The ability to request a transfer is available regardless of sex, gender identity, or sexual orientation.²⁷ The ability of HP to honor such request for tenants currently receiving assistance, however, may depend upon a preliminary determination that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, and on whether HP has another dwelling unit that is available and is safe to offer the tenant for temporary or more permanent occupancy.

This plan identifies tenants who are eligible for an emergency transfer, the documentation needed to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to tenants on safety and security. This plan is based on a model emergency transfer plan published by the U.S. Department of Housing and Urban Development (HUD), the Federal agency that oversees that **[insert name of program or rental assistance here]** is in compliance with VAWA.

Eligibility for Emergency Transfers

A tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD's regulations at 24 CFR part 5, subpart L is eligible for an emergency transfer, if: The tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same unit. If the tenant is a victim of sexual assault, the tenant may also be eligible to transfer if the sexual assault occurred on the premises within the 90-calendar-day period preceding a request for an emergency transfer.

A tenant requesting an emergency transfer must expressly request the transfer in accordance with the procedures described in this plan.

Tenants who are not in good standing may still request an emergency transfer if they meet the eligibility requirements in this section.

Emergency Transfer Request Documentation

To request an emergency transfer, the tenant shall notify HP's management office and submit a written request for a transfer to **[HP to insert location]**. HP will provide reasonable accommodations to this policy for individuals with disabilities. The tenant's written request for an emergency transfer should include either:

1. A statement expressing that the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant were to remain in the same dwelling unit assisted under HP's program; OR

regardless of sex, gender identity, or sexual orientation.

²⁷ Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

2. A statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar-day period preceding the tenant's request for an emergency transfer.

Confidentiality

HP will keep confidential any information that the tenant submits in requesting an emergency transfer, and information about the emergency transfer, unless the tenant gives HP written permission to release the information on a time limited basis, or disclosure of the information is required by law or required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program. This includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person(s) that committed an act(s) of domestic violence, dating violence, sexual assault, or stalking against the tenant. See the Notice of Occupancy Rights under the Violence Against Women Act For All Tenants for more information about HP's responsibility to maintain the confidentiality of information related to incidents of domestic violence, dating violence, sexual assault, or stalking.

Emergency Transfer Timing and Availability

HP cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. HP will, however, act as quickly as possible to move a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit. If a tenant reasonably believes a proposed transfer would not be safe, the tenant may request a transfer to a different unit. If a unit is available, the transferred tenant must agree to abide by the terms and conditions that govern occupancy in the unit to which the tenant has been transferred. HP may be unable to transfer a tenant to a particular unit if the tenant has not or cannot establish eligibility for that unit.

If HP has no safe and available units for which a tenant who needs an emergency is eligible, HP will assist the tenant in identifying other housing providers who may have safe and available units to which the tenant could move. At the tenant's request, HP will also assist tenants in contacting the local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking that are attached to this plan.

Safety and Security of Tenants

Pending processing of the transfer and the actual transfer, if it is approved and occurs, the tenant is urged to take all reasonable precautions to be safe.

Tenants who are or have been victims of domestic violence are encouraged to contact the National Domestic Violence Hotline at 1-800-799-7233, or a local domestic violence shelter, for assistance in creating a safety plan. For persons with hearing impairments, that hotline can be accessed by calling 1-800-787-3224 (TTY).

Tenants who have been victims of sexual assault may call the Rape, Abuse & Incest National Network's National Sexual Assault Hotline at 800-656-HOPE, or visit the online hotline at <https://ohl.rainn.org/online/>.

Tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

Attachment: Local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking.

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Appendix C

CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING, AND ALTERNATE DOCUMENTATION

U.S. Department of Housing and Urban Development

OMB Approval No. XXXX-XXX
Exp. XX/XX/2XXXX

Purpose of Form: The Violence Against Women Act (“VAWA”) protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. Despite the name of this law, VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

Use of This Optional Form: If you are seeking VAWA protections from your housing provider, your housing provider may give you a written request that asks you to submit documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking.

In response to this request, you or someone on your behalf may complete this optional form and submit it to your housing provider, or you may submit one of the following types of third-party documentation:

- (1) A document signed by you and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, “professional”) from whom you have sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of “domestic violence,” “dating violence,” “sexual assault,” or “stalking” in HUD’s regulations at 24 CFR 5.2003.
- (2) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- (3) At the discretion of the housing provider, a statement or other evidence provided by the applicant or tenant.

Submission of Documentation: The time period to submit documentation is 14 business days from the date that you receive a written request from your housing provider asking that you provide documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking. Your housing provider may, but is not required to, extend the time period to submit the documentation, if you request an extension of the time period. If the requested information is not received within 14 business days of when you received the request for the documentation, or any extension of the date provided by your housing provider, your housing provider does not need to grant you any of the VAWA protections. Distribution or issuance of this form does not serve as a written request for certification.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections to you, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

**TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE,
DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING**

1. Date the written request is received by victim: _____

2. Name of victim: _____

3. Your name (if different from victim's): _____

4. Name(s) of other family member(s) listed on the lease: _____

5. Residence of victim: _____

6. Name of the accused perpetrator (if known and can be safely disclosed): _____

7. Relationship of the accused perpetrator to the victim: _____

8. Date(s) and times(s) of incident(s) (if known): _____

10. Location of incident(s): _____

In your own words, briefly describe the incident(s):

This is to certify that the information provided on this form is true and correct to the best of my knowledge and recollection, and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature _____ Signed on (Date) _____

Public Reporting Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information provided is to be used by the housing provider to request certification that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. The information is subject to the confidentiality requirements of VAWA. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

Appendix D--Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, Or Stalking

Purpose of Form: If you are a victim of domestic violence, dating violence, sexual assault, or stalking, and you are seeking an emergency transfer, you may use this form to request an emergency transfer and certify that you meet the requirements of eligibility for an emergency transfer under the Violence Against Women Act (VAWA). Although the statutory name references women, VAWA rights and protections apply to all victims of domestic violence, dating violence, sexual assault or stalking. Using this form does not necessarily mean that you will receive an emergency transfer. See your housing provider's emergency transfer plan for more information about the availability of emergency transfers.

The requirements you must meet are:

(1) You are a victim of domestic violence, dating violence, sexual assault, or stalking.

If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation. In response, you may submit Form HUD-XXXXX, or any one of the other types of documentation listed on that Form.

(2) You expressly request the emergency transfer. Submission of this form confirms that you have expressly requested a transfer. Your housing provider may choose to require that you submit this form, or may accept another written or oral request. Please see your housing provider's emergency transfer plan for more details.

(3) You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit. This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you submit this form or otherwise expressly request the transfer.

Submission of Documentation: If you have third-party documentation that demonstrates why you are eligible for an emergency transfer, you should submit that documentation to your housing provider if it is safe for you to do so. Examples of third party documentation include, but are not limited to: a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom you have sought assistance; a current restraining order; a recent court order or other court records; a law enforcement report or records; communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking, and concerning your request for an emergency transfer shall be kept confidential. Such details shall not be entered into any shared database.

Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections or an emergency transfer to you. Such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

TO BE COMPLETED BY OR ON BEHALF OF THE PERSON REQUESTING A TRANSFER

1. Name of victim requesting an emergency transfer: _____

2. Your name (if different from victim's) _____

3. Name(s) of other family member(s) listed on the lease: _____

4. Name(s) of other family member(s) who would transfer with the victim: _____

5. Address of location from which the victim seeks to transfer: _____

6. Address or phone number for contacting the victim: _____

7. Name of the accused perpetrator (if known and can be safely disclosed): _____

8. Relationship of the accused perpetrator to the victim: _____

9. Date(s), Time(s) and location(s) of incident(s): _____

10. Is the person requesting the transfer a victim of a sexual assault that occurred in the past 90 days on the premises of the property from which the victim is seeking a transfer? If yes, skip question 11. If no, fill out question 11. _____

11. Describe why the victim believes they are threatened with imminent harm from further violence if they remain in their current unit.

12. If voluntarily provided, list any third-party documentation you are providing along with this notice: _____

This is to certify that the information provided on this form is true and correct to the best of my knowledge, and that the individual named above in Item 1 meets the requirement laid out on this form for an emergency transfer. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature _____ Signed on (Date) _____



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Part III

Environmental Protection Agency

40 CFR Parts 79 and 80

Renewables Enhancement and Growth Support Rule; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 79 and 80

[EPA-HQ-OAR-2016-0041; FRL-9953-79-OAR]

RIN 2060-AS66

Renewables Enhancement and Growth Support Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, the Environmental Protection Agency (EPA) is proposing to update both its renewable fuels and other fuels regulations to reflect changes in the marketplace and to promote the growing use of both ethanol fuels (conventional and advanced) and non-ethanol advanced and cellulosic biofuels. The EPA is proposing to make several changes to the Renewable Fuel Standard (RFS) program regulations that would align them with recent developments in the marketplace to increase production of cellulosic and other advanced biofuels. There are several companies that have developed renewable fuel production technologies that produce a "biointermediate" at one facility that is then processed into renewable fuel at another facility, and we are proposing regulatory changes to allow fuels produced through such methods to qualify under existing approved renewable fuel production pathways. This action also proposes to update our fuel regulations by defining fuel blends containing 16 to 83 volume percent ethanol as ethanol flex fuel (EFF) and to no longer treat fuel blends containing 16 to 50 volume percent ethanol as gasoline. The EPA is proposing environmentally protective fuel quality specifications for EFF that are consistent with those already in place for gasoline. In this action we are also proposing new pathways for cellulosic biofuel produced from short-rotation trees and for renewable diesel and biodiesel produced from non-cellulosic portions of separated food waste. We are also proposing to add new registration, recordkeeping, and reporting requirements for facilities using carbon capture and storage if we were to approve the use of this technology in future assessments of proposed pathways for producing qualifying renewable fuel. We are also seeking comment on how best to implement and/or revise the RFS regulations pertaining to the generation of RINs for renewable electricity used as

transportation fuel. Finally, we are proposing a number of other regulatory changes, clarifications, and technical corrections to the RFS program and other fuels regulations.

DATES: *Comments.* Comments must be received on or before January 17, 2017. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before December 16, 2016. *Hearings.* The EPA will hold a public hearing on this proposal. Details will be provided in a separate announcement.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2016-0041, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn from [Regulations.gov](http://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Assessment and Standards Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214-4131; email address: macallister.julia@epa.gov.

SUPPLEMENTARY INFORMATION:

Preamble Acronyms and Abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

BOB blendstock for oxygenate blending
 CAA Clean Air Act
 CBOB conventional blendstock for oxygenate blending

CCS carbon capture and storage
 CDX Central Data Exchange
 CFR Code of Federal Regulations
 CG conventional gasoline
 CHONS carbon, hydrogen, oxygen, nitrogen, and sulfur
 CNG compressed natural gas
 DFE denatured fuel ethanol
 EFF ethanol flex fuel
 EMTS EPA Moderated Transaction System
 EXX gasoline-ethanol blends containing XX percent ethanol
 F&FA Fuel and Fuel Additive
 FFV Flexible fuel vehicle
 GHG greenhouse gas
 LNG liquid natural gas
 PTD product transfer document
 QAP quality assurance plan
 RBOB reformulated blendstock for oxygenate blending
 RFG reformulated gasoline
 RFS Renewable Fuel Standard
 RIN Renewable Identification Number
 RVO Renewable Volume Obligation
 RVP Reid vapor pressure
 SRT short-rotation tree
 VCSB voluntary consensus standard body
 WPC wholesale purchaser consumer

Outline of This Preamble

- I. Executive Summary
 - A. Purpose of the Regulatory Action
 - B. Summary of the Major Provisions of the Regulatory Action
- II. General Information
 - A. Does this action apply to me?
 - B. What action is the agency taking?
 - C. What is the agency's authority for taking this action?
 - D. What are the incremental costs and benefits of this action?
- III. Biointermediates
 - A. Background
 - B. Definition of Biointermediate
 - C. Implications of Using Biointermediates for Lifecycle GHG Assessments
 - D. Applicable Pathways Involving Biointermediates and RIN Generation
 - E. Number of Parties Allowed To Make a Given Biointermediate, and Their Potential Liability for Violations
 - F. Additional Registration, Recordkeeping, and Reporting Requirements That Apply When a Biointermediate Is Used To Produce Renewable Fuel
 - G. Product Transfer Documents
 - H. Prohibited Activities and Liability in Cases Where a Biointermediate Is Not a Valid Feedstock
 - I. Attest Engagements for Biointermediate Producers
 - J. Quality Assurance Plans for Biointermediates
 - K. Foreign Biointermediate Producer Requirements
 - L. Interim Implementation Program
- IV. Standards for Ethanol Flex Fuel
 - A. Current EFF Regulatory Landscape
 - B. Key Requirements Proposed for EFF and Producers of Gasoline at Blender Pumps
 - C. Standards for Ethanol Flex Fuel
 - D. Certification of Ethanol Flex Fuel
 - E. Requirements for E15 Gasoline Blender Pump-Refiners
 - F. Compliance Provisions
 - G. Simplified EFF Alternatives

- H. Statutory Authority for Proposed EFF Requirements
- V. CCS Implementation Under the RFS Program
 - A. Background
 - B. Existing Regulatory Frameworks Related to CCS
 - C. Proposed Requirements for Use of CCS in Renewable Fuel Production
 - D. Lifecycle GHG Emissions Analysis of Renewable Fuel Produced in Conjunction With CCS
- VI. Renewable Fuels Produced From Short-Rotation Trees
 - A. Background and Scope of Analysis
 - B. Overview of Short-Rotation Tree Systems
 - C. Analysis of Lifecycle GHG Emissions
 - D. Proposed Regulations
- VII. Generating RINs for Renewable Electricity
 - A. Background
 - B. Data Requirements for Generating RINs for Renewable Electricity
 - C. Potential Program Structures
 - D. Equivalence Value and Other Issues Related to Generating RINs for Renewable Electricity
- VIII. Other Revisions to the RFS Program
 - A. RVO Reporting
 - B. Oil From Corn Oil Extraction
 - C. Allowing Production of Biomass-Based Diesel From Separated Food Waste
 - D. Registration of New and Expanded Grandfathered Volumes
 - E. Flexibilities for Renewable Fuel Blending for Military Use
 - F. Heating Oil Used for Cooling
 - G. Separated Food Waste Plans
 - H. RFS Facility Ownership Changes
 - I. Changes to the Requirements for Independent Third-Party Professional Engineers and Electronic Submission of Engineering Reviews
 - J. Additional Registration Deactivation Justifications
 - K. Registration of Biogas Producers
 - L. New RIN Retirement Section
 - M. New Pathway for Co-Processing Biomass With Petroleum To Produce Cellulosic Diesel, Jet Fuel, and Heating Oil
 - N. Vegetable Oil as Feedstock and Renewable Fuel
 - O. Public Access to Information
 - P. Grandfathered Facilities
 - Q. Changes to Bond Requirement for Foreign Producers
 - R. Redesignation of Renewable Fuel on a PTD for Non-Qualifying Uses
- IX. Other Revisions to the Fuels Program
 - A. Testing Revisions
 - B. Oxygenate Added Downstream in Tier 3
 - C. Technical Corrections and Clarifications
- X. Economic Impacts
 - A. What are the benefits?
 - B. What are the cost impacts?
- XI. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Paperwork Reduction Act (PRA)
 - C. Regulatory Flexibility Act (RFA)
 - D. Unfunded Mandates Reform Act (UMRA)

- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
- G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR part 51
- J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations, and Low-Income Populations

A red-line version of the regulatory language that incorporates the proposed changes in this action is available in the docket for this action (Docket ID No. EPA-HQ-OAR-2016-0041).

I. Executive Summary

A. Purpose of the Regulatory Action

The Environmental Protection Agency (EPA) is committed to taking steps to reduce emissions of greenhouse gases (GHGs). This commitment is based on several charges given to the EPA, such as the Climate Action Plan announced by President Obama in June 2013,¹ the Paris Agreement reached at the 2015 United Nations Climate Change Conference in December 2015,² and the Renewable Fuel Standard (RFS) program required under the Clean Air Act (CAA). Since more than 70 percent of the fossil oil used in the U.S.³ and 28 percent of GHG emissions⁴ come from the transportation sector, the EPA has developed a number of regulatory programs designed to reduce GHG emissions from vehicles and engines. These programs have targeted both the efficiency of vehicles and engines as well as their use of renewable fuels.

The fundamental objective of the RFS program under the CAA is to increase the use of renewable fuels in the U.S. transportation system every year

¹ The White House, "The President's Climate Action Plan," June 2013, <http://www.whitehouse.gov/share/climate-action-plan>.

² The White House, "U.S. Leadership and the Historic Paris Agreement to Combat Climate Change," December 2015, <http://www.whitehouse.gov/the-press-office/2015/12/12/us-leadership-and-historic-paris-agreement-combat-climate-change>.

³ The White House, "Improving the Fuel Efficiency of American Trucks—Bolstering Energy Security, Cutting Carbon Pollution, Saving Money and Supporting Manufacturing Innovation," p. 2, February 2014, <http://www.whitehouse.gov/sites/default/files/docs/finaltrucksreport.pdf>.

⁴ U.S. EPA, "Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2012," EPA 430-R-14-003, April 2014, <http://www.epa.gov/climatechange/Downloads/ghgemissions/US-GHG-Inventory-2014-Main-Text.pdf>.

through at least 2022. These fuels include corn starch ethanol, the predominant biofuel in use to date, but Congress envisioned the growth beyond 2015 to come from cellulosic and other advanced biofuels that are required to have lower GHG emissions on a lifecycle basis than conventional (non-advanced) biofuels.⁵ Since the initial promulgation of the RFS regulations in 2007, domestic production and use of renewable fuel volumes in the U.S. has increased substantially. According to the Energy Information Administration (EIA), fuel ethanol production in the U.S. more than doubled in volume from approximately 6.5 billion gallons in 2007 to about 14.8 billion gallons in 2015.⁶ Growth in biodiesel and renewable diesel production in the U.S. has increased more than two and a half times, from approximately 0.5 billion gallons in 2007⁷ to 1.43 billion gallons in 2015.⁸ Currently, nearly all of the approximately 138 billion gallons of gasoline used for transportation purposes contains 10 percent ethanol (E10).

Nevertheless, real-world limitations, such as the slower than predicted development of the cellulosic biofuel industry, less growth in gasoline use than was expected when Congress enacted the RFS provisions in 2007, and the "E10 blendwall,"⁹ have made the timeline for growth in renewable fuel use laid out by Congress difficult to achieve. These challenges remain, even as we recognize the success of the program over the past decade in boosting renewable fuel use and the recent significant signs of progress towards development of increasing volumes of advanced, low-emitting GHG fuels, including cellulosic biofuels.

In order to continue the progress made in promoting the use of renewable fuels in the transportation sector, we believe it is important to take steps to remove potential barriers to their production, distribution, and consumption where such actions make sense. To this end, we have identified a number of areas where adjustments to

⁵ Conventional biofuels are those that achieve less than a 50 percent reduction in GHG emissions.

⁶ EIA, "Monthly Energy Review," Table 10.3, April 2016, http://www.eia.gov/totalenergy/data/monthly/pdf/sec10_7.pdf.

⁷ 2007 volume represents biodiesel only. EIA, "Monthly Energy Review," Table 10.4, April 2016, http://www.eia.gov/totalenergy/data/monthly/pdf/sec10_8.pdf.

⁸ 2014 volume represents biodiesel and renewable diesel production from EMTS.

⁹ The "E10 blendwall" represents the volume of ethanol that can be consumed domestically if all gasoline contains 10 percent ethanol and there are no higher-level ethanol blends consumed such as E15 or E85.

the regulatory provisions may be warranted. Some of the proposed regulatory changes would support the increased use of higher-level ethanol blends such as E85, while others would promote increased production of cellulosic and other advanced biofuels.

We are also proposing a number of other changes to the RFS regulations and other fuel regulations to streamline them, provide clarifications, and make technical corrections.

B. Summary of the Major Provisions of the Regulatory Action

1. Biointermediates

Since the RFS2 program was finalized in 2010, we have been made increasingly aware of renewable fuel producers that would like to process fuel at more than one facility. In some cases, it may be preferable for economic or practical reasons for renewable biomass to be subjected to substantial pre-processing at one facility before being sent to a different facility where it is converted into renewable fuel. For example, renewable biomass may be converted into a proto-renewable fuel (such as a bio-oil) at one facility that requires some additional processing at a different facility before it can be used as transportation fuel. These production methodologies have the potential to lower the cost of using cellulosic and other feedstocks for the production of renewable fuels by reducing the storage and transportation costs associated with feedstock handling—especially for cellulosic biomass. Thus, we believe that such technologies hold considerable promise for the future growth in production of the cellulosic biofuels required under the RFS program. However, we did not envision significant fuel production operations occurring over multiple facilities in drafting the existing regulations, and regulatory changes are necessary to both generally allow such practices, and to provide the necessary registration, reporting, and recordkeeping requirements that will facilitate appropriate oversight by the EPA.

We believe that increasing use of these “biointermediates” will likely provide an important component of the growth in renewable fuel production in the future, particularly for advanced and cellulosic biofuels. We are proposing changes in the RFS regulations to clearly specify requirements that apply when renewable fuel is produced through sequential operations at more than one facility. These changes center around the production, transfer, and use of biointermediates and the creation of new regulatory requirements related to

registration, recordkeeping, and reporting for facilities producing or using a biointermediate for renewable fuel production. The new requirements on the biointermediate producer would be similar to those already required for renewable fuel producers.

2. Ethanol Flex Fuel

In the Tier 3 Motor Vehicle Emission and Fuel Standards (“Tier 3”) final rule, the EPA finalized new standards for passenger vehicles, including flexible fuel vehicles (FFVs), and more stringent gasoline sulfur standards to enable those standards to be achieved.¹⁰ In addition, the EPA finalized requirements for test fuels used in certifying FFVs. At the same time, the EPA deferred finalizing in-use fuel quality standards for higher-level ethanol blends used in FFVs.¹¹ As discussed in the Tier 3 proposal, the current regulations and requirements for E51–83¹² (historically referred to as E85¹³) are inadequate, unclear, and out of date given recent changes to market practices.¹⁴ While there are no standards specified in our current regulations for E51–83, the historically approved practice of blending E51–83 from just denatured fuel ethanol (DFE) and certified gasoline and gasoline blendstocks for oxygenate blending (BOBs) virtually ensured the resulting blend met the gasoline fuel specifications. However, other less-expensive blendstocks such as natural gasoline are currently available in the marketplace for which this is not necessarily true. Allowing the use of natural gasoline blendstock to produce E85 could lower the cost and increase the use of E85. Also, E16–50 blends are considered gasoline under the EPA’s current regulations and are subject to all of the EPA regulatory requirements that apply to gasoline, even though such blends currently may only be used in FFVs. The gasoline refiner requirements also extend to service stations when E16–50 is produced at blender pumps.

¹⁰ See 79 FR 23529 (April 28, 2014). FFVs are designed to operate on any gasoline-ethanol blend from 0 volume percent ethanol (E0) to 83 volume percent ethanol (E83).

¹¹ See 79 FR 23414, 23558 (April 28, 2014).

¹² E51–83 refers to gasoline-ethanol blends that contain from 51 volume percent to 83 volume percent ethanol.

¹³ “E85” refers to the maximum potential concentration of DFE in an E51–83 blend, assuming a 2 percent denaturant concentration in the DFE used to make E51–83. Industry consensus standards for E51–83 are found in ASTM D5798–14, “Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines.”

¹⁴ See 78 FR 29818 (May 21, 2013) and “Possible Approach to Fuel Quality Standards for Fuel Used in Flexible-Fuel Automotive Spark-Ignition Vehicles (FFVs)” (Docket Item No. EPA–HQ–OAR–2011–0135–0529).

Gasoline refiners produce gasoline by refining crude oil or by mixing blendstocks of undefined quality in large volumes.¹⁵ Hence, they are required to demonstrate compliance with EPA gasoline quality standards by testing each batch. However, these sampling, testing, recordkeeping, and reporting requirements are not suited to fuel retail. The purpose of this proposal is to ensure the quality of E16–83 blends used in FFVs and FFV emissions control performance while clearing the path for the greater use of E16–83 blends by aligning the EPA’s fuel regulations with the current dynamics in the marketplace and making it clear which marketplace practices are and are not consistent with those regulations. We are proposing to refer to all higher level ethanol blends (E16–83) that may only be used in FFVs as ethanol flex fuel (EFF) and to regulate these blends in the same fashion.¹⁶ We request comment on the proposed naming convention for E16–83 blends. This proposal allows several streamlined processes for certain parties that produce EFF to demonstrate compliance with the proposed standards. Parties that use these streamlined approaches would still be liable for standards violations, unless they could demonstrate that they met the affirmative defenses set forth in the regulations.

FFVs are vehicles that are designed to operate on any gasoline-ethanol mixture between pure gasoline (E0) and 85 percent denatured ethanol (E85). FFVs have been manufactured and introduced into commerce since 1996, and represent more than 6 percent of the current vehicle fleet and approximately 25 percent of new light-duty vehicles produced in 2014. Given that FFVs tend to be newer vehicles that are driven more than older vehicles, FFVs account for nearly 8 percent of all light-duty vehicle miles traveled.¹⁷ However, the vast majority of fuel used in FFVs is currently gasoline.¹⁸ Although the

¹⁵ The terms “refinery” and “refiner” are defined in 40 CFR 80.2(h) and (i), respectively.

¹⁶ We understand that some parties currently refer to E51–83 as EFF. We believe that it will resolve confusion to refer to all higher level ethanol blends that may only be used in FFVs as EFF. In 2011, the EPA issued a partial waiver to allow 15 volume percent ethanol to be used in 2001 and later light duty motor vehicles (*i.e.*, conventional gasoline vehicles). See 76 FR 4662 (January 26, 2011). Should a similar waiver be issued in the future to allow the use of an ethanol blend greater than E15 (*e.g.*, E20) in conventional gasoline vehicles, such a blend would no longer be regulated as EFF and would be subject to the requirements for gasoline.

¹⁷ EIA, “2015 Annual Energy Outlook,” [http://www.eia.gov/forecasts/aeo/pdf/0383\(2015\).pdf](http://www.eia.gov/forecasts/aeo/pdf/0383(2015).pdf).

¹⁸ In the RFS annual rulemaking for the 2014–2016 standards, we estimated that 150 million gallons of EFF was used in FFVs in 2014 compared

volume of EFF blends currently used in FFVs is relatively small, it could increase substantially in the future in response to the EPA's RFS program. FFVs are equipped with the same type of emission control systems as are conventional gasoline vehicles.¹⁹ Hence, whether FFVs are operating on E0, E85, or any level of ethanol in between, to maintain emission performance the vehicles still need the fuel to meet quality specifications consistent with those for gasoline, such as the 10 ppm average sulfur standard in the Tier 3 gasoline sulfur program,²⁰ the 0.62 volume percent average benzene standard in the gasoline benzene program,²¹ and a Reid vapor pressure (RVP) consistent with that for which the vehicle was designed. Although FFVs are equipped with the same type of evaporative emissions control systems as conventional gasoline vehicles, such systems on FFVs are designed for higher volatility fuel. Thus, FFVs can tolerate somewhat higher volatility fuel than gasoline while delivering the same level of evaporative emissions control compared to conventional gasoline vehicles.²²

By broadening the range of blendstocks that can be used to produce EFF, and thereby providing the opportunity for the production of lower cost EFF, this proposal encourages increased use of EFF. We anticipate that the volume of higher-level ethanol blends used in FFVs will increase substantially as the volume requirements of the RFS increase, and this proposal is intended to support this growth. Public and private initiatives are also currently underway to expand the use of blender pumps that dispense a variety of gasoline-ethanol blends for use in FFVs.²³ Therefore, it is becoming increasingly important that all fuels used in FFVs, not just gasoline, meet fuel quality standards. Regulations specifically crafted to regulate fuels

to the use of approximately 139 billion gallons of gasoline for transportation purposes. See 80 FR 77420 (December 14, 2015).

¹⁹ We use the term "conventional gasoline vehicles" in this preamble to refer to conventional vehicles that are designed to operate on gasoline.

²⁰ See 40 CFR part 80, subpart O.

²¹ See 40 CFR part 80, subpart L.

²² See 40 CFR part 80, subpart B.

²³ Blender pumps make mid-level ethanol blends by mixing two parent blends stored in different storage tanks. The U.S. Department of Agriculture (USDA) Biofuel Infrastructure Partnership, with public and private funding of \$210 million, is targeting the installation of nearly 4,900 EFF retail dispensers during 2016, the majority of which are anticipated to be blender pumps. Growth Energy has a "Blend Your Own Ethanol" program to encourage the installation of ethanol blender pumps that dispense a range of ethanol blend levels for use in FFVs.

used in FFVs should help to facilitate further expansion of ethanol blended fuels, which is important in satisfying the requirements of the RFS program. For these reasons, we believe it is important that clear quality standards apply to any fuel used in an FFV, including sulfur, benzene, RVP, and composing only of carbon, hydrogen, oxygen, nitrogen, and sulfur, or "CHONS."

It is important to note that the focus and application of this proposal is on the requirements for fuels used in FFVs. However, we are also separately proposing streamlined compliance provisions regarding the production of E15 at blender pumps. Apart from these proposed streamlined provisions for the production of gasoline at blender pumps, the EPA's existing fuel regulations, including waiver provisions, would continue to apply for fuels used in gasoline- and diesel-powered vehicles. For example, the EPA would need to approve a new waiver request for E16 or other higher-level ethanol blends to be used in gasoline vehicles.

3. Other Proposed Amendments to the RFS and Fuels Programs

In this action we are also proposing a number of amendments to the RFS regulations. First, the EPA is proposing registration, recordkeeping, and reporting requirements that we would use if we were to allow carbon capture and storage (CCS) as a lifecycle GHG emissions reduction technology in the context of the RFS program.²⁴ The capture and geologic sequestration of the carbon dioxide (CO₂) produced from ethanol fermentation, for example, could substantially reduce the lifecycle GHG emissions associated with the production of the renewable fuel. As discussed in section V of this preamble, this proposal relies substantially on other relevant EPA regulatory programs already in place concerning sequestration of CO₂.

Second, we are proposing to approve new pathways for the production of cellulosic fuels using short-rotation hybrid poplar and willow trees as a feedstock. These new pathways would allow for ethanol and naphtha produced from these feedstocks to qualify for cellulosic biofuel (D-code 3) RINs, and for diesel, jet fuel, and heating oil produced from these feedstocks to

²⁴ While we are not proposing to add a generally applicable CCS technology to an approved pathway in the RFS regulations, we do believe it is appropriate to propose the necessary registration, recordkeeping, and reporting requirements that would generally govern the use of CCS if and when such a pathway is approved.

qualify for cellulosic biomass-based diesel (D-code 7) RINs. As discussed in section VI of this preamble, our analysis shows that fuel produced from short-rotation hybrid poplar and willow trees using a variety of processing technologies meets the 60 percent GHG emissions reduction threshold needed to qualify for cellulosic biofuel (D-code 3) RINs and cellulosic biomass-based diesel (D-code 7) RINs.

Third, we are seeking comment on several potential approaches for the generation of RINs for electricity that is produced from biogas and used as a transportation fuel. The EPA has received a number of registration requests for approval under the existing RFS regulations and these requests envision generation of RINs by different types of entities in the renewable electricity production, distribution or use sectors, using different types of information to verify the use of renewable electricity as transportation fuel. Given the diversity of the registration requests submitted to date, and the necessity of avoiding the generation of multiple RINs for the same quantity of electricity, the approval of any one of these proposed systems may preclude in whole or in part the approval of others. As discussed in section VII of this preamble, the EPA seeks input on the approach to RIN generation for renewable electricity that would best further the goals of the RFS program, but does not propose a preferred approach.

We are also proposing to make several additional revisions to the RFS regulations, which include:

New and Revised Provisions Related to Renewable Fuel Production Pathways

- Clarifying what corn oil may be used as a feedstock for existing renewable fuel production pathways and revising the definition of "corn oil extraction."
- Approving new pathways for the production of renewable diesel and biodiesel from non-cellulosic portions of separated food waste.
- Expanding the current definition of heating oil to include fuels that are used to cool interior spaces of homes or buildings.
- Revising the requirements for separated food waste plans.
- Approving a new pathway for the production of cellulosic diesel, jet fuel, and heating oil from cellulosic biomass that is co-processed with petroleum.
- Revising the requirements for the generation of RINs for fuel made from vegetable oils.

Miscellaneous Regulatory Revisions

- Requiring obligated parties to report the breakdown of gasoline, diesel, and heating oil production as part of their annual compliance reports.
- Establishing a cut-off date for the submission of registration requests related to new or expanded baseline volumes that are exempt from the GHG reduction thresholds.
- Allowing parties that blend renewable fuel to produce transportation fuel under a national security exemption (NSE) to delegate to an upstream party the Renewable Identification Number (RIN)-related responsibilities.
- Revising and clarifying the requirements for renewable fuel producers incident to the transfer of ownership of a registered renewable fuel production facility.
- Modifying the requirements for third-party engineers that perform engineering reviews for renewable fuel producers.
- Adding additional circumstances that may justify action by EPA to deactivate a company’s RFS registration.

- Requiring biogas producers whose biogas is used to produce renewable electricity, compressed natural gas (CNG), or liquid natural gas (LNG) to register with the EPA.
- Consolidating the requirements for RIN retirement into a new section in the RFS regulations.
- Specifying what RIN transactional information and RFS compliance information that is submitted through EMTS is entitled to treatment as CBI, and that certain RIN-related information cannot be claimed as CBI when it is central to describing specified actions by the EPA (including decisions by the EPA on small refinery and small refiner hardship petitions), and EPA enforcement-related actions such as notices of violations and criminal indictments.
- Specifying the types of feedstocks that can be used at grandfathered facilities to produce qualifying renewable fuel that is exempt from the 20 percent lifecycle GHG reduction requirement.
- Removing the option for RIN-generating foreign producers to pay the

required bond amount to the U.S. Treasury instead of obtaining a bond in the proper amount from a third-party surety agent.

- Addressing situations where a party is aware that renewable fuel it intends to transfer will be used for purposes other than as transportation fuel, heating oil, or jet fuel.

- Making numerous technical corrections that update addresses, references, and other minor edits.

Finally, we note that we may choose to finalize some or all of the amendments contained in this proposed rulemaking.

II. General Information

A. Does this action apply to me?

Entities potentially affected by this proposed rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol, biodiesel, renewable diesel, and biogas. Potentially regulated categories include:

Category	NAICS ¹ code	Examples of potentially affected entities
Industry	211112	Natural gas liquids extraction and fractionation.
Industry	211112, 324110	Ethanol denaturant manufacturers.
Industry	221117	Biomass electric power generation.
Industry	221210	Manufactured gas production and distribution.
Industry	324110	Petroleum refineries (including importers).
Industry	325110	Butane and pentane manufacturers.
Industry	325193	Ethyl alcohol manufacturing.
Industry	325199	Other basic organic chemical manufacturing.
Industry	325199	Manufacturers of gasoline and E85 additives.
Industry	336111, 336112	Light-duty vehicle and light-duty truck manufacturers.
Industry	424690	Chemical and allied products merchant wholesalers.
Industry	424710, 424720	Petroleum Bulk Stations and Terminals; Petroleum and Petroleum Products Wholesalers.
Industry	447110, 447190	Fuel Retailers.
Industry	454310	Other fuel dealers.
Industry	486910	Natural gas liquids pipelines, refined petroleum products pipelines.
Industry	493190	Other warehousing and storage—bulk petroleum storage.

¹ 2012 North American Industry Classification System (NAICS).

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 could potentially 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 in the referenced regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the agency taking?

In this action, the EPA is taking steps to bring our RFS and gasoline regulations more in line with marketplace changes in an effort to further advance the goals of the RFS program by facilitating the production and use of renewable fuels in the transportation sector. As discussed in section III of the preamble, we are proposing changes to the RFS regulations to generally allow the use of biointermediates in renewable fuel production, thereby facilitating the increased production of renewable fuels, including cellulosic and other advanced biofuels. As discussed in section IV of this preamble, we are

proposing standards that will address the public health and welfare effects of EFF and its impact on emissions control devices on FFVs and FFV engines under CAA section 211(c). Our proposed provisions would support the increased production and use of higher-level ethanol blends by treating all E16–83 as EFF (instead of continuing to treat E16–50 as gasoline), implement new environmentally protective fuel quality specifications for EFF, and allow for the use of lower cost blendstocks in EFF, thereby advancing the goals of the RFS program by facilitating the increased use of ethanol in transportation fuel and, in particular, at levels beyond those associated with the use of E10 alone. Finally, as discussed in sections V, VI,

VII, VIII, and IX of this preamble, we are also proposing a number of other regulatory changes to the RFS program and fuel regulations that would add new pathways, reduce opportunities for parties to commit RIN fraud, provide clarification to existing regulations, and make a number of technical corrections.

C. What is the agency's authority for taking this action?

Statutory authority for this action comes from Clean Air Act sections 203–205, 208, 211, and 301.

D. What are the incremental costs and benefits of this action?

Through the proposed provisions for EFF, biointermediates, and new renewable fuel production pathways, this action would provide significant regulatory flexibility, streamlined compliance provisions, and the opportunity for increased biofuel production at reduced cost. As we are primarily providing parties with new flexibilities to produce EFF or renewable fuel, we expect that parties would only elect to take advantage of these proposed flexibilities if the potential economic benefits outweigh the added cost. We expect that, in general, the cost savings associated with these new provisions would far outweigh any minor costs for demonstrating compliance. This proposal also contains minor additional requirements that would apply to some biofuel producers and distributors; however, the costs associated with these requirements are expected to be very small. A more detailed discussion of the economic impacts of this action can be found in section X of this preamble.

III. Biointermediates

A. Background

One of the goals of the RFS program is to reduce the amount of GHGs emitted as transportation fuel by increasing the amount of cellulosic and advanced biofuels consumed by on-road and offroad vehicles and engines. While the RFS program has had success in promoting the use of conventional biofuel (primarily corn ethanol) and advanced biofuels (primarily biodiesel), the production and use of cellulosic biofuels has noticeably lagged behind. As noted in the preamble to the final rule establishing RFS standards for 2014, 2015, and 2016,²⁵ under the statute, cellulosic biofuel was intended to fill 4.25 billion gallons out of the 7.25 billion gallons advanced biofuel applicable volume target for 2016. In reality, cellulosic biofuel is expected to

be only 0.23 billion gallons for 2016. The supply of other advanced biofuels has increased under the influence of the RFS program, but those increases were insufficient to reach the statutory volume target. We expect the gap in advanced biofuels created by the shortfall in cellulosic biofuel to widen further in the future as the statutory volume targets quickly increase but the actual supply potential increases at a slower rate.

The RFS registration, reporting, recordkeeping, and PTD requirements were designed with the general expectation that renewable biomass would be converted into renewable fuel at a single facility (e.g., a renewable fuel producer purchases corn directly from several farmers in a region, crushes the corn in a mill, and then ferments the corn into ethanol, all on the same site). The regulations therefore impose requirements on renewable fuel producers to provide the EPA with information necessary to verify that their fuel was made with qualifying renewable biomass, through production processes corresponding with approved pathways, and in volumes corresponding to feedstocks used. Such information submissions render the EPA's oversight and enforcement roles far more manageable, leading to increased integrity and confidence in the program as a whole. Since the RFS2 regulatory program was implemented in 2010, however, the EPA has received a number of inquiries from companies regarding the possible use of renewable biomass that has been substantially pre-processed at one facility to produce feedstock (referred to as a biointermediate) that is used at a different facility to produce renewable fuel for which RINs would be generated. For example, Sweetwater Energy and Ensyn both state they have developed technologies where cellulosic biomass is pre-processed and concentrated at one facility prior to shipment to another facility for conversion to renewable fuel. The pre-processed, concentrated feedstock is a biointermediate.

Sweetwater Energy's technology converts cellulosic biomass feedstocks to cellulosic sugars using a modular approach. They plan to build relatively small facilities near the bulk feedstock source and transport the concentrated sugars they produce to a larger facility where they will be converted into renewable fuels and chemicals. At this time, Sweetwater is not able to register to produce cellulosic biofuel due to their multiple-facility approach to renewable fuel production.

Ensyn's technology, known as Rapid Thermal Processing, involves the non-

catalytic thermal conversion of woody biomass feedstocks to produce renewable chemicals, food additives, and heating oil at five commercial facilities in Wisconsin and Ontario, Canada. Ensyn registered its Ontario facility under the RFS program in 2014 and has generated cellulosic biomass-based diesel (D-code 7) RINs related to sales in the U.S. of its primary fuel product, known as renewable fuel oil (RFO), as a replacement for heating oil. They also plan to sell the RFO to petroleum refineries as a feedstock that can be further processed to produce renewable gasoline and diesel if the use of biointermediates is approved by the EPA.²⁶

The EPA believes that the use of biointermediates to produce renewable fuels is a reasonable and positive development in this developing industry and holds considerable promise for the future growth in production of the cellulosic and advanced biofuels. While near-term production may be modest, significant potential for further growth in the long-term exists, as these technologies can lower the cost of using cellulosic and other feedstocks for the production of renewable fuels by reducing the storage and transportation costs associated with bulky feedstocks and taking advantage of existing ethanol and petroleum refinery assets to convert the biomass to renewable fuel. This makes biointermediate production and use an important component of the growth of the RFS program in the future, especially the growth of the cellulosic biofuel volumes.

However, scenarios involving the use of biointermediates to produce renewable fuel pose significant concerns for the EPA in terms of ensuring that the finished fuel was made with qualifying renewable biomass, through production processes corresponding with approved RIN-generating pathways, and in volumes corresponding to feedstocks used. Companies requesting to be allowed to use a biointermediate have asked the EPA to approve their production process and allow for RIN generation by the eventual renewable fuel producer. To address the EPA's concerns about the potential for RIN fraud, many companies also offered to be subject to oversight requirements more stringent than those in the current

²⁶ As discussed further in section III.B of this preamble, if a biointermediate producer were to generate RINs on a given batch of its product for use as heating oil, then the batch would not be considered a biointermediate and further RINs could not be generated downstream by a renewable fuel producer (such as a petroleum refinery).

²⁵ See 80 FR 77420 (December 14, 2015).

RFS regulations, such as the voluntary RFS QAP.

In response to these requests, the EPA has stated that the existing RFS provisions are insufficient to generally allow RINs to be generated in situations wherein multiple facilities are involved in the conversion of renewable feedstocks into renewable fuel. We also stated that we believed that the most straightforward approach to address this issue was through the rulemaking process. This proposed rule begins that rulemaking process. As described further below, this proposal provides a set of requirements that will enable the production and use of biointermediates to make renewable fuel for which RINs can be generated. The EPA seeks comment on the proposed biointermediate regulatory program described below. We also seek comment from potential producers of biointermediates on the current status of operations, potential production volumes, timelines for production, and any other information that may help inform the EPA as to the expected use of biointermediates to produce renewable fuel in the future.

B. Definition of Biointermediate

We are proposing to define a biointermediate as any renewable fuel feedstock material that meets all of the following criteria:

- It is derived from renewable biomass.
- It does not meet the definition of renewable fuel and RINs were not generated for it.
- It is produced at a facility that is registered with the EPA, but which is different than the facility at which it is used to produce renewable fuel.
- It is made from the feedstock and will be used to produce the renewable fuel in accordance with the process(es) listed in the approved pathway.
- It is processed in such a way that it is substantially altered from the feedstock listed in the approved pathway.

In addition, we are proposing that any feedstock listed in Table 1 to 40 CFR 80.1426 or in an approved pathway pursuant to 80 CFR 80.1416 is not a biointermediate, and that a mere “form change” to renewable biomass does not create a biointermediate. We note that in many existing traditional operations, there is some degree of physical pre-processing of renewable biomass to make feedstocks listed in Table 1 to 40 CFR 80.1426 and in pathways approved pursuant to 40 CFR 80.1416. Such pre-processing may occur under the existing regulations at a different facility than the facility producing renewable fuel.

For example, the planted crop soy beans are crushed to make the soy bean oil feedstock listed in pathways F and H in Table 1 to 40 CFR 80.1426, and such crushing often occurs at locations other than the renewable fuel production facility. Since soy oil is a feedstock listed in Table 1, the proposed definition of biointermediate would not include soy bean oil notwithstanding this crushing activity. For feedstocks listed in Table 1 to 40 CFR 80.1426, we do not believe that the additional proposed regulatory requirements for processes using a biointermediate are necessary to ensure that RINs are only generated for qualifying fuel. In addition, certain processing of feedstocks would not result in sufficient alteration to result in a biointermediate. Some examples of processing involving form changes that would not result in the production of a biointermediate include the following:

- Chopping biomass into small pieces, pressing it, or grinding it into powder.
- Filtering out suspended solids from recycled cooking and trap grease.
- Degumming vegetable oils.
- Drying wet biomass.
- Adding water to biomass to produce a slurry.

We are proposing that renewable biomass subject to these types of processing would be excluded from the definition of a biointermediate and, therefore, that such activities can be conducted at a different facility than the facility producing renewable fuel without triggering the need for the additional recordkeeping, reporting, and registration requirements being proposed for producers of biointermediates. Similarly, the separation activities described in 40 CFR 80.1426(f)(5) that are required for yard waste, food waste, or municipal solid waste (MSW) to be considered renewable biomass would not be viewed as creating a biointermediate. Finally, as is generally the case for all feedstocks used in renewable fuel production, the presence of incidental, *de minimis* contaminants in a biointermediate that are impractical to remove and are related to customary feedstock production and transport may be disregarded in determining whether biofuel is produced from renewable biomass in accordance with an approved pathway.²⁷

We note that based on our proposed definition of biointermediate, undenatured ethanol that is subsequently denatured at a separate facility would be considered a

biointermediate. Under the current RFS provisions, ethanol does not become a renewable fuel until a producer adds denaturant in accordance with the requirements of the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Treasury Department at 27 CFR parts 19–21. Only after a renewable fuel producer has denatured the ethanol can they generate RINs for it; the domestic producer of the undenatured ethanol is not currently subject to any RFS requirements. Under the proposed biointermediate definition, the producer of the undenatured ethanol would be required to register as a biointermediate producer and the party that denatured the ethanol would be required to register as a renewable fuel producer.

Unlike domestic producers, foreign ethanol producers typically do not denature their ethanol product, but instead rely on importers to add denaturant and generate RINs for the finished renewable fuel. Reflecting this practice, the current RFS regulations require that foreign ethanol producers register with the EPA similar to renewable fuel producers (*i.e.*, undergo an engineering review and submit similar registration information). If we finalize the proposed provisions for producers of biointermediates, then the current special regulatory requirements for foreign ethanol producers may no longer be necessary, since such producers would be registered and regulated as biointermediate producers. Therefore, we are seeking comment on whether to remove the foreign ethanol producer requirements. If we were to remove the foreign ethanol producer requirements, we would not, however, remove other requirements for the importers of such foreign ethanol (*e.g.*, third-party volume verification under 40 CFR 80.1466).

C. Implications of Using Biointermediates for Lifecycle GHG Assessments

The EPA has evaluated whether any revisions would need to be made to Table 1 to 40 CFR 80.1426 if biointermediates were generally allowed to be used. Table 1 lists the generally-applicable pathways for the production of non-grandfathered renewable fuel. The pathways include D codes, which correspond to the RFS fuel category for which the finished renewable fuel qualifies (*e.g.*, cellulosic biofuel, biomass-based diesel, etc.). These fuel categories have corresponding lifecycle GHG emissions reduction requirements that the EPA determined were satisfied when it established the pathways. As discussed below, the EPA is proposing to maintain the existing pathways in

²⁷ See 40 CFR 80.1426(f)(1).

Table 1 to 40 CFR 80.1426, with the understanding that the pathways can be followed through the production and use of a biointermediate.

Under the RFS program, the EPA must assess lifecycle GHG emissions to determine which fuel pathways meet the GHG reduction thresholds for the four required renewable fuel categories. For the 2010 RFS2 final rule, the EPA assessed the lifecycle GHG emissions of multiple renewable fuel pathways and classified pathways based on these GHG thresholds, as compared to the 2005 statutory baseline.²⁸ In addition, the EPA has added several pathways since the 2010 rule was published. Expanding the RFS program to allow for the use of biointermediates to produce renewable fuel does not affect these prior analyses.

The pathways consist of fuel type, feedstock, and production process requirements. GHG emissions are assessed at all points throughout the lifecycle pathway. For instance, emissions associated with sowing and harvesting of feedstocks and in the production, distribution, and use of the renewable fuel are examples of what are accounted for in the GHG assessment. A full accounting of emissions is then compared with the petroleum baseline emissions for the conventional fuel being replaced. The lifecycle GHG emissions determination is one factor used to determine compliance with the RFS regulations.

There are currently over a dozen renewable fuel pathways with various types of feedstocks and production processes used, qualifying the pathways as either conventional (D-code 6), biomass-based diesel (D-code 4), advanced (D-code 5), or cellulosic (D-code 3). The EPA also created a cellulosic biomass-based diesel (D-code 7) category for fuels that can qualify as both biomass-based diesel and cellulosic biofuel. The lifecycle GHG emissions determinations for these different pathways were based on the assumption that the feedstocks listed would be converted to renewable fuel at a single facility.

If the EPA were to generally allow the use of biointermediates, one main difference in GHG emissions would potentially be the additional emissions associated with transporting the biointermediate from the biointermediate production facility to the renewable fuel production facility. However, it is expected that overall transportation emissions would decrease, since bulk biomass would typically be transported a shorter distance to the biointermediate

production facility. For example, the lifecycle GHG assessment for existing pathways already accounts for feedstock and fuel transportation, so if a biointermediate facility is located close to feedstock production it would reduce unprocessed feedstock transport emissions. Biointermediate transport emissions would be added but typically biointermediates are more energy dense than unprocessed feedstock and would have lower GHG emissions associated with transport.

Furthermore, lifecycle GHG emissions could also be reduced with a biointermediate pathway vs. a single facility pathway by allowing upstream and downstream processing to be better optimized for the production of the biointermediate and the fuel respectively. Also, the biointermediate pathway could offer the opportunity to leverage greater economies of scale for improved efficiency when processing or refining biointermediates into finished fuel products also reducing lifecycle GHG emissions.

Based on these considerations, the EPA believes the GHG emissions associated with producing renewable fuel from a biointermediate will be the same or less than the GHG emissions associated with producing renewable fuel from feedstocks listed in Table 1 to 40 CFR 80.1426 at a single facility. Therefore, the original lifecycle analyses for the renewable fuel pathways listed in Table 1 to 40 CFR 80.1426 support allowing a biointermediate to be used to produce renewable fuel for the existing pathways. Once the regulatory change to allow the use of biointermediates is final, all of the pathways currently applicable to renewable fuel under Table 1 to 40 CFR 80.1426 will allow for the use of biointermediates. This assumes, of course, that the same conversion processes that are specified for the pathway are used, even if they occur at more than one facility. Of course, fuel cannot be made from a biointermediate for a pathway that is not listed in Table 1 to 40 CFR 80.1426 or otherwise approved by the EPA; parties seeking to use a new pathway (with or without the production and use of a biointermediate) must petition the EPA for a new pathway approval pursuant to 40 CFR 80.1416.

D. Applicable Pathways Involving Biointermediates and RIN Generation

We are proposing that the approved pathways in Table 1 to 40 CFR 80.1426 (as well as those approved in response to petitions submitted pursuant to 40 CFR 80.1416) would continue to identify the feedstocks and processes that are acceptable to make renewable

fuel for the respective pathways; however, if this proposal were finalized, the processes specified could be conducted in more than one facility. Since biointermediates would be altered from the feedstocks listed in Table 1 to 40 CFR 80.1426, the renewable fuel producer would require sufficient information from the biointermediate producer to verify that the biointermediate is made from the feedstock listed in the approved pathway being used by the renewable fuel producer.²⁹ Similarly, the biointermediate producer would need sufficient documentation from their feedstock suppliers to demonstrate that the feedstock used to produce the biointermediate was renewable biomass. The renewable fuel producer would have to keep records and report to the EPA who supplied the biointermediate used to produce the renewable fuel for which RINs were generated. The biointermediate producer would also have to keep records and report to the EPA who supplied the feedstocks used to produce the biointermediate.

In general, we are proposing that from the perspective of a renewable fuel producer, a qualifying biointermediate would be treated as being equivalent to the renewable feedstock from which it was derived for purposes of identifying the appropriate RIN-generating pathway from Table 1 to 40 CFR 80.1426. However, there are several cases in which we believe this would be inappropriate. These cases would be those in which certain non-characteristic portions of a renewable feedstock were separated or extracted into a concentrated biointermediate that was inconsistent with the predominant constituents of the feedstock in the approved pathway. For instance, if oils or sugars were extracted (physically separated) from cellulosic feedstocks to produce a concentrated oil or sugar biointermediate, those oils or sugars would not be viewed as representing a cellulosic feedstock, as they would not contain cellulose, hemicellulose, or lignin and were not derived from cellulose, hemicellulose, or lignin.³⁰ It would not be appropriate for those oils or sugars to be used to produce a fuel

²⁹ The information that the biointermediate producer must provide to the renewable fuel producer is described in section III.G of this preamble.

³⁰ CAA section 211(o)(1)(E) states that cellulosic biofuel (renewable fuel with a D-code of 3 or 7) must be derived from a feedstock comprised of cellulose, hemicellulose, or lignin.

²⁸ See Table 1 to 40 CFR 80.1426.

that qualifies as cellulosic biofuel under the RFS program.³¹

We are not proposing to change the current system in which, with very few exceptions, only the renewable fuel producer would be permitted to generate RINs. This means that the party that produces renewable fuel from a biointermediate would generate RINs, rather than the producer of the biointermediate. We believe this approach would be the easiest to both implement and enforce, and would involve no disruption from current practices. If we were to allow for different points of RIN generation, it would add unnecessary complexity and difficulty to the program, and introduce an opportunity for fraudulent double-generation of RINs for the same volume of renewable fuel. Our proposal would not preclude renewable fuel producers from entering into contracts with biointermediate producers that would provide for transfer of some or all of the RIN value to the biointermediate producer, but for the purposes of RIN generation and assignment within the EPA Moderated Transaction System (EMTS), only the renewable fuel producer would be able to generate and assign the RIN (except to the extent that the regulations related to a particular pathway specifically provide otherwise).

We are not proposing to change the current flexibility for RIN generation for renewable electricity and CNG/LNG made from biogas. Although we proposed to limit the parties allowed to generate such RINs in the final Pathways II rule, we deferred finalizing that aspect of our proposal, pending further consideration.³² As a result, it is currently possible for the EPA to approve, as part of the registration process, parties in the biogas distribution system other than the ultimate renewable fuel producer to generate RINs, so long as they provide documentation (*e.g.*, contracts, affidavits) showing that no other party in the system relied upon the biogas for the creation of RINs and that the finished fuel is used as transportation fuel.³³ The one party approved to generate RINs for a given volume of renewable electricity or CNG/LNG from biogas is responsible for providing the

EPA with all the necessary information and supporting documentation in their registration, reporting, and recordkeeping to track and verify the production of raw biogas from its original source, and all the processing steps and distribution in-between, to the last step where the fuel is actually used for transportation purposes. Under this proposal, we are not changing the current opportunities related to the point of RIN generation for biogas used to make renewable electricity or CNG/LNG for transportation purposes. The EPA continues to evaluate this matter, and may issue a final rule based on these elements of the Pathways II NPRM at a future date.

In the 2010 RFS2 final rule, the EPA promulgated requirements for the generation of RINs for renewable fuel co-processed with petroleum-based fuels, and provided two methods for determining the renewable content of co-processed fuels: (1) Mass balance; or (2) Using Methods B or C of ASTM D6866 C-14 testing.³⁴ Some companies that have expressed interest in producing biointermediates have suggested processes that would use a biointermediate co-processed with petroleum at a crude oil refinery to produce a partially renewable fuel for which RINs would be generated (*i.e.*, partially renewable gasoline and partially renewable diesel). After reviewing information submitted by these companies, we are concerned with the ability of the mass balance approach to accurately and precisely determine the number of RINs that can be generated for a co-processed partially renewable fuel made from a biointermediate feedstock. The volume of biointermediate co-processed with petroleum at a refinery would likely be a small fraction of the refinery's throughput and would make it difficult to rely on a mass balance approach for RIN generation and may lead to the generation of RINs for the non-renewable portion of the co-processed fuel. Additionally, Method B of ASTM D6866 has greater precision compared with Method C. Given the challenge of calculating a precise and accurate number of RINs from co-processed partially renewable fuel produced from a biointermediate, we are proposing that only Method B of ASTM D6866 could be used to determine the renewable content of co-processed fuels when a biointermediate is used.

We recognize that co-processing configurations are highly complex and varied and that proposing Method B of ASTM D6866 as the only method to

determine renewable content of co-processed fuels produced from biointermediate feedstocks may place a high cost on parties that generate RINs from co-processed fuels. One potential option would be to require Method B of ASTM D6866 as the default method for determining renewable content of co-processed partially renewable fuel produced from a biointermediate and allow parties to petition the EPA to use other methods for determining the renewable content based on the unique process of the company producing the co-processed fuel. In some cases an appropriately characterized mass balance approach may provide reasonable assurance that RINs are not being attributed to non-qualifying fuels (*i.e.*, the co-processed petroleum-based portion of the fuel), especially in cases where the biointermediate constitutes a large portion of the blendstock used to produce the co-processed fuel. That being said, with the expected small number of parties likely to generate RINs from this situation, allowing parties to petition the EPA for alternative methods would most likely result in the EPA being petitioned by every party that wishes to generate RINs from co-processed partially-renewable fuel produced from a biointermediate. Based on experience processing these type of petitions, the review and approval of such petitions can take a significant amount of time, which could delay the registration of parties wishing to generate RINs from co-processed partially-renewable fuel produced from a biointermediate.

We seek comment on whether only allowing Method B of ASTM D6866 for RIN generation for this situation is appropriate. We also seek comment on whether other methods should be allowed and if so what methods could produce similar accuracy and precision to Method B of ASTM D6866 for purposes of measuring renewable content in co-processed fuels. For any suggested methods, we request a thorough description of the method and data that helps establish the relative accuracy and precision of the method. Lastly, we seek comment on whether the EPA should allow parties to petition for the use of a company-specific method to determine the renewable content of co-processed partially-renewable fuel produced from a biointermediate.

Finally, due to the potential complexity involved in determining the validity of RINs generated for renewable fuel produced from a biointermediate, we are proposing that if the EPA determines that any of the RINs in any batch of renewable fuel produced from

³¹ Consistent with the approach taken in the Pathways II rulemaking, we are proposing that a biointermediate that is produced from the chemical conversion of cellulosic feedstocks would continue to be treated as an entirely cellulosic feedstock if 75 percent or more of the resulting biointermediate is of cellulosic origin. See 79 FR 42128 (July 18, 2014).

³² See 79 FR 42128 (July 18, 2014).

³³ See 40 CFR 80.1426(f)(12).

³⁴ See 40 CFR 80.1426(f)(4).

a biointermediate are invalid, then all such RINs generated for that batch of renewable fuel would be considered invalid except to the extent that the EPA, in its sole discretion, determines that some portions of these RINs would be valid.

E. Number of Parties Allowed To Make a Given Biointermediate, and Their Potential Liability for Violations

We are proposing that the processing of a feedstock listed in an approved pathway into a biointermediate may only occur at a single facility before the biointermediate is transported to a renewable fuel production facility. Hence, there will only be two parties involved in the transformation of a feedstock listed in an approved pathway into renewable fuel, which will make it much more straightforward for the EPA to track and enforce. While it is possible that the production of certain biointermediates may require processing at multiple facilities in the future, most if not all of the inquiries that the EPA has received so far regarding biointermediates have only involved two facilities: One to produce the biointermediate and another to turn the biointermediate into renewable fuel. There are also numerous implementation and enforcement concerns associated with allowing more than one facility to be involved in the production of a given biointermediate, as each extra production step adds another layer of complexity and potential for fraud to occur. Thus, we are not proposing to allow for multiple facilities to be involved in the production of a biointermediate at this time.³⁵ However, we may revisit this issue in the future if new production technologies develop that call for the sequential processing of an approved feedstock listed in Table 1 to 40 CFR 80.1426 at more than one biointermediate facility prior to its use at a renewable fuel production facility. We seek comment on whether it is appropriate at this time to limit biointermediate production to occur at a single facility, or whether we should allow for multiple facilities to be involved sequentially in the production of a given biointermediate and if so, how to limit opportunities for fraud. We note, however, that under this proposal, a given renewable fuel production facility could source their

biointermediates from more than one biointermediate production facility.

We are proposing registration, reporting, recordkeeping, and PTD requirements for parties involved in the production of biointermediates, as well as modified requirements for renewable fuel producers using biointermediates to make renewable fuel. We are also proposing that biointermediate and renewable fuel producers would be liable for violation of these requirements.

F. Additional Registration, Recordkeeping, and Reporting Requirements That Apply When a Biointermediate Is Used To Produce Renewable Fuel

In general, the renewable fuel producer is responsible for verifying and demonstrating that the renewable fuel they produce is derived from renewable biomass and was produced in accordance with an approved biofuel production pathway.³⁶ If the renewable fuel producer is using a biointermediate, however, the direct link between the renewable fuel producer and the renewable biomass/feedstock supplier would be lost. In such cases we are proposing that the biointermediate producer would verify and provide records (in the form of PTDs) to the renewable fuel producer that the feedstocks used to make the biointermediate meet the definition of renewable biomass and are part of the approved biofuel production pathway that the renewable fuel producer intends to rely on to generate RINs. Therefore, we are proposing the following additional registration, recordkeeping, and reporting requirements associated with biointermediates that would help provide the renewable fuel producer with the information necessary to verify that the fuel they produce qualifies as renewable fuel for which RINs may be generated.

1. Registration

We are proposing to require that biointermediate producers register with the EPA by facility in a manner similar to renewable fuel producers. We are also proposing slight modifications to the registration requirements for renewable fuel producers that wish to use a biointermediate to produce renewable fuel. The registration information submitted by the biointermediate producer would include the submission of basic company information (*e.g.*, company name, address of production facility, etc.) required for all EPA fuels

program registrants. In addition, they would need to provide basic operational information, such as the capacity of their production facility, the processes utilized, the feedstocks they will use, a description of their biointermediate product, and the pathway(s) they believe the biointermediate product could be used in. We are proposing that biointermediate producers would need an independent third-party engineering review for each facility, which would include a site visit and review of the registration submission to independently evaluate the facility's ability to utilize the specified feedstocks and production processes that fall under an EPA-approved pathway. As discussed in section VIII.I of this preamble, we are also proposing modifications to the third-party engineering review requirements. Those modifications would apply to renewable fuel producers and biointermediate producers alike. Biointermediate producers would also need to identify renewable fuel producers that intend to use their biointermediate product. Existing renewable fuel producers would also need to update their registration information with similar information if they wished to begin using a biointermediate as a feedstock. Renewable fuel producers would also be required to enter into contracts and keep affidavits with their biointermediate suppliers. A biointermediate could not be used for renewable fuel production until the EPA had accepted both the biointermediate producer's and the renewable fuel producer's registration materials reflecting the production and use of the biointermediate. Similar to renewable fuel producer registrations, biointermediate producers would need to submit updated registration information every three years, including a new independent third-party engineering review. In addition, biointermediate producers would need to update their registration materials between three-year updates if specified changes in their operations occur. A biointermediate producer would be required to comply with any other applicable regulatory requirements related to the renewable feedstock (*e.g.*, submitting separated food waste plans and requirements related to the use of crop residue as a feedstock) that a renewable fuel producer that uses these renewable feedstocks directly (without reliance on a biointermediate) must submit to the EPA in the context of registration.

The EPA notes that although we intend to conduct a threshold review of registration materials prior to accepting

³⁵ This limitation would not apply to pre-processing that occurs upstream of the biointermediate producer and involves only "form changes" of a feedstock listed in Table 1 to 40 CFR 80.1426, such as chopping, grinding, etc.

³⁶ See 40 CFR 80.1454(c) and (d).

a registration submission, this threshold review is primarily to verify that the registration materials are complete. Thus, acceptance by the EPA of a registration submission does not represent a determination by the EPA of substantive compliance with applicable regulatory requirements.

Biointermediate and renewable fuel producers are responsible for ensuring on a continuing basis that all regulatory requirements are satisfied, including the requirement to only use renewable biomass feedstocks, and to produce renewable fuel in compliance with approved pathways. Thus, as has been the case since the inception of the RFS program, parties should not assume that the EPA approves the use of feedstocks or production processes described in a registration submission simply because the EPA has accepted a party's registration application. The EPA intends to review materials submitted by registered entities to determine substantive compliance with the program on a priority basis based in part on the availability of time and resources, and in part on indications of potential compliance concerns.

We seek comment on whether there are any additional registration requirements needed for biointermediate producers or renewable fuel producers to help ensure that the parties themselves and EPA enforcement personnel have available to them the information necessary to ensure the appropriate production and use of biointermediates.

2. Reporting Requirements

We are proposing that biointermediate producers would submit quarterly reports that include feedstock and process information by batch, volume of the batch, and cellulosic and non-cellulosic content of the batch, as well as the specific renewable fuel facility where the batch of biointermediate was intended to be used for the production of renewable fuel. The biointermediate producer would also be required to designate each batch that is intended to be used as a renewable fuel feedstock, so that the biointermediates batches are directly linked to the renewable fuel batches produced from that biointermediate. The biointermediate producer would also be required to report the renewable content and adjusted cellulosic content of each biointermediate batch and certify that the renewable content of each biointermediate batch met the renewable biomass requirement. We are also proposing changes to the periodic reporting requirements for renewable fuel producers that use a

biointermediate to help the EPA track that biointermediates are being used appropriately. These proposed reporting requirements would help the EPA monitor compliance concerning the production and use of biointermediates by directly linking the volume of biointermediate produced by a biointermediate producer with the volume of renewable fuel produced by a renewable fuel producer.

We are also proposing modifications to the EMTS reporting requirements for producers of renewable fuel to help track and ensure that biointermediates are used appropriately. Currently, feedstocks used to produce a renewable fuel are tracked on a per-batch basis in EMTS. Due to the similarity between the ways that biointermediates would be used and existing feedstocks are already being used, we are proposing that biointermediate use also be tracked through EMTS. In addition, aligning batches of RINs generated for renewable fuel with the biointermediate batches used to produce the fuel would help the EPA monitor that volumes of biointermediates are appropriately used to generate valid RINs. Therefore, we are proposing that renewable fuel producers specify in EMTS both the amount of biointermediate feedstock used to produce each batch of fuel, as well as the party from whom the biointermediate was produced, received, purchased, or procured. This is somewhat analogous to EMTS reporting requirements for RIN-generating importers of foreign renewable fuel. For example, in order to generate RINs for a volume of renewable fuel produced at a foreign renewable fuel facility, renewable fuel importers must identify in EMTS the foreign renewable fuel facility for each batch of imported renewable fuel for which they generate RINs, among other batch requirements.

These proposed changes to EMTS, while simple in concept, nevertheless will constitute a significant modification to the coding of the existing EMTS system, which will take time to develop and test to ensure adequate functionality. Therefore, we anticipate that if we finalize the proposed biointermediate provisions, we will delay the full tracking of biointermediates in EMTS, but not the periodic reporting requirements, until January 1, 2018, so that the changes to EMTS could reasonably be developed and tested. As discussed in more detail in section III.L of this preamble, biointermediate producers and renewable fuel producers using biointermediates would be permitted to meet interim implementation

requirements pending EMTS modification. Parties would still be required to submit periodic reports outside of EMTS to help the EPA monitor compliance with biointermediate requirements.

We believe that these reporting requirements and tracking in EMTS would help the EPA monitor the generation of RINs for renewable fuel produced from a biointermediate, thereby reducing the potential for fraud and enhancing the integrity of the program. We seek comment on whether we should require any additional reporting requirements from biointermediate producers or renewable fuel producers.

3. Recordkeeping Requirements

We are proposing that biointermediate producers would have essentially the same feedstock and process-related recordkeeping requirements as those already in place for renewable fuel producers. Since the biointermediate producer would be a party between suppliers of feedstocks listed in Table 1 to 40 CFR 80.1426 and the renewable fuel producer, the biointermediate producer would need to maintain records related to the purchase of feedstocks used to produce the biointermediate. Biointermediate producers would also need to maintain appropriate records that demonstrate that feedstocks meet the definition of renewable biomass. Finally, biointermediate producers would need to keep records of any calculations the biointermediate producer used to determine the renewable or cellulosic content of the biointermediate, as applicable. This information would need to be conveyed to any renewable fuel producer that uses the biointermediate as part of the required PTDs. Renewable fuel producers would need to maintain these PTDs in addition to their current recordkeeping requirements. We seek comment on whether there are any additional records that should be kept by biointermediate producers or renewable fuel producers to accommodate the proposed use of biointermediates.

G. Product Transfer Documents

In order to help provide renewable fuel producers using biointermediates the information they need to ensure the validity of RINs they generate, we are proposing PTD requirements associated with the transfer of biointermediates between the biointermediate producer and the renewable fuel producer. The biointermediate producer would be required to transfer to the renewable fuel producer a PTD along with each

shipment of biointermediate containing information related to the feedstock, volume, cellulosic and non-cellulosic content of the batch, and processes used in the production of the biointermediate. The biointermediate producer would also be required to include a certification statement regarding these details on the PTD. We are also proposing that biointermediate producers would designate clearly in the PTD what renewable fuel(s) should be produced from specific batches of biointermediate. This information would need to be conveyed on PTDs to the renewable fuel producer and should match reports submitted to the EPA by the biointermediate producer.

Additionally, to the extent that any portion of the biointermediate is not derived from renewable biomass, biointermediate producers would be required to identify the feedstock energies of the renewable and non-renewable biomass used to produce the biointermediate and the proportions of the biointermediate that could and could not be used to make renewable fuel for which RINs could be generated. If applicable, biointermediate producers would also need to convey information regarding the proportion of the biointermediate that is cellulosic material and non-cellulosic material. This breakdown would need to be transferred to the renewable fuel producer so they could properly calculate the RINs to be produced from fuel made with the biointermediate. Biointermediate producers would also need to certify to the renewable fuel producer the process used to produce the biointermediate feedstock. We seek comment on whether any additional information should be conveyed from the biointermediate producer to the renewable fuel producer through PTDs.

It should be noted that it would still be the responsibility of the renewable fuel producer to ensure that any feedstocks used to make renewable fuel, including biointermediates, meet the definition of renewable biomass, and that all processes used by the biointermediate producer in conjunction with the processes used by the renewable fuel producer fall under an EPA-approved pathway to produce renewable fuel. Thus, as discussed further in the next section, both the renewable fuel producer and the biointermediate producer may be held liable when RINs are generated for fuel that was not derived from renewable biomass, or where the biointermediate producer used processes that were inconsistent with the pathway utilized by the renewable fuel producer as the basis for RIN generation.

H. Prohibited Activities and Liability in Cases Where a Biointermediate Is Not a Valid Feedstock

We are proposing to amend the regulations to add a new prohibited activity for the production of a biointermediate from a feedstock or through a process that is not described in the producer's registration information. We are also proposing to modify the prohibited acts regulations to prohibit the use of a biointermediate by a renewable fuel producer that is not described in the producer's registration information. Renewable fuel producers are ultimately responsible for ensuring that any biointermediate is used in compliance with the regulations, similar to how they are currently responsible for using appropriate feedstocks and processes to produce renewable fuels and generate RINs. As noted above, the description of feedstocks and processes in registration materials accepted by the EPA does not represent a determination by the EPA that such feedstocks and processes are consistent with the RFS regulations; the responsibility of ensuring that they do rests on a continuing basis with the renewable fuel producer as well as any biointermediate producer.

In order to fulfill the statutory mandate that renewable fuel is produced from renewable biomass, the renewable fuel producer must be able to demonstrate that the feedstocks they are using are, or are derived from, renewable biomass and are consistent with the feedstocks permitted under the renewable fuel production pathway utilized. When a biointermediate is being used to produce renewable fuel, the renewable fuel producer may not have direct access to the information needed to make these demonstrations. Therefore we are proposing that the biointermediate producer would be required to make these demonstrations both to the EPA and to the renewable fuel producer. To ensure appropriate levels of oversight by renewable fuel producers, we do not believe that the renewable fuel producer should be held harmless in the event that the biointermediate is determined to not be derived from renewable biomass or is determined to be unauthorized under the pathway utilized by the renewable fuel producer. Therefore we are proposing that either or both the biointermediate producer and the renewable fuel producer would potentially be liable for violations involving the improper production or characterization of a biointermediate used to produce renewable fuel for which RINs were generated. This would

be true both where any errors could be characterized as having been made in good faith, and in situations involving deliberate fraud.

This approach has been used extensively in other EPA fuels programs (e.g., gasoline and diesel programs) where it is presumed that violations that occur at downstream locations (e.g., a retail station selling gasoline) were caused by all parties that produced, distributed, or carried the fuel. In this case, if, for example, a biointermediate producer were to use feedstocks that do not meet the definition of a renewable biomass, then both the biointermediate producer and the renewable fuel producer could be liable for the violation.

We seek comment on whether the proposed approach to liability in instances where biointermediates are used is appropriate and whether the final regulations should include any additional prohibited activities or liability-related provisions.

I. Attest Engagements for Biointermediate Producers

We are proposing that biointermediate producers undergo annual attest engagements similar to current annual attest engagement requirements for renewable fuel producers. The attest engagement for biointermediate producers would consist of an outside certified public accountant or certified independent auditor following agreed upon procedures to determine whether the underlying records for the biointermediate, the reported items to the EPA, and copies of PTDs to the renewable fuel producer agree. The auditor would issue a report to the EPA as to their findings. We are also proposing a slight modification to the attest engagement for renewable fuel producers to ensure that attest auditors verify records related to the use of a biointermediate.

J. Quality Assurance Plans for Biointermediates

In 2014, the EPA finalized requirements for optional QAPs to help ensure that RINs are valid.³⁷ The QAP rule provides for auditing of renewable fuel production facilities by independent third-party auditors who review feedstock elements, process elements, and RIN generation elements to determine if renewable fuel production is consistent with EPA requirements. Several companies that have contacted the EPA regarding the potential use of biointermediate feedstocks have suggested that the EPA

³⁷ See 79 FR 42128 (July 18, 2014).

allow the use of QAPs for biointermediates to help ensure the validity of RINs produced from renewable fuels that used biointermediates as a feedstock. We believe that allowing independent third-party auditors to implement QAPs for biointermediate producers would help provide assurance to the renewable fuel producer and RIN purchasers that biointermediate producers are using appropriate feedstocks and processes consistent with EPA requirements. Therefore, we are proposing that biointermediate producers may participate in the RFS QAP with third-party auditors reviewing applicable feedstock and process related QAP elements. We are also proposing small changes to the QAP requirements for renewable fuel producers to accommodate their use of biointermediate feedstocks.

More significantly, we are proposing that in order for a renewable fuel producer to generate a Q-RIN, both the biointermediate producer and the renewable fuel producer must have in place an EPA-approved pathway-specific QAP. We believe that this is necessary to provide the level of assurance that is expected from the RFS QAP. If we allowed the producer to generate Q-RINs without the biointermediate producer's information being verified, it could undermine the level of compliance assurance provided by Q-RINs. Additionally, since the focus of the QAP system is the validity of RINs and both the biointermediate producer and the renewable fuel producer must follow approved pathway processes for RINs to be valid, it would not be appropriate to allow the generation of Q-RINs without a QAP for the biointermediate producer. We seek comment on whether this approach is appropriate and whether there are any additional QAP requirements that we should impose upon biointermediate producers or renewable fuel producers using biointermediates to maintain the high level of confidence associated with Q-RIN generation.

As discussed more thoroughly below, in the interest of accelerating the implementation of the proposed expanded program allowing use of biointermediates, we are proposing that in the interim between the effective date of the final rule and January 1, 2018, biointermediate producers and renewable fuel producers that wish to produce renewable fuel using biointermediate feedstock must have a pathway-specific QAP in place. We believe this is necessary because the tracking of biointermediates in EMTS

and the association³⁸ of biointermediate companies with renewable producers tracked in the EPA Central Data Exchange (CDX) registration system would not be in place until January 1, 2018. After January 1, 2018, we are proposing that biointermediate and renewable fuel producers may voluntarily participate in the RFS QAP; however, both parties would still need to participate in the QAP program to generate Q-RINs. The EPA is also seeking comment on whether we should maintain the requirement that biointermediate and renewable fuel producers have a pathway-specific QAP after the interim period ends, or whether there are any specific situations in which the use of a QAP should continue to be mandatory, especially where the potential for fraud to occur may be more likely (e.g., biointermediate production facilities that produce both a renewable fuel and a biointermediate).

K. Foreign Biointermediate Producer Requirements

We are proposing that foreign biointermediate producers have similar requirements as foreign renewable fuel producers as described in 40 CFR 80.1466. In general, foreign biointermediate producers would be required to comply with requirements related to inspection and audit, bonding, agent appointment for service of process, and the application of U.S. substantive and procedural laws to any civil or criminal enforcement action. These requirements would allow the EPA to monitor the producers and carry out enforcement actions should a violation occur outside the U.S.

We are also proposing that foreign biointermediate producers transfer their biointermediate only to domestic and foreign RIN-generating renewable fuel producers. This means that foreign biointermediate producers would not be allowed to transfer their biointermediate to non-RIN-generating foreign producers. This proposed limitation serves two purposes. First, RIN-generating renewable fuel producers are required to provide in EMTS the type

and volume of the biointermediate used and the registration number of the biointermediate production facility. The existence of foreign biointermediate producer's information in EMTS allows the EPA to oversee all parties in the chain of RIN generation. Secondly, RIN-generating renewable fuel producers have the option to utilize the voluntary RFS QAP. The program helps ensure that RINs are properly generated through audits of renewable fuel production conducted by independent third-party auditors, and makes the RFS program more efficient for buyers of RINs. Foreign biointermediate producers would be subject to the same recordkeeping, reporting, registration, and PTD requirements as domestic biointermediate producers. We seek comment on the proposed foreign biointermediate producer requirements.

L. Interim Implementation Program

As mentioned above, some of the proposed requirements for biointermediates involve significant development of EMTS for the tracking of biointermediates and RINs generated for renewable fuel made from biointermediates. In addition, significant changes to the CDX registration system are needed to track the complex network of associations among biointermediate producers, renewable fuel producers, and, where relevant, independent third-party auditors. These changes are necessary to aid in implementing and enforcing the proposed biointermediate requirements. Additionally, by bringing biointermediates and biointermediate producers into EMTS and CDX, RFS regulated parties will be able to take full advantage of the tracking and transactional functions of the systems instead of having to track everything outside of the system.

On the other hand, the EPA does not want to delay the introduction of new renewable fuels that may help further the goals of the RFS program to significantly increase the production and use of renewable fuel as a substitute for fossil-based transportation fuel. We considered proposing a more manual tracking system, but given the significant investments already made to develop EMTS and the registration system, plus the benefits to the RFS regulated community of allowing biointermediates to be tracked with the full capabilities of EMTS and CDX, we believe it makes sense to require the tracking of biointermediate producers and biointermediates within the registration system and EMTS. Given the time needed to modify EMTS and CDX, we are proposing an interim

³⁸ For purposes of this preamble, "association" means an administrative linking of two companies in CDX and does not mean any contractual or more formal relationship. Under the QAP program, third-party auditors are required to associate with RIN generators in CDX so that RIN generators can generate verified RINs in EMTS. Under the proposed biointermediates program, biointermediate producers would need to associate in CDX with a renewable fuel producer in order for that renewable fuel producer to generate RINs. Additionally, if the biointermediate and renewable fuel producers participate in the QAP program, each party would need to associate with each other in CDX.

implementation program that would allow the use of biointermediates for renewable fuel production beginning on the effective date of final rule, with additional restrictions on the production and use of biointermediates until full tracking is available through EMTS and the CDX registration system. As discussed in section III.F.2 of this preamble, we anticipate that the necessary changes to EMTS will be completed by January 1, 2018. However, since these modifications to EMTS and CDX are significant and may take longer than the EPA anticipates, it is possible that the EPA will be forced to delay implementation of full biointermediate tracking in EMTS beyond January 1, 2018. Should this occur, the EPA would notify all parties potentially affected by this decision (both biointermediate producers and renewable fuel producers) and would continue implementing the interim requirements until the changes to EMTS are complete.

It should be noted that most of the proposed biointermediate requirements would go into effect at the start of the program and remain in place after the interim implementation period, including: Registration of biointermediate facilities, engineering review as part of registration, periodic reporting requirements outside of EMTS,³⁹ recordkeeping requirements, PTD requirements, and annual attest requirements. These requirements do not require significant development of new functionality in EMTS and CDX and can easily be implemented by the EPA and regulated parties since they are in general consistent with requirements already in place for renewable fuel producers.

The main difference between the interim implementation program and the fully implemented program is that for the interim program biointermediate producers and renewable fuel producers using biointermediates must have EPA-approved pathway-specific QAPs. After the interim implementation period, we propose that parties could continue to voluntarily participate in the RFS QAP. Although the RFS QAP is otherwise a strictly voluntary program, we believe it is appropriate to require the participation of biointermediate producers and renewable fuel producers

during the interim implementation period for two reasons. First, we want to reduce the opportunity for parties to generate invalid RINs. By allowing additional intermediate parties to collect and process feedstocks, the complexity of the relationship between feedstock providers and renewable fuel producers can be difficult to untangle and may provide opportunity for some parties to generate invalid RINs. Since RINs generated for renewable fuel produced from biointermediates would not be fully tracked in EMTS during the interim implementation period, requiring third-party verification of the production of biointermediates would provide both the EPA and the RFS regulated parties an additional increment of assurance that biointermediates are properly produced.

Second, requiring QAPs for biointermediate producers and renewable fuel producers during the interim implementation period is appropriate since this situation differs from the normal renewable fuel production situation. The use of a biointermediate as a feedstock by a renewable fuel producer is voluntary (*i.e.*, the renewable fuel producer could use traditional feedstocks to produce renewable fuels as they have since the creation of the RFS program), and in this case we are providing new flexibility for parties to utilize biointermediates that would otherwise not be allowed under the existing regulations. We believe it is appropriate to seek the additional assurance regarding RIN validity that would be provided during the interim period by requiring QAPs for biointermediate producers and renewable fuel producers using biointermediates in exchange for the additional flexibility provided by the expanded program.

We recognize that this required QAP provision may temporarily place an additional burden on biointermediate producers and renewable fuel producers using biointermediates. However, we note that several companies that expressed interest to the EPA in producing or using biointermediates have mentioned the participation in the RFS QAP as a way to provide assurance that RINs are properly generated. We specifically seek comment on whether this interim implementation approach is appropriate, and whether any of the interim requirements (such as the mandatory use of a QAP) should be continued after the expiration of the interim period. We also seek comment on whether during the interim period there are any other measures that could be employed to provide the same type of assurance of RIN validity as the RFS

QAP provides. In addition, should the EPA decide to not require the use of a QAP for all biointermediate producers and renewable fuel producers using biointermediates after the expiration of the interim period, we also seek comment on whether there are any specific situations in which the use of a QAP should continue to be mandatory, especially where the potential for fraud to occur may be more likely (*e.g.*, biointermediate production facilities that produce both a renewable fuel and a biointermediate).

IV. Standards for Ethanol Flex Fuel

This section of the preamble discusses the EPA's proposed approach for EFF. An overview of the current regulatory provisions that apply to EFF is provided in section IV.A and an overview of the key proposed requirements that would apply to producers of EFF is provided in section IV.B. The proposed standards that would apply to EFF, EFF blendstocks, and EFF additives are discussed in section IV.C. The three different certification options for producers of EFF are discussed in section IV.D and the requirements for producers of E15 at blender pumps is discussed in section IV.E. The proposed compliance provisions that would apply to producers of EFF, including the registration, recordkeeping, reporting, PTD, sampling and testing, attest engagements, compliance dates, and EFF quality survey program, are discussed in section IV.F. An alternative approach that would formalize the current approved practices for producing EFF is discussed in section IV.G. A discussion of the EPA's statutory authority for these proposed requirements is provided in section IV.H.

A. Current EFF Regulatory Landscape

FFVs are designed to operate on E0, E85, or any level of ethanol in between, and, in order to maintain emission performance, these vehicles need the fuel to meet certain quality specifications. Our various standards for gasoline apply to any fuel sold for use in motor vehicles, which is commonly or commercially known or sold as "gasoline."⁴⁰ The Fuel and Fuel Additive (F&FA) program requires that fuels the EPA has "designated" as motor vehicle fuels must be registered with the EPA prior to being introduced into commerce.⁴¹ To date, the EPA has designated gasoline and highway diesel fuel as motor vehicle fuels for the purposes of the F&FA program.

⁴⁰ See 40 CFR 79.32(a).

⁴¹ See 40 CFR 79.4(a)(1).

³⁹ In other EPA fuels programs, parties submit periodic reports through CDX into a separate reporting database (primarily DCFUEL). During the interim period, biointermediate producers would be required to submit their periodic reports in this way. After EMTS or an EMTS-like system has been developed to track biointermediate production and transfers, it may no longer be necessary to submit periodic reports through DCFUEL since that information would be collected in EMTS or an EMTS-like system.

Producers of gasoline and highway diesel fuel must comply with the F&FA program's requirements before introducing gasoline or highway diesel fuel into commerce.⁴² Currently, the EPA has registered gasoline that contains up to 15 volume percent ethanol (E15).⁴³ Additionally, the introduction into commerce of fuels and fuel additives that are not substantially similar to any fuel or fuel additive used in vehicle or engine emissions certification is prohibited, unless granted a waiver pursuant to CAA section 211(f)(4). Thus, registered gasoline is well controlled under our current regulations.

Gasoline-ethanol blends greater than 15 volume percent ethanol and less than 51 volume percent ethanol are relatively new to the marketplace. Fuels composed of at least 50 volume percent clear gasoline are included in the gasoline family under the F&FA program.⁴⁴ Hence, E16–50 blends are currently subject to all of the requirements that apply to gasoline, despite the fact that such blends may not be used in conventional gasoline vehicles. Ethanol blends that contain from 51 to 83 volume percent ethanol for use in FFVs have been sold for a number of years under the trade name “E85.”⁴⁵ Such E51–83 blends belong to the ethanol family in the F&FA program, and are not subject to our gasoline regulations.

The EPA has two sets of gasoline quality requirements: One set applies to conventional gasoline (CG) areas and the other to reformulated gasoline (RFG) areas. The RFG requirements apply in areas with the greatest air quality need and are based on compliance with an emissions model that uses a number of gasoline properties to evaluate emissions control performance.⁴⁶ Since the RFG program was finalized, changes to the EPA gasoline sulfur and benzene control requirements have largely

supplanted the provisions in the complex model (a fuel component model used to determine compliance with emission performance standards) so that the RFG program is essentially a volatility control program where gasoline RVP is typically limited to about 7.0 pounds per square inch (psi).⁴⁷ The Tier 3 gasoline sulfur program requires that all gasoline (RFG and conventional) produced and imported must meet a 10 ppm annual average sulfur standard beginning January 1, 2017.⁴⁸ The gasoline benzene program requires that all gasoline meet a 0.62 volume percent annual average benzene standard.⁴⁹ Conventional gasoline is subject to either a federal 7.8 psi RVP maximum or a 9.0 psi RVP maximum depending on the climate conditions and air quality need of a given region in addition to the gasoline sulfur and benzene requirements. Some states have also adopted more stringent RVP requirements for gasoline in a federally-approved state implementation plan (SIP) where additional volatility control is needed to address local air quality problems. A statutory 1 psi RVP waiver applies to E10 in many CG areas.⁵⁰

Under existing EPA regulations, a gasoline refiner must certify that the gasoline it produces meets the required emission performance standards by testing each batch.⁵¹ For CG, the refiner must test each batch to demonstrate compliance with sulfur, benzene, and RVP requirements. For RFG, refiners must also sample and test for a broad range of fuel properties, but the RFG emission performance standards have largely been supplanted by other EPA fuel programs such as the gasoline sulfur and benzene programs, and the RVP largely determine compliance.⁵² All gasoline is also required to be composed solely of CHONS to prevent

potential fuel contaminants from disabling vehicle emissions control catalysts. The EPA has not required CHONS testing to certify compliance with EPA gasoline quality requirements because we concluded that the processes used to produce gasoline remove non-CHONS elements. Refiners produce gasoline by processing crude oil and to a more limited extent by blending in blendstocks such as butane into previously-certified gasoline at refined product terminals. Refiners that produce gasoline are required to register with the EPA, submit annual reports, designate where the gasoline they produce may be used (*e.g.*, RFG, CG 7.8 RVP areas, or CG 9.0 RVP areas) on product transfer documents (PTDs), and in the case of RFG, participate in a downstream fuel quality survey at fuel retail facilities.

E16–50 gasoline blends are currently produced for use in FFVs using blender pumps at fuel retailer facilities. The typical current practice is that a blender pump mixes gasoline (E0 or E10) and E85 parent blends at different ratios to produce various E16–50 blends. Such E16–50 blender pumps are a recent development.⁵³ Because the EPA currently considers E16–50 to be gasoline and blender pump operators mix E85 (a non-gasoline) with gasoline to produce E16–50, blender pump operators are gasoline refiners under our existing regulations.

Similarly, E15 is also primarily produced at blender pumps. Fuel retailers that make E15 at blender pumps using E85 as a parent blend are currently subject to all of the requirements that apply to refiners producing gasoline from crude oil, including registration, reporting, and per-batch testing. This is due to the fact that such blender pump operators are mixing non-gasoline (E85) with gasoline (E0 or E10) to produce a new finished gasoline.

The only current fuel quality requirement that applies to E85 is that it must be substantially similar (sub-sim) to the fuel used for FFV certification testing. To assure compliance with the sub-sim requirement, the EPA has required that E85 blenders can use only certified gasoline, BOBs, and DFE as E85 blendstocks, consistent with practices used in producing such blends for vehicle certification. Historically, this has not been an issue, as these were the

⁴² The requirements under the F&FA program are contained in 40 CFR part 79.

⁴³ “Conventional gasoline vehicle” refers to a conventional vehicle designed to operate using gasoline. Conventional vehicles had historically been designed to operate on ethanol-gasoline blends up to 10 volume percent ethanol. In 2011, the EPA issued a partial waiver to allow 15 volume percent ethanol to be used in 2001 and later light duty motor vehicles. See 76 FR 4662 (January 26, 2011).

⁴⁴ See 40 CFR 79.56(e)(1)(i).

⁴⁵ Retailers may be moving away from the E85 trade name for E51–83 blends in part because of the wide variability in ethanol content encompassed. The Federal Trade Commission (FTC) recently finalized labeling requirements for higher level ethanol blends including E51–83. See section IV.F.8.a of this preamble for a discussion of the labeling provisions for higher-level ethanol blends.

⁴⁶ The requirements under the RFG complex emissions model are contained in 40 CFR 80.45.

⁴⁷ See the memorandum titled, “Volatility of Reformulated Gasoline,” available in the docket for this action.

⁴⁸ A 30 ppm average sulfur standard currently applies to all gasoline under the Tier 2 gasoline sulfur program (40 CFR 80.195). Under the final Tier 3 program, approved small refiners and small volume refineries may continue to produce gasoline meeting the Tier 2 30 ppm sulfur standard through December 31, 2019 (40 CFR 80.1603(a)). An 80 ppm refinery-gate per-gallon sulfur cap applies under both the Tier 2 and Tier 3 gasoline programs. A 95 ppm per-gallon sulfur cap applies at all facilities downstream of the refinery.

⁴⁹ See 40 CFR 80.1230.

⁵⁰ States can request that the EPA not apply the 1 psi RVP waiver to E10. The 1 psi RVP waiver for E10 does not apply in RFG areas. See CAA sections 211(h)(4) and (h)(5).

⁵¹ The definition of a refinery and a refiner is found in 40 CFR 80.2(h) and (i), respectively.

⁵² RFG refiners can still take advantage of other complex model fuel parameters to demonstrate compliance with the RFG program.

⁵³ Blender pumps that produce intermediate octane grades by mixing premium and regular gasolines have existed for decades. The EPA considers this to be the commingling of two compliant gasolines since the EPA currently has no in-use gasoline octane standards.

only blendstocks used when E85 was produced at refined product terminals. However, we understand that ethanol producers may also be producing E85 by blending DFE with hydrocarbon used as an ethanol denaturant. The Alcohol Tobacco Tax and Trade Bureau (TTB) specifies a range of hydrocarbons that can be used as an ethanol denaturant, including gasoline and natural gasoline.⁵⁴

B. Key Requirements Proposed for EFF and Producers of Gasoline at Blender Pumps

The proposed standards for EFF in this proposal will address the public health and welfare effects of EFF and its impact on emissions control devices on FFVs and FFV engines while providing new flexibility. The proposed standards are patterned on the EPA's Federal gasoline quality regulations and are designed to provide an equivalent level of emissions control performance when EFF is used in FFVs compared to the use of gasoline in conventional gasoline vehicles. As discussed above, the current regulations, as they relate to the production of E10, E15, and E16–50 at retail blender pumps include blender pump operators as subject to the requirements applicable to a gasoline refiner. These requirements include: Compliance with the health effects testing for the blends produced under the F&FA program; per-batch testing to demonstrate compliance with the sulfur, benzene, and RVP standards for gasoline; and registration, reporting, and recordkeeping requirements associated with demonstrating compliance.

In the Tier 3 proposal, we requested comment on several approaches for specifying standards that apply to E16–50 blends.⁵⁵ Under one approach, we sought comment on the need to have E16–50 (and any other fuel blend that is at least 50 volume percent gasoline) comply with the applicable gasoline requirements under our regulations and the need for regulatory amendments to clarify that these requirements apply. This approach would likely make the production of such blends at blender pumps impractical since blender pump-refiners would be subject to all of the requirements applicable to gasoline refiners, including registration under the F&FA program and per-batch testing. Under another approach, we sought comment on setting new standards that would apply to all EFF

blends, including E16–50.⁵⁶ This approach would be consistent with the current limitation that E16–83 may only be used in FFVs and would facilitate the production of E16–50 at blender pumps.

A number of comments on the Tier 3 proposal were in support of the EPA setting new standards for all EFF used in FFVs that would provide an equivalent level of protection to gasoline used in conventional gasoline vehicles and allow E16–50 to be made at blender pumps. However, the American Petroleum Institute (API) and the American Fuel and Petrochemical Manufacturers (AFPM) stated that the EPA should continue to treat E16–50 as gasoline to ensure an appropriate level of protection regarding the environmental quality of these blends.

In this action, we are proposing to adopt provisions to control the quality of all EFF blends, including E16–50. This proposal would make minor amendments to the regulations so that gasoline-ethanol blends of E50 and below that may not be used in conventional gasoline vehicles (currently E16–50)⁵⁷ are treated in a similar way to other EFF blends that may only be used in FFVs (*e.g.*, E51–83). Doing so would align our regulations with E16–50 use restrictions by no longer treating E16–50 as gasoline when it cannot legally be used in a conventional gasoline vehicle. We believe that the quality of EFF can be best assured by regulating in the same manner all gasoline-ethanol blends that can only be used in FFVs. If in the future, if a fuel manufacturer were to demonstrate that an ethanol blend greater than E15 is sub-sim to gasoline, or obtain a waiver under CAA section 211(f) to allow its use in conventional gasoline vehicles and engines, such a gasoline-ethanol blend would become subject to all of the requirements that apply to gasoline, including registration under the F&FA program.

We are also proposing fuel quality requirements for all EFF that would provide an equivalent level of emissions control when used in FFVs compared to the use of gasoline in conventional

gasoline vehicles. As discussed in section IV.C of this preamble, the proposed sulfur and benzene standards and elemental composition requirements for EFF directly parallel those for gasoline since levels of these fuel parameters have the same impact on the emissions performance for FFV and conventional gasoline vehicles. The proposed RVP requirements for EFF recognize the greater capability of the evaporative emissions control equipment on FFVs compared to conventional gasoline vehicles. As a result of more stringent vehicle certification testing requirements, FFVs can deliver the same level of evaporative emissions control as conventional gasoline vehicles when operated on a fuel that is 1 psi higher than gasoline. We are proposing RVP standards for EFF produced upstream of blender pumps that parallel those for gasoline without the 1 psi waiver for E10 that applies in certain areas. When blended at retail, however, the RVP of the EFF would be expected to rise. The proposed RVP standards for EFF produced upstream of retail and existing RVP standards for gasoline would ensure that EFF produced at blender pumps using EFF and gasoline is expected to be less than 1 psi higher. We believe that the proposed standards for the EFF and gasoline parent blends used at blender pumps would ensure an equivalent level of evaporative emissions control for FFVs operated on EFF to that for conventional gasoline vehicles operated on gasoline (without the 1 psi waiver for E10) without necessitating the implementation of specific RVP standards for EFF produced at blender pumps.⁵⁸

The proposed compliance provisions contain two primary elements: (1) Recordkeeping and reporting; and (2) In-use verification through a third-party survey.⁵⁹ We believe that in-use verification is critical feature in the proposed EFF compliance provisions as a check against potential fraud and abuse. This proposal includes streamlined compliance provisions for producers of E16–50 EFF blends and E15 gasoline at blender pumps based on the use of specified parent blends and

⁵⁴ Under this proposed approach, EFF would be defined as a gasoline-ethanol blend that has an ethanol content greater than that covered under a waiver obtained from the Administrator pursuant to the requirements of CAA section 211(f)(4) to allow its use in conventional gasoline vehicles, contains no more than 83 volume percent ethanol, and is suitable for use in FFVs or flex-fuel engines.

⁵⁵ Should an ethanol blend above E15 be granted a waiver in the future to allow its use in conventional gasoline vehicles, such a blend (*e.g.*, E20) would be grouped with other blends that can be used in conventional gasoline vehicles (*e.g.*, E10 and E15), and would subject to the gasoline quality requirements rather than those for EFF.

⁵⁸ For example: In conventional gasoline (CG) areas where a 9.0 psi RVP standard applies to gasoline, EFF produced upstream of the blender pump would also be subject to a 9.0 psi RVP standard. This proposed RVP standard for EFF and other proposed requirements for blender pump operators would ensure that the RVP of EFF made at blender pumps would be expected to be less than 10 psi in 9.0 psi CG areas.

⁵⁹ The proposed EFF quality survey requirements are discussed in section IV.F.9 of this preamble.

⁵⁴ The TTB requirements for ethanol denaturants are contained in 27 CFR part 21. Natural gasoline is a byproduct of natural gas production, as well as a gasoline blendstock produced at crude oil refineries.

⁵⁵ See 78 FR 29937–29938 (May 21, 2013).

participation in a fuel quality survey.⁶⁰ The proposed compliance provisions would represent a substantial reduction in the burden of compliance compared to the current requirements that apply to these fuels while continuing to ensure an equivalent level of emissions control performance to that under the current requirements.

Since the EPA has not yet designated fuels other than gasoline and highway diesel fuel as motor vehicle fuel, fuels such as E85 (E51–83) are not yet subject to the EPA's F&FA regulations. By regulating all E16–83 ethanol blends together in a similar fashion and clarifying that E16–50 blends are not required to meet the requirements for gasoline under this proposal, we are resolving the ambiguity of E16–50 blends with respect to their treatment under both our F&FA program and in-use fuel quality regulations. We are exempting E16–50 blends that are used in FFVs from the designation for gasoline and we are not designating EFF blends (E16–83) as motor vehicle fuels under the F&FA program in this proposal.⁶¹ The EFF blends would only become subject to F&FA regulations at such point in the future when the EPA takes action to designate them as motor vehicle fuels. Under this proposal, motor-vehicle gasoline-ethanol blends that have been registered by the EPA for use in conventional gasoline vehicles such as E15 would continue to be subject to our existing F&FA regulations. If in the future, a blend such as E20 that would be subject to the proposed requirements for EFF under this proposal were to be granted a waiver under CAA section 211(f) to allow its use in conventional gasoline vehicles, it would no longer be subject to the requirements for EFF and would become subject to all of the requirements applicable to gasoline, including registration under the F&FA program.

The only current EPA fuel quality requirement for E85 is that it must be substantially similar (sub-sim) to vehicle certification fuel.⁶² E85 has historically been produced by blending certified gasoline or BOBs with DFE. When E85 is made solely from EPA-

compliant gasoline, BOBs, and DFE, the EPA can be assured that the fuel is in compliance with the requirement that in-use E85 must be sub-sim to FFV certification fuel. Under this circumstance, the EPA is also assured that E85 fuel quality meets the same sulfur, benzene, and RVP requirements that apply to gasoline and is suitable to maintain the in-use emissions performance of FFVs.

A number of stakeholders have requested that the EPA promulgate regulations to allow the use of natural gasoline as a blendstock to produce EFF due to its lower cost compared to gasoline. Natural gasoline is an inexpensive and increasingly plentiful byproduct of the ongoing expansion in domestic natural gas and crude oil production, and its use to make EFF would decrease EFF production costs. If this savings were passed along to consumers, it may help increase demand for EFF. Due to the relative high volatility of natural gasoline and the low volatility of ethanol, the use of natural gasoline to make E85 could also facilitate the manufacture of E85 in the upper end of its allowable range in ethanol content (*i.e.*, 70 to 83 volume percent ethanol) while maintaining compliance with ASTM minimum volatility specifications.⁶³ Hence, the use of natural gasoline as an EFF blendstock could increase not only the demand for EFF in FFVs, but also the use of EFF with higher-level ethanol concentrations.

The current industry consensus-based controls on the quality of natural gasoline for use as an EFF blendstock⁶⁴ are not adequate to ensure the emissions control performance of FFVs.⁶⁵ Hence, there is currently no way that E85 blenders can use natural gasoline as a blendstock without potentially running afoul of the current sub-sim requirement for E85. Natural gasoline can have high sulfur and benzene content, potentially resulting in high levels of these harmful components in EFF. We believe that if natural gasoline used to produce EFF

contains chemical elements other than CHONS (*e.g.*, metals and salts), either naturally or through addition, it could also quickly destroy the effectiveness of FFV emissions control catalysts, which could lead to a substantial increase in emissions from FFVs. Although the high RVP of natural gasoline can be beneficial in producing EFF that meets minimum volatility requirements, the use of too much natural gasoline as an EFF blendstock can also result in EFF that exceeds the maximum RVP of fuels suitable for use in FFVs, resulting in diminished evaporative emissions control performance of FFVs. Thus, significant concern exists about the potential increase in FFV emissions that might result from the use of natural gasoline of uncontrolled quality as an EFF blendstock. Therefore, we believe that it is important to hold EFF to standards that provide an equivalent level of environmental protection as the current standards for gasoline.

This proposal includes standards and compliance provisions that would allow the use of natural gasoline as a blendstock to produce EFF while providing an equivalent level of environmental performance to that for gasoline. Under this proposal, there would be two classes of natural gasoline that could be used to produce EFF: Certified natural gasoline EFF blendstock and uncertified natural gasoline EFF blendstock. Certified natural gasoline EFF blendstock would be certified by its producer as being compliant with standards for sulfur, benzene, and CHONS.⁶⁶ EFF producers that use certified natural gasoline EFF blendstock would have more streamlined requirements compared to producers that use uncertified natural gasoline EFF blendstock with respect to demonstrating compliance with the proposed sulfur, benzene, and CHONS standards. EFF producers that use uncertified natural gasoline EFF blendstock would have more flexibility in the natural gasoline that could be used as an EFF blendstock but would have additional requirements to demonstrate compliance with the proposed sulfur, benzene, and CHONS standards.

The proposed requirements are designed to assure that EFF produced with natural gasoline will meet the sub-sim requirements, protect emissions control systems on FFVs, and assure that FFVs that use EFF achieve the same or better emissions control performance as conventional gasoline vehicles. Alternatively, we are requesting

⁶⁶ Maximum T90 distillation point, final boiling point, and RVP standards would also apply.

⁶⁰ E15 blender pump-refiners are currently already required to participate in an E15 quality survey pursuant to 40 CFR 80.1502.

⁶¹ See the proposed revisions to 40 CFR 70.51 regarding the requirements for motor vehicle gasoline under the F&FA program.

⁶² CAA section 211(f) requires that all fuels and fuel additives introduced into commerce must be substantially similar to the fuel used to certify vehicles. Vehicle certification fuel must meet the EPA specifications for use during vehicle emissions testing to demonstrate compliance with vehicle emissions standards.

⁶³ ASTM D5798–14 sets minimum volatility specifications for E85 to ensure startability and drivability. The low volatility of ethanol makes it difficult for high level ethanol blends to meet the minimum RVP specification using gasoline and BOBs. ASTM allows the ethanol concentration of E85 to be as low as 51 volume percent to allow sufficient hydrocarbon blendstocks to be used to facilitate compliance with the minimum volatility specifications.

⁶⁴ ASTM D8011–16, "Standard Specification for Natural Gasoline as a Blendstock in Ethanol Fuel Blends or as a Denaturant for Fuel Ethanol."

⁶⁵ See section IV.C.7 in this proposal for a discussion of the proposed controls on natural gasoline EFF blendstock and the current industry consensus controls on natural gasoline used as an E51–83 blendstock.

comment on formalizing the current approved practice that would require EFF to be produced only with EPA-compliant gasoline, BOBs, and DFE. This would be a much simpler program to implement and enforce, but would preclude the use of natural gasoline as an EFF blendstock.

This proposal includes three options that EFF producers could use to demonstrate compliance with the proposed standards, as discussed in the following sections. The EFF full-refiner and EFF bulk blender-refiner certification options are intended for EFF producers upstream of retail or wholesale purchaser consumer (WPC) facilities (e.g., petroleum terminals or ethanol plants).⁶⁷ The EFF blender pump-refiner option is intended for producers of EFF at retail or WPC facilities using a blender pump. This proposal also includes streamlined provisions for producers of gasoline at blender pumps. We are soliciting comments on all aspects of this proposal, as well as alternative requirements that would address the public health and welfare effects of EFF and its impacts on emissions control devices.

This proposal would provide substantial additional flexibility for EFF producers that accommodate current market realities while ensuring that EFF used in FFVs is of sufficient quality to control pollution. The regulatory burden for the EFF producers who choose to take advantage of these flexibilities would be modest in comparison to the economic benefit realized by taking advantage of the flexibility, and largely consistent with current industry practices.⁶⁸ In addition, the increased flexibility to produce EFF that would be provided by this rule, could result in the increased use of ethanol in motor fuels, thereby furthering the goals for increased use of renewable fuels under the RFS program. By facilitating the use of plentiful and inexpensive domestic natural gasoline in EFF, this rule, when finalized, could also result in reduced fuel costs to consumers and improved energy security. Absent the amendments contained in this proposal, the EPA would have to rely on the existing regulatory requirements to prevent a potentially substantial increase in vehicle emissions from the use of EFF that failed to meet the fuel quality standards necessary for vehicles to

⁶⁷ Bulk blenders create finished fuel by blending different fuel components just prior to when the fuel “breaks bulk” at terminals as is dispensed into a tank truck for delivery to fuel retail.

⁶⁸ Additional registration, testing, recordkeeping, and reporting requirements would apply to certain parties.

maintain proper emission performance. Doing so would not provide as robust and transparent a level of environmental and emissions control protection as the requirements in this proposal and could be disruptive to the production of higher-level ethanol blends. In addition to ensuring the environmental performance of EFF used in FFVs, the provisions in this proposal could prevent added costs to FFV owners who might otherwise face premature repairs or replacement of emissions control equipment (e.g., vehicle catalyst) from the use of poor quality fuel.

1. EFF Full-Refiner Option

Under the first option for producing EFF (the “EFF full-refiner option”), uncertified natural gasoline EFF blendstock could be used to produce EFF provided that each batch is sampled and tested to demonstrate compliance with sulfur, benzene, and RVP standards similar to the requirements for a gasoline refiner. EFF full-refiners could also use certified gasoline, BOBs, certified natural gasoline EFF blendstock, DFE, and undenatured ethanol as EFF blendstocks.⁶⁹

Under the EFF full-refiner option, uncertified natural gasoline EFF blendstock of relatively higher sulfur and benzene content compared to certified natural gasoline EFF blendstock could be used to produce EFF as long as the potential impact on the sulfur and benzene levels in the finished EFF was mitigated by the use of lower sulfur/benzene DFE or undenatured ethanol. Ethanol producers have stated that allowing for such “ethanol dilution” would be important to broaden the potential pool of natural gasoline that could be used as EFF blendstock. Similar to the requirements for gasoline refiners, we are proposing that EFF full-refiners would be subject to a 0.62 volume percent annual average benzene standard, a 10 ppm annual average sulfur standard, an 80 ppm refinery gate per-gallon sulfur cap for the EFF they produce, and that the EFF they produce must be comprised solely of CHONS. Similar to the sulfur and benzene standards for gasoline refiners, compliance with the average sulfur and benzene standards for EFF produced or imported under the full-refiner option would be evaluated annually on an EFF refinery-by-refinery basis. However, we are not proposing to include EFF sulfur or benzene credit banking and trading (BT) provisions because we do not

⁶⁹ In order to use undenatured ethanol as a blendstock, the EFF full-refiner would be required to be an ethanol producer.

believe that such provisions are needed to mitigate the burden of compliance as was the case under the EPA’s gasoline sulfur and benzene programs.

We are proposing that EFF produced by EFF full-refiners and EFF bulk blender-refiners and EFF sold at retail without further blending at a blender pump would be subject to a 9.0 psi RVP standard in CG areas where gasoline is subject to a 9.0 psi RVP standard, a 7.8 psi RVP standard in conventional gasoline areas where gasoline is subject to a 7.8 psi RVP standard, and a 7.0 psi RVP standard in reformulated gasoline (RFG) areas.⁷⁰ Alternatively, for all conventional gasoline areas we are also requesting comment on setting a uniform 9.0 psi RVP standard for EFF produced by full-refiners and EFF bulk blender-refiners. As discussed in section IV.C.3 of this preamble, these proposed EFF RVP requirements are necessary to ensure that the RVP of EFF blends produced at blender pumps does not exceed the evaporative emissions control capabilities of FFVs.⁷¹

We expect that producers of EFF would only take on the additional compliance burden under the EFF full-refiner option to the extent that the proposed flexibility to use uncertified natural gasoline EFF blendstock would be economically advantageous. Producers that do not wish to take on the additional burden could use the streamlined compliance provisions under the EFF bulk blender-refiner option. We anticipate that some ethanol producers and perhaps some crude oil refineries may use the EFF full-refiner option.

Ethanol producers have stated that the proposed per-batch testing requirement is not consistent with the current practice of producing E85 by in-line blending as the fuel is dispensed into a tank truck for delivery downstream. Therefore, we are also requesting comment on alternatives to in-tank testing of each batch of finished EFF to streamline the compliance demonstration process. To demonstrate that EFF made with natural gasoline contains no non-CHONS elements, EFF full-refiners would be required to maintain records to document that the natural gasoline was sourced from a

⁷⁰ Requiring EFF to meet a 7.0 RVP standard in RFG areas should provide the same level of evaporative emissions control as that provided by compliance with the RFG complex emissions model.

⁷¹ These proposed RVP standards for EFF produced upstream of blender pumps and other proposed requirements for blender pump-refiners would ensure that the RVP of EFF made at blender pumps is expected to be less than 10 psi in 9 psi CG areas, less than 8.8 psi in 7.8 CG areas, and less than 8.0 psi in RFG areas.

natural gas processing facility or petroleum refinery. EFF full-refiners would be subject to registration, recordkeeping, reporting, and PTD requirements similar to those for a gasoline refiner. We are also requesting comment on whether EFF full-refiners should be required to participate in the proposed EFF quality survey.

2. EFF Bulk Blender-Refiner Option

The EFF full-refiner option would provide parties with the most blending flexibility, in exchange for taking on the added testing burden to demonstrate compliance. We anticipate that the majority of EFF would continue to be made by bulk blenders at petroleum terminals and ethanol plants where the per-batch testing requirement under the full-refiner option may not be practicable. Therefore, this proposal contains a second option for streamlined production of EFF (the "EFF bulk blender-refiner option") for producers that only use blend components that have been certified upstream as meeting the applicable sulfur, benzene, and CHONS requirements. The standards and compliance demonstration requirements under this option are similar to those that apply to oxygenate blenders under the EPA's gasoline quality requirements.⁷² EFF bulk blender-refiners could use only certified natural gasoline EFF blendstock as well as certified gasoline, BOBs, and DFE that have been certified upstream for compliance with sulfur, benzene, and CHONS specifications.⁷³ We anticipate that all terminals and most ethanol productions plants would use the EFF bulk blender-refiner option to

demonstrate that the EFF they produce is in compliance with the proposed requirements.⁷⁴ Because of the reduced ability for EFF produced by EFF bulk blender-refiners to be high in sulfur, benzene, or non-CHONS, there would be reduced requirements for EFF bulk blender-refiners to demonstrate compliance with the proposed sulfur, benzene, and CHONS requirements. The proposed 10 ppm annual average sulfur standard, 0.62 volume percent annual average benzene standard, and CHONS requirement would still apply to EFF bulk blender-refiners. However, EFF bulk blender-refiners could demonstrate compliance with these standards and would be excused from most if not all of the per-batch sampling and testing requirements that apply under the EFF full-refiner option by maintaining PTDs to demonstrate that they used only approved EFF blendstocks and by participating in the proposed EFF quality survey. In parallel with the EPA's gasoline sulfur program, a 95 ppm per-gallon sulfur cap would also apply to EFF bulk blender-refiners.

We are also proposing that EFF bulk blender-refiners would be subject to the same RVP specifications proposed for EFF full-refiners. If EFF bulk blender-refiners limited the blendstocks they use to DFE and certified gasoline or BOBs that do not take advantage of the 1 psi waiver for E10, the EFF RVP blending characteristics would ensure compliance with the proposed RVP specifications for EFF. Therefore, we are proposing that EFF bulk blender-refiners that use only DFE and certified gasoline or BOBs that do not take advantage of the 1 psi RVP waiver for E10 could demonstrate compliance with

the proposed RVP requirements for EFF simply by keeping records of the blendstocks they used and participating in the proposed EFF quality survey. Thus, such EFF bulk blender-refiners would not be required to conduct RVP testing on the EFF they produce.

The relatively higher volatility of certified gasoline or BOBs that take advantage of the 1 psi waiver for E10, and/or certified natural gasoline EFF blendstock means that EFF blends made using these blendstocks could potentially result in the finished EFF exceeding the proposed RVP specifications. Therefore, when EFF bulk blender-refiners use certified gasoline or BOBs that take advantage of the 1 psi waiver for E10, and/or certified natural gasoline EFF blendstock, there would be additional requirements to demonstrate compliance with the proposed RVP standards for EFF. EFF bulk blender-refiners that use these blendstocks could demonstrate compliance with the proposed RVP requirements through per-batch testing. However, since RVP testing of the small tank truck-sized batches of EFF that we expect EFF bulk blender-refiners would produce may be impractical, we are proposing that an RVP compliance tool could be used in lieu of per-batch testing to demonstrate compliance with the proposed RVP requirements by EFF bulk blender-refiners that use gasoline or BOBs that take advantage of the 1 psi waiver and/or certified natural gasoline EFF blendstock to produce EFF.⁷⁵ The methods that EFF bulk blender-refiners may use to demonstrate compliance with the proposed RVP requirements for EFF are summarized in Table IV.B.2-1 below.

TABLE IV.B.2-1—METHODS AVAILABLE TO EFF BULK BLENDER-REFINERS TO DEMONSTRATE COMPLIANCE WITH THE PROPOSED EFF REQUIREMENTS

Hydrocarbon blendstocks	Compliance demonstration method		
	Blendstock PTDs	Compliance tool	Test
—Gasoline & BOBs that <i>do not</i> take advantage of the E10 1 psi waiver	Yes	Yes	Yes.
—Gasoline & BOBs that <i>do</i> take advantage of the E10 1 psi RVP waiver ...	No	Yes	Yes.
—Certified natural gasoline EFF blendstock.			

⁷²In producing finished gasoline, gasoline oxygenate blenders must use oxygenates and BOBs that have been certified by their respective producers as being compliant with applicable sulfur and benzene standards, and CHONS requirements. The benzene content and CHONS compliance of the finished gasoline produced by oxygenate blenders is governed by the blend components used. Hence, oxygenate blenders are deemed to be in compliance with gasoline benzene and CHONS requirements if they use only approved blends components. There is the potential for sulfur addition from contamination during distribution and the use of sulfur containing additives downstream of the

gasoline refinery. Therefore, gasoline oxygenate blenders and other parties in the downstream gasoline distribution system are subject to a downstream sulfur standard that accommodates this potential increase in fuel sulfur downstream of the refinery during distribution. The BOBs used by gasoline oxygenate blenders are formulated to assure compliance with the applicable RVP requirements when blended at the approved blend ratio with ethanol. Hence, oxygenate blenders are not required to conduct sampling and testing to demonstrate compliance with gasoline RVP requirements if they are using only the approved blend components.

⁷³Ethanol producers could also use undenatured ethanol as an EFF blendstock.

⁷⁴Crude oil refineries have a facility that acts as a terminal for the purposes of distributing finished fuels. We expect that most such crude oil refiners could also use the EFF bulk blender-refiner option for the EFF they produce.

⁷⁵The RVP compliance tool would use information on the RVP of the blendstocks used and the blend ratios to produce EFF to calculate the RVP of the finished blend. See section IV.F.3 of this preamble.

We are also proposing registration, recordkeeping, reporting, and PTD language requirements for EFF bulk blender-refiners. To ensure compliance, the producers of certified natural gasoline used by EFF bulk blender-refiners would be required to demonstrate that their product is compliant with EPA fuel quality requirements. EFF bulk blender-refiners would rely on the PTDs from the producers of the blendstocks they use to produce EFF to demonstrate compliance with the proposed sulfur, benzene, and CHONS requirements, rather than per-batch testing. We are proposing new registration, reporting, sampling, testing, and PTD requirements for producers of certified natural gasoline EFF blendstock to demonstrate that their product meets the following proposed standards: 10 ppm per-gallon sulfur cap, 0.62 volume percent benzene cap, 275 °F T90 distillation cap, 375 °F final boiling point cap, and 15 psi RVP cap. These sulfur and benzene standards for certified natural gasoline EFF blendstock are necessary to ensure that finished EFF has comparable levels of these fuel parameters to the levels present in gasoline when the potential dilution of these fuel parameters by ethanol cannot be evaluated as under the EFF full-refiner option. The T90 and final boiling point specifications would ensure that an uncharacteristic amount of higher boiling fraction hydrocarbons are not present. The RVP of EFF made with certified natural gasoline EFF blendstock would be controlled by the maximum RVP specifications for EFF discussed above. The proposed 15 psi RVP cap for certified natural gasoline EFF blendstock would help to ensure that an inappropriately high concentration of higher boiling compounds that are not typically native to natural gasoline are not present in significant quantities.

It is possible that a significant volume of natural gasoline that meets the proposed specifications for certified natural gasoline EFF blendstock without further processing could be segregated from the broader natural gasoline pool. Although there would be additional costs in segregating such naturally “sweet” natural gasoline from the general natural gasoline pool for use as certified natural gasoline EFF blendstock, such segregation costs would likely be lower than the additional processing costs to reduce the sulfur and benzene content of natural gasoline from the general natural gasoline pool to meet the proposed specifications. Therefore, segregation of such naturally sweet natural gasoline

may be the initial means used to produce compliant certified natural gasoline EFF blendstock. Gasoline refiners would also find natural gasoline meeting the proposed standards for certified natural gasoline EFF blendstock a desirable gasoline blendstock.⁷⁶ The additional processing costs to produce certified natural gasoline EFF blendstock meeting the proposed specifications are estimated to be the same or less than the cost to gasoline refiners to meet the applicable sulfur and benzene standards for gasoline. We expect that there would be no additional processing costs associated with natural gasoline meeting the proposed maximum RVP specification since we believe that the proposed 15 psi RVP cap is consistent with existing industry practice. The proposed T90 and final boiling specifications are consistent with the more stringent industry specifications.⁷⁷ There would be additional costs in transporting certified natural gasoline EFF blendstock to EFF bulk blender-refiners.

The use of certified natural gasoline EFF blendstock to produce EFF would be voluntary. We expect that producers of certified natural gasoline and EFF bulk blender-refiners would only take on the additional costs to the extent that the proposed flexibility to use certified natural gasoline EFF blendstock to produce EFF would be economically advantageous. However, we expect that the cost savings from the use of certified natural gasoline EFF blendstock meeting the proposed standards compared to the use of gasoline or BOBs would far outweigh the costs of providing natural gasoline that meets the proposed specifications. EFF bulk blender-refiners that do not wish to take advantage of the proposed flexibility to use certified natural gasoline EFF blendstock could continue to blend EFF using gasoline, BOBs, and DFE as current E85 blenders do.

3. EFF Blender Pump-Refiner Option

Compliance with the existing per-batch testing requirements in a retail setting is impractical because each vehicle fill-up would be considered a batch. Therefore, this proposal also includes a third option for the streamlined production of EFF by EFF

blender pump-refiners at fuel retail and WPC facilities. The proposed EFF blender pump-refiner option does not have a parallel under current EPA fuels regulations. Historically, gasoline retailers have not produced or blended fuel, but only received certified batches of gasoline of like ethanol content (*e.g.*, E0, E10, or E15) for delivery into segregated storage tanks. This commingling of certified gasoline did not require any further demonstration of compliance beyond maintaining product transfer documents. Gasoline retailers have produced mid-grade octane gasoline by mixing regular and premium grades at the pump for decades. However, this is commingling two previously certified gasolines and mixing of two previously certified gasoline would be expected to always result in a compliant mixture. The proposed blender pump-refiner provisions, in combination with the proposed provisions to regulate E16–50 with E51–83 rather than continuing to treat E16–50 as gasoline, would allow EFF blender pump-refiners to continue to operate with minimal additional burden.

To ensure proper fuel quality without placing unworkable testing requirements on each batch produced by a blender pump, we are proposing to limit the parent blends that can be used at blender pumps to produce EFF blends to compliant gasoline (E0, E10 with or without the 1 psi waiver, and E15) and EFF that satisfies the proposed fuel quality requirements.⁷⁸ The proposed 10 ppm annual average sulfur standard, 0.62 volume percent annual average benzene standard, and CHONS requirement for EFF would apply to EFF blender pump-refiners. However, EFF blender pump-refiners could demonstrate compliance with these requirements simply by maintaining PTDs to demonstrate that they used only approved EFF parent blends and by participating in the proposed EFF quality survey.⁷⁹ Since the parent blends used by EFF blender pump-refiners would be required to be compliant with the applicable sulfur, benzene, and CHONS requirements, the linear blending characteristics of these fuel parameters would ensure that the resulting intermediate blends are also compliant.⁸⁰ In parallel with the EPA’s

⁷⁶ Refiners that use certified natural gasoline EFF blendstock to produce gasoline would be subject to all of the requirements applicable to a gasoline refiner, including per-batch testing.

⁷⁷ See section IV.C.7 of this preamble for a discussion of the proposed controls on natural gasoline EFF blendstock and the current industry consensus controls on natural gasoline used as an E51–83 blendstock.

⁷⁸ We are also seeking comment on allowing DFE to be used as a parent blend at blender pumps.

⁷⁹ Dedicated EFF dispensers (*e.g.*, conventional E85 dispensers) would also be required to participate in the proposed EFF quality survey.

⁸⁰ Parent blends used at blender pumps would also be required to be compliant with the applicable RVP requirements.

gasoline sulfur program, a 95 ppm per-gallon sulfur cap would also apply to EFF blender pump-refiners.

Consistent with the gasoline volatility program, EFF parent blends at blender pumps and EFF at dedicated EFF dispensers would be required to be compliant with the proposed RVP requirements annually from June 1 through September 15 of each year. Also consistent with the gasoline volatility program, we are proposing a May 1 through September 15 RVP compliance period for all upstream parties to aid in the seasonal transition to RVP compliant EFF at retail facilities. EFF blender pump-refiners and operators of dedicated EFF dispensers would primarily rely on PTDs and participation in the proposed EFF quality survey to demonstrate compliance with the proposed RVP requirements. However, such retailers would also need to manage their EFF fuel deliveries to ensure that wintertime EFF that is not subject to the proposed RVP requirements is turned over to

summertime RVP-compliant EFF by the proposed June 1 compliance date.⁸¹ We are requesting comment on whether the proposed May 1 RVP compliance date for EFF upstream of retail and WPC facilities provides sufficient opportunity for EFF retail and WPC tank turnover as is the case for the seasonal tank turnover of gasoline retail and WPC tanks.

We believe that the RVP requirements on the parent blends used at blender pumps would provide effective control of the RVP of EFF produced at blender pumps. This is because the certification testing requirements for FFVs result in FFVs being equipped with evaporative emissions control equipment that is sized to control emissions when a 10 psi fuel is used. Conventional gasoline vehicles have evaporative emissions control equipment that is sized to control emissions from a 9.0 psi fuel. The proposed parent blend requirements for blender pump-refiners would ensure that the RVP of EFF blends made at blender pumps is expected to be less than 10 psi. This is

for the worst case situation in CG areas where a 9.0 psi gasoline standard and the 1 psi waiver for E10 applies. In other areas with lower gasoline volatility requirements the RVP of EFF made at blender pumps would be correspondingly lower. Therefore, we believe that setting an RVP standard for E16–50 produced at blender pumps would not be necessary to prevent an increase in evaporative emissions from FFVs.⁸² The EPA may reevaluate the need to implement additional controls on the RVP of E16–50 blends produced at blender pumps in a later action if testing of such blends indicates that additional controls are needed. We request comment on whether such additional controls are needed at this time.⁸³ The proposed requirements for parent blends used at blender pumps and the expected maximum RVP of the EFF produced at blender pumps that would result from these requirements are summarized in Table IV.B.3–1 below.

TABLE IV.B.3–1—PROPOSED BLENDER PUMP PARENT BLEND REQUIREMENTS AND EXPECTED MAXIMUM RVP OF EFF BLENDS PRODUCED AT BLENDER PUMPS

Area	Potential gasoline parent blends (maximum RVP)	EFF parent blend (maximum RVP standard for EFF full-refiners and EFF bulk blender-refiners) *	Expected maximum RVP of EFF blends made at blender pump **
9.0 RVP CG Area with 1 psi E10 Waiver	10.0 psi E10	9.0 psi EFF	10.0 psi
9.0 RVP CG Area without 1 psi E10 Waiver	9.0 psi E0 9.0 psi E15 9.0 psi E10	9.0 psi EFF	10.0 psi
7.8 RVP CG Area with 1 psi E10 Waiver	8.8 psi E10	7.8 psi EFF	8.8 psi
7.8 RVP CG Area without 1 psi E10 Waiver	7.8 psi E0 7.8 psi E15 7.8 psi E10	7.8 psi EFF	8.8 psi
RFG Area	7.8 psi E0 7.8 psi E15 7.0 psi E10	7.0 psi EFF	8.0 psi

* These maximum RVP standards would apply to EFF sold from dedicated EFF dispensers as well as to EFF parent blends at blender pumps.

4. Requirements for Gasoline Blender Pump-Refiners

Under the current regulations, fuel retailers that produce E10 or E15 at blender pumps would be subject to the gasoline refiner provisions that require per-batch sulfur, benzene, and RVP testing.⁸⁴ This proposal includes provisions that would allow gasoline blender pump-refiners that produce E15 to demonstrate compliance with the

requirements for gasoline refiners from September 16 through May 31 by using only approved parent blends, analogous to those proposed for EFF produced at blender pumps. We are also proposing provisions that could be used by blender pump-refiners that produce E15 from June 1 through September 15 in some circumstance. We are also requesting comment on similar provisions that might be used to

regulate blender pumps that produce E10.

5. Requirements for Other Parties in the EFF Distribution System

All parties in the EFF distribution chain downstream of EFF full-refiners and EFF bulk blender-refiners and upstream of EFF blender pump-refiners would be subject to the proposed sulfur, benzene, RVP, and CHONS

⁸¹ This is analogous to the management of gasoline deliveries by gasoline retailers to facilitate compliance with the seasonal RVP requirements for gasoline.

⁸² Although EFF blends made at blender pumps would not be subject to a specific RVP standard, the parent blends used at blender pumps, including the EFF RVP parent blend, would be subject to the applicable RVP standard.

⁸³ See section IV.C.3 of this preamble for additional discussion on the proposed RVP provisions for EFF.

⁸⁴ RVP testing would apply from June 1 through September 15.

requirements. Compliance with these standards could be demonstrated by these parties by maintaining records on the EFF batches they handle.

C. Standards for Ethanol Flex Fuel

The goal of these proposed quality standards for EFF is to ensure that FFVs provide the same level of emissions control performance as conventional gasoline vehicles. Since FFVs are equipped with the same catalysts and emissions control systems to control emissions as are conventional gasoline vehicles, FFV catalyst efficiency and emission control performance is subject to the same deleterious effects from fuel sulfur and atypical (non-CHONS) elements. The potential for benzene emissions from FFVs also correlates to the benzene content of the fuel used just as for conventional gasoline vehicles. The maximum RVP of fuels used in FFVs also must not exceed the capacity of the vehicle evaporative emissions control system, as it could result in uncontrolled emissions of volatile organic compounds (VOCs).

Similar to the gasoline sulfur program, the proposed standards that would apply to various parties in the EFF production and distribution system, and the means to demonstrate compliance with these standards would vary depending on their ability to affect EFF quality. This proposal contains three options under which an EFF producer can certify that their product is compliant with the applicable standards: The full-refiner option, the bulk blender-refiner option, and the blender pump-refiner option.⁸⁵ A detailed discussion of the proposed standards is provided below.

1. EFF Sulfur Standards

Under the Tier 3 gasoline program, the EPA promulgated a 10 ppm annual average sulfur standard and 80 ppm refinery gate per-gallon sulfur cap for gasoline in order to allow gasoline refiners flexibility to accommodate brief excursions from the sulfur average standard during upsets in the operation of gasoline desulfurization units.⁸⁶ Similarly, we are proposing that a 10 ppm annual average sulfur standard would apply to all EFF. EFF full-refiners would also be subject to an 80 ppm refinery gate per-gallon sulfur cap similar to the requirements for gasoline refiners. Although EFF full-refiners are not expected to be desulfurizing EFF, but merely choosing which blendstocks to use to produce EFF, we believe that

this approach would provide them with the flexibility to use an occasional batch of uncertified natural gasoline blendstock that has a somewhat higher sulfur content provided that they comply with the proposed 10 ppm annual average sulfur standard. We believe that this could help facilitate the use of natural gasoline as an EFF blendstock while maintaining the environmental goals of the program. EFF full-refiners would be required to test each batch of EFF to demonstrate compliance with these sulfur standards.

The 10 ppm annual average sulfur standard would apply to all parties throughout the EFF distribution system as well as to EFF full-refiners. However, parties other than the EFF full-refiner, such as bulk blenders, distributors, and retailers, would be deemed to be in compliance with the 10 ppm annual average sulfur standard if they maintain records to demonstrate they did not introduce uncertified blendstocks into the EFF they produce or distribute. The sulfur content of EFF produced by bulk blender-refiners and blender pump-refiners would be governed by the blending restrictions that accompany these certification options. All of the approved blend components would be subject to a 10 ppm annual average sulfur standard or a more protective 10 ppm per-gallon sulfur cap standard.⁸⁷ Depending on the sulfur content of the blend components used, the sulfur content of an individual batch of EFF could be greater than 10 ppm. However, the requirements on the blendstocks used by EFF bulk blender-refiners and EFF blender pump-refiners would ensure compliance with the 10 ppm annual average sulfur standard.

Consistent with the downstream gasoline sulfur standard under the current Tier 2 gasoline program and the Tier 3 gasoline program that will become effective January 1, 2017, we are proposing that EFF would be subject to a 95 ppm per-gallon sulfur cap standard downstream of EFF full-refiner facilities. This 95 ppm per-gallon sulfur cap would apply to EFF bulk blender-refiners, EFF blender pump-refiners and all other parties in the EFF distribution system downstream of EFF full-refiners. We believe that this would be sufficient to accommodate the use of gasoline that meets the 95 ppm per-gallon sulfur cap as an EFF blendstock by EFF bulk blender-refiners, and sulfur contamination from the use of downstream sulfur-containing EFF

additives. An additional 15 ppm from the 80 ppm refinery gate sulfur cap was provided for gasoline downstream of the refinery gate under the Tier 3 gasoline program to allow for the most extreme cases where sulfur might be added to gasoline as a result of contamination during distribution or through the use of additives when sulfur is an essential functional component in the additive (e.g., corrosion control, demulsifiers). Sulfur contamination during gasoline distribution is typically limited to less than 2 ppm. High sulfur additives are only used to remedy specific instances of gasoline quality problems where their treatment rate is governed by the desire to limit the added cost from their use.

We believe that distributors of EFF should be able to limit sulfur contamination at least as effectively as distributors of gasoline because EFF cannot be distributed by pipeline, which is where there is the highest potential for sulfur contamination of gasoline. The one link in the EFF production chain where unique concerns may exist regarding limiting sulfur contamination is in the distribution of certified natural gasoline EFF blendstock. The procedures necessary to limit contamination to the level required under this proposal may not be familiar to distributors of natural gasoline since natural gasoline is typically subject to broader quality specifications than those proposed for use as an EFF blendstock. Hence, there may be an increased chance for sulfur contamination of certified natural gasoline EFF blendstock during distribution from other higher-sulfur natural gasoline in the distribution chain during the initial phase-in of the program. The proposed 10 ppm per-gallon sulfur cap on certified natural gasoline EFF blendstock would apply throughout the distribution chain, including at the EFF full-refinery or bulk blender-refinery that uses certified natural gasoline EFF blendstock to make EFF. Therefore, sulfur contamination during the distribution of certified natural gasoline EFF blendstock should not impact the sulfur content of EFF. We would work with the producers, distributors, and users of certified natural gasoline EFF blendstock to make them aware of their responsibility to limit contamination during distribution during the implementation of the final rule.

Gasoline additives exist that are suitable for use in EFF. To the extent that additives may be specifically designed for use in EFF, we believe that such additives would not require higher sulfur content as an essential functional component to a greater extent than that

⁸⁵ The proposed EFF certification options are discussed in section IV.D of this preamble.

⁸⁶ See 79 FR 23414 (April 28, 2014).

⁸⁷ Gasoline and BOBs are currently subject to a 10 ppm annual average sulfur standard. We are proposing a 10 ppm per-gallon sulfur cap for certified natural gasoline EFF blendstock.

for additives designed solely for use in gasoline. Hence, we believe that the proposed 95 ppm downstream per-gallon sulfur cap for EFF would also be sufficient to accommodate even the most extreme cases of where sulfur contamination is at an unavoidable maximum and the maximum treatment rate of sulfur-containing additives is needed to address in-use quality problems. We anticipate that the vast majority of EFF would be close to the proposed 10 ppm annual average sulfur standard. Under the current Tier 2 gasoline program that places an average 30 ppm sulfur specification on refineries, gasoline survey data indicates that in-use gasoline sulfur average is 21 ppm with only 18 percent of the samples in the survey above 30 ppm, 2 percent above 50 ppm, and no samples above 80 ppm.⁸⁸ We intend to review in-use EFF and gasoline data after the implementation of the EPA's Tier 3 gasoline sulfur program and evaluate whether it would be possible to reduce the 80 ppm refinery gate and/or the 95 ppm downstream per-gallon sulfur caps for EFF and/or gasoline in a later action.⁸⁹ If such reductions are possible, it would provide improved ability for the EPA to more readily detect the potential addition of illegal high-sulfur blendstocks to EFF and/or gasoline.

The gasoline sulfur control program includes banking and trading (BT) provisions for sulfur credits across gasoline production facilities and companies. These BT provisions were included to address concerns that it would be difficult and costly for refiners to install the necessary desulfurization equipment to reduce the sulfur content of gasoline down to a 10 ppm annual average due to the high levels of sulfur naturally occurring in crude oil. In comparison, EFF producers could comply with the proposed sulfur specifications simply by using existing low sulfur DFE and gasoline as blendstocks as they do currently. Such EFF producers would have only minimal additional recordkeeping and PTD requirements as a result of this proposal.⁹⁰ Since EFF full-refiners and

importers are not expected to need to install desulfurization equipment to produce EFF that complies with the proposed standards, we do not expect that a subset of EFF full-refiners would face a substantially greater compliance burden compared to others as was the case for gasoline refiners under the EPA's gasoline sulfur program. Therefore, credit trading among EFF full-refiners and importers is not necessary to ease the burden of compliance as it was under the gasoline sulfur program. Consequently, we are proposing that compliance with the proposed average standard sulfur standard for EFF would be evaluated on an EFF refinery-by-refinery basis.

API and AFPM commented on the Tier 3 proposal that BT provisions should be included for E16–50 producers and that the trading of credits generated under such provisions should be allowed to be used by gasoline refiners to demonstrate compliance with the gasoline sulfur standards. We do not believe that there is a need to allow any additional source of sulfur credits to enable compliance with the Tier 3 gasoline standards, and given the large volume difference, we believe allowing gasoline sulfur credits to be used for EFF compliance would circumvent reducing EFF sulfur levels to 10 ppm. Therefore, we are not proposing to allow any credit trading between EFF and gasoline.

2. EFF Benzene Standards

We are proposing that EFF would be subject to the same 0.62 volume percent annual average benzene standard that applies to gasoline. The Tier 3 proposal requested comment on the potential that EFF might be able to satisfy more stringent benzene requirements due to a potential increased benzene dilution effect in higher ethanol content blends.⁹¹ We agree with the comments received that this would not be practical because of the uncertain benzene contribution to EFF from gasoline used as an EFF blendstock that is required to meet a 0.62 volume percent annual average benzene standard. This would particularly be an issue for lower-level ethanol content EFF blends such as E30 to the extent they may be produced upstream of a blender pump by an EFF full-refiner or bulk blender-refiner in the future rather than at a blender pump. In addition, holding EFF to a 0.62 volume percent annual average benzene standard would ensure an equivalent

level of environmental protection as is provided by the requirements for gasoline while providing EFF full-refiners with greater flexibility in the natural gasoline they could use as an EFF blendstock. Therefore, while we believe that EFF produced by EFF full-refiners will typically be below 0.62 volume percent benzene concentration due to dilution from ethanol, we are proposing to set the benzene standard at the same 0.62 volume percent annual average applicable to gasoline.

EFF full-refiners would be required to test each batch of EFF to demonstrate compliance with the proposed annual average benzene standard. The 0.62 volume percent annual average benzene standard would apply to all parties throughout the EFF distribution system as well as to EFF full-refiners. However, parties other than EFF full-refiners, such as bulk blenders, distributors, and retailers, would be deemed to be in compliance with the 0.62 volume percent annual average benzene standard if they maintain records to demonstrate that they did not introduce uncertified blendstocks into the EFF they produce or distribute. Similar to the discussion above regarding sulfur, we are proposing that the benzene content of EFF produced by bulk blender-refiners and blender pump-refiners would be governed by the blending restrictions that accompany these certification options. All of the approved blend components would be subject to a 0.62 volume percent annual average benzene standard or a more protective benzene per-gallon cap standard.⁹² Depending on the benzene level of any gasoline blendstock used, the benzene level of an individual batch of EFF could be greater than 0.62 volume percent. However, the requirements on the blendstocks used by EFF bulk blender-refiners and EFF blender pump-refiners would ensure compliance on an annual average basis.

Similar to the proposed EFF sulfur standards, we are also not proposing a BT program for the EFF benzene standards. We believe that the same conditions that led the EPA to include provisions under the gasoline benzene program for BT of benzene credits are not present for EFF full-refiners and importers. We do not expect that EFF full-refiners and importers would need to install processing equipment to remove benzene from EFF to meet the proposed 0.62 volume percent annual average benzene standard as was the

⁸⁸ Based on a review of 2013–2015 U.S. retail gasoline sulfur data from the proprietary Alliance of Automobile Manufacturers North American Fuel Survey. These data are available for purchase from the Alliance of Automobile Manufacturers, 803 7th Street NW., Suite 300, Washington, DC 20001.

⁸⁹ The gasoline 10 ppm annual average sulfur standard under the EPA's Tier 3 gasoline sulfur program will become effective on January 1, 2017.

⁹⁰ The only current means for a producer of E51–83 to be assured of compliance with the current requirement that E51–83 must be substantially similar to the fuel used during FFV vehicle certification is to limit the blendstocks used to gasoline, BOBs, and DFE. E16–50 is currently

subject to all of the requirements for gasoline. This proposal would regulate all gasoline-ethanol blends that may only be used in FFVs (E16–83) as a group.

⁹¹ See 78 FR 29936–29938 (May 21, 2013).

⁹² Gasoline and BOBs are subject to a 0.62 volume percent annual average benzene standard. We are proposing a 0.62 volume percent benzene per-gallon cap for certified natural gasoline EFF blendstock.

case for gasoline refiners. EFF full-refiners and importers could comply with the proposed benzene specifications simply by using existing low-benzene DFE and gasoline as blendstocks as they do currently. Such EFF producers would have only minimal additional recordkeeping and PTD requirements as a result of this proposal. Hence, we are proposing that compliance with the proposed 0.62 volume percent annual average benzene standard would be evaluated annually on an EFF refinery-by-refinery basis.

3. EFF Volatility Standards

Volatility is a measure of the propensity of a liquid to evaporate. RVP is a standard measure of fuel volatility at 100 °F. The amount of evaporative emissions from a gasoline blend is closely related to its volatility. The components of gasoline and EFF have different volatilities because of their unique chemical make-up. The RVP of a finished gasoline made solely from the various hydrocarbons in the gasoline boiling range is essentially proportional to the RVP and blend ratios of the individual hydrocarbon blend components. That is to say, the RVP of gasoline hydrocarbons blends linearly similar to gasoline sulfur and benzene content. This is not the case when ethanol is added to gasoline. The addition of ethanol to gasoline increases the volatility of the blend until a concentration of approximately 10 volume percent, after which increasing ethanol concentration slowly decreases blend volatility. For example, for ethanol blends made with a 9 psi RVP gasoline (E0), the RVP increases to approximately 10 psi at 10 volume percent ethanol (E10) then decreases gradually with increased ethanol concentration to 9 psi at 50 volume percent ethanol (E50), and continues to decrease at a more pronounced rate to 6 psi at 80 volume percent ethanol (E80).⁹³

As previously explained, FFVs are equipped with the same type of emissions control equipment to limit evaporative VOC emissions as are conventional gasoline vehicles. Controlling the volatility of EFF is important to limit the evaporative emissions from FFVs. Higher fuel volatility levels generates additional fuel vapor in a vehicle or engine fuel system that can cause “breakthrough” emissions from the evaporative emission control system of a vehicle or

engine.⁹⁴ Therefore, consistent with the EPA approach to addressing evaporative emissions from gasoline, we believe that it is appropriate to set maximum RVP standards for EFF.

We believe that the maximum RVP requirements for gasoline are an appropriate benchmark to consider in determining what RVP standards to set for EFF. A 9.0 psi RVP maximum applies to gasoline in many CG areas, while a 7.8 psi RVP applies in certain southern CG areas where ambient temperatures are warmer, causing fuel volatility to be higher for a given RVP.⁹⁵ The RVP of RFG is governed by a VOC performance model that takes into account fuel VOC performance parameters other than fuel volatility. Hence, there is no set regulatory RVP maximum for RFG from June 1 through September 15. However, our review of RFG production data indicates that the RVP of RFG is typically about 7.0 psi from June 1 through September 15.⁹⁶

Although FFVs are equipped with the same type of evaporative emissions control equipment as conventional gasoline vehicles, differences in the evaporative emissions testing requirements results in the evaporative emissions control equipment on FFVs being more robust than that installed on conventional gasoline vehicles. The capacity of vehicle evaporative emissions control equipment is driven by the vehicle evaporative emissions certification testing requirements. Vehicle evaporative emissions

⁹⁴ Breakthrough evaporative emissions refers to the condition where the evaporative emissions control system of a vehicle becomes saturated, and further gasoline vapor generated is simply purged into the environment without being combusted in the engine.

⁹⁵ The EPA maximum RVP requirements for gasoline are applicable from May 1 through September 15 for parties in the gasoline production system other than gasoline retailers and WPCs. These requirements apply to gasoline retailers and WPCs from June 1 through September 15. See 40 CFR 80.27. A 1 psi RVP waiver was granted by Congress in 1990 to gasoline-ethanol blends of at least 9 volume percent and no greater than 10 volume percent ethanol (*i.e.*, E10) in CG areas. With the subsequent spread of E10 nationwide, E10 is now subject to a 10 psi RVP maximum in most CG areas and an 8.8 psi maximum in certain southern CG areas. As a result, much of conventional gasoline currently has volatility as high as 10 psi. Since conventional gasoline vehicles are designed for 9 psi, this leads to breakthrough VOC emissions from vehicle evaporative emissions control systems in CG areas. The 1 psi waiver for E10 does not apply to E10 in RFG areas. Hence, there is not the same issue with breakthrough evaporative emissions from the use of E10 in RFG areas. The Renewable Fuels Association (RFA) and the Alliance of Automobile Manufacturers (AAM) sent letters to the EPA requesting that the EPA effectively eliminate the relevance of the 1 psi RVP waiver for E10.

⁹⁶ See the memorandum, “Volatility of Reformulated Gasoline,” available in the docket for this action.

certification testing includes testing to evaluate both diurnal and refueling evaporative emissions. A 9.0 psi test fuel is specified for both diurnal and refueling evaporative emissions certification testing for conventional gasoline vehicles. Hence, the evaporative emissions control systems of conventional gasoline vehicles are sized to reliably cope with a maximum 9.0 psi RVP in-use fuel without breakthrough evaporative emissions.

Historically, and at present, FFVs are certified for both diurnal and refueling evaporative emissions compliance on the highest volatility fuel typically encountered in-use during the May 1 through September 15 volatility control period (*i.e.*, E10 at 10 psi RVP), resulting in evaporative emissions control systems that are sized and designed to handle additional fuel vapor as compared to conventional gasoline vehicles. Beginning with the Tier 3 vehicle standards, a 9.0 psi test fuel will be required for diurnal evaporative emissions testing for certification for FFVs as well as for conventional gasoline vehicles. However, a 10 psi test fuel was retained for FFV refueling emissions certification testing. The Tier 3 rule concluded that the RVP of the refueling emissions test is expected to continue to drive the capacity of evaporative control equipment on FFVs.⁹⁷ Therefore, we believe that FFVs operated on 10 psi in-use EFF would provide an equivalent level of evaporative emissions control to conventional gasoline vehicles operated on 9.0 psi in-use gasoline. Hence, we believe that in-use EFF should not exceed 10 psi to control the evaporative emissions from FFVs.

At the same time, as noted above, the RVP standard for gasoline in some areas is set below 9.0 psi (at 7.8 psi in certain CG areas or effectively 7.0 psi in RFG areas) to provide greater protection from excess emissions, either due to climatic considerations or ambient pollution concentrations.⁹⁸ We believe that it is appropriate to reflect these lower limits for EFF as well in these areas for these reasons.

⁹⁷ See 79 FR 23509 (April 28, 2014).

⁹⁸ It should be noted that RFG areas fall into three categories depending on VOC regions (North vs. South) and whether the area is part of the VOC adjusted area (see 40 CFR 80.71 and 80.40(c)). Based on an analysis of the distribution of RVP samples, it is much simpler to have one RVP standard of 7.0 psi versus having three separate standards for EFF. Creating three different standards would potentially create fungibility issues with different types of RFG EFF and make the program much more complex, making it more burdensome for parties to comply. See the memorandum, “Volatility of Reformulated Gasoline,” available in the docket for this action.

⁹³ SAE technical paper 2007–01–4006, “A Model for Estimating Vapor Pressures of Commingled Ethanol Fuels,” Sam R. Reddy.

The manufacture of EFF blends at blender pumps presents unique challenges with respect to ensuring volatility control since the RVP of such blends is often higher than that of either parent blend. For example, the RVP of EFF blends made at a blender pump using two parent blends (E10 and EFF), each less than 9 psi RVP, would be somewhat higher than 9 psi.⁹⁹ Nevertheless, since the RVP of EFF blends made at blender pumps is a direct function of the RVP of the parent blends used (which would be produced by EFF full-refiners and bulk blender-refiners), the volatility of EFF blends made at blender pumps can be controlled by setting appropriate RVP standards for the parent blends.

We conducted RVP modeling to evaluate what RVP standards for the EFF blends used as parent blends at blender pumps would provide adequate control of the RVP of EFF blends produced at blender pumps.¹⁰⁰ The modeling assumed that gasoline compliant with locally applicable RVP requirements would be used as the other parent blend.¹⁰¹ This modeling indicates that limiting the RVP of EFF produced by full-refiners, importers, and bulk blender-refiners to 9.0 psi in CG areas subject to a 9.0 psi gasoline RVP standard would ensure that the RVP of EFF produced at blender pumps is expected to be below 10 psi. Limiting the RVP of EFF produced by full-refiners, importers, and bulk blender-refiners to 7.8 psi in CG areas where a 7.8 psi RVP standard applies to gasoline would likewise ensure that EFF blends made at blender pumps is expected to be below 8.8 psi. Similarly, limiting the RVP of EFF produced by full-refiners, importers, and bulk blender-refiners to 7.0 psi in RFG areas would ensure that EFF made at blender pumps is expected to be below 8.0 psi. As a result of the greater capability of FFVs to control evaporative emissions compared to conventional gasoline vehicles, we believe that controlling the RVP of EFF to 8.8 psi in CG areas where gasoline is subject to a 7.8 psi RVP standard and to 8.0 psi in RFG areas would provide a comparable level of evaporative emissions for FFVs operated on EFF compared to conventional gasoline vehicles operated on gasoline.

⁹⁹ See the memorandum, "Volatility of Ethanol Blends Made at Blender Pumps," available in the docket for this action.

¹⁰⁰ *Id.*

¹⁰¹ See Table IV.B.3-1 in this preamble for a summary of the proposed blender pump parent blend requirements and expected resulting maximum RVP of EFF blends produced at blender pumps.

As discussed above, we believe that limiting the RVP of EFF produced at blender pumps to the target levels described above would provide a comparable level of evaporative emissions for FFVs operated on EFF compared to conventional gasoline vehicles operated on gasoline. The RVP modeling results indicate that the RVP of EFF blends made at blender pumps would exceed the target maximums by only as much as 0.2 psi using worst-case assumptions.¹⁰² Given the unlikelihood of the alignment of these worse-case conditions¹⁰³ and the believed conservative nature of the RVP model,¹⁰⁴ we do not anticipate such higher levels to be seen in-use.

Therefore, we are proposing that the RVP requirements for EFF for full-refiners, importers, and bulk blender-refiners would generally track those of gasoline, with a maximum RVP of 9.0 or 7.8 psi for CG areas (depending on the applicable gasoline RVP standard), and an RVP maximum of 7.0 psi for RFG areas (which is comparable to the average RVP of RFG). We are soliciting comment on these standards. We also seek comment on setting a 9.0 RVP standard for EFF produced by full-refiners, importers, and bulk blender-refiners for use in all CG areas rather than imposing lower standards commensurate with the lower gasoline RVP standards that apply in certain areas.

We believe that the proposed parent blend requirements for EFF blender pump-refiners, including the proposed RVP standards for EFF produced by EFF full-refiners and bulk blender-refiners discussed above would provide sufficient control of the RVP of EFF made at blender pumps. Therefore, we do not believe that an RVP standard for EFF produced at blender pumps is needed at this time. We are also proposing an independent survey of the RVP of EFF at blender pumps.¹⁰⁵ The EPA would monitor the RVP of EFF produced at blender pumps, and if the results of this evaluation indicate that additional controls of EFF at blender

¹⁰² The RVP of EFF made at blender pumps would typically be significantly below the target levels.

¹⁰³ The marginal exceedances of the target RVP for EFF blends made at retail that are indicated by the RVP modeling primarily are associated with the use of E0 as a parent blend. The vast majority of gasoline in the U.S. is E10. There is relatively little E0 available at retail and which is typically sold from dedicated E0 dispensers, rather than at blender pumps, due to marketing considerations.

¹⁰⁴ Based on anecdotal information from parties familiar with the RVP model.

¹⁰⁵ The proposed EFF quality survey requirements are discussed in section IV.F.9 of this preamble.

pumps are warranted, such controls may be proposed in a later action. We request comment on whether the EPA should implement additional measures to control EFF volatility at this time. Such additional measures might include: (1) Additional limitations on the gasoline parent blends used, such as prohibiting the use of E0 as a parent blend; (2) Further restrictions on the amount of natural gasoline that could be used; and/or (3) A lower RVP maximum for the natural gasoline EFF blendstock.

Similar to the gasoline RVP requirements, we are proposing that the proposed EFF RVP standards would apply to EFF retailers and WPCs from June 1 through September 15 and to all other parties in the EFF production and distribution system from May 1 through September 15 of each year. Thus, a retailer or WPC would be liable for RVP violations if their EFF parent blends or EFF blends distributed from a dedicated dispenser exceeded these RVP limits from June 1 through September 15 and upstream parties would be liable for the RVP of the EFF they produce or distribute from May 1 through September 15. The EPA could evaluate compliance with these standards by sampling and testing the EFF parent blends from the underground storage tank. We seek comment on whether the EPA could evaluate compliance by setting the blender pump to dispense EFF only, flushing the pump, and collecting a sample from the blender pump dispenser.

We believe that E51-83 blends produced with the hydrocarbon blendstocks allowed under the current requirements for E51-83 (gasoline and BOBs) would necessarily meet the proposed maximum RVP requirements as a result of the volatility blending characteristics. In fact, at high ethanol concentrations, E85 is currently challenged to have sufficiently high RVP to meet the minimum ASTM volatility specification for proper vehicle cold start and driveability. Therefore, the proposed RVP requirements would not result in a further constraint to E51-83 RVP blending practices compared to the current situation. Rather, the proposed increased flexibility to use natural gasoline as an EFF blend component would likely allow the RVP of EFF to increase up to the evaporative control limits of FFVs. This should not only help E51-83 meet the minimum ASTM volatility specification at greater ethanol concentrations, but also reduce the cost of all EFF and potentially improve the exhaust emission performance of FFVs. Since the proposed EFF RVP standards parallel those for gasoline, this would

not constitute increase in the stringency of the standards for E16–50 EFF blends that are currently subject to all of the requirements applicable to gasoline, including the gasoline RVP standards.

ASTM has set minimum volatility specifications on E51–83 for safety reasons and to ensure adequate startability and drivability, which are critical for exhaust emission performance.¹⁰⁶ Since rapid engine start-up, warm-up, and drivability is important for vehicles to comply with the proposed Tier 3 exhaust emission standards, the Tier 3 proposal requested comment on whether it would be important that the EPA impose minimum volatility standards for E51–83 consistent with those in the ASTM standard. The comments indicated that concerns about E51–83 meeting ASTM minimum volatility standards have essentially been resolved by the change in the ASTM standard from a minimum 68 volume percent ethanol specification to a 51 volume percent specification.¹⁰⁷ We believe that the increased flexibility that this proposal would provide by allowing natural gasoline to be used as an EFF blendstock would also help to resolve any remaining concerns about EFF not meeting an appropriate RVP minimum, and at the same time enable the use of higher levels of ethanol to do so. The EPA is not aware of concerns about instances of excessively low volatility of E16–50 causing startability and driveability problems that could increase FFV emissions. We believe such concerns do not exist for E16–50 blends because the effect of increasing ethanol concentrations in higher level ethanol blends on depressing gasoline blend volatility is most pronounced for E51–83 blends. Therefore, we are not proposing RVP minimum specifications for EFF at this time.

4. EFF Elemental Composition Requirements

Elements that can poison (deactivate) vehicle emission control catalysts such as anions or cations (e.g., metals) can exist naturally in petroleum deposits or can be added in the process of extracting such deposits. They can also become entrained in either petroleum or ethanol products through contamination or be purposely added to a fuel. CAA section 211(f)(1) requires that fuel and fuel additives used in commerce must be “substantially similar” to fuel used

in certification. This requirement applies to all fuels used in motor vehicles, including the fuels used in FFVs. On July 28, 1981 (46 FR 38582), the EPA finalized an interpretation of the term “substantially similar” in terms of a fuel or fuel additive’s elemental content in motor vehicle gasoline. The fuel or fuel additive elemental content in this “substantially similar” interpretive rule was limited to CHONS. Refiners are required to limit the elemental composition of the gasoline they produce to CHONS, except for trace quantities of other atypical elements.

Emissions certification testing of FFVs is required using both the test fuel specified for conventional gasoline vehicles and a high ethanol content FFV test fuel (E83). Regulatory specifications for conventional gasoline emissions certification test fuel have long existed to ensure that atypical elements are not present. Regulatory specifications for the high-ethanol content FFV certification test fuel were finalized in the Tier 3 final rule and will become mandatory for model year (MY) 2017 FFVs.¹⁰⁸ These regulations ensure that FFV exhaust emissions test fuel is composed of only CHONS. Prior to the FFV test fuel specifications finalized in the Tier 3 rule, the EPA practice has been to blend FFV test fuel using indolene (E0) with neat (undenatured) ethanol. These blendstocks are composed only of CHONS. It is our understanding that manufacturers of FFVs have followed EPA practice when blending FFV exhaust emissions certification test fuel. Thus, FFV certification test fuel has been composed solely of CHONS prior to the Tier 3 rule that clarified this requirement. Hence, it has been a long standing EPA policy that in-use EFF fuel must be composed of only CHONS. We are proposing regulatory specifications to clarify this requirement for all in-use EFF.

Non-CHONS elements are typically removed during the processes used to produce gasoline compliant with EPA sulfur standards at crude oil refineries. Hence, the EPA has had good assurance that gasoline refiners are complying with the CHONS requirement despite the lack of a testing requirement or specific limit on the quantities of atypical elements that may be present in gasoline. The main potential source of atypical elements in gasoline is additives added to gasoline after the gasoline is produced at a crude oil

refinery; however, such additives are also required to be CHONS.

E51–83 was also assured to be composed of only CHONS when gasoline and BOBs were the only hydrocarbon blendstocks used in its manufacture. E16–50 has been assured to be CHONS by the current provisions that apply the requirements applicable to gasoline to these blends and the fact that it is typically blended from E51–83 and E10. This proposal includes provisions to treat all E16–83 as EFF and to allow EFF full-refiners, importers, and EFF bulk blender-refiners to use natural gasoline to produce EFF. There is no existing CHONS requirement for natural gasoline used as an EFF blendstock. Therefore we are proposing that EFF would be required to be CHONS, and are proposing additional CHONS requirements on natural gasoline EFF blendstock. We believe that the proposed provisions for natural gasoline EFF blendstock and the existing provisions for the other EFF blendstocks would ensure that EFF would be CHONS.¹⁰⁹ Therefore, we are not proposing a testing requirement or specific limit on the quantities of atypical elements that may be present in finished EFF at this time. The EPA intends to further evaluate the potential presence of non-CHONS elements in EFF as well as in gasoline and may propose additional control measures in the future if warranted. We request comment on whether additional controls may be needed to prevent the presence of non-CHONS elements in EFF as well as gasoline, with associated supporting data.

5. Additives Used in EFF

Special provisions were provided under the gasoline sulfur program to accommodate additives that require sulfur in their functional components. These provisions allowed the continued use of such important additives while ensuring compliance with the 95 ppm downstream per-gallon sulfur cap for gasoline. We are proposing that additives used in EFF would be subject to the same sulfur requirements that apply to additives used in gasoline.¹¹⁰ Under this proposal, an additive would be required to contribute no more than 3 ppm to the sulfur content of EFF when used at the maximum recommended treatment rate. The additive manufacturer would be required to

¹⁰⁶ ASTM D5798–14, “Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines.”

¹⁰⁷ The change by ASTM to a minimum 51 volume percent ethanol specification was made to allow more hydrocarbons to be used in the blend to help meet minimum volatility requirements.

¹⁰⁸ See 79 FR 23414 (April 28, 2014) and 40 CFR 1065.725.

¹⁰⁹ The other proposed EFF blendstocks are finished gasoline, BOBs, DFE, and undenatured ethanol.

¹¹⁰ EFF additives are sold for use at a concentration of less than 1.0 volume percent in EFF.

maintain records of its additive production quality control activities that demonstrate that the sulfur content of the additive is compliant with this requirement. The 3 ppm maximum was determined to be sufficient to accommodate all gasoline additives, and we believe that additives used in EFF do not differ from gasoline additives with respect to the sulfur content necessary to provide the additive's functionality. These proposed requirements would allow for the continued use of important EFF additives while ensuring compliance with the proposed 95 ppm per-gallon sulfur cap for EFF. We are also proposing that manufacturers of additives for use in EFF certify that there are no non-CHONS elements present. The use of additives that contain non-CHONS elements such as metals in EFF would be prohibited unless the EPA were to determine that the use of such an additive would not cause or contribute to regulated emissions failures of FFVs, and was granted a waiver to allow its use in EFF pursuant to the requirements of CAA section 211. Similar to gasoline additives, which have no benzene requirements, we believe that benzene requirements for additives used in EFF are not necessary because benzene is not a typical additive component and the 1 volume percent cap on additive concentration would further limit any potential impact on finished fuels from the limited benzene content of additives.

We believe that there would be no need for the use of additives in certified natural gasoline EFF blendstock from the point of its production to its use to produce EFF. Therefore, we are proposing to prohibit the addition of additives to certified natural gasoline EFF blendstock. We request comment on whether provisions including sulfur standards are needed to facilitate the use of additives in certified natural gasoline EFF blendstock. If we were to finalize provisions to allow the use of additives in certified natural gasoline EFF blendstock, the use of additives that contain non-CHONS elements such as metals would be prohibited unless the EPA were to determine that the use of such an additive would not cause or contribute to regulated emissions failures of FFVs, and granted a waiver to allow its use in EFF pursuant to the requirements of CAA section 211.

We also believe that there would be no need for the use of additives in uncertified natural gasoline EFF blendstock from the point of its production to its use to produce EFF. EFF full-refiners that use uncertified natural gasoline EFF blendstock are

required to test each batch of finished EFF. Therefore the potential impact on the sulfur and benzene content from the possible addition of additives to uncertified natural gasoline EFF blendstock would be reflected in the per-batch EFF testing required of EFF full-refiners, and there would be no need for sulfur or other standards for such additives. The use of additives that contain non-CHONS elements such as metals in uncertified natural gasoline EFF blendstock would be prohibited unless the EPA were to determine that the use of such an additive would not cause or contribute to regulated emissions failures of FFVs, and granted a waiver to allow its use in EFF pursuant to the requirements of CAA section 211. We are proposing that EFF full-refiners would be required to secure a PTD from the uncertified natural gasoline EFF blendstock supplier that demonstrates that it contains no non-CHONS elements.

6. EFF Deposit Control

The current deposit control regulations require that the gasoline portion of E51–83 must contain a certified deposit control additive at a concentration at least as great as that used during gasoline deposit control additive certification testing (referred to as the lowest additive concentration or LAC).¹¹¹ The addition of ethanol to gasoline, with deposit control additive at the LAC, to produce E51–83 results in a deposit control additive concentration that is lower than the LAC due to the increased dilution from the additional ethanol. The EPA is not aware of data on the deposit control needs of FFVs that operate on E51–83. It is unclear the extent to which the current requirements are effective in aiding the control of deposits in FFV engine and fuel supply systems that result from the use of EFF. Stakeholders have stated that as additive concentration diminishes due to dilution with DFE, there is a point where the presence of a deposit control additive ceases to be beneficial and can actually contribute to deposit formation. Certain deposit control additives are also not completely soluble in high ethanol content blends. In light of this, the Tier 3 proposal requested comment on removing the requirement that the gasoline portion of E51–83 must contain a deposit control additive until the specific deposit control needs of these blends can be evaluated. To the extent that E16–50 would no longer be treated as gasoline, we also requested comment on not applying gasoline deposit control

standards to these blends pending further study.

We continue to believe that the current deposit control requirement for the gasoline portion of E51–83 is not providing a meaningful benefit to deposit control in these blends and may actually contribute to deposits. There is currently insufficient data regarding the potential effects of deposits on FFV emissions and what regulatory specifications may be appropriate for deposit control additives used in EFF. Likewise there are no test procedures that might be used for regulatory purposes. Therefore, we are proposing to amend the regulations to remove the requirement that the gasoline portion of E51–83 must contain a certified deposit control additive.

There are similar concerns regarding using deposit control additives certified for gasoline use in E16–50. Consequently we are also proposing to defer setting deposit control requirements for E16–50. We appreciate the concerns expressed in the comments on the Tier 3 proposal that all spark ignition fuels, including EFF, should be required to provide a minimum level of deposit control. We may consider adopting deposit control requirements for EFF in a later action should appropriate deposit additives and test procedures be developed for use with EFF and data become available to establish that there is sufficient environmental need. In the meantime, we believe that the resolution of this issue is best left to the marketplace.

7. Standards for Blendstocks Used by EFF Full-Refiners and Bulk Blender-Refiners

EPA-compliant gasoline, BOBs, and DFE can be used to produce E85 under the current regulatory requirements. There are already regulations in place under the EPA's gasoline program regarding the sulfur, benzene, and presence of atypical elements in such blendstocks that assure they are of sufficient quality for use in vehicle fuels (including all EFF). This proposal would create a new classification of certified natural gasoline EFF blendstock that could also be used by EFF bulk blender-refiners. This proposal would also create a new classification of uncertified natural gasoline EFF blendstock that could be used by EFF full-refiners. Therefore, new fuel quality requirements are needed for such natural gasoline EFF blendstocks. We are proposing that hydrocarbons that are imported for use as an EFF blendstock must be sourced from a foreign refiner that is registered with the EPA. We believe that this requirement is

¹¹¹ See 40 CFR 80.161(a)(3).

necessary to provide the EPA with sufficient oversight to ensure that such hydrocarbon blendstocks meet the proposed quality specifications. We are also requesting comment on allowing butane and pentane that are approved for downstream blending into gasoline to be used by EFF full-refiners and bulk blender-refiners.

a. Certified Natural Gasoline EFF Blendstock

To ensure that the use of certified natural gasoline as an EFF blendstock by EFF full-refiners and bulk blender-refiners does not result in increased FFV emissions, we are proposing that producers of certified natural gasoline EFF blendstock must demonstrate compliance with proposed quality requirements regarding sulfur and benzene content. We are also proposing that certified natural gasoline EFF blendstock be composed solely of CHONS.

The natural gasoline that is typically used to denature ethanol is likely unsuitably high in sulfur and benzene content to ensure adequate FFV emission control performance.¹¹² The EPA set a 330 ppm per-gallon sulfur cap on ethanol denaturant effective January 1, 2017, concurrent with the implementation of the Tier 3 sulfur program. The use of denaturant with 330 ppm sulfur at the maximum 3 volume percent denaturant concentration finalized under the Tier 3 program would result in 10 ppm sulfur content for the resulting DFE, consistent with the Tier 3 requirements for DFE. The EPA did not finalize a benzene specification for DFE because it was judged that the presence of the 3 volume percent cap on denaturant concentration finalized under the Tier 3 program would limit benzene concentration in DFE to well below the 0.62 volume percent annual average applicable for gasoline. These specifications assume dilution of the sulfur and benzene content of the denaturant with 97 percent neat (undenatured) ethanol that is assumed to be free of sulfur and benzene.

However, if ethanol denaturant is used as a blendstock in EFF, the concentration of such denaturant relative to the undenatured ethanol used would be substantially higher than in DFE, resulting in insufficient dilution of the sulfur and benzene present in the denaturant. For example, if 30 percent denaturant at 330 ppm sulfur was used

¹¹² We have insufficient data on the sulfur and benzene content of natural gasoline used to denature ethanol to characterize the extent of this concern.

with 70 percent undenatured ethanol to make E70, the resulting sulfur content of the finished E70 would consistently be close to 100 ppm. Such consistently high sulfur levels in EFF would result in significant FFV emissions control catalyst performance degradation and a substantial increase in FFV emissions.

Therefore, to ensure that the emissions control equipment of FFVs running on EFF are not impaired and that FFVs have the same emissions performance as conventional gasoline vehicles running on gasoline, we are proposing that certified natural gasoline EFF blendstock would be required to meet a 10 ppm per-gallon sulfur cap and a 0.62 volume percent per-gallon benzene cap. These proposed standards would be consistent with the average standards applicable for gasoline and would ensure that the sulfur and benzene content of EFF made by bulk blender-refiners is equivalent to the levels found in gasoline without the need to impose a per-batch testing requirement.¹¹³ Setting cap standards for blendstocks used by blenders where additional testing is not required and that are equivalent to the average standards applicable to refiners (where per-batch testing is required) is consistent with the established approach for DFE and butane/pentane blended into gasoline and will help facilitate enforcement by allowing the EPA to evaluate compliance on a batch-by-batch basis.

We are proposing that certified natural gasoline EFF blendstock would be required to be composed solely of CHONS similar to the requirement for gasoline producers. To ensure that certified natural gasoline EFF blendstock is CHONS, we are proposing that it would be required to be sourced from either a natural gas processing facility or a crude oil refinery. We are proposing that a natural gas processing plant means a facility designed to “clean” raw natural gas by separating impurities and various non-methane hydrocarbons and fluids to produce what is known as “pipeline quality” dry natural gas. A gas processing plant is used to recover natural gas liquids including natural gasoline and to remove other substances such as sulfur and benzene from natural gasoline EFF blendstock as needed.¹¹⁴ We believe

¹¹³ The gasoline 10 ppm annual average sulfur standard under EPA’s Tier 3 gasoline program will become effective January 1, 2017 (40 CFR 80.1603(a)). The gasoline 0.62 volume percent annual average benzene standard became effective January 1, 2011 (40 CFR 80.1230(a)).

¹¹⁴ The proposed definition of natural gas processing facility is based on a definition used by the U.S. Department of Transportation, Pipeline &

that the processing steps used to produce certified natural gasoline EFF blendstock at a natural gas processing plant or crude oil refinery would provide adequate assurance that non-CHONS elements are not present or would be removed, as opposed to other potential sources of similar boiling range materials. To the extent that non-CHONS elements are present in raw natural gas liquids, they would primarily be present in the heavier boiling fractions that would be removed at natural gas processing plants and crude oil refineries in the processes used to produce natural gasoline. We are also proposing that the natural gasoline must have received processing at a natural gas processing plant or crude oil refinery, such as in a distillation tower and/or desulfurization unit. These provisions would preclude a natural gas processing plant or crude oil refinery from purchasing natural gasoline and reselling it for use as certified natural gasoline without the natural gasoline having been subjected to processing to assure its quality. The proposed distillation specifications for certified natural gasoline EFF blendstock discussed below would provide additional assurance that non-CHONS elements are not present by requiring that high boiling fraction materials are not present in significant quantities. Existing provisions for the other EFF blendstocks would continue to ensure that they are CHONS.¹¹⁵ Therefore, we are not proposing a testing requirement or specific limit on the quantities of atypical elements that may be present in certified natural gasoline EFF blendstock at this time. The EPA intends to further evaluate the potential presence of non-CHONS elements in certified natural gasoline EFF blendstock and may propose additional control measures in the future if warranted. We request comment on whether additional controls may be needed to prevent the presence of non-CHONS elements in natural gasoline EFF blendstock, with associated supporting data.

To prevent an inappropriately high concentration of high boiling point hydrocarbons in natural gasoline, we are proposing 275 °F T90 distillation and 375 °F final boiling point specifications consistent with a commonly observed

Hazardous Materials Safety Administration at <https://primis.phmsa.dot.gov/comm/FactSheets/FSNaturalGasProcessingPlants.htm>.

¹¹⁵ The other proposed EFF blendstocks are finished gasoline, gasoline BOBs, DFE, and undenatured ethanol.

industry consensus specification.¹¹⁶ We believe that most natural gasoline, and in particular that which is a by-product of natural gas production, would typically be well below these limits naturally. Since natural gasoline is typically lighter than gasoline, these standards would act as a backstop to prevent heavy hydrocarbons that could lead to increased FFV emissions from being present in natural gasoline. We understand that some distributors of natural gasoline observe 365 °F T90 distillation and 437 °F final boiling point specifications for the natural gasoline they handle.¹¹⁷ However, we believe that these specifications would allow for the presence of an inappropriately high concentration of high boiling point hydrocarbons in natural gasoline used as an EFF blendstock, which could lead to elevated exhaust emissions. Additionally these specifications are not necessary to allow for adequate supply of certified natural gasoline, and could make enforcement against inappropriate addition of compounds to EFF more difficult. We request comment on whether the proposed specifications are appropriate or whether different specifications are needed to be adequately protective, such as simply establishing a 300 °F final boiling point specification.

We are proposing that certified natural gasoline EFF blendstock would be subject to a 15 psi RVP maximum specification. This would provide additional assurance that an abnormally high fraction of higher boiling compounds are not present that could lead to unexpected vehicle performance issues that could adversely impact FFV emissions. We believe that this is consistent with current industry practice that limits natural gasoline RVP to below atmospheric pressure (14.7 psi) to avoid the need for more costly storage vessels.

We are also proposing that refiners and importers of certified natural gasoline EFF blendstock would be required to register with the EPA, submit batch reports annually, and issue PTDS indicating that their product is suitable for use by EFF bulk blender-refiners. We are proposing that the PTDS also include the RVP of the natural gasoline to facilitate use of the proposed RVP tool to demonstrate compliance by EFF bulk blender-refiners with the proposed maximum RVP specification.

¹¹⁶ Gas Processors Association Standard 3132–84, “Natural Gasoline Specifications and Test Methods.”

¹¹⁷ ASTM D8011–16, “Standard Specification for Natural Gasoline as a Blendstock in Ethanol Fuel Blends or as a Denaturant for Fuel Ethanol.”

The proposed RVP requirements for EFF would typically limit the amount of natural gasoline that could be used to make EFF from May 1 through September 15 for parties upstream of retail and WPC facilities to about 30 volume percent.¹¹⁸ However, from September 16 through April 30 for parties upstream of retail and WPC facilities, it would technically be possible to use natural gasoline as the sole hydrocarbon blendstock in EFF while still meeting the ASTM RVP maximum requirement absent additional controls. In the most extreme case, this might result in an E16 blend made with 84 percent natural gasoline.

The industry consensus ASTM standard for E51–83 allows the use of natural gasoline as a blendstock.¹¹⁹ However, there is currently no ASTM standard for E16–50 blends where natural gasoline could be the primary hydrocarbon blendstock.¹²⁰ There could be operability issues that arise from the use of natural gasoline as the primary hydrocarbon blendstock in E16–50 that have yet to be addressed. Additionally, while permitted, it is not clear that ASTM envisioned natural gasoline to be used in E51–83 in concentrations up to 49 volume percent. Given the wide variability in the composition and distillation range of natural gasoline and its potential to naturally contain atypical compounds in concentrations greater than found in refined gasoline, a limit of 30 volume percent may be more appropriate. Therefore, to address concerns that the potential overuse of natural gasoline to produce EFF might result in unforeseen vehicle operability and/or emission performance problems, we are proposing to limit the amount of natural gasoline that may be used as a blendstock to produce EFF with DFE and other approved blendstocks to 30 volume percent.¹²¹ Natural gasoline is

¹¹⁸ This assumes a 12 psi RVP for the natural gasoline used as an EFF blendstock. Due to variability in natural gasoline RVP, the use of more or less natural gasoline to produce EFF could be possible while maintaining compliance with the proposed EFF RVP requirements.

¹¹⁹ ASTM D5798–15, “Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines.”

¹²⁰ ASTM D7794–14, “Standard Practice for Blending Mid-Level Ethanol Fuel Blends for Flexible-Fuel Vehicles with Automotive Spark-Ignition Engines,” specifies procedures for blending mid-level ethanol blends (E16–50) using E51–83 that conforms to ASTM D5798–15. Under ASTM D5798–15, E51–83 may be produced using natural gasoline as a blendstock provided that the finished E51–83 meets all the specifications including maximum RVP.

¹²¹ The proposed 30 volume percent limit on natural gasoline used as an EFF blendstock would apply to the sum of certified natural gasoline EFF blendstock and uncertified natural gasoline EFF blendstock used to produce EFF.

often used as a denaturant in DFE and beginning with the January 1, 2017, implementation date for the Tier 3 gasoline program, the denaturant concentration in DFE will be limited to 3 volume percent.¹²² The proposed 30 volume percent limit on the use of natural gasoline as an EFF blendstock would not include the amount of natural gasoline used to denature ethanol. Thus, if 30 volume percent natural gasoline blendstock was added to 70 volume percent DFE containing natural gasoline as a denaturant, the concentration of natural gasoline in the finished EFF blend would be approximately 32 volume percent.

We believe that these proposed standards are necessary to ensure that the proposed flexibility to allow natural gasoline use as an EFF blendstock would not result in increased FFV emissions. ASTM recently published a standard that for the first time put in place a level of quality control for natural gasoline used as an E51–83 blendstock.¹²³ This ASTM standard noted that it would be appropriate for such blendstock used in the U.S. outside of California to meet a 30 ppm sulfur maximum consistent with the current 30 ppm average gasoline sulfur requirement under the EPA’s Tier 2 gasoline program, and a 0.62 volume percent benzene cap consistent with the EPA’s gasoline benzene program.¹²⁴ The ASTM standard also noted that the 30 ppm sulfur maximum would be adjusted to remain consistent with the gasoline 10 ppm average sulfur standard when the EPA’s Tier 3 gasoline program is implemented on January 1, 2017. This approach is consistent with our proposal to match the sulfur and benzene cap standards to the average standards currently applicable for gasoline. The ASTM standard also notes the importance of preventing the presence of non-CHONS elements in natural gasoline and states that work is underway to evaluate this potential concern. Therefore, the ASTM standard should help to prepare industry to comply with the EPA’s proposed specifications for natural gasoline EFF blendstock. Some states require compliance with ASTM fuel standards. Hence, the ASTM standard for natural gasoline may provide some additional assurance of compliance with the

¹²² See 40 CFR 80.1610.

¹²³ ASTM D8011–16, Standard Specification for Natural Gasoline as a Blendstock in Ethanol Fuel Blends or as a Denaturant for Fuel Ethanol.’

¹²⁴ The Tier 2 program’s 30 ppm annual average sulfur standard in 40 CFR 80.195(a)(1) will be replaced by the Tier 3 program’s 10 ppm annual average sulfur standard beginning January 1, 2017 (40 CFR 1603(a)).

proposed requirements in this proposal. However, the ASTM standards are voluntary industry consensus standards that are not enforceable nationwide. As discussed above, the proposed requirements for natural gasoline EFF blendstock also contain a number of provisions and safeguards, including EPA compliance oversight, that are not present in the ASTM standard. Therefore, as with many of our other fuel standards, these proposed provisions would provide substantially greater assurance that the quality of natural gasoline used as an EFF blendstock is sufficient to support the EPA's emissions control goals for FFVs compared the ASTM standard alone.

We believe the economic incentive provided by this new flexibility would be sufficient for natural gasoline producers to take the necessary steps to provide certified natural gasoline EFF blendstock to EFF full-refiners and bulk blender-refiners. For example, E70 could be produced with approximately 30 volume percent natural gasoline while meeting the proposed 9 psi maximum RVP standard in CG areas.¹²⁵ Depending on the cost of the blendstocks used, E70 made with natural gasoline could be approximately 5 percent less costly on an energy adjusted basis compared to using gasoline as the sole hydrocarbon blendstock.¹²⁶ EFF could also continue to be manufactured using gasoline/BOBs as under current regulatory requirements. Hence, a potential shortage of natural gasoline that meets the proposed specifications for use as an EFF blendstock would not interfere with the production of EFF compared to the current requirements.

b. Uncertified Natural Gasoline EFF Blendstock

EFF full-refiners could use uncertified natural gasoline EFF blendstock provided that they demonstrate that each batch: (1) Was sourced from a natural gas processing plant or crude oil refinery; (2) Meets 275 °F T90 distillation and 375 °F final boiling point specifications; and (3) Meets a maximum 15 psi RVP specification.

¹²⁵ The amount of high-volatility natural gasoline that could be used as an EFF blendstock would be governed by what regional RVP specification applied to EFF.

¹²⁶ The cost of ethanol, gasoline, and natural gasoline tend to vary over time both individually and in relation to one another. See the memorandum, "Potential Impact on E85 Cost from the use of Natural Gasoline as Blendstock," available in the docket for this action. The relationship between the price of E85 compared to the price of E10 and E85 sales was discussed in the 2014–2016 RFS final rule (80 FR 77420, December 14, 2015). See Figure II.E.2.iii–1.

These requirements parallel those proposed above for certified natural gasoline EFF blendstock to ensure that non-CHONS elements are not present and that an undue fraction of heavy or light boiling fractions are not present. EFF full-refiners could test each batch of uncertified natural gasoline EFF blendstock to demonstrate compliance with the proposed T90, final boiling point, and maximum RVP specifications. EFF full-refiners would also need to obtain documentation from their suppliers that demonstrates that uncertified natural gasoline EFF blendstock was sourced from a processing unit such as a distillation tower and/or desulfurization unit at natural gas processing plant or crude oil refinery. Such documentation would need to establish that the uncertified natural gasoline had received some processing at a natural gas processing plant or crude oil refinery, such as in a distillation tower and/or desulfurization unit. We are not proposing sulfur or benzene specifications for uncertified natural gasoline EFF blendstock because EFF full-refiners would already be required to test each finished batch of EFF to demonstrate compliance with the proposed sulfur and benzene specifications for EFF.¹²⁷

c. Butane and Pentane

We request comment on allowing butane and pentane that meets the requirements for downstream gasoline blending to be used as blendstocks by EFF full-refiners and bulk blender-refiners.¹²⁸ We further request comment on whether their use as EFF blendstocks should be limited to the period from September 16 through April 30. Butane and pentane blended into gasoline downstream of the refinery are required to meet a 10 ppm per-gallon sulfur cap under the Tier 3 gasoline sulfur program. Such butane and pentane are also required to meet a 0.03 volume percent benzene cap. These standards would ensure that butane and pentane are suitable for use as EFF blendstocks with respect to sulfur and benzene content. The gasoline program requirements for these blendstocks would also ensure that atypical elements are not present. However, they are not typically used currently for producing EFF and their high volatility could constrain their use. We request

¹²⁷ EFF full-refiners would also be required to test each batch of EFF to demonstrate compliance with the proposed EFF RVP requirements.

¹²⁸ The requirements for butane blended into gasoline downstream of the refinery are contained in 40 CFR 80.82. The requirements for pentane blended into gasoline downstream of the refinery are contained in 40 CFR 80.85 and 80.86.

comment on whether allowing the use of butane and pentane as EFF blendstocks could result in unforeseen distillation issues for the final EFF blend. The potential existence of adverse impacts on the properties of the finished EFF blend is the primary reason why we are not proposing to allow the use of butane and pentane as EFF blendstocks at this time. Another complicating factor is that the proposed RVP compliance tool would not adequately cover butane and pentane blending in its current form.¹²⁹

d. Potential Additional Grades of DFE and Natural Gasoline

Ethanol producers have requested that the EPA consider a means to certify a grade of DFE that meets lower sulfur and benzene caps for use with a grade of certified natural gasoline EFF blendstock that meets higher sulfur and benzene standards than those proposed above. The respective sulfur and benzene standards for these grades would be set to provide equivalent sulfur and benzene levels in the finished EFF blends produced as would be achieved by using DFE that meets the existing requirements¹³⁰ and certified natural gasoline EFF blendstock that meets the proposed sulfur and benzene standards. This approach would be similar to that outlined in the recent ASTM standard for natural gasoline used in higher level ethanol blends.¹³¹

The use of undenatured ethanol as an EFF blendstock rather than DFE might provide even more opportunity for dilution of the sulfur and benzene content of natural gasoline used as an EFF blendstock. Hence, there may also be the potential for yet another grade of certified natural gasoline EFF blendstock with somewhat higher sulfur and benzene specifications to be used at ethanol production plants in combination with undenatured ethanol to make EFF. Under such an approach, the sulfur and benzene content of the undenatured ethanol could be considered negligible provided that the producer maintains production quality control records to demonstrate that

¹²⁹ The proposed RVP compliance tool is discussed in section IV.F.3 of this preamble.

¹³⁰ The requirements for DFE are contained in 40 CFR 80.1610.

¹³¹ ASTM D8011–16, "Standard Specification for Natural Gasoline as a Blendstock in Ethanol Fuel Blends or as a Denaturant for Ethanol Fuel." See table X1.2. The use of natural gasoline grade EFB2 as an E51–83 blendstock in the ASTM standard assumes the concurrent use of DFE meeting the California's sulfur and benzene specifications (10 ppm sulfur and 0.06 volume percent benzene). This would ensure a level of control of EFF sulfur content consistent with the requirements under the EPA's Tier 2 gasoline sulfur program.

sulfur was not introduced as a by-product of the production process.

Ethanol producers stated that including such additional grades of DFE and natural gasoline EFF blendstock would allow access to a larger volume of natural gasoline for blending into EFF. This approach would necessitate additional product segregation, PTD, reporting, and recordkeeping requirements to ensure that the different grades of certified natural gasoline were used under the appropriate circumstances. For example, all parties in the production and distribution system would need to segregate and keep records on the various grades of certified natural gasoline they handle and maintain PTD records. We request comment on this approach, including what standards would be appropriate for the additional grades of DFE and natural gasoline EFF blendstock discussed above, and the means of simplifying its implementation while ensuring enforceability.

8. Exemptions From EFF Requirements

The following paragraphs discuss several provisions and exemptions from the proposed EFF standards in special circumstances.

a. EFF Used in Military Applications

Due to national security considerations, some of the EPA's existing regulations allow the military to request and receive National Security Exemptions (NSEs) for vehicles, engines, and equipment from emissions regulations if the operational requirements for such vehicles, engines, or equipment warrant such an exemption. In our diesel fuel program and the Tier 2 and Tier 3 gasoline sulfur programs, we provide an exemption for fuel used in tactical military vehicles and nonroad engines and equipment with a NSE from the vehicle and engine emissions standards. Fuel used in these applications would also be exempt if it is used in tactical military vehicles, engines, or equipment that are not covered by an NSE but, for national security reasons (such as the need to be ready for immediate deployment overseas), need to be fueled on the same fuel as those with an NSE. We are proposing to extend this exemption to EFF as well.

b. EFF Used in Research, Development, and Testing

Similar to existing EPA fuels programs, we are proposing to allow for requests for an exemption from the EFF standards for EFF used for research, development, and testing purposes ("R&D exemption"). We recognize that

there may be legitimate research programs that require the use of EFF with benzene, sulfur, or RVP levels greater than those allowed under the proposed EFF requirements. Thus, we are proposing provisions for obtaining an exemption from the prohibition against persons producing, distributing, transporting, storing, selling, or dispensing EFF that does not meet the EFF standards, where such fuel is necessary to conduct a research, development, or testing program.

Parties seeking an R&D exemption would be required to submit an application for exemption to the EPA that describes the purpose and scope of the program, and the reasons why the noncompliant EFF is necessary. Upon presentation of the required information, an exemption could be granted at the discretion of the EPA, with the condition that the EPA could withdraw the exemption in the event the EPA determines the exemption is not justified. In addition, an exemption based on false or inaccurate information would be considered void *ab initio*. EFF subject to an exemption would be exempt from certain provisions of this rule, including the sulfur standards, provided certain requirements are met. These requirements include the segregation of the exempt EFF from non-exempt EFF, identification of the exempt EFF on PTDs, and pump labeling.

c. EFF for Export

EFF produced for export, and that is actually exported for use in a foreign country, would be considered exempt from the fuel content standards and other requirements of the proposed EFF program. In order to exclude exported EFF, refiners would have to retain records to demonstrate that the EFF was exported. Such EFF would have to be designated by the EFF refiner for export, and the PTD would have to state that the EFF is for "export only;" otherwise, the EFF would be considered as intended for use in the U.S. and subject to the proposed EFF standards. EFF intended for export would be required to be segregated from all EFF intended for use in the U.S. Distributing or dispensing such fuel for domestic use would be illegal.

d. California EFF

The current State of California requirements for EFF do not parallel those we are proposing for EFF.¹³² California defines E85 as containing a

¹³² The California regulations for E85 are contained in 13 Code of California Regulations (CCR) 2292.4.

minimum ethanol content of 79 volume percent ethanol as opposed to the 51 volume percent minimum set by ASTM.¹³³ The quality of E85 in California is controlled by narrow restrictions on the blendstocks that may be used to blend E85: California compliant gasoline and DFE. Natural gasoline is not currently allowed as an E85 blendstock in California. Beyond this, California has a maximum 8.7 psi RVP requirement and a 40 ppm maximum sulfur standard for E85. California currently does not have specific regulations for E16–78 ethanol blends. Hence, E16–78 blends are currently prohibited for sale in California.

We are proposing to exempt California EFF from the requirements in this proposal provided that California EFF is segregated from federally compliant EFF, and PTD and recordkeeping requirements are observed for California EFF. These proposed requirements are similar to those associated with the current exemption from federal sulfur standards for California diesel fuel that meets California diesel fuel standard. We believe that it is appropriate to exempt California EFF from the requirements in this proposal to allow California the latitude to regulate EFF in a manner that is consistent with the state's unique air quality needs and the requirements under the state's Low Carbon Fuel Standard (LCFS) program.¹³⁴ We also understand that California is considering amending the sulfur and RVP specifications for E85 and implementing specifications for E16–78 ethanol blends.

e. Other Special Provisions and Potential Exemptions

Additionally, in existing EPA fuels programs we have included exemptions for racing fuel and for fuel used in the U.S. territories of Guam, American Samoa, and the Northern Mariana Islands. We have included these same exemptions for the proposed EFF requirements and request comment on whether or not such exemptions would be needed for this program.

D. Certification of Ethanol Flex Fuel

All producers or importers of EFF are considered EFF refiners, and thus responsible for demonstrating that the EFF blends they produce or import meet EPA quality requirements. This proposal contains three options under

¹³³ ASTM D5798–15 "Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines."

¹³⁴ The California LCFS regulations are contained in Cal Code Regs. tit. 17, § 95480.

which EFF refiners could demonstrate compliance with the proposed EFF quality requirements (*i.e.*, “certify”), which are tailored to the party’s ability to affect fuel quality. Given the potential challenges associated with batch sampling, testing, and reporting for the relatively small batches of EFF typically produced, we are proposing options with compliance demonstration requirements that are commensurate with the party’s ability to affect EFF quality. These options are further discussed below.

1. EFF Full-Refiner Certification Option

Under the proposed EFF full-refiner option, refiners and importers of EFF blends could use certified and uncertified natural gasoline ethanol flex fuel blendstock, certified gasoline, BOBs, DFE, and undenatured ethanol as EFF blendstocks,¹³⁵ provided that they conduct per-batch sulfur, benzene, and RVP testing to demonstrate compliance with the proposed standards. The requirements under this option parallel those for a gasoline refiner, and we expect that producers would only take on the regulatory burden under this option if the cost advantages that accompany the additional blending flexibility justify the added cost of demonstrating compliance.

EFF full-refiners would be required to register each facility, provide annual reports on the EFF produced, issue compliant PTDs for each EFF batch, and maintain records to demonstrate compliance. As part of the proposed annual reporting requirement, EFF full-refiners would be required to certify that the EFF they produced or imported is compliant with the proposed CHONS requirement in addition to providing batch test data to demonstrate compliance with the other proposed quality requirements. EFF full-refiners would have complete responsibility to demonstrate compliance of the uncertified natural gasoline they use as an EFF blendstock with the proposed requirements. To support that the uncertified natural gasoline is CHONS, EFF full-refiners would be required to maintain records to demonstrate the uncertified natural gasoline blendstock used was sourced only from processing units at natural gas processing plants or crude oil refineries and that no non-

CHONS additives were added.¹³⁶ Such records could be bills of lading from the natural gasoline supplier. EFF full-refiners would also be required to maintain records to demonstrate that the natural gasoline used met the proposed maximum T90, final boiling point, and RVP specifications to ensure that high boiling point hydrocarbon contaminants and an unrepresentative fraction of light boiling point hydrocarbons are not present.¹³⁷ Such records could be from testing of the natural gasoline performed at the EFF full-refinery, or of test results provided by the natural gasoline supplier.

We are proposing that EFF full-refiners would be the only party that could designate natural gasoline as uncertified natural gasoline EFF blendstock and that uncertified natural gasoline blendstock could not be transferred to another party. EFF full-refiners could use bills of lading and certificates of analysis from their natural gasoline supplier to help demonstrate compliance with the requirements for uncertified natural gasoline EFF blendstock. Therefore, we believe that there is no practical reason to allow an entity upstream of an EFF full-refinery to designate natural gasoline as uncertified natural gasoline EFF blendstock or for natural gasoline designated as uncertified natural gasoline EFF blendstock to be transferred to another party.

We are proposing that EFF batch certification testing would be conducted on a “certification tank” of EFF where individual samples are drawn from the top, middle, and bottom of the tank to ensure that the test results are representative, consistent with existing gasoline tank sampling requirements.¹³⁸ We request comment on what additional requirements might be needed to assure that samples are collected from a homogenous batch, and to limit stratification in the storage tank from which EFF is drawn for testing. We are also requesting comment on whether the calculative RVP compliance tool discussed below for use by EFF bulk blender-refiners could also be used by EFF full-refiners in place of RVP testing

to demonstrate compliance with the proposed EFF RVP requirements.

For EFF full-refiners that are also alcohol fuel plants under the Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations, the addition of at least two volume percent uncertified natural gasoline blendstock would result in distilled spirits that are unfit for beverage use. As a result, unlike other EFF refiners, EFF full-refiners have the option to blend in uncertified natural gasoline blendstock to accomplish EFF blending and denaturing of ethanol in one step. As prescribed in 26 U.S.C. 5181, when the distilled spirits are produced under the statutory and regulatory provisions for fuel use and are being withdrawn exclusively for fuel use the fuel alcohol is withdrawn free of tax.¹³⁹ For EFF full-refiners that are distilled spirit plants, they also may withdraw ethanol tax free when it has been completely denatured for any lawful purpose, including use as fuel alcohol. Completely denatured alcohol is created by adding 2 gallons or more of denaturant to each 100 gallons of undenatured ethanol (*i.e.*, resulting in a minimum denaturant concentration of approximately 1.96 volume percent).¹⁴⁰ In consulting with the TTB, we have confirmed that the addition of more than 1.96 volume percent denaturant, such as uncertified natural gasoline blendstock at the proposed maximum level (*i.e.*, 30 volume percent) would still allow the distilled spirit plant to withdraw fuel alcohol tax free.

While we anticipate that most current E85 blenders would use the following EFF bulk blender-refiner option, ethanol producers have expressed interest in this EFF full-refiner option. We understand that the proposed EFF certification tank requirements are not well suited to the existing EFF production methods at ethanol production plants where the various component blendstocks are mixed at set ratios via in-line blending to produce EFF as it is pumped into tank trucks or rail cars for downstream delivery. Therefore, we are requesting comment on alternatives to the proposed certification tank approach to streamline compliance for ethanol producers that wish to take advantage of the EFF full-refiner option, which would still be able to be used to ensure compliance.

Under one such alternative, a “hand blend” option, a representative sample of EFF at a given blend ratio would be made up from representative samples of the individual EFF blendstocks. To create a representative sample of each

¹³⁵ Allowing the use of undenatured ethanol as an EFF blendstock would allow ethanol producers to meet the Alcohol and Tobacco Tax and Trade Bureau (TTB) ethanol denaturant requirements in the same blending operation used to produce EFF, rather than force the ethanol to be denatured in a separate step. This might also allow for additional flexibility in the quality of the natural gasoline that might be used as a blendstock.

¹³⁶ The natural gasoline must have received some processing at a natural gas processing plant or crude oil refinery, such as in a distillation tower and/or desulfurization unit.

¹³⁷ See section IV.C.7 of this preamble.

¹³⁸ Previously certified EFF could be used as a blend component to produce new certified batches of EFF provided that the newly certified batch of EFF was sampled and tested per the proposed requirements. We anticipate that this would be the typical practice for complying with the tank heel of previously certified EFF that is difficult to remove from the certification tank.

¹³⁹ See 27 CFR part 19.

¹⁴⁰ See 27 CFR 19.746.

EFF blendstock, individual samples would be drawn from the top, middle, and bottom of the blendstock tank to ensure that the test results are representative. Testing would be conducted on the representative EFF sample to demonstrate compliance. These test results would be valid for all batches produced at the same blend ratio as long as no new product was added to the tanks from which the EFF blendstocks are drawn. As an additional compliance assurance measure we might require that periodic samples of the blended EFF be retained and later tested for compliance. One option that we request comment on would have a sample of blended EFF taken once for every 250,000 gallons of EFF produced or once every three months, whichever is more frequent. The proposed EFF retail fuel survey requirements would provide additional assurance that EFF quality was being maintained.¹⁴¹ However, we are not proposing the hand blend option discussed above due to concerns that it might allow for an unacceptable variability in EFF composition. Variability in the composition of EFF production batches compared to such a hand blend could arise if the blend ratios of the different blendstocks did not remain constant. We request comment on what additional provisions might be appropriate to ensure a consistent level of EFF quality while providing a streamlined means of compliance demonstration under the EFF full-refiner option.

2. EFF Bulk Blender-Refiner Certification Option

Much of the E51–83 is currently made at petroleum terminals and ethanol production facilities by mixing blendstocks in prescribed ratios via in-line blending as the fuel is delivered into tanker trucks for delivery to retail stations. We anticipate the vast majority of E51–83 will continue to be made by such bulk blenders at gasoline terminals and ethanol plants. The small batch size and timing constraints when E51–83 is made as the product is dispensed into a tank truck for delivery to retail and WPCs facilities would likely make the per-batch EFF sulfur and benzene testing requirements under the EFF full-refiner option impractical for EFF bulk blender-refiners. There is also no clear technical path to facilitate per-batch RVP testing under such circumstances since such testing could introduce unacceptable delay during tank trucks picking up EFF at product terminals.

¹⁴¹ The proposed EFF quality survey requirements are discussed in section IV.F.9 of this preamble.

Therefore, we are proposing the EFF bulk blender-refiner certification option under which bulk blenders could avoid per-batch testing by using only previously certified blendstocks, where much of the compliance demonstration has been accomplished by the blendstock producer. The only blend components that such bulk blenders can currently use while being assured of compliance with the existing sub-sim requirement for E51–83 are gasoline, BOBs, and DFE. We are proposing to expand this list of blend components to allow for increased EFF production.

We are proposing that to be treated as an EFF bulk blender-refiner, bulk blenders would be limited to using the following blendstocks that had been certified by their producers as meeting EPA quality requirements to produce EFF: DFE, gasoline, BOBs, and certified natural gasoline EFF blendstock.¹⁴² We are proposing that an EFF bulk blender-refiner that is also an ethanol producer could also use undenatured ethanol as an EFF blendstock similar to under the EFF full-refiner option. In other words, they could not use uncertified natural gasoline EFF blendstock without having to meet the EFF full-refiner option requirements.

EFF bulk blender-refiners that continue to use only DFE and certified gasoline/BOBs that do not take advantage of the 1 psi waiver for E10 to make E51–83 would have only minimal additional regulatory burdens under this proposal associated with registration, annual reporting, recordkeeping, PTDs, and participation in the proposed EFF quality survey. EFF bulk blender-refiners that choose to take advantage of the proposed new blending flexibility to use natural gasoline and those that use E10/BOBs that take advantage of the 1 psi waiver for E10 would be subject to additional compliance demonstration requirements, potentially including per-batch RVP testing consistent with their ability to affect EFF quality. However, bulk blenders would only choose to accept the additional regulatory burden that accompanies the increased blending flexibility if there was an economic advantage to do so. We anticipate that the opportunity to use relatively low cost natural gasoline as an EFF blendstock could result in a significant cost savings in the production of EFF, while minimizing the regulatory burden and ensuring that

¹⁴² We are also proposing that EFF bulk blender-refiners would be limited to using a maximum of 30 volume percent of certified natural gasoline to produce EFF and that the addition of additives to certified natural gasoline EFF blendstock would be prohibited.

EFF quality supports the EPA's environmental goals.

EFF bulk blender-refiners could demonstrate compliance with the proposed sulfur and benzene specifications and CHONS requirement by maintaining PTDs showing that they used only the approved blendstocks. Since the sulfur and benzene content of blended fuels is directly proportional to the sulfur and benzene content in the blendstocks used and bulk blenders would be limited to using certified blendstocks to manufacture EFF that meet applicable average and cap sulfur and benzene standards, we could be assured of compliance with the sulfur and benzene specifications for EFF without requiring per-batch testing.

However, the nonlinearity in the RVP of ethanol blended fuels means that additional provisions would be needed for EFF bulk blender-refiners to demonstrate compliance with the proposed maximum RVP standards for EFF from May 1 through September 15 for parties upstream of retail and WPC facilities. We are proposing several paths that EFF bulk blender-refiners could use to demonstrate compliance with the proposed maximum RVP requirements:¹⁴³

- EFF bulk blender-refiners that use only gasoline and BOBs that are compliant with the applicable regional RVP specifications without benefit of the 1 psi waiver for E10 could demonstrate compliance simply by maintaining the PTDs for the blendstocks used.
- EFF bulk blender-refiners that use certified natural gasoline EFF blendstock (in addition to gasoline/BOBs) or those that use gasoline/BOBs that take advantage of the 1 psi waiver for E10 as EFF hydrocarbon blendstocks could demonstrate compliance by either:
 - Conducting per-batch RVP testing, or
 - Using an RVP compliance tool.¹⁴⁴

To the extent per-batch RVP testing is used rather than the RVP compliance tool, we request comment on the potential to allow for less frequent testing provided that there was no change in the composition of the blendstocks or the blending recipe. Some parties may wish to perform per-

¹⁴³ In their annual reports to the EPA, EFF bulk blender-refiners would be required to identify the method used to demonstrate compliance for each batch with detailed supporting materials including and provide information on the blendstocks used, the inputs to the RVP compliance tool if used, and the results of each RVP test if per-batch testing if conducted.

¹⁴⁴ The proposed RVP compliance tool is discussed in section IV.F.3 of this preamble.

batch testing because early indications from the EPA's test program to evaluate the performance of the RVP compliance tool may slightly overestimate RVP.¹⁴⁵ Hence, the use of per-batch testing could allow the use of slightly more natural gasoline while remaining compliant with the proposed RVP requirements.

We are proposing that EFF bulk blender-refiners would be required to register with the EPA and provide annual reports on the EFF they produce. We expect that most EFF bulk blender-refiners would already be registered with the EPA as gasoline oxygenate blenders or ethanol producers. EFF bulk blender-refiners would also be required to provide PTDs for each batch of EFF they produce. The issuance of PTDs by fuel producers is common business practice.

3. EFF Blender Pump-Refiner Certification Option

Blender pumps produce a fuel with a particular ethanol content by drawing from two "parent blends" in different tanks at specified volume ratios. The blender pump can produce a mixture with an ethanol content anywhere between that exhibited by the parent blends in the two tanks. In most current cases, this involves E10 gasoline and E85. This proposal would replace the current gasoline refiner requirements for producers of E16–50 at blender pumps with requirements for the parent blends that may be used, including E51–83.

The properties of the blends produced are determined by those of the parent blends. Since sulfur, benzene, and non-CHONS elements blend linearly, compliance of the parent blends with the proposed specifications for these fuel parameters would ensure the compliance of blends produced at blender pumps. In the context of the average standards for benzene and sulfur that apply to gasoline, the benzene and sulfur concentrations of the EFF produced will vary, but should not increase on average. However, the nature of blending hydrocarbon fuels with ethanol is such that the RVP of the blend exhibits a highly nonlinear response. That is, the RVP of a blend of two fuels with two different ethanol contents diverges significantly from what one would predict based on a volume-weighted averaging of the RVPs of the two fuels. We conducted RVP modeling to evaluate the RVP of blends made at blender pumps using the parent

blends that are commonly used. The results of this modeling indicate the use of the parent blends commonly used at blender pumps would result in mid-level ethanol blends that are expected to be within the evaporative emissions control capacity of FFVs.¹⁴⁶ Therefore, we are proposing that EFF blender pump-refiners could demonstrate compliance with the proposed EFF sulfur, benzene, RVP, and CHONS requirements by maintaining PTDs to demonstrate that only certified gasoline and EFF were used as parent blends and participate in the proposed EFF quality survey. Records of the parent blends used are already kept as part of common business practice and we expect that in the vast majority of cases no changes would need to be made to the type of parent blends used at blender pumps. These requirements represent a substantial reduction in the burden of compliance for blender pump operators compared to the current per-batch testing and reporting requirements for E16–50 gasoline refiners while continuing to safeguard the environmental performance of E16–50.

We expect that E51–83 would be the EFF parent blend of choice at blender pumps so that it could be made available for sale, although other EFF blends could be used. We request comment on requiring that E51–83 be the EFF parent blend used at blender pumps. We believe that this limitation could provide additional quality control benefits for blender pumps while not removing any meaningful flexibility since using E16–50 as a parent blend is not currently a common practice at blender pumps. The EPA intends to monitor the RVP of blends produced at blender pumps and may propose additional controls in a later action if warranted.¹⁴⁷ EFF blender pump-refiners would also be required to perform quality assurance practices typical of gasoline retailers to limit contamination. For example, EFF retailers would also be required to ensure that their retail tanks are turned over each year from wintertime EFF (to which RVP requirements do not apply) to summertime EFF that is compliant with the proposed RVP requirements.

Some blender pump operators have expressed interest in using DFE as a parent blend to produce EFF. Allowing the use of DFE as a parent blend component at blender pumps would

provide additional flexibility to industry while meeting the EPA's environmental goals. The use of DFE as a parent blend could facilitate the direct marketing of DFE from ethanol plants to fuel retailers and allow retailers to separate RINs from DFE as it is used to create motor vehicle fuel. These practices could have the potential to reduce the retail cost of EFF. The use of DFE as a parent blend could also simplify the adjustment of blender pumps to produce various blend ratios of EFF compared to the use of EFF that may vary in ethanol content seasonally. When EFF is used as a parent blend, blender pumps must be readjusted each time a batch of EFF parent blend is delivered with a different ethanol blend ratio to ensure accuracy in the ethanol concentration of the blends produced at the blender pump.¹⁴⁸ This readjustment should not be necessary when DFE is used as a parent blend.

However, storing DFE at blender pump facilities could result in increased fire safety concerns.¹⁴⁹ Therefore, we are not proposing to allow DFE to be used at as a parent blend at blender pumps. The headspace in DFE storage tanks is flammable at nearly all ambient temperatures, whereas there is substantially less likelihood of this being the case for E83 and lower ethanol content blends. Industry is developing recommendations on how to mitigate the increased fire safety concerns associated with storing DFE at retail stations. Such recommendations may lead to fire safety codes regarding storing DFE at retail that would ultimately be enforced by local fire marshals. The EPA may reconsider allowing DFE to be used as a parent blend at blender pumps when appropriate safety codes regarding storing DFE at retail have been developed and implemented. At the same time, we understand that this practice may already be occurring in a limited number of retail stations. Consequently, we request comment on allowing DFE to be used as a parent blend at blender pumps.

¹⁴⁸ We anticipate that blender pump operators may contract with their supplier to receive a single EFF blend year-round (*e.g.*, E70) to avoid the need to recalibrate their blender pumps or arrange to receive a single summer time blend and a single wintertime blend to limit the number of recalibrations needed.

¹⁴⁹ Coordinating Research Council (CRC), Project No. CM-138-12-1. "A Risk Analysis/Hazard Assessment of High Ethanol Content Fuels at Service Stations." June 2014.

¹⁴⁵ The EPA expects to have the results of the test program to confirm the utility of the RVP compliance tool for EFF blends made with natural gasoline in time to inform the final rule to follow this proposal.

¹⁴⁶ A discussion of the proposed volatility requirements for EFF blends and the underlying RVP modeling is discussed in section IV.C.3 of this preamble.

¹⁴⁷ Such monitoring would be accomplished through the proposed third-party independent survey of the RVP of EFF at blender pumps.

4. Summary of the Blendstock Requirements Under the EFF Certification Options and Other Proposed Provisions for EFF

EFF certification options is contained in Table IV.D.4–1 below.

A summary of the blendstock requirements under the three proposed

TABLE IV.D.4–1—SUMMARY OF BLENDSTOCK REQUIREMENTS UNDER THE THREE EFF CERTIFICATION OPTIONS

EFF certification option	Blendstocks that may be used
EFF Full-Refiner	Gasoline, BOBs, Certified Natural Gasoline EFF Blendstock, Uncertified Natural Gasoline EFF Blendstock, DFE, Undenatured Ethanol.*
EFF Bulk Blender-Refiner	Gasoline, BOBs, Certified Natural Gasoline EFF Blendstock, DFE, Undenatured Ethanol.*
EFF Blender Pump-Refiner	Gasoline, EFF.

* Must be an ethanol producer to use undenatured ethanol as an EFF blendstock.

We are proposing that once EFF has been certified as meeting the proposed requirements, no additional blendstocks could be added downstream.¹⁵⁰ For example, natural gasoline could not be added to previously certified EFF. Allowing the addition of blendstocks to previously certified EFF would add substantial complexity to the program and introduce additional opportunities for compliance issues to arise. We believe that precluding the addition of additional blendstocks to previously certified EFF would not interfere with the legitimate production of EFF.

We are proposing a prohibition on commingling batches of EFF batches downstream of the production facility except at EFF blender pump-refiner facilities and retail/WPC facilities that dispense EFF from dedicated dispensers.¹⁵¹ We believe that this would help prevent the introduction of potential errors in the ethanol content of EFF reported on the PTD. Accurate information on the ethanol content of EFF is important to blender pump-refiners in calibrating their dispensers to produce EFF blends (and E15) of appropriate ethanol content. We believe that this prohibition would not be a practical constraint on EFF distributors, since EFF is primarily distributed by tank truck to retail and WPC facilities without any intervening storage facility. We request comment on the extent to which EFF may be distributed by rail car or other means with intervening storage before delivery to retail/WPC facilities. To the extent that EFF may be distributed in this manner, the proposed prohibition on commingling of EFF batches discussed above could complicate the storage of EFF at facilities between the producer and retail/WPC facility. If this is a concern,

we request comment on alternative means to ensure that error in the ethanol content of EFF is not introduced by commingling of EFF batches downstream of the producer.

E. Requirements for E15 Gasoline Blender Pump-Refiners

Fuel retailers and WPCs that make E15 at blender pumps using E85 as a parent blend are currently subject to all of the requirements that apply to refiners producing gasoline from crude oil, including registration, reporting, and per-batch testing. This is due to the fact that such blender pump operators are mixing non-gasoline (E85) with gasoline (E0 or E10). However, the application of these requirements to fuel retailers and WPCs is impractical. For example, it is infeasible for fuel retailers and WPCs to conduct laboratory tests on each batch of E15 produced (*i.e.*, each vehicle fill-up) to demonstrate compliance with the applicable sulfur, benzene, and RVP requirements. Even if blender pump operators could test every batch, requiring per-batch testing is inconsistent with their limited ability to impact the quality of the gasoline they produce, which is governed by the parent blends used.

Since the proposed requirements for EFF parallel those for gasoline, the use of EFF that meets the proposed requirements as a parent blend with compliant gasoline as the other parent blend would ensure that E15 made at blender pumps is compliant with the gasoline sulfur, benzene, and CHONS requirements. This is due to the linear blending characteristics of fuel sulfur, benzene, and CHONS content. The situation is analogous to commingling two previously certified gasolines, which does not entail any additional compliance demonstration requirements.

However, the non-linear RVP blending characteristics for gasoline-ethanol blends pose unique issues

regarding RVP compliance for E15 made at blender pumps from June 1 through September 15 when gasoline RVP requirements apply at retail and WPCs. Blenders of E15 in conventional gasoline areas (both at blender pumps and at terminals) have typically not been able to make E15 that is compliant with summertime RVP requirements due to the unavailability of sub-RVP blendstocks. The gasoline blendstocks that are available in conventional gasoline areas are typically formulated to produce E10 with the 1 psi RVP waiver since it has not been economical for lower RVP gasoline blendstocks to also be made available that would be suitable to make E15.

We are proposing that from September 16 through May 31, all E15 gasoline blender pump-refiners, regardless of where they are located, could demonstrate compliance with the gasoline refiner requirements using the same approach that we are proposing for EFF blender pump-refiners—by maintaining PTDs that show that the parent blends used to make E15 (*i.e.*, E0 or E10, and EFF) were certified for sale upstream of the blender pump-refiner. Such gasoline blender pump-refiners would also be required to maintain records of their quality control program, including those from the periodic calibration of the blender pump. These proposed requirements would be consistent with common business practices at fuel retail, and would ensure that the E15 produced by a gasoline blender pump-refiner for use from September 16 through May 31 complies with the sulfur, benzene, and CHONS requirements.

We are proposing that EFF blender pump-refiners could demonstrate compliance with the proposed RVP requirements for EFF from June 1 through September 15 by maintaining PTDs that show the parent blends used were certified upstream of the blender pump-refiner as meeting local RVP

¹⁵⁰ EFF additives could still be added downstream as needed.

¹⁵¹ A dedicated EFF dispenser provides only a single EFF blend (*e.g.*, “E85” or E51–83).

requirements. We based this proposed approach to EFF production at blender pumps on RVP modeling showing that the resulting EFF blends produced at blender pumps would not exceed the evaporative emissions control capability of FFVs (*i.e.*, 10 psi RVP). Due to the more stringent vehicle evaporative certification requirements for FFVs, they can operate on a fuel with volatility 1 psi higher than the maximum volatility required for conventional gasoline vehicles while maintaining evaporative emissions control performance equivalent to that of conventional gasoline vehicles.

A similar approach for E15 can be used in many areas depending on whether the 1 psi waiver for E10 applies.¹⁵² In conventional gasoline areas where the 1 psi waiver for E10 does not apply, E15 made at blender pumps using EFF that meets the proposed RVP requirements and E10 as parent blends would be compliant with the applicable gasoline RVP standard.¹⁵³

In RFG areas, E15 made with EFF that meets the proposed RVP standard and E10 that meets the RFG VOC performance standard would also be compliant with the RFG VOC performance standard. This is because the proposed 7.0 psi RVP standard for EFF in RFG areas is consistent with the RFG VOC performance standard for gasoline.¹⁵⁴ Therefore, we are proposing that in conventional gasoline areas where the 1 psi waiver does not apply and in RFG areas, blender pump-refiners of E15 could demonstrate compliance with the volatility requirements for E15 from June 1 through September 15 by keeping PTDs for the E10 and EFF used as parent blends to show that they were certified upstream of the blender pump-refiner as meeting the local requirements.

However, in conventional gasoline areas where the 1 psi waiver does apply, E15 made at blender pumps using E10 and EFF that meets the proposed RVP requirements would not be compliant

with the applicable RVP requirements for gasoline. Therefore, in conventional gasoline areas where the 1 psi waiver for E10 applies, we are not proposing to allow blender pump-refiners of E15 that use E10 as a parent blend to meet their gasoline refiner requirements using PTDs for the parent blends used from June 1 through September 15.

In all areas, E15 produced at blender pumps using E0 and EFF meeting the applicable RVP requirements would not be in compliance with the applicable RVP requirements for E15. Therefore, we are not proposing to allow blender pump-refiners of E15 that use E0 as a parent blend to meet their gasoline refiner requirements from June 1 through September 15 by using PTDs for the parent blends used. Our proposal regarding the demonstration of compliance of blender pump-refiners of E15 with the RVP requirements for E15 is summarized in the Table IV.E-1 below.

TABLE IV.E-1—DEMONSTRATION OF COMPLIANCE WITH E15 RVP REQUIREMENTS AT BLENDER PUMPS

Area	Parent blends	E15 RVP	Demonstrate compliance using PTDs for parent blends?
RFG	E10 ¹ & EFF (7 psi)	Compliant with RFG VOC requirements ¹ .	Yes.
	E0 ^{1,2} & EFF (7 psi)	Not compliant with RFG VOC requirements.	No.
CG Areas without the 1 psi waiver for E10.	E10 (9 psi/7.8 psi) ³ & EFF(9 psi/7.8 psi).	<9 psi/7.8 psi	Yes.
	E0 (9 psi/7.8 psi) & EFF (9 psi/7.8 psi).	>9 psi/7.8 psi	No.
CG Areas with the 1 psi waiver for E10.	E10 (10 psi/8.8 psi) ⁴ & EFF (9 psi/7.8 psi).	>9 psi/7.8 psi	No.
	E0 (9 psi/7.8 psi) & EFF (9 psi/7.8 psi).	>9 psi/7.8 psi	No.

¹ RFG meets a VOC performance standard as opposed to a per-gallon RVP cap.

² Refiners currently formulate all RFG for the downstream addition of 10 volume percent ethanol.

³ Some CG areas have a 9.0 psi standard for gasoline and proposed 9.0 psi standard for EFF produced upstream of retail/WPCs. Other CG areas have a 7.8 psi standard for gasoline and proposed 7.8 psi standard for EFF produced upstream of retail/WPCs.

⁴ Reflects 1 psi waiver for E10.

As a result of the difficulty blenders face in locating sub-RVP blendstocks for use in making E15 that is compliant with the gasoline RVP requirements in areas where the 1 psi waiver for E10 applies, the EPA received requests for clarification about whether relabeling E15 as for use only in FFVs would exempt E15 from gasoline RVP requirements from June 1 through September 15. All gasoline, including E15, is subject to all of the requirements applicable to gasoline because of its

formulation, not because of its end use. These requirements cannot be circumvented by relabeling. Allowing a fuel to be exempted from fuel quality requirements simply based on a statement of its intended use would undermine the EPA's ability to assure compliance with fuel quality requirements. In situations where E15 blenders could not locate sub-RVP blendstocks to facilitate compliance with the applicable gasoline RVP requirements, they could adjust the

ethanol blend ratio to produce an EFF blend such as E20 from June 1 through September 15. Such producers of E20 or other EFF blends would be compliant with the proposed RVP requirements for EFF if they observed the proposed parent blend requirements for EFF blender pump-refiners. Such E20 producers would also be required to comply with the other proposed requirements for EFF blender pump-refiners and to appropriately label the fuel.

¹⁵² The 1 psi waiver is applicable in most conventional gasoline areas, but does not apply in RFG areas where gasoline volatility is governed by a VOC performance standard rather than a per-gallon RVP cap.

¹⁵³ For a discussion of the volatility of E15 and E10 made at blender pumps, see the memorandum, "Volatility of Ethanol Blends Made at Blender Pumps," available in the docket for this action.

¹⁵⁴ See the memorandum, "Volatility of Reformulated Gasoline," available in the docket for this action.

Some retailers may also be interested in producing E10 using E0 and EFF as parent blends at blender pumps. We seek comment on the need for, and means of, facilitating this practice without triggering the batch sampling testing requirements that apply to a gasoline refiner. The means of assuring compliance of E10 made at blender pumps using E0 and EFF with the sulfur, benzene, and CHONS requirements for gasoline should parallel those proposed above for blender pump-refiners of E15. However, because of the limited blending accuracy for blender pumps, we are not confident of the means to assure compliance with the gasoline volatility requirements for E10, particularly in areas where the 1 psi waiver for E10 does not apply, as well as in areas where the waiver does apply.¹⁵⁵

F. Compliance Provisions

1. Registration, Reporting, and Recordkeeping Requirements

Registration, reporting, and recordkeeping requirements are necessary components to ensure that any fuels program is effectively implemented. This proposal includes registration, reporting, and recordkeeping requirements for each class of party tailored to their specific activities related to the production of EFF and E15 produced at blender pumps.

a. Registration Requirements

We are proposing that EFF full-refiners and importers, EFF bulk blender-refiners, and certified natural gasoline EFF blendstock refiners and importers register with the EPA prior to the production of EFF or natural gasoline EFF blendstock. Since downstream parties (*e.g.*, EFF bulk blender-refiners and blender pump-refiners) need upstream parties (*e.g.*, natural gasoline EFF blendstock refiners and EFF full-refiners) to comply with the proposed EFF quality standards to practicably comply with their individual requirements, we are proposing staggered initial registration deadlines to facilitate the cascading nature of EFF fuel quality standards implementation.

For registration, we are proposing to use the same basic forms that previous fuels programs have used. These forms are well-known in the regulated community and are simple to fill out. With the exception of certified natural gasoline EFF blendstock producers, we

anticipate that most parties will already be registered under our existing fuel standards. Upon receipt of a completed registration form, the EPA would issue a unique 4-digit company identification number and a unique 5-digit facility identification number. As with existing fuels programs, these numbers would be required for all reports submitted to the EPA and for applicable PTDs.

Registrations would not expire and would not have to be renewed; however, we are proposing that registered parties would be responsible for notifying us of any change to their company or facility information.

An entity's registration would include a corporate name and address (including the name, telephone number, and email address of a corporate contact); and, for each facility operated by the entity:

- Type of facility (*e.g.*, EFF full-refinery, EFF bulk blender-refiner facility, certified natural gasoline EFF blendstock refinery facility)
 - Registrations for certified natural gasoline EFF blendstock refineries would be limited to natural gas processing plants and crude oil refineries.
 - Facility name.
 - Physical location.
 - Contact name, telephone number, and email address.

These proposed registration requirements would be similar to those currently required for gasoline refiners and importers. The EPA has had success with these requirements and believes that they are appropriate for parties involved in the manufacture of EFF. However, there may be some additional registration requirements that would prove useful to ensure that parties involved in the manufacture of EFF make compliant fuels. Although we are not proposing any additional registration requirements on EFF refiners and importers, EFF bulk blender-refiners, and certified natural gasoline EFF blendstock refiners and importers compared to what we have historically required of gasoline or diesel refiners and importers, we seek comment on whether there are any other registration requirements that we should impose on these parties.

b. Reporting Requirements

We are proposing to require parties involved in the manufacture of EFF to submit annual reports demonstrating their compliance with the EFF standards. Based on our experience with existing gasoline programs, we believe that requiring annual reports containing individual batch data would provide an

effective means of monitoring compliance with the EFF standards.

Consistent with other fuel program annual reporting requirements, we are proposing that reports would be due annually on March 31. Since the EFF requirements are different for the proposed three broad categories of parties, there would be different reporting requirements for EFF full-refiners and importers, EFF bulk blender-refiners, and natural gasoline EFF blendstock refiners and importers.

For EFF full-refiners and importers, we are proposing that they submit annual batch level reports with sulfur, benzene, and ethanol content, as well as RVP, consistent with forms and procedures already used by gasoline refiners and importers. EFF full-refiners and importers would also have to demonstrate annual compliance with average sulfur and benzene content standards similar to gasoline refiners and importers. Although we are not proposing to have other fuel parameters reported by batch to the EPA that are currently required to be reported for gasoline (*e.g.*, distillation, aromatics), we seek comment on whether we should require any additional information to be submitted to the EPA by EFF full-refiners and importers.

We are proposing that EFF bulk blender-refiners would be required to submit an annual report that includes the volume, ethanol concentration, and blendstocks used (*e.g.*, certified natural gasoline, E10, BOBs) of each EFF batch. One of the benefits for EFF bulk blender-refiners to utilize certified blendstocks to make EFF versus creating EFF as an EFF full-refiner is that EFF bulk blender-refiners would not have to sample and test their batches of EFF for sulfur, benzene, or RVP. Without this information, it would not make sense to require EFF bulk blender-refiners to report these values. However, the EPA believes that based on our experience with implementation and enforcement of other programs it is still important to have the volumes that are produced reported to us. We seek comment on whether we should require additional reporting requirements on EFF bulk blender-refiners.

Finally, for natural gasoline EFF blendstock refiners and importers, we are proposing similar reporting requirements for those outlined above for EFF full-refiners and importers. Since natural gasoline EFF blendstock refiners and importers would be required to meet per-gallon cap sulfur and benzene requirements, natural gasoline EFF blendstock refiners and importers would also have to report additional information to ensure that

¹⁵⁵ The ethanol content of E10 must be between 9 and 10 volume percent for the 1 psi waiver to apply.

each batch meets the applicable standards. Consistent with other EPA fuels programs, natural gasoline EFF blendstock refiners would need to submit annual batch reports and annual compliance reports. Reporting elements for natural gasoline EFF blendstock refiners' batch reports would be the sulfur content, benzene content, ethanol content, RVP, batch volume, and batch identifying information (*e.g.*, date of production, batch number, etc.) for each batch produced in the compliance year. Annual compliance reports would contain total volume production and certification that all batches produced in the compliance period were compliant with applicable requirements.

Since most of this information is already required of some gasoline refiners, existing reporting forms and procedures for gasoline refiners should also be applicable to natural gasoline EFF blendstock refiners and importers with minor modification. We seek comment on whether we should require any additional reporting from natural gasoline EFF blendstock refiners and importers.

Consistent with existing CBI requirements, all refiners and importers of EFF and natural gasoline EFF blendstock can claim information submitted to the EPA as CBI. Parties making such a claim would be required to follow all reporting guidance and clearly mark the information being claimed as proprietary. The EPA would treat information covered by such a claim in accordance with the regulations at 40 CFR part 2, and other EPA procedures for handling proprietary information.

c. Recordkeeping

Consistent with current EPA fuels programs, we are proposing that EFF full-refiners and importers, EFF bulk blender-refiners, blender pump-refiners, and natural gasoline EFF blendstock refiners and importers would be required to retain all records that demonstrate compliance with applicable EFF and gasoline requirements. We are proposing that all of these parties would also be required to keep records of all bills of lading, PTDs, invoices or other commercial documents relating to gasoline, ethanol, natural gasoline EFF blendstock, or any other blendstock used to make EFF, and records of any quality assurance plans (QAPs). Records would need to be retained for five years consistent with other EPA fuels programs. We are proposing that records would be made available to the EPA on request. We are also proposing that if electronic records

are kept, hard copies should be made available upon request.

Since several parties would be subject to different EFF requirements, we are proposing some specific requirements on different individual parties. For blender pump-refiners, we are proposing to require that records related to the calibration of blender pumps be kept. Most, if not all, retail stations are already subject to state weights and measures programs that require the calibration of fuel dispensers to be tested periodically. These calibrations are important to determining whether blender pump-refiner requirements are in fact being met by all gasoline-ethanol blends manufactured through a blender pump. We are not proposing specific calibration requirements for blender pumps because we believe that it is most appropriate for such requirements to be established by state weight and measure programs.

For EFF bulk blender-refiners, the demonstration that a particular batch of EFF would meet appropriate EFF fuel quality standards is based primarily on recordkeeping and QAPs. Therefore, it is paramount that appropriate records be kept and that attest engagement requirements are in place.¹⁵⁶ We seek comment on whether there are any additional recordkeeping requirements that would be appropriate and necessary for the EPA to require of EFF bulk blender-refiners specifically, and other parties more generally, to enhance compliance and enforceability of the EFF requirements.

2. Proposed Sampling, Test Method, and Sample Retention Requirements for Refiners and Importers of EFF and Natural Gasoline EFF Blendstock

We are proposing that refiners and importers utilize the following sampling and test methods for measuring the fuel parameter properties of sulfur, benzene, oxygenate, RVP, 90 percent distillation point, and final boiling point for EFF and natural gasoline EFF blendstock. We are also proposing sample retention requirements for EFF and natural gasoline EFF blendstock. Table IV.F.2-1 below lists the ASTM standard practices that we are proposing.

We are proposing that refiners and importers of EFF and natural gasoline EFF blendstock utilize the following ASTM standard practices when sampling EFF and natural gasoline EFF blendstock. We are proposing that when refiners and importers manually sample EFF and natural gasoline EFF blendstock, they utilize ASTM D4057.

We are proposing that when refiners and importers sample EFF and natural gasoline EFF blendstock by an automated sampling method, they utilize ASTM D4177. We are proposing that when refiners and importers sample EFF and natural gasoline EFF blendstock for volatility measurements, they utilize ASTM D5842. Finally, we are proposing that when refiners and importers mix and handle EFF and natural gasoline EFF blendstock for compliance measurements, they utilize ASTM D5854.

We are proposing that EFF full-refiners and importers and natural gasoline EFF blendstock refiners and importers measure sulfur content. Currently our regulations for the measurement of sulfur content in gasoline at 40 CFR 80.46 designates ASTM D2622 as the primary test method. For consistency's sake, we are proposing ASTM D2622 as the designated primary test method for measuring the sulfur content of EFF and natural gasoline EFF blendstock. We are also proposing six alternative test methods for the measurement of sulfur content of EFF and natural gasoline EFF blendstock: ASTM D1266, ASTM D3120, ASTM D5453, ASTM D6920, ASTM D7220, and ASTM D7039, provided that their test results are correlated to ASTM D2622. Of the test methods discussed here for measuring the sulfur content of EFF and natural gasoline EFF blendstock, we believe ASTM D2622 is the most precise test method.

We are also proposing that EFF full-refiners and importers and natural gasoline EFF blendstock refiners and importers measure benzene content. Currently our regulations for the measurement of aromatic content in gasoline at 40 CFR 80.46 designates ASTM D5769 as the primary test method. ASTM D5769 also measures the benzene content of gasoline. For consistency's sake and since ASTM D5769 also measures benzene content, we are proposing ASTM D5769 as the designated primary test method for measuring the benzene content of EFF and natural gasoline EFF blendstock. We are also proposing the allowance of three alternative test methods for the measurement of benzene content of EFF and natural gasoline EFF blendstock: ASTM D3606, ASTM D5580, and ASTM D6730, provided that their test results are correlated to ASTM D5769. Since ASTM D3606 has the potential for interference between ethanol and benzene when ethanol is present in the fuel sample, we do not believe ASTM D3606 is the best candidate to be the designated primary test method for EFF

¹⁵⁶ See section IV.F.5 of this preamble for discussion on attest engagement requirements.

and natural gasoline EFF blendstock compared to ASTM D5769, which lacks the potential for interference issues between benzene and ethanol. The EPA seeks comment on whether to designate only ASTM D5769 for measuring benzene content in gasoline, or whether to add ASTM D5769 as a designated primary test method for benzene in gasoline along with ASTM D3606.

We are also proposing that EFF bulk blender-refiners and blender pump-refiners measure oxygenate content as part of the proposed EFF survey program. Currently our regulations for the measurement of oxygenate content in gasoline at 40 CFR 80.46 designates ASTM D5599 as the primary test method. For consistency's sake, we are proposing to designate ASTM D5599 as the designated primary test method for measuring the oxygenate content of EFF. We are also proposing for the allowance of one alternative test method for oxygenate content measurement of EFF: ASTM D4815, provided that its test results are correlated to ASTM D5599.

We are also proposing that EFF full-refiners and importers, EFF bulk blender-refiners, and natural gasoline EFF blendstock refiners and importers measure RVP. Currently our regulations for the measurement of RVP in gasoline at 40 CFR 80.46 designates ASTM D5191 as the primary test method. For consistency's sake, we are proposing to designate ASTM D5191 as the designated primary test method for measuring the RVP of EFF and natural gasoline EFF blendstock. We are also proposing for the allowance of two alternative test methods for the RVP measurement of EFF and natural gasoline EFF blendstock: ASTM D5482 and ASTM D6378, provided that their test results are correlated to ASTM D5191.

Finally, we are also proposing that natural gasoline EFF blendstock refiners and importers measure the 90 percent distillation point and final boiling point of natural gasoline EFF blendstock. Currently our regulations for the measurement of the distillation point of

gasoline at 40 CFR 80.46 designates ASTM D86–12 as the primary test method. For consistency's sake, we are proposing to designate ASTM D86–12 as the designated primary test method for measuring the 90 percent distillation point and final boiling point of natural gasoline EFF blendstock.

All of the test methods discussed here do not have established precision estimates for repeatability or reproducibility that would enable the EPA to propose Performance-Based Measurement System (PBMS) requirements for these analytical test methods. Once these estimates have been established by ASTM, at that time the EPA may propose PBMS requirements for the measurement of sulfur, benzene, oxygenate, RVP, 90 percent distillation point, and final boiling point of EFF and natural gasoline EFF blendstock. We welcome comment on our proposed sampling and test methods.

TABLE IV.F.2–1—ASTM SAMPLING AND DESIGNATED PRIMARY AND ALTERNATIVE ANALYTICAL TEST METHODS FOR EFF AND NATURAL GASOLINE EFF BLENDSTOCK

Fuel parameter	ASTM Analytical standard practice or test method
Standard Practice for Manual Sampling	ASTM D4057–12, entitled, “Standard Practice for Manual Sampling of Petroleum and Petroleum Products”.
Standard Practice for Automated Sampling	ASTM D4177–95 (Reapproved 2010), entitled, “Standard Practice for Automatic Sampling of Petroleum and Petroleum Products”.
Standard Practice for Handling of Fuels for Volatility Measurement.	ASTM D5842–14, entitled, “Standard Practice for Sampling and Handling of Fuels for Volatility Measurement”.
Standard Practice for Mixing and Handling of Liquid Samples of Petroleum and Petroleum Products.	ASTM D5854–96 (Reapproved 2010), entitled, “Standard Practice for Mixing and Handling of Liquid Samples of Petroleum and Petroleum Products”.
Sulfur (designated primary test method)	ASTM D2622–10, entitled “Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry”.
Sulfur (alternative test method)	ASTM D1266–13, entitled, “Sulfur Test Method for Sulfur in Petroleum Products (Lamp Method)”.
Sulfur (alternative test method)	ASTM D3120–08 (Reapproved 2014), entitled, “Standard Test Method for Trace Quantities of Sulfur in Light Liquid Petroleum Hydrocarbons by Oxidative Microcoulometry”.
Sulfur (alternative test method)	ASTM D5453–12, entitled, “Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Spark Ignition Engine Fuel, Diesel Engine Fuel, and Engine Oil by Ultraviolet Fluorescence”.
Sulfur (alternative test method)	ASTM D6920–13, entitled, “Standard Test Method for Total Sulfur in Naphthas, Distillates, Reformulated Gasolines, Diesels, Biodiesels, and Motor Fuels by Oxidative Combustion and Electrochemical Detection”.
Sulfur (alternative test method)	ASTM D7220–12, entitled, “Standard Test Method for Sulfur in Automotive, Heating, and Jet Fuels by Monochromatic Energy Dispersive X-ray Fluorescence Spectrometry”.
Sulfur (alternative test method)	ASTM D7039–13, entitled, “Standard Test Method for Sulfur in Gasoline, Diesel Fuel, Jet Fuel, Kerosine, Biodiesel, Biodiesel Blends, and Gasoline-Ethanol Blends by Monochromatic Wavelength Dispersive X-ray Fluorescence Spectrometry”.
Benzene (designated primary test method)	ASTM D5769–10, entitled, “Standard Test Method for Determination of Benzene, Toluene, and Total Aromatics in Finished Gasolines by Gas Chromatography/Mass Spectrometry”.
Benzene (alternative test method)	ASTM D3606–10, entitled, “Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography”.
Benzene (alternative test method)	ASTM D5580–13, entitled, “Standard Test Method for Determination of Benzene, Toluene, Ethylbenzene, <i>p/m</i> -Xylene, <i>o</i> -Xylene, C ₉ , and Heavier Aromatics, and Total Aromatics in Finished Gasoline by Gas Chromatography”.
Benzene (alternative test method)	ASTM D6730–01 (Reapproved 2011), entitled, “Standard Test Method for Determination of Individual Components in Spark Ignition Engine Fuels by 100-Metre Capillary (with Precolumn) High-Resolution Gas Chromatography”.
Oxygenate Content (designated primary test method).	ASTM D5599–00(2010), entitled, “Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection”.
Oxygenate Content (alternative test method)	ASTM D4815–15a, entitled, “Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C ₁ to C ₄ Alcohols in Gasoline by Gas Chromatography”.

TABLE IV.F.2-1—ASTM SAMPLING AND DESIGNATED PRIMARY AND ALTERNATIVE ANALYTICAL TEST METHODS FOR EFF AND NATURAL GASOLINE EFF BLENDSTOCK—Continued

Fuel parameter	ASTM Analytical standard practice or test method
RVP (designated primary test method)	ASTM D5191-13, entitled, "Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method)".
RVP (alternative test method)	ASTM D5482-07 (Reapproved 2013), entitled, "Standard Test Method for Vapor Pressure of Petroleum Products (Mini-Method—Atmospheric)".
RVP (alternative test method)	ASTM D6378-10, entitled, "Standard Test Method for Determination of Vapor Pressure (VPx) of Petroleum Products, Hydrocarbons, and Hydrocarbon Oxygenate Mixtures (Triple Expansion Method)".
Distillation Point (designated primary test method).	ASTM D86-12, entitled, "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure".

The EPA is also taking comment on whether we should establish Performance-Based Analytical Test Method Approach (PBATMA) requirements for the parameters of sulfur, benzene, distillation point, oxygenate content, and RVP in EFF and natural gasoline EFF blendstock. The EPA envisions that sulfur would fall under the absolute fuel parameter category for PBATMA where the precision criteria¹⁵⁷ and accuracy criteria¹⁵⁸ would be the same as for sulfur in gasoline.¹⁵⁹ The EPA envisions the fuel parameters of benzene, T90 distillation point, oxygenate content, and RVP would fall under the method defined fuel parameter category for PBATMA.¹⁶⁰ Under the method defined fuel parameter PBATMA requirements, the EPA envisions that the precision criteria would be the same as for each of these respective fuel parameters in gasoline.¹⁶¹ The EPA envisions that the accuracy criteria would be addressed by

ASTM D6708 assessments to determine the need for a correction equation.¹⁶² The EPA envisions following the same approval process for EFF as for gasoline; that is, voluntary consensus standard body (VCSB) test methods self-qualify to regulatory criteria and non-VCSB test methods submit required information to the EPA for approval.¹⁶³ Finally the EPA envisions that the EFF and natural gasoline EFF blendstock statistical quality control (SQC) PBATMA requirements for accuracy and precision would mirror what was finalized for PBATMA for motor vehicle gasoline and diesel fuel.¹⁶⁴ The EPA is interested in comments on whether the test methods discussed here sufficiently address EFF and natural gasoline EFF blendstock in their precision statement in order to establish PBATMA accuracy and precision criteria as discussed above for the fuel parameters of sulfur, benzene, distillation point, oxygenate content, and RVP.

3. Alternate Provisions for EFF Bulk Blender-Refiners to Demonstrate Compliance With Volatility Standards

As an alternative to per-batch RVP testing, we are proposing that EFF bulk blender-refiners that use natural gasoline to produce EFF could use an RVP tool to demonstrate compliance with the proposed maximum RVP specifications for EFF.¹⁶⁵ Records of the use of such an RVP compliance tool could be used as part of an affirmative defense against potential liability by an EFF bulk blender-refiner in cases where a batch of EFF was later found to exceed the proposed RVP standards. This would parallel how records of an RVP test on such a batch could be used as part of an affirmative defense. We are proposing the use of RVP equations 6, 8, and 11 described in SAE technical paper 2007-01-4006, entitled "A Model for Estimating Vapor Pressures of Commingled Ethanol Fuels," by Sam R. Reddy, which are copied below:

Equation: 6:

$$K_{\text{undenatured ethanol}} = 46.321 (\text{vol}\% \text{ undenatured ethanol})^{-0.8422}$$

¹⁵⁷ The maximum allowable standard deviation computed from the results of a minimum of 20 tests made over 20 days (tests may be arranged into no fewer than five batches of four or fewer tests each, with only one such batch allowed per day over the minimum of 20 days) on samples using good laboratory practices taken from a single homogeneous commercially available gasoline must be less than or equal to 1.5 times the repeatability "r" divided by 2.77, where "r" equals the ASTM repeatability of ASTM D7039 (Example: A 10 ppm sulfur gasoline sample: Maximum allowable standard deviation of 20 tests $\leq 1.5 * (1.73 \text{ ppm} / 2.77) = 0.94 \text{ ppm}$). The 20 results must be a series of tests with a sequential record of analysis and no omissions.

¹⁵⁸ Two accuracy demonstrations would be completed based on the test method repeatability statements of ASTM D7039. The arithmetic average of a continuous series of at least 10 tests performed using good laboratory practices on a commercially available gravimetric sulfur standard in the range of

1-10 ppm shall not differ from the accepted reference value (ARV) of the standard by more than 0.70 ppm, where the accuracy criteria is $0.75 * (1.5 * r / 2.77)$, where "r" is the repeatability (Example: $0.75 * (1.5 * 1.73 \text{ ppm} / 2.77) = 0.70 \text{ ppm}$); and The arithmetic average of a continuous series of at least 10 tests performed using good laboratory practices on a commercially available gravimetric sulfur standard in the range of 10-20 ppm shall not differ from the ARV of the standard by more than 1.02 ppm sulfur, where the accuracy criteria is $0.75 * (1.5 * r / 2.77)$, where "r" is the repeatability (Example: $0.75 * (1.5 * 2.52 \text{ ppm} / 2.77) = 1.02 \text{ ppm}$).

¹⁵⁹ See 40 CFR 80.47(b).
¹⁶⁰ See 40 CFR 80.47.

¹⁶¹ Proposed method defined precision criteria for EFF and natural gasoline EFF blendstock. A precision demonstration would show through self-qualification for these method defined fuel parameters that the maximum allowable standard deviation computed from the results of a minimum of 20 tests made over 20 days (tests may be arranged

into no fewer than five batches of four or fewer tests each, with only one such batch allowed per day over the minimum of 20 days) on samples using good laboratory practices taken from a single homogeneous commercially available gasoline must be less than or equal to 0.3 times the reproducibility "R", where "R" equals the ASTM reproducibility for benzene see 40 CFR 80.47(i), for T90 Distillation see 40 CFR 80.47(h), for oxygenate content see 40 CFR 80.47(f), and for RVP see 40 CFR 80.47(g).

¹⁶² See 40 CFR 80.47(l).

¹⁶³ See 40 CFR 80.47(m).

¹⁶⁴ See 40 CFR 80.47(o), 80.47(p), and 80.47(q).

¹⁶⁵ EFF bulk blender-refiners that use only DFE (or in the case of EFF bulk blender-refiners that are also ethanol producers, potentially undenatured ethanol), and certified gasoline/BOBs that do not take advantage of the 1 psi RVP waiver for E10 could demonstrate compliance simply by maintaining PTDs to demonstrate that only these blendstocks are used.

Equation 8:

$$\begin{aligned} K_{\text{hydrocarbon}} = & -7\text{E-}07(\text{vol}\% \text{ undenatured ethanol})^3 \\ & + 0.0002 (\text{vol}\% \text{ undenatured ethanol})^2 \\ & + 0.0024 (\text{vol}\% \text{ undenatured ethanol}) + 1 \end{aligned}$$

Equation 11:

$$\begin{aligned} \text{RVP}_{\text{EFF blend}} = & K_{\text{hydrocarbon}} (\text{vol}\% \text{ hydrocarbon} / 100) \text{RVP}_{\text{hydrocarbon}} \\ & + K_{\text{undenatured ethanol}} (\text{vol}\% \text{ undenatured ethanol} / 100) 2.4 \end{aligned}$$

Equations 8 and 11 were modified from those in the referenced SAE paper by replacing the term “gasoline” with “hydrocarbon” to reflect that we are proposing that the RVP tool could be used when natural gasoline (and BOBs) are used as EFF blendstocks as well as gasoline. The proposed RVP compliance tool was developed based on data from ethanol blends made with gasoline as the hydrocarbon blend component.

There is some concern regarding the representativeness of the proposed RVP compliance tool when natural gasoline is used as a blendstock because of the low aromatic content of natural gasoline relative to gasoline/BOBs and the effect of aromatic content on the RVP of ethanol blends. However, we believe that the proposed tool would be suitable to cover the use of natural gasoline as an EFF blendstock. Because of the characteristics of natural gasoline, including its typical lower aromatic concentration, we anticipate that the proposed RVP compliance tool would tend to slightly overestimate the actual RVP of blends made using natural gasoline rendering its use somewhat conservative. The EPA is currently conducting work to test the RVP of ethanol blends made with natural gasoline. The results of this study will be used to validate that the proposed RVP compliance tool provides accurate results for blends that contain natural gasoline. If the results of this study indicate that the proposed tool needs to be amended to accurately reflect the RVP blending properties of natural gasoline, the EPA would modify it in a later action.

The RVP of unoxxygenated gasoline, BOB, and/or natural gasoline EFF blendstock used to produce the EFF would be volume weighted to arrive at a value for the RVP of the mixture of the hydrocarbon blend components for use

in equations 8 and 11. If DFE is used as an EFF blendstock rather than undenatured ethanol, the denaturant would also be included in the volume weighted calculation to arrive at a value for the RVP of the mixture of the hydrocarbon blend components used in equations 8 and 11. We expect that in most cases EFF would be produced at product terminals and that DFE would be used as a blendstock. EFF bulk blender-refiners that are also ethanol producers would have the option to use undenatured ethanol in blending EFF that they manufacture at their production facilities. For the purpose of calculating the inputs for the RVP compliance tool regarding the RVP and volume percent of the hydrocarbons in the EFF blend, it could be assumed that the DFE used as a blendstock contains 3 volume percent denaturant at 15 psi RVP. The volume percent ethanol input to the RVP compliance tool equations would also be assumed to be 97 percent of the volume percent of the DFE used as a blendstock.

We believe that this approach would provide a conservative estimate of the effect of the ethanol denaturant on the volatility of the finished EFF blend. Ethanol denaturant concentration is limited to a maximum of 3.0 volume percent beginning January 1, 2017, pursuant to the requirement of the Tier 3 final rule.¹⁶⁶ Requirements in the RFS program, which specify that only 2 volume percent ethanol may be included for the purposes of compliance, have also prompted ethanol producers to limit denaturant concentration to 2 volume percent (effectively 2.5 volume percent given rounding) to streamline their RFS compliance calculations.¹⁶⁷ Therefore,

assuming a 3 volume percent denaturant concentration would be an upper-bound estimate, and the limited information available to the EPA indicates that an RVP of 15 psi would be representative of higher volatility natural gasoline that is used as the predominant ethanol denaturant. We also understand that the volatility of natural gasoline is typically limited to below atmospheric pressure to ease transport and storage logistical issues. Standard atmospheric pressure is 14.7 psi. Therefore 15 psi should represent an upper bound.

We are proposing that EFF bulk blender-refiners would be required to participate in the proposed EFF quality survey. We expect that participation in this survey would provide needed assurance that the RVP compliance tool is being used appropriately, as well as providing needed assurance that other EFF requirements are being satisfied.

We request comment on the above RVP compliance tool, any alternative RVP correlations that might be more accurate, and any data that might be available to enhance its accuracy. We also request comment on whether the proposed RVP blending compliance tool could be extended to cover the use of butane and/or pentane as an EFF blendstock if the use of these blendstocks was allowed.¹⁶⁸

4. PTD Requirements

The EPA is proposing several changes and additions to the existing PTD requirements to provide the information needed for fuel providers to properly manufacture or blend EFF. The EPA has previously established similar requirements for PTDs for E10 and E15 to help ensure downstream compliance

¹⁶⁶ See 40 CFR 80.1610.

¹⁶⁷ See 40 CFR 80.1401.

¹⁶⁸ As discussed in section IV.C.7.c of this preamble, we are requesting comment on including provisions to allow the use of butane and pentane as EFF blendstocks.

with sulfur, benzene, and RVP requirements. The introduction of EFF into the marketplace makes it important to include additional information on the PTDs that accompany the transfer of EFF and EFF blendstocks.

a. PTD Requirements for EFF Transferred Downstream of an EFF Full-Refinery or Bulk Blender-Refinery

Under the current regulations, the transferor of gasoline-ethanol blends with ethanol content above 15 percent is required to provide to the transferee information on ethanol concentration of the blend by the following statement: "EXX—Contains no more than XX% ethanol."¹⁶⁹ The purpose of the statement was to ensure proper labeling of gasoline-ethanol blends above E15 and to prevent any downstream parties from commingling fuels that could result in RVP exceedances or other violations. As we are proposing EFF regulations that encompass EFF from E16 to E83, we are proposing to replace "EXX" with "Ethanol Flex Fuel."

b. PTD Requirements for EFF

We are proposing to add new PTD requirement for transfers of EFF. The general requirements would be similar to that of gasoline, where any person that transfers EFF would be required to provide PTD information including the name and address of the transferor and transferee, the volume of EFF being transferred, the location of EFF at the time of transfer, the date of transfer, and the approximate ethanol concentration as discussed above. The transferor would also be required to provide a statement on the PTD that indicates its suitability or lack thereof for use as a blendstock to manufacture EFF in a blender pump. As discussed earlier, there are a number of paths to manufacture EFF and the challenges in demonstrating compliance with the RVP standard are greatest for blender pumps, given the non-linear RVP blending characteristics of potential blendstocks. To resolve this concern, we are proposing to list the blendstocks that can be used in blender pumps to make EFF and to require a statement on the PTD that states whether the blendstock is suitable for use in a blender pump and meets the RVP requirements.

Under the proposed rule, blender pumps can manufacture EFF by blending no more than two blend components: A high ethanol content blend component and a high hydrocarbon content blend component. The components will primarily vary based on two factors: Whether the

blendstock is being used in a CG or RFG area and whether it is between June 1 and September 15.¹⁷⁰ For instance, a blender pump that is located in an RFG area cannot use a hydrocarbon blendstock composed of conventional gasoline to manufacture EFF. The blender pump also cannot blend a hydrocarbon blendstock that is not compliant with RVP requirements from June 1 through September 15 with other blendstocks to manufacture EFF. In accordance with this approach, we are proposing that a statement be written on the PTD that indicates the suitability of the EFF for use at a blender pump.

c. PTD Requirements for Certified Natural Gasoline EFF Blendstock

We are proposing to add a new PTD requirement for the transfer of certified natural gasoline EFF blendstock. The PTD would require general information such as the name and address of the transferor and transferee, volume of the blendstock being transferred, location of the blendstock at the time of the transfer, and the date of the transfer. We are also proposing to require reporting the RVP on the PTD to facilitate downstream blending by alleviating the need for additional downstream testing and to minimize any improper commingling. The natural gasoline EFF blendstock refiner or importer may choose to either conduct per-batch sampling to determine the RVP or use a default RVP value of 15 psi.

We are also proposing to require a statement on the PTD prohibiting the use of natural gasoline EFF blendstock as a blendstock at blender pumps and its sale as conventional blendstock for oxygenate blending (CBOB) or reformulated blendstock for oxygenated blending (RBOB). Natural gasoline is known to be the higher temperature boiling components of natural gas liquids that is sometimes used as a denaturant for ethanol. It is also utilized in producing EFF since it is conveniently stored at the plant for its denaturant use and is considerably less expensive than CBOB and RBOB. Yet natural gasoline is known to have a higher RVP than CBOB or RBOB, so its use may hinder downstream RVP compliance. As explained above, EFF blender pump-refiners are similar to full-refiners in that they have the ability to manufacture EFF, but do not have the same quality assurance requirements. Accordingly, we are proposing that the natural gasoline EFF blendstock be

prohibited from use as a blendstock at blender pumps. Furthermore, we are proposing to require a statement to distinguish natural gasoline EFF blendstock from other blendstocks (such as CBOB or RBOB) to prevent any confusion for downstream parties. We are proposing to require a statement that it cannot be used as CBOB or RBOB or blended into CBOB, RBOB, or gasoline without meeting all requirements applicable to refiners. This statement would minimize any confusion for downstream parties and help ensure that certified natural gasoline EFF blendstock is not used as a gasoline blendstock.

5. Attest Engagements, Affirmative Defenses, Violations, and Penalties

We are proposing attest engagement requirements for EFF full-refiners and importers, EFF bulk blender-refiners, and certified natural gasoline EFF blendstock refiners and importers using the procedures used in other EPA fuels programs for attest engagements. We believe that attest engagements are particularly important for EFF bulk blender-refiners. Having an independent auditor review blending records to ensure that EFF made by bulk blender-refiners meet applicable EFF requirements would help ensure compliance, given the reduced sampling, testing, and reporting requirements. Attest engagements would also help ensure applicable EFF requirements are met, similar to how attest engagements help assure compliance for fuel manufacturers in other EPA fuels programs.

We are also proposing affirmative defense requirements for parties that manufacture, distribute, and sell EFF. These provisions would allow parties that manufacture, distribute, or sell EFF to help establish affirmative defenses against potential violations of the proposed EFF requirements if all applicable conditions are met. These proposed potential affirmative defenses are analogous to those provided to other parties in other EPA fuels programs.

The violation and penalty provisions applicable to this proposed EFF program would be very similar to the provisions currently in effect in other fuels programs. We are proposing that EFF and natural gasoline EFF blendstock downstream violations follow the same presumptive liability approach used in other fuel programs. We request comment on the need for additional attest engagement, violation, penalty, or any other compliance and enforcement related provisions to the proposed EFF and natural gasoline EFF blendstock requirements.

¹⁷⁰ It is important to note that EFF may also be subject to different RVP standards based on being in an RVP controlled area within an RFG or CG area.

¹⁶⁹ See 40 CFR 80.1503(b)(1)(vi)(E).

6. Compliance Dates

Based on our experience with our past fuel standards, we are proposing a sequence of start dates for compliance depending on the point in the fuel production and distribution system. We are proposing that the proposed requirements for EFF would apply to EFF full-refiners and bulk blender-refiners beginning January 1, 2018. EFF full-refiners and EFF bulk blender-refiners would be required to submit their registration applications to the EPA by November 1, 2017, or 2 months prior to producing EFF. To allow sufficient time for certified natural gasoline EFF blendstock to be made available to EFF full-refiners and bulk blender-refiners, we are proposing that the requirements for certified natural gasoline EFF blendstock would apply beginning December 1, 2017. Producers of certified natural gasoline EFF blendstock would be required to submit their registration applications to the EPA by October 1, 2017, or 2 months prior to producing certified natural gasoline EFF blendstock.

We are proposing that the proposed requirements for EFF would apply at retail and WPC facilities beginning February 1, 2018. We are proposing that the provisions for E15 blender pump retail and WPC facilities would likewise be effective beginning February 1, 2018. This would provide one month between the date when upstream producers of EFF are required to comply and the date

for retail and WPC compliance to allow time for EFF retail tank turnover. This time for retail/WPC tank turnover would be needed for blender pumps that produce E10/E15 as well as those that produce E16–50 using EFF as a parent blend. We anticipate that retailers and WPC facilities would draw down their storage tank volumes and manage deliveries to facilitate compliance on February 1, 2018. We request comment on whether these proposed compliance dates would provide sufficient time for the various parties in the EFF production and distribution system to prepare for compliance.

We are planning on allowing at least 4 months after the publication of the final rule that results from this action before the EFF requirements and gasoline blender pump provisions would apply at retail and WPC facilities. If publication of the final rule is delayed, we would adjust the compliance dates for the various parties in the EFF production and distribution system discussed above to maintain a similar sequenced compliance schedule.

Under the volatility control provisions for conventional gasoline, retail outlets and WPC facilities are required to comply with gasoline RVP requirements from June 1 through September 15 of each year.¹⁷¹ Upstream parties are required to comply from May 1 through September 15 of each year to facilitate retail and WPC compliance. Operators of retail and WPC facilities

manage the timing of their gasoline deliveries so that storage tank volume is drawn down prior to the first delivery of RVP controlled gasoline in the spring of each year. These practices ensure retail and WPC level compliance by the June 1 compliance date.

The same seasonal environmental concerns exist regarding the control of evaporative emissions for FFVs as exist for gasoline vehicles. Therefore, we are proposing that EFF retail and WPC facilities would be required to comply with the proposed RVP standards for EFF from June 1 through September 15 each year in parallel with the requirements for gasoline. We are also proposing that all facilities upstream of retail and WPC facilities would be required to comply with the proposed RVP requirements for EFF from May 1 through September 15 each year in parallel with the gasoline RVP requirements. We believe that this compliance schedule should provide sufficient time for EFF retail and WPC tank turnover provided that EFF retailers and WPC carefully manage their tank volume and delivery schedules. However, we are requesting comment on whether an earlier compliance date would be appropriate for parties upstream of retail and WPC facilities given the historically longer turnover time for EFF retail tanks.

The proposed compliance dates discussed above are summarized below in the Table IV.F.6–1.

TABLE IV.F.6–1—PROPOSED EFF COMPLIANCE DATES

	Certified natural gasoline EFF blendstock producers	EFF full-refiners and EFF bulk blender-refiners	EFF retail and WPC facilities
EPA Registration	10/1/2017 or 2 months prior to production.	11/1/2017 or 2 months prior to production.	Not applicable.
Sulfur, Benzene, and CHONS Requirements.	12/1/2017	1/1/2018	2/1/2018.
Seasonal RVP Requirements	Not applicable. Year-round RVP cap beginning 12/1/2017.	5/1 through 9/15 of each year beginning 5/1/2018*.	6/1 through 9/15 of each year beginning 6/1/2018.

* These seasonal RVP compliance dates apply to all parties in the EFF production and distribution system (including terminals) except retail and WPC facilities.

** The provisions for E10/E15 blender pump-refiners would be effective 2/1/2018.

7. Renewable Volume Obligation

CAA section 211(o)(2)(A)(i) requires that the EPA establish a regulatory program to ensure that transportation fuel contain specified volumes of renewable fuel. In the regulatory program enacted as part of the RFS2 final rule,¹⁷² we specified that obligated party RVOs would be based on their production and import of gasoline and diesel fuel, since other forms of transportation fuel (e.g., natural gas,

propane, and electricity) were used in much smaller quantities than gasoline and diesel, and their use as transportation fuel would be difficult to distinguish at the production level from their use for other purposes.¹⁷³ However, we also reserved expansion of the RVOs to other forms of transportation fuel for future inclusion if warranted. As a result, the RVOs applicable to refiners and importers are currently based only on the non-

renewable volumes of the gasoline and diesel that they produce or import for use in the U.S.

At the time of the RFS2 final rule, E51–83 was not included with gasoline and diesel as a fuel that incurs an RVO, despite the fact that it can be used as a transportation fuel and it has some non-renewable content. Gasoline is the only non-renewable material that currently can be used to make E51–83 EFF while ensuring that it meets the gasoline sub-

¹⁷¹ See 40 CFR 80.27.

¹⁷² See 75 FR 14670 (March 26, 2010).

¹⁷³ See 75 FR 14721 (March 26, 2010).

sim requirement. Since all gasoline incurs an RVO, therefore, the non-renewable fraction of E51–83 incurs an RVO under our current RFS regulations. Since E16–50 blends are being made at blender pumps using gasoline and E85, the non-renewable fraction of E16–50 blends also incurs an RVO under our current regulations. Moreover, since E16–50 blends are also treated as gasoline under our current regulations, we saw no need in the RFS2 final rule to add the non-renewable portion of E16–83 blends to the list of fuels that incur an RVO under the RFS program.

In the years since 2010, there has been increasing interest in the use of natural gasoline as an E51–83 blendstock. Since E16–50 blends are produced at blender pumps using E51–83 as one of the parent blends, such natural gasoline would also be a component of E16–50 blends. As stated before, gasoline is the only non-renewable material that currently can be used to make E51–83 EFF, and natural gasoline, which is typically extracted from the condensates produced from natural gas wells, is not considered to be gasoline under our current regulations. This proposal contains provisions to allow the use of natural gasoline as an EFF blendstock.

Since under our current regulations natural gasoline is not considered to be finished or unfinished gasoline that will eventually be used in the transportation sector, it does not currently incur an RVO under the RFS program. However, by replacing the finished and unfinished gasolines that had formerly been used to produce E16–83 with natural gasoline, it is appropriate to consider whether the RFS regulations should be modified to add natural gasoline used to produce E16–83 to the list of fuels that incur an RVO. This proposal also contains provisions to regulate all E16–83 blends as EFF rather than to continue to treat E16–50 blends as gasoline, thereby providing additional impetus to the consideration of whether natural gasoline used in EFF blends should be added to the list of fuels that incur an RVO.

Under the RFS regulations, the party that first produces or imports a transportation fuel is generally the party that incurs the RVO for the non-renewable portion of that transportation fuel. If EPA were to require all natural gasoline used to make EFF to incur an RVO, there would be a different point of obligation for certified versus uncertified natural gasoline used as an EFF blendstock. For certified natural gasoline EFF blendstocks, the party incurring the RVO would be the producers or importers, consistent with producers and importers of all gasoline

and diesel. For uncertified natural gasoline EFF blendstock, however, the party incurring the RVO would be the party that blends DFE with the uncertified natural gasoline EFF blendstock to produce EFF, since the natural gasoline would not have been designated or treated as an EFF blendstock upstream at the point of production or importation. EFF is generally produced by blenders and ethanol producers that would typically not produce any other fuels that would incur an RVO. Thus, the imposition of an RVO on the producer of EFF would make certain parties responsible for satisfying an RVO that have not had such obligations to date. The EFF producer would need to quantify and track volumes of natural gasoline separately from gasoline and BOBs used to produce EFF. The EFF producer would also be required to acquire and retire an appropriate number of RINs to meet their obligation under the RFS program. There would be both practical and economic impacts on EFF producers that might discourage its expansion in the marketplace.

While in general we continue to believe that all non-renewable transportation fuel should incur an RVO, we also believe that expanding opportunities for the use of EFF is an important goal of the RFS program. Since imposing an RVO on EFF producers that use natural gasoline could potentially conflict with that goal, it may not be appropriate to do so at this time. Moreover, the volume of EFF is currently significantly smaller than the volume of other non-renewable transportation fuels, and is expected to remain so for some time. Based on these considerations, we are not proposing that natural gasoline used to make EFF would incur an RVO, but are instead proposing to defer the imposition of an RVO on parties making EFF with natural gasoline until such time as EFF produced using natural gasoline becomes a more substantial fraction of the transportation fuel pool. We seek comment on this issue and the option to defer the RVO obligation for this fuel.

8. Other Compliance Issues

a. Pump Labeling

During the Tier 3 public comment period, we received comments requesting that the EPA adopt labeling provisions for EFF fuels to help prevent the misfueling of EFF into gasoline-powered conventional vehicles.¹⁷⁴ The EPA also sought comment on this issue in the E15 misfueling mitigation

rulemaking.¹⁷⁵ As was described in the E15 misfueling mitigation rulemaking, the EPA chose not to require labels for EFF at that time because the FTC was planning to require labels that were consistent in size, shape, and content with the EPA's E15 label.¹⁷⁶ We also noted that two separate labeling requirements for EFF by the FTC and the EPA would potentially be confusing and counterproductive to the mitigation of misfueling.

Since the publication of the E15 misfueling mitigation rulemaking and the end of the Tier 3 public comment period, the FTC has finalized labeling requirements for EFF.¹⁷⁷ We believe the FTC EFF labeling requirements are consistent in size, shape, and content with our E15 label and will help mitigate the misfueling of gasoline-fueled vehicles, engines, and equipment with EFF. Therefore, to avoid confusion we are not proposing to require additional EFF labeling requirements at this time.

b. E15 Misfueling Mitigation Harmonization

While this proposal focuses on establishing requirements for EFF quality, minor modifications to the E15 misfueling mitigation requirements at 40 CFR part 80, subpart N, are needed to accommodate the proposed EFF requirements. We are not reopening any other portions of subpart N, and are therefore not seeking comments on aspects of subpart N other than those described in this proposal.

We are proposing a restructuring of 40 CFR part 80, subpart N, to incorporate the proposed EFF requirements. In general, the E15 misfueling mitigation requirements are unchanged; however, some slight modifications to the E15 misfueling mitigation requirements would be necessary to incorporate EFF requirements. For example, we are proposing to change the PTD requirements for E15 misfueling mitigation in 40 CFR 80.1563 to be consistent with PTD requirements for the Tier 3 gasoline sulfur program and incorporate new language to help EFF blender pump-refiners comply with applicable EFF requirements. Additionally, consistent with PTD requirements in other EPA fuels programs, we are proposing to allow parties to submit alternative EFF PTD language for EPA approval, including E15 misfueling mitigation PTD requirements. This would allow all affected parties an opportunity to use

¹⁷⁵ See 75 FR 68044 (November 4, 2010).

¹⁷⁶ See 76 FR 44406 (July 25, 2011).

¹⁷⁷ See 79 FR 18850 (April 4, 2014).

¹⁷⁴ See Docket Item No. EPA-HQ-OAR-2011-0135-5212.

more concise PTD language, with EPA approval, to help address the manifold complex situations that may occur in the fuel distribution system while meeting the intent of the EPA's PTD requirements.

We are also proposing to add a definition for flexible-fuel engines and language that exempts flexible-fuel nonroad engines from the prohibition on the use of gasoline-ethanol blended fuels containing more than 10 volume percent ethanol since these engines have been certified on the use of EFF similar to FFVs. Although we have pointed out that the current regulatory requirements allow flexible-fuel engines to use EFF,¹⁷⁸ we are proposing to remove any ambiguity from the regulations to better accommodate appropriate EFF use at retail stations.

9. EFF Quality Survey Program

The EPA has a successful history of allowing regulated parties to participate in survey programs managed by an independent survey association as a way to decrease compliance costs for both regulated parties and the EPA. We recognize that many, if not all, EFF bulk blender-refiners and blender pump-refiners would have difficulty complying with the EFF full-refiner requirements, including sampling and testing, compliance reporting, recordkeeping requirements, and attest engagements. As a result, we have developed compliance systems for EFF bulk blender-refiners and blender pump-refiners that rely primarily on monitoring records as discussed above. Such systems, however, are subject to fraud and abuse without some means to verify their authenticity. As a result, we need some means of doing so for EFF. Based on past experience with our other fuel programs, we believe the least costly and most effective way of doing so is through in-use fuel quality surveys. As such, we believe that allowing EFF bulk blender-refiners and blender pump-refiners to verify compliance with the proposed EFF requirements through participation in a survey program and the use of appropriate blendstocks and parent fuels is appropriate. EFF bulk blender-refiners and blender pump-refiners would comply with the applicable EFF standards through the use of appropriate parent fuels and blendstocks and by contracting an independent survey association to conduct a survey of EFF manufactured through blender pumps and blended in bulk at terminals or at an ethanol

production facility. The scope of the EFF blender pump survey program and specific design requirements for the survey program are discussed below.

a. Scope of the EFF Quality Survey Program

The survey would be limited to collecting and analyzing samples of EFF for ethanol content, sulfur content, benzene content, and RVP (from June 1 to September 15) at EFF and blender pump retail stations. The proposed EFF requirements would impose a 10 ppm annual average sulfur standard, 95 ppm per-gallon sulfur cap, and 0.62 volume percent annual average benzene standard on all EFF. In lieu of requiring the sampling and testing of each batch to ensure compliance with the sulfur and benzene standards, the EPA is proposing to allow EFF bulk blender-refiners and blender pump-refiners the flexibility to comply with these standards by contracting with an independent survey association to randomly sample and test the EFF they manufacture. The EPA believes that most terminals, ethanol production facilities, and retail stations that make EFF would prefer to contract an independent survey association to conduct such a survey since it would be significantly cheaper than sampling and testing each batch of fuel for sulfur and benzene content.

As discussed earlier, determining the RVP resulting from commingling gasoline, ethanol, and natural gasoline is complicated for parties that are simply creating small batches of EFF.¹⁷⁹ This situation is even more complex at blender pumps where many different gasolines could be commingled through the dispenser and in the underground storage tanks, with many different EFF in varying proportions. Although we are proposing to control the RVP for EFF manufactured through a blender pump by regulation of the parent fuels, the EPA believes that RVP information from the samples would help ensure that EFF dispensed through blender pumps does not result in summertime fuels greater than 10 psi that would impose problems for FFV evaporative emissions controls. The EPA would monitor the information from the EFF survey to inform whether an EFF blender pump-refiner RVP requirement would be necessary.

The benzene and sulfur test results from these fuels would help ensure that EFF manufactured by an EFF bulk blender-refiner and the parent blends at an EFF blender pump-refinery (*i.e.*, the gasoline and EFF used to make gasoline-ethanol blended fuels at blender pumps)

are meeting applicable benzene and sulfur standards at a regional and national level. This information would be useful to identify if further requirements to control sulfur and benzene levels in EFF are needed. Additional parties (*e.g.*, EFF full-refiners and natural gasoline EFF blendstock refiners) could participate in the survey to help establish affirmative defenses similar to what we are proposing for RVP, in-use sulfur, and benzene content. We also seek comment on whether there are any other fuel parameters that should be measured as part of the proposed EFF survey program to help ensure EFF compliance with proposed requirements.

The EPA is also proposing to require that EFF bulk blender-refiners participate in the survey as part of satisfying the alternative compliance provisions as EFF bulk blender-refiners. In order to ensure that the EFF produced by an EFF bulk blender-refiner met applicable EFF standards, all EFF retail outlets would need to be surveyed. Testing these fuels for regulated parameters would help ensure that EFF produced by bulk blender-refiners met standards.

We are not proposing to require that EFF full-refiners participate in the EFF survey program in addition to the other proposed requirements for EFF full-refiners. We believe that EFF full-refiners can demonstrate that their fuels would meet applicable EFF fuel quality standards through the sampling and testing of each batch of EFF at the point of production consistent with how gasoline refiners have done so in other EPA fuels programs. Historically, the EPA has never required that parties contract with an independent surveyor as the only means of demonstrating requirements. Compliance surveys have always been a compliance option for parties in lieu of conducting their own compliance assurance programs. Requiring all EFF refiners to participate in the survey would also blur the lines between the compliance options of being an EFF full-refiner or an EFF bulk blender-refiner and make the full-refiner option less attractive to parties that manufacture EFF. However, requiring EFF full-refiners to participate in the survey program would help spread out the compliance costs across all parties that manufacture EFF since the EFF survey would sample and test EFF from retail stations regardless of which party produced it. Therefore, although we are not proposing to require EFF full-refiners to participate in the EFF survey program, we seek comment on whether EFF full-refiners should be required to participate in the EFF survey program.

¹⁷⁸ Letter to Bob Greco, American Petroleum Institute, from Adam Kushner, U.S. EPA, July 31, 2008.

¹⁷⁹ See section IV.D.3.b of this preamble.

We recognize that the proposed EFF survey program overlaps significantly with the E15 survey program. The E15 survey program already regularly samples blender pump stations for the ethanol content of gasoline samples, with a focus on E15. Currently, most blender pump stations are selected for sampling and testing since these stations make up a bulk of the stations already offering E15 and are the most likely to offer E15 without satisfying E15 misfueling mitigation requirements. Additionally, some retail stations that market E85, but do not have blender pumps, are randomly selected as part of the E15 survey program. Since these stations are already being surveyed as part of the E15 survey program, we believe that responsible parties could integrate the proposed EFF survey program with the E15 survey to reduce the cost to industry. However, the proposed EFF survey program requirements are separate from the E15 survey requirements in the regulations and EFF bulk blender-refiners and blender pump-refiners may choose to have two different independent survey associations to conduct the E15 and EFF surveys.

b. Specific EFF Quality Survey Design Requirements

We are proposing similar survey design elements for the EFF survey program as those used in other EPA fuels survey programs. The survey would be conducted by an independent survey association with the same independence requirements used in other fuels survey programs. The independent survey association would submit an annual plan to the EPA for approval that outlines how the EFF blender pump survey requirements would be met. These requirements would include how blender pump and EFF stations would be selected for sampling and testing, how samples would be procured, how samples would be tested for sulfur, benzene, RVP, and ethanol content, and how potential issues would be reported to the EPA. The survey association would have to also submit periodic and annual reports on aggregate survey results to the EPA. The survey association would be responsible for identifying blender pump and EFF station locations and providing those locations to the EPA on a regular basis. The survey association would also let the EPA know if any EFF bulk blender-refiner or blender pump-refiner fails to participate in the EFF survey consortium. Similar to other survey programs, the survey association would also have to provide proof of monies for the approved survey plan

prior to the implementation of the annual EFF survey plan. Consistent with other EPA fuels survey programs, the EFF survey program would require four quarterly surveys.

We also are proposing a slightly different sample size determination methodology from those used in other EPA fuels survey programs for the EFF survey program. Since the EFF survey program needs to sample EFF produced by a bulk blender-refiner and distributed to all EFF stations (*i.e.*, stations offering only “E85” and stations that operate blender pumps), the EFF survey would need to take samples from a subset of all stations that offer EFF. However, EFF produced at a blender pump and EFF produced at a terminal or ethanol production facility necessitates different sampling and sample size methodologies to ensure that the EFF sampled and tested is representative of the fuels produced by EFF bulk blender-refiners and blender pump-refiners, respectively. Therefore, we are proposing to have separate sample size determinations for all EFF stations and for the subset of stations with EFF that make EFF through a blender pump.

For all EFF stations, the sample size determination methodology would be similar to those already required in other EPA fuels survey programs with one difference. Since the number of total EFF stations is still relatively small (around 3,000 stations), a finite population correction would be needed to account for the small population of EFF retail stations. Additionally, we are proposing a minimum number of samples for the survey of all EFF retail stations of 500 stations to account for the relatively low population of EFF retail stations. The EPA would reconsider the minimum sample size if the number of EFF retail stations increases substantially relative to the total number of fuel retail stations nationwide.

For the subset of EFF stations that make EFF via a blender pump, we believe a different sample size determination methodology is necessary due to the even smaller relative size of the population of blender pump stations. To date there have been a limited number of retail stations that own or operate blender pumps (we estimate 400 to 500), spread out over many states but focused primarily in the Midwest. Given the limited number of retail stations that currently own or operate blender pumps, we propose that the survey would be conducted at all blender pump stations each year until the number of retail stations with blender pumps exceeds 500 stations.

This would mean that each retail station with a blender pump could expect to be sampled at least once per year. Once the number of stations with a blender pump exceeds 500 stations, the survey association would determine the number of retail stations to be sampled in accordance with appropriate sample size determination methodology.¹⁸⁰ For these sample size determinations, we are proposing similar sample size determination methodology as those used in other EPA fuels survey programs.¹⁸¹ However, under no circumstances would the minimum number of retail stations selected to be sampled be less than 500.

Although we are not proposing a maximum number of samples, a maximum sample size could be used to limit the cost of the survey program since the number of retail stations that are needed to be sampled would depend on compliance rates determined by the previous survey period and the number of total retail stations with blender pumps. For example, in the ULSD Survey Program, we established a maximum number of samples at 9,600 to limit industry’s potential cost.¹⁸² We seek comment on these proposed sample size requirements.

We are proposing that the survey association use a method for collecting samples of EFF produced through a blender pump consistent with those specified in NIST Handbook 158. Since most E15 is currently produced by blending E10 with EFF via a blender pump, the EPA has encountered some challenges with collecting a valid sample due to the unique way that blended fuels are produced at blender pumps. The issue was that inconsistent ethanol content results occurred due to variation between the independent survey association and states’ weights and measure offices. In order to address this issue, the EPA has worked with industry, the RFG Survey Association, and other affected stakeholders to

¹⁸⁰ It should be noted that this 500 station minimum is in addition to the 500 station minimum for the entire EFF station population. This means that the EFF survey program would have a minimum number of 1,000 stations that are sampled in a given year. These 500 stations cannot be double-counted within the EFF program; however, stations selected for the E15 program could be counted for the EFF survey program minimum number.

¹⁸¹ For the first year of the survey to determine the number of retail stations for the survey, the estimated non-compliance rate would be 2.3 percent. This number is based on historical compliance rates from other fuel programs. Since it is most likely that the first several years of the survey would be a virtual census of blender pumps, actual compliance rates from these years would substitute the historical figure of 2.3 percent.

¹⁸² See 40 CFR 80.6113(e)(4)(v).

develop an agreed upon sampling protocol to ensure that representative samples are collected from blender pumps. This agreed-upon method was included in NIST Handbook 158, and we believe that the methods specified there for collecting blended fuels produced through a blender pump yield representative samples. Therefore, we are proposing that the survey association use one of those methods, incorporated by reference, for both the E15 and EFF survey programs. We seek comment on whether this is appropriate.

Unlike in our other fuel survey programs, we are proposing not to require that the samples at retail stations be stratified. The practical implication of not stratifying the sample is that the annual sample size of retail stations surveyed would be decreased.¹⁸³ This is related to the small number of retail stations with blender pumps and the fact that many of these stations are located in rural areas. Historically, the EPA has stratified the national retail station pool to ensure that fuels from major metropolitan areas, transportation corridors (*i.e.*, the areas around interstates and major highways), and rural areas were appropriately represented in the survey sample. This helped give the EPA a sense of compliance rates in each stratum to help target future compliance and enforcement efforts. Since blender pumps are not concentrated in major metropolitan areas or along transportation corridors, it does not make sense to have a survey that stratifies a sample like other national fuels survey programs. Additionally, at least for the first few years of the program, the EFF quality survey program would take samples from all retail stations with blender pumps, making stratification unnecessary. However, if EFF stations become more prevalent nationwide, stratification of the national EFF station pool could be incorporated into the annual EFF survey plan in the future.

We are proposing that the independent surveyor submit the survey plans to the EPA for approval no later than November 15 of the preceding year and that proof of monies be submitted to the EPA no later than December 15 of the preceding year. These dates are consistent with other EPA fuels survey programs and should provide enough time for an independent surveyor to

submit plans and begin conducting the survey. It should be noted that responsible parties may only take advantage of the alternative compliance provisions for EFF bulk blender-refiners and blender pump-refiners if they participate in a survey program with an EPA-approved survey plan.

Although the EFF quality survey program would be required for EFF bulk blender-refiners and blender pump-refiners, we are proposing that other parties (*e.g.*, EFF full-refiners) could participate in the EFF quality survey consortium to help establish an affirmative defense for potential EFF violations. The EPA has provided this affirmative defense opportunity to parties in other fuels programs (*e.g.*, the E15 survey program).

Even though the EFF quality survey program is similar to other EPA fuels program surveys, we are proposing some significant changes to the survey design to accommodate blender pumps and EFF stations. We believe that the proposed survey design can effectively help assure compliance without imposing unnecessary burden on responsible parties. However, we are interested if there are changes to the proposed EFF survey program that could improve its effectiveness in assuring compliance or further reduce costs for responsible parties. One option to reduce costs would be to find alternatives to ensuring compliance at the retail level without sampling and testing. For example, the independent surveyor could review the PTDs of parent fuels to ensure that EFF blender pump-refiners only received certified gasoline and EFF for EFF production through a blender pump. This PTD review could be less expensive than the sampling and testing of EFF and could replace some of the sampling that needs to occur under the proposed EFF survey program. The EPA is not proposing this option over concerns that retail stations may not wish to allow an independent surveyor to review their PTDs and thus diminish response rates in the proposed survey program. We seek comment on allowing independent surveyors to review PTDs in lieu of taking an EFF sample and testing it for compliance and whether there are any additional survey design changes that should be incorporated in the proposed EFF survey program.

G. Simplified EFF Alternatives

The proposed provisions to allow the use of natural gasoline as a blendstock to produce EFF could reduce the cost of EFF and result in the increased use of ethanol to help meet the RFS mandates. However, the use of natural gasoline

would also introduce complications, necessitate the substantial new provisions discussed in this proposal, and increase the EPA's burden to ensure that EFF meets environmentally protective standards. Accordingly, we are also seeking comment on implementing two alternative simpler programs to regulate EFF.

The first alternative would only allow the use of EPA-compliant gasoline, BOBs, and DFE as EFF blendstocks. This would parallel the current requirements in California while still expanding the allowable range of ethanol blends.

A number of the provisions in this proposal would remain unchanged under this simpler approach. For example, we would still propose to treat E16-50 in a similar way to other EFF blends that may only be used in FFVs (E51-83), and would defer consideration of requiring compliance with the F&FA program requirements for all EFF to a future action. The proposed EFF blender pump-refiner provisions would also remain the same.

Since parties that produce EFF would only be using DFE and EPA-compliant gasoline or BOBs, they would not have to conduct any sampling or testing to demonstrate compliance with any of the proposed requirements for EFF, including the RVP requirements. The only programmatic requirements for EFF bulk blender-refiners would be to register with the EPA, keep PTDs and other records regarding their blending activities, and submit simple annual reports with information regarding the EFF batches they produced during the year.

The second alternative would allow EFF producers to use certified natural gasoline EFF blendstocks in addition to certified gasoline and BOBs, but would not allow the use of uncertified natural gasoline EFF blendstocks. Thus, the EFF full-refiner certification option would no longer be included. There are several benefits of this proposed approach, as it would allow the increased use of natural gasoline to produce EFF, thereby reducing the costs, and would also assure that the overall emissions from EFF are no greater than emissions from the production of EFF with certified gasoline without the complications necessitated by the use of uncertified natural gasoline. The EFF full-refiner option would allow natural gasoline with higher benzene and sulfur levels to be used to produce EFF, provided that tests on the finished EFF demonstrated the same level of control as provided for gasoline under the current regulations. The added complexity under the EFF full-refiner option, which is needed to

¹⁸³ On the other hand, by not stratifying the sample, this ensures the probability of an individual station being randomly selected for sampling is relatively the same. This could help reduce concerns associated with selection bias in the survey program.

ensure that the use of higher sulfur and benzene natural gasoline does not result in increased emissions, may create confusion among regulated parties and increase the likelihood of violations for downstream parties.

We request comment on whether the increased flexibility of allowing the use of either certified or uncertified natural gasoline as an EFF blendstock justifies the EPA promulgating the previously discussed comprehensive compliance provisions and the increased burden of governmental oversight, or whether it would be more appropriate to implement one of the simpler programs described above.

H. Statutory Authority for Proposed EFF Requirements

FFVs have been manufactured and introduced into commerce for more than two decades and are typically designed to operate on gasoline and any gasoline-ethanol mixture of up to 83 percent ethanol. These fuels contribute to emissions of VOC and NO_x that result in the formation of both ozone and fine particulate matter (PM_{2.5}). These pollutants present a significant risk of harm to public health and welfare. Given the environmental and health effects of evaporative emissions from fuels, the EPA has responded by consistently setting requirements to address such emissions. For example, beginning in 1971, the EPA established a series of evaporative control requirements for vehicles and engines, under CAA section 202(b). Similarly, beginning in 1989, the EPA set volatility requirements for gasoline under CAA section 211(c) by requiring that gasoline meet a maximum RVP of 9.0 psi during the ozone high season. In 1990, Congress ratified these regulations by promulgating CAA section 211(h). The EPA has also limited sulfur in gasoline in its Tier 3 rule under CAA section 211(c),¹⁸⁴ and has limited levels of benzene under the Mobile Source Air Toxics (MSAT) rule.¹⁸⁵

When operating on gasoline, FFV emissions are minimized due to the existing gasoline content requirements (*i.e.*, sulfur, benzene, CHONS, and RVP). Currently, the only fuel requirement for higher ethanol blends used in FFVs is that it has to be either substantially similar to certification fuel or have a waiver under CAA section 211(f). FFVs are also equipped with the same type of emission control systems as conventional gasoline vehicles and are generally subject to the same emissions standards. Therefore, we believe that in

order to maintain emissions control performance, FFVs need EFF that meet quality specifications similar to those for gasoline, such as the 10 ppm annual average sulfur standard in the Tier 3 gasoline sulfur program,¹⁸⁶ and the 0.62 volume percent annual average benzene standard in the gasoline benzene program.¹⁸⁷

The EPA is proposing to regulate EFF content pursuant to our authority under CAA section 211(c). We are proposing sulfur, benzene, and RVP controls for EFF based on both of the criteria in section 211(c). This section allows the EPA to establish a fuel control if at least one of the following two criteria is met: (1) The emission products of the fuel cause or contribute to air pollution that may reasonably be anticipated to endanger the public health and welfare;¹⁸⁸ or (2) The emissions products of the fuel will impair to a significant degree the performance of any emissions control device or system which is either in general use or which the Administrator finds has been developed to a point where in a reasonable time it will be in general use or which the administrator finds has been developed to a point where in a reasonable time it will be in general use were the fuel control to be adopted.¹⁸⁹ We are also proposing to limit EFF to CHONS using our authority under CAA section 211(f).

1. Section 211(c)(1)(A)

Under the first criterion of CAA section 211(c)(1), we believe that EFF with current levels of sulfur, benzene, and RVP causes or contributes to ambient levels of ozone, PM and air toxics that endanger the public health and welfare. EFF containing sulfur at the current levels increases emissions of NO_x and PM from FFVs and as such contributes to the formation of ozone and PM in the atmosphere. EFF with current RVP levels is a source of VOC emissions and as such contributes to the formation of ozone in the atmosphere. In addition, EFF is also a source of MSATs. MSATs are present in gasoline and gasoline-ethanol blends or their additives and are emitted to the air when EFF evaporates or passes through FFV engines.

The EPA has set National Ambient Air Quality Standards (NAAQS) for ambient concentrations of PM and ozone.¹⁹⁰ PM is a highly complex mixture of substances that exist as

discrete particles. Particles span many sizes and shapes and may consist of hundreds of different chemicals. PM is linked to a broad range of health effects.¹⁹¹ There are well documented studies on the health effects associated with both short-term and long-term PM exposure. Short-term PM_{2.5} exposure has been associated with increased cardiovascular and respiratory effects and mortality.¹⁹² With regard to long-term exposure, there are also studies that demonstrate a link between long-term exposure to PM_{2.5} with an array of cardiovascular effects such as heart attacks, congestive heart failure, stroke, and mortality.¹⁹³ Specific groups within the general population are at increased risk for experiencing adverse health effects related to PM exposures, including children, older adults, and individuals with pre-existing heart and lung disease. Further, environmental and welfare effects of PM_{2.5} include reduced visibility in certain parts of the country, overall contamination through deposition to terrestrial and aquatic ecosystems and soiling and aesthetic damage by corroding and degrading buildings and monuments.¹⁹⁴

Ground level ozone pollution is typically formed through reactions involving VOC and NO_x in the lower atmosphere in the presence of sunlight. In humans, exposure to ozone can irritate the respiratory system, reduce lung function and aggravate asthma and other lung diseases.¹⁹⁵ Several groups are at increased risk for ozone-related health effects, including people with asthma, children, older adults, and outdoor workers. In addition ozone has effects on vegetation and ecosystems.¹⁹⁶ These effects include visible foliar injury, impacts on tree growth, productivity and carbon storage, and crop yield loss.¹⁹⁷ The proposed EFF sulfur and RVP controls would reduce emissions of NO_x and VOCs which

¹⁹¹ See 78 FR 3103–3104 (January 15, 2013).

¹⁹² U.S. EPA, “2009 Final Report: Integrated Science Assessment for Particulate Matter,” EPA/600/R-08/139F, at chapter 2 (sections 2.3.1–2) and chapter 6.

¹⁹³ *Id.* at chapter 7.

¹⁹⁴ *Id.* at chapter 2 (sections 2.5.1–3) and chapter 9.

¹⁹⁵ U.S. EPA, “2013 Final Report: Integrated Science Assessment for Ozone,” EPA/600/R-10/076F, at chapter 6.

¹⁹⁶ See the NAAQS for Ozone (80 FR 65292, 65302–65340, October 26, 2015).

¹⁹⁷ See 80 FR 65470 (October 26, 2015). A more detailed discussion of the health and welfare effects of these pollutants can be found in the final rules for the NAAQS for Ozone (80 FR 65292, 65302–65340, October 26, 2015), NAAQS for PM (78 FR 3087, January 15, 2013), and their ISAs, which are available at <https://www.epa.gov/isa>.

¹⁸⁶ See 40 CFR part 80, subpart O.

¹⁸⁷ See 40 CFR part 80, subpart L.

¹⁸⁸ See CAA section 211(c)(1)(A).

¹⁸⁹ See CAA section 211(c)(1)(B).

¹⁹⁰ See 40 CFR 50.18 and 50.19.

¹⁸⁴ See 79 FR 23414 (April 28, 2014).

¹⁸⁵ See 72 FR 8428 (February 26, 2007).

contribute to ambient concentrations of PM and ozone.

Natural gasoline can have high benzene content, potentially resulting in high levels of benzene in EFF. The EPA's Integrated Risk Information System (IRIS) database lists benzene as a known human carcinogen.¹⁹⁸ Benzene causes leukemia by all routes of exposure, and exposure is associated with additional health effects, including genetic changes in both humans and animals and increased proliferation of bone marrow cells in mice.¹⁹⁹ A number of adverse noncancer health effects including blood disorders, such as pre leukemia and aplastic anemia, have also been associated with long-term exposure to benzene.²⁰⁰ We believe that the EFF benzene standard, when finalized, will limit benzene exhaust and evaporative emissions from FFVs that are fueled by EFF. In addition, it will limit evaporative benzene emissions from EFF distribution systems.

In sum, we are proposing that emission products of EFF will endanger public health and welfare. FFVs represent more than 6 percent of the current vehicle fleet and approximately 25 percent of new light duty vehicles produced in 2014. Given that FFVs tend to be newer vehicles that are driven more than older vehicles, FFVs account for nearly 8 percent of all light duty vehicle miles traveled in 2015.²⁰¹ Thus, we believe that control of sulfur, benzene, and RVP in EFF will lead to significant effective reductions in emissions of these air pollutants and thus, benefits to public health and welfare.

Prior to adopting a fuel control based on a finding that the fuel's emission products contribute to air pollution that can reasonably be anticipated to endanger public health or welfare, under CAA section 211(c)(2)(A), the EPA must consider "all relevant medical and scientific evidence available, including consideration of other technologically or economically feasible means of achieving emission

standards under [section 202 of the CAA]." The EPA has considered medical and scientific evidence as well as other technologically or economically feasible means of achieving emissions control using vehicle controls. The EPA's analysis of the medical and scientific evidence relating to the emissions impact from EFF is described in more detail in various documents cited earlier, including the MSAT rule, and the Ozone and PM NAAQS final rules and their associated Integrated Science Assessments (ISAs). The EPA has also satisfied the statutory requirement to consider "other technologically or economically feasible means of achieving emission standards under [section 202 of the CAA]." This provision has been interpreted as requiring consideration of establishing emission standards under CAA section 202 prior to establishing controls or prohibitions on fuels or fuel additives under CAA section 211(c)(1)(A).²⁰² In *Ethyl Corp. v. EPA*, the court stated that CAA section 211(c)(2)(A) calls for good faith consideration of the evidence and options, not for mandatory deference to regulation under CAA section 202 compared to fuel controls.²⁰³ As a general matter, under Title II of the CAA, the EPA has adopted a systems-approach towards mobile source standard setting (*i.e.*, the simultaneous promulgation of both engine and fuels requirements, under CAA sections 202 and 211(c)). In so doing, the EPA considers interactions between the designs of vehicles and the fuels they use in order to assure optimum emission performance at minimum cost. The EPA has previously promulgated various emissions standards for FFVs and FFV engines under CAA section 202. These include the 2007 MSAT evaporative emission standards applicable to diurnal and hot soak emissions for FFVs that became fully effective in 2014 and more recently the Tier 3 final rule.²⁰⁴ In the Tier 3 rule, the EPA proposed both fuel quality and emissions standards for FFVs but only finalized vehicle and engine standards and certification fuel.²⁰⁵ As previously explained, emissions certification testing of FFVs is required using both the test fuel specified for conventional gasoline vehicles and a high ethanol content FFV test fuel (E83). Regulatory specifications for conventional gasoline emissions certification test fuel have

long existed.²⁰⁶ Regulatory specifications for the high-ethanol content FFV certification test fuel were finalized in the Tier 3 final rule and will become mandatory for MY 2017 FFVs.²⁰⁷ As previously explained, EFF must be substantially similar to vehicle certification fuel, under CAA section 211(f).²⁰⁸ These proposed standards for EFF, which expand on the Tier 3 proposal, will therefore restrict sulfur, benzene, and RVP content in EFF and enable compliance with the MSAT benzene evaporative standards as well as Tier 3 emission standards for FFVs that were based on use of advanced emission control technology now in-use by FFVs.

2. Section 211(c)(1)(B)

We are also proposing requirements for sulfur content in EFF and RVP limits for EFF under the second criterion of CAA section 211(c). We believe that sulfur in EFF could significantly impair the emission-control systems expected to be in general use in FFVs and FFV engines. There are well documented studies on the impact of sulfur on emissions control performance of exhaust catalyst systems.²⁰⁹ Sulfur is a well-known catalyst poison because it inhibits and degrades the emissions control performance of exhaust catalyst systems by selectively binding and reacting, in some instances, with active sites and coating materials.²¹⁰ As a general matter, reducing fuel sulfur levels has been the primary regulatory mechanism to minimize sulfur contamination of the catalyst and ensure optimum emissions performance over the useful life of a vehicle. As also explained in the Tier 3 final rule, the impact of sulfur poisoning on exhaust catalyst performance and the relative stringency of the Tier 3 exhaust emissions standards, when considered together make a compelling argument for the virtual elimination of sulfur from

¹⁹⁸ U.S. EPA, "Toxicological Review of Benzene (Noncancer Effects)," EPA/635/R-02/001F, at 22.

¹⁹⁹ *Id.* at 72, 108. See also, U.S. EPA, "Integrated Risk Information System Chemical Assessment Summary: Benzene," at Section II, https://cfpub.epa.gov/ncea/iris/iris_documents/documents/subst/0276_summary.pdf.

²⁰⁰ U.S. EPA, "Toxicological Review of Benzene (Noncancer Effects)." EPA/635/R-02/001F. See also, Aksoy, M. (1989). "Hematotoxicity and carcinogenicity of benzene." *Environ. Health Perspect.* 82: 193-197; See also, Goldstein, B.D. (1988). "Benzene toxicity." *Occupational medicine. State of the Art Reviews.* 3: 541-554.

²⁰¹ EIA, "2015 Annual Energy Outlook," [http://www.eia.gov/forecasts/aeo/pdf/0383\(2015\).pdf](http://www.eia.gov/forecasts/aeo/pdf/0383(2015).pdf).

²⁰² See *Ethyl Corp. v. EPA*, 541 F.2d. 1, 31-32 (D.C. Cir. 1976).

²⁰³ *Id.* at 32, n.66.

²⁰⁴ See 72 FR 8473 (February 26, 2007) and 79 FR 23414 (April 28, 2014).

²⁰⁵ See 79 FR 23558 (April 28, 2014).

²⁰⁶ See, *e.g.*, "The effects of Ultra-Low Sulfur Gasoline on Emissions from Tier 2 Vehicles in the In-Use Fleet," EPA-420-R-14-002. See also, Durbin, T. "The effect of fuel sulfur on NH₃ and other emissions from 2000-2001 model year vehicles." *Atmospheric Environment* 38, 2699 (2004).

²⁰⁷ See 79 FR 23414 (April 28, 2014) and 40 CFR 1065.725.

²⁰⁸ See 40 CFR 1801-12.

²⁰⁹ See the Tier 3 final rule, 79 FR 23414 (April 28, 2014).

²¹⁰ *Nat'l Petrochemical & Refiners Ass'n v. EPA*, 287 F.3d 1130, 1143 (D.C. Cir. 2002); See also section IV.6 of the Tier 3 final rule preamble, which describes the substantial adverse effect of high gasoline sulfur levels on emission control devices or systems for Tier 3 vehicles and engines (79 FR 23463-23474, April 28, 2014).

fuel used in vehicles equipped with catalytic aftertreatment.

There are currently no specifications in 40 CFR part 80 for natural gasoline used as an EFF blendstock that would ensure that the resulting EFF is suitable for use in FFVs. Additionally, natural gasoline can have high sulfur content, potentially resulting in high levels of these harmful components in EFF that could impair the performance of FFV emissions control catalysts. As also previously explained, the EPA set vehicle and engines standards, under CAA section 202, in the recent Tier 3 rule that relied on sulfur reduction in gasoline. FFVs utilize the same aftertreatment catalysts as gasoline vehicles, which are adversely affected by sulfur in EFF in the same way as sulfur in gasoline. Therefore, we believe that control of sulfur in EFF to 10 ppm (the same as sulfur in gasoline) will significantly improve the efficiency of emissions control systems currently in use in FFVs and continue prevention of the substantial adverse effects of sulfur levels on the performance of such emissions control systems when they operate on any fuel.

We also believe that high RVP levels in EFF could impair FFV evaporative emissions control systems. FFVs are equipped with evaporative canisters similar to conventional gasoline vehicles. These canisters have limited storage abilities and fuel vapors must be “purged” each time the engine is operated. FFVs with properly designed evaporative control systems are equipped with purging systems that remove enough vapor as well as control fuel flow rates so that purged vapor does not increase emissions. They are also designed to regenerate their vapor storage capacity so that vapor can continue to be controlled. However, when FFVs are operated on EFF with RVP levels above the test fuels used during FFV certification the evaporative canisters on FFVs can be overloaded resulting in excessive evaporative emissions. Therefore, we believe that the RVP of EFF must be controlled to ensure that FFVs are not subjected to EFF that exceeds the RVP of test fuels used during FFV certification.

CAA section 211(c)(2)(B) requires that, prior to adopting a fuel control based on a significant impairment to vehicle emission-control systems, the EPA consider available scientific and economic data, including a cost benefit analysis comparing emission-control devices or systems which are or will be in general use that require the proposed fuel control with such devices or systems which are or will be in general use that do not require the proposed

fuel control. As previously explained, there are existing emissions standards for FFVs and FFV engines under CAA section 202, including the MSAT evaporative emission standards applicable to diurnal and hot soak emissions for FFVs,²¹¹ and more recently the Tier 3 final rule.²¹² For these purposes, the EPA is relying on the Regulatory Impact Analyses (RIAs) for the Tier 3 rule and 2007 MSAT rule.²¹³ We believe that the emissions control technology being used to meet these existing standards would be significantly impaired by operation on EFF with annual average sulfur levels greater than 10 ppm and current RVP levels. Our analysis of the available scientific and economic data can also be found in the Tier 3 RIA. The EPA is relying on the detailed analysis of the environmental benefits of the Tier 3 sulfur standards (Chapters 6 and 8), the analysis of the technological feasibility and cost of controlling sulfur to the levels established in the Tier 3 final rule (Chapters 4 and 5), and the cost-effectiveness analysis of the sulfur control and motor vehicle and engine emission standards (Chapter 8). These EFF requirements, when finalized, will ensure that emission control devices available for general use in FFVs can continue to meet existing emission standards and would not be significantly impaired by EFF with current sulfur and RVP levels, as well as when EFF is made with natural gasoline.

3. Section 211(c)(2)(C)

CAA section 211(c)(2)(C) requires that prior to prohibiting a fuel or fuel additive, the EPA must make a finding that such prohibition will not cause the use of another fuel or fuel additive “which will produce emissions which endanger the public health or welfare to the same or greater degree” than the prohibited fuel or additive. This finding is required by the CAA only prior to prohibiting a fuel or additive, not prior to controlling a fuel or additive.²¹⁴ Since the EPA is not proposing to prohibit use of sulfur, benzene, or RVP, but rather controlling their levels in EFF, this finding is not required for this proposed rulemaking. Nevertheless, the EPA does not believe that these various controls for EFF will result in the use of

any other fuel or additive that will produce emissions that will endanger public health or welfare to the same or greater degree as the emissions produced by EFF with their current levels.

4. Section 211(f)

The EPA is also proposing to regulate the elemental composition of EFF, as we believe that elements that poison (deactivate) vehicle emissions control catalysts such as anions or cations (*e.g.*, metals) can exist naturally in petroleum deposits or can be added in the process of extracting such deposits. They can also become entrained in either petroleum or ethanol products through contamination or could purposefully be added to a fuel. As a result, the EPA limited the elemental content for gasoline and gasoline additives to CHONS.²¹⁵ Refiners are required to limit the elemental composition of the gasoline they produce to CHONS, except for trace quantities of other atypical elements. We are proposing to regulate EFF to consist only of CHONS in the same fashion.

As also previously explained, there are currently no specifications in 40 CFR part 80 on the quality of natural gasoline used as EFF blendstock that would ensure that the resulting EFF is suitable for use in FFVs. Were natural gasoline used in EFF to contain non-CHONS elements (*e.g.*, metals and salts), either naturally or through addition, it could also quickly destroy the effectiveness of FFV emissions control catalysts. Thus, significant concern exists about the potential increase in FFV emissions that might result from the unregulated use of natural gasoline of uncontrolled quality as an EFF blendstock. Additionally, other components of EFF (*e.g.*, ethanol and additives) can also contain non-CHONS elements that can adversely affect FFV emissions control catalysts. We are also concerned about the non-CHONS content of these components and the resulting effect on emissions from FFVs.

CAA section 211(f) requires fuel and fuel additives introduced into commerce to be “substantially similar” to fuels or fuel additives used in certification. This requirement applies to all fuels used in motor vehicles, including FFVs. The term “substantially similar” is not defined in the CAA and has been interpreted and historically used to regulate the elemental content, molecular structure, and total concentration of fuel and fuel

²¹¹ See 72 FR 8473 (February 26, 2007).

²¹² See 79 FR 23414 (April 28, 2014).

²¹³ The Tier 3 RIA is available at <https://www3.epa.gov/otaq/documents/tier3/420r14005.pdf> and the MSAT RIA is available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2005-0036-1168>.

²¹⁴ See *Ethyl Corp. v. EPA*, 541 F.2d. at 32.

²¹⁵ See 46 FR 38582 (July 28, 1981).

additives.²¹⁶ Current emissions certification testing for FFVs is required using both the test fuel specified for conventional gasoline vehicles (E10, starting in MY 2017 vehicles) and a high ethanol content FFV test fuel (E83). Regulatory specifications for conventional gasoline emissions certification testing have long existed to ensure that atypical elements are not present. Regulatory specifications for the ethanol gasoline blends certification test fuel were finalized in the Tier 3 final rule and will become mandatory for MY 2017 FFVs.²¹⁷ Regulatory specifications were also set for the certification fuel for gasoline (E10) in the Tier 3 final rule and will also become mandatory of MY 2017 FFVs. These regulations ensure that FFV exhaust emissions test fuel is composed only of CHONS. Thus, in order for EFF to meet the statutory requirement in CAA section 211(f), it must consist only of CHONS, as is the case for the gasoline and FFV certification test fuels that are used in vehicle testing. That fuels introduced into commerce be CHONS is fundamental to the EPA's understanding of "substantially similar" as it relates to both certification fuels for FFVs (*i.e.*, E85 and E10).

We are proposing regulations under CAA section 211(f) that limit elemental composition of EFF to CHONS. We are proposing that parties must demonstrate the elemental composition of EFF using our authority under CAA sections 114 and 208 to establish and maintain records, and make reports.

V. CCS Implementation Under the RFS Program

A. Background

CCS is a potentially important technology for reducing GHG emissions from stationary sources. As described in the final standards of performance for GHG emissions from new, modified, and reconstructed electric utility generating units ("NSPS for EGUs"), it is important to promote deployment and further development of CCS technologies that allow for meaningful reductions in CO₂ emissions from fossil fuel-fired utility boilers.²¹⁸ In that rulemaking, the EPA found that partial CCS has been adequately demonstrated, is technically feasible, and can be implemented at reasonable costs.²¹⁹ The rulemaking also found that partial CCS

provides meaningful emission reductions and its implementation will serve to promote further development and deployment of the technology.²²⁰ We believe that allowing CCS as a technology for reducing lifecycle GHG emissions for renewable fuels under the RFS program would complement the NSPS for EGUs by providing another opportunity for the deployment of this important GHG reduction technology. CCS can also enhance the RFS program by allowing an additional mechanism for renewable fuel producers to significantly reduce their lifecycle GHG emissions associated with the production of renewable fuel.

The EPA has received petitions under the RFS program to apply CCS to reduce the lifecycle GHG emissions associated with ethanol produced as renewable fuel.²²¹ Under such a process, a renewable fuel producer would capture, treat, and compress CO₂ produced from the ethanol fermentation process. The captured CO₂ stream²²² would be transported and injected deep underground for geologic sequestration (GS), the long-term containment of CO₂ in subsurface geologic formations such as deep saline formations or oil and gas reservoirs.²²³ The capture and geologic sequestration of the CO₂ generated from ethanol fermentation could substantially reduce the lifecycle GHG emissions associated with the production of renewable fuel.

In this action we are proposing registration, recordkeeping, reporting, and RIN generation requirements that the EPA would use if we were to allow CCS as a lifecycle GHG emissions reduction technology in the context of the RFS program. At this time, the EPA

is not proposing to add a generally applicable CCS technology to an approved pathway in Table 1 to 40 CFR 80.1426, but instead will evaluate, on an individual basis, petitions that are received pursuant to 40 CFR 80.1416 that propose to use CCS. In this action we are proposing regulations that would generally govern the use of CCS if and when such a pathway is approved. Were a renewable fuel pathway involving use of CCS to be created in the future, use of the pathway in the context of the RFS program would remain voluntary and all other applicable existing RFS regulations would apply.²²⁴ As discussed below, this proposal relies substantially on other relevant EPA regulatory programs already in place concerning the disposition of captured CO₂.

B. Existing Regulatory Frameworks Related to CCS

The EPA has already developed an effective and coherent regulatory framework to ensure the long-term, secure, and safe storage of large volumes of CO₂. This includes air-side monitoring and reporting requirements promulgated under the CAA through the GHG Reporting Program (GHGRP) and Safe Drinking Water Act (SDWA) Underground Injection Control (UIC) Program requirements that regulate the underground injection of fluids²²⁵ in a manner that ensures protection of underground sources of drinking water (USDWs).²²⁶ Together, the requirements of the GHGRP and the UIC Program provide a regulatory framework that addresses the injection and geologic sequestration of CO₂, and provide the monitoring mechanisms to identify and address potential leakage. This proposal

²²⁰ See 80 FR 64513 (October 23, 2015). In the NSPS for EGUs, partial CCS refers to CCS with capture of a level of CO₂ emissions lower than 90 percent. To meet the final standard of performance of 1,400 lb CO₂/MWh, a new, highly efficient steam generating EGU would need to capture and store approximately 20 percent of its potential CO₂ emissions.

²²¹ The petitions have been received pursuant to 40 CFR 80.1416. See <https://www.epa.gov/renewable-fuel-standard-program/pending-petitions-renewable-fuel-pathways> for a list of petitions.

²²² The EPA's GHG Reporting Program defines CO₂ stream as CO₂ that has been captured from an emission source (*e.g.*, a power plant or other industrial facility) or extracted from a CO₂ production well plus incidental associated substances either derived from the source materials and the capture process or extracted with the CO₂. See 40 CFR 98.6. In referring to captured CO₂, this proposal generally uses the terms "CO₂" and "CO₂ stream" interchangeably.

²²³ The petitioners have indicated for purposes of their application that the geologic sequestration of delivered CO₂ would be part of EOR operations, such that the CO₂ would be utilized for oil or gas extraction before ultimately being geologically stored.

²²⁴ The RFS regulations at 40 CFR 80.1401 define advanced biofuel as "renewable fuel, other than ethanol derived from cornstarch, that has lifecycle greenhouse gas emissions that are at least 50 percent less than baseline lifecycle greenhouse gas emissions." Based on this definition, a future renewable fuel pathway using CCS to produce ethanol as an advanced biofuel could not use cornstarch as a feedstock, but could potentially use other feedstocks (*e.g.*, grain sorghum or barley).

²²⁵ The EPA's UIC regulations define the term fluid to include any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas or any other form or state. See 40 CFR 146.3.

²²⁶ The EPA's UIC regulations define USDW as an aquifer or its portion: (a)(1) Which supplies any public water system; or (2) Which contains a sufficient quantity of ground water to supply a public water system; and (i) Currently supplies drinking water for human consumption; or (ii) Contains fewer than 10,000 mg/l total dissolved solids; and (b) Which is not an exempted aquifer. See 40 CFR 144.3. For more information, see <https://www.epa.gov/uic/general-information-about-injection-wells>.

²¹⁶ See, *e.g.*, 73 FR 22277 (April 25, 2008), 56 FR 5352 (February 11, 1991), and 46 FR 38582 (July 28, 1981).

²¹⁷ See 79 FR 23414 (April 28, 2014) and 40 CFR 1065.725.

²¹⁸ See 80 FR 64548 (October 23, 2015).

²¹⁹ See 80 FR 64548, 64558 (October 23, 2015).

builds upon these existing regulatory frameworks.

The UIC Program is designed to ensure that injected CO₂ remains isolated from USDWs. The UIC Program regulates the injection of fluids through six categories of injection wells (*i.e.*, Classes I through VI). Class II wells are used to inject fluids associated with oil and natural gas production activities, including CO₂ injection for enhanced oil or gas recovery (EOR). Class II requirements address site characterization, area of review, well construction (*e.g.*, casing and cementing), well operation (*e.g.*, injection pressure), injectate sampling, mechanical integrity testing, plugging and abandonment, financial responsibility, and reporting. Class VI wells are used to inject CO₂ for geologic sequestration.²²⁷ The Class VI requirements address comprehensive site characterization and project area delineation, computational modeling of the area of review, financial responsibility, reporting and recordkeeping, injection well construction, operation and permitting, testing and monitoring (*e.g.*, of the well and project area), post-injection site care, and site closure.²²⁸ These requirements are built upon decades of experience regulating underground injection wells and help ensure the safe and secure sequestration of large volumes of CO₂ for long term containment.

40 CFR part 98, subpart RR, of the GHGRP establishes an accounting framework for the geologic sequestration of CO₂, including monitoring and reporting requirements.²²⁹ The NSPS for EGUs specifically requires that any affected EGU that captures CO₂ to meet the applicable emissions limit must transfer the captured CO₂ to a facility that reports under the GHGRP, 40 CFR part 98, subpart RR.²³⁰ Under subpart

²²⁷ CO₂ that is injected into oil and gas reservoirs for the primary purpose of enhancing the recovery of oil or gas (ER) are regulated as Class II enhanced recovery wells under the UIC Program. Transitions to a Class VI permit would be considered if the purpose of the injection activity changes from oil or gas production, or if the risk of endangerment to USDWs is likely to increase and cannot be addressed by the Class II UIC Program.

²²⁸ For a summary of the UIC Program and more details on the UIC Class VI Rule finalized in December 2010, see the UIC Geologic Sequestration of Carbon Dioxide Web site at <https://www.epa.gov/uic>.

²²⁹ More information on the relationship between the 40 CFR part 98, subpart RR, of the GHGRP, and the UIC program can be found in the preamble to subpart RR (75 FR 75060, December 1, 2010) and the preamble to the UIC Class VI Final Rule (75 FR 77230, December 10, 2010).

²³⁰ See 40 CFR 60.5555(f). Any affected unit that captures CO₂ to meet the applicable emissions limit must report, under 40 CFR part 98, subpart RR, if

RR, facilities must: Report basic information on the amount of CO₂ received for injection; develop and implement an EPA-approved monitoring, reporting, and verification (MRV) plan; and report the amount of CO₂ sequestered using a mass balance approach and annual monitoring activities.²³¹

For the purposes of this proposed rulemaking, a facility is conducting geologic sequestration if it is reporting under 40 CFR part 98, subpart RR.²³² The facility may hold either a Class II or Class VI permit.²³³ The petitions that EPA has received to date under 80.1416 requesting EPA evaluation of renewable fuel production pathways using CCS have stated that the geologic sequestration of CO₂ would be part of EOR operations before ultimately being geologically sequestered.²³⁴ The following sections discuss proposed requirements that the EPA would use if we were to allow CCS as a lifecycle GHG emissions reduction technology in the context of the RFS program.

C. Proposed Requirements for Use of CCS in Renewable Fuel Production

This rulemaking proposes and seeks comment on a series of registration, recordkeeping, reporting, and additional requirements associated with the use of CCS as a lifecycle GHG emissions reduction technology in the context of the RFS program. The proposed requirements would apply only to renewable fuel producers that seek to achieve the GHG reductions necessary to qualify for a given renewable fuel pathway by using CCS as part of the renewable fuel production process. By

the captured CO₂ is injected onsite. If the captured CO₂ is sent offsite, there is a requirement that the captured CO₂ that the permittee sends offsite of the EGU facility is transferred to an entity that is subject to the requirements of subpart RR.

²³¹ See 40 CFR 98.446(a)(1), 40 CFR 98.446(b)(4), 40 CFR 98.448, 40 CFR 98.446(f)(9) and (10), and 40 CFR 98.446(f)(12).

²³² Pursuant to 40 CFR 98.440(a), “[t]he geologic sequestration of carbon dioxide (CO₂) source category comprises any well or group of wells that inject a CO₂ stream for long-term containment in subsurface geologic formations.”

²³³ Pursuant to 40 CFR 98.440(c), “[t]his source category does not include a well or group of wells where a CO₂ stream is being injected in subsurface geologic formations to enhance the recovery of oil or natural gas unless one of the following applies: (1) The owner or operator injects the CO₂ stream for long-term containment in surface geologic formations and has chosen to submit a proposed monitoring, reporting, and verification (MRV) plan to EPA and received an approved plan from EPA (2) [t]he well is permitted as Class VI under the Underground Injection Control program.”

²³⁴ The petitions have been received pursuant to 40 CFR 80.1416. See <https://www.epa.gov/renewable-fuel-standard-program/pending-petitions-renewable-fuel-pathways> for a list of petitions.

building on the foundation established in the GHGRP and UIC Program, this proposal seeks to contribute to a consistent approach across the EPA for facilities that use CCS. It is important to note that in this action the EPA specifically seeks comment only on the proposed requirements for use of CCS as part of the RFS program. This proposed action is not seeking comments on the recently finalized NSPS for EGUs, nor does it seek comment on any of the requirements under the UIC Program or the GHGRP. Any such comments that are submitted on those programs will be considered beyond the scope of this rulemaking. Furthermore, EPA is not proposing to consider use of CCS in any particular application in the RFS program at this time, and any comments suggesting its application in particular renewable fuel production pathways will also be considered beyond the scope of this rulemaking.

1. Registration

A renewable fuel producer seeking to use a pathway involving CCS would be required to submit a CCS plan for review and approval by the EPA’s Office of Transportation and Air Quality as part of the facility registration requirements under 40 CFR 80.1450. The CCS plan would contain fundamental information regarding various elements of a given CCS project, including information related to sequestration processes and energy usage. This information is needed for the EPA to determine the amount of geologically sequestered CO₂ that should be considered credited for purposes of lifecycle GHG emissions. The CCS plan would also include a contract or contracts between the renewable fuel producer (supplier of the CO₂ stream) and the designated sequestration facility (if not the same entity).

The EPA is proposing that the CCS plan the renewable fuel producer submits at registration would contain the following information:

1. A statement of affirmation by the sequestration facility that the sequestration facility will inject CO₂ captured from the renewable fuel production process in accordance with an MRV plan developed pursuant to 40 CFR part 98, subpart RR.²³⁵
2. A statement of affirmation by the renewable fuel producer using a method approved by EPA—as part of the

²³⁵ Submission of registration materials under the RFS program pursuant to 80.1450 and review of an MRV plan pursuant to 40 CFR 98.448 may occur concurrently. The MRV plan must be approved prior to approval of registration under the RFS program.

response to a petition pursuant to 40 CFR 80.1416—that lifecycle GHG emissions associated with renewable fuel produced are no greater than a specified threshold lifecycle GHG emissions value. We expect that the lifecycle GHG emissions value would be calculated according to the method discussed in the technical support document available in the docket for this action. The EPA seeks comment on this method.

3. If the CO₂ is or will be transferred offsite to a sequestration facility, a contract or contracts between the renewable fuel producer and sequestration facility and any intermediate or necessary parties demonstrating:

a. The sale or transfer of CO₂ from the renewable fuel producer to the sequestration facility.

b. The duty of the sequestration facility to inject the CO₂ for geologic sequestration.

c. The geologic sequestration facility's duty to notify the renewable fuel producer of CO₂ surface leaks within 24 hours of detection.

d. Acknowledgement of the geologic sequestration facility's duty to help the renewable fuel producer develop a remediation plan within 30 days of the EPA being notified by the renewable fuel producer of a surface leak, providing information related to the date(s) the surface leak occurred, the GHGRP facility identification number of the geologic sequestration facility, a detailed description of how the leak occurred, the amount of CO₂ that leaked, and a description of plans by the sequestration facility to remediate the leak. The remediation plan would need to be submitted to the EPA within 30 days of the EPA being notified by the renewable fuel producer of the surface leak.

e. Acknowledgement of the geologic sequestration facility's duty to notify the renewable fuel producer within 30 days of its annual submission to the EPA of all reports required pursuant to 40 CFR part 98 subpart RR.

f. Acknowledgement of the geologic sequestration facility's duty to notify the renewable fuel producer if the sequestration facility submits a request pursuant to 40 CFR 98.441 for discontinuation of reporting under 40 CFR part 98 subpart RR or ends sequestration operations.

g. Acknowledgement of the geologic sequestration facility's duty to retain, for at least five years, all records required by the applicable provisions of the UIC program under 40 CFR part 146, subpart H, and the GHGRP pursuant to 40 CFR 98.3.

In addition to requiring a CCS plan at the time of registration, the EPA also proposes that the renewable fuel producer must provide a description of the CO₂ capture and sequestration process and, if the CO₂ is transferred to a sequestration facility after capture, a description of the transfer process of the CO₂ from the renewable fuel production facility to the sequestration facility. This description would be verified by a third-party engineer as part of the required engineering review and must include the mode of transport (*e.g.*, whether CO₂ is transferred by pipeline or by container), as well as the projected annual quantity of CO₂ transferred. The EPA also seeks comment on what, if any, additional registration requirements are necessary.

2. Reporting and Recordkeeping

The proposed requirements associated with use of CCS as part of the RFS program would rely substantially, but not exclusively, on the requirements, processes, and methodologies established in the GHGRP and the UIC Program.

The sequestration facility injecting CO₂ captured from the renewable fuel production process would submit an MRV plan and would be required to meet all other applicable requirements under 40 CFR part 98, subpart RR, including all applicable reporting requirements. Subpart RR provides a mechanism for facilities to account for the quantity of CO₂ sequestered on an annual basis through a mass balance approach.²³⁶ Additionally, renewable fuel producers that capture CO₂ in order to sequester it underground would also be subject to all applicable requirements under 40 CFR part 98, subpart PP, of the GHGRP, which is applicable to suppliers of CO₂. Importantly, under subpart PP, CO₂ suppliers are required to report the annual quantity of CO₂ transferred offsite, and indicate the

CO₂'s known end use, including geologic sequestration.²³⁷

Building on the foundation established by the UIC Program and GHGRP helps contribute to a consistent and transparent approach for facilities that use a renewable fuel production pathway involving CCS under the RFS program. At the same time, we are proposing several additional reporting and recordkeeping requirements in order to make sure the emissions reduction requirements of the RFS program are met. The EPA is proposing that producers of renewable fuel that achieve the GHG reductions necessary to qualify for a renewable fuel pathway by using CCS as part of the renewable fuel production process would have to calculate the lifecycle GHG emission value (LEV)²³⁸ for each batch of fuel produced using an EPA-approved method, maintain records of these calculations, and periodically report these calculations to the EPA.²³⁹ The renewable fuel producer would also report the electronic GHGRP facility identification number of the geologic sequestration facility and the GHGRP facility identification number of the renewable fuel facility.

We are also proposing provisions in keeping with the reporting termination provisions of 40 CFR 98.441. These provisions establish that a facility reporting in accordance with the requirements of 40 CFR part 98, subpart RR, must continue to report, “until the Administrator has issued a final decision on an [injection well] owner or operator's request to discontinue reporting [under subpart RR].” Pursuant to 40 CFR 98.441(b), the facility may discontinue reporting under 40 CFR part 98, subpart RR by making a demonstration that current monitoring and model(s) show that the injected CO₂ stream is not expected to migrate in the future in a manner likely to result in surface leakage or, in the case of UIC

²³⁶ Therefore, renewable fuel producers that achieve the GHG reductions necessary to qualify for a renewable fuel pathway by using CCS that are injecting CO₂ onsite would be subject to all applicable reporting requirements of 40 CFR part 98, subpart RR. These producers must report to the EPA that onsite injection is occurring, that they are reporting in accordance with the requirements of subpart RR, and that no surface leaks occurred during the appropriate compliance period. If the captured CO₂ is injected offsite, the renewable fuel producer would not be considered a source category under subpart RR, but the injecting geologic sequestration facility would be. If the captured CO₂ is injected offsite, we are proposing that at registration the renewable fuel producer would be required to demonstrate the injection is occurring offsite and affirm that the offsite geologic sequestration facility that plans to inject the CO₂ underground will submit a MRV plan and meet all other applicable requirements under subpart RR.

²³⁷ See 40 CFR 98.426. Subpart PP requires suppliers of CO₂ that meet certain applicability requirements to report CO₂ supplied to the economy or injected underground. This includes facilities with production process units that capture and supply CO₂ for commercial applications that capture and maintain custody of a CO₂ stream in order to sequester or otherwise inject it underground. Suppliers of CO₂ under subpart PP must keep records on the mass of CO₂ captured from the relevant production processes. Data from subpart PP includes the amount of CO₂ that leaves the ethanol facility for off-site underground injection and GS.

²³⁸ The LEV for a given fuel is the GHG emissions as calculated per Btu of fuel produced.

²³⁹ A GHG calculation method is discussed in the memorandum, “Example Method for Calculating Lifecycle Greenhouse Gas Emissions Associated with Renewable Fuel Production including Carbon Capture and Sequestration,” available in the docket for this action.

Class VI wells, by providing a copy of the applicable UIC Program Director's authorization of site closure. The EPA proposes that renewable fuel producers using a pathway involving CCS would be required to notify the EPA if a participating geologic sequestration facility has filed a request for discontinuation under 40 CFR 98.441 and must update their RFS registration if the participating geologic sequestration facility ends sequestration operations or if the renewable fuel producer intends to send CO₂ to a different geologic sequestration facility.

The EPA is also proposing that, consistent with existing RFS requirements, all records associated with the use of CCS under the RFS program must be kept for five years to be consistent with other RFS program requirements.²⁴⁰ The five-year records retention period is ubiquitous across the EPA fuels programs and stems from the limitations on bringing enforcement action for civil cases as described in 28 U.S.C. 2462.²⁴¹ The EPA seeks comment on alternative or additional reporting, termination of reporting, recordkeeping, and RIN generation requirements that should be considered.

One of the petitions the EPA received suggests an alternative crediting method relating to displacement of naturally occurring CO₂ extracted from domes. The suggested "displacement approach" would consider CO₂ from ethanol plants that is captured and sent offsite for a commercial use (e.g., in beverage carbonation, EOR²⁴²) as a co-product of the ethanol production process that displaces CO₂ from other sources. The emissions that would have occurred from production and use of the displaced CO₂ would then be subtracted (as a credit) from the lifecycle GHG emissions associated with ethanol production. Under a displacement approach, the petition asserts that if the CO₂ from the ethanol process is used for commercial purposes and replaces CO₂ from geologic reservoirs, it would represent a reduction in the lifecycle GHG emissions of the ethanol on the basis that displaced geologic CO₂ remains underground and does not enter the market. The petition further

asserts that any surface leakage that occurs during commercial usage would have happened regardless of whether the source of the CO₂ was from a geologic or ethanol fermentation source. Under the displacement method, the petition asserts that it is unnecessary to report or track the CO₂ injected for EOR, along with any leakage or recycling during use in EOR, as long as the renewable fuel facility can demonstrate that they are displacing carbon that would have otherwise been supplied by a geologic source.²⁴³ A report from the National Energy Technology Laboratory (NETL) suggests that the market for CO₂ is supply-limited, in flux, and will rely on industrial sources for expansion, making long-term displacement by fermentation sources difficult to determine.²⁴⁴ The EPA is not proposing this crediting approach, but seeks comment on its use.

3. RIN Generation

The EPA is proposing that a renewable fuel producer using CCS to achieve the GHG reductions necessary to qualify for a given renewable fuel pathway can only generate RINs for a batch of renewable fuel if the lifecycle GHG emissions for the batch are determined to be below the threshold value for the applicable pathway by a method approved by the EPA as part of its response to a petition pursuant to 40 CFR 80.1416.²⁴⁵ The EPA is also proposing that a renewable fuel producer using a pathway involving CCS cannot generate RINs in a given calendar year after the annual GHG report deadline in 40 CFR 98.3 for the geologic sequestration facility unless the renewable fuel producer has received verification from the geologic sequestration facility that the geologic sequestration facility's applicable reporting obligations under 40 CFR part 80, subpart RR have been satisfied.

²⁴³ The displacement approach is further discussed in the memorandum, "Example Method for Calculating Lifecycle Greenhouse Gas Emissions Associated with Renewable Fuel Production including Carbon Capture and Sequestration," available in the docket for this action.

²⁴⁴ "Near-Term Projections of CO₂ Utilization for Enhanced Oil Recovery," DOE/NETL-2014/1648.

²⁴⁵ An example of a GHG calculation method is discussed in the memorandum, "Example Method for Calculating Lifecycle Greenhouse Gas Emissions Associated with Renewable Fuel Production including Carbon Capture and Sequestration," available in the docket for this action. Rather than assigning specific emission limits for individual stages of the CCS process, the example method would use facility-specific data to calculate a lifecycle GHG emission value for the renewable fuel produced, which could account for small amounts of surface leakage and equipment usage.

4. Surface Leaks

We are proposing that a renewable fuel producer using CCS to achieve the GHG reductions necessary to qualify for a given renewable fuel pathway could only generate RINs for a batch of renewable fuel if the calculated lifecycle GHG emissions for the batch are below the threshold value for the applicable pathway. In the context of using CCS as a lifecycle GHG emissions reduction technology in the RFS program, a calculation of lifecycle GHG emissions would consider whether CO₂ emissions through any potential surface leakage²⁴⁶ pathways identified in an EPA-approved MRV plan as specified in 40 CFR 98.448 could cause the lifecycle GHG emissions to exceed the threshold value required for the approved pathway under 40 CFR 80.1416.²⁴⁷ While small, sporadic surface leaks may not have a significant impact on the lifecycle GHG emissions of a fuel, particularly if the GHG emissions are calculated on a 365 day rolling average, large surface leaks could significantly increase the lifecycle GHG emissions for batches of renewable fuels produced using a CCS pathway, which could potentially preclude RIN generation for those batches. Although the EPA believes such surface leaks would rarely occur, we are proposing a series of RIN validation and remediation requirements that would be applied to potentially invalid RINs (PIRs) generated for renewable fuel produced using CCS. These proposed requirements would be in addition to any validation and remediation requirements under the existing RFS program.²⁴⁸

²⁴⁶ Surface leakage means the movement of the injected CO₂ stream from the injection zone to the surface and into the atmosphere, indoor air, oceans, or surface water. See 40 CFR 98.449.

²⁴⁷ As discussed above, EPA proposes that at the time of registration, the renewable fuel producer must demonstrate, using an EPA-approved approach, that lifecycle GHG emissions associated with renewable fuel produced are no greater than a specified threshold lifecycle emissions value. An example of a GHG calculation method is discussed in the memorandum, "Example Method for Calculating Lifecycle Greenhouse Gas Emissions Associated with Renewable Fuel Production including Carbon Capture and Sequestration," available in the docket for this action.

²⁴⁸ In the RFS QAP rulemaking, the EPA established an administrative process to help identify PIRs and help determine if those PIRs were invalidly generated. See 79 FR 42078 (July 18, 2014). Under the administrative process described in 40 CFR 80.1474, designated parties can identify a PIR (e.g., the renewable fuel producer, a third-party auditor under QAP, or the EPA), and the renewable fuel producer has an opportunity to demonstrate the validity of the RIN or take appropriate corrective action within certain timeframes depending on the party that identified the PIR. If a renewable fuel producer fails to

²⁴⁰ See 40 CFR 80.1454(n).

²⁴¹ 28 U.S.C. 2462 states that "Except as otherwise provided by Act of Congress, an action, suit, proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued[.]"

²⁴² CO₂ injected for GS (in the case where EOR is not occurring) would not be considered under this approach because no alternative sources of CO₂ are displaced.

A key element of the proposed surface leak remediation process is the timely reporting of surface leaks by the renewable fuel producer to the EPA. Under 40 CFR part 98, subpart RR, of the GHGRP, the geologic sequestration facility is required to develop a strategy for detecting and quantifying surface leakage of CO₂ from the geologic sequestration facility.²⁴⁹ Under the proposed surface leak requirements, the renewable fuel producer would need to report that no surface leaks that could cause the lifecycle GHG emissions to exceed the threshold value required for the approved pathway under 40 CFR 80.1416 occurred during the appropriate compliance period. Should a surface leak occur, under the proposed surface leak remediation requirements the renewable fuel producer would need to report to the EPA that detection of a surface leak occurred at a geologic sequestration facility within 24 hours of notification by the geologic sequestration facility that a leak has been detected.²⁵⁰ To help limit the number of affected RINs, the EPA also proposes that such emissions, once detected and reported, would result in a suspension of the renewable fuel producer's ability to generate RINs under that pathway.²⁵¹ Failure to notify the EPA of a surface leak, submit a remediation plan, or take corrective actions may result in a suspension of the renewable fuel producer's RFS registration. We recognize that the 24-hour notification period may appear to present logistical challenges. However, we envision that a simple message from the renewable fuel producer to the EPA's EMTS support line would suffice to satisfy this requirement. We believe that allowing longer time periods would increase the number of RINs affected by the surface leak and further complicate

demonstrate that the PIRs are valid (as determined by the EPA), corrective action from the renewable fuel producer involves either retiring or replacing the PIR. If the producer fails to retire or replace the PIR, the parties that own or used those RINs for compliance may become responsible for retiring or replacing the PIRs.

²⁴⁹ See 40 CFR 98.448.

²⁵⁰ As discussed above, if the CO₂ is transferred offsite from a renewable fuel facility to a sequestration facility, then at registration the renewable fuel producer must submit a contract(s) demonstrating the sequestration facility's duty to notify the renewable fuel producer of CO₂ surface leaks within 24 hours of detection. The producer must then report detection of the surface leak to the EPA within 24 hours of receiving this notification or otherwise becoming of the surface leakage. The EPA recognizes that it may take some time for the geologic sequestration facility to determine if a leak, as defined in 40 CFR 98.449, has in fact occurred.

²⁵¹ It should be noted that the renewable fuel producer could continue to generate RINs using non-CCS pathways if they are able to produce renewable fuel under another approved pathway.

the resolution of the PIR administrative process. We seek comment on whether a longer reporting timeframe is appropriate.

Under the proposed surface leak remediation process, the renewable fuel producer would need to submit a remediation plan to the EPA for approval within 30 days of notifying the EPA of the surface leak. The remediation plan would:

1. If possible, demonstrate that the PIRs are not invalid. For example, the producer could provide calculations showing that the surface leak did not result in lifecycle GHG emissions exceeding the GHG emission reduction threshold required for the renewable fuel production pathway for which RINs were previously generated and for future RINs that would be generated using the CCS pathway.²⁵²

2. Describe corrective actions that:

a. When taken, would remediate the surface leak and that the renewable fuel producer working with the geologic sequestration facility was taking all necessary steps to ensure a high likelihood that no further CO₂ would be emitted that would cause the lifecycle GHG emissions to exceed the threshold value required for the approved pathway.²⁵³ Such demonstration may require the modification of the producer's registration, structural or other alterations to the geologic sequestration facility, or other steps as needed.

b. Demonstrate how the renewable fuel producer intends to take corrective action for any PIRs resulting from the surface leak. Corrective actions that could be part of a remediation plan could include retiring the PIRs or purchasing and retiring replacement RINs under 40 CFR 80.1474.

Again, we recognize that the 30-day period for renewable fuel producers to prepare and submit a remediation plan may appear to be a short time frame.

²⁵² We envision that one way that a renewable fuel producer could mitigate the effects of a surface leak would be to sequester GHGs in excess of the GHG reduction threshold for the D-Code for RINs generated under the CCS pathway. For example, for a D5 RIN generated under a CCS pathway, a renewable fuel producer could reduce GHGs by 53 percent (instead of the minimum threshold of 50 percent). Over the course of five years of RIN generation, this over-compliance could shield the producer from all but the largest of surface leaks. We believe that parties that purchase these RINs for compliance may drive renewable fuel producers to over-comply in order to ensure that the RINs remain valid in the event of a surface leak. The remediation plan process is an opportunity to allow the renewable fuel producer to demonstrate that PIRs from surface leaks are not invalid.

²⁵³ This demonstration must include an evaluation of any potential surface leakage pathways identified in an EPA-approved MRV plan as described in 40 CFR 98.448.

However, we note that if the surface leak was immaterial (*i.e.*, a leak so small that affected RINs generated under a CCS pathway would continue to meet the applicable lifecycle GHG reduction threshold), 30 days should be sufficient for a renewable fuel producer to demonstrate that affected RINs are not invalid and resume generating RINs from a CCS pathway. We believe that renewable fuel producers wishing to generate RINs using a CCS pathway would want to remediate the issues as quickly as possible to begin generating RINs using that pathway again. Further, any the corrective actions described in the remediation plan do not need to be implemented within 30 days. Nonetheless, we seek comment on whether we should allow renewable fuel producers generating RINs from a CCS pathway more time to prepare and submit a remediation plan.

Under the existing regulations, producers can already take corrective action under the options above. However, we are proposing that producers generating RINs under a CCS pathway would need to provide additional information to that already required under the PIR administration process (*e.g.*, adjusted calculated GHG emissions for affected RINs). This information would help the producer demonstrate whether the affected RINs continued to meet the applicable GHG reduction threshold.

Under this approach, the renewable fuel producer is responsible for submitting the remediation plan and ensuring that surface leaks are remediated at the geologic sequestration site prior to the further generation of RINs under a CCS pathway. We believe that continuing to have the renewable fuel producer ultimately responsible for all aspects related to the valid generation of RINs is consistent with our goals of promoting compliance within the RFS. However, we seek comment on this approach.

We are proposing that all RINs generated under a CCS pathway during the five years preceding the surface leak would be PIRs in the event of a surface leak at the facility sequestering CO₂ from the renewable fuel production facility. Therefore, the GHG emissions attributable to the leak would be applied equally to all PIRs. If the producer could demonstrate that the average calculated GHGs for each RIN continued to meet the RFS GHG threshold requirements, then under this proposed approach those PIRs would not be invalid. If the calculated GHG emissions for the PIRs fell below the RFS GHG reduction threshold, then the producer would

need to retire and/or replace all of the PIRs.

Under the proposed remediation process, failure to submit a remediation plan or take appropriate corrective action would trigger the procedures outlined in 40 CFR 80.1474 as discussed in the following paragraph. In addition, the EPA would only allow the renewable fuel producer to generate RINs using a CCS pathway after the EPA approves a remediation plan and the renewable fuel producer takes appropriate corrective action. If a renewable fuel producer does not notify the EPA of a surface leak within 24 hours of detection, stop RIN generation as described above, and comply with the PIR administrative procedures outlined in 40 CFR 80.1474, the renewable fuel producer would be deemed to have failed to have taken corrective action and all RINs generated under the CCS pathway during the five years preceding the leak could be considered invalid. However, the EPA is proposing that RINs generated under the CCS pathway prior to the five years preceding the leak would not potentially be invalid.

The EPA believes that the proposed remediation process as a supplement to the existing PIR administrative process would allow renewable fuel producers an opportunity to remediate PIRs resulting from surface leaks without going through the process of replacing all RINs generated using a CCS pathway prior to the surface leak. The EPA recognizes that renewable fuel producers that generate RINs from a CCS pathway may not be able to replace RINs in the case of a large surface leak. Although we do not believe this is likely to occur, we seek comment on alternative corrective actions renewable fuel producers could take in order to remediate PIRs resulting from the surface leak. We also seek comment on the proposed remediation process and whether there is any additional information we should require of renewable fuel producers to ensure that PIRs resulting from surface leaks are appropriately addressed.

D. Lifecycle GHG Emissions Analysis of Renewable Fuel Produced in Conjunction With CCS

Through amendments to the CAA enacted as part of EISA, Congress established specific lifecycle GHG emission thresholds for each of four types of renewable fuels, requiring a percentage reduction compared to lifecycle GHG emissions for gasoline or diesel (whichever is being replaced by the renewable fuel) sold or distributed as transportation fuel in 2005. For

example, the CAA requires a 50 percent reduction in order for a fuel to be classified as advanced biofuel.

Determining whether a fuel's lifecycle GHG emissions meet a threshold level of lifecycle GHG reduction requires a comprehensive evaluation of the lifecycle GHG emissions of the renewable fuel as compared to the lifecycle GHG emissions of the baseline gasoline or diesel fuel that it replaces. As mandated by CAA section 211(o), the lifecycle assessment must evaluate the aggregate quantity of GHG emissions (including direct emissions and significant indirect emissions such as significant emissions from land use changes) related to the full fuel lifecycle, including all stages of fuel and feedstock production, distribution, and use by the ultimate consumer.

As discussed above, the EPA proposes that at the time of registration, the renewable fuel producer must affirm that when using an EPA-approved approach, lifecycle GHG emissions associated with renewable fuel produced will be no greater than a specified threshold lifecycle emissions value. The lifecycle GHG calculation would be based in part on the amount of CO₂ injected and would account for any CO₂ lost during injection and recycling as well as energy used in the injection and recycling process. The renewable fuel producer would need to keep appropriate records and report data on a regular basis to demonstrate that the fuel produced achieved the required lifecycle value and was accurate over time. The EPA discusses calculating lifecycle GHG emissions for renewable fuel produced using CCS in greater depth a memorandum to the docket and requests comment on the approaches discussed and the example method provided.²⁵⁴

VI. Renewable Fuels Produced From Short-Rotation Trees

The EPA is proposing to approve new fuel pathways for ethanol and naphtha produced from short-rotation hybrid poplar and willow using a production process that converts cellulosic biomass to fuel for the generation of cellulosic biofuel (D-code 3) RINs. We are also proposing to approve new fuel pathways for diesel, jet fuel, and heating oil produced from short-rotation hybrid poplar and willow using a production process that converts cellulosic biomass to fuel for the generation of cellulosic biomass-based diesel (D-code 7) RINs.

²⁵⁴ See the memorandum, "Example Method for Calculating Lifecycle Greenhouse Gas Emissions Associated with Renewable Fuel Production including Carbon Capture and Sequestration," available in the docket for this action.

As discussed in this section, the EPA's analysis shows that fuel produced from short-rotation hybrid poplar and willow using a variety of processing technologies meets the 60 percent GHG emissions reduction threshold needed to qualify as cellulosic biofuel. This section includes an overview of short-rotation hybrid poplar and willow growing systems, and explains our analysis of the lifecycle GHG emissions associated with these fuel pathways.

A. Background and Scope of Analysis

As part of the RFS2 final rule, the EPA analyzed various biofuel production pathways to determine whether fuels produced through those pathways meet minimum lifecycle GHG reduction thresholds specified in the CAA for different categories of biofuel (*i.e.*, 60 percent reduction for cellulosic biofuel, 50 percent reduction for biomass-based diesel and advanced biofuel, and 20 percent reduction for other renewable fuels). The RFS2 final rule focused on fuels that were anticipated to contribute relatively large volumes of renewable fuel by 2022 and thus did not cover all fuels that are contributing or could potentially contribute to the national renewable fuel volumes prescribed in EISA. In the preamble to the rule, the EPA indicated that it had not completed the GHG emissions analyses for several specific biofuel production pathways but that the EPA would complete these analyses through supplemental actions.²⁵⁵ Since the RFS2 final rule, the EPA has continued to examine additional renewable fuel pathways. In this proposed rulemaking, we present our analysis of lifecycle GHG emissions associated with producing biofuel from short-rotation hybrid poplar and willow. The modeling approach the EPA used for this analysis is the same general approach used in the RFS2 final rule for lifecycle analyses of other biofuels, as described in more detail in section VI.C of this preamble.²⁵⁶

The EPA requests public comment on our analysis of the lifecycle GHG emissions related to the production and use of biofuel from short-rotation hybrid poplar and willow. The EPA specifically requests comments on the modeling used to conduct our analysis, and the definitions of short-rotation hybrid

²⁵⁵ See 75 FR 14680 (March 26, 2010).

²⁵⁶ The RFS2 final rule preamble (75 FR 14670, March 26, 2010) and Regulatory Impact Analysis (RIA) (EPA-420-R-10-006) provide further discussion of our approach. These documents are available in the docket for this action or online at <https://www.epa.gov/renewable-fuel-standard-program/renewable-fuel-standard-rfs2-final-rule-additional-resources>.

poplar and willow that we are proposing.

B. Overview of Short-Rotation Tree Systems

Short-rotation tree (SRT) systems, also known as short-rotation coppice (SRC), are stands of woody trees producing multiple stems from coppice growth, and harvested in relatively short rotations (generally less than 10 years) for bioenergy use. Common genera grown in SRT systems include *Populus* (cottonwoods, poplars, aspens), *Salix* (willows), *Pinus* (southern pines), and *Eucalyptus* (eucalypts). Most definitions of SRTs or SRCs classify these systems by maximum rotation length or coppicing abilities.^{257 258 259} SRT systems can vary widely by planting density, species composition, and rotation length.²⁶⁰ For instance, systems purposed for high frequency harvesting of biomass are often managed on shorter rotations (e.g., 2–4 years), with high density planting. Others are harvested less frequently (e.g., 10 years), with more spaced planting to allow each plant to grow to a larger size (without being hindered by competition for sunlight, water, and soil nutrients).

SRT systems can provide a number of environmental benefits over a tilled agricultural system. They result in greater accumulation of carbon through below-ground organic matter that goes undisturbed for longer periods of time, as well as protection against nutrient runoff and soil erosion due to larger root networks.²⁶¹ A key feature of most SRT systems is coppicing. Coppicing is a desirable characteristic of short-rotation system because it requires relatively low maintenance between harvests compared to an annual crop. Original site establishment of SRT systems requires the planting of a seedling, usually one to two years old, followed by successive harvest cycles (e.g., 6 to 8 rounds of 3–4 year rotations) until the

coppice reaches the end of its productive lifespan (e.g., 20–30 years). Managed SRT systems exist in many parts of the world, predominantly in Europe (notably willow in Sweden and the UK, and poplar in Italy, among others).²⁶²

1. Short-Rotation Hybrid Poplar

The EPA has analyzed a set of taxa being grown in short-rotation systems known as the hybrid poplar. Hybrid poplars are plants created by the cross pollination of multiple members of *Populus* species within the *Salicaceae* family. Specifically, hybridization is most commonly performed between two (of six) *Populus* sections, *Aigeiros* and *Tacamahaca* (cottonwoods), with the most common parent poplars being black cottonwood (*Populus trichocarpa*) and eastern cottonwood (*Populus deltoides*).²⁶³ Artificial hybridization is performed to take advantage of an effect called heterosis (or “hybrid vigor”), in which the hybrid offspring exhibits enhanced traits compared to either of the parents (be it greater yield growth, disease resistance, or other biological characteristics). Hybridization of poplar species began in 1925 with initial interest in cultivation for conventional pulpwood, and in various parts of the world poplar is currently grown for pulp and other solid wood uses.^{264 265 266} Over time, the fast-growing nature of hybrid poplar attracted research for short-rotation, smaller diameter purposes. In the U.S., USDA has participated in hybrid poplar development through the biomass crop assistance program (BCAP), with most of the focus occurring in the Pacific Northwest. Hybrid poplar is mostly being grown on demonstration scale plots; there is not currently large scale commercial production in the U.S. USDA does not formally track hybrid poplar production so there is no U.S. government estimate of national acreage or production quantity. However, there are approximately 100,000 acres of

short-rotation hybrid poplar grown in the Pacific Northwest (including Canada), approximately 25–30 thousand acres grown in Minnesota, and small pockets of production in other parts of the U.S. and Canada.^{267 268} Existing production from demonstration sites goes to research associated with the production of cellulosic biofuel, bioenergy, and pulp.^{269 270}

2. Short-Rotation Willow

The EPA also analyzed short-rotation willow, also known as shrub willow, which is another short-rotation species. Shrub willow refers to a number of *Salix* species also within the family *Salicaceae* (like *Populus*). Multiple *Salix* species are being used in SRT systems. In the U.S., common varieties include *S. miyabeana*, *S. purpurea*, *S. sachalinensis*, and *S. viminalis* (and crosses between these and other species).^{271 272} In addition to use as a bioenergy feedstock, willow has gathered interest for other purposes. Willow “living fences” can be used as windbreaks, visual/noise screens, or to trap blowing snow along roadways, which reduces the cost of snow plowing and improves road safety. Additionally, willow is well-suited to grow in wet soils and can be used to stabilize stream banks, reducing the risk of flooding and providing a vegetated buffer to prevent pollutants and sediments from entering surface and groundwater.²⁷³ Research of shrub willow for bioenergy and bioproducts began in the U.S. in 1986 through the State University of New York College of Environmental Science

²⁶⁷ Hybrid Poplar Research Program, Washington State University. <http://puyallup.wsu.edu/poplar/>.

²⁶⁸ Hybrid Poplar (*Populus* spp). Agroforestry. University of Minnesota Extension. <http://www.extension.umn.edu/environment/agroforestry/hybrid-poplar-populus-spp/hybrid-poplar-populus-spp.html>.

²⁶⁹ “Biomass Energy Opportunities from Hybrid Poplars in Minnesota.” Dean Schmidt, WesMin Resource Conservation and Development. Information presented at Woody Biomass Harvesting and Utilization Workshop presentation in St. Cloud, MN on March 21, 2006. <http://www.extension.umn.edu/environment/agroforestry/biomass/schmidt.pdf>.

²⁷⁰ Project Overview, Infosheet no. 1. March 2014. Advanced Hardwood Biofuels Northwest. <http://hardwoodbiofuels.org/wp-content/uploads/2014/03/ProjectOverviewFinal.pdf>.

²⁷¹ Zalesny, Jr., R.S., et al. “Woody Biomass from Short Rotation Energy Crops.” Chapter 2, American Chemical Society 2011.

²⁷² Whereas all of the *Populus* varieties we are considering are hybrid crosses, only some of the qualifying willow cultivars are crosses, while others are from single species. When we reference “willow” we mean both a single species and crosses between multiple species.

²⁷³ “Introduction to Shrub Willow Fact Sheet.” State University of New York College of Environmental Science and Forestry. <http://www.esf.edu/willow/documents/1IntroToShrubWillow.pdf>.

²⁵⁷ Wright L.L. et al. “Short Rotation Woody Crops: Using Agroforestry technology for energy in the United States.” Oak Ridge National Laboratory. Dec 1993.

²⁵⁸ Short Rotation Crops for Bioenergy Systems. IEA Bioenergy, Task 30. Technical Review No. 3. April 2009.

²⁵⁹ Coppicing is the process by which new shoots and trees are regenerated from a cut stump following harvest. Hinchee et al. “Short-rotation woody crops for bioenergy and biofuels applications.” *In Vitro Cell Dev Biol Plant*. 2009 Dec; 45(6): 619–629. Published online 2009 Aug 26. doi: 10.1007/s11627-009-9235-5.

²⁶⁰ Wang et al., “GREET Model Short Rotation Woody Crops (SRWC) Parameter Development.” Argonne National Laboratory. December 2012.

²⁶¹ Hansen. “Soil carbon sequestration beneath hybrid poplar plantations in the North Central United States.” *Biomass and Bioenergy*. Volume 5, Issue 5, 1993, pg. 431–436.

²⁶² Langeveld et al. “Assessing Environmental Impacts of Short Rotation Coppice (SRC) Expansion: Model Definition and Preliminary Results.” *Bioenerg. Res.* (2012) 5:621–635.

²⁶³ “Hybrid Poplar, an Intermediate Crop for the Intermountain West.” USDA-Natural Resources Conservation Service, Boise, Idaho. January 2001.

²⁶⁴ Stout, A. B., and E. J. Schreiner. 1933. “Results of a project in hybridizing poplars.” *Journal of Heredity* 24:2 16–229.

²⁶⁵ Stout, A. B., R. H. McKee, and E. J. Schreiner. 1927. “The breeding of forest trees for pulp wood.” *Journal of New York Botanical Gardens* 28:49–63.

²⁶⁶ Utilization Opportunities and Economics, Hybrid Poplar Best Management Practices. University of Minnesota, Extension. Fall 2011. <http://www.extension.umn.edu/environment/agroforestry/docs/hybrid-poplar-utilization-opportunities.pdf>.

and Forestry (SUNY–ESF). Through the BCAP, USDA has partnered with SUNY–ESF to develop willow in upstate New York where there are approximately 1,200 acres of willow in production.²⁷⁴ There it is harvested in 3–4 year cycles. Since the initial trials in upstate New York in the mid-1980s, yield trials have been conducted, or are underway, in 14 states²⁷⁵ and six provinces in Canada.²⁷⁶ USDA does not formally track willow production so there is no U.S. government estimate of national acreage or production quantity.

Willow also has a history as a bioenergy feedstock in numerous countries in Europe, including Sweden, the UK, and Poland, where it is pelletized and co-fired with coal in electricity generation to help meet renewable energy goals. By one estimate, there are over 40,000 acres of commercial plantings in Europe.²⁷⁷

C. Analysis of Lifecycle GHG Emissions

The EPA's analysis shows that fuel produced from short-rotation hybrid poplar and willow using a variety of processing technologies meets the 60 percent GHG emissions reduction threshold necessary to qualify as cellulosic biofuel. This section explains our analysis of the lifecycle GHG emissions associated with fuel produced from these feedstocks.

1. Methodology and Scenarios Evaluated

The EPA's analysis of the domestic impacts of short-rotation hybrid poplar and willow biofuel pathways use the same model of U.S. agricultural and forestry sectors that was used for the RFS2 final rule: The Forestry and Agricultural Sector Optimization Model (FASOM) developed by Texas A&M University.²⁷⁸ The model requires a

number of inputs and assumptions that are specific to the pathway being analyzed, including projected yields of feedstock per acre planted, projected fertilizer use, and energy use in feedstock processing and fuel production.²⁷⁹

For international impacts, we applied results from the switchgrass analysis performed for the RFS2 final rule. The switchgrass analysis used the Food and Agricultural Policy and Research Institute international model as maintained by the Center for Agricultural and Rural Development at Iowa State University (the FAPRI–CARD model). This approach is similar to the methodology we used to evaluate and approve other dedicated bioenergy feedstocks, such as energy cane, giant reed, and napier grass. As we discussed in the RFS2 final rule, some feedstock sources can be determined to be similar enough to those modeled that the modeled results could reasonably be extended to these similar feedstock types. Switchgrass, short-rotation hybrid poplar, and short-rotation willow are all dedicated bioenergy feedstocks, and are expected to grow on the same types of land and cause the same types of crop displacement. As the EPA assumed for the analysis of energy cane, giant reed, and napier grass, we do not believe that these bioenergy feedstocks will cause large land use change impacts, as they do not generate the economic returns of row crops on productive lands, and are therefore being targeted for development on less productive lands. For analysis of short-rotation hybrid poplar and willow, we scaled the switchgrass international emissions for yield differences in switchgrass, short-rotation hybrid poplar, and short-rotation willow, and applied these adjusted emissions to short-rotation hybrid poplar and willow.²⁸⁰

To assess the impacts of an increase in renewable fuel volume from a “business-as-usual” scenario likely to have occurred without the short-rotation hybrid poplar and willow-based biofuels, we compared impacts in a control case to the impacts in two new cases: “short-rotation hybrid poplar biofuel” and “short-rotation willow

biofuel.”²⁸¹ The control case includes a projection of renewable fuel volumes from feedstocks such as corn, soybeans, and switchgrass, among others. The control case used for this analysis had zero gallons of short-rotation hybrid poplar or willow biofuel production. For the “short-rotation hybrid poplar biofuel” and “short-rotation willow biofuel” cases, our modeling assumed that 400 million gallons of short-rotation hybrid poplar ethanol or short-rotation willow ethanol are produced in 2022.

The scenario volume of 400 million gallons of biofuel per year used in the model is the target production level of hybrid poplar based biofuel as of 2012 by Advanced Hardwood Biofuels Northwest (AHB), a USDA-funded consortium of universities and industry partners. We believe this is a reasonable volume to model for a number of reasons. While there is little production of short-rotation hybrid poplar or willow-based biofuel currently, the biotechnology company Zechem Inc., with a loan guarantee from USDA, is planning a 25 million gallon/year cellulosic biorefinery in Boardman, Oregon, sourcing hybrid poplar as the primary feedstock. Zechem Inc. currently operates a 250,000 gallon/year demonstration plant also in Boardman, Oregon. Although these currently identified projects are much lower than the 400 million gallons modeled, there is also data supporting larger volumes. For example, the Department of Energy (DOE), in the 2011 “U.S. Billion Ton Study Update” assessed the potential supplies of bioenergy feedstocks at various economic conditions. At baseline conditions, they concluded that in 2022, 67 million dry tons of “woody crops” (roughly 6 billion gallons of biofuel) could be supplied at \$50/dry ton.^{282 283} When weighing the potential for large-scale feedstock production with the more modest volume of projects currently identified, we think

²⁸¹ This approach is similar to the approach used in the RFS2 final rule. For more information, refer to the RFS2 final rule preamble (75 FR 14670, March 26, 2010) or the RFS2 final rule RIA (EPA–420–R–10–006). These documents are available in the docket or online at <https://www.epa.gov/renewable-fuel-standard-program/renewable-fuel-standard-rfs2-final-rule-additional-resources>.

²⁸² In addition to poplar and willow, “woody crops” also included eucalyptus and southern pines in this study, so this full amount would not be expected to come from short-rotation hybrid poplar and/or willow. However, these volumes are indicative of supply potential in a future with favorable conditions for dedicated bioenergy feedstocks. U.S. DOE. 2011. “U.S. Billion-Ton Update: Biomass Supply for a Bioenergy and Bioproducts Industry”. R.D. Perlack and B.J. Stokes (Leads), ORNL/TM–2011/224. Oak Ridge National Laboratory, Oak Ridge, TN. 227p. (pg. 130).

²⁸³ These biofuel volumes assume a conversion yield of 92.3 gallons of ethanol per dry ton.

²⁷⁴ “Willow Bioenergy in New York State.” State University of New York College of Environmental Science and Forestry. <http://www.esf.edu/willow/documents/2NewYorkWillow.pdf>.

²⁷⁵ Delaware, Indiana, Illinois, Maryland, Michigan, Minnesota, Missouri, New Jersey, New York, Pennsylvania, South Carolina, Virginia, Vermont, and Wisconsin.

²⁷⁶ U.S. DOE. 2011. “U.S. Billion-Ton Update: Biomass Supply for a Bioenergy and Bioproducts Industry.” R.D. Perlack and B.J. Stokes (Leads), ORNL/TM–2011/224. Oak Ridge National Laboratory, Oak Ridge, TN. 227p. (pg. 109).

²⁷⁷ “Developing Willow Biomass Crops as a Source of Home Grown Energy.” T.A. Volk, State University of New York College of Environmental Science and Forestry. Renewable Energy Forum, Auburn, NY, March 20, 2010. <http://www.esf.edu/willow/documents/VolkWillowOverview111110.pdf>.

²⁷⁸ For more information on the FASOM model, refer to the RFS2 final rule preamble (75 FR 14670, March 26, 2010) or the RFS2 final rule RIA. These documents are available in the docket for this action or online at <https://www.epa.gov/renewable-fuel-standard-program/renewable-fuel-standard-rfs2-final-rule-additional-resources>.

²⁷⁹ Detailed information on model inputs, assumptions, calculations, and the results of this and other components of our assessment of the lifecycle GHG emissions performance for short-rotation hybrid poplar and willow pathways can be found in the memorandum, “Short-Rotation Trees Technical Memorandum,” available in the docket for this action.

²⁸⁰ Additional details on the application of switchgrass results to this analysis are available in the memorandum, “Short-Rotation Trees Technical Memorandum,” available in the docket for this action.

400 million gallon/year is a reasonable volume for our modeling purposes.

Understanding the uncertainty in the ability for hybrid poplar and willow biofuel to penetrate and grow in the market, we also analyzed smaller volume scenarios as a sensitivity analysis that is included in the memo to the docket. The purpose of doing so was to test the GHG emissions impact of a lesser demand for these fuels on agricultural markets and land use. These lower volume scenarios produced agricultural market and land use impacts on a per-gallon basis that were similar to the respective 400 million gallon/year scenarios, and LCA GHG results were also consistent with the larger volume scenarios.²⁸⁴

Similar to our analysis of renewable fuel feedstocks in the RFS2 final rule, the EPA assessed what the lifecycle GHG emissions impacts would be from the use of additional volumes of short-rotation hybrid poplar or willow for biofuel production. The information provided below discusses the outputs of the analysis using the FASOM model to determine changes in the domestic agricultural and livestock markets. We then discuss the results of our analysis of international impacts from the switchgrass analysis in the RFS2 final rule. Finally, we discuss other GHG emissions associated with the pathways, and conclude with a summary of all

GHG emissions associated with the production of biofuel from short-rotation hybrid poplar or willow feedstock.

2. Domestic Impacts

Using FASOM, we estimated the domestic impacts of producing 400 million gallons of biofuel from short-rotation hybrid poplar or willow. FASOM estimates that 6.3 million tons of additional short-rotation hybrid poplar production will be needed to produce 400 million gallons of ethanol in 2022, and that these tons will come exclusively from around 950,000 acres in the Pacific Northwest East region of FASOM. The Pacific Northwest East region, which covers Oregon and Washington, east of the Cascade mountain range, has the highest yield in the model. The Pacific Northwest East region is also the location of actual current production. The increased short-rotation hybrid poplar production in the Pacific Northwest East causes cropland in this region to be shifted away from wheat, barley, and hay. Although production of these crops increases in other regions, overall the national production of these crops decreases (see Table VI.C.2-1).

The total active cropland in the U.S. increases by 260,000 acres in 2022 (see Table VI.C.2-2). These additional acres primarily come from the conversion of

idle cropland (131,000 acres), pastureland (72,000 acres), and forests (57,000 acres) to active cropland.²⁸⁵

In the short-rotation willow scenario, approximately 6.5 million tons of short-rotation willow will be needed to produce 400 million gallons of ethanol in 2022. Like short-rotation hybrid poplar, short-rotation willow currently has no commercial market in FASOM, and all of the short-rotation willow for fuel comes from new production. In 2022, all short-rotation willow production is projected to be in the Northeast, and around 1.2 million acres will be required.²⁸⁶ In FASOM, the Northeast has the highest short-rotation willow yield. This is also the region where short-rotation willow is currently grown for research purposes. Short-rotation willow production causes decreases in the production of hay, corn, and soybeans in the Northeast. Although production increases in other regions, overall the national production of these crops decreases (see Table VI.C.2-1).

For this high-volume willow scenario, the total active cropland in the U.S. increases by 363,000 acres (see Table VI.C.2-2). The cropland comes primarily from the conversion of forest (212,000 acres), pastureland (90,000 acres), and idle cropland (60,000 acres) to active cropland.²⁸⁷

TABLE VI.C.2-1—CHANGES IN U.S. PRODUCTION IN 2022 RELATIVE TO CONTROL CASE
[Million tons]

	Short-rotation hybrid poplar case	Short-rotation willow case
Short-Rotation Hybrid Poplar	6.28	0
Short-Rotation Willow	0	6.49
Corn	-0.01	-1.22
Wheat	-0.52	-0.12
Soybeans	-0.03	-0.23
Barley	-0.09	0.03
Hay	-0.77	-0.75

TABLE VI.C.2-2—CHANGES IN HARVESTED AREA BY CROP IN THE U.S. IN 2022 RELATIVE TO CONTROL CASE
[Thousand acres]

	Short-rotation hybrid poplar case	Short-rotation willow case
Short-Rotation Hybrid Poplar	948	0
Short-Rotation Willow	0	1,187
Corn	26	-299

²⁸⁴ We analyzed a 200 million gallon/year hybrid poplar scenario and a 200 million gallon/year willow scenario. These results can be found in the memorandum, "Short-Rotation Trees Technical Memorandum," available in the docket for this action.

²⁸⁵ Additional details about national land cover changes are available in the docket for this action.

²⁸⁶ The Northeast region in FASOM covers the New England states, New York, Pennsylvania, New Jersey, Delaware, Maryland, and West Virginia.

²⁸⁷ According to the 2012 Census of Agriculture, there were 389.7 million acres of cropland in 2012. This means that according to FASOM, producing 400 million gallons of willow or hybrid poplar biofuel would increase total cropland in the U.S. by

less than 0.1 percent in 2022 relative to 2012 levels. See "Farms and Farmland, Numbers, Acreage, Ownership, and Use." September 2014. 2012 Census of Agriculture. United States Department of Agriculture. https://www.agcensus.usda.gov/Publications/2012/Online_Resources/Highlights/Farms_and_Farmland/Highlights_Farms_and_Farmland.pdf.

TABLE VI.C.2-2—CHANGES IN HARVESTED AREA BY CROP IN THE U.S. IN 2022 RELATIVE TO CONTROL CASE—
Continued
[Thousand acres]

	Short-rotation hybrid poplar case	Short-rotation willow case
Wheat	- 485	- 2
Soybeans	- 26	- 178
Hay	- 91	- 320
Other	- 112	- 25
Total *	260	363

* Total may differ from subtotals due to rounding.

3. International Impacts

As explained above, the results of the FASOM model provide insights into the domestic impacts of producing biofuel from short-rotation hybrid poplar or willow. In this section we explain the international impacts. The FASOM model shows that in the short-rotation hybrid poplar and willow scenarios, the national production of crops such as wheat, corn, and soybeans will decrease as a result of increased land competition.²⁸⁸ The decrease of production creates upwards price pressure on these crops. The primary response of these supply pressures in FASOM is the decline of U.S. exports, especially wheat in the short-rotation hybrid poplar case and corn in the short-rotation willow case. This effect creates an incentive for international producers to increase production of

these crops, which likely requires some conversion of new land into agriculture and produces land use change emissions. In addition, increased international crop production can cause an increase in the amount of fertilizers and energy used internationally for crop production, which would increase GHG emissions. Finally, international changes in crop production can cause changes in livestock and rice methane emissions, which will also influence GHG emissions. Given the limited historical and market data associated with growing dedicated bioenergy feedstocks, we believe it is reasonable to assume that short-rotation hybrid poplar and willow will have similar international impacts as other dedicated energy feedstocks such as switchgrass. Since there are not well established global markets for SRT feedstocks, we

don't expect a significant interaction between an increase in the production of short-rotation willow and hybrid poplar for biofuels in the U.S. and other hybrid poplar and willow production around the world. Switchgrass, short-rotation hybrid poplar, and short-rotation willow are expected to be grown on similar types of land and have similar impacts on the production of other crops. Therefore, we believe it is reasonable to apply the international emissions associated with increased biofuel production from switchgrass to our analysis of impacts associated with producing biofuels from short-rotation hybrid poplar and willow, an approach that we have taken for other bioenergy feedstocks such as miscanthus, energy cane, and napier grass.²⁸⁹ International GHG emissions are discussed in section VI.C.6 of this preamble.

TABLE VI.C.3-1—CHANGES IN U.S. EXPORTS IN 2022 (THOUSAND TONS) RELATIVE TO THE CONTROL CASE

	Short-rotation hybrid poplar case	Short-rotation willow case
Corn	27	- 931
Soybeans	- 27	- 226
Barley	- 4	0
Wheat	- 524	- 93

4. Feedstock Transport

GHG emissions associated with distributing short-rotation hybrid poplar and willow are expected to be similar to the EPA's estimate for switchgrass because they are all dedicated bioenergy feedstocks requiring similar transport, loading, unloading, and storage regimes and have similar conversion yields as discussed in section VI.C.5 of this preamble. Our analysis therefore assumes the same GHG impact for

feedstock distribution as we assumed for switchgrass.

5. Fuel Production, Distribution, and Use

Short-rotation hybrid poplar and willow are suitable for the same conversion processes as other cellulosic feedstocks, such as switchgrass and corn stover. Currently available information on short-rotation hybrid poplar and willow composition shows that their hemicellulose, cellulose, and lignin

content are comparable to or higher than other feedstocks that qualify under the RFS regulations for the production of cellulosic biofuels. Conversion yield data provided by a technical assessment of cellulosic feedstocks by National Renewable Energy Laboratory (NREL) suggests that the yield will be higher for short-rotation hybrid poplar and willow than for other cellulosic feedstocks.²⁹⁰ However, as a conservative estimate, we applied the same production process energy inputs and conversion yields

²⁸⁸ See section VI.C.2 of this preamble.

²⁸⁹ We scaled the switchgrass emissions to account for the lower yields of short-rotation hybrid poplar and willow, as described in more detail in

the memorandum, "Short-Rotation Trees Technical Memorandum," available in the docket for this action.

²⁹⁰ Tao, L. and A. Aden. November 2008. "Technoeconomic Modeling to Support the EPA Notice of Proposed Rulemaking." NREL. Docket Item No. EPA-HQ-OAR-2005-0161-0844.

that were modeled for switchgrass in the RFS2 final rule (biochemical ethanol, thermochemical ethanol, and Fischer-Tropsch (F-T) diesel²⁹¹) to short-rotation hybrid poplar and willow.²⁹² The EPA also assumes that the distribution and use of biofuel made from short-rotation hybrid poplar and willow will not differ significantly from similar biofuel produced from other cellulosic sources. As was done for the switchgrass case, this analysis assumes that dedicated bioenergy feedstocks are grown in the U.S. for production purposes. If feedstocks were grown internationally for biofuel production, and the fuel was shipped to the U.S., shipping the finished fuel to the U.S. could increase transport emissions. However, based on analysis of the increased transport emissions associated with sugarcane ethanol distribution to the U.S. considered for the RFS2 final rule, this would at most add 1–2 percent to the overall lifecycle GHG impacts of the dedicated bioenergy feedstocks.

6. Results of Lifecycle GHG Analysis

As described above, we analyzed the GHG emissions associated with agriculture, land use change, fuel and feedstock transport, and tailpipe emissions for renewable fuels produced from short-rotation hybrid poplar and willow. Tables VI.C.6–1 and VI.C.6–2 break down by stage the lifecycle GHG emissions of the 2005 gasoline and diesel baselines and of short-rotation hybrid poplar and willow fuels produced in 2022.²⁹³

Net agricultural emissions include domestic and international impacts related to changes in crop inputs such as fertilizer, energy used in agriculture, livestock production, and other agricultural changes in the scenarios modeled. Increased demand for short-rotation hybrid poplar or short-rotation willow results in negative net agricultural emissions, meaning the emissions decrease relative to the control case. Short-rotation hybrid poplar and short-rotation willow use fewer agricultural inputs than corn, soybeans, barley, and wheat. Because land was converted from these crops to short-rotation hybrid poplar or short-rotation willow production, there was a reduction in the usage of agricultural inputs, and a corresponding reduction in the emissions from farm inputs.²⁹⁴

Domestic land use change emissions are negative for short-rotation hybrid poplar and willow. One reason for this is that most of the land used for short-rotation hybrid poplar or willow production comes from existing cropland. Using this cropland for short-rotation hybrid poplar or willow rather than annual crops like corn or wheat increases the amount of carbon stored in the soil and below-ground biomass (roots) due to the longer rotation and no-tillage characteristics of short-rotation hybrid poplar and willow. Another reason for the decrease in domestic land use change emissions in 2022 is due to more intensive management of forest acres in response to expected pressure on forest acres and forest product supply in the future.

As a result of increased demand for short-rotation willow and hybrid poplar, international land use change emissions increase. The increase in international land use change emissions for short-rotation hybrid poplar and short-rotation willow are larger than the decrease in domestic land use change emissions, leading to a net increase in land use change emissions.

The fuel production stage includes emissions from ethanol or diesel production plants, as described in section VI.C.5 of this preamble. Fuel and feedstock transport includes emissions from transporting short-rotation hybrid poplar or willow from the farm to a fuel production facility. As we assume for cellulosic pathways approved under the 2010 RFS2 final rule for the biochemical conversion process, lignin from the feedstock is burned to produce electricity, which offsets grid electricity, resulting in negative emissions. Even without this credit, short-rotation willow and hybrid poplar would meet the 60 percent GHG reduction threshold.

For short-rotation hybrid poplar, total emissions are 77–132 percent lower than the 2005 gasoline or diesel baseline. For short-rotation willow, total emissions are 69–125 percent below the gasoline or diesel baseline. These results, if finalized, would justify a determination that short-rotation hybrid poplar and willow ethanol, diesel, jet fuel, heating oil, and naphtha would meet the 60 percent reduction threshold required to qualify as cellulosic biofuel.

TABLE VI.C.6–1—LIFECYCLE GHG EMISSIONS FOR SHORT-ROTATION HYBRID POPLAR BIOFUEL
[g CO₂-eq/mmBtu]

Fuel type	Biochemical ethanol	Thermochemical ethanol	F-T diesel **	2005 Gasoline baseline	2005 Diesel baseline
Net Agriculture (w/o land use change)	– 4,503	– 4,714	– 4,670		
Domestic Land Use Change	– 2,481	– 2,597	– 2,573		
International Land Use Change	23,608	24,709	24,481		
Fuel Production	– 53,116	559	835	19,200	17,998
Fuel and Feedstock Transport	4,565	4,778	3,981	(*)	(*)
Tailpipe Emissions	880	880	700	79,004	79,008
Total Emissions	– 31,048	23,616	22,753	98,204	97,006
Lifecycle GHG Percent Reduction Compared to Petroleum Baseline	132%	76%	77%		

* Emissions included in fuel production stage.

** The F–T diesel process modeled applies to cellulosic diesel, jet fuel, heating oil, and naphtha.

²⁹¹ As explained in the RFS2 final rule (75 FR 14782), the F–T diesel process modeled applies to cellulosic diesel, jet fuel, heating oil, and naphtha. More information about F–T production technology can be found in: David, Ryan. August 2009. “Techno-economic analysis of current technology for Fischer-Tropsch fuels production.” NREL. Docket Item No. EPA–HQ–OAR–2005–0161–3035.

²⁹² Details about the energy input assumptions and GHG emissions calculations can be found in the memorandum, “Short-Rotation Trees Technical Memorandum,” available in the docket for this action.

²⁹³ More details on these values are available in the memorandum, “Short-Rotation Trees Technical

Memorandum,” available in the docket for this action.

²⁹⁴ A breakdown of the emissions from domestic and international farm inputs, livestock, and rice methane can be found in the memorandum, “Short-Rotation Trees Technical Memorandum,” available in the docket for this action.

TABLE VI.C.6-2—LIFECYCLE GHG EMISSIONS FOR SHORT-ROTATION WILLOW BIOFUEL
[g CO₂-eq/mmBtu]

Fuel type	Biochemical ethanol	Thermochemical ethanol	F-T diesel **	2005 Gasoline baseline	2005 Diesel baseline
Net Agriculture (w/o land use change)	-4,210	-4,407	-4,366		
Domestic Land Use Change	-2,596	-2,717	-2,692		
International Land Use Change	29,556	30,935	30,649		
Fuel Production	-53,116	559	835	19,200	17,998
Fuel and Feedstock Transport	4,679	4,897	4,099	(*)	(*)
Tailpipe Emissions	880	880	700	79,004	79,008
Total Emissions	-24,807	30,148	29,225	98,204	97,006
Lifecycle GHG Percent Reduction Compared to Petroleum Baseline	125%	69%	70%		

* Emissions included in fuel production stage.

** The F-T diesel process modeled applies to cellulosic diesel, jet fuel, heating oil, and naphtha.

Although this analysis assumes short-rotation hybrid poplar and willow biofuels produced for sale and use in the U.S. will most likely come from domestically produced feedstock, we also intend for the proposed pathways to cover short-rotation hybrid poplar and willow from other countries. We do not expect biofuels from short-rotation hybrid poplar and willow feedstocks produced in other nations to have significantly different lifecycle GHG emissions than we have calculated for domestically-produced fuels. As explained above, we believe that increased transport for fuel produced internationally would only increase the total lifecycle GHG emissions by at most 1–2 percent. Moreover, other countries most likely to be exporting short-rotation hybrid poplar, short-rotation willow, or biofuels produced from these feedstocks are likely to be major producers that typically use similar cultivars and farming techniques. Therefore, GHG emissions from producing biofuels with short-rotation hybrid poplar and willow grown in other countries should be similar to the GHG emissions we estimated for U.S. short-rotation hybrid poplar and willow, though they could be slightly (and insignificantly) higher or lower.

7. Risk of Potential Invasiveness

Poplars (*i.e.*, *Populus* species) and willows (*i.e.*, *Salix* species) are potential bioenergy feedstocks when grown as SRTs. Potential candidates for feedstocks include species that are both native and exotic to the U.S., as well as a variety of hybrids and cultivars of these species. While we are not necessarily concerned about the invasive potential of the native species, some exotics are weedy or potentially weedy, and hybrids can sometimes have weedy or invasive characteristics that are not shared by the parent species. Because poplar and willow species and

hybrids are actively being developed for bioenergy use on large landscape scales, there is uncertainty regarding the potential invasiveness of these taxa. Therefore, we are seeking comment on what regulatory requirements, if any, would be appropriate for mitigating the risk of invasiveness of these taxa of poplars and willows.

D. Proposed Regulations

1. Adding Pathways to Table 1 to 40 CFR 80.1426

As discussed previously, the EPA’s analysis shows that fuel produced from short-rotation hybrid poplar and willow using a variety of processing technologies meets the 60 percent GHG emissions reduction threshold needed to qualify as a cellulosic biofuel. Therefore, we are proposing to modify rows K, L, and N of Table 1 to 40 CFR 80.1426 to add these new pathways. Producers would then be able to submit registration materials to produce renewable fuels through these pathways, subject to compliance with all applicable regulations. We invite comment on all aspects of this analysis.

2. Proposed Definitions for Short-Rotation Hybrid Poplar and Short-Rotation Willow

For purposes of the RFS program, we are proposing that short-rotation hybrid poplar means a species or cross of species in the *Populus* genus that is grown with harvest rotations of less than 10 years. The EPA is considering hybrid poplar to include the following species, as well as crosses between them: *Populus (P.) deltoides*, *P. trichocarpa*, *P. nigra*, and *P. suaveolens* subsp. *maximowiczii*. We are also proposing that short-rotation willow means a species or a cross of species in the *Salix* genus that is grown with harvest rotations of less than 10 years. Qualifying species include *Salix (S.)*

miyabeana, *S. purpurea*, *S. eriocephala*, *S. caprea* hybrid, and *S. x dasyclados* as well as crosses between *S. koriyanagi* and *S. purpurea*, *S. viminalis* and *S. miyabeana*, and *S. purpurea* and *S. miyabeana*. The proposed pathways do not affect the existing pathways for slash or pre-commercial thinnings. We invite comment on the proposed definitions of short-rotation hybrid poplar and short-rotation willow.

3. Registration, Recordkeeping, and Reporting Requirements

To be used as feedstock for qualifying renewable fuel under the RFS program, short-rotation hybrid poplar and short-rotation willow must be grown on a tree plantation as defined in 80 CFR 1401, and producers of fuel made from such feedstock must meet all of the registration, recordkeeping, and reporting requirements specified in the regulations for producers of renewable fuel made from qualified planted trees or tree residues. These requirements are designed to implement the statutory requirement that qualifying renewable fuel be made from “renewable biomass” as defined in the CAA, including “planted trees and tree residue from actively managed tree plantations on non-federal lands [. . .].” Among other requirements, the current regulations specify that a tree plantation must have been actively managed as a tree plantation on December 19, 2007, and that producers using these feedstocks maintain records serving as evidence that this is the case. However, we believe that the central purpose of the renewable biomass requirement is to prevent the conversion of land that was not cleared and actively managed as agricultural land as of the date of EISA enactment from being converted to production of renewable fuel feedstocks. This purpose can be satisfied with respect to tree plantations providing the land in question was cleared and

actively managed for any agricultural purpose on December 19, 2007. In addition, we believe that modifying the definition of tree plantation to allow their placement on land that was actively managed for any agricultural purpose on December 19, 2007, will facilitate the production of cellulosic biofuels, which is consistent with the purpose of the statute to promote the rapid development and use of such fuels. Therefore, the EPA is proposing to revise the definition of tree plantation and the associated recordkeeping requirements so as to allow planted trees and tree residue to be sourced from lands that were actively managed as agricultural land on December 19, 2007, in addition to those that were actively managed as tree plantations on that date. This revision would be applicable for all uses of renewable biomass from tree plantations under the RFS program. We are also amending the regulatory definition of tree plantation to include the statutory requirement that they be located on non-federal lands.

The EPA is proposing new registration and recordkeeping requirements for renewable fuel producers generating cellulosic biofuel (D-code 3) or cellulosic biomass-based diesel (D-code 7) RINs for renewable fuel produced from short-rotation hybrid poplar or willow. These requirements are to ensure that feedstocks used for these pathways meet the definitions of short-rotation hybrid poplar or willow and that the feedstocks were grown on tree plantations as defined in 80.1401. At registration, producers would be required to list all species and hybrids that they intend to use as a short-rotation hybrid poplar or willow. In addition, they would need to provide a written justification of why each feedstock meets the definition of short-rotation willow or short-rotation hybrid poplar, including the specification that the harvest rotation is less than 10 years. Finally, at registration the producer would have to submit records (including contracts and affidavits from the tree plantation supplying the feedstocks) demonstrating that the short-rotation hybrid poplar or short-rotation willow feedstocks will be sourced from a tree plantation, as defined in 40 CFR 80.1401.

The EPA is proposing additional recordkeeping requirements for renewable fuel producers using short-rotation hybrid poplar and short-rotation willow. Producers would be required to keep records of the specific short-rotation hybrid poplar or willow species or hybrids used to produce renewable fuel for each batch of fuel produced, the total quantity of each

feedstock used for each batch, and the total amount of fuel produced in each batch. In addition, producers would be required to keep affidavits obtained on a quarterly basis and contracts from the short-rotation hybrid poplar or short-rotation willow feedstock providers confirming that the feedstocks provided are from a tree plantation meeting the definition in 80.1401. We invite comment on the proposed new registration and recordkeeping requirements for short-rotation hybrid poplar and short-rotation willow.

In addition to these new proposed requirements, renewable fuel producers using short-rotation hybrid poplar and short-rotation willow would need to comply with all existing applicable regulatory requirements. Short-rotation hybrid poplar and willow are considered planted trees as defined in 40 CFR 80.1401. Applicable requirements include but are not limited to registration requirements at 40 CFR 80.1450(b)(1)(ii), which require producers to demonstrate that their production process has the ability to convert cellulosic components of their feedstock into fuel. Producers using short-rotation hybrid poplar and willow as feedstocks would also have to comply with all applicable reporting requirements and submit quarterly reports pursuant to 40 CFR 80.1451(d). Producers would also have to report the specific type and quantity of each short-rotation hybrid poplar or willow species or hybrids used as feedstocks to produce the renewable fuel in EMTS consistent with existing requirements for all renewable fuels.²⁹⁵ Because hybrid poplar and willow are considered planted trees rather than crops, they do not fall under the aggregate compliance approach, and therefore existing recordkeeping and reporting requirements applicable to planted trees are required. These include the requirements listed at 40 CFR 80.1454(c) and 80.1454(d) specific to producers of renewable fuel made from feedstocks that are planted trees. Additionally, producers would also have to comply with any other applicable recordkeeping requirements listed at 40 CFR 80.1454. Producers would also have to ensure that their feedstock satisfies all applicable definitions in the CAA and RFS regulations, including the definitions at 40 CFR 80.1401 of planted trees, tree plantations, and renewable biomass, which, among other provisions, prohibit direct conversion of previously uncleared land for the production of planted trees.

²⁹⁵ See 40 CFR 80.1452(b).

VII. Generating RINs for Renewable Electricity

A. Background

The RFS regulations currently contain pathways for the generation of cellulosic RINs when electricity, produced from biogas, is used as a transportation fuel.²⁹⁶ There has been growing interest in RINs generated for renewable electricity²⁹⁷ as the fleet of electric vehicles (EVs) has expanded in recent years. Based on 2011–2014 sales data, we estimate that the current EV fleet is comprised of ~120,000 battery electric vehicles and ~150,000 plug-in hybrid electric vehicles. Were this fleet to be charged exclusively using renewable electricity, there exists the potential for the generation of approximately 30 million RINs annually. The EPA expects that the potential annual generation of RINs generated for renewable electricity could increase by roughly 10 million per annum over the next few years. The EPA believes that these potential RINs represent an opportunity to incentivize the growth of the EV market in the U.S. while simultaneously advancing the goals of the CAA to reduce air pollution and GHG emissions from mobile sources and the fuels that power them. Revenue from the sale of RINs could be used to incentivize increased generation of renewable electricity, greater availability of public charging infrastructure, increased ownership of EVs, or any combination thereof. As the EPA considers the requirements for generating RINs for renewable electricity under the RFS program, we do so with the goal of adopting a structure that best achieves the greater goals of the RFS program: increasing the production and use of low GHG fuels produced from renewable biomass.

The EPA has received a number of registration requests for approval under the existing provisions for generating RINs for renewable electricity generated from biogas.²⁹⁸ These requests vary considerably in their approach, from parties interested in generating RINs for the electricity used by a fleet of EVs, several charging stations, or groups of interested EV owners, to those interested in generating RINs for the electricity used by all of the EVs produced by an EV manufacturer. Many

²⁹⁶ See Pathways Q and T in Table 1 to 40 CFR 80.1426. These pathways presume that the electricity input into EVs carries the environmental attributes borne by electricity that is generated from biogas. The mechanics of this presumption were specified in the Pathways II rule (79 FR 42128, July 18, 2014).

²⁹⁷ We use the term “renewable electricity” in this preamble to refer to electricity produced from biogas and used as transportation fuel.

²⁹⁸ See 40 CFR 80.1426(f)(10) and (11).

elements of these RIN generation structures conflict with one another. This has created an untenable environment for the approval of any single registration request by the EPA to date. Many of the registration requests submitted envision generating RINs using different types of information to verify the use of electricity as transportation fuel.

Given the diversity of the registration requests submitted for the generation of RINs for renewable electricity to date, and the necessity of avoiding the double-counting of RINs for the same quantity of electricity, the approval of any one of these proposed systems may preclude the approval of others. The regulations prohibit double-counting of RINs for the same quantity of renewable electricity. Thus, for a given quantity of renewable electricity, at most one party—whether it is the electricity producer, the utility distributing the electricity, the EV owner, the charging station, or the manufacturer—can generate the corresponding RINs. The EPA believes the question of the appropriate party to generate RINs in these circumstances deserves the opportunity for public comment. In determining the regulatory requirement for parties seeking to generate RINs for renewable electricity, our goal is to establish an open and comprehensive program that will best incentivize growth in the use of renewable electricity without sacrificing the integrity of the RIN market. We seek comment on the following discussion and potential RIN generation structures for renewable electricity in order to help resolve the many issues associated with choosing an appropriate structure and its design, as well as which of these structures would best further the goals of the RFS program. Feedback received in response to this request for comment will be essential to ensuring that an equitable, open, and comprehensive program structure is adopted and implemented.

B. Data Requirements for Generating RINs for Renewable Electricity

A key requirement of the RFS program is the type of data required to demonstrate that RINs were generated validly and identification of who is responsible for providing the necessary data for RIN generation. Vehicle charging data demonstrate the use of electricity as transportation fuel, one of the two main requirements for RIN generation (production from renewable biomass being the other). However, there are several sources of charging data that could be provided to verify the use of electricity as transportation fuel:

- Charging data from charging stations and/or fleet owners
- Charging data from electric utilities
- Charging data from vehicle manufacturers
- Information from EV owners (from separate meters, telemetric devices, or onboard diagnostic tools)

Any of these sources of data could conceivably be used as the basis for generating RINs for renewable electricity.

Although multiple types of data can be used to demonstrate the use of electricity as transportation fuel, allowing them to be used simultaneously would almost certainly result in the generation of RINs by multiple parties for the same charging event (*i.e.*, double counting). For example, if an EV owner charged their vehicle at a public charging station, it is possible that the vehicle owner, charging station owner, and vehicle manufacturer would all have record of the amount of renewable electricity used in this single charging event.²⁹⁹ To protect the integrity of the RIN system, as well as to further the GHG reduction goals of the CAA, we therefore seek comment on the entity or entities that the EPA should register for the generation of RINs for renewable electricity.

In addition to determining the type of information that will be required for RIN generation for renewable electricity, the EPA proposes to determine the extent to which parties authorized to generate RINs would be allowed to use estimates or averages (rather than empirical data) for the basis of RIN generation. These estimates or averages could range from relatively simplistic (*e.g.*, assuming 80 percent of EV charging occurs at home and 20 percent occurs at public charging stations) to more complex (*e.g.*, utilizing models generated from a sample of EV behavior to estimate the average electricity use of all EVs, or a certain type thereof). Allowing the use of estimates or averages would enable the EPA to consider a wider variety of data and data providers for participation in RIN generation. Allowing greater participation through acceptance of averaging or estimation methods may better allow RINs generated for renewable electricity to be used to

²⁹⁹ At the time of writing, there has been little resolution regarding whether any of the parties actually has exclusive, legal rights to the data generated by a vehicle charging event. Some vehicle manufacturers have entered into “user” agreements with the vehicle owners that grants them permission to use the vehicle data, but these agreements do not appear to grant either party exclusive use rights.

incentivize future growth. For example, allowing the use of estimates and assumptions could enable the EPA to:

- Allow utilities or other parties to estimate the quantity of electricity used as transportation fuel by all EVs within their customer base.
- Allow a hybrid system wherein different types of parties (*i.e.*, charging station owners, utilities, and/or vehicle manufacturers) could participate in different segments of the market (*e.g.*, public charging or home charging).

Whether it is necessary for the EPA to adopt a system that strictly requires empirical charging data, rather than a system that allows for reasonable assumptions, remains undecided. The empirical data approach would require that large quantities of data be generated, managed, and provided by the RIN generator. A program of that scope could be resource intensive for both the RIN generator and the EPA and, depending on the approach, may prevent large-scale participation, thereby undermining the potential of the RFS program to stimulate EV usage, infrastructure, and reduce GHGs.

A program that relies upon some degree of simplification, through assumptions, would reduce resource allocation for data generation and oversight. This reduced complexity may allow for a larger variety of parties to participate in the RFS program and would likely increase participation, the number of RINs generated, and encourage future growth. Allowing the use of assumptions, such as estimates or averages, would sacrifice some of the precision present in systems that rely on empirical data, but it may also help mitigate concerns over data ownership and consumer privacy infringement. For example, if the quantity of RINs that could be generated annually by an EV were determined based upon average vehicle miles traveled, rather than empirical charging data, knowing the size of the fleet for a given year is all that is required rather than vehicle-specific charging data. There are privacy and data ownership concerns that may arise with any structure that requires empirical charging data from the EV. Issues surrounding data ownership and privacy concerns are present throughout the structures described below. Some of these structures offer more established pathways to resolution (*e.g.*, auto manufacturers and vehicle purchasers through dealer networks) while others may require the creation of resolution pathways.

Another important consideration for the EPA in determining the data requirements to allow for RIN generation for renewable electricity is

whether or not to allow third parties to generate RINs using data as discussed in the various structures below. These third parties could serve an important role within these structures as aggregators of the required data and agents or intermediaries for RIN generation. In some structures (“Vehicle Owner”) it is difficult to conceive how the program could effectively work without third parties to manage data and generate RINs, whereas in other structures (“Electric Utility” or “Vehicle Manufacturer”) the potential RIN-generating parties may be large enough to avoid the need for a third party’s involvement. While allowing third parties to generate RINs could potentially increase participation in the RFS program, particularly under some of the structures discussed below, the EPA is concerned that it could also present an opportunity for the generation of fraudulent RINs by allowing companies with minimal capital investment to participate in a lucrative new market only temporarily, making them hard to track and hold responsible. Additionally, whatever portion of the RIN value is extracted by the third party for their services cannot be used to incentivize the use of renewable electricity as transportation fuel.

C. Potential Program Structures

Allowing the generation of RINs for renewable electricity under the RFS program provides a potentially significant opportunity to incentivize investment in EV technologies and infrastructure, as well as the generation of electricity from biogas. However, the unique characteristics of the generation and tracking of renewable electricity from biogas present implementation challenges. The EPA is aware that how these challenges are dealt with and resolved will have significant consequences for who can generate RINs for renewable electricity, how the program is implemented and monitored, the level of program participation, and the degree to which RINs will be used to incentivize growth in the number of EVs, the charging infrastructure, and the generation of electricity from biogas for use as transportation fuel.

In light of these concerns, the EPA is seeking comment on the type of structure and accompanying data to be employed in allowing parties to generate RINs for renewable electricity. The following sections discuss several potential structures considered by the EPA and informed by preliminary discussions with several stakeholders. Each of these structures addresses the two primary RFS requirements for the

generation of RINs for renewable electricity: (a) That renewable electricity has been generated from approved renewable biomass (biogas); and (b) That the renewable electricity is used as transportation fuel. Some of the structures discussed below are better positioned to verify the first requirement (the generation of electricity from biogas), while others are better positioned to verify the latter requirement (that electricity is used as transportation fuel). All of these structures are being considered on an individual basis, but could also be considered in the context of a hybrid approach that would combine multiple structures and/or reserve percentages of the RINs from renewable electricity for specific structures (*e.g.*, vehicle owner and vehicle manufacturers).

Any of the structures (or hybrids thereof) would impose significant, additional implementation challenges. The current RFS program would need to be adjusted to accommodate new registered parties (*e.g.*, vehicle manufacturers) and the information that those parties would need to submit during registration or during periodic reporting. EMTS may need to be modified to accommodate data submissions from new sources (*e.g.*, vehicle telematics) to more appropriately generate and track RINs generated from renewable electricity. Additionally, the complexity of a new or modified renewable electricity regulatory structure could make assuring the validity of RINs more challenging for all parties and could increase the potential for fraud. Since the complexity of generating RINs from any of these discussed structures is significantly different from traditional renewable fuels, both submission and review of registrations and reports will likely be unique. These issues, and other issues related to the implementation of a new regulatory structure, would need to be addressed.

The EPA believes that the best-case scenario would be the adoption of a structure for generating RINs for renewable electricity that would simultaneously provide greater incentive for EV use and ownership (thereby reducing air pollution and GHG emissions from vehicles), increase the amount of renewable electricity produced, and minimize challenges related to program oversight. As of 2014, however, roughly 11,000 GWh of electricity were generated from biogas, while slightly less than 700 GWh from all sources were used as transportation fuel. This means that in the near term, the number of RINs that are able to be generated from renewable electricity

will likely be limited by the size of the EV fleet. Structures that do not incentivize increased ownership of EVs are therefore likely to have limited impact on the quantity of renewable electricity produced in the near term. Any program that does not induce additional electricity generation from biogas is not expected to provide additional GHG reductions beyond those provided by the efficiency of the additional EVs added to the fleet. Finally, in order to fully understand the implication of our decision on the structure for the generation of RINs for renewable electricity, we believe we should take into account the existing and significant incentives currently in place for the production of EVs and the generation of electricity from biogas.

We understand that many of the options under consideration differ from the typical approach under the RFS of placing authority and responsibility for RIN generation on the renewable fuel producer. We believe that a unique approach with respect to renewable electricity could be justifiable if it provides greater incentives for use of renewable electricity in the transportation sector and simplifies program implementation, but we seek comment on this issue.

1. Vehicle Owner Structure

One possible program structure would be to allow vehicle owners to use the data on the quantity of electricity used to charge their EVs, as measured by separate meters or telemetric devices, to generate RINs. Under this system, the data available to the RIN generator clearly demonstrate the use of electricity as transportation fuel. Allowing EV owners to generate RINs for renewable electricity could provide a direct financial incentive to owners and potential owners of EVs; however, such a system would have several major challenges that the EPA believes would prevent this structure from achieving the desired impact.

One major issue for EV owners is to measure and keep records of the amount of electricity used to charge their EVs. Barriers currently exist for vehicle owners to access and log their vehicle charging activity. Vehicle owners may opt for a second electricity meter to be installed by their utility company, which would then provide charging activity information through a dedicated billing account. The validity of charging data captured by dedicated EV charging meters would be verifiable and documented. Alternatively, vehicle owners may opt to purchase a current measurement device capable of measuring and logging charging activity.

The extent of verification challenges related to charging data captured through an independent current management device is unclear is unclear and we request comment on this issue. Either of these options would necessitate an initial financial investment, which could reduce program participation.

Even if EV owners were able to log their vehicle charging activity through one of these options, there would still be a challenge for program administration because the EPA would need to collect and verify the accounting accuracy of the charging data compared to number of RINs generated for each individual EV owner (e.g., potential of ~270,000 EV owners and hundreds of charging events over the course of one year). The EPA would also need to invest in IT system upgrades or modifications to store and process the significant number of additional registrations and large volume of data. Currently, the RFS program has approximately 1,200 registrants. The addition of potentially hundreds of thousands of additional registered parties is not something currently supported by the registration system and would require a significant amount of time and resources to implement. Other program administration challenges include educating EV owners on the registration, reporting, recordkeeping, and other requirements for RIN generation under the RFS program. Since EV owners are less likely to be familiar with the requirements of the RFS program, this would likely result in a higher chance of noncompliance or violations and pose further challenges for EPA enforcement. Conversely, the compliance challenge imposed upon EV owners may be too high, and not worth the incentive of the RIN value. This could result in less participation by EV owners in the RFS program, which would be counter to the program goals. We request comment on the extent to which these program administration challenges could be minimized or overcome.

A second major issue would be the need to verify that the vehicle charging was completed using electricity generated from renewable biomass. Individual vehicle owners would likely be unable to enter into direct contracts with independent power producers or investor-owned utilities in order to demonstrate the renewable content requirements for RIN generation. Broad EV owner participation would therefore likely necessitate the creation and maintenance of a novel contract mechanism by the EPA or the

involvement of a third-party aggregator in order to fulfill the requirements for RIN generation. A substantial degree of simplification for assuring renewable content, as well as eliminating charging data measurement and reporting by vehicle owners, could be achieved through the use of assumptions. The complexity of administering the vehicle owner structure could be greatly reduced by modeling usage behavior and then allowing a third party to aggregate vehicle owners and contract to meet renewable content requirements. The third party could then distribute RIN value to vehicle owners, less administrative costs, after the sale of RINs to obligated parties. Some mechanism for aggregation would be required, as another major issue is the sale of small numbers of RINs. Under the RFS program, obligated parties purchase RINs in blocks of millions and are not set up to purchase small numbers from individual parties. Therefore, aggregation would almost certainly be a necessity for the vehicle owner structure or any other structure predicated upon the generation of small numbers of RINs by a single party.

It is conceivable that owners of large EV fleets may be willing to meet the administrative and recordkeeping challenges posed by RIN generation under a non-assumption based version of the vehicle owner structure. However, because the number of EVs in fleets is small relative to the total number of EVs in the market, allowing for this structure alone would not maximize the number of RINs generated. Under a strictly empirical data version of the vehicle owner structure, even EV owners willing and able to create and maintain the necessary records would likely be dependent on a third-party aggregator to generate and sell RINs on their behalf, as the registration requirements and realities of the RIN market³⁰⁰ would provide practical barriers to individual EV owners participating directly. Therefore, without some allowance for modeling or assumptions, the vehicle owner structure would be unlikely to achieve the desired impact of promoting increased generation of renewable electricity and increased EV ownership.

2. Public Charging Station Structure

Another potential structure could allow the owners of vehicle charging stations to generate RINs based on the electricity used by their charging stations. Charging data from public

stations could be verified by meter billing statements that would be readily available to participating stations. Allowing charging station owners to generate RINs could also incentivize the building of additional public charging infrastructure, which could also impact the willingness of consumers to purchase and use EVs. If this structure were adopted, it is probable that the EPA could rely on verifiable empirical charging data (rather than estimates or averages) for the amount of renewable electricity used. However, such charging stations would still have to contract with upstream parties to verify that the renewable electricity used as transportation fuel for which RINs were generated was consistent with the quantity of renewable electricity generated from qualifying renewable biomass supplied to the grid from which the charging stations withdrew their electricity.

The program administration challenges for the EPA under this structure would be to verify and rectify contracts among all of the parties upstream of the charging station, particularly when there are multiple parties involved. For example, it is particularly challenging for the EPA to ensure that RINs are generated only for the quantity of electricity that is actually produced at a renewable electricity generation facility if the facility has multiple contracts with multiple charging stations for a portion of their electricity. The charging station would not know if they were contracted for a quantity of electricity that was above the capacity of the renewable electricity generation facility, and therefore the burden would fall on the EPA, or others, to conduct this verification. We seek comment on how to overcome this implementation challenge without imposing overly burdensome restrictions on how parties set up contracts and conduct business in this competitive market.

Additionally, a majority of EV charging is currently performed at work or home. Therefore, adopting this structure alone would limit the ability to achieve the desired goals of the RFS program. Even if all public charging station owners were able to participate in the RFS program, this structure would not allow for the generation of RINs for renewable electricity when EVs are not charged at public charging stations. This would significantly limit the number of RINs that could be generated for renewable electricity, thereby reducing the effectiveness of this structure to be used to incentivize ongoing EV growth. It is possible that this structure could be used in

³⁰⁰ Obligated parties purchase RINs in quantities of millions of RINs, far more than any individual EV owner could generate.

conjunction with another structure—one in which the public charging structure is used to account for the public charging of EVs and another structure is used to account for the private charging of EVs. Such a hybrid system could enable the value of the RINs generated for renewable electricity sold at charging stations to incentivize increased public charging infrastructure while capturing a larger proportion of EV charging events. It may also be possible to register public charging stations or fleet owners under the current regulations while the structure adopted to allow for RINs to be generated for home charging remains undecided. We request comment on this approach.

Another challenge of this structure is that many of the public charging stations are owned by municipalities or other entities that may find it difficult, due to human resource or other constraints, to make their charging data available and participate in the RFS program. These challenges, though unique to charging stations, are not materially different than the challenges that were outlined in the vehicle owner structure for smaller entities generating RINs and participating in the RFS program. Whether adopted alone, or in concert with another structure to capture home charging, the difficulties associate with recordkeeping, reporting, and the likely need to aggregate small RIN generators so that they may participate in the RIN market are present and will need solutions prior to the public charging structure being ready for implementation.

3. Electric Utility Structure

While the other structures discussed here allow one to more easily quantify and verify the amount of electricity used as transportation fuel, they are far removed from the point where one can verify that the feedstock used to generate the renewable electricity was actually qualifying renewable biomass (*i.e.*, biogas from landfills or other qualified biomass sources). In contrast, an electric utility structure may be more effective at ensuring that the electricity was derived from a qualified source of biogas, but less effective at quantifying how much was actually used as transportation fuel. Utilities would likely have no direct knowledge of the amount of such electricity that was actually used as transportation fuel (except in circumstances where a dedicated EV charging meter had been installed) and would need to contract with downstream parties to obtain this information. Program administration challenges under the electric utility

structure would include verifying and rectifying contracts among all the parties upstream and downstream of the transmission of electricity to the vehicle charger. Due to the restructuring of many utilities in the U.S., multiple parties may have to be regularly contractually connected in order for the electric utility to be the RIN generator. An additional administrative challenge would be verifying that RINs are only generated for the quantity of electricity actually produced at a renewable electricity generation facility if the facility has contracts with multiple utilities or charging stations for a portion of their electricity. We seek comment on how to overcome this implementation challenge without imposing overly burdensome restrictions on how parties set up contracts and conduct business in this competitive market.

There are several additional reasons beyond the physical connection to the qualified biomass being converted to electricity as to why an electric utility structure may be desirable. Depending on the design of the program, value from RINs generated by utilities could incentivize new forms of biomass to electricity generation or drive the increased use of biogas to generate renewable electricity, providing GHG benefits. It could also provide a source of revenue for utilities to help offset the cost of upgrading electricity distribution infrastructure, which would likely be necessary if EVs are adopted to a significant degree. Finally, as the parties that sell electricity to the end users, utilities would conceptually be best positioned to provide renewable electricity to EV owners at discounted rates.

A version of this form of structure has been adopted by the State of California in their Low Carbon Fuel Standard Program (LCFS). Under the LCFS, electric utilities generate credits based upon the number of EVs in their service territories. The amount of electricity used by each vehicle is estimated based on data from a limited number of EV owners with separate meters to directly measure the amount of electricity used to charge their vehicles. The LCFS program also allows public charging stations and fleet owners to generate credits based on charging data. The system addresses the potential for generating multiple credits for the same charging event by allowing utilities to generate credits based on estimates of the electricity used only for the home charging of EVs, while allowing public charging stations and fleet owners to generate credits based on their own

charging data.³⁰¹ An important provision of the LCFS is that the utilities are required to use the LCFS credit proceeds for the direct benefit of EV owners, a provision that is not currently a part of the EPA's RFS program. While some utilities may pass revenue from RIN generation along to customers if a utility structure was adopted, the generally non-competitive nature of utilities is likely to limit the degree to which customers directly benefit from any RIN revenue.

Unlike the RFS program, the LCFS program has no requirement that the electricity used to generate the LCFS credits come from any specific source. Their program relies on a grid average carbon intensity to determine the amount of LCFS credits that are to be awarded for each charging event. This is fundamentally different from the requirements under the RFS program, where credits may only be generated for electricity generated from qualifying renewable biomass sources.

The use of grid average carbon intensity also obscures another important issue which will need to be resolved by any national structure for RINs generated for renewable electricity: Most facilities generating electricity from biogas are independent power producers (IPPs) not owned by electric utility companies. In 1978, the Public Utility Regulatory Policy Act (PURPA) was passed, granting qualifying facilities the right to be able to generate and sell electricity to utility companies at the utility's avoided cost.³⁰² The allowance of IPPs was expected to reduce electricity costs for consumers by allowing cheaper generation sources to participate in the market. Perhaps unintentionally, PURPA set the stage for the erosion of the regulatory consensus surrounding the vertically integrated utility model in much of the U.S. Today, many once vertically integrated utility companies have divested or separated their transmission, distribution, and generation services. In many parts of the country, the notion of "utility" is tantamount to the entity responsible for providing electric distribution services. The implication of this for any program structure for generating RINs for renewable electricity is that there is an added layer of complication because the utility that is delivering the electricity in such areas is rarely the owner/operator of the biogas electricity generation facility. For example, in 2014, roughly 11,000 GWh of electricity

³⁰¹ The LCFS program does not involve EV manufacturers as the source of charging data or as parties eligible to generate LCFS credits.

³⁰² See PURPA § 210.

were generated from biogas, less than 1,000 GWh of which were generated by traditional electric utilities.

This disaggregation introduces a potential challenge to the electric utility structure. Any utility-based structure would likely need to determine whether to allow utilities to contract with IPPs currently generating electricity from biogas or require that the utilities directly generate electricity from biogas in order to generate RINs for renewable electricity. Allowing utilities to contract with IPPs would likely result in the greatest participation in the RFS program, but may limit the procurement of new biogas generation in the near term (until the amount of electricity used as transportation fuel nears the amount of electricity presently generated from biogas). Alternatively, requiring that utilities generate the RINs for biogas generation capacity they either already own or newly procure could provide an incentive for increasing the amount of electricity generated from biogas, but would likely reduce utilities' participation in the RFS program.³⁰³ Regardless of whether program participation is affected by IPP contracting, there is a tradeoff between these two alternative programs which would have ramifications for how the RIN value might be used.³⁰⁴ If contracting with IPPs was allowed, more of the RIN value could be reserved for incentivizing EVs but there would be little change in electricity generation from biogas as a result of RIN generation

³⁰³ Substituting the IPPs as the RIN generators would face other challenges. Unlike utilities, IPPs do not have a customer base from which to aggregate the total electricity used as transportation fuel. Secondly, as of 2013, the average size of an IPP biogas project was 3.2 Megawatts. This is diminutive relative to utility-scale projects and it is doubtful that many of these producers would have the resources to be able to participate in the RFS program independently. Third-party aggregators would likely be required to manage the RINs generated by IPPs. Also, if IPPs were generating the RINs, the role (especially financially) of the utility would be greatly diminished and the administrative costs of participating in RFS may not be justifiable. This could present an obstacle if neither the utility nor the renewable electricity producers have sufficient capacity or incentive to participate in the RFS program.

³⁰⁴ It is unclear that providing the RIN value to IPPs or utilities would result in an increase in electricity generation from biogas. Under PURPA, biogas facilities are guaranteed the utility's avoided cost of generation. Additionally, many state and federal production tax credits, investment tax credits, and compliance market credits (RECs, etc.) are already accrued by these facilities; contributing to the current large supply of electricity generation from biogas in relation to the EV market demand. Nevertheless, despite the preexisting level of subsidization, many potential biogas generating projects remain undeveloped. Additional information would be helpful to understand the degree to which the value of the RIN would result in additional generation of biogas for electricity.

(additional GHG reductions unlikely). If contracting with IPPs was not allowed, more electricity generation from biogas may be built (additional GHG reduction possible), but a much smaller fraction of the RIN value would likely remain to incentivize EVs.

In summary, the utility centric structure has some advantages, such as most directly providing the linkage to the renewable nature of the RINs generated, and could provide funds for the upgrading of electricity distribution infrastructure. In addition, the utility structure could be used in conjunction with the public charging structure used to separately capture private and public charging of EVs. There remain several challenges to the adoption of the utility centric structure however. The disaggregated nature of electricity generation from biogas would provide program administration challenges. A decision about whether or not to allow utilities to contract with IPPs to fulfill the requirement that the renewable electricity was generated from biogas would have to be made. Finally, questions remain as to the degree to which utilities, many of which are publicly regulated entities, would be legally able to participate in the RFS program as RIN generators, or whether they would be dependent on third parties to generate RINs on their behalf. We request comment from such entities regarding potential legal issues that may limit or prevent their participation.

4. Vehicle Manufacturer Structure

An additional RIN generation structure option would be a program that would use charging data collected by the vehicle manufacturer as the basis for RIN generation. This structure, like the vehicle owner and public charging station structures, is focused on quantifying the amount of electricity used as transportation fuel and less well-suited to ensuring that the electricity is generated from qualifying renewable biomass pursuant to an approved pathway (e.g., biogas from an appropriate source). Currently, however, the principle constraint in the biogas to electricity to transportation fuel pathway is the use of electricity as transportation fuel, precisely what would be reflected in the EV's state of charge. Therefore, the state of charge data which could be provided by vehicle manufacturers (or their designated intermediary) may constitute a logical source of data for RIN generation. Furthermore, many vehicle manufacturers are already collecting vehicle charging data, increasing the availability of EV charging data for potential inclusion in the RFS program.

The vehicle manufacturer structure, due to the ability of OEMs to independently generate charging data, could be adopted unilaterally or this structure could be used in conjunction with another structure (e.g., the charging station model) to incentivize infrastructure. Use of a vehicle manufacturer structure alone could potentially reduce the variety of data being submitted and help with the process of data verification for RIN generation. Additionally, EV manufacturers are positioned to pass on the revenue from the sale of RINs to the customer directly by discounting the purchase price of EVs or through other rebate mechanisms. This would allow the RFS program to be used to address an important factor currently limiting the amount of renewable electricity used as transportation fuel: The number of EVs in the U.S. There may be concerns that setting up the program structure in this manner would result in the automotive manufacturers collecting a windfall profit, rather than reducing the sale price of the EVs they sell. However, market forces may ultimately transfer a substantial portion of the RIN revenue to the EV owners. Automotive manufacturers have enticed customers to purchase their products over their competitors for decades through the use of incentives. Automotive manufacturers, which have existing requirements motivating them to sell EVs, may use the RIN revenue to further incentivize vehicle buyers to purchase their product over a competitors.

From a program administration perspective, the parties that would be able to generate RINs for renewable electricity in a vehicle manufacturer structure would be a small pool of relatively homogenous applicants. It has been suggested that vehicle manufacturer telematics data could be used, in a raw or processed form, as the basis for RIN generation. However, EMTS is not currently configured to accept, process, or track the quantity and format of information that may be provided from vehicle telematics. Although these data could perhaps provide reliable information for RIN generation, the parsing of the substantial amount of information down to the vehicle level would be difficult to review for RIN verification. Significant modifications to EMTS and the registration system would still be needed to allow for the appropriate generation and tracking of RINs using data from EV manufacturers at this time.

Another aspect of the vehicle manufacturer centric structure is that it could also be administered to allow for the use of assumptions or models rather

than empirical charging data for the basis of RIN generation. Under this approach, the burden of collecting and verifying data could be greatly reduced. For example, EV electricity consumption models could range from something as simple as average U.S. vehicle miles travelled to usage models based on samples taken from the local EV population. The number of vehicles that each manufacturer has in the fleet could be determined based on vehicle registration data or estimated based on sales data and vehicle scrappage rates. Using these types of averages or models is one way that could also address consumer privacy concerns associated with EV manufacturers using charging data from individual EVs as the basis for RIN generation.

Like the utility centric structure, the vehicle manufacturer centric structure does not preclude a hybrid option where public or private charging stations could also be RIN generators. In order to avoid the double-counting of RINs, many different approaches could be adopted. A simplistic hybrid approach would be to adopt a market segmentation similar to that employed by California in the LCFS. Under this structure a certain percentage of the market, based on the percentage of EV charging that is expected to take place at public charging stations, is reserved for public charging stations. The number of RINs that vehicle manufacturers would be able to generate would be reduced by a corresponding percentage which could vary depending on the extent to which vehicles produced by a particular manufacturer are designed to use public charging stations. The intent of this reduction would be for vehicle manufacturers to capture only the charging of EVs that happens at the vehicle owner's homes. This approach is coarse in the sense that discounting the total RINs which were measured (or modeled) by the vehicle manufacturers by a percentage and then allowing charging stations to generate RINs based upon their aggregated charging data could result in more or less RINs being awarded than should have been depending upon the actual home to public charging split. However, this approach would simplify implementation and allow a hybrid system to incentivize both EVs and charging infrastructure.

In summary, the vehicle manufacturer centric structure has several potential advantages (potential for simplicity of implementation and providing financial incentives to increase the adoption rate of EVs), as well as some issues which would need to be resolved. Vehicle manufacturers have a privileged

position in terms of access to charging data, and would thereby have the least amount of need to create complex registration requests. Vehicle manufacturers also have an opportunity to resolve potentially complex data ownership issues surrounding EV charging data. There is also flexibility in this program structure for the use of assumptions and models that could serve to reduce administrative and applicant resource expenditure, which could lead to greater program participation. Vehicle manufacturers, however, would have to rely on contractual mechanisms to verify that the electricity used as the basis for RIN generation was generated from qualifying biogas and that the electricity was introduced into a grid servicing their customers. A single vehicle manufacturer would likely need to rely on a sizable number of contracts with IPPs, given the small scale of many IPPs that generate electricity from biogas and the necessity for the IPPs to be able to supply electricity onto the electrical grid from which the manufacturer's EVs draw electricity.

D. Equivalence Value and Other Issues Related to Generating RINs for Renewable Electricity

The EPA has received input from various parties regarding the equivalence value assigned to RINs generated for renewable electricity used as transportation fuel. A number of these parties have voiced concern that the unique nature of electric vehicles warrants an equivalence value calculated using a different set of parameters than those used to calculate the equivalence value of other renewable fuels under the RFS program. The EPA acknowledges that there are undoubtedly differences between vehicles that use internal combustion engines (ICEs) for propulsion and those that utilize electric motors. Whether the equivalence value for RINs generated for renewable electricity should be evaluated differently in light of these differences is a considerably more complex issue, and as such, the EPA would like to open up the issue of the renewable electricity RIN equivalence value for public comment. We are not at this time seeking comment on the how equivalence value is calculated for fuels other than renewable electricity.

The history of how equivalence values were conceived and calculated plays an important role in how the discussion on potentially establishing a unique equivalence value for RINs generated for renewable electricity

should be framed. In the preamble to RFS1 final rule we stated:³⁰⁵

To appropriately account for the different energy contents of different renewable fuels as well as the fact that some renewable fuels actually contain some non-renewable content, we are requiring that Equivalence Values be calculated using both the renewable content of a renewable fuel and its energy content. This section describes the calculation methodology for Equivalence Values. In order to take the energy content of a renewable fuel into account when calculating the Equivalence Values, we must identify an appropriate point of reference. Ethanol is a reasonable point of reference as it is currently the most prominent renewable fuel in the transportation sector, and it is likely that the authors of the Act saw ethanol as the primary means through which the required volumes would be met in at least the first years of the RFS program. By comparing every renewable fuel to ethanol on an equivalent energy content basis, each renewable fuel is assigned an Equivalence Value that precisely accounts for the amount of petroleum in motor vehicle fuel that is reduced or replaced by that renewable fuel in comparison to ethanol. To the degree that corn-based ethanol continues to dominate the pool of renewable fuel, this approach allows actual volumes of renewable fuel to be consistent with the volumes required by the Act.

This language establishes two important precepts: (1) Equivalence values are to be calculated using both the renewable content of the fuel and its energy content; and (2) Corn-based ethanol was selected as the reference fuel. These principles were reaffirmed in the current regulatory structure for the RFS program in 2010 when the EPA decided, through a notice and comment rulemaking, to retain the use of an energy and renewable content-based equivalence value for purposes of calculating the number of RINs generated for any quantity of renewable fuel. Therefore, the EPA has maintained the position that although there are efficiency differences present in the operation of ICEs, including those powered by different fuels, the current equivalence value of 22.6 kWh per gallon of ethanol is appropriate. However, due to concerns raised by various parties that maintaining this position may unduly negatively affect the renewable electricity pathway, we are seeking comment on whether a

³⁰⁵ See 72 FR 23920 (May 1, 2007).

different means of determining the equivalence value for renewable electricity would be appropriate. The following discussion is broken into segments which address the many issues that have been raised concerning renewable electricity RIN generation.

1. Landfill Gas Pathway Effectiveness

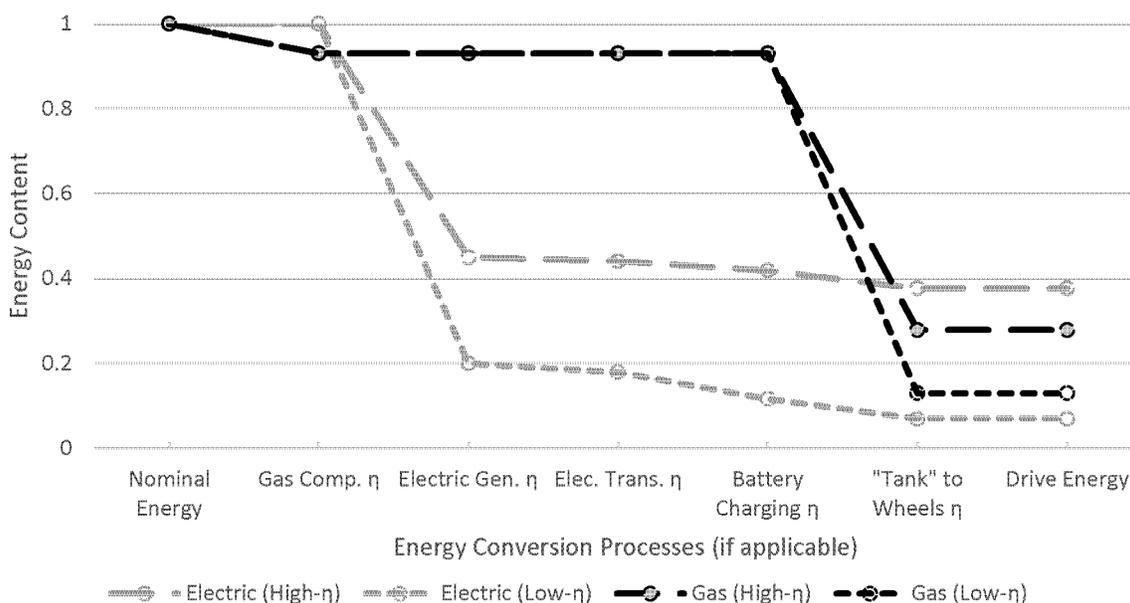
Proponents of revising the equivalence value for renewable electricity have noted that aside from electricity, all of the approved fuels under the RFS are chemical fuels and this difference requires a novel approach. Their supporting reasoning is as follows: Electric motors used to propel a vehicle are not subject to the same fundamental efficiency limitations of ICEs. This makes electricity fundamentally different and unique and means that a “gallon of gasoline equivalent” of electricity in the battery of an EV provides several times more miles of transportation service than a

gasoline vehicle with a gallon of ethanol in the tank. If we constrain the bounds of the analysis to a “tank-to-wheels” efficiency metric as they are suggesting should be done, then it is undeniable that EVs are far more efficient than ICE powered vehicles. A representative value for a tank-to-wheels efficiency for EVs is near 90 percent, whereas a value around 20–30 percent is representative of ICEs. Using this logic, it is understandable that proponents of revising the equivalence value feel that the EPA is not capturing the superiority of EVs consuming renewable electricity compared to ICEs consuming chemical fuels in the current equivalence value. However, it should be noted that the EPA is currently giving credit for electric vehicle efficiency to vehicle manufacturers under the Light Duty Vehicle GHG program.

An alternative interpretation could also be reached if the scope of the analysis is broadened. Using a source of

renewable electricity, landfill gas (LFG), as the starting point of this comparison, there are currently two approved pathways under the RFS program by which LFG can be utilized to generate RINs. One of these is the direct use of the cleaned LFG to generate renewable electricity (referred to as “Electric”), typically in an ICE or a turbine. The other pathway is to upgrade the LFG to high BTU “Renewable Gas” (referred to as “Gas”), which can then be compressed and used in CNG/LNG vehicles as transportation fuel. As shown in Figure VII.D.1–1 below, these two pathways are assessed to determine the quantity of original energy content from the LFG that is ultimately available to provide drive energy to propel a vehicle. Starting with a nominal unit of energy, each conversion process in the value chain for each respective pathway is assessed a high and low efficiency to provide a rough bandwidth for drive energy efficiency.

Figure VII.D.1-1: Landfill Gas Use Scenarios



The specific assumptions for this illustrative comparison for the efficiency of the energy conversion

processes in Figure VII.D.1–1 are presented in Table VII.D.1–1 below.

TABLE VII.D.1–1—LANDFILL GAS USE SCENARIO ASSUMPTIONS

Landfill gas use scenario	Nominal LFG energy	Gas compression η (%)	Electricity compression η (%)	Electricity transmission η (%)	Battery charging η (%)	"Tank" to wheels η (%)	Drive energy available
Electric (High-η)	1	n/a	45	98	95	90	0.38
Electric (Low-η)	1	n/a	20	90	65	60	0.07
Gas (High-η)	1	93	n/a	n/a	n/a	30	0.28
Gas (Low-η)	1	93	n/a	n/a	n/a	14	0.13

The energy required for gas compression for the gas pathway was calculated assuming an isentropic efficiency of 80 percent, a CNG pressure of 3600 psi, and it was assumed that the compressor was consuming electricity generated from LFG at an efficiency of 35 percent. This way of representing the energy penalty of upgrading LFG to CNG may be simplistic, but we believe it provides sufficient accuracy for this relative assessment of the two pathways. The “tank” to wheels efficiency values for ICE engines³⁰⁶ are representative of the upper and lower bounds of expected fuel energy to drive energy conversion. The “tank” (battery) to wheels efficiency upper-bound is representative of reported values by manufacturers and the lower-bound is an assessment based upon reported behavior of EVs in cold weather, but no reliable empirical data was available to substantiate the value used of 60 percent.

The key point illustrated by the Figure VII.D.1–1 is that the Electric pathway is not always superior to the Gas pathway on a drive energy provided

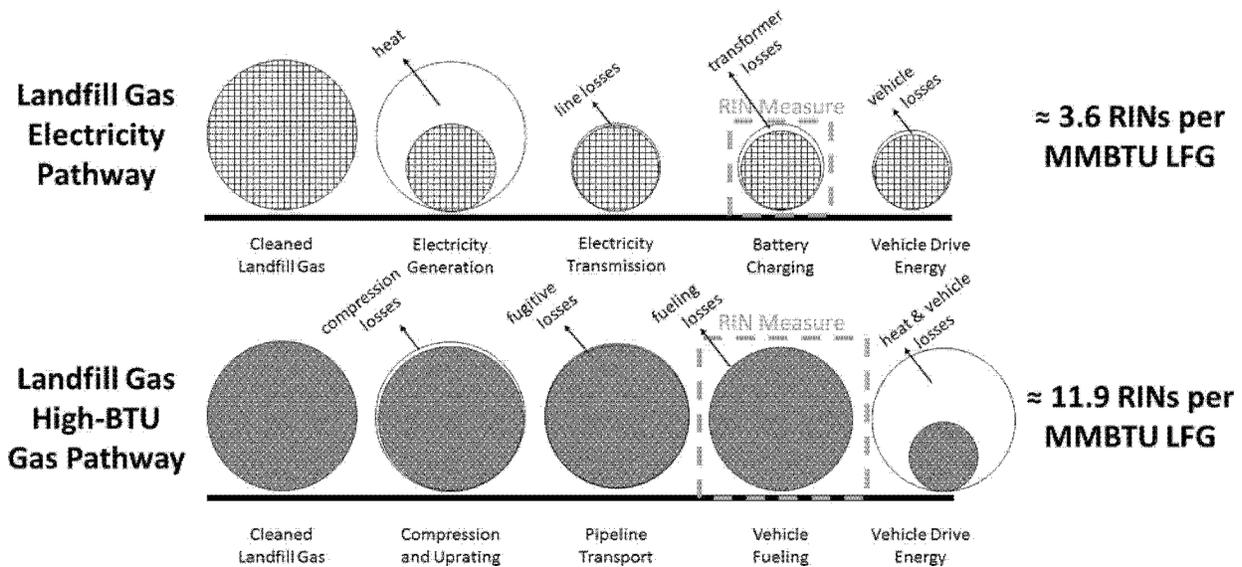
basis when starting with the same quantity of landfill gas. Depending on the efficiencies for key energy conversion processes, either of the pathways can appear superior to the other. By contrast, an analysis using median efficiency values for all the energy conversion processes highlighted, would find that the overall efficiency of converting LFG to drive energy in a vehicle is roughly equivalent regardless of the pathway chosen. If both pathways generated RINs based upon the quantity of LFG used, the resulting interpretation of delivered drive energy parity between the pathways for establishing a novel equivalence value for the electricity pathway would likely be that no change to the EPA’s current energy content methodology would be warranted. However, neither pathway is currently evaluated based upon the quantity of LFG used to deliver drive energy.

2. RIN Generation and Measurement Location

Another important, and tightly coupled aspect, of the equivalence value

issue is where the RINs are generated along the value chain. Whether bulk gas from the LFG producer, electricity generator LFG consumption or electricity production, electrical feed to the battery charging device, or onboard vehicle state of charge is designated as the point of RIN generation can have a significant effect on the quantity of RINs generated. The determination of an appropriate point in the value chain for RIN generation is a major factor highlighted by parties suggesting an undervaluation of RINs generated from electricity. Those stakeholders have asserted that there is inequity created by allowing the Gas pathway for LFG to be measured on the upstream side of the ICE (the vehicle’s ICE) while the Electric pathway is required to be measured on the downstream side of the ICE (the electrical generation equipment). This idea is illustrated in Figure VII.D.2–1 below, where each LFG pathway starts with 1 MMBTU of cleaned LFG on the left and the required conversion processes for each pathway are applied cumulatively moving to the right.

Figure VII.D.2-1. Hypothetical RIN Generation for Electric and Gas Pathways



The quantity of energy from the nominal cleaned LFG that remains for Vehicle Drive Energy is very similar for each pathway. However, due to the point in the process at which energy is measured for RIN generation in the two pathways currently, the Gas pathway produces roughly 3.5 times the RINs for an equivalent quantity of cleaned LFG.

The EPA seeks comment on whether the parity that is observed in the delivered vehicle drive energy between the two pathways should be reflected by the quantity of RINs generated by the two pathways and requests comment on the appropriate means of doing so.

One means of ensuring that the Gas and Electric pathways for LFG would

generate commensurate quantities of RINs would be to have RIN generation be tied to the quantity of LFG consumed. However, the EPA has concerns regarding the potential generation of RINs from LFG prior to the generation of electricity as this may create a perverse incentive for generators to operate inefficiently. Put

³⁰⁶ See <https://www.fueleconomy.gov/feg/atv.shtml>.

another way, if credits are given based upon the amount of LFG that gets converted to electricity rather than on the amount of electricity generated, operators may be incentivized to consume more LFG to meet demand. This concern is more plausible given the current oversupply of electricity generated from LFG relative to the quantity of electricity consumed by EV charging (and eligible for RINs). Consequently, it may be more appropriate to maintain RIN generation for renewable electricity after generation of the electricity.

3. Additional Challenges Unique to Electricity

Unlike the chemical fuels typically used to generate RINs under the RFS program, which incur very minimal losses from the time they are produced until they are consumed in the vehicle, renewable electricity used as a transportation fuel presents some unique challenges. As a result, one of the requirements being considered for parties interested in generating RINs for renewable electricity is for the parties to ensure that a corresponding quantity of biogas-generated electricity is produced to provide the ultimate kWh converted to transportation fuel. One interpretation of this provision is that RINs would be awarded exclusively based on the quantity of kWh increased in the battery of the EV being fueled, and should therefore account for the efficiency of the charging system used. The degree to which this value varies from the quantity of kWh used to charge the vehicle's battery is a function of the efficiency of the charging system used to alter the battery's state of charge. Depending on whether a system is inductive or conductive, level I, II, fast charging, or something yet to be developed, there will be associated charging losses. Additionally, the electricity must be generated at facilities that vary in the efficiency by which they convert landfill gas to renewable electricity. There is potential for variation in every energy conversion or transfer process associated with the electricity RIN generation pathway. Furthermore, the transmission of electricity across the country incurs resistive losses, which result in approximately 6 percent of the originally generated kWh being lost before it can even begin the process of being converted to transportation fuel. We request comment on the degree to which parties interested in generating RINs for renewable electricity should be responsible for accounting for electricity generation efficiency and the losses

associated with EV charging efficiency and the transmission of electricity.

A related complexity for properly determining the amount of RINs to be awarded for a charging event is parasitic and vampire losses. Unlike their ICE counterparts, EVs cannot utilize waste engine heat for passenger compartment heating and must use electricity, which would otherwise be used to propel the vehicle, to warm the passenger compartment. Additionally, parasitic losses associated with maintaining battery pack temperature, providing passenger compartment air conditioning, etc., can amount to a non-trivial quantity of electricity not being used to propel the vehicle. The combined effect of these system losses will inevitably result in less vehicle miles being driven on a given charge than would otherwise be anticipated under more mild conditions. We request comment on whether or not parasitic and vampire losses should be accounted for in determining the number or RINs that should be generated for renewable electricity, as well as options for accounting for these losses.

Finally, the environmental attributes associated with a unit of generated electricity have value above and beyond wholesale electricity depending upon generation source and local environmental compliance market conditions. Several states and regions currently have programs that require electric utility companies to produce or procure an allotment of renewable energy credits (RECs) to be retired annually in order to promote the buildup of renewable electricity. There are also FTC regulations that ensure consumers who purchase products based on advertised reduced environmental impact that these claims are substantiated. Although RIN generation under the RFS program is not constrained by state laws, it is the responsibility of the regulated community to ascertain the extent to which RIN generation under the RFS program has implications for their actions and obligations under state programs and laws administered by other federal agencies.

4. RFS Complications and Ancillary Issues

Several parties have suggested that the equivalence value for renewable electricity should reflect the higher efficiency of electric vehicles. Deviating from the current system for determining the equivalence value, where the number of RINs generated is calculated strictly on the energy content of the fuel entering the vehicle, to a system that also considered the engine and vehicle

efficiency would introduce significant complexity to the RFS program. Engine efficiencies vary not only according to fuel type (e.g., gasoline, diesel, natural gas, electricity), but also according to a number of other factors, such as the compression ratio of the engine and final drive ratio. Further, a number of factors specific to each individual driver, such as the type of driving (primarily city vs. highway), environmental conditions (e.g., temperature, elevation change, etc.), and driver behavior, can impact vehicle efficiency. Perhaps more importantly, none of these factors remain constant, as vehicle efficiencies are continuously changing over time. Therefore, it could introduce considerable complexity to consider engine efficiency when calculating the number of RINs that can be generated for any given quantity of fuel under the RFS program. For this reason, at this time we are only seeking comment on a unique methodology for the determination of RINs from renewable electricity and not other biofuels.

Another issue for consideration is that the EPA currently administers programs beyond the scope of the RFS (such as the Light Duty Vehicle and Heavy Duty Vehicle GHG Standards) that already take into consideration and provide credit for engine and vehicle efficiency. Including vehicle efficiency in RIN determination would result in counting the same benefit under multiple programs. For example, if the vehicle manufacturer approach were ultimately selected as the RIN generation structure and an equivalence value that preferentially rewarded the electricity pathway for LFG adopted, vehicle manufacturers would essentially be receiving large quantities of credits for producing EVs under both the RFS program and the Light Duty Vehicle GHG Standard. Such "double dipping" may be perceived as unwarranted and inequitable by the taxpayers supporting those programs and the consumers purchasing those vehicles. Similar examples of "double dipping" could be postulated for other RIN generation structures. For example, the utility structure where electricity produced from LFG is already accruing a production tax credit of \$11/MWh for the plant operator. Providing an additional incentive through the value of the RIN in the RFS program would therefore be providing two incentives for the same engine efficiency benefit. We seek comment on the appropriateness of doing so and introducing vehicle/engine efficiency into the RIN value for RINs generated

for renewable electricity and the appropriate means of doing so.

The EPA believes that the best-case scenario would be the adoption of a structure for generating RINs for renewable electricity that would simultaneously provide greater incentive for EV use and ownership, increase the amount of renewable electricity produced, and minimize challenges related to program oversight. The discussion of potential program structures is meant to elicit comment on the mechanics of the program, what is most likely to be directly incentivized by each, and which entities should ultimately be able to generate RINs in a manner that will minimize the administrative burden of participation for both the RIN-generating entities and the EPA. By opening up for comment the subject of the equivalence value for RINs generated for renewable electricity, the EPA hopes to receive public comment from all stakeholders to better inform any changes to the RIN values in the future. This program represents an opportunity to incentivize more widespread adoption of EVs, but decisions regarding which structure(s) should be adopted, how and at what point RINs should be generated, and what types of data and oversight should be required will ultimately determine the successfulness of any future program. While we are not proposing a particular structure at this point in time, we do recognize the importance of resolving this issue as quickly as possible to support the growth of renewable electricity and electric vehicles. As such, we request not only comments that comprehensively address the range of issues raised in this discussion, but also supporting data that might allow us to move quickly to a proposal.

VIII. Other Revisions to the RFS Program

A. RVO Reporting

Currently, obligated parties report the total volume of gasoline and diesel fuel that they produce or import. This volume is used to calculate their RVOs. In order to more effectively ensure compliance, we are proposing to revise the RVO reporting requirements for obligated parties as described in 40 CFR 80.1451(a) in two ways. First, we are proposing that obligated parties would now report the constituent products described in 40 CFR 80.1407(c) and (e) separately, instead of in total beginning with the 2017 compliance year. This would enable the EPA to more easily track the production of gasoline and

diesel by obligated parties and verify that the reported volumes are accurate.

Second, beginning with the 2017 compliance year, we are also proposing to require that obligated parties report heating oil production volumes as part of their annual compliance reports to help ensure that RVOs are appropriately calculated. While heating oil production is not counted towards an obligated party's RVO, it is often chemically identical to diesel fuel. Numerous states and cities in the Northeast and Mid-Atlantic³⁰⁷ have recently revised their standards for heating oil such that heating oil sold in those states and cities is (or soon will be) subject to the same 15 ppm ultra-low sulfur standard that the EPA established for ultra-low sulfur diesel in 40 CFR part 80, subpart I.³⁰⁸ As such, refineries are now shipping their heating oil to the Northeast in the same pipelines and in the same batches as diesel fuel. By aligning the production breakdown by category more closely with other fuels programs and collecting heating oil production information, the EPA would be able to help ensure that heating oil and diesel fuel are appropriately accounted for in obligated parties' RVOs.

B. Oil From Corn Oil Extraction

In the RFS2 final rule,³⁰⁹ the EPA established two pathways (pathways F and H in Table 1 to 40 CFR 80.1426) for biomass-based diesel (D-code 4) or advanced biofuel (D-code 5) made from "non-food grade corn oil." The lifecycle GHG analyses for these pathways were based on the EPA's modeling of corn oil recovered from distillers grains with solubles (DGS) produced by a dry-mill corn ethanol plant through corn oil extraction. The EPA is proposing to revise pathways F and H in Table 1 to 40 CFR 80.1426 to specify that the feedstock is "oil from corn oil extraction," and to include a revised and somewhat broadened definition of "corn oil extraction."

The RFS regulations currently define "corn oil extraction" as "the recovery of corn oil from the thin stillage and/or the distillers grains and solubles produced by a dry mill corn ethanol plant, most often by mechanical separation."³¹⁰ As the industry has evolved and matured, new approaches are being used to

extract corn oil, and at different locations in the ethanol production process. Despite the current regulatory language, we believe that the precise timing and method of corn oil extraction is not relevant for GHG reductions to be accomplished pursuant to pathways F and H, provided that: (1) The corn is converted to ethanol; (2) The corn oil is extracted at a point in the dry mill ethanol production process that renders it unfit for food uses without further refining; and (3) The resulting DGS from the dry mill operation is marketable as animal feed. Therefore, we are proposing a revised definition of "corn oil extraction" to include these points. The revised definition would include corn oil recovered at any point downstream of when a dry mill corn ethanol plant grinds the corn (provided that the three conditions listed above are satisfied), as corn ground at a dry mill ethanol plant is typically rendered unsuitable for food uses. For example, this would include recovery of corn oil before fermentation from the slurry or liquefaction tanks. It would also include recovery of corn oil after fermentation from the thin stillage and/or DGS. Further, it would also include recovery of corn oil by a third-party from DGS produced by a dry mill corn ethanol plant.³¹¹ Given that the EPA's modeling of corn oil from corn oil extraction for approved pathways F and H considered the impacts of using the DGS co-product as animal feed, the proposed revision also specifies that the oil extraction results in DGS that is marketable as animal feed.

Based on currently available information, the indirect GHG impacts of using corn oil recovered through means other than corn oil extraction as a biofuel feedstock are likely to be different than the GHG impacts for corn oil extraction that the EPA modeled for the RFS2 final rule. The corn fractionation and wet milling processes to recover corn oil are not covered either by the existing definition or the proposed definition of "corn oil extraction."³¹² Given the other potential market impacts of using corn oil recovered by corn fractionation or wet milling as a biofuel feedstock, the EPA is not in a position to determine whether corn oil from those sources meets the GHG reduction thresholds for

³⁰⁷ Connecticut, Delaware, Maine, Massachusetts, New Jersey, New York, Rhode Island, Vermont, and the city of Philadelphia, along with a proposal for the District of Columbia.

³⁰⁸ See the New England Fuel Institute's (NEFI) "State Sulfur & Bioheat Requirements for No. 2 Heating Oil in the Northeast & Mid-Atlantic States," available in the docket for this action.

³⁰⁹ See 75 FR 14670 (March 26, 2010).

³¹⁰ See 40 CFR 80.1401.

³¹¹ Like any other renewable fuel producer, such a third-party would be required to satisfy requirements designed to ensure that their biofuel product is derived from renewable biomass.

³¹² The RFS regulations at 40 CFR 80.1401 define corn oil fractionation as "a process whereby seeds are divided in various components and oils are removed prior to fermentation for the production of ethanol."

non-grandfathered fuel that is required by the CAA. Companies wishing to produce non-grandfathered biofuels from corn oil that is not recovered by corn oil extraction may petition the EPA for approval of their proposed pathway pursuant to 40 CFR 80.1416.

C. Allowing Production of Biomass-Based Diesel From Separated Food Waste

In the RFS2 final rule, we determined that waste grease biodiesel achieved an 86 percent reduction in lifecycle GHG emissions compared to the baseline diesel fuel. This analysis formed the basis for our determination that the biodiesel from biogenic waste oils/fats/greases would qualify for generation of biomass-based diesel (D-code 4) and advanced biofuel (D-code 5) RINs. These pathways are specified in Rows F and H of Table 1 to 80.1426.

We have received a request to approve a pathway for the use of non-cellulosic portions of separated food waste to produce biodiesel. The process by which the food waste would be converted to biodiesel is similar to the process we modeled in the RFS2 final rule for waste oils/fats/greases biodiesel. In addition, as a waste product, separated food waste would have negligible GHG emissions associated with its production, as is the case for waste oils/fats/greases. Therefore, we believe that utilizing separated food waste to produce biodiesel would have a similar lifecycle emissions profile as using biogenic waste oils/fats/greases to produce biodiesel. As a result, we are proposing to amend the pathways specified in Rows F and H of Table 1 to 80.1426 to allow for the generation of D-code 4 and D-code 5 RINs for the production of biodiesel and advanced biofuel, respectively, from the non-cellulosic portions of separated food waste. This amendment is consistent with the CAA, which defines both biomass-based diesel and advanced biofuels as fuels that result in at least 50 percent less GHG emissions than the petroleum fuels they replace.

For the same reasons, and to provide more flexibility to renewable fuel providers, we are also proposing that renewable diesel made from the non-cellulosic portions of separated food waste would qualify for the generation of D-code 4 and D-code 5 RINs. This additional flexibility is also reflected in proposed amendments to Rows F and H of Table 1 to 80.1426.

D. Registration of New and Expanded Grandfathered Volumes

The CAA and the EPA's implementing regulations provide for

two exemptions to the otherwise generally applicable requirement that all qualifying renewable fuel attain at least a 20 percent lifecycle GHG reduction as compared to baseline petroleum fuel. The first exemption is for a baseline volume of fuel from facilities that commenced construction prior to December 19, 2007, and completed construction by December 19, 2010, without an 18 month hiatus in construction.³¹³ The second exemption is for a baseline volume of ethanol from facilities fired by natural gas or biomass that commenced construction after December 19, 2007, but prior to December 31, 2009, and completed construction within 36 months without an 18 months hiatus in construction.³¹⁴ In both cases the baseline volume of exempt fuel for qualifying facilities is determined by reference to the most restrictive of all applicable preconstruction, construction, and operating permits issued prior to December 19, 2007, or December 31, 2009, depending on which exemption is applicable. If permitted capacity cannot be determined, the baseline volume is calculated by reference to actual production volumes in a specified historic time period. In the RFS2 final rule, the EPA noted that verifying the facts underlying claims related to exempt baseline volumes was likely to become increasingly difficult over time, and therefore included a requirement that applications for registration of facilities claiming an exemption from the 20 percent GHG reduction requirement be submitted to the EPA by May 1, 2013.³¹⁵ In a later action, the EPA extended this deadline to July 1, 2013.³¹⁶ The regulation also provided, however, that the EPA could continue to process registration applications for facilities seeking an exemption from the 20 percent GHG reduction requirement after July 1, 2013, if the EPA, in its sole discretion, determined that it could adequately verify the factual basis for a producer's claims.

Although the EPA envisioned that it would stop processing registration requests for facilities claiming an exemption from the 20 percent GHG reduction requirement after the regulatory July 1, 2013, deadline, we have exercised our discretion to review a number of additional requests on a case-by-case basis. Since the July 1, 2013, deadline, we have accepted approximately 12 requests for either

new registrations or for amendments to the registered baseline volume of exempt fuel at a facility. We are aware of approximately 13 additional requests of this nature pending with the EPA, but expect that there may be additional applications undergoing initial processing by EPA contractors.

The EPA is proposing November 16, 2016, as a firm cut-off date for the receipt by the EPA of registration materials related to facilities not previously registered with the EPA that seek to produce renewable fuel exempt from the 20 percent GHG reduction requirement, and for currently-registered facilities that seek to amend their registrations to increase the registered baseline volume of renewable fuel exempt from the 20 percent requirement. The primary reason for this proposed change is that it has become increasingly difficult for EPA staff to independently verify the authenticity of the air permits, construction permits, or similar documents that are in some cases over 10 years old, to determine whether a complete set of such permits has been provided by the would-be registrant, or, in the alternative where permitted capacity cannot be determined, to verify the actual production volumes from facilities during historic time periods. Thus, we believe this proposal is justified for the reason expressed in the current regulation—that registration applications, cannot be verified by the EPA in the same manner as would have been possible with a timely submission. While this may also be the case for submissions received prior to November 16, 2016, we are proposing to review those submissions on a case-by-case basis. A secondary basis for our proposal is related to the first. The later the date of registration submissions that are based on data pre-dating 2007 or 2009, the greater the burden on EPA staff to attempt to verify the claims. This additional burden prevents or limits EPA staff from timely attending to other critical implementation and enforcement matters.

Although there is scant legislative history for EISA to shed light on the purposes of the statutory exemptions from the 20 percent GHG reduction requirement, we believe it is likely that the primary purpose of the exemptions was to protect facilities that had made substantial investments to supply biofuels to the U.S. market in response to the incentives provided by Energy Policy Act of 2005, and that might be financially unable to upgrade their facilities to meet the new 20 percent GHG reduction requirement imposed by EISA. We believe that all such facilities

³¹³ See 40 CFR 80.1403(c).

³¹⁴ See 40 CFR 80.1403(d).

³¹⁵ See 75 FR 14690 (March 26, 2010) and 40 CFR 80.1450(f).

³¹⁶ See 75 FR 26030 (May 10, 2010).

would have submitted registration materials with the EPA prior to November 16, 2016, and at this point in time allowing continued registration of facilities claiming an exemption is not warranted given the difficulty in establishing facts and verifying documents going back a decade and the considerable administrative burden to the EPA in attempting to do so.

It should be noted that this proposed change would not affect facilities that have already registered with the EPA and are producing renewable fuel pursuant to an exemption from the GHG reduction requirements under the provisions of 40 CFR 80.1403. Those companies would continue to be able to produce renewable fuels that are exempt from the 20 percent GHG reduction requirement, up to their individual baseline volumes. In addition, facilities can register with the EPA at any time for the production of fuels meeting the 20 percent (or greater) lifecycle GHG emissions reduction thresholds applicable to non-exempt renewable fuel.

Given the dynamic nature of the renewable fuels marketplace, facilities are frequently bought and sold, and this proposal is not intended to change the existing practice allowing facilities that change ownership to retain the exemptions available in 40 CFR 80.1403. We are proposing to add language to the regulations to make clear that when a facility is transferred, the new owners are able to register to produce renewable fuel subject to an exemption in 40 CFR 80.1403 to the extent the prior owner's registration reflects eligibility for such an exemption, provided of course that other regulatory requirements are satisfied.

Taken together, these proposed changes would not allow registration of facilities claiming new or expanded exempt baseline volumes if their requests were received by the EPA after November 16, 2016, but would not impact the operations or eligibility for producing fuel pursuant to the exemptions in 40 CFR 80.1403 for facilities that are already registered. If finalized, the EPA would undertake a case-by-case review of all registration applications received prior to November 16, 2016, to ascertain if the claims for eligibility to produce biofuel exempt from the 20 percent GHG reduction requirement are accurate and verifiable, and requests received after that date would be denied for the reasons stated above.

E. Flexibilities for Renewable Fuel Blending for Military Use

The EPA proposes to amend 40 CFR 80.1440 to allow parties that blend renewable fuel to produce fuels for use as transportation fuel, heating oil, or jet fuel under a national security exemption or that sell neat renewable fuel for use in vehicles, engines, and equipment that have a national security exemption for emissions certification to delegate to an upstream party the RIN-related responsibilities (*i.e.*, RIN separation, reporting, recordkeeping, and attest engagement requirements). These parties could include the U.S. Military itself, or contractors working for the U.S. Military. The EPA currently has a provision that allows blenders who handle and blend small volumes of renewable fuel per year (less than 250,000 gallons per year) to delegate RIN-related responsibilities to an upstream party. The EPA has received a number of inquiries from parties that have wished to provide renewable fuel, either neat or blended into transportation fuel, for use by the U.S. Military as part of Department of Defense (DOD) renewable military initiatives. One obstacle to this use of renewable fuel by the DOD is that, unlike other EPA fuels programs, there are no exemptions related to national security uses in the RFS regulatory program.

The EPA believes that it would be appropriate to allow DOD or its contractors to delegate RFS RIN responsibilities to upstream parties; doing so would remove a potential obstacle to the use of renewable fuels by DOD and would promote use of renewable fuel by the military. Therefore, we are proposing similar upstream delegation provisions for neat and blended renewable fuels supplied to DOD under a NSE as those already in place for small renewable fuel blenders. The EPA seeks comment on whether this is appropriate.

F. Heating Oil Used for Cooling

We are proposing to amend the definition of heating oil in 40 CFR 80.1401. This amendment would expand the current definition of heating oil to include fuels that differ from those meeting the current definition only because they are used to cool, rather than heat, interior spaces of homes or buildings to control ambient climate for human comfort. We are also proposing to make minor modifications to the registration, reporting, PTD, and recordkeeping requirements for renewable heating oil to correspond with this change. We have received

questions related to the use of renewable heating oil in equipment that cools interior spaces. We believe that displacing the use of petroleum based fuel oil with renewable heating oil for cooling is consistent with the CAA section 211(o) requirements and should be allowed. We seek comment on whether this approach is appropriate.

G. Separated Food Waste Plans

We are proposing to amend the RFS registration procedures for separated food waste plans. The current regulations require that plans include: “(1) The location of any municipal waste facility or other facility from which the waste stream consisting solely of separated food waste is collected; and (2) A plan documenting how the waste will be collected, how the cellulosic and non-cellulosic portions of the waste will be quantified, and for ongoing verification that such waste consists only of food waste (and incidental other components such as paper and plastics) that is kept separate since generation from other waste materials.”³¹⁷ In addition to submission of separated food waste plans during RFS registration, the EPA also requires that renewable fuel producers using separated food waste feedstock update the registration information whenever there is a change to the plan, and in some cases, the newly updated plan must be reviewed by a third-party engineer in accordance with EPA registration procedures. The EPA has received numerous company updates for production facilities with separated food waste plans, and some parties have noted that the requirement to identify and update suppliers of feedstocks through a plan is overly burdensome.

Recognizing that business relationships for recovery of food wastes evolve and that a renewable fuel producer may elect over time to purchase feedstocks from different or multiple parties, the EPA proposes to remove the requirement to provide the location of every facility from which separated food waste feedstock is collected. It should also be noted that renewable fuel producers are required to retain records that contain this information under the recordkeeping requirements under 40 CFR 80.1454. The RFS regulations only allow renewable fuel producers to generate RINs for fuel if they can demonstrate, pursuant to the recordkeeping requirements, that the fuel was produced from renewable biomass. The recordkeeping section of the regulations requires renewable fuel producers to

³¹⁷ See 40 CFR 80.1450(b)(1)(vii)(B).

keep documents associated with feedstock purchases and transfers that identify where the feedstocks were produced and are sufficient to verify that the feedstocks meet the definition of renewable biomass.³¹⁸ Removing this registration requirement would alleviate numerous company registration updates as a facility's feedstock supplier list evolves, as well as make it easier for renewable fuel producers to have their separated food waste plans reviewed in a timelier manner. However, renewable fuel producers would still be required to establish that they used a qualifying feedstock to generate RINs.

We are also proposing to modify the regulations to specify that separated food waste plans identify the type(s) of separated food waste to be used and the type(s) of establishment the waste will be collected from. For instance, CAA section 211(o) identifies "recycled cooking and trap grease" as an example of a type of separated food waste. Examples of types of establishments could be restaurants, slaughterhouses, or specific food production plants (the kind of food production should be provided). We believe this information is necessary for the EPA to determine whether a renewable fuel producer can make fuel from its proposed feedstock under currently approved separated food waste pathways. Without this information, we would not know what the specific feedstock is (e.g., tallow, yellow grease, etc.) or whether it would qualify as a separated food waste.

We are also proposing to require that producers of renewable fuels made from biogenic waste oils/fats/greases that are not separated food waste to submit a plan at registration with many of the same requirements as the plan for producers of renewable fuels made from separated food waste. We would henceforth refer to such plans as "waste oils/fats/greases feedstock plans." There is significant overlap between the two categories of feedstock, with a considerable quantity of biogenic waste oils/fats/greases qualifying as renewable biomass as a result of its additional qualification as separated food waste. For these reasons, the EPA has required parties intending to use biogenic waste oils/fats/greases as a renewable fuel feedstock to submit separated food waste plans at registration. In addition to helping the EPA determine if the feedstock in question meets renewable biomass requirements, the EPA has found that the plans help the EPA assess whether the feedstocks specified by a prospective producer qualify as biogenic waste oils/fats/greases. This assessment

is made on a case-by-case basis. This proposed amendment will conform the regulations to the EPA's current practice. A party fully describing their feedstock in a separated food waste plan would not be required to submit an additional waste oils/fats/greases plan. Since most, if not all, producers of renewable fuel from biogenic waste oils/fats/greases have submitted a separated food waste plan at registration, we do not believe that this revision would add much, if any, burden to existing registered facilities. We propose that those few registered producers using biogenic waste oils/fats/greases who have not previously submitted a separated food waste plan at registration or in a subsequent registration update would be required to do so as part of their next periodic registration update. We seek comment on whether requiring waste oils/fats/greases feedstock plans for producers of renewable fuels from biogenic waste oils/fats/greases is appropriate and whether we should require any additional information.

H. RFS Facility Ownership Changes

We are proposing to amend the RFS registration, EMTS reporting, and RIN generation requirements to more explicitly outline requirements for renewable fuel producers that transfer the ownership of a facility that was registered immediately preceding the sale. Throughout the implementation of 40 CFR part 80 fuels programs (e.g., RFG, Anti-dumping, Gasoline Sulfur, RFS, etc.), the EPA has treated the transfer of ownership of a facility as requiring a new registration. However, the EPA has recognized that many elements of the registration for the facility previously registered to another renewable fuel producer remain the same upon change of ownership and has, in some cases, allowed parties to rely upon previously submitted registration materials. The EPA has tried to work with companies to minimize disruption of continued operation of the facility. However, some new owners have expressed confusion over what the appropriate registration procedures are incident to the transfer of ownership of a previously registered facility. To help ameliorate this potential confusion, we are proposing to amend the RFS registration, EMTS reporting, and RIN generation requirements in three ways.

First, we are proposing that the regulations explicitly note that RINs cannot be generated nor assigned to any batches of renewable fuels in EMTS until a renewable fuel producer has completed all applicable registration requirements and the EPA has accepted that renewable fuel producer's

registration. Although this requirement is apparent under the current regulations, since the requirements for RIN generation at 40 CFR 80.1426 only allow for the generation of RINs if all registration requirements under 40 CFR 80.1450 are satisfied, we believe that the requirement can be re-iterated for additional clarity.

Second, we are proposing specific requirements for parties that are assuming ownership of a facility that was already registered by another renewable fuel producer. The renewable fuel producer that would newly acquire the previously registered facility would have to submit all applicable registration information required for the registration of a new renewable fuel producer, an appropriately conducted engineering review, and a letter from the responsible corporate officers (RCOs) of both companies notifying the EPA of the date the transfer of ownership is expected to take place. In addition, proof of sale would need to be submitted after the transfer of ownership is completed. Consistent with the requirements of the registration of a new renewable fuel producer, the new renewable fuel producer would need to supply all information to the EPA (with one exception noted below) 60 days prior to the generation of RINs.³¹⁹

The only exception to the 60-day requirement would be that the new renewable fuel producer may supply the proof of sale or ownership within three business days of the effective date of the transfer of ownership. We recognize that it will likely be impractical for parties to provide appropriate proof of sale or ownership until on or after the actual effective date of the transfer of ownership. Therefore, we are proposing to allow some flexibility on when renewable fuel producers may submit the proof of sale or ownership. The EPA would be able to review all other registration materials well in advance of the effective date of the transfer of ownership and be in a position to approve the new renewable fuel producer's registration shortly after receiving the proof of sale or ownership.

Third, we are proposing that the regulations state that the EPA has the sole discretion to allow the new renewable fuel producer to retroactively generate RINs for renewable fuel produced and sold in the interim between the effective date of transfer of ownership of the facility and EPA acceptance of new registration materials. With EPA approval, the RINs could be assigned in EMTS and back-

³¹⁸ See 40 CFR 80.1426(a) and 80.1454(c) and (d).

³¹⁹ See 40 CFR 80.1450(b).

dated to the time of renewable fuel sale. In most cases, the EPA should be able to accommodate renewable fuel producers that submit registration materials in accordance with the proposed deadlines for facility ownership changes (*i.e.*, the EPA would be able to accept the registration submission and administratively activate the company in CDX and EMTS with sufficient time for the company to generate RINs within the five business day limitation for such transactions in EMTS). However, instances may arise where the EPA cannot administratively act even when a company has satisfied all the proposed regulatory requirements (*e.g.*, an upgrade to EMTS or government closure). In such cases, the EPA would need to allow the company to bypass certain administrative business rules in CDX and EMTS to generate RINs. This discretion should allow the EPA an adequate amount of time to thoroughly review the submitted registration materials while not risking the continued operation or profitability of facilities that were previously registered. The EPA would not, however, use this discretion to allow the retroactive generation of RINs at a facility for which the new owner did not satisfy all RFS registration requirements.

Taken together, we believe these changes outline what requirements parties are required to meet to register a facility that is changing ownership. We also believe that the proposed changes would allow the EPA the flexibility to work with parties to ensure that companies can continue operation of the facility and generate RINs, when appropriate. We seek comment on whether there are any additional requirements we should specify for parties that are assuming the ownership of a facility, and whether our proposed approach is appropriate.

I. Changes to the Requirements for Independent Third-Party Professional Engineers and Electronic Submission of Engineering Reviews

Independent third-party auditors and professional engineers play critical roles in ensuring the integrity of the RFS program and if renewable fuel is allowed to be produced through the use of biointermediates as we are proposing, there will be a significant expansion in the scope and number of regulated entities under the RFS program, making third-party verifications even more critical. However, in recent years the EPA has taken a number of enforcement actions against renewable fuel producers that generated invalid

RINs,³²⁰ and the extent of unlawful and fraudulent activities associated with the RFS program, as demonstrated by these cases, is troubling given the roles that independent third-parties play in the RFS program. The independent third-party professional engineer ensures that a renewable fuel producer can actually produce renewable fuel in accordance with the RFS regulations and thus generate valid RINs, and the independent third-party auditor (when hired by a renewable fuel producer) verifies that the renewable fuel produced adheres to its registered and approved feedstocks and processes, and therefore qualifies for RIN generation under the QAP program. Because we are concerned that independent third-party auditors and professional engineers may not be mitigating unlawful and fraudulent activities in the RFS program to the extent needed for a successful program, we are proposing to strengthen the requirements that apply to these entities. Specifically, we are proposing to modify the requirements for the independent third-party auditors that use approved QAPs to audit renewable fuel production to verify that RINs were validly generated by the producer. The purpose of these modifications is to strengthen the independence requirements that protect against conflicts of interest.

We are also proposing several changes to the requirements for the professional engineer serving as an independent third-party conducting an engineering review for a renewable fuel producer as part of the RFS registration requirements and/or conducting other duties in connection with a renewable fuel producer's registration updates. First, we are proposing to strengthen the independence requirements for third-party professional engineers by requiring those engineers to comply with similar requirements (including the additional requirements we are proposing) to those that currently apply to independent third-party auditors. Second, we are proposing that the third-party professional engineer would be required to register directly with the EPA (as is currently required for third-party auditors). This includes submission of documentation that the third-party engineer meets minimum qualifications (*e.g.*, independence and professional competency requirements) and maintains professional liability insurance. Third, as part of any engineering review, the third-party engineer would be required to submit electronic engineering reports directly

to the EPA. This would be a change from current provisions, which require that the renewable fuel producer submits the engineering review report and allows the option for submission of hardcopy engineering review reports via the mail. Fourth, we are proposing that third-party professional engineers provide documents and more detailed engineering review write-ups that demonstrate the professional engineer performed the required site visit and independently verified the information through the site visit and independent calculations. Fifth, we are proposing new prohibited acts applicable to third-party professional engineers to reduce the potential of a conflict of interest with the renewable fuel producer. The purpose of these requirements is to help the EPA and obligated parties better ensure that third-party audits and engineering reviews are being correctly conducted, provide greater accountability, and ensure that third-party auditors and professional engineers maintain a proper level of independence from the renewable fuel producer. Taken together, we believe these proposed requirements would help avoid RIN fraud by strengthening third-party verification of renewable fuel producers' registration information.

1. Third-Party Auditors

As discussed extensively in the EPA's Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act proposed rule,³²¹ third-party independence is critical to the success of any third-party compliance program. Based on the research discussed in that proposal, we believe that the independence requirements applicable to third-party auditors in the RFS program should be clarified and strengthened to further minimize (and hopefully eliminate) any conflicts of interest between auditors and renewable fuel producers that might facilitate improper RIN validation. Currently, the RFS regulations require the auditor to be free from any interest, or the appearance of any interest, in the renewable fuel producer's business.³²² We believe that an appearance of a conflict of interest exists in situations where auditors may have incentives to ensure that their customers continue to produce RINs by not reporting potential issues arising from audits. We are proposing language that clarifies the current prohibition against an appearance of a conflict of interest to include:

³²⁰ See <https://www.epa.gov/enforcement/civil-enforcement-renewable-fuel-standard-program>.

³²¹ See 81 FR 13638, 13654–62 (March 14, 2016).

³²² See 40 CFR 80.1471(b)(4) and (5).

- Acting impartially when performing all auditing activities.

- Not having conducted research, development, design, construction, or consulting services for the producer within the last three years.³²³

- Not providing business or consulting services for the producer for a period of at least three years following submission of the final QAP audit for the producer.

- Ensuring that all personnel involved in audit activities for a specific producer do not accept future employment with that producer for a period of at least three years following submission of the final QAP audit for the producer.

These provisions are intended to prevent third-party auditors from expecting, anticipating, or conducting prospective “cross-selling” of other services unrelated to the QAP verification. They are also intended to prevent third-party auditors from seeking or obtaining employment from producers for which the auditors are conducting QAP verification activities. In both instances, we believe that third-party auditors could be unduly influenced in their QAP verification activities as a result. With regard to companies that employ personnel who previously worked for or otherwise engaged in consulting services with a producer, those companies meet the independence criteria when such personnel do not participate on, manage, or advise the audit teams. Additionally, employees of these companies are not prohibited from accepting future employment with a producer as long as they were not involved in performing or managing the audit.

Additionally, we are proposing to preclude third-party auditors from providing initial and triennial engineering reviews for the same renewable fuel producers. In the RFS QAP final rule, we stated that we continued to be concerned that allowing an auditor to also perform engineering reviews and attest engagements will tie the auditor’s financial interests too closely with the renewable fuel producers being audited and could create incentives for auditors to fail to report potentially invalid RINs; however, we did not want to exclude potential third-party auditors that had significant knowledge of the RFS program and renewable fuel production facilities from participating in the QAP

³²³ For purposes of this requirement, consulting does not include performing or participating in third-party audits pursuant to 40 CFR 80.1472.

program.³²⁴ To balance those concerns, the final rule prohibited third-party auditors from continuing to provide annual attest engagements and QAP implementation to the same audited renewable fuel producer, but allowed third-party auditors to continue to conduct engineering reviews. After further evaluation, we continue to have significant concerns that third-parties that perform engineering reviews and provide QAP services to the same producer may have financial incentives to overlook certain registration and/or RIN generation issues to continue a revenue stream from a renewable fuel producer. Precluding the same entity from providing both engineering reviews and QAP services for the same renewable fuel producer adds an additional level of assurance that RINs are being generated validly. Furthermore, the EPA was initially concerned that the number of third-parties available to conduct both engineering reviews and QAP services was limited. However, the EPA now believes that there are a sufficient number of parties with RFS knowledge to provide these services. Therefore, we believe that allowing these parties to perform both services is no longer needed. We are also proposing that a third-party auditor that provided an engineering review for a renewable fuel producer prior to November 16, 2016, would not be precluded from implementing a QAP for that producer so long as the auditor provides no more engineering review services in the future.

We seek comment on whether these criteria are appropriate and sufficient to prevent any conflict of interest or the appearance of any conflict of interest between the third-party auditor and the renewable fuel producer and to provide maximum assurances that RINs are being generated validly. We seek comment on whether any adjustments to these criteria are necessary for maximum effectiveness and efficiency, including comments or suggestions on how to provide more flexibility into these criteria. We also seek comment on whether the proposed three-year timeframe to separate the audit from other business arrangements is appropriate.

2. Third-Party Professional Engineers

In 2013, a report from the Inspector General for the EPA highlighted concerns with the independence requirements of third-party professional

engineers in the RFS program.³²⁵ One way to partially address those concerns is to strengthen the independence requirements for third-party professional engineers and to require submission of engineering reviews from third-party professional engineers directly to the EPA. Currently, third-party professional engineers conduct the engineering review and often provide the report for submission to the renewable fuel producer, who must then submit the report to the EPA.

Engineering reviews from independent third-party professional engineers are integral to the successful implementation of the RFS program. Not only do they ensure that RINs are properly categorized, but they also provide a check against fraudulent RIN generation. As we have designed our registration system to accommodate the association between third-party auditors and renewable fuel producers to implement the RFS QAP, we have realized that both the way engineering reviews are conducted and the nature of the relationships among the third-party professional engineers, affiliates, and renewable fuel producers are analogous to third-party auditors and renewable fuel producers. As a result, we are proposing to strengthen the independence requirements for third-party professional engineers by requiring those engineers to comply with similar requirements (including the additional requirements we are proposing) to those that currently apply to independent third-party auditors. We seek comment on whether the independence requirements that apply to third-party auditors should also apply to third-party professional engineers, and whether any adjustments to the third-party auditor independence criteria are necessary for third-party engineers.

We are also proposing that third-party professional engineers become regulated parties under the RFS program and register with the EPA. Requiring third-party professional engineers to register would allow the EPA to determine that the basic minimum qualifications (*e.g.*, independence and professional competency requirements) are met. One goal we have with proposing the registration submission changes is to leverage the IT infrastructure that we developed to implement the RFS QAP program to deal more directly with the third-party professional engineers. This means that third-party professional

³²⁵ U.S. EPA, Office of Inspector General, “The EPA Should Improve Monitoring of Controls in the Renewable Fuel Standard Program,” Report No. 13–P–0373, September 5, 2013.

³²⁴ See 79 FR 42094 (July 18, 2014).

engineers would need to register with the EPA through CDX, the EPA's electronic reporting site, and submit engineering reviews electronically on forms established by the EPA.

Currently, third-party professional engineers conduct the engineering review and often provide the report for submission to the renewable fuel producer, who must then submit the report to the EPA. This creates an opportunity, or at least the perception of an opportunity, for the renewable fuel producer to alter the information submitted to the EPA. Additionally, renewable fuel producers have several options for submitting their engineering review to the EPA: (1) A hard-copy typically as a written report and attachments in a three-ring binder sent through the mail; (2) An engineering review form with accompanying report and attachments in PDF format uploaded to the EPA's registration system (CDX or OTAQREG); or (3) Submission using an EPA-developed electronic webform. The current submission of hard-copy engineering reviews presents a significant administrative burden on EPA staff to process the mail, scan the engineering review report, and upload it to the EPA system to route to the team for review. The hard-copy engineering reviews also create a large volume of paper records that the EPA must further store and protect following CBI requirements, as appropriate. By requiring engineering reviews to be submitted electronically, the EPA would be able to reduce the administrative burden of processing these reports, as well as reduce a significant amount of paper that is used since these reports are typically hundreds of pages long. This proposed change may reduce burden for the submitters as well.

These proposed requirements would eliminate the current options for renewable fuel producers to submit engineering review reports directly to the EPA and for third-party professional engineers to submit engineering review reports in hardcopy via the mail, which could be a concern for some parties. We seek comment on these proposed changes.

If the proposed changes to engineering reviews are finalized, we plan to develop and require a new electronic webform for engineering reviews reflecting those changes at some point in the future. The added benefits of the electronic reporting form are a reduction in errors and omissions for engineering reviews and a more IT-accessible format that would reduce the amount of time that the EPA takes to review and accept RFS registrations.

This should allow EPA acceptance of registrations for renewable fuel producers in a timelier manner. However, since the electronic webforms for the engineering reviews may require the EPA to develop new or revise existing systems, including troubleshooting, we may require significant time to fully implement this component after the effective date of these requirements.

We are also proposing to improve the RFS registration requirements for engineering reviews by requiring site visits to take place when the facility is producing renewable fuel. This will provide the regulated community and the EPA with greater confidence in the production capabilities of the renewable fuel facility. Since the adoption of the RFS2 requirements in 2010, most engineering reviews are conducted by a handful of third-party professional engineers. Some of these engineers are using templates that make it difficult for the EPA to determine whether registration information was verified. We are concerned that, in some instances, the third-party engineers are relying too heavily on information provided by the renewable fuel producers, and not conducting a truly independent verification. In order to provide greater confidence in third-party engineering reviews, we are proposing that the engineering review submission include evidence of a site visit while the facility is producing renewable fuel(s) that it is registered to produce. We also propose to incorporate the EPA's current interpretation and guidance into the regulations regarding actions that third-party engineers must take to verify information in the renewable fuel producer's registration application. The amendments would explain that in order to verify the applicable registration information, the third-party auditor must independently evaluate and confirm the information, and cannot rely on representations made by the renewable fuel producer. We believe these amendments would help provide greater assurance that third-party professional engineering reviews are based upon independent verification of the required registration information in 40 CFR 80.1450, helping to provide enhanced assurance of the integrity of the registration materials submitted by the facility, as well as the renewable fuel they produce.

Finally, we are proposing prohibited activities for third-party professional engineers. Specifically, we are proposing to prohibit third-party professional engineers from failing to identify incorrect information in a renewable fuel producer's registration,

failing to properly conduct an engineering review, failing to disclose to the EPA any financial, professional, business, or other interest with parties for whom the third-party professional engineer provides services for under the RFS registration requirements. The EPA staff that review RFS registrations have concerns that third-party professional engineers may be acting, independently or through an affiliate, as consultants and agents for the same renewable fuel producer, or that, directly or through an affiliate, they may have a financial interest in the renewable fuel producer, may not appropriately conduct engineering reviews, or may not meet the requirements for independence to qualify as a third-party. We believe that making third-party professional engineers more accountable for properly conducting engineering reviews under the regulations and requiring that they interact more directly with the EPA will help our ability to identify potential conflicts of interests and bring enforcement actions against third-party professional engineers should an issue arise.

We seek comment on these proposed changes and input on whether there is anything else the EPA should do to help ensure that third-party professional engineering reviews are conducted so as to maximize the submission of relevant and accurate information to the EPA.

J. Additional Registration Deactivation Justifications

We are proposing additional circumstances in which the EPA may deactivate the registration of a company, third-party auditor, or third-party engineer under 40 CFR 80.1450(h). In July 2014, the EPA finalized requirements that describe circumstances under which the EPA may deactivate a company registration and an administrative process to initiate deactivation that provides companies an opportunity to respond to and/or submit the required information in a timely manner.³²⁶ Since finalizing these requirements, the EPA has identified a number of other cases in which it would be appropriate to deactivate the registration of a company. In addition we believe the provisions should be extended to cover deactivation of registrations for third-party auditors and third-party engineers. Specifically, we propose to amend the current regulations to provide that the EPA may deactivate registrations of a company,

³²⁶ Under this administrative process, the company will have 14 calendar days from the date of the notification to correct the deficiencies identified or explain why there is no need for corrective action. See 40 CFR 80.1450(h)(2)(i).

third-party auditor, or third-party engineer for the following reasons:

- The company, third-party auditor, or third-party engineer fails to comply with the registration requirements of 40 CFR 80.1450.

- The company, third-party auditor, or third-party engineer fails to submit any required report within thirty days of the required submission date.

- The company, third-party auditor, or third-party engineer fails to pay a penalty or to perform any requirements under the terms of a court order, administrative order, consent decree, or administrative settlement agreement between the company and the EPA.

- The company, third-party auditor, or third-party engineer submits false or incomplete information.

- The company, third-party auditor, or third-party engineer denies the EPA access or prevents the EPA from completing authorized activities under CAA section 114 despite our presenting a warrant or court order. This includes a failure to provide reasonable assistance.

- The company, third-party auditor, or third-party engineer fails to keep or provide the EPA with the records required in 40 CFR 80.1450.

- The company, third-party auditor, or third-party engineer otherwise circumvents the intent of the CAA or 40 CFR part 80, subpart M.

These deactivation circumstances are consistent with cases where the EPA may deny or revoke a certificate of conformity under 40 CFR 1051.255(c) and 86.442–78 for engines and vehicles manufactured in or imported into the U.S. In addition, we are proposing that in instances of willfulness or those in which public health, interest, or safety requires otherwise, the EPA may also deactivate the registration of a company, third-party auditor, or third-party engineer registration without providing notice to the company, third-party auditor, or third-party engineer prior to deactivation, and would send written notification to the RCO describing the reasons for the deactivation. Companies, third-party auditors, or third-party engineers could still submit new registrations after appropriate actions were taken by the company, third-party auditor, or third-party engineer.

We believe these proposed amendments would help parties better understand when the EPA intends to restrict a party's participation in the RFS program as well as the procedures that will be used in such circumstances. We seek comment on whether there are any additional circumstances when the EPA should deactivate the registration

of a company, third-party auditor, or third-party engineer.

K. Registration of Biogas Producers

Consistent with our proposed approach for biointermediate producers, we are proposing that biogas producers whose biogas is used to produce renewable electricity or CNG/LNG would be required to register with the EPA and would be liable for violations of the applicable RFS requirements, and that renewable fuel producers may only generate RINs for renewable fuel produced from biogas sourced from a registered biogas producer.³²⁷ A biogas producer would be defined as the owner of any landfill, municipal wastewater treatment facility digester, agricultural digester, or separated MSW digester that produces biogas used to produce renewable electricity or CNG/LNG. Biogas producers registering with the EPA would be required to undergo a third-party engineering review, which we believe would help ensure that the RINs generated for fuel derived from this biogas are indeed valid. We are not proposing that biogas producers submit additional reports to the EPA since the existing reporting requirements for parties that generate RINs for fuel made from biogas are sufficient. We also do not believe that additional PTD, attest engagement, or recordkeeping requirements are necessary. Our intent is not to substantially alter the current requirements for renewable electricity or CNG/LNG produced from biogas, but rather to provide an additional level of assurance through registration of biogas producers that biogas used to make renewable electricity or CNG/LNG meets regulatory requirements.³²⁸ However, we recognize that additional reporting and third-party verification (*i.e.*, through attest engagements) could help ensure that RINs generated for fuel derived from biogas have the same level of compliance assurance as RINs generated for fuel produced through other pathways. We request comment on this proposed change and whether there are any additional requirements that should be imposed on biogas producers.

L. New RIN Retirement Section

We are proposing to create a new section in the RFS regulations for RIN retirements. The regulations have specific sections that address when and how parties may generate and separate

RINs. However, the cases where parties must retire RINs are identified in various sections throughout the regulations. The new section of the RFS regulations for RIN retirements would simply organize these current sections into one place. The EPA is aware of some confusion for some responsible parties causing those parties to improperly retire RINs or fail to retire RINs when they have a responsibility to do so under the regulations. Improper retirements can lead to a time-consuming remediation process, both for the EPA and responsible parties. This new section attempts to organize these requirements into one location in the regulations to make these determinations simpler to locate and understand.

We are also proposing new regulatory language for cases requiring RIN retirement that are identified in EMTS, but may not be clear in the regulations, given their current organization. Our intent is not to add additional burden on parties that must retire RINs under the RFS program, but rather to make the regulations consistent with how parties retire RINs in EMTS and help reduce potential confusion regarding the situations when parties must retire RINs.

Taken together by enumerating the specific instances in which a party must retire RINs in a new specific section of the regulations and by making those retirements consistent with how parties administratively retire RINs in EMTS, we believe that the newly proposed RIN generation section would provide beneficial clarification.

M. New Pathway for Co-Processing Biomass With Petroleum To Produce Cellulosic Diesel, Jet Fuel, and Heating Oil

One of the potential technologies that may be enabled to participate in the RFS program by the proposed regulations for biointermediates is the production of bio-oil from cellulosic feedstocks. While these bio-oils can be upgraded to finished transportation fuels at stand-alone facilities that process only renewable biomass and RINs can be generated for these fuels under the existing RFS regulations, it may be more efficient and cost-effective to upgrade these bio-oils along with petroleum crude oils at existing refineries. Currently, pathways exist for renewable gasoline and gasoline blendstock (Pathway M in Table 1 to 40 CFR 80.1426) and naphtha (Pathway N in Table 1 to 40 CFR 80.1426) produced from cellulosic biomass that is co-processed with petroleum. However, there is currently no pathway for diesel,

³²⁷ It should be noted that in cases where the biogas producer is the RIN-generating party, the producer would already be registered with EPA, and no additional registration would be required.

³²⁸ Biogas producers would have to keep records related to their registration similar to other parties.

jet fuel, or heating oil produced in this manner.

The current pathway for cellulosic diesel, jet fuel, and heating oil (Pathway L in Table 1 to 40 CFR 80.1426) excludes processes that co-process renewable biomass and petroleum. To qualify as cellulosic diesel, a fuel must meet the requirements for both cellulosic biofuel and biomass-based diesel. The definition of biomass-based diesel explicitly excludes renewable fuels that are derived from co-processing biomass with petroleum, and therefore a process that produces diesel, jet fuel, or heating oil by co-processing renewable biomass with petroleum cannot qualify as biomass-based diesel or cellulosic diesel under Pathway L in Table 1 to 40 CFR 80.1426. The EPA is proposing a new pathway that would allow these fuels to qualify as cellulosic biofuel and generate cellulosic (D-code 3) RINs, as cellulosic biofuels that are not prohibited from being derived from biomass co-processed with petroleum. We are also proposing to amend the definition of cellulosic diesel to no longer require that it meet the definition of biomass-based diesel, and proposing to create a new definition for cellulosic biomass-based diesel to refer to fuels that meet the definition for both cellulosic biofuel and biomass-based diesel. Fuels that meet the cellulosic biomass-based diesel definition would be able to generate D7 RINs, while fuels that meet the cellulosic diesel definition but not the cellulosic biomass-based diesel definition due to co-processing with petroleum would be able to generate D3 RINs.

We believe that the lifecycle modeling that was done for the current pathway for cellulosic diesel, jet fuel, and heating oil provides sufficient basis for concluding that fuels produced using similar processes and technologies, where the only difference is that the bio-oil is co-processed with petroleum, meet the appropriate GHG reduction thresholds. Any emissions related to the transportation of bio-oil from the production site to a refinery or other facility that co-processes renewable biomass with petroleum to produce transportation fuel is not expected to have a significant impact on the emissions of these fuels. We seek comment on whether this proposed approach is appropriate.

N. Vegetable Oil as Feedstock and Renewable Fuel

Vegetable oils (e.g., soy oil, algal oil, corn oil, and many waste plant oils) can be used as feedstock both for biodiesel production and for the production of drop-in renewable diesel that meets the

same specifications as petroleum-based diesel fuel. However, vegetable oils can also be blended without processing into petroleum diesel fuel in concentrations up to 5 percent for use in conventional diesel engines, and can be used in their neat form in vehicle engines that have been specifically modified to run on it. Given the possible use of vegetable oils both directly as a transportation fuel and as a feedstock for the production of biodiesel and drop-in renewable diesel fuels, it has been the subject of an overwhelming number of the enforcement actions taken by the EPA for RIN fraud under the RFS program. Typically, parties engaging in fraudulent activity simply purify or clean up vegetable oil to produce a product that they generate RINs for, claiming that it would be used as transportation fuel, but instead sell the vegetable oil to another facility that uses it to produce biodiesel for which RINs are also generated. These cases of RIN fraud have substantially undermined the integrity of the RFS program and significantly increased compliance costs for affected parties as they have had to retire and/or replace the invalid RINs. We believe the RIN fraud problem with vegetable oil is so pervasive that it merits a different approach to RIN generation than most other types of renewable fuels.

As an initial matter, the EPA is proposing two regulatory definitions for vegetable oil that differentiate between its use as a feedstock and its use as a renewable fuel. When vegetable oil is used as a feedstock, we propose to refer to it as “straight vegetable oil (SVO)”. If the same material is used as renewable fuel (either in a blend with petroleum diesel or in neat form for use in a modified engine), we propose to refer to it as “viscous non-ester renewable diesel (VRD).” RINs would not be generated for SVO because it is intended to be used as a feedstock rather than as a renewable fuel, but RINs could be generated for VRD under appropriate conditions.

However, to avoid the enforcement problems noted above, we are proposing unique provisions related to RIN generation for VRD. Although under the RFS program it is generally the renewable fuel producer that generates RINs for renewable fuel, we propose that for VRD this would only be the case if it is intended to be used in its neat form. Furthermore, in such circumstances the producer would be required to demonstrate in their registration submission that an end-user has: (a) Modified engines to operate on the fuel in accordance with an EPA-approved Clean Alternative Fuel

Conversion under 40 CFR part 85, subpart F; and (b) contracted with the producer to use the neat VRD as transportation fuel, heating oil, or jet fuel. Given that there are relatively few such EPA-approved Clean Alternative Fuel Conversions, it should not be difficult for the EPA to establish that an end-user has made the necessary modifications at the time of VRD producer registration and would help ensure that RINs are only generated for fuel that is actually used as transportation fuel, heating oil, or jet fuel. Additionally, we are proposing that the VRD producer would need to have the use of the neat VRD verified by a third-party auditor under the QAP program prior to RIN generation.

In instances where VRD is to be blended with petroleum diesel, we propose that the only party that could generate RINs for VRD would be the party actually doing the blending (*i.e.*, the party that uses the VRD to produce a fuel that meets ASTM D975 standards for No. 1 or No. 2 diesel fuel). This approach will best ensure that RINs are not generated for vegetable oils that are actually destined to be used as a feedstock for biodiesel production.³²⁹ Under this proposal, the producers of VRD would be subject to all of the proposed registration, recordkeeping, and reporting requirements for biointermediate producers as described in section III.F of this preamble. Parties blending VRD with petroleum diesel would be required to register with the EPA in a manner that is similar to renewable fuel producers; registration would include, for example, an independent third-party engineering review designed to verify that they have the capability for VRD blending. Since VRD blenders would be RIN generators, they would also be required to submit RIN transaction reports, and keep records related to RIN transactions and blending activity.

VRD would be defined as a form of “non-ester renewable diesel” which, in turn, is a type of biomass-based diesel. Therefore, biomass-based diesel RINs (D-code 4) could be generated for VRD under the existing renewable diesel pathways in Table 1 to 40 CFR 80.1426. We are proposing to amend the definition of non-ester renewable diesel in two ways. First, it would differentiate between VRD and non-VRD renewable fuels. The definition would clarify that non-VRD renewable fuels must be produced through a hydrotreating

³²⁹ Under this proposed approach, producers of SVO destined for use as a feedstock to produce biodiesel or renewable diesel would continue to not have to register or report to the EPA under the RFS program.

process and be able to be used in an engine designed to operate on conventional diesel fuel. Such fuels would meet the petroleum diesel specifications in ASTM D975. VRD fuels would be defined as SVO that is intended for use as transportation fuel, heating oil, or jet fuel.

We believe that these proposed amendments would reduce the potential for RIN fraud and provide greater certainty to obligated parties regarding the validity of the RINs they purchase. We seek comment on our proposed approach for vegetable oils, including whether there may be additional scenarios in which it may be appropriate to allow for RINs to be generated by VRD producers.

O. Public Access to Information

The EPA is proposing regulations that would streamline our processing of claims that RFS-related information should be withheld from public disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4), as CBI. If finalized, the rules would identify which types of RFS information would receive confidential treatment as CBI and which would be available for disclosure in response to a FOIA request without the need for the often time-consuming notice and substantiation procedural requirements that would otherwise be required under 40 CFR part 2, subpart B.

The EPA recently received and responded to a FOIA request seeking release of a substantial amount of RFS transactional and compliance information submitted to the EPA through EMTS and in other formats.³³⁰ The EPA evaluated each EMTS data element within the scope of the FOIA request, and on March 27, 2015, issued a determination identifying the extent to which those elements are eligible for CBI treatment. The FOIA request, and the EPA's response, covered only the data submitted within a certain historic time period. The EPA is proposing to establish by rule that the same determinations of eligibility for CBI treatment would apply to all of the EMTS data elements covered by this determination, regardless of the date the data was received.³³¹ To the extent that the proposed rules identify data elements as CBI, we note that it is not our intent to suggest that all records making use of such data, including, for

example, EPA-derived documents that aggregate the information in a manner that masks individual company data, would necessarily be entitled to protection as CBI. The EPA will continue to make individual case-by-case CBI determinations regarding public disclosure of such records.

In addition, we are proposing to codify a determination that basic information related to EPA actions on petitions for RFS small refinery and small refiner exemptions may not be claimed as confidential business information. Small refineries and small refiners may petition the EPA pursuant to 40 CFR 80.1441 and 80.1442 for an extension of exemptions from RFS compliance obligations on the basis of disproportionate economic hardship. Some petitioners availing themselves of this opportunity have claimed their submissions to be CBI. To the extent that the EPA determines that such CBI claims are justifiable, the EPA protects the information from disclosure to the public pursuant to FOIA Exemption 4, which covers "trade secrets and commercial or financial information obtained from a person that is privileged or confidential." The EPA generally evaluates CBI claims pursuant to its regulations in 40 CFR part 2, subpart B. While it is appropriate to consider the potential that information that the EPA obtains from outside of the agency, such as detailed business information within a petition submission, could qualify for protection as CBI, the courts have clarified that data generated within the government are not "obtained from a person" within the meaning of FOIA Exemption 4, and therefore cannot be claimed as CBI.³³² In addition, basic facts related to government decisions are also not entitled to CBI treatment under FOIA Exemption 4.³³³ Nevertheless, the courts have recognized that where an agency decision repeats or would otherwise divulge sensitive business information that was submitted to the agency by a person outside of government, that sensitive information does not lose its CBI status by virtue of its reference in the agency decision.³³⁴ In light of this precedent, and to expedite processing of information requests related to EPA small refinery/refiner exemption petition determinations, we propose to

clarify in the regulations that a clearly delineated set of basic information related to our decisions on small refinery/refiner exemption petitions is not entitled to treatment as CBI, since it is inherently part of the EPA's decision and is not "obtained from a person" outside of government. The EPA does not intend to suggest by this proposal how it will respond to requests for the underlying information provided by petitioners to substantiate a claim of disproportionate economic hardship. Such information is "obtained from a person" within the meaning of FOIA Exemption 4, may be claimed as CBI, and will be evaluated on a case-by-case basis by the EPA following the procedures specified in 40 CFR part 2, subpart B, when and if the EPA receives a request for public release of such documents.

The proposed regulations would specify that with respect to each decision on a small refinery/refiner exemption request, we would release to the public the petitioner's name, the name and location of the facility for which relief was requested, the general nature of the relief requested, the time period for which relief was requested, and the extent to which the EPA granted or denied the requested relief. All of this information is inherent to the EPA's decision and, we believe, is not entitled to treatment as CBI. The EPA could post this information on its Web site, or otherwise provide it to the public in response to individual information requests. If finalized, the procedures in 40 CFR part 2, subpart B, related to EPA processing of requests for documents for which CBI claims have been made would not apply to requests for the information specified in the rule.

We also believe that parties cannot claim as CBI information related to the EPA's internal workload, since the matters that the EPA has decided to work on reflect an EPA decision, and those decisions were not "obtained from a person" outside of government. Thus, we believe that once a small refinery/refiner petition is accepted by the EPA for processing, and added to the queue of projects that are pending EPA evaluation, basic information regarding the matter is not entitled to treatment as CBI. We propose, therefore, to establish by rule that after adding the response to a small refinery/refiner petition to its queue of projects to be completed, the EPA would publicly release information on the name of the petitioner, the name and location of the facility for which relief was requested, the general nature of the relief requested, and the time period for which relief was requested. This basic information is necessary to

³³² See *Board of Trade v. Commodity Futures Trading Commission*, 627 F.2d 393, 404 (D.C. Cir. 1980); *Soucie v. OST*, 448 F.2d 1067 (D.C. Cir. 1971).

³³³ See *Bloomberg v. Board of Governors*, 601 F.3d 143 (2d Cir. 2010); *Philadelphia Newspapers Inc., v. HHS*, 69 F. Supp. 2d 63 (D.D.C. 1999).

³³⁴ See *Southern Alliance for Clean Energy v. Dept. of Energy*, 853 F. Supp. 2d 60 (D.D.C. 2012).

³³⁰ See 79 FR 73577 (December 11, 2014).

³³¹ The EPA's rationale for these determinations is set forth in "Freedom of Information Act Request EPA-HQ-2013-006023 (HQ-APP-2013-008586); Confidentiality Determination—Final Version with All Errata Corrected (Clean)," available in the docket for this action.

identify the nature and scope of work that the EPA has decided to undertake. The EPA could post this information on its Web site, or otherwise provide it to the public in response to individual information requests. If finalized, the procedures in 40 CFR part 2, subpart B, would not apply with respect to requests for the information specified in the rule.

Finally, we are proposing that the EPA is not releasing information that is entitled to protection as CBI when it posts on its Web site or otherwise publicly releases EPA enforcement-related determinations or actions, together with basic information regarding the party or parties involved and the RINs in question. The EPA determinations and actions covered by this proposal include EPA determinations that RINs are invalid under 40 CFR 1474(b)(4)(i)(C)(2) and 1474(b)(4)(ii)(C)(2), notices of violation, administrative complaints, civil complaints, criminal informations and criminal indictments. The information that the EPA may post or otherwise publicly release in the context of these determinations or actions includes the company name and EPA identification number of the company that generated the RINs in question, the facility name and EPA identification number of the facility at which the fuel associated with the RINs in question was allegedly produced or imported, the total quantity of RINs in question, the time period when the RINs in question were generated, and the batch number(s) and the D code(s) of the RINs in question. This basic information is central to the EPA's enforcement-related actions and determinations. Since these actions and determinations are not "obtained from a person" outside of the EPA, they and the basic information necessary to describe them cannot be claimed as CBI. Thus, while we are proposing that most RIN-related information is generally entitled to treatment as CBI, as discussed above, we are also proposing as an exception to that general rule that basic RIN information that is central to the EPA's enforcement-related actions and determinations is not entitled to such treatment.

We believe that publicly releasing the EPA's enforcement-related actions and determinations described above is important to successful operation and integrity of the RFS program. Doing so may prevent parties from unwittingly transferring or attempting to use invalid RINs for compliance, in contravention of the RFS regulations, or from investing in invalid RINs that they will be unable to use for compliance. We seek comment on whether any additional

factual information relating to the EPA actions described above should be identified as ineligible for CBI protection and whether there are additional EPA actions and determinations that we should identify as including RIN-related information that does not qualify for CBI protection.

We note that existing EPA regulations governing treatment of CBI define the term "person" in 40 CFR 2.201(a) as including government agencies and their employees. We believe that this is appropriate, since we acknowledge that there may be instances where a government report or decision could contain detailed information generated by the EPA, but which is based on information submitted from outside of the EPA and which could create competitive harm to the non-government data submitter if released. We propose to interpret our regulatory definition of "person" in accordance with the court decisions interpreting the phrase "obtained from a person" for purposes of FOIA Exemption 4, to both allow the EPA to withhold EPA-generated records in appropriate circumstances where necessary to prevent disclosure of information obtained from outside the EPA to inform those decisions, and to release basic information related to EPA decisions and workload as proposed in this action. However, we solicit comment on whether the regulatory definition of "person" should be amended to more clearly align with this proposal.

P. Grandfathered Facilities

The CAA provides an exemption from the minimum 20 percent lifecycle GHG reduction requirement for a baseline volume of fuel made from two classes of facilities; those that commenced construction prior to the date of EISA's enactment, and ethanol facilities fired by natural gas or biomass that commenced construction prior to December 31, 2009.³³⁵ While these facilities need not produce fuel pursuant to a pathway specified in Table 1 to 80.1426, they are nevertheless required to use feedstock that meets the CAA's definition of "renewable biomass." In light of implementation and enforcement concerns related to tracking renewable biomass through a number of processing steps over multiple facilities, we are proposing that fuel will not qualify for an exemption from the 20 percent lifecycle GHG reduction requirement unless it is: (1) Produced from renewable biomass in a single facility; (2) Made at a single facility from a feedstock that is derived

from renewable biomass and is listed in Table 1 to 40 CFR 80.1426; or (3) Made at a single facility from renewable biomass that was pre-processed at another facility if that pre-processing at another facility was limited to form changes such as chopping, crushing, grinding, pelletizing, filtering, compaction/compression, centrifuging, dewater/drying, melting, and/or the addition of water to produce a slurry. We seek comment on our proposed approach.

To help implement this proposed change, the EPA is also proposing changes to the registration and registration update requirements for renewable fuel producers that either already have facilities registered with an exemption under 40 CFR 80.1403 or renewable fuel producers that have facilities that would have been able to claim an exemption under 40 CFR 80.1403 but cannot due to the proposed change. Since the EPA would no longer need to establish a baseline volume from permits or production information prior to December 19, 2007, or outdated production information, the EPA is proposing that facilities that would have been able to claim the exemption (*i.e.*, those constructed prior to December 19, 2007, or December 31, 2009, depending on the exemption) only submit the most recent permits or, if not available, recent production information to establish a facility's baseline volume. Additionally, for three-year registration updates, the EPA is proposing that facilities already claiming an exemption under 40 CFR 80.1403 would no longer need to provide copies of air permits to establish exempted baseline volumes since all parties that could claim the exemption under 40 CFR 80.1403 would have done so. The net result of this change is that all facilities would need to submit their most recent air permits or production information during initial registration or three-year registration updates and parties would not need to submit older air permits and production information to establish baseline volumes.

To help distinguish total baseline volumes from exempted baseline volumes, the EPA is proposing to redefine the term "baseline volume" and create a definition for "exempted baseline volume." The proposed definition for exempted baseline volume would include the permitted capacity as established in air permits prior to December 19, 2007 or older production records as defined in the current definition of actual peak capacity. This definition should be consistent with the baseline volumes previously established for facilities claiming an exemption

³³⁵ See 40 CFR 80.1403.

under 40 CFR 80.1403. However, many facilities that claim an exemption under 40 CFR 80.1403 also produce renewable fuels that do not claim the exemption. This leads to situations where the reported baseline volume may not be consistent with the total actual production capacity of the facility. Therefore, the EPA is also proposing to amend the definition of baseline volume to better establish a facility's total production capacity. Under this proposal, all facilities would need to submit recent air permits or production information to establish current baseline volumes. However, only facilities claiming a new exemption under 40 CFR 80.1403—for example, facilities claiming an exemption under 40 CFR 80.1403 involved in a change of ownership—would need to submit information related to an exempted baseline volume. Facilities would still need to maintain air permits and documentation used to establish exempted baseline volumes under the recordkeeping requirements in 40 CFR 80.1454. The EPA believes this change would allow for more accurate total baseline volumes to be included as part of registration information submitted to the EPA.

Q. Changes to Bond Requirement for Foreign Producers

The EPA is proposing to remove the option that allows a RIN-generating foreign producer to pay the required bond amount to the U.S. Treasury as stipulated under 40 CFR 80.1466(h)(2)(i) instead of obtaining a bond in the proper amount from a third-party surety agent. This option was provided as an alternative approach for RIN-generating foreign producers that expressed possible difficulties in securing the required bond to participate in the RFS program. We are now proposing to remove this option because it has proven to be too much of a challenge for the EPA to implement properly. For instance, a special account would need to be established at the U.S. Treasury that would allow the EPA to deposit the submitted bank checks (or hold in escrow) and also allow the EPA the ability to draw upon these funds to satisfy a potential judgment or reimburse the RIN-generating producer if they no longer participate in the RFS program. This type of accounting requires a lot of oversight and resources to ensure proper implementation. Since there very few RIN-generating foreign producers who are currently using this option, we believe it is not justified to continue to allow this option due to the high administrative burden. For these reasons, we are proposing to remove

this option from the regulations and believe this proposal will provide RIN-generating foreign producers with sufficient time to obtain surety agreements to meet the bond requirements. We request comment on this proposed change.

R. Redesignation of Renewable Fuel on a PTD for Non-Qualifying Uses

The EPA is proposing to amend the PTD, RIN management and enforcement-related regulations to address situations where a party subject to PTD requirements is aware that renewable fuel it intends to transfer will be used for purposes other than as transportation fuel, heating oil, or jet fuel.

CAA section 211(o)(1)(J) defines “renewable fuel” as fuel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel present in a “transportation fuel,” which is defined in CAA section 211(o)(1)(L) as “fuel for use in motor vehicles, motor vehicle engines, nonroad vehicles or nonroad engines (except for ocean-going vessels). The CAA also provides, however, that “additional renewable fuel,” defined as fuel made from renewable biomass that is used to replace or reduce the quantity of fossil fuel present in home heating oil or jet fuel, may also receive credit under the CAA. Thus, the CAA envisions use of renewable fuels under the RFS program for transportation fuel, heating oil, and jet fuel, which we refer to here as “qualifying uses.” While some of the more common biofuels that participate in the RFS program (e.g., denatured ethanol) have no significant non-qualifying uses, other types of biofuels, such as renewable electricity and natural gas derived from biogas, can be put to myriad uses, many of which are non-qualifying. Reflecting this difference, EPA regulations include special provisions for certain renewable fuels (e.g., natural gas derived from biogas) that limit RIN generation to circumstances where the potential RIN generator can document that their biofuel will be used as transportation fuel, heating oil, or jet fuel, whereas such provisions are not required with respect to biofuels like denatured ethanol that do not have significant non-qualifying uses. All renewable fuels, however, must be accompanied by a PTD when ownership of the fuel is transferred to parties other than retail customers or wholesale purchaser-consumer facilities (as defined in 40 CFR 80.2), and the PTD must include a good faith designation of the fuels’

intended use.³³⁶ The EPA modified the PTD requirements and related enforcement provisions in the QAP final rule, but in the course of doing so, the EPA included contradictory statements in the preamble of its intent to finalize certain of the proposed provisions, and these statements were inconsistent in part with EPA's final actions in amending the regulations.³³⁷

The original RFS2 regulations required parties that obtained renewable fuel with attached RINs and that either designated renewable fuel for a non-qualifying fuel use or that used renewable fuel for a non-qualifying fuel use to retire the RINs that they received with the fuel.³³⁸ On February 21, 2013, the EPA published an NPRM for the QAP rule that proposed to remove and reserve 40 CFR 80.1429(f) of the regulations, expand the PTD requirements to require that parties transferring renewable fuel include specific information in PTDs regarding the character and intended use of blended and neat renewable fuel, and add a new 40 CFR 80.1433 that would set forth a specific mechanism for parties with PTD obligations that change a renewable fuel designation from qualifying to non-qualifying fuel uses to retire the appropriate number and type of RINs. In addition, the EPA proposed a new 40 CFR 80.1460(g) to prohibit parties from redesignating renewable fuel for a non-qualifying use without retiring RINs in accordance with proposed 40 CFR 80.1433.³³⁹

In one section of the preamble to the final QAP Rule, the EPA stated that it was implementing this proposal.³⁴⁰ However, the preamble to the final QAP rule also included contradictory language that stated, “we feel that the program goal of ensuring appropriate end use is already addressed and managed through the regulations. We are therefore not finalizing the proposed § 80.1433 and conforming prohibited act provision for sellers and transferors of RIN-generating renewable fuel.”³⁴¹ The regulations implemented in the final QAP rule inadvertently removed 40 CFR 80.1429(f), without including the proposed 40 CFR 80.1433 or 80.1460(g). The PTD regulations that were adopted in the final QAP rule at 40 CFR 80.1453(a)(12) include a reference to 40 CFR 80.1433, but that section was not included in the final regulations.

³³⁶ See 40 CFR 80.1453.

³³⁷ See 79 FR 42078 (July 18, 2014).

³³⁸ See 40 CFR 80.1429(f).

³³⁹ See 78 FR 12193 (February 21, 2013).

³⁴⁰ See 79 FR 42106 (July 18, 2014).

³⁴¹ *Id.*

The EPA recognizes that these contradictory statements have led to confusion, and we are proposing to resolve this confusion by implementing a new 40 CFR 80.1433 that would require a party that receives renewable fuel without a PTD or with a PTD indicating that the fuel is for qualified uses, and that subsequently transfers that fuel to a party that the transferor knows or has reason to know will use the fuel for a non-qualifying use, to include a statement on the PTD designating the fuel for an alternative use and to retire an appropriate number and type of RINs. We are also proposing that the transfer of renewable fuel for use by stationary internal combustion engines would not require RIN retirement. These engines often use the same fuel as nonroad engines, and the effect of renewable fuel in displacing petroleum products in fuel used in such engines is also similar. We are also proposing to add a new prohibited act at 40 CFR 80.1460(j) for failing to retire RINs as would be required by proposed 40 CFR 80.1433. The RIN retirement provisions in proposed 40 CFR 80.1433 would not apply to a party that could demonstrate, through records available at the time of fuel transfer and maintained for five years, that no RINs were generated for any part of the fuel or fuel blend that it transfers or that an appropriate number and type of RINs had already been retired by a prior owner of the fuel or fuel blend. With respect to situations where a party asserts that RINs were never generated, we seek comment on whether the exemption from the RIN retirement requirements in proposed 40 CFR 80.1433 should be limited to those parties that purchased renewable fuel directly from the renewable fuel producer, similar to the requirement specified for exports at 40 CFR 80.1430(a). We believe these proposed provisions, if finalized, will remedy the confusion created by the contradictory statements in the QAP rule, and will further the objectives of the statute by augmenting the integrity of the RIN system.

We are also proposing to delete 40 CFR 80.1460(c)(2) and (c)(3) from the prohibited acts section of the regulations, and replace these sections with a new 40 CFR 80.1460(c)(2). We believe that the existing two near-identically worded provisions would appropriately be replaced by a single more clearly worded regulation that prohibits parties from using RINs for compliance or transferring RINs to other parties, in a situation where the party using or transferring the RINs uses the

fuel associated with the RINs for a purpose other than as transportation fuel, heating oil or jet fuel. This prohibition would only apply to parties that obtained renewable fuel with assigned RINs and then used or transferred the renewable fuel for a non-qualifying fuel use; any RINs improperly transferred by such a party would not be considered invalid as a result of that action, and therefore could be used or transferred by downstream parties notwithstanding the upstream violation of 40 CFR 80.1460(c)(2).

IX. Other Revisions to the Fuels Program

A. Testing Revisions

The EPA is proposing several changes to its testing requirements, as described in the following sections.

1. Non-VCSB Absolute Fuel Parameter—Sulfur Testing in Diesel, Gasoline, Butane, and Pentane

The EPA is proposing to remove the requirement for periodic resubmitting of non-VCSB test methods that have not been approved by VCSBs. Non-VCSB test methods are required to resubmit accuracy and precision qualification information every 5 years if the non-VCSB test method has not been approved by a VCSB organization. At this time, VCSBs, such as ASTM, have yet to qualify any non-VCSB test methods for measuring the sulfur content in diesel, gasoline, butane, or pentane. Moreover, the EPA requires minimal statistical quality control requirements on every type test method approved under the diesel sulfur accuracy and precision requirements³⁴² to ensure proper test method instrumentation use is as intended in practice. The EPA is, therefore, proposing to amend the regulatory requirement that non-VCSB test methods by eliminating the provision to re-submit accuracy and precision qualification information every 5 years.

The EPA is also proposing to require use of ASTM D6708 for determining that sample specific biases are random prior to submission for approval. If a non-VCSB test method absolute fuel parameter of sulfur in diesel, gasoline, butane, or pentane as compared to its designated primary test method were to exhibit sample-specific biases that cannot be determined as random through the utilization of ASTM D6708, such an indication of sample-specific biases would raise a concern that the test method should be investigated and improved upon prior to utilization in

practice in order to eliminate any systematic errors that may keep the test method from properly measuring sulfur in either diesel, gasoline, butane, or pentane in the most accurate and precise manner practically achievable. The EPA believes that the non-VCSB test method applicant has to demonstrate through ASTM D6708 that sample-specific biases existing between the candidate non-VCSB test method and the designated primary test method are random prior to submitting to the EPA for approval. If the applicant determines that sample-specific biases exist between the candidate non-VCSB test method and the designated primary test method that cannot be determined to be random through utilization of ASTM D6708, then the non-VCSB test method is automatically disqualified from consideration for approval. The EPA is proposing to an additional requirement that non-VCSB test methods for sulfur in diesel, gasoline, butane, and pentane must demonstrate through the use of ASTM D6708 that sample-specific biases are random. This demonstration must be made prior to submission for approval.

2. Removal of Sunset Date for Designated Primary Test Methods

Currently, EPA fuels regulations exempt those designated primary test methods that were in use prior to October 28, 2013, from meeting the accuracy and precision qualification requirements.³⁴³ We provided this sunset exemption date in the Tier 3 final rule because we were confident that test facilities were utilizing designated primary test methods prior to this date. However, since the SQC requirements at 40 CFR 80.47 are intended to ensure proper utilization of designated primary test methods in practice, the EPA is proposing to remove this sunset exemption date. This action would exempt all designated primary test methods from the accuracy and precision requirements of 40 CFR 80.47.

3. Sulfur in Pentane and Test Methods for Benzene, Aromatics, and C6-Plus Hydrocarbons in Pentane

The EPA is proposing to add accuracy and precision criteria for sulfur in pentane that are identical to sulfur in gasoline. The Tier 3 regulations provided for the allowance of blending pentane in gasoline.³⁴⁴ The EPA did not specify test methods for sulfur, benzene, aromatics, and C6-plus hydrocarbons in pentane. The EPA is not aware of an ASTM test method that has been

³⁴³ See 40 CFR 80.47(j).

³⁴⁴ See 79 FR 23589–23591 (April 28, 2014).

³⁴² See 40 CFR 80.584.

developed to analyze sulfur in pentane. It is our understanding that the ASTM test methods currently utilized by industry for the analysis of sulfur in gasoline may be adaptable for the analysis of sulfur in pentane if refrigerated auto-samplers are added to the apparatus of these test methods. This is being done in order to reduce safety issues associated with analyzing the sulfur content in pentane which has a lower boiling point than gasoline. Regardless of how these test methods are innovated in order to determine the sulfur content of pentane, the EPA believes it is appropriate to assign PBATMA criterion for sulfur in pentane based on the current criterion for sulfur in gasoline. Once industry has developed a test method for sulfur in

pentane through the VCS-based process and developed precision statements for the test method, the EPA will revisit whether accuracy and precision criteria need to be revised to reflect the VCSB test methods for sulfur in pentane. The EPA is proposing to add accuracy and precision criterion for sulfur in pentane in 40 CFR 80.47(b) that is identical to sulfur in gasoline. We believe that this will provide greater assurance to both the regulated community and the EPA that once pentane is blended into gasoline, it meets the required sulfur fuel standard.

In addition, the EPA is also proposing to establish two ASTM test methods for the analysis of benzene content, aromatic content, and C6-plus hydrocarbons in pentane at 40 CFR

80.46. We are proposing to designate ASTM D6730 as the designated primary test method for measuring benzene content, aromatic content, and C6-plus hydrocarbons in pentane. We are also proposing one alternative test method for the benzene content, aromatic content, and C6-plus hydrocarbons measurement in pentane, ASTM D6729, provided that its test results are correlated to ASTM D6730. Table IX.A.3–1 below lists the two ASTM test methods we are proposing. The establishment of these two test methods would provide greater assurance to both the regulated community and the EPA that benzene content, aromatic content, and C6-plus hydrocarbons in pentane meet the regulatory requirements at 40 CFR 80.86.

TABLE IX.A.3–1—DESIGNATED PRIMARY AND ALTERNATIVE ASTM ANALYTICAL TEST METHODS FOR THE ANALYSIS OF BENZENE CONTENT, AROMATIC CONTENT, AND C6-PLUS HYDROCARBON CONTENT IN PENTANE

Fuel parameter in pentane	ASTM international analytical test method
Benzene (Designated Primary Test Method)	ASTM 6730–01 (Reapproved 2011), Standard Test Method for Determination of Individual Components in Spark Ignition Fuels by 100-Metre Capillary (Pre-Column) High-Resolution Gas Chromatography.
Benzene (Alternative Test Method)	ASTM D6729–14, Standard Test Method for Determination of Individual Components in Spark Ignition Engine Fuels by 100-Metre Capillary High-Resolution Gas Chromatography.
Aromatics (Designated Primary Test Method) ...	ASTM 6730–01 (Reapproved 2011), Standard Test Method for Determination of Individual Components in Spark Ignition Fuels by 100-Metre Capillary (Pre-Column) High-Resolution Gas Chromatography.
Aromatics (Alternative Test Method)	ASTM D6729–14, Standard Test Method for Determination of Individual Components in Spark Ignition Engine Fuels by 100-Metre Capillary High-Resolution Gas Chromatography.
C6-plus Hydrocarbons (Designated Primary Test Method).	ASTM 6730–01 (Reapproved 2011), Standard Test Method for Determination of Individual Components in Spark Ignition Fuels by 100-Metre Capillary (Pre-Column) High-Resolution Gas Chromatography.
C6-plus Hydrocarbons (Alternative Test Method).	ASTM D6729–14, Standard Test Method for Determination of Individual Components in Spark Ignition Engine Fuels by 100-Metre Capillary High-Resolution Gas Chromatography.

4. Benzene Testing in Gasoline

We are proposing to add ASTM D5769 as a designated primary test method for benzene in gasoline, gas chromatography mass spectrometry (GCMS)-based test method. This would be in addition to the current designated primary gas chromatography (GC)-based test method (ASTM D3606) codified at 40 CFR 80.46(e). Currently, the majority of motor vehicle gasoline in the U.S. contains ethanol. The current GC-based designated primary test method for benzene in gasoline (ASTM D3606) has the potential for interference issues with ethanol in determining the benzene content in gasoline when ethanol is present as an oxygenate in gasoline. This interference issue of ethanol with benzene peaks in ASTM D3606 makes this test method very difficult to use and has significant potential to impact the accuracy of the benzene content test results.³⁴⁵ At the same time, we note

³⁴⁵ ASTM D3606 is difficult to utilize with E10, and as ethanol concentrations increase in motor

that ASTM D3606 has been the designated primary test method for benzene in motor vehicle gasoline since the inception of the RFG fuel program, and technical procedures exist to account for ethanol interference issues with benzene in gasoline. Moreover, the current precision statements in ASTM D3606 do not account for the presence of alcohols in gasoline.³⁴⁶ The GCMS-based test method (ASTM D5769) utilizes both gas chromatography to separate chemical compounds in a gasoline sample and then determines the chemical compounds content by mass by utilizing a mass spectrometry detector. From a technical perspective, the EPA believes ASTM D5769 is a more

vehicle gasoline (such as E15 or higher), we believe the difficulty in resolving ethanol peaks from benzene peaks in the ASTM D3606 chromatogram will increase, thus further increasing the likelihood of interferences between ethanol and benzene.

³⁴⁶ See Note 7, ASTM D3606–10, “Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography.”

accurate and precise test method for determining the benzene content in motor vehicle gasoline regardless of the type of oxygenate it contains. Thus, interference issues in determining the benzene content in motor vehicle gasoline when alcohols are present does not present a concern with ASTM D5769. ASTM D5769 already contains sample component and internal standard values, calibration requirements, quality control reference material for benzene in motor vehicle gasoline, and precision statements for repeatability and reproducibility have been developed as well.³⁴⁷ The EPA is not proposing to change the PBATMA requirements for benzene in motor vehicle gasoline that were promulgated in the Tier 3 rule at 40 CFR 80.47. Thus, the regulated community will continue to have the flexibility to utilize ASTM

³⁴⁷ ASTM D5769–10, “Standard Test method for Determination of Benzene, Toluene, and Total Aromatics in Finished Gasolines by Gas Chromatography.”

D3606 for measuring the benzene content in motor vehicle gasoline as well as any other alternative test method that meets the PBATMA requirements for benzene content in motor vehicle gasoline.

As previously explained, we are also proposing removal of the sunset date for designated primary test methods. As a result of this removal, the designated primary test methods for benzene in gasoline would be exempt from accuracy and precision qualification requirements at 40 CFR 80.47.

B. Oxygenate Added Downstream in Tier 3

After the Tier 3 rule was published,³⁴⁸ we received several questions concerning the language at 40 CFR 80.1603(d) about accounting for downstream oxygenate blending in refiners' and importers' average annual sulfur calculations. Specifically, some refiners asked whether 40 CFR 80.1603(d) is consistent with the related RFG provisions for downstream oxygenate blending in 40 CFR 80.69. Currently, refiners may certify RFG after the addition of oxygenate to the RBOB sample at the refinery lab (creating a so-called "hand blend"), as allowed in 40 CFR 80.69(a). The Tier 3 regulations at 40 CFR 80.1603(d) require that refiners and importers account for downstream oxygenate blending to any gasoline or BOB by volume weighting the sulfur content of the gasoline or BOB with the sulfur content of the added oxygenate. Under the Tier 3 regulations, refiners and importers may either rely upon test results of batches of oxygenate supplied by the producer of the oxygenate or use an assumed value of 5.00 ppm added at

10 volume percent ethanol concentration if actual sulfur results are not available. These refiners and importers suggested that the regulatory language at 40 CFR 80.1603(d) may be interpreted to continue to allow the use of hand-blended RBOB samples for determining oxygenate sulfur content added downstream by arguing that the language at 40 CFR 80.1603(d) only applied to conventional gasoline and CBOB.

The EPA intended for the downstream oxygenate blending regulations at 40 CFR 80.1603(d) to apply to all gasoline and BOBs, not just conventional gasoline and CBOB. In the preamble to the Tier 3 rule, the EPA explained that the "final rule requires that in determining their compliance with today's sulfur standards, refiners and importers must either use the actual sulfur content of the DFE established through testing of the DFE actually blended or assume a 5 ppm sulfur content for the DFE added downstream. To prevent potential bias, a refiner or importer must choose to use only one method during each annual compliance period."³⁴⁹ The regulations at 40 CFR 80.101(d)(4) sets forth the criteria that a refiner must meet to include downstream ethanol in their conventional gasoline compliance calculations, and 40 CFR 80.69 sets forth the criteria a refiner must meet to include downstream ethanol in their RFG or RBOB compliance calculations. If a refiner satisfies these criteria, 40 CFR 80.1603(d) sets forth the mechanism for accounting for downstream ethanol in annual compliance calculations for all gasoline and BOBs. This section of the

regulations was designed to ensure that all refiners calculate their annual average sulfur levels by including the ethanol that is actually added to their gasoline or BOBs, or the default value of 5 ppm. This prevents refiners from using hand blends prepared with ethanol that has less sulfur than is actually blended with the refiner's gasoline or BOB for their compliance calculations.

Although the EPA believes that 40 CFR 80.1603(d) clearly applies to all gasoline and BOBs, not just RFG or RBOB, we are proposing minor amendments to assure that the regulated community will not misinterpret these requirements. We are also proposing minor amendments to the Tier 3 sulfur reporting requirements at 40 CFR 80.1652 to better accommodate the inclusion of downstream oxygenate blending in annual average sulfur compliance demonstrations. These added requirements would help align the reported batch information with the annual average compliance report and is necessary to ensure that refiners met both the per-gallon and annual average sulfur standards. We also seek comment on whether we should adopt similar provisions for the gasoline benzene program.

C. Technical Corrections and Clarifications

We are proposing numerous technical corrections to the EPA's fuels programs. These amendments are being proposed to correct inaccuracies and oversights in the current regulations. These proposed changes are described in Table IX.C-1 below. We request comment on all of these proposed changes.

TABLE IX.C-1—MISCELLANEOUS TECHNICAL CORRECTIONS AND CLARIFICATIONS TO TITLE 40

Part and section of Title 40	Description of revision
79.51(f)(6)(iii), 79.59(a)(1), 80.27(e)(1)(i), 80.69(a)(11)(viii)(C), 80.93(d)(4), 80.174(b), 80.174(c), 80.235(b), 80.290(b), 80.533(b), 80.574(b)(1), 80.595(b), 80.607(a), 80.855(c)(2), 80.1285(b), 80.1340(b), 80.1415(c)(4), 80.1441(h), 80.1442(i), 80.1443(d)(2), 80.1449(d), 80.1454(h)(6)(iii), 80.1502(b)(5)(i), 80.1502(b)(5)(ii), 80.1622(g), 80.1625(c)(2), and 80.1656(h).	Amended by redirecting the mailing addresses to the new address section in 80.10.
80.9	Amended by updating the incorporation by reference (IBR) to the most recent ASTM version for "Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications," ASTM E29-02, which is now ASTM E29-13. ASTM E29-13 assists our regulated entities in determining the number of significant digits when rounding a test result or measurement for determining conformance with our fuel standards.
80.10	Amended by adding a new address section that reflects the address change.
80.27(b)	Amended by clarifying the PBATMA implementation for RVP compliance assurance measurements.

³⁴⁸ See 79 FR 23414 (April 28, 2014).

³⁴⁹ See 79 FR 23544 (April 28, 2014).

TABLE IX.C-1—MISCELLANEOUS TECHNICAL CORRECTIONS AND CLARIFICATIONS TO TITLE 40—Continued

Part and section of Title 40	Description of revision
80.46	Amended by clarifying that the PBATMA requirements in 80.47 are now effective, removing the VCSB alternative analytical test methods from 80.46, as the VCSB analytical test methods in 80.46 must now meet the requirements in 80.47, and adding test methods and corresponding IBRs for benzene, aromatics, and C6-plus hydrocarbons in pentane.
80.47(b)(2), 80.47(c)(2), 80.47(d)(2), 80.47(e)(2), 80.47(f)(2), 80.47(g)(2), 80.47(h)(2), 80.47(i)(2), 80.47(j)(2), and 80.47(l)(4).	Amended by removing the reference to the October 28, 2013, date and making the designated primary test methods exempt from the applicable accuracy and precision requirements of 40 CFR 80.47, given that there are SQC requirements for these methods that will verify if they are being carried out properly.
80.47(b)(2)(i) and 80.47(b)(2)(ii)	Amended by clarifying accuracy criterion for sulfur in gasoline by adding examples with accuracy criterion.
80.47(c)(2)(i) and 80.47(c)(2)(ii)	Amended by clarifying accuracy criterion for sulfur in butane by adding examples with accuracy criterion.
80.47(l)(2)(i)	Amended by clarifying that test facilities meet applicable precision requirements for VCSB method defined and non-VCSB absolute fuel parameters.
80.47(n)(1)(i), 80.47(o)(1)(i), 80.47(p)(1)(i), and 80.47(p)(2)(i).	Removing the accuracy SQC requirement for pre-treatment and assessment of results from the check standard testing after at least 15 testing occasions as described in section 8.2 of ASTM D6299.
80.47(n)(1)(ii), 80.47(o)(1)(ii), and 80.47(p)(1)(ii)	Clarifying the expanded uncertainty of the accepted reference value of consensus named fuels shall be included in the accuracy SQC qualification criterion.
80.47(o)(1)(i)	Clarifying participation in a commercially available Inter Laboratory Crosscheck Program (ILCP) at least three times a year meeting the ASTM D6299 requirements for ILCP check standards that meet the requirements for absolute differences between test results and the accepted reference value of the check standard based on the designated primary test method obtained through participation in the ILCP satisfies the accuracy SQC requirement as well as appropriate calculation for adherence to SQC criteria. Also clarifying the accuracy SQC criteria is 0.75 times the published reproducibility of the applicable designated primary test method for each method defined fuel parameter to be consistent with non-VCSB method defined fuel parameter accuracy SQC requirements.
80.47(n)(2)(i), 80.47(o)(2)(i), and 80.47(p)(3)(i)	Clarification in Precision SQC requirements that the test facility's long term precision standard deviation, as demonstrated by control charts, is expected to meet applicable precision criterion for the test method.
80.164(a)(5) and 80.177(d)(1)(ii)	Amended by updating the IBR to the most recent ASTM version for "Standard Specification for Automotive Spark-Ignition Engine Fuel," ASTM D4814-95c and ASTM D4814-13b, which is now ASTM D4814-14b. ASTM D4814-14b is gasoline specifications used in making certification fuel for meeting gasoline detergent requirements.
80.177(d)(1)(i)	Amended by updating the IBR to the most recent ASTM version for "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel," ASTM D4806-13a, which is now ASTM-4806-15 ethanol specification. ASTM D4806-15 is ethanol specifications used in making certification fuel for meeting gasoline detergent requirements.
80.1240(a)(1)(i) and 80.1603(f)	Amended by clarifying that gasoline benzene and sulfur credits must be used for compliance purposes (i.e., retired) instead of simply being obtained.
80.1401	Adding definition of affiliate, foreign renewable fuel producer, RIN-generating foreign producer, and non-RIN-generating foreign producer; amended by revising the definition of foreign ethanol producer and renewable fuel.
80.1426(a)(2), 80.1426(c)(4)-(5), 80.1450(b), 80.1451(b), 80.1451(g)(1)(ii)(D), 80.1451(i)(2)(x), 80.1454(p), and 80.1466(b)-(p).	Amended by applying the new and revised definitions in 80.1401.
80.1440	Amended by adding a new paragraph related to RIN responsibilities for renewable fuel used for purposes subject to national security exemptions.
80.1450(b)(1)(ix)(A), 80.1451(b)(1)(ii)(l), 80.1451(g)(1)(ii)(l), 80.1452(b)(11), and 80.1464(b)(1)(ii).	Amended by clarifying the term "denaturant" to mean "ethanol denaturant."
80.1450(g)(9)	Amended by clarifying the third-party auditor registration updates language to make QAP updates consistent with registration updates.
80.1466(d)(3)(ii)	Amended erroneous reference for third-party independence requirements from 80.65(e)(2)(iii) to 80.65(f)(2)(iii).
80.1468(b)(1)	Amended by updating the IBR to the most recent ASTM version for "Standard Guide for Use of the Petroleum Measurement Tables," ASTM D1250-08, which is now ASTM D1250-08 (2013). ASTM D1250-08 (2013) is a standard guide used by our regulated community for determining temperature corrected standardized volumes under the renewable fuels program.
80.1468(b)(3)	Amended by updating the IBR to the most recent ASTM version for "Standard Test Method for Laboratory Standardization and Calibration of Hand-Held Moisture Meters," ASTM D4444-08, which is now ASTM D4444-13. ASTM D4444-13 is a test method used for determining moisture content of wood samples in that must be met when qualifying for RINs for renewable fuels.

TABLE IX.C-1—MISCELLANEOUS TECHNICAL CORRECTIONS AND CLARIFICATIONS TO TITLE 40—Continued

Part and section of Title 40	Description of revision
80.1468(b)(4)	Amended by updating the IBR to the most recent ASTM version for “Standard Specification for Biodiesel Blend Stock (B100) for Middle Distillate Fuels,” ASTM D6751-09, which is now ASTM D6751-15. ASTM D6751-15 is biodiesel fuel specifications that must be met qualifying for RINs for renewable fuels.
80.1468(b)(7)	Amended by updating the IBR to the most recent ASTM version for “Standard Test Method for Analysis of Wood Fuels,” ASTM E870-82, which is now ASTM E870-82 (2013). ASTM E870-82 (2013) is a test method that covers the proximate and ultimate analysis of wood fuels and the determination of the gross calorific value of wood sampled and prepared by prescribed test methods and analyzed according to ASTM established procedures that must be met when qualifying for RINs for renewable fuels.
80.1468(b)(8)	Amended by updating the IBR to the most recent ASTM version for “Standard Specification for Diesel Fuel Oils,” ASTM D975-13a, which is now ASTM D975-15. ASTM D975-15 is diesel fuel specifications that must be met qualifying for RINs for renewable fuels.
80.1469(e)(3)	Amended by clarifying that quality assurance plans submitted as part of annual registration renewal are approved at the same time as a third-party auditor’s registration.
80.1469(f)(1)	Amended to more clearly link updates to quality assurance plans with updates to a third-party auditor’s registration under 80.1450(g)(9).
80.1501(b)(3)(i)	Amended to reflect that the word “ATTENTION” should be in black font, not orange.
80.1503	Amended by revising the section to clarify that the absolute approach shall be used in determining compliance assurance with respect to ethanol content.
80.1600	Amended by removing the duplicative definition of “Ethanol denaturant,” which is already defined in 80.2(iii).
80.1609(a)	Amended by revising cross-reference to 80.1603(d)(3).
80.1616(c)(3)	Amended by clarifying that Tier 2 credits generated from January 1, 2017 through December 31, 2019, must be used between January 1, 2017 and December 31, 2019.
80.1650(b)(3)	Amended by clarifying that the oxygenate blender registration dates also apply to persons who blend oxygenate into CBOB and conventional gasoline.
80.1650(e)(1)(iii)(A) and 80.1650(g)(1)(iii)(A)	Amended by clarifying that records are kept at the oxygenate production “facility” (instead of the oxygenate production “refinery”).

X. Economic Impacts

The proposed provisions for biointermediates and the proposed provisions for EFF and gasoline produced at blender pumps would have economic impacts. The proposal would provide significant additional regulatory flexibility, streamlined compliance provisions, and the opportunity for increased biofuel production at reduced cost. The cost savings are anticipated to far outweigh the minor costs imposed for demonstrating compliance. In most cases, the associated costs would only apply to those parties that elect to take advantage of the proposed flexibilities because the potential economic benefits outweigh the costs. This proposal contains minor additional registration, reporting, and recordkeeping requirements that would apply to some parties in the biofuel production and distribution system that do not take advantage of the proposed flexibilities as well as those that do. We are also seeking comment in this action on potential provisions for generating RINs from renewable electricity and seek comment on what economic impacts they may have.

A. What are the benefits?

1. Proposed Biointermediates Provisions and Other Fuels Program Revisions

Under the current RFS regulations, the production of renewable biofuels from feedstocks listed in approved pathways must all take place at the same facility. Numerous companies have approached the EPA about the use of biointermediates to produce renewable fuels as part of the RFS program. Many of the biointermediates produced by these companies would be used by renewable fuel producers to generate cellulosic and other advanced renewable fuels. This proposal would allow for the production of renewable fuel from biointermediates by amending the RFS regulations to allow the new flexibility. By allowing producers to use biointermediates to produce renewable fuels, the EPA is enabling the production of potentially significant future volumes of cellulosic and other advanced biofuels at reduced cost.

2. Proposed Provisions for EFF and Producing Gasoline at Blender Pumps

Without the regulatory flexibilities in this proposed rule, the expansion of blender pumps and use of natural gasoline as an EFF blendstock could not be accommodated while at the same time continuing to ensure the control of emissions from FFVs. We anticipate that

the flexibility to use natural gasoline of appropriate quality to produce EFF provided by this proposal could reduce the EFF production cost. For example, we project that the use of natural gasoline to produce E70 in place of gasoline might reduce the cost of E70 by 5 percent on an energy adjusted basis.³⁵⁰ This could help to further the use of increased volumes of renewable fuels under the RFS program. The increased use of natural gasoline in motor fuels could also have energy security benefits, providing another domestic outlet for this feedstock currently in oversupply.

Our proposal to regulate E16-50 quality with other higher-level ethanol blends that can only be used in FFVs rather than to continue to treat E16-50 as gasoline would provide a practical and streamlined means for blender pump-refiners to demonstrate compliance while continuing to ensure the environmental quality to these blends. Our proposal to allow gasoline to be made at blender pumps from September 16 through May 31 without triggering the full gasoline refiner requirements would likewise provide a practical and streamlined means for blender pump-refiners to demonstrate

³⁵⁰ See the memorandum, “Potential Impact on the Cost of Ethanol Flex Fuel from the Use of Natural Gasoline as a Blendstock,” available in the docket for this action.

compliance while ensuring the environmental quality of the gasoline they produce.³⁵¹ Without these proposed changes, it may be impractical for blender pump-refiners to produce E16–50 or E15 while meeting the existing EPA compliance demonstration requirements.³⁵²

3. Other Proposed RFS and Fuels Program Revisions

The proposed revisions discussed in sections V, VI, VIII, and IX of this preamble would all help support the RFS and other fuels programs by doing such things as creating new renewable fuel production pathways, clarifying various provisions of the RFS program, and providing numerous technical corrections.

B. What are the cost impacts?

1. Proposed Biointermediates Provisions and Other Fuels Program Revisions

The ability to produce renewable fuels and generate RINs for them using biointermediates holds significant promise for reducing the costs of producing cellulosic and other advanced biofuels. By concentrating renewable fuel feedstocks prior to shipment to the renewable fuel production facility and/or by taking advantage of existing infrastructure, producers can significantly reduce their production costs. At the same time, allowing the use of biointermediates will require some additional minor compliance costs. The proposed provisions for production of renewable fuel from biointermediates include new registration, reporting, recordkeeping, and PTD requirements for biointermediate producers. There would also be additional recordkeeping and reporting requirements for renewable fuel producers that use biointermediates. These requirements are typical of other EPA fuel programs, and the associated costs are modest. As this is a new flexibility that is not currently available to producers in the RFS program, the EPA does not believe that a renewable fuel producer would choose to take advantage of this program unless there was sufficient economic incentive for the producer to do so. Current renewable fuel producers would not be compelled to use biointermediates, and as such, any costs

associated with these provisions are purely voluntary.

2. Proposed EFF Provisions

Overall, we anticipate only a cost savings regarding the cost to produce EFF blends and demonstrate compliance with the EPA fuel quality requirements. This proposal would provide additional flexibility regarding the hydrocarbon blendstocks that could be used to produce EFF. These new flexibilities would apply to all EFF blends. Currently, the only hydrocarbon blendstocks that producers of E85 may use to be assured of compliance with the sub-sim requirement for E85 are certified gasoline and BOBs. Under the proposed EFF bulk blender-refiner provisions, certified natural gasoline EFF blendstock could also be used to produce EFF. The EFF bulk blender-refiner certification option includes streamlined compliance demonstration requirements to limit the testing that would be required when such certified blendstocks are used. We anticipate that the ability to use certified natural gasoline EFF blendstock would be welcomed by EFF bulk blender-refiners due to the anticipated lower cost compared to the use of gasoline or BOBs.³⁵³ Under the proposed EFF full-refiner and importer provisions, uncertified natural gasoline EFF blendstock could be used to produce EFF provided that each batch is tested to demonstrate compliance. The ability to blend other uncertified natural gasoline EFF blendstock would also provide additional flexibility that may prove useful to producers of EFF. Taking advantage of the proposed blending flexibility to produce EFF would be voluntary. EFF producers that continue to use only gasoline and BOBs that do not take advantage of the 1 psi waiver for E10 as hydrocarbon blendstocks would not be affected by the new regulatory requirements associated with the proposed blending flexibility. EFF bulk blender-refiners that use gasoline and BOBs that take advantage of the 1 psi waiver would have a minimal additional burden to demonstrate compliance with the proposed EFF RVP requirements. Such EFF bulk blender-refiners could use a calculative RVP compliance tool that uses common business records to demonstrate compliance with the proposed EFF RVP requirements.³⁵⁴ EFF

producers would only choose to be subject to the new regulatory requirements associated with the use of natural gasoline as an EFF blendstock to the extent that the economic benefits of the proposed blending flexibility outweighs the associated costs.

This proposal would also provide streamlined provisions for EFF blender pump-refiners to demonstrate that the blends they produce are in compliance with EPA fuel quality requirements. Under the current regulations, E16–50 blends are treated as gasoline. Consequently, blender pump-refiners are currently subject to all of the requirements of a gasoline refiner, including per-batch testing, registration, and annual reporting. Under this proposal, E16–50 would no longer be treated as gasoline, and would instead be subject to new fuel quality requirements that apply to all EFF (E16–83). This would allow EFF blender pump-refiners to demonstrate compliance with the proposed fuel quality requirements for the EFF they produce by maintaining PTDs for the parent blends they use to make EFF and participating in an EFF quality survey.

Under the current regulations, the production of the E10 or E15 gasoline blends at blender pumps also subjects blender pump-refiners to all of the gasoline refiner requirements. This proposal would provide a streamlined means for producers of gasoline at blender pumps to demonstrate compliance with these gasoline refiner requirements by keeping the PTDs from the parent blends that were used. The proposed provisions for producers of EFF and gasoline at blender pumps are consistent with the common business practices and commensurate with the ability of blender pump-refiners to affect the quality of the EFF and gasoline (E15 and E10) they produce. Hence, we expect that these proposed provisions would substantially reduce the cost of compliance for blender pump-refiners.

The proposed provisions for EFF include new registration, reporting, recordkeeping, PTD, and fuel survey requirements for EFF full-refiners and bulk blender-refiners as well as recordkeeping requirements for distributors and retailers of EFF and manufacturers of additives for use in EFF. To support the proposed provisions to allow the use of certified natural gasoline EFF blendstock, this proposal also includes registration, batch testing, reporting, recordkeeping, and PTD requirements for natural gasoline EFF blendstock refiners and

blending records. See section IV.F.3 of this proposal for a discussion of the RVP compliance tool.

³⁵¹ We are also requesting comment on how to streamline the compliance demonstration requirements for blender pump operators who produce gasoline from June 1 through September 15 (see section IV.E of this preamble).

³⁵² For example, the existing regulations would require that each batch of fuel produced at a blender pump (*i.e.*, each delivery to a vehicle) be sampled and tested to demonstrated compliance.

³⁵³ See the memorandum, “Potential Impact on the Cost of Ethanol Flex Fuel from the Use of Natural Gasoline as a Blendstock,” available in the docket for this action.

³⁵⁴ The RVP compliance tool employs information on the RVP of the blendstocks used to make EFF that is available on PTDs and EFF

importers. The proposed requirements are consistent with other EPA fuel programs, and the associated costs are modest and necessary to support EPA compliance oversight.³⁵⁵ The use of natural gasoline as an EFF blendstock would represent a new market opportunity to natural gasoline producers. We anticipate that there would be sufficient economic incentive to producers of natural gasoline to overcome the burden of entry into this new outlet for their natural gasoline product. However, natural gasoline producers would not be compelled to do so and could choose to continue to use existing market outlets for their product.

3. Other Proposed RFS and Fuels Program Revisions

The EPA does not anticipate that there would be any significant costs associated with the proposed revisions to the RFS and other fuels programs discussed in sections V, VI, VIII, and IX of this preamble.

XI. Statutory and Executive Order Reviews

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review because it raises novel legal or policy issues. Any changes made in response to OMB recommendations have been documented in the docket.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR numbers 2545.01 (for the proposed biointermediate provisions) and 2544.01 (for the proposed EFF provisions). You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The information to be collected for the proposed biointermediate provisions are based on the proposed registration, recordkeeping, reporting, and PTD requirements in 40 CFR part 80, subpart M, which would be mandatory for biointermediate producers and renewable fuel producers that use a biointermediate. The proposed recordkeeping, reporting, and PTD requirements require only the specific

information needed to determine compliance. All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to the EPA policies set forth in 40 CFR part 2, subpart B.

Respondents/affected entities: Biointermediate producers and renewable fuel producers.

Respondent's obligation to respond: Mandatory. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414).

Estimated number of respondents: 45.
Frequency of response: Annually, quarterly.

Total estimated burden: 100,532 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$4,030,939 (per year).

The information to be collected for the proposed EFF provisions are based on the proposed registration, recordkeeping, reporting, and PTD requirements in 40 CFR part 80, subpart N, which would be mandatory for producers of EFF and natural gasoline EFF blendstock. The proposed recordkeeping, reporting, and PTD requirements require only the specific information needed to determine compliance. All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to the EPA policies set forth in 40 CFR part 2, subpart B.

Respondents/affected entities: EFF refiners and importers, natural gasoline EFF blendstock refiners and importers, independent surveyors, and independent auditors.

Respondent's obligation to respond: Mandatory. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414).

Estimated number of respondents: 1,850.

Frequency of response: Annually.
Total estimated burden: 44,826 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$4,577,031 (per year).

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.

Submit your comments on the EPA's need for this information, the accuracy

of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to oria_submissions@omb.eop.gov, Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than December 16, 2016. The EPA will respond to any ICR-related comments in the 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. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. The small entities directly regulated by this proposed rule are primarily EFF refiners, biointermediate producers, and renewable fuel producers. To the extent small EFF refiners take advantage of the flexibilities provided by this action, it will only result in a cost savings. The requisite compliance requirements that go along with the proposed flexibilities will impose only minor costs in comparison to the savings; otherwise parties would not take advantage of the flexibility offered. Similarly, we do not believe that a small biointermediate producer or renewable fuel producer would choose to take advantage of the proposed program for biointermediates unless there was sufficient economic incentive for them to do so. Current small renewable fuel producers would not be compelled to use biointermediates, and as such, any costs associated with these provisions are purely voluntary. We do not anticipate that there will be any significant costs associated with the other proposed revisions to the RFS and other fuels programs. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does

³⁵⁵ These costs are discussed in the ICR associated with this rule, as summarized in section XI.B of this preamble.

not significantly or uniquely affect small governments. The action implements mandates specifically and explicitly set forth in CAA section 211(o) without the exercise of any policy discretion by the EPA. The action imposes no enforceable duty on any state, local, or tribal governments.

E. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. This proposed rule will be implemented at the Federal level and affects transportation fuel refiners, blenders, marketers, distributors, importers, exporters, and renewable fuel producers and importers. Tribal governments would be affected only to the extent they produce, purchase, and use regulated fuels. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those

regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it implements specific standards established by Congress in statutes (CAA section 211(o)).

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

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action provides a new/expanded market opportunity for natural gasoline, allows renewable fuel suppliers to take advantage of biointermediate feedstocks that might make fuel production more economical, and proposes various other revisions to the RFS program. There are no additional costs for sources in the energy supply, distribution, or use sectors.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action involves technical standards. The EPA proposes to update a number of regulations that already contain voluntary consensus standards, practices, and specifications to more recent versions of these standards, and

to propose the use of VCS for motor vehicle gasoline, EFF, natural gasoline EFF blendstock, butane, and pentane. In accordance with the requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the use of ASTM test methods listed below in Table XI.I–1. A detailed discussion of these test methods can be found in sections IV.F.2, IX.A, and IX.C of this preamble. The standards may be obtained through the ASTM Web site (www.astm.org) or by calling ASTM at (610) 832–9585.

This proposed rulemaking also involves environmental monitoring or measurement. Consistent with the EPA’s PBMS approach, in this proposal we have decided to seek comment on to allow the use of any method that meets prescribed performance criteria for sulfur in pentane, as well as sulfur, benzene, aromatic content, distillation, RVP, and oxygenate content in EFF and natural gasoline EFF blendstock. The PBMS approach is intended to be more flexible and cost effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. The EPA is proposing not to preclude the use of any one method, whether it constitutes a VCS or not, as long as it meets the performance criteria specified in this proposal.

TABLE XI.I–1—DESIGNATED ANALYTICAL TEST METHODS AND SPECIFICATIONS FOR GASOLINE, DENATURED FUEL ETHANOL FOR USE WITH GASOLINE, DIESEL, BIODIESEL, PENTANE, ETHANOL FLEX FUEL, AND NATURAL GASOLINE ETHANOL FLEX FUEL BLENDSTOCK

Fuel parameter or specification	Designated analytical method or specification
Manual sampling	ASTM D4057–12.
Automated sampling	ASTM D4177–95 (Reapproved 2010).
Sample compositing	ASTM D5854.
Standard Practice for Sampling and Handling of Fuels for Volatility Measurement	ASTM D5842–07.
Sulfur in EFF and Natural Gasoline EFF Blendstock	ASTM D2622–10.
Sulfur in EFF and Natural Gasoline EFF Blendstock	ASTM D1266–13.
Sulfur in EFF and Natural Gasoline EFF Blendstock	ASTM D3120–08 (Reapproved 2014).
Sulfur in EFF and Natural Gasoline EFF Blendstock	ASTM D5453–12.
Sulfur in EFF and Natural Gasoline EFF Blendstock	ASTM D6920–13.
Sulfur in EFF and Natural Gasoline EFF Blendstock	ASTM D7220–12.
Sulfur in EFF and Natural Gasoline EFF Blendstock	ASTM D7039–13.
Benzene in EFF and Natural Gasoline EFF Blendstock	ASTM D5769–10.
Benzene in EFF and Natural Gasoline EFF Blendstock	ASTM D5580–13.
Benzene in EFF and Natural Gasoline EFF Blendstock	ASTM D3606–10.
Benzene in EFF and Natural Gasoline EFF Blendstock	ASTM D6730–01 (Reapproved 2010).
RVP in EFF and Natural Gasoline EFF Blendstock	ASTM D5191–13.
RVP in EFF and Natural Gasoline EFF Blendstock	ASTM D5842–14.
RVP in EFF and Natural Gasoline EFF Blendstock	ASTM D6378–10.
Distillation in Natural Gasoline EFF Blendstock	ASTM D86–12.
Oxygenate Content in EFF and Natural Gasoline EFF Blendstock	ASTM D5599–00 (Reapproved 2010).
Oxygenate Content in EFF and Natural Gasoline EFF Blendstock	ASTM D4815–15a.
Benzene in Motor Vehicle Gasoline	ASTM D5769–10.
Aromatics in Pentane	ASTM D6730–01 (Reapproved 2011).
Aromatics in Pentane	ASTM D6729–14.

TABLE XI.I-1—DESIGNATED ANALYTICAL TEST METHODS AND SPECIFICATIONS FOR GASOLINE, DENATURED FUEL ETHANOL FOR USE WITH GASOLINE, DIESEL, BIODIESEL, PENTANE, ETHANOL FLEX FUEL, AND NATURAL GASOLINE ETHANOL FLEX FUEL BLENDSTOCK—Continued

Table with 2 columns: Fuel parameter or specification, Designated analytical method or specification. Rows include Benzene in Pentane, C6 plus hydrocarbons in Pentane, Standard Guide for Use of Petroleum Measurement Tables, etc.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations.

List of Subjects in 40 CFR Part 79

Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

List of Subjects in 40 CFR Part 80

Fuel additives, Gasoline, Imports, Incorporation by reference, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: October 3, 2016.

Gina McCarthy, Administrator.

For the reasons set forth in the preamble, the EPA proposes to amend 40 CFR parts 79 and 80 as follows:

PART 79—REGISTRATION OF FUEL AND FUEL ADDITIVES

1. The authority citation for part 79 continues to read as follows:

Authority: 42 U.S.C. 7414, 7524, 7545 and 7601.

Subpart D—Designation of Fuels and Additives

2. Section 79.32 is amended by revising paragraph (a)(3) to read as follows:

§ 79.32 Motor vehicle gasoline.

(a) * * * (3) Motor vehicle gasoline, leaded, non-premium—motor vehicle gasoline that contains more than 0.05 gram of lead per gallon but is not sold as “premium.”

* * * * *

Subpart F—Testing Requirements for Registration

3. Section 79.51 is amended by revising the last sentence of paragraph (f)(6)(iii) to read as follows:

§ 79.51 General requirements and provisions.

* * * * *

(f) * * * (6) * * * (iii) * * * The registrants’ communications should be sent to the following address: Attn: Fuel/Additives Registration, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Mail Code 6405A, Washington, DC 20460.

* * * * *

4. Section 79.59 is amended by revising the last sentence of paragraph

(a)(1) introductory text to read as follows:

§ 79.59 Reporting requirements.

(a) * * * (1) * * * Forms for submitting this data may be obtained from EPA at the following address: Attn: Fuel/Additives Registration, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Mail Code 6405A, Washington, DC 20460.

PART 80—REGULATION OF FUEL AND FUEL ADDITIVES

5. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

Subpart A—General Provisions

- 6. Section 80.2 is amended by: a. Revising paragraphs (h) and (l); b. Adding paragraphs (p) and (q); c. Revising paragraphs (r) and (t); d. Adding paragraph (aa); and e. Revising paragraphs (vvv) and (aaaa).

The revisions and additions read as follows:

§ 80.2 Definitions.

* * * * *

(h) Refinery means any facility, including but not limited to, a plant, tanker truck, or vessel where gasoline, diesel fuel, ethanol flex fuel, or natural gasoline ethanol flex fuel blendstock is produced, including any facility at which blendstocks are combined to produce gasoline, diesel fuel, ethanol flex fuel, or natural gasoline ethanol flex fuel blendstock, or at which blendstock is added to gasoline, diesel fuel, ethanol

flex fuel, or natural gasoline ethanol flex fuel blendstock.

* * * * *

(l) *Distributor* means any person who transports or stores or causes the transportation or storage of gasoline, diesel fuel, ethanol flex fuel, or natural gasoline ethanol flex fuel blendstock at any point between any gasoline, diesel fuel, ethanol flex fuel, or natural gasoline ethanol flex fuel refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility.

* * * * *

(p) *Blendstock for oxygenate blending* or *BOB* means gasoline blendstock (RBOB, CBOB, or GTAB) that could become finished gasoline solely upon the addition of an oxygenate.

(q) *Ethanol Flex Fuel* or *EFF* means a fuel that is not gasoline, has an ethanol content greater than that covered under a waiver obtained from the Administrator pursuant to the requirements of Clear Air Act section 211(f)(4), contains no more than 83 volume percent ethanol, and is used, intended for use, or made available for use in flex-fuel vehicles or flex-fuel engines.

(r) *Importer* means a person who imports gasoline, gasoline blending stocks or components, diesel fuel, ethanol flex fuel, or natural gasoline ethanol fuel blendstock from a foreign country into the United States (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands).

* * * * *

(t) *Carrier* means any distributor who transports or stores or causes the transportation or storage of gasoline, diesel fuel, BOB, ethanol flex fuel, or natural gasoline ethanol flex fuel blendstock without taking title to or otherwise having any ownership of the gasoline, diesel fuel, BOB, ethanol flex fuel, or natural gasoline ethanol flex fuel blendstock and without altering either the quality or quantity of the gasoline, diesel fuel, BOB, ethanol flex fuel, or natural gasoline ethanol flex fuel blendstock.

* * * * *

(aa) *Natural gasoline ethanol flex fuel blendstock* means a mixture of hydrocarbons composed mostly of pentanes that is separated either from natural gas at a natural gas processing plant or from crude oil at a petroleum refinery, and that is blended into, intended to be blended into, or offered to be blended into ethanol flex fuel.

* * * * *

(vvv) *Denatured Fuel Ethanol* or *DFE* means an alcohol of the chemical formula C_2H_6O that contains an ethanol denaturant to make it unfit for human consumption, is used or is intended for use to produce gasoline or ethanol flex fuel, and meets the requirements of § 80.1610.

* * * * *

(aaaa) *Conventional gasoline blendstock for oxygenate blending* or *CBOB* means gasoline blendstock that could become conventional gasoline solely upon the addition of oxygenate.

* * * * *

■ 7. Section 80.8 is amended by revising the section heading and introductory text to read as follows:

§ 80.8 Sampling methods for gasoline, diesel fuel, fuel additives, ethanol flex fuel, natural gasoline ethanol flex fuel blendstock, and renewable fuels.

The sampling methods specified in this section shall be used to collect samples of gasoline, diesel fuel, blendstocks, fuel additives, ethanol flex fuel, natural gasoline ethanol flex fuel blendstock, and renewable fuels for purposes of determining compliance with the requirements of this part.

* * * * *

■ 8. Section 80.9 is revised to read as follows:

§ 80.9 Rounding a test result for determining conformance with a fuels standard.

(a) For purposes of determining compliance with the fuel standards of 40 CFR part 80, a test result will be rounded to the nearest unit of significant digits specified in the applicable fuel standard in accordance with the rounding method described in ASTM E29–13, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications, approved August 1, 2013.

(b) ASTM E29–13 is incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428–2959. Copies may be inspected at the Air Docket, EPA/DC, William Jefferson Clinton Building West, Room B102, 1301 Constitution Ave. NW., Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030 or go to:

■ 9. Section 80.10 is added to read as follows:

§ 80.10 Addresses.

(a) For submitting notifications, applications, petitions, or other communications with the EPA, use one of the following addresses for mailing:

(1) For U.S. Mail: Attn: [TITLE AS DIRECTED], U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Mail Code 6405A, Washington, DC 20460

(2) For commercial service: Attn: [TITLE AS DIRECTED], U.S. Environmental Protection Agency, William Jefferson Clinton Building North, Mail Code 6405A, Room 6520V, 1200 Pennsylvania Ave. NW., Washington, DC 20004; Phone: 1–800–385–6164.

(b) [Reserved]

Subpart B—Controls and Prohibitions

■ 10. Section 80.27 is amended by revising paragraphs (b) and (e)(1)(i) to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

* * * * *

(b) *Determination of compliance.* Compliance with the standards listed in paragraph (a) of this section shall be determined by the use of the sampling methodologies specified in § 80.8 and the testing methodology specified in § 80.46(c) until December 31, 2015, and § 80.47 beginning January 1, 2016.

* * * * *

(e) * * *

(1) * * *

(i) Any person may request a testing exemption by submitting an application that includes all the information listed in paragraphs (e)(3) through (6) of this section to the attention of “Test Exemptions” to the address in § 80.10(a).

* * * * *

Subpart D—Reformulated Gasoline

■ 11. Section 80.46 is amended by:
 ■ a. Revising paragraphs (a), (b), (d), (e), (f), and (g);
 ■ b. Redesignating paragraph (h) as paragraph (k) and adding new paragraphs (h) through (j); and
 ■ c. Revising newly redesignated paragraph (k)(1).

The revisions and additions read as follows:

§ 80.46 Measurement of reformulated gasoline and conventional gasoline fuel parameters.

(a) *Sulfur.* Sulfur content of gasoline and butane must be determined by use of the following methods:

(1)(i) Through December 31, 2015, the sulfur content of gasoline must be determined by ASTM D2622.

(ii) Beginning January 1, 2016, the sulfur content of gasoline must be determined by a test method approved under § 80.47.

(2)(i) Through December 31, 2015, the sulfur content of butane must be determined by ASTM D6667.

(ii) Beginning January 1, 2016, the sulfur content of butane must be determined by a test method approved under § 80.47.

(b) *Olefins*. Olefin content must be determined by use of the following methods:

(1) Through December 31, 2015, olefin content must be determined using ASTM D1319.

(2) Beginning January 1, 2016, olefin content must be determined by a test method approved under § 80.47.

* * * * *

(d) *Distillation*. Distillation parameters must be determined by use of the following test methods:

(1) Through December 31, 2015, distillation parameters must be determined using ASTM D86.

(2) Beginning January 1, 2016, distillation parameters must be determined by a test method approved under § 80.47. (Note: The precision estimates for reproducibility in ASTM D86–12 do not apply; see § 80.47(h).)

(e) *Benzene*. Benzene content must be determined by use of the following test methods:

(1) Through December 31, 2015, benzene content must be determined using ASTM D5769 or ASTM D3606, except that ASTM D3606 instrument parameters shall be adjusted to ensure complete resolution of the benzene, ethanol, and methanol peaks because ethanol and methanol may cause interference with ASTM D3606 when present.

(2) Beginning January 1, 2016, benzene content must be determined by a test method approved under § 80.47.

(f) *Aromatic content*. Olefin content must be determined by use of the following methods:

(1) Through December 31, 2015, aromatic content must be determined using ASTM D5769, except the sample chilling requirements in section 8 of this standard method are optional.

(2) Beginning January 1, 2016, aromatic content must be determined by a test method approved under § 80.47.

(g) *Oxygen and oxygenate content analysis*. Oxygen and oxygenate content must be determined by use of the following methods:

(1) Through December 31, 2015, oxygen and oxygenate content must be determined using ASTM D5599.

(2) Beginning January 1, 2016, oxygen and oxygenate content must be determined by a test method approved under § 80.47.

(h) *Benzene in pentane*. (1) Benzene content in pentane must be determined using the primary test method ASTM D6730.

(2) Any refiner, importer, or oxygenate blender may determine benzene content in pentane using ASTM D6729 for purposes of meeting any testing requirement, provided that the test result is correlated with the method specified in paragraph (h)(1) of this section.

(i) *Aromatics in pentane*. (1) Aromatic content in pentane must be determined using the primary test method ASTM D6730.

(2) Any refiner, importer, or oxygenate blender may determine aromatic content in pentane using ASTM D6729 for purposes of meeting any testing requirement, provided that the test result is correlated with the method specified in paragraph (i)(1) of this section.

(j) *C6-plus hydrocarbons in pentane*. (1) C6-plus hydrocarbon content in pentane must be determined using the primary test method ASTM D6730.

(2) Any refiner, importer, or oxygenate blender may determine C6-plus hydrocarbon content in pentane using ASTM D6729 for purposes of meeting any testing requirement, provided that the test result is correlated with the method specified in paragraph (j)(1) of this section.

(k) * * *

(1) *ASTM International material*. The following standards are available from ASTM International, 100 Barr Harbor Dr., P.O. Box C700, West Conshohocken, PA 19428–2959, (877) 909–ASTM, or <http://www.astm.org>:

(i) ASTM D86–12, Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure, approved December 1, 2012 (“ASTM D86”).

(ii) ASTM D1319–13, Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption, approved May 1, 2013 (“ASTM D1319”).

(iii) ASTM D2622–10, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry, approved February 15, 2010 (“ASTM D2622”).

(iv) ASTM D3606–10, Standard Test Method for Determination of Benzene

and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography, approved October 1, 2010 (“ASTM D3606”).

(v) ASTM D5191–13, Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method), approved December 1, 2013 (“ASTM D5191”).

(vi) ASTM D5599–00 (Reapproved 2010), Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection, approved October 1, 2010 (“ASTM D5599”).

(vii) ASTM D5769–10, Standard Test Method for Determination of Benzene, Toluene, and Total Aromatics in Finished Gasolines by Gas Chromatography/Mass Spectrometry, approved May 1, 2010 (“ASTM D5769”).

(viii) ASTM D6667–10, Standard Test Method for Determination of Total Volatile Sulfur in Gaseous Hydrocarbons and Liquefied Petroleum Gases by Ultraviolet Fluorescence, approved October 1, 2010 (“ASTM D6667”).

(ix) ASTM D6730–01 (Reapproved 2011), Standard Test Method for Determination of Individual Components in Spark Ignition Fuels by 100-Metre Capillary (Pre-Column) High-Resolution Gas Chromatography, approved May 1, 2011 (“ASTM D6730”).

(x) ASTM D6729–14, Standard Test Method for Determination of Individual Components in Spark Ignition Fuels by 100-Metre Capillary High-Resolution Gas Chromatography, approved October 1, 2014 (“ASTM D6729”).

* * * * *

■ 12. Section 80.47 is amended by:

■ a. Revising paragraphs (b), (c)(2)(i) and (ii), (c)(3), (d)(2), (e)(2), (f)(2), (g)(2), (h)(2), (i)(2), (j)(2), and (l)(2)(i);

■ b. Adding paragraph (l)(2)(iii); and

■ c. Revising paragraphs (l)(4), (n)(1), (n)(2)(i), (o)(1), (o)(2)(i), (p)(1), (p)(2)(i), and (p)(3)(i).

The revisions and addition read as follows:

§ 80.47 Performance-based Analytical Test Method Approach.

* * * * *

(b) *Precision and accuracy criteria for approval for the absolute fuel parameter of gasoline sulfur and pentane sulfur.*

(1) *Precision*. Beginning January 1, 2016, for motor vehicle gasoline, gasoline blendstock, pentane, and gasoline fuel additives subject to the gasoline sulfur standard at §§ 80.195 and 80.1603, the maximum allowable standard deviation computed from the results of a minimum of 20 tests made over 20 days

(tests may be arranged into no fewer than five batches of four or fewer tests each, with only one such batch allowed per day over the minimum of 20 days) on samples using good laboratory practices taken from a single homogeneous commercially available gasoline must be less than or equal to 1.5 times the repeatability “r” divided by 2.77, where “r” equals the ASTM repeatability of ASTM D7039 (Example: A 10 ppm sulfur gasoline sample: Maximum allowable standard deviation of 20 tests $\leq 1.5 * (1.73 \text{ ppm} / 2.77) = 0.94 \text{ ppm}$). The 20 results must be a series of tests with a sequential record of analysis and no omissions. A laboratory facility may exclude a given sample or test result only if the exclusion is for a valid reason under good laboratory practices and it maintains records regarding the sample and test results and the reason for excluding them.

(2) *Accuracy*. Beginning January 1, 2016, for motor vehicle gasoline, gasoline blendstock, pentane, and gasoline fuel additives subject to the gasoline sulfur standard at §§ 80.195 and 80.1603:

(i) The arithmetic average of a continuous series of at least 10 tests performed using good laboratory practices on a commercially available gravimetric sulfur standard in the range of 1–10 ppm shall not differ from the accepted reference value (ARV) of the standard by more than 0.47 ppm sulfur, where the accuracy criteria is $0.75 * (1.5 * r / 2.77)$, where “r” is the repeatability (Example: $0.75 * (1.5 * 1.15 \text{ ppm} / 2.77) = 0.47 \text{ ppm}$);

(ii) The arithmetic average of a continuous series of at least 10 tests performed using good laboratory practices on a commercially available gravimetric sulfur standard in the range of 10–20 ppm shall not differ from the ARV of the standard by more than 0.94 ppm sulfur, where the accuracy criteria is $0.75 * (1.5 * r / 2.77)$, where “r” is the repeatability (Example: $0.75 * (1.5 * 2.30 \text{ ppm} / 2.77) = 0.94 \text{ ppm}$);

and
(iii) In applying the tests of paragraphs (b)(2)(i) and (ii) of this section, individual test results shall be compensated for any known chemical interferences using good laboratory practices.

(3) The test method specified at § 80.46(a)(1) is exempt from the requirements of paragraphs (b)(1) and (2) of this section.

(c) * * *

(2) * * *

(i) The arithmetic average of a continuous series of at least 10 tests performed using good laboratory practices on a commercially available

gravimetric sulfur standard in the range of 1–10 ppm, say 10 ppm, shall not differ from the ARV of the standard by more than 0.47 ppm sulfur, where the accuracy criteria is $0.75 * (1.5 * r / 2.77)$, where “r” is the repeatability (Example: $0.75 * (1.5 * 1.15 \text{ ppm} / 2.77) = 0.47 \text{ ppm}$);

(ii) The arithmetic average of a continuous series of at least 10 tests performed using good laboratory practices on a commercially available gravimetric sulfur standard in the range of 10–20 ppm, say 20 ppm, shall not differ from the ARV of the standard by more than 0.94 ppm sulfur, where the accuracy criteria is $0.75 * (1.5 * r / 2.77)$, where “r” is the repeatability (Example: $0.75 * (1.5 * 2.30 \text{ ppm} / 2.77) = 0.94 \text{ ppm}$);

and
* * * * *

(3) The test method specified at § 80.46(a)(2) is exempt from the requirements of paragraphs (c)(1) and (2) of this section.

(d) * * *

(2) The test method specified at § 80.46(b)(1) is exempt from the requirements of paragraph (d)(1) of this section.

(e) * * *

(2) The test method specified at § 80.46(f)(1) is exempt from the requirements of paragraph (e)(1) of this section.

(f) * * *

(2) The test method specified at § 80.46(g)(1) is exempt from the requirements of paragraph (f)(1) of this section.

(g) * * *

(2) The test method specified at § 80.46(c)(1) is exempt from the requirements of paragraph (g)(1) of this section.

(h) * * *

(2) The test method specified at § 80.46(d)(1) is exempt from the requirements of paragraph (h)(1) of this section.

(i) * * *

(2) The test methods specified at § 80.46(e)(1) are exempt from the requirements of paragraph (i)(1) of this section.

(j) * * *

(2) The test method specified at § 80.2(z) is exempt from the requirements of paragraph (j)(1) of this section.

* * * * *

(l) * * *

(2)(i) The test facility demonstrates that the test method meets the applicable precision information for the method-defined or non-VCSB absolute fuel parameter as described in this section.

* * * * *

(iii) For the non-VCSB absolute fuel parameter of sulfur in gasoline, butane, and pentane, the test facility shall include information demonstrating that the comparison of the non-VCSB test method and respective designated primary test method results in sample specific biases that are determined as random. If the sample specific biases through use of ASTM D6708 between the non-VCSB test method and designated primary test method cannot be determined as random, the non-VCSB test method is disqualified from approval.

* * * * *

(4) The test methods specified at §§ 80.2(z) and 80.46(a)(1), (a)(2), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), and (g)(1) are exempt from the requirements of paragraphs (l)(1) through (3) of this section.

* * * * *

(n) * * *

(1)(i) *Accuracy SQC*. Every facility shall conduct tests on every instrument with a commercially available gravimetric reference material, or check standard as defined in ASTM D6299 at least three times a year using good laboratory practices. The facility must construct “MR” and “I” charts with control lines as described in section 8.4 and appropriate Annex sections of this standard practice. In circumstances where the absolute difference between the mean of multiple back-to-back tests of the standard reference material and the ARV of the standard reference material is greater than 0.75 times the published reproducibility of the test method, the cause of such difference must be investigated by the facility. Records of the standard reference materials measurements as well as any investigations into any exceedance of these criteria must be kept for a period of five years.

(ii) The expanded uncertainty of the ARV of consensus named fuels shall be included in the following accuracy qualification criterion: Accuracy qualification criterion = square root $[(0.75R)^2 + (0.75R)^2/L]$, where L = the number of single results obtained from different labs used to calculate the consensus ARV.

(2)(i) *Precision SQC*. Every facility shall conduct tests of every instrument with a quality control material as defined in paragraph 3.2.8 in ASTM D6299 either once per week or once per every 20 production tests, whichever is more frequent. The facility must construct and maintain an “I” chart as described in section 8 and section A1.5.1 and a “MR” chart as described in section A1.5.4. Any violations of control

limit(s) shall be investigated by personnel of the facility and records kept for a period of five years. The test facility's long term site precision standard deviation, as demonstrated by the "I" chart and "M" chart, must meet the applicable precision criterion as described in paragraph (b)(1) or (c)(1) of this section.

* * * * *

(o) * * *

(1)(i) *Accuracy SQC*. Every facility shall conduct tests of every instrument with a commercially available check standard as defined in ASTM D6299 at least three times a year using good laboratory practices. The check standard must be an ordinary fuel with levels of the fuel parameter of interest close to either the applicable regulatory standard or the average level of use for the facility. For facilities using a VCSB designated method defined test method, the ARV of the check standard must be determined by the respective designated test method for the fuel parameter following the guidelines of ASTM D6299. Facilities using a VCSB alternative method defined test method must use the ARV of the check standard as determined in a VCSB Inter Laboratory Crosscheck Program (ILCP) or a commercially available ILCP following the guidelines of ASTM D6299. If the ARV is not provided in the ILCP, accuracy must be assessed based upon the respective EPA-designated test method using appropriate production samples. The facility must construct "MR" and "I" charts with control lines as described in section 8.4 and appropriate Annex sections of this standard practice. In circumstances where the absolute difference between test results and the ARV of the check standard based on the designated primary test method is greater than 0.75 times the published reproducibility of the designated primary test method, the cause of such difference must be investigated by the facility. Participation in a VCSB ILCP or a commercially available ILCP meeting the ASTM D6299 requirements for ILCP check standards, based on the designated primary test method, at least three times a year, and, meeting the requirements in this section for absolute differences between the test results and the ARV of the check standard based on the designated primary test method of less than 0.75 times the published reproducibility of the designated primary test method obtained through participation in the ILCP satisfies this Accuracy SQC requirement (Examples of VCSB ILCPs: ASTM Reformulated Gasoline ILCP or ASTM motor gasoline

ILCP). Records of the standard reference materials measurements as well as any investigations into any exceedance of these criteria must be kept for a period of five years.

(ii) The expanded uncertainty of the ARV of consensus named fuels shall be included in the following accuracy qualification criterion: Accuracy qualification criterion = square root $[(0.75R) - 2 + (0.75R) - 2/L]$, where L = the number of single results obtained from different labs used to calculate the consensus ARV.

(2)(i) *Precision SQC*. Every facility shall conduct tests of every instrument with a quality control material as defined in paragraph 3.2.8 in ASTM D6299 either once per week or once per every 20 production tests, whichever is more frequent. The facility must construct and maintain an "I" chart as described in section 8 and section A1.5.1 and a "MR" chart as described in section A1.5.4. Any violations of control limit(s) shall be investigated by personnel of the facility and records kept for a period of five years. The test facility's long term site precision standard deviation, as demonstrated by the "I" chart and "M" chart, must meet the applicable precision criterion as described in paragraph (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i)(1), or (j)(1) of this section.

* * * * *

(p) * * *

(1)(i) *Accuracy SQC for Non-VCSB Method-Defined test methods with minimal matrix effects*. Every facility shall conduct tests on every instrument with a commercially available check standard as defined in the ASTM D6299 at least three times a year using good laboratory practices. The check standard must be an ordinary fuel with levels of the fuel parameter of interest close to either the applicable regulatory standard or the average level of use for the facility. Facilities using a Non-VCSB alternative method defined test method must use the ARV of the check standard as determined in either a VCSB Inter Laboratory Crosscheck Program (ILCP) or a commercially available ILCP following the guidelines of ASTM D6299. If the ARV is not provided in the ILCP, accuracy must be assessed based upon the respective EPA designated test method using appropriate production samples. The facility must construct "MR" and "I" charts with control lines as described in section 8.4 and appropriate Annex sections of this standard practice. In circumstances where the absolute difference between the mean of multiple back-to-back tests of the standard reference material and

the ARV of the standard reference material is greater than 0.75 times the published reproducibility of the fuel parameter's respective designated test method, the cause of such difference must be investigated by the facility. Records of the standard reference materials measurements as well as any investigations into any exceedance of these criteria must be kept for a period of five years.

(ii) The expanded uncertainty of the ARV of consensus named fuels shall be included in the following accuracy qualification criterion: Accuracy qualification criterion = square root $[(0.75R) - 2 + (0.75R) - 2/L]$, where L = the number of single results obtained from different labs used to calculate the consensus ARV.

(2)(i) *Accuracy SQC for Non-VCSB Method-Defined test methods with high sensitivity to matrix effects*. Every facility shall conduct tests on every instrument with a production fuel on at least a quarterly basis using good laboratory practices. The production fuel must be representative of the production fuels that are routinely analyzed by the facility. The ARV of the production fuel must be determined by the respective reference installation of the designated test method for the fuel parameter following the guidelines of ASTM D6299. The facility must construct "MR" and "I" charts with control lines as described in section 8.4 and appropriate Annex sections of this standard practice. In circumstances where the absolute difference between the mean of multiple back-to-back tests of the standard reference material and the ARV of the standard reference material is greater than 0.75 times the published reproducibility of the test method must be investigated by the facility. Documentation on the identity of the reference installation and its control status must be maintained on the premises of the method-defined alternative test method. Records of the standard reference materials measurements as well as any investigations into any exceedances of this criterion must be kept for a period of five years.

* * * * *

(3)(i) *Precision SQC*. Every facility shall conduct tests of every instrument with a quality control material as defined in paragraph 3.2.8 in ASTM D6299 either once per week or once per every 20 production tests, whichever is more frequent. The facility must construct and maintain an "I" chart as described in section 8 and section A1.5.1 and a "MR" chart as described in section A1.5.4. Any violations of control

limit(s) shall be investigated by personnel of the facility and records kept for a period of five years. The test facility's long term site precision standard deviation, as demonstrated by the "I" chart and "M" chart, must meet the applicable precision criterion as described in paragraph (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i)(1) or (j)(1) of this section.

* * * * *

■ 13. Section 80.69 is amended by revising paragraph (a)(11)(viii)(C) to read as follows:

§ 80.69 Requirements for downstream oxygenate blending.

- (a) * * *
- (11) * * *
- (viii) * * *

(C) The survey plan must be sent to the attention of "RFG Program (Survey Plan)" to the address in § 80.10(a);

* * * * *

Subpart E—Anti-Dumping

■ 14. Section 80.93 is amended by revising paragraph (d)(4) to read as follows:

§ 80.93 Individual baseline submission and approval.

* * * * *

- (d) * * *

(4) For U.S. Postal delivery, the petition shall be sent to the attention of "RFG Program (Baseline Petition)" to the address in § 80.10(a).

* * * * *

Subpart F—Attest Engagements

■ 15. Section 80.130 is amended by revising paragraph (a)(2) to read as follows:

§ 80.130 Agreed upon procedures reports.

- (a) * * *

(2) The CPA or CIA shall provide a copy of the auditor's report to the EPA within the time specified in § 80.75(m).

* * * * *

Subpart G—Detergent Gasoline

■ 16. Section 80.164 is amended by revising the first two sentences of paragraph (a)(5) to read as follows:

§ 80.164 Certification test fuels.

- (a) * * *

(5) Unless otherwise required by this section, finished test fuels must conform to the requirements for commercial gasoline described in ASTM D 4814–14b, Standard Specification for Automotive Spark-Ignition Engine Fuel, approved October 1, 2014, which is incorporated by reference. This incorporation by reference was

approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at U.S. Environmental Protection Agency, William Jefferson Clinton Building West, Room B102, 1301 Constitution Ave. NW., Washington, DC 20460, or at the National Archives and Records Administration (NARA). * * *

* * * * *

■ 17. Section 80.169 is amended by revising paragraph (c)(9)(v) to read as follows:

§ 80.169 Liability for violations of the detergent certification program controls and prohibitions.

* * * * *

- (c) * * *

- (9) * * *

(v) In all such instances, a curing VAR must be created and maintained, which documents the use of the appropriate equation as specified above, and otherwise complies with the requirements of § 80.170(f)(7).

■ 18. Section 80.170 is amended by redesignating paragraphs (f)(4) through (6) as (f)(5) through (7) and adding a new paragraph (f)(4) to read as follows:

§ 80.170 Volumetric additive reconciliation (VAR), equipment calibration, and recordkeeping requirements.

* * * * *

- (f) * * *

(4) For all detergent blending facilities, a record specifying, for each VAR period, the total volume in gallons of unadditized base gasoline used to produce ethanol flex fuel pursuant to the requirements of subpart N of this part;

* * * * *

■ 19. Section 80.173 is amended by adding paragraph (d) to read as follows:

§ 80.173 Exemptions.

* * * * *

(d) *Ethanol flex fuel exemption.* Any gasoline or blendstock for oxygenate blending used to make ethanol flex fuel, as defined in § 80.2(q), is exempt from the provisions of this subpart, provided the ethanol flex fuel is in compliance with all applicable requirements of subpart N of this part.

■ 20. Section 80.174 is amended by revising paragraphs (b) and (c) to read as follows:

§ 80.174 Addresses.

* * * * *

(b) Other detergent registration and certification data, and certain other information which may be specified in this subpart, shall be sent to the attention of "Detergent Additive

Certification" to the address in § 80.10(a).

(c) Notifications to EPA regarding program exemptions, detergent dilution and commingling, and certain other information which may be specified in this subpart, shall be sent to the attention of "Detergent Enforcement Program" to the address in § 80.10(a).

■ 21. Section 80.177 is amended by revising paragraphs (d)(1)(i) and (ii) to read as follows:

§ 80.177 Certification test fuels for use with the alternative test procedures and standards.

* * * * *

- (d) * * *

- (1) * * *

(i) ASTM D4806–15, Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel, approved April 1, 2015.

(ii) ASTM D4814–14b, Standard Specification for Automotive Spark-Ignition Engine Fuel, approved October 1, 2014.

* * * * *

Subpart H—Gasoline Sulfur

■ 22. Section 80.235 is amended by revising paragraph (b) to read as follows:

§ 80.235 How does a refiner obtain approval as a small refiner?

* * * * *

(b) Applications for small refiner status must be sent to the attention of "Gasoline Sulfur Program (Small Refiner)" to the address in § 80.10(a).

* * * * *

■ 23. Section 80.290 is amended by revising paragraph (b) to read as follows:

§ 80.290 How does a refiner apply for a sulfur baseline?

* * * * *

(b) The sulfur baseline request must be sent to the attention of "Gasoline Sulfur Program (Sulfur Baseline)" to the address in § 80.10(a).

* * * * *

Subpart I—Motor Vehicle Diesel Fuel; Nonroad, Locomotive, and Marine Diesel Fuel; and ECA Marine Fuel

■ 24. Section 80.533 is amended by revising paragraph (b) as follows:

§ 80.533 How does a refiner or importer apply for a motor vehicle or non-highway baseline for the generation of NRLM credits or the use of the NRLM small refiner compliance options?

* * * * *

(b) The baseline must be sent to the attention of "Nonroad Rule Diesel Fuel Baseline" to the address in § 80.10(a).
* * * *

■ 25. Section 80.574 is amended by revising paragraph (b) as follows:

§ 80.574 What labeling requirements apply to retailers and wholesale purchaser-consumers of ECA marine fuel beginning June 1, 2014?
* * * *

(b) Alternative labels to those specified in paragraph (a) of this section may be used as approved by EPA. Send requests to the attention of "ECA Marine Fuel Alternative Label Request" to the address in § 80.10(a).

■ 26. Section 80.585 is amended by:

- a. Redesignating paragraph (b)(4) as paragraph (b)(5) and adding a new paragraph (b)(4); and
- b. Revising paragraph (d)(4).

The addition and revision read as follows:

§ 80.585 What is the process for approval of a test method for determining the sulfur content of diesel or ECA marine fuel?
* * * *

(b) * * *

(4) Provide information indicating that a comparison of the non-VCSB test method and its respective designated primary test method results in sample specific biases that are determined to be random. If the sample specific biases through use of ASTM D6708 between the non-VCSB test method and designated primary test method cannot be determined as random, the non-VCSB test method is disqualified from approval.
* * * *

(d) * * *

(4) The approval of any test method under paragraph (b) of this section shall be valid from the date of approval from the Administrator.
* * * *

■ 27. Section 80.595 is amended by revising paragraph (b) to read as follows:

§ 80.595 How does a small or GPA refiner apply for a motor vehicle diesel fuel volume baseline for the purpose of extending their gasoline sulfur standards?
* * * *

(b) The volume baseline must be sent via certified mail with return receipt or express mail with return receipt to the attention of "Diesel Baseline" to the address in § 80.10(a).
* * * *

■ 28. Section 80.607 is amended by revising paragraph (a) to read as follows:

§ 80.607 What are the requirements for obtaining an exemption for diesel fuel used for research, development or testing purposes?

(a) *Written request for a research and development exemption.* Any person may receive an exemption from the provisions of this subpart for diesel fuel or ECA marine fuel used for research, development, or testing purposes by submitting the information listed in paragraph (c) of this section to the attention of "Diesel Program (Diesel Exemption Request)" to the address in § 80.10(a).
* * * *

Subpart J—Gasoline Toxics

■ 29. Section 80.855 is amended by revising paragraph (c)(2) to read as follows:

§ 80.855 What is the compliance baseline for refineries or importers with insufficient data?
* * * *

(c) * * *

(2) *Application process.* Applications must be submitted to the attention of "Anti-Dumping Compliance Period" to the address in § 80.10(a).
* * * *

Subpart L—Gasoline Benzene

■ 30. Section 80.1230 is amended by adding paragraph (a)(6) to read as follows:

§ 80.1230 What are the gasoline benzene requirements for refiners and importers?
(a) * * *

(6) Beginning February 1, 2018, a refiner that produces E15 at a blender pump-refinery, as defined in § 80.1500, shall be deemed in compliance with the provisions of this subpart, provided the refiner is in compliance with the requirements for gasoline produced by blender pump-refiners in § 80.1530.
* * * *

■ 31. Section 80.1240 is amended in paragraph (a)(1)(i) in the equation by revising the definition "OC" to read as follows:

§ 80.1240 How is a refinery's or importer's compliance with the gasoline benzene requirements of this subpart determined?
(a) * * *

(1)(i) * * *

OC = Benzene credits used by the refiner or importer to show compliance (gallons benzene).
* * * *

■ 32. Section 80.1285 is amended by revising paragraph (b) to read as follows:

§ 80.1285 How does a refiner apply for a benzene baseline?
* * * *

(b) For U.S. Postal delivery, the benzene baseline application shall be sent to the attention of "MSAT2 Benzene" to the address in § 80.10(a).
* * * *

■ 33. Section 80.1340 is amended by revising paragraph (b) to read as follows:

§ 80.1340 How does a refiner obtain approval as a small refiner?
* * * *

(b) Applications for small refiner status must be sent to the attention of "MSAT2 Benzene" to the address in § 80.10(a).
* * * *

Subpart M—Renewable Fuel Standard

■ 34. Section 80.1401 is amended by:

- a. Revising the definition of "Actual peak capacity";
- b. Adding in alphabetical order a definition for "Affiliate";
- c. Revising the definition of "Baseline volume";
- d. Adding in alphabetical order definitions for "Biogas producer", "Biointermediate", "Biointermediate import facility", "Biointermediate importer", "Biointermediate producer", "Biointermediate production facility", "Carbon capture and storage or CCS", and "Cellulosic biomass-based diesel";
- e. Revising the definitions of "Cellulosic diesel", "Co-processed", and "Corn oil extraction";
- f. Adding in alphabetical order definitions for "Exempted baseline peak capacity" and "Exempted baseline volume";
- g. Revising the definition of "Foreign ethanol producer";
- h. Adding in alphabetical order definitions for "Foreign renewable fuel producer" and "Geologic sequestration facility";
- i. Revising paragraph (2) in the definition of "Heating oil" and the definition of "Non-ester renewable diesel";
- j. Adding in alphabetical order definitions for "Non-renewable feedstock" and "Non-RIN-generating foreign producer";
- k. Revising the definitions of "Quality assurance audit" and "Quality assurance plan, or QAP";
- l. Revising paragraph (2) in the definition of "Renewable fuel";
- m. Adding in alphabetical order definitions for "RIN-generating foreign producer", "Short-rotation hybrid poplar", "Short-rotation willow", "Straight vegetable oil", and "Surface leakage";

- n. Revising the definition of “Tree plantation”; and
- o. Adding in alphabetical order a definitions for “Viscous renewable diesel blender or VRD blender”.

The revisions and additions read as follows:

§ 80.1401 Definitions.

* * * * *

Actual peak capacity means 105% of the maximum annual volume of renewable fuels produced from a specific renewable fuel production facility on a calendar year basis. The actual peak capacity is based on the last five calendar years prior to the year in which the owner or operator registers the facility under the provisions of § 80.1450, unless no such production exists, in which case actual peak capacity is based on any calendar year after startup during the first three years of operation.

* * * * *

Affiliate is used to indicate a relationship to a specified entity, and means any entity that, directly or indirectly or through one or more intermediaries, owns or controls, is owned or controlled by, or is under common ownership or control with such entity.

* * * * *

Baseline volume means the permitted capacity or, if permitted capacity cannot be determined, the actual peak capacity of a specific renewable fuel production facility on a calendar year basis. If neither permitted capacity nor actual peak capacity can be determined, baseline volume means the nameplate capacity of a specific renewable fuel production facility on a calendar year basis. Baseline volume includes exempted baseline volume and any additional renewable fuel production capacity for which a renewable fuel producer is not claiming an exemption as described in § 80.1403(c) or (d).

* * * * *

Biogas producer means any landfill, municipal wastewater treatment facility digester, agricultural digester, or separated MSW digester that produces biogas used to produce renewable fuel.

Biointermediate means any feedstock material that is used to produce renewable fuel and meets all of the following requirements:

- (1) It is derived from renewable biomass.
- (2) It does not meet the definition of renewable fuel and RINs were not generated for it as a renewable fuel in its own right.
- (3) It is produced at a facility registered with EPA that is different

than the facility at which it is used to produce renewable fuel.

(4) It is made from the feedstock and will be used to produce the renewable fuel in accordance with the process(es) listed in the approved pathway (as described in Table 1 to § 80.1426 or a pathway approval pursuant to § 80.1416) that the biointermediate producer and renewable fuel producer are using to convert renewable biomass to renewable fuel.

(5)(i) It is substantially altered from the feedstock listed in the approved pathway that the biointermediate producer and renewable fuel producer are using to convert renewable biomass to renewable fuel;

(ii) The substantial alteration is other than a form change such as chopping, crushing, grinding, pelletizing, filtering, compacting/compression, centrifuging, dewatering/drying, melting, or the addition of water to produce a slurry; and

(iii) The substantial alteration does not involve the isolation or concentration of non-characteristic components of the feedstock to yield an intermediate product not contemplated by EPA in establishing the approved pathway that the biointermediate producer and the renewable fuel producer are using to convert renewable biomass to renewable fuel.

Biointermediate import facility means any facility where a biointermediate is imported into the United States.

Biointermediate importer means any person who owns, leases, operates, controls, or supervises a biointermediate import facility.

Biointermediate producer means any person who owns, leases, operates, controls, or supervises a biointermediate production facility.

Biointermediate production facility means all of the activities and equipment associated with the production of a biointermediate starting from the point of delivery of feedstock material to the point of final storage of the end biointermediate product, which are located on one property, and are under the control of the same person (or persons under common control).

* * * * *

Carbon capture and storage or *CCS* means the capture, treatment, and compression of CO₂ at a renewable fuel facility, transportation of that CO₂, and geologic sequestration of that CO₂ at a geologic sequestration facility.

* * * * *

Cellulosic biomass-based diesel is any renewable fuel that meets both the definitions of cellulosic diesel and biomass-based diesel, as defined in this section 80.1401.

Cellulosic diesel is any renewable fuel that meets the definition of cellulosic biofuel, as defined in this section 80.1401, and meets all of the requirements of paragraph (1) of this definition:

(1)(i) Is a transportation fuel, transportation fuel additive, heating oil, or jet fuel.

(ii) Meets the definition of either biodiesel or non-ester renewable diesel.

(iii) Is registered as a motor vehicle fuel or fuel additive under 40 CFR part 79, if the fuel or fuel additive is intended for use in a motor vehicle.

(2) Cellulosic diesel includes heating oil and jet fuel made from cellulosic feedstocks and renewable fuel that is co-processed with petroleum.

* * * * *

Co-processed means that renewable biomass or a biointermediate was simultaneously processed with fossil fuels or other non-renewable feedstock in the same unit or units to produce a fuel that is partially derived from renewable biomass or a biointermediate.

Corn oil extraction means the recovery of corn oil at any point downstream of when a dry mill corn ethanol plant grinds the corn, provided that the corn is converted to ethanol, the oil is rendered unfit for food uses without further refining, and the oil extraction results in distillers grains marketable as animal feed.

* * * * *

Exempted baseline peak capacity means 105% of the maximum annual volume of renewable fuels produced from a specific renewable fuel production facility on a calendar year basis for which a renewable fuel producer is claiming the exemption described in § 80.1403(c) or (d).

(1) For facilities that commenced construction prior to December 19, 2007, the exempted baseline peak capacity is based on the last five calendar years prior to 2008, unless no such production exists, in which case actual peak capacity is based on any calendar year after startup during the first three years of operation.

(2) For facilities that commenced construction after December 19, 2007, and before January 1, 2010, that are fired with natural gas, biomass, or a combination thereof, the exempted baseline peak capacity is based on any calendar year after startup during the first three years of operation.

Exempted baseline volume means the capacity of a facility for volume for which a renewable fuel producer is claiming the exemption described in § 80.1403(c) or (d). The exempted baseline volume is the permitted

capacity as demonstrated during registration as described in § 80.1450(b)(1)(v)(B), or if permitted capacity cannot be determined, the exempted baseline peak capacity.

* * * * *

Foreign ethanol producer means a foreign renewable fuel producer who produces ethanol for use in transportation fuel, heating oil, or jet fuel, but who does not add ethanol denaturant to their product as described in paragraph (2) of the definition of renewable fuel in this section.

Foreign renewable fuel producer means a person from a foreign country or from an area that has not opted into the program requirements of this subpart who produces renewable fuel.

* * * * *

Geologic sequestration facility means any well or group of wells that is a "facility," as defined under 40 CFR 98.6, that inject a CO₂ stream for long-term containment in subsurface geologic formations as described in 40 CFR 98.440.

Heating oil * * *

(2) A fuel oil that is used to heat or cool interior spaces of homes or buildings to control ambient climate for human comfort. The fuel oil must be liquid at 60 degrees Fahrenheit and 1 atmosphere of pressure, and contain no more than 2.5% mass solids.

* * * * *

Non-ester renewable diesel, also known as renewable diesel, is either viscous or non-viscous renewable diesel:

(1) Non-viscous renewable diesel satisfies all of the following:

(i) Is not a mono-alkyl ester.

(ii) Meets the ASTM D975–13a (incorporated by reference, see § 80.1468) Grade No. 1–D or No. 2–D specifications prior to blending with any other product.

(iii) Can be used in an engine designed to operate on conventional diesel fuel.

(iv) Is produced through a hydrotreating process.

(2) Viscous renewable diesel (VRD) satisfies all of the following:

(i) Is not a mono-alkyl ester.

(ii) Is a straight vegetable oil

(iii) Is intended for use as one of the following:

(A) A blend in an engine designed to operate on conventional diesel fuel (referred to as VRD for blending or VRD–B).

(B) A neat fuel for use either: In a vehicle or engine that has been converted to use such fuel under an EPA-approved Clean Alternative Fuel Conversion under 40 CFR part 85,

subpart F; as heating oil; or as jet fuel (collectively referred to as VRD for neat use or VRD–N).

* * * * *

Non-renewable feedstock means a feedstock that does not meet the definition of renewable biomass.

Non-RIN-generating foreign producer means a foreign renewable fuel producer that has been approved by EPA to produce renewable fuel for which RINs have not been generated.

* * * * *

Quality assurance audit means an audit of a renewable fuel production facility or biointermediate production facility conducted by an independent third-party auditor in accordance with a QAP that meets the requirements of §§ 80.1469, 80.1472, and 80.1476.

Quality assurance plan, or QAP, means the list of elements that an independent third-party auditor will check to verify that the RINs generated by a renewable fuel producer or importer are valid, including RINs generated from renewable fuel produced from a biointermediate. A QAP includes both general and pathway specific elements.

* * * * *

Renewable fuel * * *

(2) Ethanol covered by this definition shall be denatured using an ethanol denaturant as required in 27 CFR parts 19 through 21. Any volume of ethanol denaturant added to the undenatured ethanol by a producer or importer in excess of 2 volume percent shall not be included in the volume of ethanol for purposes of determining compliance with the requirements under this subpart.

* * * * *

RIN-generating foreign producer means a foreign renewable fuel producer that has been approved by EPA to generate RINs for renewable fuel it produces.

Short-rotation hybrid poplar means a species or a cross of species in the *Populus* genus that is grown with harvest rotations of less than 10 years. Qualifying species include *Populus (P.) deltoides*, *P. trichocarpa*, *P. nigra*, and *P. suaveolens* subsp. *maximowiczii*, as well as crosses between them.

Short-rotation willow means a species or a cross of species in the *Salix* genus that is grown with harvest rotations of less than 10 years. Qualifying species include *Salix (S.) miyabeana*, *S. purpurea*, *S. eriocephala*, *S. caprea* hybrid, and *S. x dasyclados*, as well as crosses between *S. koriyanagi* and *S. purpurea*, *S. viminalis* and *S.*

miyabeana, and *S. purpurea*, and *S. miyabeana*.

* * * * *

Straight vegetable oil includes all of the following products:

(1) Soy bean oil.

(2) Oil from annual covercrops.

(3) Algal oil.

(4) Biogenic waste oils/fats/greases that are of plant origin.

(5) Non-food grade corn oil.

(6) *Camelina sativa* oil.

(7) Canola/Rapeseed Oil.

(8) Any other vegetable oil listed as a feedstock in Table 1 to § 80.1426 or described in a pathway approved pursuant to § 80.1416.

Surface leakage has the same meaning as defined in 40 CFR 98.449.

* * * * *

Tree plantation is a stand of no less than 1 acre on non-federal lands that is composed primarily of trees established by hand- or machine-planting of a seed or sapling, or by coppice growth from the stump or root of a tree that was hand- or machine-planted. Tree plantations must have been cleared prior to December 19, 2007 and must have been actively managed on December 19, 2007, as evidenced by records which must be traceable to the land in question, which must include:

(1) Sales records for planted trees or tree residue together with other written documentation connecting the land in question to these purchases;

(2) Purchasing records for seeds, seedlings, or other nursery stock together with other written documentation connecting the land in question to these purchases;

(3) A written management plan for silvicultural purposes;

(4) Documentation of participation in a silvicultural program sponsored by a Federal, state or local government agency;

(5) Documentation of land management in accordance with an agricultural or silvicultural product certification program;

(6) An agreement for land management consultation with a professional forester that identifies the land in question;

(7) Evidence of the existence and ongoing maintenance of a road system or other physical infrastructure designed and maintained for logging use, together with one of the above-mentioned documents; or

(8) Records satisfying the requirements of paragraph (2) of the definition of existing agricultural land in this section that demonstrates that the land was actively managed or fallow agricultural land.

* * * * *

Viscous renewable diesel blender or VRD blender means a party that blends VRD-B with petroleum diesel to produce fuel that meets the specifications of ASTM D975 Grade No. 1-D or No. 2-D (incorporated by reference, see § 80.1468).

■ 35. Section 80.1403 is amended by adding paragraph (g) to read as follows:

§ 80.1403 Which fuels are not subject to the 20% GHG thresholds?

* * * * *

(g) Fuel produced by a facility meeting the requirements of paragraphs (c) or (d) of this section is not a qualifying renewable fuel unless it meets one of the following requirements:

(1) It is made in one facility from feedstock that is renewable biomass.

(2) It is made from a feedstock that is derived from renewable biomass and is listed in Table 1 to § 80.1426.

(3) It is made from a feedstock that is renewable biomass that was pre-processed at another facility, and such pre-processing at that facility was limited to form changes such as chopping, crushing, grinding, pelletizing, filtering, compaction/compression, centrifuging, dewater/drying, melting, and/or the addition of water to produce a slurry.

■ 36. Section 80.1415 is amended by revising paragraph (c)(4) to read as follows:

§ 80.1415 How are equivalence values assigned to renewable fuel?

* * * * *

(c) * * *

(4) Applications for equivalence values must be sent to the attention of “RFS2 Program (Equivalence Value Application)” to the address in § 80.10(a).

* * * * *

■ 37. Section 80.1425 is amended by revising paragraph (g)(5) to read as follows:

§ 80.1425 Renewable Identification Numbers (RINs).

* * * * *

(g) * * *

(5) D has the value of 7 to denote fuel categorized as cellulosic biomass-based diesel.

* * * * *

■ 38. Section 80.1426 is amended by:

- a. Revising the section heading;
- b. Revising paragraphs (a)(1) introductory text and (a)(2);
- c. Adding paragraph (a)(4);
- d. Revising paragraphs (c)(4) and (5);
- e. Adding paragraphs (c)(8) and (9);
- f. Revising paragraph (e)(1);

■ g. Removing paragraph (f)(1) introductory text (but retaining the subject heading);

■ h. Adding paragraphs (f)(1)(i) through (vi) prior to tables 1 and 2 to § 80.1426;

■ i. In paragraph (f)(1), in Table 1 to § 80.1426, revising the entries F, H, K, L, and N and adding an entry U;

■ j. Revising the definitions of “ $V_{RIN,CD}$ ” and “ EV_{CD} ” in Table 3 to § 80.1426 in paragraph (f)(3)(v);

■ k. Revising the definition of “ $V_{RIN,CD}$ ” in Table 4 to § 80.1426 in paragraph (f)(3)(vi);

■ l. Revising the paragraph (f)(4) subject heading;

■ m. Revising the definitions of “ FE_R ” and “ FE_{NR} ” in paragraph (f)(4)(i)(A)(1); and

■ n. Adding paragraphs (f)(4)(iv) and (v), (f)(17)(ii), (f)(18), and (f)(19).

The revisions and additions read as follows:

§ 80.1426 How are RINs generated and assigned to batches of renewable fuel?

(a) * * *

(1) To the extent permitted under paragraphs (b) and (c) of this section, producers and importers of renewable fuel (other than VRD-B) and VRD blenders must generate RINs to represent that fuel if all of the following occur:

* * * * *

(2) To generate RINs for imported renewable fuel, including any renewable fuel contained in imported transportation fuel, heating oil, or jet fuel, importers must obtain information from a non-RIN-generating foreign renewable fuel producer that is registered pursuant to § 80.1450 sufficient to make the appropriate determination regarding the applicable D code and compliance with the renewable biomass definition for each imported batch for which RINs are generated.

* * * * *

(4) Where a feedstock or biointermediate is used to produce renewable fuel is not entirely renewable biomass, RINs may only be generated for the portion of fuel that is derived from renewable biomass, as calculated under paragraph (f)(4) of this section.

* * * * *

(c) * * *

(4) Importers shall not generate RINs for renewable fuel imported from a non-RIN-generating foreign renewable fuel producer unless the foreign renewable fuel producer is registered with EPA as required in § 80.1450.

(5) Importers shall not generate RINs for renewable fuel that has already been

assigned RINs by a RIN-generating foreign renewable fuel producer.

* * * * *

(8) RINs shall not be generated for the production of a biointermediate.

(9) Parties shall not generate RINs to represent renewable fuel prior to EPA approval of applicable registration requirements under § 80.1450(b), (c), (d)(1), and (d)(4).

* * * * *

(e) * * *

(1) Except as provided in paragraph (g) of this section for delayed RINs, the producer or importer of renewable fuel (other than VRD-B) or the VRD blender must assign all RINs generated to volumes of renewable fuel.

* * * * *

(f) * * *

(1) *Applicable pathways.* (i) D codes shall be used in RINs generated by producers or importers of renewable fuel (other than VRD-B) and VRD blenders according to the pathways listed in Table 1 of this section, paragraph (f)(6) of this section, or as approved by the Administrator.

(ii) In choosing an appropriate D code, producers and importers may disregard any incidental, de minimis feedstock contaminants that are impractical to remove and are related to customary feedstock production and transport.

(iii) Tables 1 and 2 to this section do not apply to, and impose no requirements with respect to, volumes of fuel for which RINs are generated pursuant to paragraph (f)(6) of this section.

(iv) Pathways in Table 1 to this section and advanced technologies in Table 2 to this section also apply in cases wherein the renewable fuel producer is using a biointermediate as the feedstock.

(v) For the purposes of identifying the appropriate pathway in Table 1 of this section, biointermediates used as feedstocks for the production of renewable fuel are considered to be equivalent to the renewable biomass from which they were derived, with the following exceptions:

(A) Oil that is physically separated from any woody or herbaceous biomass and used to produce cellulosic biofuel shall not generate D-code 3 or 7 RINs.

(B) Sugar or starch that is physically separated from cellulosic biomass and used to produce cellulosic biofuel shall not generate D-code 3 or 7 RINs.

(C) Free fatty acids that are physically separated from mono-, bi-, and triglycerides in biogenic waste oils/fats/greases are not biogenic waste oils/fats/greases.

(vi) If a renewable fuel producer uses a biointermediate as the feedstock for

the production of renewable fuel, additional requirements apply to both the renewable fuel producer and the biointermediate producer as provided in § 80.1475.

TABLE 1 TO § 80.1426—APPLICABLE D CODES FOR EACH FUEL PATHWAY FOR USE IN GENERATING RINS

	Fuel type	Feedstock	Production process requirements	D-code
F	Biodiesel, renewable diesel, jet fuel and heating oil.	Soy bean oil; oil from annual covercrops; algal oil; biogenic waste oils/fats/greases; oil from corn oil extraction; <i>Camelina sativa</i> oil; non-cellulosic portions of separated food waste.	One of the following: Trans-Esterification Hydrotreating Excluding processes that co-process renewable biomass or a biointermediate and petroleum.	4
H	Biodiesel, renewable diesel, jet fuel and heating oil.	Soy bean oil; oil from annual covercrops; algal oil; biogenic waste oils/fats/greases; oil from corn oil extraction; <i>Camelina sativa</i> oil; non-cellulosic portions of separated food waste.	One of the following: Trans-Esterification Hydrotreating Includes only processes that co-process renewable biomass or a biointermediate and petroleum.	5
K	Ethanol	Crop residue, slash, pre-commercial thinnings and tree residue, switchgrass, miscanthus, energy cane, <i>Arundo donax</i> , <i>Pennisetum purpureum</i> , and separated yard waste; biogenic components of separated MSW; cellulosic components of separated food waste; cellulosic components of annual cover crops; short-rotation hybrid poplar; short-rotation willow.	Any process that converts cellulosic biomass to fuel.	3
L	Cellulosic diesel, jet fuel and heating oil.	Crop residue, slash, pre-commercial thinnings and tree residue, switchgrass, miscanthus, energy cane, <i>Arundo donax</i> , <i>Pennisetum purpureum</i> , and separated yard waste; biogenic components of separated MSW; cellulosic components of separated food waste; cellulosic components of annual cover crops; short-rotation hybrid poplar; short-rotation willow.	Any process that converts cellulosic biomass to fuel.	7
N	Naphtha	Switchgrass, miscanthus, energy cane, <i>Arundo donax</i> , <i>Pennisetum purpureum</i> ; short-rotation hybrid poplar; short-rotation willow.	Gasification and upgrading processes that converts cellulosic biomass to fuel.	3
U	Cellulosic diesel, jet fuel and heating oil.	Crop residue, slash, pre-commercial thinnings and tree residue, switchgrass, miscanthus, energy cane, <i>Arundo donax</i> , <i>Pennisetum purpureum</i> , and separated yard waste; biogenic components of separated MSW; cellulosic components of separated food waste; and cellulosic components of annual cover crops.	Any process that converts cellulosic biomass to fuel; includes only processes that co-process renewable biomass or biointermediate with petroleum.	3

* * * * *

(3) * * *

(v) * * *

$V_{RIN,CD}$ = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for

the cellulosic biomass-based diesel portion of the batch with a D code of 7.

* * * * *

EV_{CD} = Equivalence value for the cellulosic biomass-based diesel portion of the batch per § 80.1415.

(vi) * * *

$V_{RIN,CD}$ = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for a batch of cellulosic biomass-based diesel with a D code of 7.

* * * * *

(4) *Renewable fuel that is produced from a partially renewable biointermediate or by co-processing renewable biomass or a biointermediate and non-renewable feedstocks simultaneously to produce a fuel that is partially renewable.*

- (i) * * *
- (A) * * *
- (1) * * *

FE_R = Feedstock energy from renewable biomass or the renewable portion of a biointermediate used to make the transportation fuel, in Btu.

FE_{NR} = Feedstock energy from non-renewable feedstocks or the non-renewable portion of a biointermediate used to make the transportation fuel, heating oil, or jet fuel, in Btu.

* * * * *

(iv) In no case shall the RIN volume V_{RIN} according to paragraph (f)(4)(i)(A) or (f)(4)(i)(B) of this section be more than the maximum renewable content as specified in the RIN generating party's registration under 40 CFR part 79, as applicable.

(v) In determining the RIN volume V_{RIN} for co-processed fuels produced from a biointermediate, RIN-generating parties must use Method B as described in paragraph (f)(4)(i)(B) of this section and calculate the renewable fraction of a fuel R using Method B of ASTM D6866 (incorporated by reference, see § 80.1468) as described in paragraph (f)(9)(ii) of this section.

* * * * *

- (17) * * *

(ii) In addition to the requirements specified in paragraph (f)(17)(i) of this section, VRD-N producers may generate RINs for such fuel only in accordance with § 80.1479(a).

(18) *Requirements related to Renewable Diesel that is VRD.* RINs may only be generated for VRD in accordance with § 80.1479.

(19) *Renewable fuel produced using CCS.* The following requirements apply to producers of renewable fuel that generates RINs and achieves the greenhouse gas reductions necessary to qualify for a renewable fuel pathway by using CCS:

(i) Renewable fuel producers can only generate RINs if the lifecycle greenhouse gas emissions are below the threshold value for the applicable pathway when calculated by a method approved by EPA as part of a petition pursuant to § 80.1416.

(ii) Renewable fuel producers cannot generate RINs in a given calendar year after the applicable submittal date for the annual GHG report specified in 40 CFR 98.3 unless the renewable fuel producer has received verification that

the geologic sequestration facility has satisfied all applicable reporting obligations pursuant to 40 CFR part 98, subpart RR.

(iii) If EPA is notified of a surface leak, the producer shall not generate RINs using a CCS pathway until the remediation plan submitted under § 80.1474(g) has been approved by EPA and the renewable fuel producer takes appropriate corrective action, if necessary.

(iv) Renewable fuel producers shall notify EPA if a participating geologic sequestration facility has filed a request for discontinuation under 40 CFR 98.441.

(v) Renewable fuel producers must meet all of the following conditions (in addition to any other applicable requirements):

(A) Registration requirements under § 80.1450(b)(1)(xvi).

(B) Reporting requirements under § 80.1451(b)(1)(ii)(W).

(C) Recordkeeping requirements under § 80.1454(b)(11).

* * * * *

■ 39. Section 80.1427 is amended by revising paragraph (a)(3)(ii) and adding paragraph (d) to read as follows:

§ 80.1427 How are RINs used to demonstrate compliance?

- (a) * * *

- (3) * * *

(ii) A cellulosic biomass-based diesel RIN with a D code of 7 cannot be used to demonstrate compliance with both a cellulosic biofuel RVO and a biomass-based diesel RVO.

* * * * *

(d) *Redesignation RVOs.* (1) Each party that is obligated to meet an RVO under § 80.1433 must demonstrate pursuant to § 80.1451(a)(1) that the party has retired for compliance purposes a sufficient number of RINs to meet its RVOs by the deadline specified in § 80.1433(d).

(2) In fulfillment of its RVOs, each party is subject to the provisions of paragraphs (a)(2), (a)(3), (a)(6), and (a)(8) of this section.

(3) No more than 20 percent of the RVO calculated according to a formula at § 80.1433(a) may be fulfilled using RINs generated in the year prior to the year in which the RVO was incurred.

■ 40. Section 80.1429 is amended by adding paragraph (b)(11) to read as follows:

§ 80.1429 Requirements for separating RINs from volumes of renewable fuel.

* * * * *

- (b) * * *

(11) Any party that must retire RINs for redesignated neat or blended

renewable fuel under § 80.1433 must separate any RINs that have been assigned to the redesignated volume.

* * * * *

■ 41. Section 80.1430 is amended by revising paragraph (c) to read as follows:

§ 80.1430 Requirements for exporters of renewable fuels.

* * * * *

(c) If the exporter knows or has reason to know that a volume of exported renewable fuel is cellulosic biomass-based diesel, he must treat the exported volume as either cellulosic biofuel or biomass-based diesel when determining his Renewable Volume Obligations pursuant to paragraph (b) of this section.

* * * * *

■ 42. Section 80.1431 is amended by adding paragraph (a)(3) to read as follows:

§ 80.1431 Treatment of invalid RINs.

- (a) * * *

* * * * *

(3) In the event that EPA determines that some portion of RINs generated for a batch of renewable fuel produced using a biointermediate are invalid, then all RINs generated for that batch of renewable fuel are deemed invalid, unless EPA in its sole discretion determines that some portion of these RINs are valid.

* * * * *

■ 43. Section 80.1433 is added to read as follows:

§ 80.1433 Requirements for a party who knows or has reason to know that a party to whom it is transferring a renewable fuel or a renewable fuel blend intends a use other than as transportation fuel, heating oil, jet fuel, or fuel for a stationary internal combustion engine.

(a) A party that received fuel containing any amount of renewable fuel, ethanol, butanol, biodiesel, renewable diesel, naphtha, or other biomass-derived fuel, and who knows or has reason to know that a party to whom it is transferring the fuel intends a use other than as transportation fuel, heating oil, jet fuel, or fuel for a stationary internal combustion engine, must include a statement on a product transfer document it delivers to the fuel transferee at the time of fuel transfer designating the fuel for other uses, as specified in paragraph (e) of this section, and must retire an appropriate number and type of RINs according to one of the following equations, as appropriate, depending on fuel volume and type, and in accordance with paragraphs (a)(1) through (a)(4) of this section. However, this paragraph and paragraphs (b) through (d) of this

section do not apply to a party that can demonstrate through records available at the time of fuel transfer and which are maintained for a period of no less than five years that no RINs were generated for any part of the fuel or fuel blend that it transfers or that an appropriate number and type of RINs had already been retired pursuant to this section by a prior owner of the fuel or fuel blend as specified on the PTD received with the fuel or fuel blend.

(1) Except as provided in paragraph (a)(5) of this section, *Cellulosic biofuel*.

$$\text{RINRET}_{\text{CB},i} = \Sigma(\text{VOL}_k * \text{EV}_k)_i$$

Where:

$\text{RINRET}_{\text{CB},i}$ = The quantity of cellulosic biofuel RINs that must be retired for day i, in gallons.

k = A discrete volume of fuel that the party designated for use in an application other than as transportation fuel, heating oil, jet fuel, or fuel for a stationary internal combustion engine, and which the party knows or has reason to know would qualify as cellulosic biofuel if it was designated for use as transportation fuel, heating oil, jet fuel, or fuel for a stationary internal combustion engine.

VOL_k = The standardized volume of discrete volume k, in gallons, calculated in accordance with § 80.1426(f)(8) and, for fuel blends, with paragraph (c) of this section.

EV_k = The equivalence value associated with discrete volume k.

(2) Except as provided in (a)(5), *Biomass-based diesel*.

$$\text{RINRET}_{\text{BBD},i} = \Sigma(\text{VOL}_k * \text{EV}_k)_i$$

Where:

$\text{RINRET}_{\text{BBD},i}$ = The quantity of biomass-based diesel RINs that must be retired for day i, in gallons.

k = A discrete volume of fuel that the party designated for use in an application other than as transportation fuel, heating oil, jet fuel, or fuel for a stationary internal combustion engine, and which the party knows or has reason to know would qualify as biomass-based diesel if it was designated for use as transportation fuel, heating oil, jet fuel, or fuel for a stationary internal combustion engine.

VOL_k = The standardized volume of discrete volume k, in gallons, calculated in accordance with § 80.1426(f)(8) and, for fuel blends, with paragraph (c) of this section.

EV_k = The equivalence value associated with discrete volume k.

(3) *Advanced biofuel*.

$$\text{RINRET}_{\text{AB},i} = \Sigma(\text{VOL}_k * \text{EV}_k)_i$$

Where:

$\text{RINRET}_{\text{AB},i}$ = The quantity of advanced biofuel RINs that must be retired for day i, in gallons.

k = A discrete volume of fuel that the party designated for use in an application other than as transportation fuel, heating

oil, jet fuel, or fuel for a stationary internal combustion engine, and which the party knows or has reason to know would qualify as advanced biofuel if it was designated for use as transportation fuel, heating oil, jet fuel, or fuel for a stationary internal combustion engine.

VOL_k = The standardized volume of discrete volume k, in gallons, calculated in accordance with § 80.1426(f)(8) and, for fuel blends, with paragraph (c) of this section.

EV_k = The equivalence value associated with discrete volume k.

(4) *Renewable fuel that does not qualify as a type of advanced biofuel*.

$$\text{RINRET}_{\text{RF},i} = \Sigma(\text{VOL}_k * \text{EV}_k)_i$$

Where:

$\text{RINRET}_{\text{RF},i}$ = The quantity of renewable fuel RINs that must be retired for day i, in gallons.

k = A discrete volume of fuel that the party designated for use in an application other than as transportation fuel, heating oil, jet fuel, or fuel for a stationary internal combustion engine, and which the party knows or has reason to know would qualify as renewable fuel (but not as a type of advanced biofuel) if it was designated for use as transportation fuel, heating oil, jet fuel, or fuel for a stationary internal combustion engine.

VOL_k = The standardized volume of discrete volume k, in gallons, calculated in accordance with § 80.1426(f)(8) and, for fuel blends, with paragraph (c) of this section.

EV_k = The equivalence value associated with discrete volume k.

(5) If the party knows or has reason to know that the fuel would qualify as cellulosic biomass-based diesel if it was designated for use as transportation fuel, heating oil, jet fuel, or fuel for a stationary internal combustion engine, it must choose either the formula specified in paragraph (a)(1) of this section or that in paragraph (a)(2) of this section to calculate the number and type of RINs that must be retired.

(b) For the purposes of calculating the number of RINs that must be retired under paragraphs (a) of this section:

(1) If the renewable fuel category and equivalence value for the discrete volume k can be determined based on its composition, then the appropriate formula and equivalence value based on such information shall be used in the calculation pursuant to paragraph (a).

(2) If the discrete volume k is known to be biomass-based diesel but the composition is unknown, the EV_k shall be 1.5.

(3) If neither the renewable fuel category nor EV_k of discrete volume k can be determined by its composition, the renewable fuel category and EV_k in the formula used in paragraph (a) of this section shall correspond to the renewable fuel designation on the PTD

received by the party, or shall be 1.0, whichever value is greater.

(c) VOL_k of fuel blends shall be based on one of the following:

(1) Information from the supplier of the blend of the concentration of fuel originally produced as renewable fuel in the blend.

(2) Determination of the renewable portion of the blend using Method B or Method C of ASTM D 6866 (incorporated by reference, see § 80.1468), or an alternative test method as approved by the EPA.

(3) Assuming the maximum concentration of the renewable fuel in the blend as allowed by law.

(d) All RIN retirements required pursuant paragraph (a) of this section shall be identified in EMTS within thirty (30) business days of the transfer of the fuel designated for use in an application other than as transportation fuel, heating oil, jet fuel, or fuel for a stationary internal combustion engine.

(e) A party that received fuel containing any amount of renewable fuel, ethanol, butanol, biodiesel, renewable diesel, naphtha, or other biomass-derived fuel, and who knows or has reason to know that a party to whom it is transferring the fuel intends a use other than as transportation fuel, heating oil, jet fuel, or fuel for a stationary internal combustion engine must include a statement on a product transfer document it delivers to the fuel transferee at the time of fuel transfer that includes the following information:

(1) "This volume of fuel is designated and intended for use other than as transportation fuel, heating oil, jet fuel, or fuel for a stationary internal combustion engine.";

(2) "To the extent necessary, the appropriate number and type of RINs have been retired pursuant to 40 CFR 80.1433.";

(3) Date of RIN retirement in EMTS; and

(4) EMTS Transaction ID for the transaction in which the appropriate number and type of RINs were retired.

(f) Any volume of fuel which is designated for use in an application other than as transportation fuel, heating oil, jet fuel, or fuel for a stationary internal combustion engine cannot be redesignated as renewable fuel.

■ 44. Section 80.1434 is added to read as follows:

§ 80.1434 RIN retirement.

(a) A RIN must be retired in any of the following cases:

(1) *Demonstrate annual compliance*. Except as specified in paragraph (b) of this section or § 80.1456, each party that

is an obligated party under § 80.1406 and is obligated to meet the RVO under § 80.1407 must retire a sufficient number of RINs to demonstrate compliance with an applicable RVO.

(2) *Exported renewable fuel.* Any exporter of renewable fuel that incurs an ERVO as described in § 80.1430(a) shall retire RINs pursuant to §§ 80.1430(b) through (g) and 80.1427(c).

(3) *Redesignation.* Any party that uses a renewable fuel in any application that is not transportation fuel, heating oil, or jet fuel, or designates a renewable fuel for use as something other than transportation fuel, heating oil, or jet fuel, must retire any RINs received with that renewable fuel as described in § 80.1433.

(4) *RIN expiration.* Except as provided in § 80.1427(a)(7), a RIN is valid for compliance during the compliance year in which it was generated, or the following compliance year. Any RIN that is not used for compliance purposes for the compliance year in which it was generated, or for the following compliance year, will be an expired RIN. Pursuant to § 80.1431(a), an expired RIN will be considered an invalid RIN, cannot be used for compliance purposes, and must be retired as described in § 80.1431(b).

(5) *Volume error correction.* A RIN must be retired when it was based on incorrect volumes or volumes that have not been standardized to 60 °F as described in § 80.1426(f)(8).

(6) *Import volume correction.* Where the port of entry volume is the lesser of the two volumes in § 80.1466(e)(1)(i), the importer shall calculate the difference between the number of RINs originally assigned by the foreign producer and the number of RINs calculated under § 80.1426 for the volume of renewable fuel as measured at the port of entry, and retire that amount of RINs in accordance with § 80.1466(k)(4).

(7) *Spillage or disposal of renewable fuels.* Except as provided in § 80.1432(c), in the event that a reported spillage or disposal of any volume of renewable fuel, the owner of the renewable fuel must notify any holder or holders of the attached RINs and retire a number of gallon-RINs corresponding to the volume of spilled or disposed of renewable fuel multiplied by its equivalence value.

(i) If the equivalence value for the spilled or disposed of volume may be determined pursuant to § 80.1415 based on its composition, then the appropriate equivalence value shall be used.

(ii) If the equivalence value for a spilled or disposed volume of renewable

fuel cannot be determined, the equivalence value shall be 1.0.

(iii) If the owner of a volume of renewable fuel that is spilled or disposed of and reported establishes that no RINs were generated to represent the volume, then no gallon-RINs shall be retired.

(8) *Contaminated or spoiled fuel.* In the event that contamination or spoliatio of any volume of renewable fuel is reported, the owner of the renewable fuel must notify any holder or holders of the attached RINs and retire a number of gallon-RINs corresponding to the volume of contaminated or spoiled renewable fuel multiplied by its equivalence value.

(i) If the equivalence value for the contaminated or spoiled volume may be determined pursuant to § 80.1415 based on its composition, then the appropriate equivalence value shall be used.

(ii) If the equivalence value for a contaminated or spoiled volume of renewable fuel cannot be determined, the equivalence value shall be 1.0.

(iii) If the owner of a volume of renewable fuel that is contaminated or spoiled and reported establishes that no RINs were generated to represent the volume, then no gallon-RINs shall be retired.

(9) *Delayed RIN generation.* In the event that a party generated a delayed RIN as described in § 80.1426(g)(1) through (4), parties must retire RINs as described in accordance with § 80.1426(g)(5) and (6).

(10) *Invalid RIN.* In the case that a RIN is invalid as described in § 80.1431(a), the RIN will be considered invalid and must be retired as described in § 80.1431(b).

(11) *Potentially invalid RINs.* In the case that a RIN is identified as a PIR under § 80.1474(b)(1), the PIRs or replacement RINs must be retired as described in § 80.1474(b)(2) through (5).

(12) *Replacement.* As required by § 80.1431(b) or § 80.1474, any party that must replace an invalid RIN or PIR that was used for compliance must retire valid RINs to replace the invalid RINs originally used for any RVO.

(13) *Other.* Any other instance identified by the EPA.

(b) In the case that retirement of a RIN is necessary, the following provisions apply:

(1) Any party affected by such retirement must keep copies and adjust its records, reports, and compliance calculations in which the retired RIN was used.

(2) The retired RIN must be reported in the applicable reports under § 80.1451.

(3) The retired RIN must be reported in the EPA Moderated Transaction System pursuant to § 80.1452(c).

(4) Where the importer of renewable fuel is required to retire RINs under paragraph (a)(6) of this section, the importer must report the retired RINs in the applicable reports under §§ 80.1451, 80.1466(k), and 80.1466(m).

■ 45. Section 80.1440 is amended by revising the section heading and paragraph (a) and adding paragraph (f) to read as follows:

§ 80.1440 What are the provisions for blenders who handle and blend less than 250,000 gallons of renewable fuel per year or who handle renewable fuel blended for fuels under a national security exemption?

(a)(1) Renewable fuel blenders who handle and blend less than 250,000 gallons of renewable fuel per year, and who do not have one or more reported or unreported Renewable Volume Obligations, are permitted to delegate their RIN-related responsibilities to the party directly upstream of them who supplied the renewable fuel for blending.

(2) Renewable fuel blenders who handle and blend renewable fuel for parties that have a national security exemption under 40 CFR part 80, or a national security exemption under paragraph (f) of this section, and who do not have one or more reported or unreported Renewable Volume Obligations, are permitted to delegate their RIN-related responsibilities to the party directly upstream of them who supplied the renewable fuel for blending.

* * * * *

(f) *National security exemption.* (1) The requirements described in paragraph (b) of this section may be delegated directly upstream for transportation fuel, heating oil, or jet fuel that is produced, imported, sold, offered for sale, supplied, offered for supply, stored, dispensed, or transported for use in any of the following:

(i) Tactical military vehicles, engines, or equipment having an EPA national security exemption from emission standards under 40 CFR 85.1708, 89.908, 92.908, 94.908, 1042.635, or 1068.225.

(ii) Tactical military vehicles, engines, or equipment that are not subject to a national security exemption from vehicle or engine emissions standards as described in paragraph (f)(1)(i) of this section but, for national security purposes (for purposes of readiness for deployment overseas), need to be fueled on the same transportation fuel, heating oil, or jet fuel as the vehicles, engines,

or equipment for which EPA has granted such a national security exemption.

■ 46. Section 80.1441 is amended by adding paragraph (e)(2)(iv) and revising paragraph (h) to read as follows:

§ 80.1441 Small refinery exemption.

* * * * *

(e) * * *
(2) * * *

(iv)(A) The following information related to petitions submitted under this section that have been accepted by EPA for evaluation is not entitled to confidential treatment under 40 CFR part 2, subpart B:

- (1) Petitioner's name.
(2) The name and location of the facility for which relief is requested.
(3) The general nature of the relief requested.
(4) The time period for which relief is requested.

(B) The following information related to EPA determinations on petitions submitted under this section is not entitled to confidential treatment under 40 CFR part 2, subpart B:

- (1) Petitioner's name.
(2) The name and location of the facility for which relief was requested.
(3) The general nature of the relief requested.
(4) The time period for which relief was requested.
(5) The extent to which EPA either granted or denied the requested relief.

(C) The EPA will disclose the information specified in paragraphs (e)(2)(iv)(A) and (B) of this section on its Web site, or will otherwise make it available to interested parties, notwithstanding any claims that the information is entitled to confidential treatment under 40 CFR part 2, subpart B.

* * * * *

(h) Verification letters under paragraph (b) of this section, petitions for small refinery hardship extensions under paragraph (e) of this section, and small refinery exemption waiver notices under paragraph (f) of this section shall be sent to the attention of "RFS Program" to the address in § 80.10(a).

■ 47. Section 80.1442 is amended by adding paragraph (h)(6) and revising paragraph (i) to read as follows:

§ 80.1442 What are the provisions for small refiners under the RFS program?

* * * * *

(h) * * *

(6)(i) The following information related to petitions submitted under this section that have been accepted by EPA for evaluation is not entitled to confidential treatment under 40 CFR part 2, subpart B:

- (A) Petitioner's name.
(B) The name and location of the facility for which relief is requested.
(C) The general nature of the relief requested.
(D) The time period for which relief is requested.
(ii) The following information related to EPA determinations on petitions submitted under this section is not entitled to confidential treatment under 40 CFR part 2, subpart B:
(A) Petitioner's name.
(B) The name and location of the facility for which relief was requested.
(C) The general nature of the relief requested.
(D) The time period for which relief was requested.
(E) The extent to which EPA either granted or denied the requested relief.

(iii) The EPA will disclose the information specified in paragraphs (h)(6)(i) and (ii) of this section on its Web site, or will otherwise make it available to interested parties, notwithstanding any claims that the information is entitled to confidential treatment under 40 CFR part 2, subpart B.

(i) Small refiner status verification letters, small refiner exemption waivers, or applications for extensions of the small refiner temporary exemption under this section must be sent to the attention of "RFS Program" to the address in § 80.10(a).

■ 48. Section 80.1443 is amended by revising paragraph (d)(2) to read as follows:

§ 80.1443 What are the opt-in provisions for noncontiguous states and territories?

* * * * *

(d) * * *

(2) A petition submitted under this section should be sent to the attention of "RFS Program" to the address in § 80.10(a).

* * * * *

■ 49. Section 80.1449 is amended by revising paragraph (d) to read as follows:

§ 80.1449 What are the Production Outlook Report requirements?

* * * * *

(d) Production outlook reports shall be sent to the attention of "RFS Program (Production Output Reports)" to the address in § 80.10(a).

* * * * *

■ 50. Section 80.1450 is amended by:

- a. Revising paragraph (a);
■ b. Revising paragraphs (b) introductory text and (b)(1) introductory text;
■ c. Revising paragraphs (b)(1)(i) and (ii), (b)(1)(iv)(A)(1) and (2);

- d. Revising paragraphs (b)(1)(v) introductory text, (b)(1)(v)(A), (b)(1)(v)(C)(1), (b)(1)(vii), (b)(1)(viii), (b)(1)(ix)(A), and (b)(1)(xi)(A) and (B);
■ e. Revising paragraph (b)(1)(xv) introductory text;
■ f. Adding paragraphs (b)(1)(xvi) through (xxi);
■ g. Revising paragraph (b)(2) introductory text and (b)(2)(i) and (ii);
■ h. Redesignating paragraphs (b)(2)(iii) through (vi) as paragraphs (b)(2)(v) through (viii) and adding new paragraphs (b)(2)(iii) and (iv);
■ i. Revising newly redesignated paragraph (b)(2)(vi);
■ j. Adding paragraphs (b)(2)(ix) and (x);
■ k. Revising paragraphs (d), (f), (g)(9), and (g)(11)(i);
■ l. Redesignating paragraphs (h) and (i) as paragraphs (i) and (j) and adding a new paragraph (h); and
■ m. Revising newly redesignated paragraph (i).

The revisions and additions read as follows:

§ 80.1450 What are the registration requirements under the RFS program?

(a) Obligated parties and exporters. Any obligated party described in § 80.1406, any exporter of renewable fuel described in § 80.1430, and any party that must retire RINs under § 80.1433, must provide EPA with the information specified for registration under § 80.76, if such information has not already been provided under the provisions of this part. An obligated party, an exporter of renewable fuel, or party that must retire RINs under § 80.1433 must receive EPA-issued identification numbers prior to engaging in any transaction involving RINs. Registration information must be submitted and accepted by EPA by July 1, 2010, or 60 days prior to RIN ownership, whichever date comes later.

(b) Producers. Any RIN-generating foreign producer, any non-RIN-generating foreign producer, or any domestic renewable fuel producer that generates RINs, or any biointermediate producer that transfers any biointermediate for the production of a renewable fuel for RIN generation, must provide EPA the information specified under § 80.76 if such information has not already been provided under the provisions of this part, and must receive EPA-issued company and facility identification numbers prior to the generation of any RINs for their fuel or for fuel made with their ethanol, or prior to the transfer of any biointermediate to be used in the production of a renewable fuel for which RINs may be generated. Unless otherwise specifically indicated, all the

following registration information must be submitted and accepted by EPA by July 1, 2010, or 60 days prior to the generation of RINs, whichever date comes later (for renewable fuel producers and foreign producers), or by the effective date of the final rule, or 60 days prior to the transfer of any biointermediate to be used in the production of a renewable fuel for the generation of RINs, whichever date comes later (for biointermediate producers):

(1) A description of the types of renewable fuels, ethanol, or biointermediate(s) that the producer intends to produce at the facility and that the facility is capable of producing without significant modifications to the existing facility. For each type of renewable fuel, ethanol, or biointermediate(s) the renewable fuel producer or foreign ethanol producer shall also provide all the following:

(i)(A) A list of all the feedstocks and/or biointermediates the facility intends to utilize without significant modification to the existing facility.

(B) A description of the type(s) of renewable biomass that will be used as feedstock material to produce the biointermediate, if applicable.

(C) A list of the EPA company registration numbers and EPA facility registration numbers of all biointermediate producers and biointermediate production facilities that will supply biointermediates for renewable fuel or ethanol production, as appropriate.

(D) An affidavit from or contract with the biointermediate producer stating its intent to supply biointermediate to the renewable fuel producer, and certifying the renewable and non-renewable components of the biointermediate that it intends to provide to the renewable fuel producer.

(ii) A description of the facility's renewable fuel, ethanol, or biointermediate production processes, including:

(A) A process diagram with all relevant unit processes labeled, including required inputs and outputs at each step and current operating pressures and temperatures of each unit.

(B) A description of the renewable biomass or ethanol treatment process, including required inputs and outputs used at each step.

(C) A description of the mechanical, chemical, and biochemical mechanisms by which renewable biomass is processed prior to being converted to renewable fuel, ethanol, or a biointermediate.

(D) Determination of the throughput rate-limiting step in the production

process and corresponding capacity of the production process.

(E) For a producer of renewable fuel seeking to generate RINs with different D codes from the same batch or co-processing renewable biomass and non-renewable biomass:

(1) The expected overall fuel yield, calculated as the total volume of fuel produced per batch divided by the total feedstock mass per batch on a dry weight basis.

(2) The Converted Fraction (CF) that will be used for generating RINs.

(3) Chemical analysis data supporting the calculated Converted Fraction and a discussion of the possible variability that could be expected between reporting periods per

§ 80.1451(b)(1)(ii)(U)(1). Data used to calculate the CF must be representative and obtained using an analytical method certified by a voluntary consensus standards body, or using a method that would produce reasonably accurate results as demonstrated through peer reviewed references provided to the third party engineer performing the engineering review at registration.

(4) A description and calculations showing how the data were used to determine the cellulosic Converted Fraction.

(F) For registrations indicating production of cellulosic biofuel (D codes 3 or 7) from feedstocks other than biogas (including through pathways in rows K, L, M, and N of Table 1 to § 80.1426), the producer must demonstrate the ability to convert cellulosic components of feedstock into fuel by providing all of the following:

(1) A process diagram with all relevant unit processes labeled and a designation of which unit process is capable of performing cellulosic treatment, including required inputs and outputs at each step.

(2) A description of the cellulosic biomass treatment process, including required inputs and outputs used at each step.

(3) A description of the mechanical, chemical and biochemical mechanisms by which cellulosic materials can be converted to biofuel products.

(G) For registrations indicating the production of any biointermediate, the biointermediate producer must provide all of the following:

(1) The company names, EPA company registration numbers, and EPA facility registration numbers of all renewable fuel producers and facilities at which each biointermediate will be used.

(2) Copies of documents and corresponding calculations

demonstrating production capacity of each biointermediate produced at the biointermediate production facility.

(3) A description of the types of feedstocks that the biointermediate producer intends to process at the facility and that the facility is capable of producing without significant modifications to the existing facility. For each type of feedstocks that the biointermediate producer intends to process the biointermediate producer shall also provide all the following:

(i) A list of all the feedstocks the facility intends to utilize without significant modification to the existing facility.

(ii) A description of the type(s) of renewable biomass that will be used as feedstock material to produce the biointermediate.

(iii) The type of co-products produced with each type of biointermediate.

(4) The pathway(s) in Table 1 to § 80.1426 or the approved pathway under § 80.1416 that the biointermediate could be used in to produce renewable fuel.

* * * * *
(iv) * * *
(A) * * *

(1) Each type of process heat fuel used at the facility to produce the renewable fuel, ethanol, or biointermediate.

(2) The name and address of the company supplying each process heat fuel to the renewable fuel facility, foreign ethanol facility, or biointermediate production facility.

* * * * *

(v) For renewable fuel producers, the following records that support the facility's baseline volume and exempted baseline volume, as applicable, as defined in § 80.1401 or, for foreign ethanol facilities, their production volume:

(A) For all facilities, copies of the most recent applicable air permits issued by the U.S. Environmental Protection Agency, state, local air pollution control agencies, or foreign governmental agencies and that govern the construction and/or operation of the renewable fuel or foreign ethanol facility.

* * * * *
(C) * * *

(1) For all facilities, copies of documents demonstrating each facility's actual peak capacity and exempted baseline peak capacity, if applicable, as defined in § 80.1401 if the maximum rated annual volume output of renewable fuel is not specified in the air permits specified in paragraphs (b)(1)(v)(A) and (b)(1)(v)(B) of this section, as appropriate.

* * * * *

(vii)(A) For a producer of renewable fuel, a foreign producer of ethanol, or a biointermediate producer producing a biointermediate made from separated yard waste per § 80.1426(f)(5)(i)(A):

(1) The location of any municipal waste establishment(s) or other establishments from which the waste stream consisting solely of separated yard waste is collected.

(2) A plan documenting how the waste will be collected and how the renewable fuel producer or foreign ethanol producer will conduct ongoing verification that such waste consists only of yard waste (and incidental other components such as paper and plastics) that is kept separate since generation from other waste materials.

(B) For a producer of renewable fuel, a foreign producer of ethanol, or a biointermediate producer producing a biointermediate made from separated food waste per § 80.1426(f)(5)(i)(B) or from biogenic waste oils/fats/greases:

(1) A plan documenting the type(s) of separated food waste or biogenic waste oils/fats/greases, the type(s) of establishment the waste is collected from, how the waste will be collected, a description of ongoing verification measures that demonstrate such waste consists only of food waste (and an incidental amount of other components such as paper and plastics) or biogenic waste oils/fats/greases that is kept separate from other waste materials, and if applicable, how the cellulosic and non-cellulosic portions of the waste will be quantified.

(2) [Reserved]

(viii) For a producer of renewable fuel, a foreign producer of ethanol, or biointermediate producer of a biointermediate made from separated municipal solid waste per § 80.1426(f)(5)(i)(C):

(A) The location of the municipal waste establishment(s) from which the separated municipal solid waste is collected or from which material is collected that will be processed to produce separated municipal solid waste.

(B) A plan providing ongoing verification that there is separation of recyclable paper, cardboard, plastics, rubber, textiles, metals, and glass wastes to the extent reasonably practicable and which documents the following:

(1) Extent and nature of recycling that occurred prior to receipt of the waste material by the renewable fuel producer, foreign ethanol producer, or biointermediate producer.

(2) Identification of available recycling technology and practices that are appropriate for removing recycling materials from the waste stream by the

fuel producer, foreign ethanol producer, or biointermediate producer.

(3) Identification of the technology or practices selected for implementation by the fuel producer, foreign ethanol producer, or biointermediate producer including an explanation for such selection, and reasons why other technologies or practices were not.

(C) Contracts relevant to materials recycled from municipal waste streams as described in § 80.1426(f)(5)(iii).

(D) Certification by the producer that recycling is conducted in a manner consistent with goals and requirements of applicable State and local laws relating to recycling and waste management.

(ix) * * *

(A) For a producer of ethanol from grain sorghum or a foreign ethanol producer making product from grain sorghum and seeking to have it sold as renewable fuel after addition of ethanol denaturant, provide a plan that has been submitted and accepted by U.S. EPA that includes the following information:

* * * * *

(xi) * * *

(A) An affidavit from the producer of the fuel oil meeting paragraph (2) of the definition of heating oil in § 80.1401 stating that the fuel oil for which RINs have been generated will be sold for the purposes of heating or cooling interior spaces of homes or buildings to control ambient climate for human comfort, and no other purpose.

(B) Affidavits from the final end user or users of the fuel oil stating that the fuel oil meeting paragraph (2) of the definition of heating oil in § 80.1401 is being used or will be used for purposes of heating or cooling interior spaces of homes or buildings to control ambient climate for human comfort, and no other purpose, and acknowledging that any other use of the fuel oil would violate EPA regulations and subject the user to civil and/or criminal penalties under the Clean Air Act.

* * * * *

(xv) For a producer of cellulosic biofuel made from crop residue, a foreign ethanol fuel producer from crop residue and seeking to have it sold after denaturing as cellulosic biofuel, or a biointermediate producer producing a biointermediate for use in the production of a cellulosic biofuel made from crop residue, provide all the following information:

* * * * *

(xvi) For a producer of renewable fuel that achieves the greenhouse gas reductions necessary to qualify for a renewable fuel pathway by using CCS:

(A) A CCS plan that includes each of the following:

(1) A statement of affirmation that the owner or operator of the sequestration facility will inject CO₂ underground from the renewable fuel production process under 40 CFR part 98, subpart RR. The MRV plan must be approved pursuant to 40 CFR 98.448 prior to approval of registration under the RFS program.

(2) A statement of affirmation that the renewable fuel producer is using the methodology approved under § 80.1416 for calculating lifecycle greenhouse gas emissions associated with renewable fuel produced and that the lifecycle greenhouse gas emissions associated with renewable fuel produced are no greater than a specified emissions value.

(3) If the CO₂ is or will be transferred offsite to a sequestration facility, a contract or contracts between the renewable fuel producer and sequestration facility (and any intermediate or necessary parties) demonstrating the sale of CO₂ from the fuel producer to the sequestration facility and all of the following sequestration facility duties:

(i) A duty to inject the CO₂ for geologic sequestration.

(ii) A duty to help the renewable fuel producer develop a remediation plan for the leaked CO₂ to be submitted to EPA within 30 days of EPA being notified by the renewable fuel producer of the surface leak, and which provides information related to the date(s) the surface leak occurred, the GHGRP facility identification number of the sequestration facility, a detailed description of how the leak occurred, the amount of CO₂ that leaked, and a description of how the leak would be remediated.

(iii) A duty to notify the renewable fuel producer of CO₂ surface leaks within 24 hours of detection.

(iv) A duty to certify to the renewable fuel producer annually and within 30 days of submission to EPA that the geologic sequestration facility has submitted to EPA all reports pursuant to 40 CFR part 98, subpart RR.

(v) A duty for the geologic sequestration facility to notify the renewable fuel producer if the geologic sequestration facility ends sequestration operations.

(vi) A duty for the geologic sequestration facility to notify the renewable fuel producer if the geologic sequestration facility submits a request pursuant to 40 CFR 98.441 for discontinuation of reporting under 40 CFR part 98, subpart RR.

(vii) Acknowledgement of the geologic sequestration facility's duty to retain, for at least five years, all records required by the applicable provisions of the UIC

program under Part 146, Subpart H, and the GHGRP under 40 CFR 98.3.

(B) A description of the CO₂ capture and sequestration process. If the CO₂ is transferred to a sequestration facility after capture, a description of the transfer process must be included. The transfer process description must include the mode of transport (*e.g.*, whether CO₂ is transferred by pipeline or by container), as well as the annual quantity of CO₂ transferred.

(C) If a producer of renewable fuel that achieves the greenhouse gas reductions necessary to qualify for a renewable fuel pathway by using CCS changes the geologic sequestration facility or if the participating geologic sequestration facility ends sequestration operations, the renewable producer shall update their registration under paragraph (d)(1) of this section.

(D) Any additional information EPA may request, as appropriate.

(xvii) For a producer of renewable fuel that is produced by co-processing renewable biomass and non-renewable feedstocks simultaneously to produce a fuel that is partially renewable:

(A) A description of how the renewable content of the partial renewable fuel will be determined after co-processing.

(B) The method the producer will use to calculate the number of gallon-RINs on a per-batch basis as described in § 80.1426(f)(4).

(C) Any additional information EPA may request, as appropriate.

(xviii) For a producer of cellulosic biofuel made from short-rotation willow or short-rotation hybrid poplar:

(A) A list of all the species and hybrids the producer intends to utilize as short-rotation willow or short-rotation hybrid poplar.

(B) A written justification that explains why each feedstock a producer lists according to paragraph (b)(1)(xviii)(A) of this section meets the definition of “short-rotation willow” or “short-rotation hybrid poplar” per § 80.1401.

(C) Records demonstrating that the short-rotation willow or short-rotation hybrid poplar feedstocks will only be sourced from locations that qualify as a tree plantation as defined in § 80.1401, including documentation that the land was cleared prior to December 19, 2007, and actively managed on December 19, 2007.

(D) Contracts and affidavits from the party or parties supplying the producer with short-rotation willow or short-rotation hybrid poplar that the feedstocks supplied to the producer shall be grown only at locations that qualify as a tree plantation and for

which records required pursuant to paragraph (b)(1)(xviii)(C) of this section have been provided to the producer.

(xix) For VRD–N producers, submit all relevant information in § 80.1426(f)(17) and the following:

(A) Letters of approval from EPA for a Clean Alternative Fuel Conversion under 40 CFR part 85, subpart F, for all intended transferees of VRD–N.

(B) Copies of contracts with the intended fuel transferee, or affidavits signed by a responsible officer of the intended transferee, together with other documentation that EPA may specify on a case-by-case basis that demonstrate that the contracted end users have converted vehicles and engines under an EPA-approved Clean Alternative Fuel Conversion under 40 CFR part 85, subpart F.

(xx) A responsible corporate officer, or an official in an equivalent position, of the renewable fuel producer, foreign ethanol producer, or biointermediate producer in submitting its registration materials to EPA under this section, must include, sign, and date the following certification: “I certify under penalty of law that the attached registration materials were developed, received, reviewed, and responded to under my direction or supervision by qualified personnel in accordance with the requirements of 40 CFR part 80. Based on my personal knowledge and experience, or inquiry of personnel involved in developing the registration materials, the information submitted herein is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.”

(xxi) For each facility, the renewable fuel producer, foreign ethanol producer, or biointermediate producer shall make the following information readily accessible on the facility’s publicly-available Web site (if such Web site exists) as a public notification:

(A) The name of the independent third-party engineer that conducted the engineering review under paragraph (b)(2) of this section.

(B) A summary of how the independent third-party engineer meets the competency and independent criteria.

(C) The independent third-party engineer’s and producer’s signed certification statements as required under paragraphs (b)(1)(xx) and (b)(2)(iii) of this section.

(2) *Engineering review.* An independent third-party engineer shall conduct an engineering review that verifies the information provided

pursuant to paragraph (b)(1) of this section and submit a written report that demonstrates the verification of the information provided pursuant to paragraph (b)(1) of this section. The engineering review and written report shall be based upon a site visit occurring while the facility is producing renewable fuel, ethanol, or a biointermediate, and review of relevant documents, and shall separately identify each item required by paragraph (b)(1) of this section, describe how the independent third-party engineer evaluated the accuracy of the information provided, state whether the independent third-party engineer agrees with the information provided, and identify any exceptions between the independent third-party engineer’s findings and the information provided.

(i) The engineering review and written report required under this section must be conducted by a professional engineer, as specified in paragraph (b)(2)(i)(A) or (B) of this section, as applicable, who is an independent third-party engineer. The verifying independent third-party engineer must be:

(A) For a domestic renewable fuel production facility or a domestic biointermediate production facility: A professional engineer who is licensed by an appropriate state agency in the United States and trained or certified in proper verification techniques, with professional work experience in the chemical engineering field or related to renewable fuel production.

(B) For a foreign renewable fuel production facility, a foreign ethanol production facility, or a foreign biointermediate production facility: An engineer who is a foreign equivalent to a professional engineer licensed in the United States and trained or certified in proper auditing techniques, with professional work experience in the chemical engineering field or related to renewable fuel production.

(ii) The independent third-party engineer and its contractors and subcontractors must be registered with EPA and meet all applicable requirements under paragraph (h) of this section.

(iii) The independent third-party engineer shall sign, date, and submit to EPA with the written report the following conflict of interest statement: “I certify that the engineering review and written report required and submitted under 40 CFR 80.1450(b)(2) was conducted and prepared by me, or under my direction or supervision, in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information

upon which the engineering review was conducted and the written report is based. I further certify that the engineering review was conducted and this written report was prepared pursuant to the requirements of 40 CFR part 80 and all other applicable auditing, competency, independence, impartiality, and conflict of interest standards and protocols. Based on my personal knowledge and experience, and inquiry of personnel involved, the information submitted herein is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.”

(iv)(A) To verify the accuracy of the information provided in paragraph (b)(1)(ii) of this section, the independent third-party engineer shall conduct independent calculations of the throughput rate-limiting step in the production process, take digital photographs with date and geographic coordinates stamps of all process units depicted in the process flow diagram during the site visit, and certify that all process unit connections are in place and functioning based on the site visit.

(B) To verify the accuracy of the information in paragraph (b)(1)(iii) of this section, the independent third-party engineer shall obtain independent documentation from parties in contracts with the producer for any co-product sales or disposals.

(C) To verify the accuracy of the information provided in paragraph (b)(1)(iv) of this section, the independent third-party engineer shall obtain independent documentation from all process heat fuel suppliers of the process heat fuel supplied to the facility.

(D) To verify the accuracy of the information provided in paragraph (b)(1)(v) of this section, the independent third-party engineer shall conduct independent calculations of the Converted Fraction that will be used to generate RINs.

* * * * *

(vi) The renewable fuel producer, foreign ethanol producer, or biointermediate producer must retain records of the review and verification, as required in § 80.1454(b)(6) or (n)(4), as applicable.

* * * * *

(ix) The independent third-party engineer must provide to EPA documentation demonstrating that a site visit, as described in paragraph (b)(2) of this section, occurred. Such documentation shall include digital photographs with date and geographic

coordinates stamps of the process units taken during the site visit and a description of what is depicted in the photographs.

(x) Reports required under paragraph (b)(2) of this section shall be electronically submitted directly to EPA by an independent third-party engineer using forms and procedures established by EPA.

* * * * *

(d) *Registration updates.* (1)(i)(A) Any producer of renewable fuel or any foreign ethanol producer who makes changes to their facility that will allow them to produce renewable fuel that is not reflected in the producer’s registration information on file with EPA must update their registration information and submit a copy of an updated independent third-party engineering review on file with EPA at least 60 days prior to producing the new type of renewable fuel.

(B) Any biointermediate producer who makes changes to their biointermediate production facility that will allow them to produce a biointermediate for use in the production of a renewable fuel that is not reflected in the biointermediate producer’s registration information on file with EPA must update their registration information and submit a copy of an updated independent third-party engineering review on file with EPA at least 60 days prior to producing the new biointermediate for use in the production of the renewable fuel.

(ii) The producer may also submit an addendum to the independent third-party engineering review on file with EPA provided the addendum meets all the requirements in paragraph (b)(2) of this section and verifies for EPA the most up-to-date information at the producer’s existing facility.

(2)(i) Any producer of renewable fuel or any foreign ethanol producer who makes any other changes to a facility that will affect the producer’s registration information but will not affect the renewable fuel category for which the producer is registered per paragraph (b) of this section must update his registration information 7 days prior to the change.

(ii)(A) Any biointermediate producer who makes any other changes to a biointermediate production facility that will affect the biointermediate producer’s registration information must update their registration information 7 days prior to the change.

(B) All biointermediate producers must update their registration information on file with EPA at least 60 days prior to transferring any

biointermediate for use in the production of a renewable fuel produced by a renewable fuel producer not contained in their registration information on file with EPA.

(3) All producers of renewable fuel, foreign ethanol producers, and biointermediate producers must update registration information and submit an updated independent third-party engineering review according to the schedule in paragraph (d)(3)(i) or (ii) of this section, and including the information specified in paragraph (d)(3)(iii) or (iv) of this section, as applicable:

(i) For all producers of renewable fuel and foreign ethanol producers registered in calendar year 2010, the updated registration information and independent third-party engineering review shall be submitted to EPA by January 31, 2013, and by January 31 of every third calendar year thereafter; or

(ii) For all producers of renewable fuel, foreign ethanol producers, and biointermediate producers registered in any calendar year after 2010, the updated registration information and independent third-party engineering review shall be submitted to EPA by January 31 of every third calendar year after the first year of registration.

(iii) For all producers of renewable fuel and foreign ethanol producers, in addition to conducting the engineering review and written report and verification required by paragraph (b)(2) of this section, the updated independent third-party engineering review shall include a detailed review of the renewable fuel producer’s calculations used to determine VRIN of a representative sample of batches of each type of renewable fuel produced since the last registration. The representative sample shall be selected in accordance with the sample size guidelines set forth at § 80.127.

(iv) For biointermediate producers, in addition to conducting the engineering review and written report and verification required by paragraph (b)(2) of this section, the updated independent third-party engineering review shall include a detailed review of the biointermediate producer’s calculations used to determine the renewable biomass and cellulosic renewable biomass proportions, as required to be reported to EPA under § 80.1451(i)(2), of a representative sample of batches of each type of biointermediate produced since the last registration. The representative sample shall be selected in accordance with the sample size guidelines set forth at § 80.127.

(v) Renewable fuel producers claiming an exemption specified in

§ 80.1403(b) or (c) do not need to resubmit air permits as specified in paragraph (b)(1)(v)(B) of this section or exempted baseline peak capacity as specified in paragraph (b)(1)(v)(C)(1) of this section. Air permits and documentation specified in paragraphs (b)(1)(v)(B) and (C) of this section must be kept as specified in § 80.1454(e).

(4) *Facility ownership changes.* (i) Parties that purchase, acquire, or otherwise obtain a facility that has not been operational for more than six months must submit a new registration for the facility under paragraph (b) of this section.

(ii) Producers of renewable fuel that purchase, acquire, or otherwise obtain a facility that has been operational within the previous six months and was previously registered to a different renewable fuel producer under paragraph (b) of this section, must meet the following requirements:

(A) The following information must be provided to EPA:

(1) All applicable information described in paragraph (b)(1) of this section.

(2) An engineering review as described in paragraph (b)(2) or (d)(1) of this section.

(3) A letter, signed by both a responsible corporate officer from the renewable fuel producer that previously registered the facility and the renewable fuel producer that currently owns or will own the facility that details the effective date of the transfer of ownership of the facility and summarizes any changes to the registration information provided to EPA pursuant to paragraph (b) of this section for the facility.

(4) Documents that demonstrate proof of sale or ownership of the facility.

(B) The documents and information described in paragraphs (b)(4)(ii)(A)(1) through (3) of this section must be provided to EPA no later than 60 days prior to the effective date of the transfer of ownership for a facility.

(C) The document(s) described in paragraph (b)(4)(ii)(A)(4) of this section must be provided to EPA within 3 business days of the effective date of the transfer of ownership.

(iii) The renewable fuel producer that is acquiring the previously registered facility under paragraph (d)(4)(ii) of this section shall not generate RINs under § 80.1426 until EPA accepts all applicable registration information.

(iv) For renewable fuel producers that have been approved by EPA to transfer ownership of a facility under paragraph (d)(4)(ii) of this section, those parties may, at EPA's sole discretion, be allowed to retroactively generate RINs

pursuant to § 80.1426(f) and assign those RINs to batches of renewable fuel pursuant to § 80.1452(e) back to the effective date of the transfer of ownership for the facility, if EPA determines that the renewable fuel producer met all applicable requirements under paragraphs (b) and (d) of this section for the facility at the effective date of the transfer of ownership for the facility.

(v) The previous renewable fuel producer that owned the facility shall not generate RINs pursuant to § 80.1426 or assign RINs to a batch of renewable fuel for a facility pursuant to § 80.1452(b) on or after the effective date of the transfer of ownership for the facility.

(vi) For purposes of this section, the effective date of the transfer of ownership for a facility shall be the date that the renewable fuel producer that is acquiring the previously registered facility purchased the facility, took custody of the facility, or began operating the facility, whichever is later.

(f)(1) Except as provided in paragraph (f)(2) of this section, all documents required for a new registration of any facility claiming an exemption under § 80.1403(c) or (d), and all documents required to support requests by registered facilities to amend registrations to increase the baseline volume of fuel qualifying for an exemption under § 80.1403(c) or (d), must be received by EPA no later than November 16, 2016.

(2) Paragraph (f)(1) of this section does not limit the ability of a renewable fuel producer to newly register with EPA as a result of the transfer of ownership of a facility that was previously registered to another renewable fuel producer, provided that such producer shall be subject to the same limitations as the previous owner regarding the baseline volume for which an exemption under § 80.1403(c) or (d) apply.

(g) * * *

(9) *Registration updates.* (i) Any independent third-party auditor who makes changes to its quality assurance plan(s) that will allow it to audit new renewable fuel production facilities, as defined in § 80.1401, that is not reflected in the independent third-party auditor's registration information on file with the EPA must update its registration information and submit a copy of an updated QAP on file with the EPA at least 60 days prior to producing the new type of renewable fuel.

(ii) Any independent third-party auditor who makes any changes other

than those specified in paragraphs (g)(9)(i), (iii), and (iv) of this section that will affect the third-party auditor's registration information must update its registration information 7 days prior to the change.

(iii) Independent third-party auditors must update their QAPs at least 60 days prior to verifying RINs generated by a renewable fuel facility for a pathway not covered in the independent third-party auditor's QAPs.

(iv) Independent third-party auditors must update their QAPs at least 60 days prior to verifying RINs generated by any renewable fuel facility not identified in the independent third-party auditor's existing registration.

* * * * *

(11) * * *

(i) The Administrator may issue a notice of intent to revoke the registration of a third-party auditor if the Administrator determines that the auditor has failed to fulfill any requirement of this subpart, including, but not limited to, the failure to fulfill QAP services. The notice of intent shall include an explanation of the reasons for the proposed revocation.

* * * * *

(h) *Independent third-party engineers.* Each independent third-party engineer who conducts an independent third-party engineering review must register with EPA as an independent third-party engineer and receive an EPA issued identification number prior to conducting an engineering review pursuant to paragraph (b)(2) or (d)(1) of this section. Each independent third-party engineer must directly provide to EPA all of the following registration materials at least 30 days prior to conducting an engineering review pursuant to paragraph (b)(2) or (d)(1) of this section:

(1) Documentation, as described in paragraph (b)(2)(i)(A) and (B) of this section, for every professional engineer who will provide a third-party engineering review.

(2) Documentation of the independent third-party engineer's training or certification in proper verification techniques, with professional work experience in the chemical engineering field or related to renewable fuel production.

(3) Documentation demonstrating that every independent third-party engineer who conducts an independent third-party engineering review pursuant to paragraph (b)(2) or (d)(1) of this section is, as required, maintaining professional liability insurance, as defined in 31 CFR 50.5(q). Independent third-party engineers shall use insurance providers

that possess a financial strength rating in the top four categories from either Standard & Poor's or Moody's (*i.e.*, AAA, AA, A, or Aa, A, or Baa for Moody's). Independent third-party engineers shall disclose the level of professional liability insurance they possess when entering into contracts to provide independent third-party engineering review services.

(4) Documentation of the name, address, company, and facility identification numbers of all renewable fuel producers, foreign ethanol producers, and biointermediate producers that the independent third-party engineer intends to conduct an independent third-party engineering review for under paragraph (b)(2) or (d)(1) of this section during the current calendar year.

(5) An affidavit, or electronic consent, from each domestic renewable fuel producer and biointermediate producer stating its intent to have the independent third-party engineer conduct an independent third-party engineering review of any of the renewable fuel producer, foreign ethanol producer, or biointermediate producer's facilities during the current calendar year.

(6) An affidavit stating that the independent third-party engineer, its affiliates, contractors, and subcontractors are independent of the renewable fuel producer, foreign ethanol producer, or biointermediate producer. For an independent third-party engineer or its affiliates, contractors, or subcontractors to be considered independent under this section, all of the following conditions must be met:

(i) The independent third-party engineer shall act impartially when performing all activities under this section.

(ii) The independent third-party engineer shall not be owned or operated by the renewable fuel producer, foreign ethanol producer, or biointermediate producer, or any subsidiary or employee of these producers.

(iii) The independent third-party engineer shall not be owned or operated by an obligated party or any subsidiary or employee of an obligated party as defined in § 80.1406.

(iv) The independent third-party engineer shall not have conducted research, development, design, construction, or consulting for the renewable fuel producer, foreign ethanol producer, or biointermediate producer within the last three years. For purposes of this requirement, consulting does not include performing or participating in the engineering review

(including the verification activities) pursuant to this section.

(v) The independent third-party engineer shall not provide other business or consulting services to any renewable fuel producer, foreign ethanol producer, or biointermediate producer, including advice or assistance to implement the findings or recommendations of the written report described in paragraph (b)(2) of this section, for a period of at least three years following submission of the final written report.

(vi) The independent third-party engineer shall ensure that all personnel involved in the engineering review activities under this section do not accept employment with the owner or operator of the renewable fuel producer, foreign ethanol producer, or biointermediate producer for a period of at least three years following submission of the final written report. For the purposes of this requirement, employment does not include performing or participating in the engineering review activities pursuant to paragraph (b)(2) of this section.

(vii) The independent third-party engineer shall have written policies and procedures to ensure that the independent third-party engineer and all personnel under the independent third-party engineer's direction or supervision comply with the competency, independence, and impartiality requirements of this section.

(viii) For engineering review services as described in paragraph (b)(2) of this section provided to a biointermediate producer, the independent third-party engineer shall not be owned or operated by any renewable fuel producer listed in paragraph (b)(1)(xv) of this section and the independent third-party engineer shall be free from any interest in any renewable fuel producer listed in paragraph (b)(1)(xv) of this section. Any renewable fuel producer listed in paragraph (b)(1)(xv) of this section shall be free from any interest in the independent third-party engineer's business.

(ix) The independent third-party engineer shall not perform an attest engagement under § 80.1464 for the renewable fuel producer, foreign ethanol producer, or biointermediate producer within three years of the date that the independent third-party engineer conducted the independent third-party engineering review at that same facility pursuant to paragraph (b)(2) or (d)(1) of this section.

(x) The independent third-party engineer shall not be a QAP auditor, as described in § 80.1471, or perform QAP

audits, as described in § 80.1472, for the renewable fuel producer, foreign ethanol producer, or biointermediate producer in which it performed an independent third-party engineering review pursuant to paragraph (b)(2) or (d)(1) of this section.

(xi) The independent third-party engineer shall not own, buy, sell, or otherwise trade RINs.

(xii) The independent third-party engineer shall be free from any interest or the appearance of any interest in the renewable fuel producer, foreign ethanol producer, or biointermediate producer's business and receive no financial benefit from the outcome of the registration, apart from receipt of payment for the independent third-party engineering review services under paragraph (b)(2) of this section.

(xiii) The renewable fuel producer, foreign ethanol producer, or biointermediate producer shall be free from any interest or the appearance of any interest in the independent third-party engineer's business.

(xiv) The independent third-party engineer must not be debarred, suspended, or proposed for debarment pursuant to the Government-wide Debarment and Suspension regulations, 40 CFR part 32, or the Debarment, Suspension and Ineligibility provisions of the Federal Acquisition Regulations, 48 CFR part 9, subpart 9.4.

(7) Documentation with the name and contact information for each person employed, affiliated with, or under contract or subcontract, by the independent third-party engineer to conduct independent third-party engineering reviews.

(8) Documentation of the independent third-party engineer's written policies and procedures to ensure that the independent third-party engineer and all affiliates, contractors, and subcontractors under the professional engineer's direction or supervision comply with the competency, independence, and impartiality requirements of this section.

(9) The independent third-party engineer shall sign, date, and submit to EPA with the registration the following conflict of interest statement: "I certify under penalty of law that the registration materials submitted to EPA were developed, received, reviewed, and responded to under my direction or supervision by qualified personnel in accordance with the requirements of 40 CFR part 80. Based on my personal knowledge and experience, or inquiry of personnel involved in developing the registration materials, the information submitted herein is true, accurate, and complete. I am aware that there are

significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.”

(10) *Registration updates.* Any independent third-party engineer who has any changes to the information in paragraphs (h)(1) through (9) of this section must update their registration information seven days prior to the change.

(11) *Revocation of registration.* (i) The Administrator may issue a notice of intent to revoke the registration of an independent third-party engineer if the Administrator determines that the independent third-party engineer has failed to fulfill any requirement of this subpart, including, but not limited to, the submittal to EPA of an inaccurate independent third-party engineering review. The notice of intent shall include an explanation of the reasons for the proposed revocation.

(ii) Within 60 days of receipt of the notice of intent to revoke, the independent third-party engineer may submit written comments concerning the notice, including, but not limited to, a demonstration of compliance with the requirements that provide the basis for the proposed revocation. The Administrator shall review and consider any such submission before taking final action concerning the proposed revocation.

(iii) If the independent third-party engineer fails to respond in writing, within 60 days, to the notice of intent to revoke, the revocation shall become final by operation of law and the Administrator shall notify the independent third-party engineer of such revocation.

(i) *Deactivation of company, third-party auditor, or third-party engineer registration.* (1) EPA may deactivate the registration of a company, third-party auditor, or third-party engineer, using the process in paragraph (i)(2) of this section, if any of the following criteria are met:

(i) The company has reported no activity in EMTS for twenty-four consecutive months.

(ii) The company, third-party auditor, or independent third-party engineer has failed to comply with the registration requirements of this section.

(iii) The company, third-party auditor, or independent third-party engineer has failed to submit any required notification or report within 30 days of the required submission date under this subpart.

(iv) Any attest engagement required under § 80.1464 has not been received within 30 days of the required submission date.

(v) The company, third-party auditor, or independent third-party engineer fails to pay a penalty or to perform any requirements under the terms of a court order, administrative order, consent decree, or administrative settlement between the company and EPA.

(vi) The company, third-party auditor, or independent third-party engineer submits false or incomplete information.

(vii) The company, third-party auditor, or independent third-party engineer denies EPA access or prevents EPA from completing authorized activities under sections 114 or 208 of the Clean Air Act despite presenting a warrant or court order. This includes a failure to provide reasonable assistance.

(viii) The company, third-party auditor, or independent third-party engineer fails to keep or provide the records required in this section.

(ix) The company, third-party auditor, or independent third-party engineer otherwise circumvents the intent of the Clean Air Act or of this subpart.

(x) If a company has registered a facility using CCS technology pursuant to § 80.1450(b)(xvi) and there is an occurrence of surface leakage of any CO₂ emissions at the geologic sequestration facility.

(2) Except as provided in paragraph (i)(3) of this section, EPA will use the following process whenever it decides to deactivate the registration of a company, third-party auditor, or independent third-party engineer:

(i) EPA will provide written notification to the responsible corporate officer identifying the reasons or deficiencies of why EPA intends to deactivate the company's registration. The company will have fourteen calendar days from the date of the notification to correct the deficiencies identified or explain why there is no need for corrective action.

(ii) If the basis for EPA's notice of intent to deactivate registration is the absence of EMTS activity, a stated intent to engage in activity reported through EMTS will be sufficient to avoid deactivation of registration.

(iii) If the company does not respond, does not correct identified deficiencies, or does not provide an adequate explanation regarding why such correction is not necessary within the time allotted for response, EPA may deactivate the company's registration without further notice to the party.

(3) In instances of willfulness or those in which public health, interest, or safety requires otherwise, EPA may deactivate the registration of the company, third-party auditor, or independent third-party engineer without any notice to the party. EPA

will provide written notification to the responsible corporate officer identifying the reasons EPA deactivated the registration of the company, third-party auditor, or independent third-party engineer.

(4) *Impact of registration deactivation:*

(i) A company whose registration is deactivated shall still be liable for violation of any requirements of this subpart.

(ii) A company whose registration is deactivated will not be listed on any public list of actively registered companies that is maintained by EPA.

(iii) A company whose registration is deactivated will not have access to any of the electronic reporting systems associated with the renewable fuel standard program, including the EPA Moderated Transaction System (EMTS).

(iv) A company whose registration is deactivated must submit any corrections of deficiencies to EPA on forms, and following policies, established by EPA.

(v) If a company, third-party auditor, or independent third-party engineer whose registration has been deactivated wishes to re-register, they may seek to do so by submitting a new registration pursuant to the requirements in paragraphs (a) through (c), (e), and (g) of this section, as applicable.

* * * * *

■ 51. Section 80.1451 is amended by:

■ a. Revising paragraph (a) introductory text;

■ b. Redesignating paragraphs (a)(1)(v) through (xviii) as paragraphs (a)(1)(viii) through (xxi) and adding new paragraphs (a)(1)(v) through (vii);

■ c. Revising newly redesignated paragraphs (a)(1)(viii), (ix), (xi), and (xix);

■ d. Revising paragraphs (b) introductory text, (b)(1)(ii)(D), (I), (K), and (L);

■ e. Redesignating paragraph (b)(1)(ii)(W) as paragraph (b)(1)(ii)(X) and adding a new paragraph (b)(1)(ii)(W);

■ f. Revising paragraphs (g)(1)(ii)(D) and (I) and (g)(2)(vii); and

■ g. Redesignating paragraphs (i) and (j) as paragraphs (k) and (l) and adding new paragraphs (i) and (j).

The revisions and additions read as follows:

§ 80.1451 What are the reporting requirements under the RFS program?

(a) *Obligated parties and exporters.* Any obligated party described in § 80.1406, exporter of renewable fuel described in § 80.1430, or party that must retire RINs under § 80.1433, must submit to EPA reports according to the schedule, and containing all the information, that is set forth in this paragraph (a).

(1) * * *

(v) Beginning with the 2017 compliance year and every year thereafter, the production volume and import volume for each of the products listed in § 80.1407(c) and (e) for the reporting year.

(vi) Beginning with the 2017 calendar year and every year thereafter, the volume of renewable fuel blended into gasoline or diesel fuel as described in § 80.1407(b) and (d) for the reporting year.

(vii) Beginning with the 2017 calendar year and every year thereafter, the production volume and import volume for heating oil, as defined in § 80.2(ccc). Volumes of renewable heating oil for which RINs were generated under § 80.1426 shall not be included.

(viii) The combined total production volume and import volume as calculated in § 80.1407(b) and (d) for the reporting year.

(ix) The RVOs, as defined in § 80.1427(a) for obligated parties, § 80.1430(b) for exporters of renewable fuel, and § 80.1433(a) for parties that must retire RINs under § 80.1433, for the reporting year.

* * * * *

(xi) The total current-year RINs by category of renewable fuel, as those fuels are defined in § 80.1401 (i.e., cellulosic biofuel, biomass-based diesel, advanced biofuel, renewable fuel, and cellulosic biomass-based diesel), retired for compliance.

* * * * *

(xix) The total current-year RINs by category of renewable fuel, as those fuels are defined in § 80.1401 (i.e., cellulosic biofuel, biomass-based diesel, advanced biofuel, renewable fuel, and cellulosic biomass-based diesel), retired for compliance that are invalid as defined in § 80.1431(a).

* * * * *

(b) *Renewable fuel producers (domestic and foreign) and importers.* Any domestic producer or importer of renewable fuel who generates RINs, or any RIN-generating foreign producer must submit to EPA reports according to the schedule, and containing all of the following information:

(1) * * *

(ii) * * *

(D) The importer EPA facility registration number and foreign renewable fuel producer company registration number, if applicable.

* * * * *

(I) The volume of ethanol denaturant and applicable equivalence value of each batch.

* * * * *

(K) The types and quantities of feedstocks and biointermediates used.

(L) The process(es), feedstock(s), and biointermediate(s) used and proportion of renewable volume attributable to each process and feedstock.

* * * * *

(W) Renewable fuel producers that achieve the greenhouse gas reductions necessary to qualify for a renewable fuel pathway by using CCS as part of the renewable fuel production process shall report to EPA in accordance with the applicable requirements of 40 CFR part 98, subpart PP, and shall also meet the following requirements:

(1) Calculated lifecycle greenhouse gas emissions value for each batch of fuel produced using a method approved by EPA for each batch of renewable fuel produced.

(2) The facility identification number associated with the 40 CFR part 98, subpart RR, annual GHG report of the geologic sequestration facility and the GHGRP facility identification number of the renewable fuel facility.

(3)(i) If the CO₂ injection occurs onsite, report that onsite injection is occurring and affirm that they are reporting in accordance with the requirements of 40 CFR part 98, subpart RR, and that no surface leaks that could cause the lifecycle greenhouse gas emissions to exceed the threshold value required for the approved pathway under § 80.1416 occurred during the appropriate compliance period.

(ii) If the CO₂ injection occurs offsite, report that injection is occurring offsite and affirm that the captured CO₂ is transferred to a facility or facilities that reports in accordance with 40 CFR part 98, subpart RR and that no surface leaks that could cause the lifecycle greenhouse gas emissions to exceed the threshold value required for the approved pathway under § 80.1416 occurred during the appropriate compliance period.

* * * * *

(g) * * *

(1) * * *

(ii) * * *

(D) The importer EPA facility registration number and foreign renewable fuel producer company registration number, if applicable.

* * * * *

(I) The volume of ethanol denaturant and applicable equivalence value of each verified batch.

* * * * *

(2) * * *

(vii) A list of all facilities including the EPA's company and facility registration numbers audited under an approved quality assurance plan under

§ 80.1469, the date the independent third-party auditor conducted the on-site visit and audit, the name(s) of the professional engineer(s) that conducted or oversaw the on-site visit and audit, and whether the facility has a remote monitoring system.

* * * * *

(i) *Biointermediate producers and importers.* Any biointermediate producer or biointermediate importer must submit to EPA reports according to the schedule, and containing all of the following information:

(1) Beginning on the effective date of the final rule, biointermediate batch production reports for each biointermediate production facility shall be submitted according to the schedule specified in paragraph (f)(2) of this section.

(2) The biointermediate batch production reports shall include all the following information for each batch of biointermediate produced or imported, where "batch" means a discrete quantity of biointermediate produced or imported and assigned a unique batch number per § 80.1475(h):

(i) The biointermediate producer's name.

(ii) The biointermediate producer's EPA company registration number.

(iii) The biointermediate producer's EPA facility registration number.

(iv) The applicable reporting period.

(v) The production date and batch number of each batch.

(vi) The adjusted cellulosic content of each batch, as defined in § 80.1401, and certification that the cellulosic content of each batch was derived from cellulose, hemicellulose, or lignin that was derived from renewable biomass, as defined in § 80.1401.

(vii) The volume of each batch produced.

(viii) The types and quantities of feedstocks used.

(ix) The renewable fuel type(s) each batch of biointermediate was designated to be used as a feedstock material for.

(x) The EPA company registration number and EPA facility registration number for each renewable fuel producer or foreign renewable fuel producer that received title to each batch.

(xi) The percentage of each batch of biointermediate that met the definition of renewable feedstock and certification that this portion of the batch of biointermediate was derived from renewable biomass, as defined in § 80.1401.

(xii) The process(es) and feedstock(s) used and proportion of biointermediate volume attributable to each process and feedstock.

(xiii) The type of co-products produced with each batch.

(xiv) The quantity of co-products produced in each quarter.

(xv) Any additional information the Administrator may require.

(j) The following tables set forth EPA determinations regarding the extent to which listed data elements from reports submitted pursuant to this section are eligible for treatment as confidential business information.

TABLE 2–80.1451—EMTS DATA SUBMITTED IN QUARTERLY ACTIVITY REPORTS

Field name	CBI
a—Report Number	N
b—Report Type	N
c—CBI	N
d—Report Date	N
e—Company ID	Y
f—Company Name	Y
g—Compliance Period Code	N
h—Compliance Basis/Facility ID	.....
h.1—Compliance Basis	N
h.2—Facility ID	Y
i—Compliance Year	Y
j—RIN Status (assigned/separated)	Y
k—Volume of renewable fuel owned at the end of the quarter	.....
k.1—If company identifying information present	Y
k.2—If company identifying information absent	N
l—Prior-year RFS2 RINs owned at the start of the quarter in EMTS	Y
m—Prior-year RFS2 RINs purchased in EMTS	Y
n—Prior-year RFS2 RINs sold in EMTS	Y
o—Prior-year RFS2 RINs separated in EMTS	Y
p—Prior-year RFS2 RINs retired in EMTS	Y
q—Prior-year RFS2 RINs owned at the end of the quarter in EMTS	Y
r—Prior-year RFS2 RINs expired in EMTS at the end of the quarter (Current Year—2 only)	.....
r.1—If company identifying information present	Y
r.2—If company identifying information absent	N
s—Current-year RFS2 RINs owned at the start of the quarter in EMTS	Y
t—Current-year RFS2 RINs purchased in EMTS	Y
u—Current-year RFS2 RINs sold in EMTS	Y
v—Current-year RFS2 RINs separated in EMTS	Y
w—Current-year RFS2 RINs retired in EMTS	Y
x—Current-year RFS2 RINs owned at the end of the quarter in EMTS	Y

TABLE 2–80.1451—EMTS DATA SUBMITTED IN QUARTERLY ACTIVITY REPORTS—Continued

Field name	CBI
y—RFS2 RINs generated during the quarter in EMTS	Y
z—Submission Comment	Y
System 1—CDX Submission ID	Y
System 2—Submitter	Y

TABLE 3–80.1451—EMTS DATA SUBMITTED IN ANNUAL COMPLIANCE REPORTS

Field name	CBI
a—Company ID	Y
b—Company Name	Y
c—Report Number	N
d—Report Type	N
e—CBI	N
f—Report Date	N
g—Compliance Year	Y
h—Renewable Volume Obligation (RVO)	Y
i—Gasoline and Diesel Production/Renewable Fuel Export Volume	Y
j—Renewable Fuel Standard Value/Equivalence Value	N
k—Cellulosic Biofuel Waiver Credits Payment ID	Y
l—Cellulosic Biofuel Waiver Credits Payment Method	Y
m—Cellulosic Biofuel Waiver Credits Used	Y
n—Compliance Basis/Facility ID	Y
o—Compliance Facility Number	Y
p—Renewable Fuel Export Type	Y
q—Prior Year Deficit	Y
r—Renewable Volume Obligation (Name)	N
s—Prior-year RFS2 RINs used, D code of 3	Y
t—Prior-year RFS2 RINs used, D code of 4	Y
u—Prior-year RFS2 RINs used, D code of 5	Y
v—Prior-year RFS2 RINs used, D code of 6	Y
w—Prior-year RFS2 RINs used, D code of 7	Y
x—Current-year RFS2 RINs used, D code of 3	Y
y—Current-year RFS2 RINs used, D code of 4	Y
z—Current-year RFS2 RINs used, D code of 5	Y
aa—Current-year RFS2 RINs used, D code of 6	Y
ab—Current-year RFS2 RINs used, D code of 7	Y
ac—Deficit RVO	Y
ad—Submission Comment	Y
ae—CDX Submission ID	Y
af—Submitter	Y

TABLE 4–80.1451—DATA IN PDF VERSIONS OF QUARTERLY RIN SELL TRANSACTION REPORTS

Field name	CBI
a—Seller Company ID	Y
b—Seller Company Name	Y
c—Buyer Company ID	Y
d—Buyer Company Name	Y
e—RIN Year	Y
f—Fuel D-Code	Y
g—Assignment Code Text	Y
h—Batch Volume	Y
i—RIN Quantity	Y
j—Ptd Number	Y
k—Generate Organization ID (non-FIFO)	Y
l—Generate Facility ID (non-FIFO)	Y
m—Generate Batch Number (non-FIFO)	Y
n—Sell Reason Code Text	N
o—Document ID	Y
p—Document Name	Y
q—Transaction Comment	Y
System 1—CDX Submission ID	Y
System 2—EMTS Submission Date	N
System 3—EMTS Submission ID	N
System 4—EMTS Transaction Date	N
System 5—EMTS Transaction ID	N

TABLE 5–80.1451—DATA IN PDF VERSIONS OF QUARTERLY RIN BUY TRANSACTION REPORTS

Field name	CBI
a—Buyer Company ID	Y
b—Buyer Company Name	Y
c—Seller Company ID	Y
d—Seller Company Name	Y
e—RIN Year	Y
f—Fuel D-Code	Y
g—Assignment Code Text	Y
h—Batch Volume	Y
i—RIN Quantity	Y
j—Ptd Number	Y
k—Generate Organization ID (non-FIFO)	Y
l—Generate Facility ID (non-FIFO)	Y
m—Generate Batch Number (non-FIFO)	Y
n—Buy Reason Code Text	N
o—Document ID	Y
p—Document Name	Y
q—Transaction Comment	Y
System 1—CDX Submission ID	Y
System 2—EMTS Submission Date	N
System 3—EMTS Submission ID	N
System 4—EMTS Transaction Date	N
System 5—EMTS Transaction ID	N

TABLE 6—80.1451—DATA IN PDF VERSIONS OF QUARTERLY RIN SEPARATE TRANSACTION REPORTS

Field name	CBI
a—Separator Company ID	Y
b—Separator Company Name	Y
c—RIN Year	Y
d—Fuel D-Code	Y
e—Assignment Code	Y
f—Batch Volume	Y
g—Blender Company ID	Y
h—Blender Company Name	Y
i—RIN Quantity	Y
j—Separate Reason Code Text ...	N
k—Generate Organization ID (non-FIFO)	Y
l—Generate Facility ID (non-FIFO)	Y
m—Generate Batch Number (non-FIFO)	Y
n—Document ID	Y
o—Document Name	Y
p—Transaction Comment	Y
System 1—CDX Submission ID ...	Y
System 2—EMTS Submission ID	N
System 3—EMTS Transaction Date	N
System 4—EMTS Transaction ID	N

TABLE 7—80.1451—DATA IN PDF VERSIONS OF QUARTERLY RIN RETIRE TRANSACTION REPORTS

Field name	CBI
a—Retirement Company ID	Y
b—Retirement Company Name ...	Y
c—RIN Year	Y
d—Fuel D-Code	Y
e—Assignment Code Text	Y
f—Batch Volume	Y
g—RIN Quantity	Y
h—Generate Organization ID (non-FIFO)	Y
i—Generate Facility ID (non-FIFO)	Y
j—Generate Batch Number (non-FIFO)	Y
k—Retire Reason Code Text	N
l—Compliance Year	Y
m—Compliance Level Code	Y
n—Compliance Facility ID	Y
o—Transaction Comment	Y
p—Document ID	Y
q—Document Name	Y
System 1—CDX Submission ID ...	Y
System 2—EMTS Submission ID	N
System 3—EMTS Transaction Date	N
System 4—EMTS Transaction ID	N

- * * * * *
- 52. Section 80.1452 is amended by:
 - a. Revising paragraph (b)(11);
 - b. Redesignating paragraph (b)(16) as paragraph (b)(18) and adding new paragraph (b)(16) and paragraph (17); and
 - c. Redesignating paragraph (d) as paragraph (g) and adding new paragraph (d) and paragraphs (e) and (f).

The revisions and additions read as follows:

§ 80.1452 What are the requirements related to the EPA Moderated Transaction System (EMTS)?

- * * * * *
- (b) * * *
 (11) The volume of ethanol denaturant and applicable equivalence value of each batch.
 * * * * *
- (16) Starting January 1, 2018, or a later date designated by EPA, the type and quantity of biointermediate(s) used for the batch, if applicable.
 (17) Starting January 1, 2018, or a later date designated by EPA, the EPA facility registration number of each biointermediate production facility at which a biointermediate used for the batch was produced, if applicable.
 * * * * *
- (d) Parties shall not assign RINs to a batch of renewable fuel pursuant to paragraph (b) of this section prior to EPA approval of applicable registration requirements under § 80.1450(b), (c), (d)(1), and (d)(4).
 (e) The following tables set forth EPA determinations regarding the extent to which listed EMTS data elements are eligible for treatment as confidential business information.

TABLE 1 TO § 80.1452—EMTS DATA RELATED TO RIN GENERATION

Field name	CBI
a—RIN Originator Company ID	Y
b—RIN Originator Company Name	Y
c—RIN Quantity	Y
d—Batch Volume	Y
e—Fuel D-Code	Y
f—Production Process	Y
g—Fuel Category Code Text	Y
h—Fuel Production Date	Y
i—Denaturant Volume	Y
j—Equivalence Value	Y
k—Renewable Fuel Producer Company ID	Y
l—Renewable Fuel Producer Company Name	Y
m—Renewable Fuel Producer Facility Number	Y
n—RIN Originator Facility Number	Y
o—RIN Originator Import Facility Number	Y
p—RIN Originator Batch Number	Y
q—Production Source Comment ..	Y
r—Feedstocks	Y
s—Feedstocks Amount	Y
t—Feedstocks Unit of Measure	N
u—QAP Service Type	Y
v—Feedstock Comment	Y
w—Co-Product	Y
x—Co-Product Comment	Y
y—RIN Year	Y
System 1—CDX Submission ID ...	Y
System 2—Data Preparer	N

TABLE 1 TO § 80.1452—EMTS DATA RELATED TO RIN GENERATION—Continued

Field name	CBI
System 3—EMTS Generate Transaction ID	N
System 4—EMTS Submission Date	N
System 5—EMTS Submission ID	N
System 6—EMTS Transaction Date	N
System 7—EMTS Transaction ID	N
System 8—Submission Method ...	N
System 9—Submitter	Y

TABLE 2 TO § 80.1452—EMTS DATA RELATED TO RIN SELL TRANSACTIONS

Field name	CBI
a—Seller Company ID	Y
b—Seller Company Name	Y
c—Buyer Company ID	Y
d—Buyer Company Name	Y
e—Ptd Number	Y
f—RIN Quantity	Y
g—Batch Volume	Y
h—Fuel D-Code	Y
i—Assignment Code Text	Y
j—RIN Year	Y
k—QAP Service Type	Y
l—Transfer Date	Y
m—Sell Reason Code Text	N
n—Price Per Gallon	Y
o—Price Per RIN	Y
p—Transaction Comment	Y
q—Generate Organization ID (non-FIFO)	Y
r—Generate Facility ID (non-FIFO)	Y
s—Generate Batch Number (non-FIFO)	Y
t—Public Supporting Document (text box 1)	Y
u—Public Supporting Document ID (text box 1)	Y
v—Public Supporting Document (text box 2)	Y
w—Public Supporting Document (text box 2)	Y
System 1—CDX Submission ID ...	Y
System 2—Data Preparer	N
System 3—EMTS Buy Transaction ID	N
System 4—EMTS Submission Date	N
System 5—EMTS Submission ID	N
System 6—EMTS Transaction Date	N
System 7—EMTS Transaction ID	N
System 8—Matched EMTS Transaction ID	N
System 9—Submission Method ...	N
System 10—Submitter	Y

TABLE 3 TO § 80.1452—EMTS DATA RELATED TO RIN BUY TRANSACTIONS

Field name	CBI
a—Buyer Company ID	Y

TABLE 3 TO § 80.1452—EMTS DATA RELATED TO RIN BUY TRANS-ACTIONS—Continued

Field name	CBI
b—Buyer Company Name	Y
c—Seller Company ID	Y
d—Seller Company Name	Y
e—Ptd Number	Y
f—RIN Quantity	Y
g—Batch Volume	Y
h—Fuel D-Code	Y
i—Assignment Code Text	Y
j—RIN Year	Y
k—QAP Service Type	Y
l—Transfer Date	Y
m—Buy Reason Code Text	N
n—Price Per RIN	Y
o—Price Per Gallon	Y
p—Transaction Comment	Y
q—Generate Organization ID (non-FIFO)	Y
r—Generate Facility ID (non-FIFO)	Y
s—Generate Batch Number (non-FIFO)	Y
t—Public Supporting Document (text box 1)	Y
u—Public Supporting Document ID (text box 1)	Y
v—Public Supporting Document (text box 2)	Y
w—Public Supporting Document (text box 2)	Y
System 1—CDX Submission ID ...	Y
System 2—Data Preparer	N
System 3—EMTS Buy Trans-action ID	N
System 4—EMTS Submission Date	N
System 5—EMTS Submission ID	N
System 6—EMTS Transaction Date	N
System 7—EMTS Transaction ID	N
System 8—Matched EMTS Trans-action ID	N
System 9—Submission Method ...	N
System 10—Submitter	Y

TABLE 4 TO § 80.1452—EMTS DATA RELATED TO RIN SEPARATE TRANS-ACTIONS

Field name	CBI
a—RIN Separator Company ID	Y
b—RIN Separator Company Name	Y
c—Transaction Date	Y
d—RIN Quantity	Y
e—Batch Volume	Y
f—Fuel D-Code	Y
g—Separate Reason Code Text ..	N
h—Assignment Code	Y
i—RIN Year	Y
j—QAP Service Type	Y
k—Blender Company ID	Y
l—Blender Company Name	Y
m—Transaction Comment	Y
n—Generate Organization ID (non-FIFO)	Y
o—Generate Facility ID (non-FIFO)	Y

TABLE 4 TO § 80.1452—EMTS DATA RELATED TO RIN SEPARATE TRANS-ACTIONS—Continued

Field name	CBI
p—Generate Batch Number (non-FIFO)	Y
q—Document ID	Y
r—Document Name	Y
System 1—CDX Submission ID ...	Y
System 2—Data Preparer	N
System 3—EMTS Submission Date	N
System 4—EMTS Submission ID	N
System 5—EMTS Transaction Date	N
System 6—EMTS Transaction ID	N
System 7—Submission Method ...	N
System 8—Submitter	Y
System 9—Separation Trans-action ID	N

TABLE 5 TO § 80.1452—EMTS DATA RELATED TO RIN RETIRE TRANS-ACTIONS

Field name	CBI
a—RIN Retirement Company ID ..	Y
b—RIN Retirement Company Name	Y
c—RIN Quantity	Y
d—Batch Volume	Y
e—Fuel D-Code	Y
f—Assignment Code Text	Y
g—RIN Year	Y
h—QAP Service Type	Y
i—Retire Reason Code Text	N
j—Compliance Year	Y
k—Compliance Level Code Text ..	Y
l—Compliance Facility ID	Y
m—Transaction Comment	Y
n—Generate Organization ID (non-FIFO)	Y
o—Generate Facility ID (non-FIFO)	Y
p—Generate Batch Number (non-FIFO)	Y
q—Document ID	Y
r—Document Name	Y
System 1—CDX Submission ID ...	Y
System 2—Data Preparer	N
System 3—EMTS Submission Date	N
System 4—EMTS Submission ID	N
System 5—EMTS Transaction Date	N
System 6—EMTS Transaction ID	N
System 7—Submission Method ...	N
System 8—Submitter	Y
System 9—Retire Transaction ID ..	N

(f) EPA’s public release of EPA enforcement-related determinations and EPA actions under the RFS program, together with basic information regarding the party or parties involved and the RINs in question, does not involve the release of information that is entitled to treatment as confidential business information. Such information may include the company name and

company identification number of the party that generated the RINs in question, the facility name and facility identification number of the facility at which the fuel associated with the RINs in question was allegedly produced or imported, the total quantity of RINs in question, the time period when the RINs in question were generated, and the batch number(s) and the D code(s) of the RINs in question. Enforcement-related determinations and actions within the scope of this rule include EPA determinations that RINs are invalid under § 80.1474(b)(4)(i)(C)(2) and (b)(4)(ii)(C)(2), notices of violation, administrative complaints, civil complaints, criminal informations and criminal indictments.

■ 53. Section 80.1453 is amended by revising paragraphs (a) introductory text, (a)(12) introductory text, and (d), and adding paragraph (e) to read as follows:

§ 80.1453 What are the product transfer document (PTD) requirements for the RFS program?

(a) On each occasion when any person transfers ownership of neat and/or blended renewable fuels or separated RINs subject to this subpart, other than when fuel is sold or dispensed at a retail outlet or wholesale purchaser-consumer facility, the transferor shall provide to the transferee documents that include the following information, as applicable.

* * * * *

(12) Except as provided in § 80.1433(e), an accurate and clear statement on the product transfer document of the fuel type and intended fuel use or uses, from the options listed below, which is made in good faith:

* * * * *

(d) For fuel oil meeting paragraph (2) of the definition of heating oil in § 80.1401, the PTD of the fuel oil shall state: “This volume of renewable fuel oil is designated and intended to be used to heat or cool interior spaces of homes or buildings to control ambient climate for human comfort. Do NOT use for process heat or cooling or any other purpose, as these uses are prohibited pursuant to 40 CFR 80.1460(g).”

(e) On each occasion when any party transfers title or custody of a biointermediate, the transferor must provide to the transferee documents that include all of the following information:

- (1) The name and address of the transferor and transferee.
- (2) The transferor’s and transferee’s EPA company registration and applicable facility registration numbers.
- (3) The volume of biointermediate that is being transferred.
- (4) The date of the transfer.

(5) The location of the biointermediate at the time of the transfer.

(6) The renewable fuel type the biointermediate was designated to be used as a feedstock material for by the biointermediate producer under § 80.1475(i).

(7) The composition of the biointermediate being transferred, including:

(i) The type and quantity of each feedstock, specified exactly as described in Table 1 to § 80.1426, that was used to make the biointermediate.

(ii) The percentage of each feedstock that is renewable biomass, rounded to two decimal places.

(iii) For a biointermediate that contains both renewable and non-renewable feedstocks:

(A) The percentage of each feedstock that is not renewable biomass, rounded to two decimal places.

(B) The feedstock energy from the renewable biomass used to make the biointermediate, in Btu.

(C) The feedstock energy from the non-renewable biomass used to make the biointermediate, in Btu.

(D) The total percentage of the biointermediate that may generate RINs, rounded to two decimal places.

(E) The total percentage of the biointermediate that may not generate RINs, rounded to two decimal places.

(iv) For a biointermediate that contains cellulosic material:

(A) The percentage of each feedstock in § 80.1453(e)(6)(ii) that is cellulosic, rounded to two decimal places.

(B) The percentage of each feedstock in § 80.1453(e)(6)(ii) that is non-cellulosic, rounded to two decimal places, if applicable.

(C) The total percentage of the biointermediate that may generate cellulosic RINs, rounded to two decimal places.

(D) For separated municipal solid waste as described in § 80.1426(f)(5)(i)(C), the cellulosic portion of the biointermediate is equivalent to the biogenic portion.

(E) For separated food waste, the non-cellulosic percentage is assumed to be zero percent unless it is demonstrated to be partially cellulosic.

(F) For separated yard waste, as described in § 80.1426(f)(5)(i)(A), 100% of separated yard waste is deemed to be cellulosic.

(G) The following statement “I certify that the cellulosic content of this feedstock was derived from cellulose, hemicellulose, or lignin that was derived from renewable biomass.”

(v) The type and proportion of RINs that may be generated for the biointermediate.

(8) Copies of records specified in §§ 80.1454(n)(3) and 80.1454(n)(5) through (7) for the volume being transferred, as applicable.

(9) The following statement designating the volume of biointermediate as feedstock for the production of a renewable fuel: “This volume is designated and intended for use as biointermediate feedstock in the production of renewable fuel as defined in 40 CFR 80.1401. Parties shall not generate RINs on this feedstock material.”

■ 54. Section 80.1454 is amended by:

■ a. Revising paragraphs (a) introductory text and (a)(4)(i);

■ b. Adding paragraph (a)(7);

■ c. Redesignating paragraphs (b)(3)(vii) through (xiii) as paragraphs (b)(3)(viii) through (xiii) and adding a new paragraph (b)(3)(vii);

■ d. Revising paragraph (b)(6);

■ e. Adding paragraph (b)(11);

■ f. Revising paragraph (d)(2) introductory text;

■ g. Redesignating paragraph (d)(2)(vi) as (d)(2)(vii) and adding new paragraph (d)(2)(vi) and paragraph (d)(2)(viii);

■ h. Revising paragraph (h)(6)(iii);

■ i. Redesignating paragraphs (n) through (t) as paragraphs (q) through (w) and adding new paragraphs (n) through (p); and

■ j. Revising newly redesignated paragraphs (q) and (t).

The revisions and additions read as follows:

§ 80.1454 What are the recordkeeping requirements under the RFS program?

(a) *Requirements for obligated parties and exporters.* Beginning July 1, 2010, any obligated party (as described at § 80.1406), exporter of renewable fuel (as described at § 80.1401), or party that must retire RINs under § 80.1433, must keep all of the following records:

* * * * *

(4) * * *

(i) Methods and variables used to calculate the Renewable Volume Obligations pursuant to § 80.1407, § 80.1430, or § 80.1433.

* * * * *

(7) For parties that must retire RINs under § 80.1433, invoices, bills of lading, and other documents describing the renewable fuel and the intended use of the renewable fuel for which RINs must be retired under § 80.1433.

* * * * *

(b) * * *

(3) * * *

(vii) Type and quantity of biointermediate used.

* * * * *

(6) Copies of registration documents required under § 80.1450, including

information on fuels and products, feedstocks, biointermediates, facility production processes, process changes, and capacity, energy sources, and a copy of the independent third party engineering review written report submitted to EPA per § 80.1450(b)(2).

* * * * *

(11) For any producer of renewable fuel that achieves the greenhouse gas reductions necessary to qualify for a renewable fuel pathway by using CCS technology as part of the renewable fuel production process, records presenting accurate calculations verifying compliance with the applicable lifecycle greenhouse gas reductions reported in accordance with § 80.1451(b)(1)(ii)(W).

* * * * *

(d) * * *

(2) Domestic producers of renewable fuel made from qualified planted trees or tree residue from actively managed tree plantations must keep records that serve as evidence that the land from which the feedstock was obtained was cleared prior to December 19, 2007, and actively managed on December 19, 2007. The records must be provided by the feedstock producer and must include at least one of the following documents, which must be traceable to the land in question:

* * * * *

(vi) An agreement for land management consultation with a professional forester that identifies the land in question.

* * * * *

(viii) Records satisfying the requirements of paragraph (d)(3)(i) of this section that serve as evidence that the land on which the tree plantation is located was cleared or cultivated prior to December 19, 2007, and actively managed or fallow on December 19, 2007.

* * * * *

(h) * * *

(6) * * *

(iii) The survey plan must be sent to the attention of “RFS Program” to the address in § 80.10(a).

* * * * *

(n) *Requirements for biointermediate producers.* Beginning on the effective date of the final rule, any biointermediate producer producing a biointermediate must keep all of the following records in addition to those required under paragraphs (a) through (m) of this section:

(1) Product transfer documents consistent with § 80.1453(e) and associated with the biointermediate producer’s activities, if any, as transferor or transferee of biointermediates.

(2) Copies of all reports submitted to EPA under § 80.1451(i).

(3) Records related to the production of biointermediates for each biointermediate production facility, including all of the following:

- (i) Batch volume.
- (ii) Batch number.
- (iii) Type and quantity of co-products produced.
- (iv) Type and quantity of feedstocks used.
- (v) Type and quantity of fuel used for process heat.
- (vi) Feedstock energy calculations per § 80.1426(f)(4), as applicable.
- (vii) Date of production.
- (viii) Results of any laboratory analysis of batch chemical composition or physical properties.

(4) Copies of registration documents required under § 80.1450, including information on products, feedstocks, facility production processes, process changes, and capacity, energy sources, and a copy of the independent third party engineering review submitted to EPA per § 80.1450(b)(2)(i).

(5) Records demonstrating that feedstocks are renewable biomass, as required under paragraphs (d), (g), or (h) of this section.

(6) A biointermediate producer that produces a biointermediate from separated yard and food waste for use in the production of a renewable fuel, as described in § 80.1426(f)(5)(i)(A) and (B), or from separated municipal solid waste, as described in § 80.1426(f)(5)(i)(C), shall keep all records described in paragraph (j) of this section, as applicable.

(7) For any biointermediate made from *Arundo donax* or *Pennisetum purpureum* per § 80.1426(f)(14), all applicable records described in paragraph (b)(7) of this section.

(8) Records, including contracts, related to the implementation of a QAP under § 80.1469.

(o) A producer of renewable fuel that achieves the greenhouse gas reductions necessary to qualify for a renewable fuel pathway by using CCS technology as part of the renewable fuel production process must retain records of all information reported in accordance with the applicable requirements of 40 CFR part 98, subpart PP, must follow the applicable record retention requirements specified by 40 CFR part 98, subpart PP, and one of the following, as applicable:

(1) If the injection occurs onsite, follow the record retention requirements specified by 40 CFR part 98, subpart RR, and retain records of all information reported by the producer or importer in accordance with the requirements of 40 CFR part 98, subpart RR.

(2) If the injection occurs offsite, retain records of all information reported by the facility or facilities that report in accordance with the requirements of 40 CFR part 98, subpart RR.

(p) Producers of renewable fuel using short-rotation willow or short-rotation hybrid poplar shall keep records of all of the following:

(1) The specific short-rotation willow or short-rotation hybrid poplar species or hybrids utilized to produce each batch of renewable fuel.

(2) The total quantity of each specific short-rotation willow or short-rotation hybrid poplar feedstock used for each batch.

(3) Total amount of fuel produced under the short-rotation willow or short-rotation hybrid poplar pathway for each batch.

(4) Affidavits from the short-rotation willow or short-rotation hybrid poplar feedstock suppliers confirming that the feedstocks supplied to the producer are grown only at locations that qualify as a tree plantation and for which records required pursuant to § 80.1450(b)(1)(xviii)(C) have been provided to the producer. The producer shall obtain affidavits under this paragraph at least once per calendar quarter.

(5) Contracts from the short-rotation willow or short-rotation hybrid poplar feedstock suppliers confirming that the feedstocks supplied to the producer are grown only at locations that qualify as a tree plantation and for which records required pursuant to § 80.1450(b)(1)(xviii)(C) have been provided to the producer.

(q) The records required under paragraphs (a) through (d) and (f) through (p) of this section and under § 80.1453 shall be kept for five years from the date they were created, except that records related to transactions involving RINs shall be kept for five years from the date of the RIN transaction.

(t) The records required in paragraphs (b)(3) and (c)(1) of this section must be transferred with any renewable fuel sent to the importer of that renewable fuel by any non-RIN-generating foreign producer.

- 55. Section 80.1460 is amended by:
 - a. Revising paragraphs (b)(5) and (c)(2);
 - b. Removing paragraph (c)(3);
 - c. Revising paragraph (g); and
 - d. Adding paragraphs (j) through (l).
 The revisions and additions read as follows:

§ 80.1460 What acts are prohibited under the RFS program?

* * * * *

(b) * * *

(5) Introduce into commerce any renewable fuel produced from a feedstock, a biointermediate feedstock, or through a process that is not described in the person's registration information.

* * * * *

(c) * * *

(2) Use a RIN for compliance or transfer a RIN that was assigned to renewable fuel received by a person if the person uses the volume of fuel associated with the RIN for an application other than as transportation fuel, jet fuel, or heating oil.

* * * * *

(g) *Failing to use a renewable fuel oil for its intended use.* No person shall use fuel oil that meets paragraph (2) of the definition of heating oil in § 80.1401 and for which RINs have been generated in an application other than to heat or cool interior spaces of homes or buildings to control ambient climate for human comfort.

* * * * *

(j) *Improper biointermediate production violation.* No person shall introduce into commerce for use in the production of a renewable fuel any biointermediate produced from a feedstock or through a process that is not described in the person's registration information.

(k) *Independent third-party engineer violations.* No person shall do any of the following:

(1) Fail to identify any incorrect information submitted by the renewable fuel producer, foreign ethanol producer, or biointermediate producer as described in § 80.1450(b)(2).

(2) Fail to meet any requirement related to engineering reviews as described in § 80.1450(b)(2).

(3) Fail to disclose to EPA any financial, professional, business, or other interests with parties for whom the independent third-party engineer provides services under § 80.1450.

(4) Fail to meet any requirement related to the independent third-party engineering review registration requirements in § 80.1450(b)(2) or (d)(1).

(l) *Failing to designate fuel for an alternative use or retire RINs as required.* No person shall fail to designate fuel for an alternative use or retire RINs as required by § 80.1433.

- 56. Section 80.1461 is amended by revising paragraphs (a) and (c) and adding paragraph (e) to read as follows:

§ 80.1461 Who is liable for violations under the RFS program?

(a) *Liability for violations of prohibited acts.* (1) Any person who violates a prohibition under § 80.1460(a) through (d) or § 80.1460(g) through (l) is liable for the violation of that prohibition.

(2) Any person who causes another person to violate a prohibition under § 80.1460(a) through (d) or § 80.1460(g) through (l) is liable for a violation of § 80.1460(e).

* * * * *

(c) *Parent corporation liability.* Any parent corporation is liable for any violation of this subpart that is committed by any of its subsidiaries, contractors, subcontractors, or affiliates.

* * * * *

(e) *Biointermediate liability.* When a biointermediate contained in any storage tank at any facility owned, leased, operated, controlled, or supervised by any biointermediate producer, biointermediate importer, renewable fuel producer, or foreign ethanol producer is found in violation of the prohibition described in § 80.1460(j), the following persons shall be deemed in violation:

(1) Each biointermediate producer, biointermediate importer, renewable fuel producer, renewable fuel importer, or foreign ethanol producer who owns, leases, operates, controls, or supervises the facility where the violation is found.

(2) Each biointermediate producer, biointermediate importer, renewable fuel producer, renewable fuel importer, or foreign ethanol producer who manufactured, imported, sold, offered for sale, dispensed, offered for supply, stored, transported, or caused the transportation of any biointermediate that is in the storage tank containing the biointermediate found to be in violation.

(3) Each carrier who dispensed, supplied, stored, or transported any biointermediate that was in the storage tank containing the biointermediate found to be in violation, provided that EPA demonstrates, by reasonably specific showings using direct or circumstantial evidence, that the carrier caused the violation.

■ 57. Section 80.1464 is amended by:

■ a. Revising paragraphs (a) introductory text, (a)(1)(i)(A), and (a)(1)(ii) and (v);

■ b. Adding paragraph (a)(1)(vii);

■ c. Revising paragraphs (b)(1)(ii) and (v); and

■ d. Adding paragraph (h).

The revisions and additions read as follows:

§ 80.1464 What are the attest engagement requirements under the RFS program?

* * * * *

(a) *Obligated parties and exporters.* The following attest procedures shall be completed for any obligated party as stated in § 80.1406(a), exporter of renewable fuel, or party that must retire RINs under § 80.1433:

(1) * * *

(i) * * *

(A) The obligated party's volume of all products listed in § 80.1407(c) and (e), the exporter's volume of each category of exported renewable fuel identified in § 80.1430(b)(1) through (b)(4), or the volume of each category of renewable fuel identified in § 80.1433(a)(1) through (a)(4), as applicable.

* * * * *

(ii) Obtain documentation of any volumes of renewable fuel used in products listed in § 80.1407(c) and (e) at the refinery or import facility, exported during the reporting year, or redesignated as described in § 80.1433; compute and report as a finding the total volumes of renewable fuel represented in these documents.

* * * * *

(v) Compute and report as a finding the RVOs for the obligated party, exporter, or party that must retire RINs under § 80.1433, and any deficit RVOs carried over from the previous year or carried into the subsequent year, and verify that the values agree with the values reported to EPA.

* * * * *

(vii) For parties that must retire RINs under § 80.1433, perform all of the following:

(A) Obtain the database, spreadsheet, or other documentation that the party maintains for all renewable fuel for which RINs must be retired under § 80.1433.

(B) Compare the volume of products identified in these documents with the volumes reported to EPA.

(C) Verify that the volumes reported to EPA agree with the volumes identified in the database, spreadsheet, or other documentation, and report as a finding any exception.

(D) Select sample batches in accordance with the guidelines in § 80.127 from each separate category of renewable fuel identified in § 80.1451(a); obtain invoices, bills of lading, and other documentation for the representative samples; state whether any of these documents refer to the renewable fuel as advanced biofuel or cellulosic biofuel; and report as a finding whether or not the party calculated an advanced biofuel or

cellulosic biofuel RVO for these fuels pursuant to § 80.1433(a)(1) or § 80.1433(a)(3).

(b) * * *

(1) * * *

(ii) Obtain production data for each renewable fuel batch by type of renewable fuel that was produced or imported during the year being reviewed; compute the RIN numbers, production dates, types, volumes of ethanol denaturant and applicable equivalence values, and production volumes for each batch; report the total RINs generated during the year being reviewed; and state whether this information agrees with the party's reports to EPA. Report as a finding any exceptions.

* * * * *

(v)(A) Obtain documentation, as required under § 80.1451(b), (d), and (e), associated with feedstock and biointermediate purchases for a representative sample, selected in accordance with the guidelines in § 80.127, of renewable fuel batches produced or imported during the year being reviewed.

(B) Verify that feedstocks were properly identified in the reports and met the definition of renewable biomass in § 80.1401.

(C) Verify that biointermediates were properly identified in the reports, if applicable.

* * * * *

(h) *Biointermediate producers.* The following attest reports shall be completed for any biointermediate producer that produces a biointermediate in a calendar year:

(1) *Biointermediate production reports.* (i) Obtain and read copies of the quarterly biointermediate production reports required under § 80.1451(i).

(ii) Obtain any database, spreadsheet, or other documentation used to generate the information in the biointermediate production reports; compare the corresponding entries in the database or spreadsheet and report as a finding any discrepancies.

(iii) For a representative sample of biointermediate batches, selected in accordance with the guidelines in § 80.127, obtain records required under § 80.1454(n); compare these records to the corresponding batch entries in the reports procured in paragraph (h)(1)(i) of this section and report as a finding any discrepancies.

(2) *Independent third-party engineering review.* (i) Obtain documentation of independent third-party engineering reviews required under § 80.1450(b)(2).

(ii) Review and verify the written verification and records generated as

part of the independent third-party engineering review.

(3) *Product transfer documents.* (i) Obtain contracts, invoices, or other documentation for the representative sample under paragraph (h)(1)(iii) of this section and the corresponding copies of product transfer documents required under § 80.1453; compare the product transfer documents with the contracts and invoices and report as a finding any discrepancies.

(ii) Verify that the product transfer documents obtained in paragraph (h)(3)(i) of this section contain the applicable information required under § 80.1453 and report as a finding any product transfer document that does not contain the required information.

(iii) Verify the accuracy of the information contained in the product transfer documents reviewed pursuant to paragraph (h)(3)(ii) of this section with the records obtained and reviewed under paragraph (h)(1)(iii) of this section and report as a finding any exceptions.

* * * * *

- 58. Section 80.1466 is amended by:
- a. Revising the section heading;
- b. Revising paragraphs (a) and (b);
- c. Revising paragraphs (c) introductory text and (c)(1);
- d. Revising paragraphs (d)(1)(iii) and (v), (d)(1)(vi)(B), (d)(3)(ii), and (e)(2)(ii);
- e. Revising paragraphs (f) introductory text and (f)(1) introductory text;
- f. Revising paragraphs (f)(1)(ii)(C), (f)(1)(v)(A) and (C), (f)(1)(vii), (f)(2) through (8), and (g);
- g. Revising paragraph (h) introductory text;
- h. In the equation in paragraph (h)(1) revising the definition “G”;
- i. Revising paragraphs (h)(2), (h)(3)(iii), (h)(4), (i), (j)(2) through (4), (k)(1), (k)(2)(ii), (k)(4)(ii), and (k)(5);
- j. Revising paragraphs (l) introductory text and (l)(1) introductory text;
- k. Revising paragraphs (l)(2)(i), (l)(3), (m)(3)(ii), and (m)(6)(i);
- l. Revising paragraphs (n) introductory text and (n)(1), (3), and (4);
- m. Revising paragraphs (o) introductory text and (o)(2); and
- n. Adding paragraph (p).

The revisions and addition read as follows:

§ 80.1466 What are the additional requirements under this subpart for foreign renewable fuel producers and importers of renewable fuels?

(a) *Applicability.* This section only applies to foreign renewable fuel producers that are located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the

Commonwealth of the Northern Mariana Islands (collectively referred to in this section as “the United States”).

(b) *General requirements.* An approved foreign renewable fuel producer under this section must meet all requirements that apply to renewable fuel producers under this subpart.

(c) *Designation, RIN-generating foreign producer certification, and product transfer documents.* (1) Any approved foreign renewable fuel producer must designate each batch of such renewable fuel as “RFS–FRRF” at the time the renewable fuel is produced.

* * * * *

(d) * * *

(1) * * *

(iii) Obtain the EPA-assigned registration number of the RIN-generating foreign producer.

* * * * *

(v) Determine the date and time the vessel departs the port serving the RIN-generating foreign producer.

(vi) * * *

(B) That the RFS–FRRF remained segregated from Non-RFS–FRRF and other RFS–FRRF produced by a different foreign producer.

* * * * *

(3) * * *

(ii) Be independent under the criteria specified in § 80.65(f)(2)(iii); and

* * * * *

(e) * * *

(2) * * *

(ii) Where the port of entry volume is the lesser of the two volumes in paragraph (e)(1)(i) of this section, the importer shall calculate the difference between the number of RINs originally assigned by the RIN-generating foreign producer and the number of RINs calculated under § 80.1426 for the volume of renewable fuel as measured at the port of entry, and acquire and retire that amount of RINs in accordance with paragraph (k)(3) of this section.

(f) *Foreign producer commitments.* Any foreign renewable fuel producer shall commit to and comply with the following provisions as a condition to being approved as a foreign renewable fuel producer under this subpart:

(1) Any EPA inspector or auditor must be given full, complete, and immediate access to conduct inspections and audits of the foreign renewable fuel producer facility.

* * * * *

(ii) * * *

(C) Renewable fuel is stored or transported between the foreign renewable producer and the United States, including storage tanks, vessels and pipelines.

* * * * *

(v) * * *

(A) The volume of renewable fuel.

* * * * *

(C) Transfers of title or custody to the renewable fuel.

* * * * *

(vii) Any employee of the foreign renewable fuel producer must be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.

* * * * *

(2) An agent for service of process located in the District of Columbia shall be named, and service on this agent constitutes service on the foreign renewable fuel producer or any employee of the foreign renewable fuel producer for any action by EPA or otherwise by the United States related to the requirements of this subpart.

(3) The forum for any civil or criminal enforcement action related to the provisions of this section for violations of the Clean Air Act or regulations promulgated thereunder shall be governed by the Clean Air Act, including the EPA administrative forum where allowed under the Clean Air Act.

(4) United States substantive and procedural laws shall apply to any civil or criminal enforcement action against the foreign renewable fuel producer or any employee of the foreign renewable fuel producer related to the provisions of this section.

(5) Applying to be an approved foreign renewable fuel producer under this section, or producing or exporting renewable fuel under such approval, and all other actions to comply with the requirements of this subpart relating to such approval constitute actions or activities covered by and within the meaning of the provisions of 28 U.S.C. 1605(a)(2), but solely with respect to actions instituted against the foreign renewable fuel producer, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign renewable fuel producer under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).

(6) The foreign renewable fuel producer, or its agents or employees, will not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors for actions performed within the scope of EPA employment or contract related to the provisions of this section.

(7) The commitment required by this paragraph shall be signed by the owner

or president of the foreign renewable fuel producer company.

(8) In any case where renewable fuel produced at a foreign renewable fuel production facility is stored or transported by another company between the production facility and the vessel that transports the renewable fuel to the United States, the foreign renewable fuel producer shall obtain from each such other company a commitment that meets the requirements specified in paragraphs (f)(1) through (7) of this section, and these commitments shall be included in the foreign renewable fuel producer's application to be an approved foreign renewable fuel producer under this subpart.

(g) *Sovereign immunity.* By submitting an application to be an approved foreign renewable fuel producer under this subpart, or by producing and exporting renewable fuel to the United States under such approval, the foreign renewable fuel producer, and its agents and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with respect to actions instituted against the foreign renewable fuel producer, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign renewable fuel producer under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).

(h) *Bond posting.* Any RIN-generating foreign producer shall meet the requirements of this paragraph (h) as a condition to approval as a RIN-generating foreign producer under this subpart.

(1) * * *

G = the greater of: The largest volume of renewable fuel produced by the RIN-generating foreign producer and exported to the United States, in gallons, during a single calendar year among the five preceding calendar years, or the largest volume of renewable fuel that the RIN-generating foreign producers expects to export to the United States during any calendar year identified in the Production Outlook Report required by § 80.1449. If the volume of renewable fuel exported to the United States increases above the largest volume identified in the Production Outlook Report during any calendar year, the RIN-generating foreign producer shall increase the bond to cover the shortfall within 90 days.

(2) Obtaining a bond in the proper amount from a third party surety agent that is payable to satisfy United States administrative or judicial judgments against the RIN-generating foreign producer, provided EPA agrees in advance as to the third party and the nature of the surety agreement.

(3) * * *

(iii) Include a commitment that the bond will remain in effect for at least five years following the end of latest annual reporting period that the RIN-generating foreign producer produces renewable fuel pursuant to the requirements of this subpart.

(4) On any occasion a RIN-generating foreign producer bond is used to satisfy any judgment, the RIN-generating foreign producer shall increase the bond to cover the amount used within 90 days of the date the bond is used.

(i) *English language reports.* Any document submitted to EPA by a foreign renewable fuel producer shall be in English, or shall include an English language translation.

(j) * * *

(2) No foreign renewable fuel producer or other person may cause another person to commit an action prohibited in paragraph (j)(1) of this section, or that otherwise violates the requirements of this section.

(3) No foreign renewable fuel producer or importer may generate RINs for the same volume of renewable fuel.

(4) A foreign renewable fuel producer is prohibited from generating RINs in excess of the number for which the bond requirements of this section have been satisfied.

(k) * * *

(1) Renewable fuel shall be classified as RFS-FRRF according to the designation by the RIN-generating foreign producer if this designation is supported by product transfer documents prepared by the foreign producer as required in paragraph (c) of this section.

(2) * * *

(ii) Use the RIN-generating foreign producer's RFS-FRRF certification to determine the name and EPA-assigned registration number of the RIN-generating foreign producer that produced the RFS-FRRF.

* * * * *

(4) * * *

(ii) The RIN-generating foreign producer, containing the information determined under paragraph (k)(2)(i) of this section, and including identification of the port at which the product was offloaded, and any RINs retired under paragraph (e)(2) of this section.

(5) Any United States importer shall meet all other requirements of this subpart for any imported renewable fuel that is not classified as RFS-FRRF under paragraph (k)(1) of this section.

(l) *Truck imports of RFS-FRRF produced by a RIN-generating foreign producer.* (1) Any RIN-generating foreign producer whose RFS-FRRF is transported into the United States by truck may petition EPA to use alternative procedures to meet all the following requirements:

* * * * *

(2) * * *

(i) Contracts with any facilities that receive and/or transport RFS-FRRF that prohibit the commingling of RFS-FRRF with Non-RFS-FRRF or RFS-FRRF from other foreign renewable fuel producers.

* * * * *

(3) The petition described in this section must be submitted to EPA along with the application for approval as a RIN-generating foreign producer under this subpart.

(m) * * *

(3) * * *

(ii) Obtain the documents used by the independent third party to determine transportation and storage of the RFS-FRRF from the RIN-generating foreign producer's facility to the load port, under paragraph (d) of this section. Obtain tank activity records for any storage tank where the RFS-FRRF is stored, and activity records for any mode of transportation used to transport the RFS-FRRF prior to being loaded onto the vessel. Use these records to determine whether the RFS-FRRF was produced at the RIN-generating foreign producer's facility that is the subject of the attest engagement, and whether the RFS-FRRF was mixed with any Non-RFS-FRRF or any RFS-FRRF produced at a different facility.

* * * * *

(6) * * *

(i) Be independent of the RIN-generating foreign producer;

* * * * *

(n) *Withdrawal or suspension of foreign renewable fuel producer approval.* EPA may withdraw or suspend a foreign renewable fuel producer's approval where any of the following occur:

(1) A foreign renewable fuel producer fails to meet any requirement of this section.

* * * * *

(3) A foreign renewable fuel producer asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in this subpart.

(4) A foreign renewable fuel producer fails to pay a civil or criminal penalty

that is not satisfied using the foreign renewable fuel producer bond specified in paragraph (h) of this section.

(o) *Additional requirements for applications, reports, and certificates.* Any application for approval as a foreign renewable fuel producer, alternative procedures under paragraph (l) of this section, any report, certification, or other submission required under this section shall be:

* * * * *

(2) Signed by the president or owner of the foreign renewable fuel producer company, or by that person's immediate designee, and shall contain the following declaration:

(i) "I hereby certify:

(A) That I have actual authority to sign on behalf of and to bind [NAME OF FOREIGN RENEWABLE FUEL PRODUCER] with regard to all statements contained herein;

(B) That I am aware that the information contained herein is being Certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subpart M, and that the information is material for determining compliance under these regulations; and

(C) That I have read and understand the information being Certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof.

(ii) I affirm that I have read and understand the provisions of 40 CFR part 80, subpart M, including 40 CFR 80.1465 apply to [NAME OF FOREIGN RENEWABLE FUEL PRODUCER]. Pursuant to Clean Air Act section 113(c) and 18 U.S.C. 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to \$10,000 U.S., and/or imprisonment for up to five years."

(p) *Requirements for non-RIN-generating foreign producer.* Any non-RIN-generating foreign producer must comply with the requirements of this section beginning on the effective date of the final rule or prior to EPA acceptance, whichever is later.

■ 59. Section 80.1468 is amended by:

- a. in the first sentence of paragraph (a), removing "this part" and adding "this subpart" in its place; and
- b. revising paragraphs (b)(1), (3), (4), (5), (7), and (8) to read as follows:

§ 80.1468 Incorporation by reference

* * * * *

(b) * * *

(1) ASTM D 1250–08 (Reapproved 2013) ("ASTM D 1250"), Standard

Guide for Use of the Petroleum Measurement Tables, Approved October 1, 2013; IBR approved for § 80.1426(f)(8)(ii)(B).

* * * * *

(3) ASTM D 4444–13 ("ASTM D 4444"), Standard Test Method for Laboratory Standardization and Calibration of Hand-Held Moisture Meters, Approved April 1, 2013; IBR approved for § 80.1426(f)(7)(v)(B).

(4) ASTM D 6751–15 ("ASTM D 6751"), Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels, Approved January 1, 2015, IBR approved for § 80.1401.

(5) ASTM D 6866–08 ("ASTM D 6866"), Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis, Approved 2008; IBR approved for §§ 80.1426(f)(9)(ii), 80.1430(e)(2), and 80.1433(c)(2).

* * * * *

(7) ASTM E 870–82 (Reapproved 2006) ("ASTM E 870"), Standard Test Methods for Analysis of Wood Fuels, Approved November 1, 2006; IBR approved for § 80.1426(f)(7)(v)(A).

(8) ASTM D 975–15, Standard Specification for Diesel Fuel Oils, Approved March 1, 2015; IBR approved for §§ 80.1401, 80.1426(f), 80.1450(b), 80.1451(b), and 80.1454(l).

- 60. Section 80.1469 is amended by:
- a. Revising paragraphs (c)(1)(ii), (vi), and (vii);
- b. Adding paragraphs (c)(4)(iv) and (c)(6); and
- c. Revising paragraphs (e)(3) and (4), (f)(1) introductory text, and (f)(1)(i).

The revisions and additions read as follows:

§ 80.1469 Requirements for Quality Assurance Plans.

* * * * *

(c) * * *

(1) * * *

(ii) If applicable, plans under § 80.1426(f)(5)(ii) are accepted and up to date.

* * * * *

(vi) Feedstock(s) and biointermediate(s) are consistent with production process and D code being used as permitted under Table 1 to § 80.1426 or a petition approved through § 80.1416, and is consistent with information recorded in EMTS.

(vii) Feedstock(s) and biointermediate(s) are not renewable fuel for which RINs were previously generated.

* * * * *

(4) * * *

(iv) Verify that RINs that needed to be separated under § 80.1429(b)(11) and RINs that must be retired under § 80.1433 were appropriately separated and retired, as applicable.

* * * * *

(6) *VRD–N components.* In addition to applicable components described in paragraphs (c)(1) through (4) of this section, the independent third-party auditor shall perform the following for any VRD–N prior to the generation of RINs from such volumes:

(i)(A) Verify that the end-user(s) of any VRD–N have converted vehicles and engines to use such fuel under an EPA-approved Clean Alternative Fuel Conversion under 40 CFR part 85, subpart F, if applicable.

(B) Verify documentation demonstrating that end-user(s) can use VRD–N as heating oil or jet fuel, if applicable.

(ii) Verify that any VRD–N has been used by the end-user(s) of the VRD–N as transportation fuel, heating oil, or jet fuel.

(iii) Ensure that the VRD–N producer did not generate RINs for any volume of VRD–N prior to verification by an independent third-party auditor.

(iv) Independent third-party auditors shall not use representative sampling as described in paragraph (c)(5) of this section for the verification of VRD–N.

* * * * *

(e) * * *

(3) A QAP is approved on the date that the EPA notifies the third-party independent auditor of such approval or if all of the conditions specified in § 80.1450(g)(10) are met.

(4) The EPA may revoke its approval of a QAP, in whole or in part (e.g., QAP-specific feedstocks or process pathways), for cause, including, but not limited to, an EPA determination that the approved QAP has proven to be inadequate in practice.

* * * * *

(f) * * *

(1) A new QAP shall be submitted to the EPA according to paragraph (e) of this section and the third-party auditor shall update their registration according to § 80.1450(g)(9) whenever any of the following changes occur at a production facility audited by a third-party independent auditor and the auditor does not possess an appropriate pathway-specific QAP that encompasses the changes:

(i) Change in feedstock, including biointermediates.

* * * * *

■ 61. Section 80.1471 is amended by:

- a. Revising paragraphs (b) introductory text, (b)(1), and (b)(4) through (6);

- b. Adding paragraphs (b)(8) through (14);
- c. Revising paragraphs (e) introductory text and (e)(4); and
- d. Adding paragraph (e)(5).

The revisions and additions read as follows:

§ 80.1471 Requirements for QAP auditors.

* * * * *

(b) To be considered an independent third-party auditor under this section, all of the following conditions must be met:

(1) The independent third-party auditor and its contractors and subcontractors shall not be owned or operated by the renewable fuel producer, foreign ethanol producer, or biointermediate producer, or any subsidiary or employee of the renewable fuel producer, foreign ethanol producer, or biointermediate producer.

* * * * *

(4) The independent third-party auditor and its contractors and subcontractors shall be free from any interest in the renewable fuel producer, foreign ethanol producer, or biointermediate producer's business.

(5) The renewable fuel producer, foreign ethanol producer, or biointermediate producer shall be free from any interest in the third-party auditor's business and the businesses of the third-party auditor's contractors and subcontractors.

(6) The independent third-party auditor and its contractors and subcontractors shall not have performed an attest engagement under § 80.1464 for the renewable fuel producer, foreign ethanol producer, or foreign renewable fuel producer in the same calendar year it performed a QAP audit pursuant to § 80.1472 for the same entities.

* * * * *

(8) The independent third-party auditor and its contractors and subcontractors shall act impartially when performing all activities under this section.

(9) The independent third-party auditor and its contractors and subcontractors shall be free from any interest in the renewable fuel producer, foreign ethanol producer, or biointermediate producer's business and receive no financial benefit from the outcome of the registration, apart from payment for the auditing services.

(10) The independent third-party auditor and its contractors and subcontractors shall not have conducted past research, development, design, construction, or consulting for the

renewable fuel producer, foreign ethanol producer, or biointermediate producer within the last three years. For purposes of this requirement, consulting does not include performing or participating in verification activities pursuant to this section.

(11) The independent third-party auditor and its contractors and subcontractors shall not provide other business or consulting services to the renewable fuel producer, foreign ethanol producer, or biointermediate producer, including advice or assistance to implement the findings or recommendations in an audit report, for a period of at least three years following submission of the its final QAP audit.

(12) The independent third-party auditor and its contractors and subcontractors shall ensure that all personnel involved in the third-party audit (including the verification activities) under this section do not accept future employment with the owner or operator of the renewable fuel producer, foreign ethanol producer, or biointermediate producer for a period of at least three years. For purposes of this requirement, employment does not include performing or participating in the third-party audit (including the verification activities) pursuant to § 80.1472.

(13) The independent third-party auditor and its contractors and subcontractors shall have written policies and procedures to ensure that the independent third-party auditor and all personnel under the independent third-party auditor's direction or supervision comply with the competency, independence, and impartiality requirements of this section.

(14) The independent third-party auditor and its contractors and subcontractors shall not have performed an engineering review under § 80.1450(b)(2) for the renewable fuel producer, foreign ethanol producer, or biointermediate producer.

* * * * *

(e) The independent third-party auditor shall identify RINs generated from a renewable fuel producer as having been verified under a QAP.

* * * * *

(4) The independent third-party auditor shall not identify RINs generated from a renewable fuel producer as having been verified under a QAP if a revised QAP must be submitted to and approved by EPA under § 80.1469(f).

(5) The independent third-party auditor shall not identify RINs generated for renewable fuel produced

using a biointermediate as having been verified under a QAP unless the biointermediate used to produce the renewable fuel was verified under an approved QAP pursuant to § 80.1476.

* * * * *

■ 62. Section 80.1472 is amended by revising paragraphs (b)(3)(i) introductory text, (b)(3)(ii)(B), and (b)(3)(iii) and adding paragraph (b)(3)(v) to read as follows:

§ 80.1472 Requirements for quality assurance audits.

* * * * *

(b) * * *

(3) * * *

(i) As applicable, the independent third-party auditor shall conduct an on-site visit at the renewable fuel production facility, foreign ethanol production facility, or biointermediate production facility:

* * * * *

(ii) * * *

(B) 380 days after the previous on-site visit if a previously approved (by EPA) remote monitoring system is in place at the renewable fuel production facility, foreign ethanol production facility, and biointermediate production facility, as applicable. The 380-day period shall start the day after the previous on-site visit ends.

(iii) An on-site visit shall include verification of all QAP elements that require inspection or evaluation of the physical attributes of the renewable fuel production facility, foreign ethanol production facility, or biointermediate production facility, as applicable.

* * * * *

(v) Any on-site visit specified in paragraph (b)(3)(i) of this section shall occur while the facility is producing renewable fuel, undenatured ethanol, or a biointermediate. If the facility is not operational at the time of the third-party on-site visit, then all of the following requirements apply:

(A) The responsible corporate officer for the renewable fuel producer, foreign ethanol producer, or biointermediate producer must provide the third-party auditor with a signed affidavit explaining why the facility is not operational.

(B) If the facility is not operational because of a maintenance issue, the renewable fuel producer, foreign ethanol producer, or biointermediate producer must provide the third-party auditor with supporting written documentation of the maintenance issue.

(C) The independent third-party auditor shall include the reason why the facility was not operational in their

report under § 80.1451(g)(2) and keep the related affidavit pursuant to the recordkeeping requirements under § 80.1454(m).

(D) The independent third-party auditor shall not verify RINs for the renewable fuel producer under § 80.1471(e) until after an on-site visit occurs while the facility is operational.

■ 63. Section 80.1474 is amended by redesignating paragraph (g) as paragraph (h) and adding a new paragraph (g) to read as follows:

§ 80.1474 Replacement requirements for invalidly generated RINs.

* * * * *

(g) *PIRs for RINs generated from a CCS pathway after a surface leak.* (1) Renewable fuel producers that generate RINs using a CCS pathway must notify EPA via the EMTS support line (*support@epamts-support.com*) within 24 hours of notification of the detection of any occurrence of surface leakage from the geologic sequestration facility. All RINs generated within the five years preceding the surface leak are PIRs. Within 30 days, the producer shall submit to EPA a remediation plan for EPA approval. The explanation must contain the following:

(i) The date(s) the surface leak occurred.

(ii) The facility identification number associated with the 40 CFR part 98, subpart RR, annual GHG report of the geologic sequestration facility.

(iii) The facility identification number associated with the 40 CFR part 98, subpart PP, annual GHG report of the renewable fuel production facility.

(iv) A detailed description of how the leak occurred.

(v) The amount of CO₂ that leaked.

(vi) A description of corrective actions that when taken, would remediate the surface leak.

(vii) A list of all PIRs affected by the surface leak.

(viii) The original calculated greenhouse gas emissions for each affected batch of renewable fuel.

(ix) The updated calculated greenhouse gas emissions for each affected batch of renewable fuel that accounts for the surface leak.

(x) A plan detailing how the RIN generator intends to remediate all PIRs generated as a result of the surface leak.

(xi) A demonstration from the renewable fuel producer that all necessary steps are being taken to ensure there will be no CO₂ emissions through any potential surface leakage pathways identified in an EPA-approved monitoring, reporting, and verification plan as described in 40 CFR 98.448 that would cause the lifecycle

greenhouse gas emissions to exceed the threshold value required for the approved pathway under § 80.1416.

(xii) Any other information requested by EPA.

(2) If EPA determines that the surface leak has caused the PIR(s) to be invalid, the PIR generator must retire the PIR or a valid RIN following the requirements of paragraph (d) of this section within 30 days of notification by EPA.

* * * * *

■ 64. Section 80.1475 is added to read as follows:

§ 80.1475 Requirements for biointermediate producers.

Biointermediate producers shall comply with the following requirements:

(a) *Registration.* No later than the effective date of the final rule, or 60 days prior to the transfer of any biointermediate to be used in the production of a renewable fuel for which RINs may be generated, biointermediate producers shall register with EPA pursuant to the requirements of § 80.1450(b).

(b) *Reporting.* Beginning on the effective date of the final rule, biointermediate producers shall comply with the reporting requirements pursuant to § 80.1451(i).

(c) *Recordkeeping.* Beginning on the effective date of the final rule, biointermediate producers shall comply with the recordkeeping requirements pursuant to § 80.1454(n).

(d) *PTDs.* Beginning on the effective date of the final rule, biointermediate producers shall comply with the PTD requirements pursuant to § 80.1453(e).

(e) *Quality Assurance Plans.* Until January 1, 2018, or a later date designated by EPA, biointermediate producers shall have an approved quality assurance plan pursuant to § 80.1476(b). Beginning January 1, 2018, or a later date designated by EPA, biointermediate producers may have an approved quality assurance plan pursuant to § 80.1476(b), but are not required to do so.

(f) *Attest engagements.* Beginning on the effective date of the final rule, biointermediate producers shall comply with the annual attest engagement requirements pursuant to § 80.1464(h).

(g) *Interim implementation facility limitation.* (1) Until January 1, 2018, or a later date designated by EPA, a biointermediate producer shall be limited to designating and transferring a biointermediate to a single renewable fuel production facility.

(2) Beginning January 1, 2018, or a later date designated by EPA, a biointermediate producer may designate

and transfer a biointermediate to more than one renewable fuel production facility.

(3) The EPA in its sole discretion may allow a biointermediate producer to designate and transfer a biointermediate to more than one renewable fuel production facility prior to January 1, 2018, or a later date designated by EPA.

(h) *Batch numbers.* Every batch of biointermediate produced or imported at a biointermediate production facility shall be assigned a number (the “batch number”), consisting of the EPA-assigned company registration number, the EPA facility registration number, the last two digits of the year in which the batch was produced, and a unique number for the batch, beginning with the number one for the first batch produced or imported each calendar year and each subsequent batch during the calendar year being assigned the next sequential number (e.g., 4321–54321–95–000001, 4321–54321–95–000002, etc.). An alternative batch numbering protocol may be used as approved by the Administrator.

(i) *Designation.* Every batch of biointermediate produced or imported at a biointermediate production facility shall be designated for use in the production of a renewable fuel in accordance with the biointermediate producer’s registration under § 80.1450. The designation for the batch of biointermediate shall be clearly indicated on PTDs for the biointermediate as described in § 80.1453(e)(6).

■ 65. Section 80.1476 is added to read as follows:

§ 80.1476 Requirements for QAPs for biointermediate producers.

(a) Independent third-party auditors that verify biointermediate production must meet the requirements of § 80.1471(a) through (c) and (g) through (h).

(b) QAPs approved by EPA to verify biointermediate production must meet the requirements in § 80.1469(c) through (f), as applicable.

(c) Quality assurance audits, when performed, shall be conducted in accordance with the requirements in § 80.1472(a) and (b)(3).

(d)(1) If a third-party auditor identifies a potentially improperly produced biointermediate, the third-party auditor shall notify EPA, the biointermediate producer, and any renewable fuel producers that may have been transferred the biointermediate in writing within five business days of the identification, including an initial explanation of why the biointermediate may have been improperly produced.

(2) If RINs were generated from the potentially improperly produced biointermediate, the RIN generator shall follow the identification and treatment of PIR procedures as specified in § 80.1474.

(e) For the generation of Q-RINs for renewable fuels that were produced from a biointermediate, the biointermediate must be verified under an approved QAP as described in paragraph (b) of this section and the RIN generating facility must be verified under an approved QAP as described in § 80.1469.

■ 66. Section 80.1477 is added to read as follows:

§ 80.1477 Requirements for foreign biointermediate producers and importers.

(a) *Foreign biointermediate producer.* For purposes of this subpart, a foreign biointermediate producer is a person located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (collectively referred to in this section as “the United States”) that has been approved by EPA to produce biointermediate for use in the production of renewable fuel by a RIN-generating renewable fuel producer.

(b) *Foreign biointermediate producer requirements.* Any foreign biointermediate producer must meet all requirements that apply to biointermediate producers under this subpart as a condition of being approved as a foreign biointermediate producer under this subpart.

(c) *Foreign biointermediate producer commitments.* Any foreign biointermediate producer must commit to the following provisions as a condition of being approved as a foreign biointermediate producer under this subpart:

(1) Any EPA inspector or auditor must be given full, complete, and immediate access to conduct inspections and audits of the foreign biointermediate producer facility.

(i) Inspections and audits may be either announced in advance by EPA, or unannounced.

(ii) Access will be provided to any location where:

(A) Biointermediate is produced.

(B) Documents related to foreign biointermediate producer operations are kept.

(C) Biointermediate is stored or transported between the foreign biointermediate producer and the renewable fuel producer, including storage tanks, vessels, and pipelines.

(iii) EPA inspectors and auditors may be EPA employees or contractors to EPA.

(iv) Any documents requested that are related to matters covered by inspections and audits must be provided to an EPA inspector or auditor on request.

(v) Inspections and audits may include review and copying of any documents related to the following:

(A) The volume of biointermediate produced and/or delivered to renewable fuel production facilities.

(B) Transfers of title or custody to the biointermediate.

(C) Work performed and reports prepared by independent third parties and by independent auditors under the requirements of this section, including work papers.

(vi) Inspections and audits by EPA may include interviewing employees.

(vii) Any employee of the foreign biointermediate producer must be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.

(viii) English language translations of any documents must be provided to an EPA inspector or auditor, on request, within 10 working days.

(ix) English language interpreters must be provided to accompany EPA inspectors and auditors, on request.

(2) An agent for service of process located in the District of Columbia shall be named, and service on this agent constitutes service on the foreign biointermediate producer or any employee of the foreign biointermediate producer for any action by EPA or otherwise by the United States related to the requirements of this subpart.

(3) The forum for any civil or criminal enforcement action related to the provisions of this section for violations of the Clean Air Act or regulations promulgated thereunder shall be governed by the Clean Air Act, including the EPA administrative forum where allowed under the Clean Air Act.

(4) United States substantive and procedural laws shall apply to any civil or criminal enforcement action against the foreign biointermediate producer or any employee of the foreign biointermediate producer related to the provisions of this section.

(5) Applying to be an approved foreign biointermediate producer under this section, or producing or exporting biointermediate under such approval, and all other actions to comply with the requirements of this subpart relating to such approval constitute actions or activities covered by and within the meaning of the provisions of 28 U.S.C. 1605(a)(2), but solely with respect to actions instituted against the foreign biointermediate producer, its agents and employees in any court or other tribunal

in the United States for conduct that violates the requirements applicable to the foreign biointermediate producer under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).

(6) The foreign biointermediate producer, or its agents or employees, will not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors for actions performed within the scope of EPA employment or contract related to the provisions of this section.

(7) The commitment required by this paragraph shall be signed by the owner or president of the foreign biointermediate producer company.

(8) In any case where the biointermediate produced at a foreign biointermediate production facility is stored or transported by another company between the production facility and the vessel that transports the renewable fuel to the United States, the foreign biointermediate producer shall obtain from each such other company a commitment that meets the requirements specified in paragraphs (c)(1) through (7) of this section, and these commitments shall be included in the foreign biointermediate producer's application to be an approved foreign biointermediate producer under this subpart.

(d) *Sovereign immunity.* By submitting an application to be an approved foreign biointermediate producer under this subpart, or by producing and exporting biointermediate fuel to the United States under such approval, the foreign biointermediate producer, and its agents and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with respect to actions instituted against the foreign biointermediate producer, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign biointermediate producer under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).

(e) *English language reports.* Any document submitted to EPA by a foreign biointermediate producer must be in English, or must include an English language translation.

(f) *Foreign biointermediate producer contractual relationship.* Any foreign biointermediate producer must establish a contractual relationship with the RIN-generating renewable fuel producer prior to the sale of a biointermediate. Any foreign biointermediate producer must retain contracts and documents memorializing the sale of biointermediates for five years from the date they were created, and must deliver such records to the Administrator upon request.

(g) *Withdrawal or suspension of foreign biointermediate producer approval.* EPA may withdraw or suspend a foreign biointermediate producer's approval where any of the following occur:

(1) A foreign biointermediate producer fails to meet any requirement of this section.

(2) A foreign government fails to allow EPA inspections or audits as provided in paragraph (c)(1) of this section.

(3) A foreign biointermediate producer asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in this subpart.

(h) *Additional requirements for applications, reports, and certificates.* Any application for approval as a foreign biointermediate producer, any report, certification, or other submission required under this section shall be:

(1) Submitted in accordance with procedures specified by the Administrator, including use of any forms that may be specified by the Administrator.

(2) Signed by the president or owner of the foreign biointermediate producer company, or by that person's immediate designee, and must contain the following declaration:

(i) "I hereby certify:

(A) That I have actual authority to sign on behalf of and to bind [NAME OF FOREIGN BIOINTERMEDIATE PRODUCER] with regard to all statements contained herein;

(B) That I am aware that the information contained herein is being Certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subpart M, and that the information is material for determining compliance under these regulations; and

(C) That I have read and understand the information being Certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof.

(ii) I affirm that I have read and understand the provisions of 40 CFR part 80, subpart M, including 40 CFR 80.1465 apply to [NAME OF FOREIGN BIOINTERMEDIATE PRODUCER]. Pursuant to Clean Air Act section 113(c) and 18 U.S.C. 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to \$10,000 U.S., and/or imprisonment for up to five years."

(i) *Requirements for biointermediate importers.* Any biointermediate importer must meet all the following requirements:

(1) For each biointermediate batch, any biointermediate importer shall have an independent third party do all the following:

(i) Determine the volume of biointermediate in the vessel.

(ii) Determine the name and EPA-assigned registration number of the foreign biointermediate producer that produced the biointermediate.

(iii) Determine the name and country of registration of the vessel used to transport the biointermediate to the United States.

(iv) Determine the date and time the vessel arrives at the United States port of entry.

(2) Any biointermediate importer shall submit reports within 30 days following the date any vessel transporting biointermediate arrives at the United States port of entry to all the following:

(i) The Administrator, containing the information determined under paragraph (h)(1) of this section.

(ii) The foreign biointermediate producer, containing the information determined under paragraph (h)(1) of this section, and including identification of the port at which the product was offloaded.

(3) The biointermediate importer and the third-party auditor must keep records of the audits and reports required under paragraphs (h)(1) and (2) of this section for five years from the date of creation.

■ 67. Section 80.1478 is added to read as follows:

§ 80.1478 Requirements for biogas producers.

Biogas producers shall comply with the following requirements:

(a) *Registration.* (1) No later than the effective date of the final rule, or 60 days prior to the production of biogas for the generation of RINs under § 80.1426, biogas producers must register either as a renewable fuel producer or a biointermediate producer pursuant to the requirements of § 80.1450(b).

(2) No later than the effective date of the final rule, or 60 days prior to the generation of RINs from biogas produced from a biogas producer, whichever is later, biogas producers and the RIN generating party must associate in the EPA's Central Data Exchange using forms and procedures as prescribed by the Administrator.

(3) Biogas producers must update their registrations as described in § 80.1450(d).

(b) *Recordkeeping.* In addition to any records required to be maintained under § 80.1454(k), biogas producers must keep applicable records related to the registration described in paragraph (a) of this section pursuant to either § 80.1454(b)(6) or (n)(4), as applicable, for a period of five years from the date those records were created.

(c) *RIN Generation.* (1) Biogas producers that register as renewable fuel producers must generate RINs in accordance with applicable requirements in § 80.1426 and satisfy all applicable requirements in this subpart for renewable fuels producers.

(2) Biogas producers that register as biointermediate producers shall not generate RINs.

(3) Renewable fuel producers shall only generate RINs for renewable fuel produced from biogas sourced from a biogas producer that satisfies the requirements of this section.

(d) *Reporting.* (1) Biogas producers that register as renewable fuel producers shall submit reports to the EPA as described in § 80.1451(b) and (c), as applicable.

(2) Biogas producers that register as biointermediate producers shall submit reports to the EPA as described in § 80.1451(i).

(e) *Attest Engagements.* (1) Biogas producers that register as renewable fuel producers shall comply with annual attest engagement requirements as described in § 80.1464(b).

(2) Biogas producers that register as biointermediate producers shall comply with annual attest engagement requirements as described in § 80.1464(h).

(f) *Quality Assurance Plans.* Biogas producers that register as biointermediate producers do not need to have quality assurance plans as described in § 80.1475(e).

(g) *Interim Implementation Facility Limitation.* The interim implementation facility limitation as described in § 80.1475(g) does not apply to biogas producers that register as biointermediate producers.

(h) *Designation.* Biogas produced by a biogas producer that has registered as a

biointermediate producer must be designated as described in § 80.1475(i).

(i) *Prohibited acts.* Biogas producers are prohibited from the acts described in § 80.1460.

(j) *Liability.* Biogas producers are liable for violations as described in § 80.1461(e).

■ 68. Section 80.1479 is added to read as follows:

§ 80.1479 Requirements for VRD producers and blenders.

(a) *Requirements for VRD-N producers.* (1) The VRD-N producer shall generate RINs.

(2) The VRD-N producer must satisfy all requirements specified in this subpart for renewable fuel producers (including but not limited to registration, recordkeeping, and reporting requirements).

(3) RINs may only be generated for VRD-N after an independent third-party auditor has verified the use of the fuel as transportation fuel, heating oil, or jet fuel under an EPA-approved QAP as described in § 80.1469.

(b) *Requirements for VRD-B producers and VRD blenders.* (1) Only parties that are VRD blenders and are not VRD producers may generate RINs for VRD-B.

(2) RINs shall not be assigned to finished fuel, but shall be treated as separated RINs immediately upon generation.

(3) VRD blenders must satisfy all requirements specified in this subpart for renewable fuel producers that are using a biointermediate (including, but not limited to, registration, recordkeeping, and reporting requirements). In applying such requirements, the facility at which VRD-B is blended with petroleum diesel shall be considered the renewable fuel production facility and the VRD-B producer shall be considered the biointermediate producer.

(4) VRD-B producers must satisfy the requirements of paragraph (c) of this section.

(c) *Additional requirements for VRD-B producers.* VRD-B producers must meet the requirements in paragraphs (c)(1) through (11) of this section. For the purposes of the other sections of this subpart reference in this paragraph (c), VRD-B producers are considered to be biointermediate producers.

(1) *Registration.* No later than the effective date of this rule, or 60 days prior to the production of VRD-B, whichever is later, VRD-B producers must register with the EPA in accordance with the provisions in § 80.1450(b) that apply to biointermediate producers.

(2) *Reporting.* VRD-B producers shall submit reports to the EPA as described in § 80.1451(i).

(3) *Recordkeeping.* VRD-B producers must keep records specified in § 80.1454(n) and any additional records referenced therein.

(4) *Product transfer documents.* VRD-B producers shall comply with the product transfer document requirements specified in § 80.1453(e)(1) through (8). In addition, each PTD shall include the following statement: “This volume of viscous renewable diesel is designated and intended for blending with petroleum diesel to produce transportation fuel, heating oil or jet fuel.”

(5) *Attest engagements.* VRD-B producers shall comply with the annual attest engagement requirements specified in § 80.1464(h).

(6) *Quality assurance plans.* VRD-B producers must have quality assurance plans as specified in § 80.1475(e).

(7) *Interim implementation facility limitation.* The interim implementation facility limitation specified in § 80.1475(g) applies to VRD-B producers.

(8) *RIN generation.* VRD-B producers are prohibited from generating RINs for VRD-B.

(9) *Prohibited acts.* VRD-B producers are prohibited from the acts specified in § 80.1460.

(10) *Liability.* VRD-B producers are liable for violations specified in § 80.1461(e).

(11) *Exemption for producers of straight vegetable oil for use as a feedstock.* Producers of straight vegetable oil that is used as a feedstock to produce biodiesel are not subject to the requirements of this section.

Subpart N—Additional Requirements for Gasoline-Ethanol Blends, Ethanol Flex Fuel, and Natural Gasoline Ethanol Flex Fuel Blendstock

■ 69. The subpart N heading is revised to read as set forth above.

■ 70. Section 80.1500 is revised to read as follows:

§ 80.1500 Definitions.

(a) Unless otherwise defined in paragraph (b) of this section, the definitions in § 80.2 apply to this subpart, including, but not limited to, the definitions for the following terms: Carrier (§ 80.2(t))

Conventional gasoline blendstock for oxygenate blending or CBOB (§ 80.2(aaaa))

Conventional gasoline (§ 80.2(ff))

Denatured fuel ethanol or DFE (§ 80.2(vvv))

Distributor (§ 80.2(l))

Ethanol blender (§ 80.2(v))

Ethanol flex fuel or EFF (§ 80.2(q))

Gasoline (§ 80.2(c))

Importer (§ 80.2(r))

Natural gasoline ethanol flex fuel blendstock (§ 80.2(aa))

Oxygenate blender (§ 80.2(mm))

Oxygenate blending facility (§ 80.2(ll))

Refinery (§ 80.2(i))

Refinery (§ 80.2(h))

Reformulated gasoline (§ 80.2(ee))

Reformulated gasoline blendstock for oxygenate blending or RBOB (§ 80.2(kk))

Retail outlet (§ 80.2(j))

Retailer (§ 80.2(k))

Wholesale purchaser-consumer (§ 80.2(o))

(b) The following definitions apply for the purposes of this subpart:

Batch means a quantity of ethanol flex fuel or natural gasoline ethanol flex fuel blendstock that is homogeneous with regard to those properties that are specified for these fuels.

Blender pump means a fuel dispenser at a blender pump-refinery.

Blender pump-refiner means any person who owns, leases, operates, controls, or supervises a blender pump-refinery.

Blender pump-refinery means a retail outlet or wholesale purchaser-consumer facility where, in the process of fueling a vehicle, engine, or portable fuel container, certified E0, E10, or E15 is blended with certified ethanol flex fuel to produce a fuel pursuant to the requirements of § 80.1523 (for ethanol flex fuel) or § 80.1530 (for gasoline) and other provisions of this subpart.

California ethanol flex fuel means ethanol flex fuel that meets the requirements of § 80.1558.

Certified natural gasoline ethanol flex fuel blendstock means natural gasoline ethanol flex fuel blendstock that has been certified as meeting the standards and requirements in § 80.1524.

Crude oil refinery means a facility that refines gasoline and or diesel fuel using crude oil as a feedstock.

E0 means a gasoline that contains no ethanol.

E10 means gasoline that contains at least 9 and no more than 10 volume percent ethanol.

E15 means gasoline that contains greater than 10 volume percent ethanol and no more than 15 volume percent ethanol.

Ethanol flex fuel additive means any additive that is added to, intended to be added to, used in, or offered for use in ethanol flex fuel or in flex-fuel vehicle or engine fuel systems pursuant to the provisions of § 80.1525.

Ethanol flex fuel additive manufacturer means any person who produces, manufactures, or imports an ethanol flex fuel additive and/or sells or imports for sale such additive under the person's own name.

Ethanol flex fuel bulk blender-refiner means any person who owns, leases, operates, controls, or supervises an ethanol flex fuel bulk blender-refinery.

Ethanol flex fuel bulk blender-refinery means any facility upstream of a retail outlet or wholesale purchaser-consumer facility, including but not limited to, a plant, tanker truck, or vessel where ethanol flex fuel is produced by combining blendstocks pursuant to the provisions of § 80.1522 and other requirements in this subpart.

Ethanol flex fuel full-refiner means any person who owns, leases, operates, controls, or supervises an ethanol flex fuel full-refinery.

Ethanol flex fuel full-refinery means any facility upstream of a retail outlet or wholesale purchaser-consumer facility, including but not limited to, a plant, tanker truck, or vessel where ethanol flex fuel is produced by combining blendstocks pursuant to the provisions of § 80.1521 and other requirements in this subpart.

Ethanol flex fuel import facility means any facility where ethanol flex fuel is imported from a foreign country into the United States (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

Ethanol flex fuel importer means any person who owns, leases, operates, controls, or supervises an ethanol flex fuel import facility.

Ethanol flex fuel refiner means any person who owns, leases, operates, controls, or supervises an ethanol flex fuel refinery.

Ethanol flex fuel refinery means any facility, including but not limited to, a plant, tanker truck, vessel, ethanol flex fuel retail station, or wholesale purchaser-consumer facility where ethanol flex fuel is produced, including any facility at which blendstocks are combined to produce ethanol flex fuel pursuant to the requirements of § 80.1520 and other provisions of this subpart, including ethanol flex fuel full-refineries, ethanol flex fuel bulk blender-refineries, and blender pump-refineries.

Ethanol flex fuel retail station means any establishment where ethanol flex fuel is sold or offered for sale for use in flex-fuel vehicles and flex-fuel engines.

Ethanol importer means a person who brings denatured ethanol into the United States (including from the

Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands) for use in motor vehicles and nonroad engines.

Ethanol producer means any person who owns, leases, operates, controls, or supervises a facility that produces ethanol for use in motor vehicles or nonroad engines.

Flex-fuel engine has the same meaning as *flexible-fuel engine* as defined in 40 CFR 1054.801.

Flex-fuel vehicle has the same meaning as *flexible fuel vehicle* as defined in 40 CFR 86.1803–01.

Fuel dispenser means the apparatus used to dispense fuel into motor vehicles or nonroad vehicles, engines or equipment, or into a portable fuel container as defined at 40 CFR 59.680.

Natural gas processing plant means a facility designed to “clean” raw natural gas by separating impurities and various non-methane hydrocarbons and fluids to produce what is known as “pipeline quality” dry natural gas. A gas processing plant is used to recover natural gas liquids, including natural gasoline, and to remove other substances such as sulfur and benzene as needed.

Natural gasoline ethanol flex fuel blendstock importer means any person who imports natural gasoline ethanol flex fuel blendstock is imported from a foreign country into the United States (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

Natural gasoline ethanol flex fuel blendstock refiner means any person who owns, leases, operates, controls, or supervises a natural gasoline ethanol flex fuel blendstock refinery.

Natural gasoline ethanol flex fuel blendstock refinery means a natural gas processing plant or crude oil refinery that produces natural gasoline ethanol flex fuel blendstock.

Survey series means the four quarterly surveys that comprise a survey program.

Sampling strata means the three types of areas sampled during a survey which include the following:

- (i) Densely populated areas;
- (ii) Transportation corridors; and
- (iii) Remaining areas.

Uncertified natural gasoline ethanol flex fuel blendstock means natural gasoline ethanol flex fuel blendstock that meets the standards and requirements in § 80.1521(b)(5).

Undenatured ethanol means an alcohol of the chemical formula C₂H₆O that does not contain an ethanol

denaturant to make it unfit for human consumption.

§§ 80.1502, 80.1503, 80.1504, 80.1505, 80.1506, 80.1507, and 80.1508
[Redesignated as §§ 80.1561, 80.1563, 80.1504, 80.1565, 80.1566, 80.1567, and 80.1568]

■ 71a. Sections 80.1502, 80.1503, 80.1504, 80.1505, 80.1506, 80.1507, and 80.1508 are redesignated as §§ 80.1561, 80.1563, 80.1504, 80.1565, 80.1566, 80.1567, and 80.1568, respectively.

§ 80.1501 [Redesignated as § 80.1502]

■ 71b. Section 80.1501 is redesignated as section 80.1502.

§ 80.1509 [Redesignated as § 80.1503]

■ 71c. Section 80.1509 is redesignated as section 80.1503.

■ 72. A new section 80.1501 is added to read as follows:

§ 80.1501 Fuels subject to the provisions of this subpart.

(a) The following fuels are subject to the standards and requirements of this subpart:

(1) Reformulated and conventional gasoline, RBOB, and CBOB (collectively called “gasoline” unless otherwise specified).

(2) Any blendstock blended with PCG.

(3) Oxygenates blended with gasoline, RBOB, or CBOB.

(4) Ethanol flex fuel.

(5) Certified and uncertified natural gasoline ethanol flex fuel blendstock.

(b) The following fuels are not subject to the standards and requirements of this subpart:

(1) Gasoline and ethanol flex fuel that is used to fuel aircraft, racing vehicles, or racing boats that are used only in sanctioned racing events, provided that the following requirements are met:

(i) Product transfer documents associated with such gasoline and ethanol flex fuel, and labels from any pump stand from which such gasoline and ethanol flex fuel is dispensed, identify the gasoline and ethanol flex fuel either as gasoline or ethanol flex fuel that is restricted for use in aircraft, or as gasoline or ethanol flex fuel that is restricted for use in racing motor vehicles or racing boats that are used only in sanctioned racing events.

(ii) The gasoline and ethanol flex fuel is completely segregated from all other gasoline and ethanol flex fuel throughout production, distribution, and sale to the ultimate consumer.

(iii) The gasoline and ethanol flex fuel is not made available for use as motor vehicle gasoline and ethanol flex fuel, or dispensed for use in motor vehicles, except for motor vehicles used only in sanctioned racing events.

(2) California gasoline as defined in § 80.1600 and subject to the provisions of § 80.1654.

(3) California ethanol flex fuel as defined in § 80.1500 and subject to the provisions of § 80.1558.

(4) Gasoline and ethanol flex fuel that is exported for sale and use outside the United States.

(5) Exempt fuels under §§ 80.1555 (national security exemptions), 80.1556 (ethanol flex fuel used for research, development, or testing purposes), and 80.1557 (ethanol flex fuel used in American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands).

■ 73. Newly redesignated section 80.1502 is amended by:

- a. Revising the section heading;
- b. Revising paragraphs (b)(3)(i) and (b)(5)(i); and
- c. Removing and reserving paragraph (b)(5)(ii).

The revisions read as follows:

§ 80.1502 Labeling requirements that apply to retailers and wholesale purchaser-consumers of gasoline that contains greater than 10 volume percent ethanol and not more than 15 volume percent ethanol.

* * * * *

(b) * * *

(3) * * *

(i) The word “ATTENTION” shall be capitalized in 20-point, black, Helvetica Neue LT 77 Bold Condensed font, and shall be placed in the top 1.25 inches of the label as further described in paragraph (b)(4)(iii) of this section.

* * * * *

(5) * * *

(i) A request for approval of an alternative label shall be sent to the attention of “E15 Alternative Label Request” to the address in § 80.10(a).

* * * * *

■ 74. Newly redesignated section 80.1503 is revised to read as follows:

§ 80.1503 Rounding a test result for purposes of this subpart.

The provisions of § 80.9 apply for purposes of determining the ethanol content, sulfur content, benzene content, or Reid vapor pressure (RVP) of any fuel, blendstock, or oxygenate subject to this subpart.

■ 75. A new section 80.1504 is added to read as follows:

§ 80.1504 Implementation dates and standards format for the requirements for ethanol flex fuel and natural gasoline ethanol flex fuel blendstock in this subpart.

(a) *Registration dates.* (1) Any ethanol flex fuel full-refiner, ethanol flex fuel importer, or ethanol flex fuel bulk blender-refiner must register by November 1, 2017, or at least 60 days in

advance of the first date that such person will produce or import ethanol flex fuel, whichever is later.

(2) Any natural gasoline ethanol flex fuel blendstock refiner or importer must register by October 1, 2017, or at least 60 days in advance of the first date that such person will produce or import certified natural gasoline ethanol flex fuel blendstock, whichever is later.

(b) *Standards compliance dates.* (1) Any ethanol flex fuel full-refiner, ethanol flex fuel importer, or ethanol flex fuel bulk blender-refiner must comply with the requirements of this subpart by January 1, 2018, or the first date that such person produces or imports ethanol flex fuel, whichever is later. Such parties must also comply with the RVP requirements in § 80.1520(c) from May 1 through September 15 each year beginning May 1, 2018, through September 15, 2018.

(2) Any blender pump-refiner must comply with the requirements of this subpart by February 1, 2018, or the first date that such person blends ethanol flex fuel, whichever is later. Such parties must also comply with the RVP requirements in § 80.1520(c) from June 1 through September 15 each year beginning June 1, 2018, through September 15, 2018.

(3) Any certified natural gasoline ethanol flex fuel blendstock refiner or importer must comply with the requirements of this subpart by December 1, 2017, or the first date that such person produces or imports natural gasoline ethanol flex fuel blendstock, whichever is later.

(4) Any party in the ethanol flex fuel production and distribution system except for retail and wholesale purchaser consumer facilities must comply with the RVP requirements in § 80.1520(c) from May 1 through September 15 each year beginning May 1, 2018, through September 15, 2018.

(5) Any ethanol flex fuel retail or wholesale purchaser consumer facility must comply with the RVP requirements in § 80.1520(c) from June 1 through September 15 each year beginning June 1, 2018, through September 15, 2018.

(c) *Standards format*—(1) *Annual average standards.* (i) An annual average standard is the maximum average level allowed for ethanol flex fuel produced at a refinery or imported by an importer during each calendar year beginning on the date specified in paragraph (b) of this section.

(ii) For annual average standards, the averaging period is a calendar year (January 1 through December 31) or any part thereof during which ethanol flex fuel is produced, imported, sold, offered

for sale, dispensed, supplied, offered for supply, stored, or transported for use.

(2) *Per-gallon cap standards.* A per-gallon cap standard is the maximum level allowed for any batch of ethanol flex fuel produced, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, or transported or any batch of certified natural gasoline ethanol flex fuel blendstock used or made available for use to produce ethanol flex fuel beginning on the date specified in paragraph (b) of this section.

(3) *RVP standards.* The RVP standard is the maximum RVP level allowed for any batch of ethanol flex fuel produced, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, or transported or any batch of certified natural gasoline ethanol flex fuel blendstock used or made available for use to produce ethanol flex fuel beginning on the date specified in paragraph (b) of this section.

(4) *T90 distillation point and final distillation point.* The T90 distillation point and final distillation point standards are the maximum T90 distillation point and final distillation point allowed for any batch of natural gasoline ethanol flex fuel blendstock used or made available for use to produce ethanol flex fuel beginning on the date specified in paragraph (b) of this section.

(5) *Elemental composition requirements.* The elemental composition requirements apply to any batch of ethanol flex fuel produced, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, or transported or any batch of certified natural gasoline ethanol flex fuel blendstock used or made available for use to produce ethanol flex fuel beginning on the date specified in paragraph (b) of this section.

§§ 80.1505–80.1519 [Reserved]

■ 76. Reserved §§ 80.1505 through 80.1519 are added.

■ 77. Section 80.1520 is added to read as follows:

§ 80.1520 Standards for ethanol flex fuel.

(a) *Applicability.* All ethanol flex fuel shall meet the requirements of this section beginning on the date specified in § 80.1504(b), unless otherwise provided in this subpart.

(b) *Sulfur, benzene, and elemental composition standards*—(1) *Sulfur content*—(i) *Annual average standard.* (A) For all ethanol flex fuel, the annual average sulfur standard is a maximum of 10.00 ppm.

(B) [Reserved]

(ii) *Per-gallon cap standard.* (A) For ethanol flex fuel produced by an ethanol flex fuel full-refiner, the sulfur per-gallon cap standard is a maximum of 80 ppm.

(B) For all other ethanol flex fuel, the sulfur per-gallon cap standard is a maximum of 95 ppm.

(2) *Benzene content*—(i) *Annual average standard.* (A) For all ethanol flex fuel, the annual average benzene standard is a maximum of 0.62 volume percent.

(B) [Reserved]

(ii) [Reserved]

(3) *Elemental composition requirement.* All ethanol flex fuel shall be composed solely of carbon, hydrogen, oxygen, nitrogen, and/or sulfur, unless a waiver has been granted under 42 U.S.C. 7545(f)(4).

(c) *RVP standard.* Except for ethanol flex fuel produced by a blender pump-refiner satisfying the requirements of § 80.1523, no person may sell, offer for sale, dispense, supply, offer for supply, transport or introduce into commerce ethanol flex fuel that does not comply with the applicable RVP standard as specified in § 80.1531.

■ 78. Section 80.1521 is added to read as follows:

§ 80.1521 Requirements for ethanol flex fuel produced by ethanol flex fuel full-refiners or imported by ethanol flex fuel importers.

(a) *Applicability.* Any ethanol flex fuel full-refiner or ethanol flex fuel importer shall demonstrate compliance with the standards in § 80.1520 by complying with the requirements of this section for all ethanol flex fuel that they produce or import beginning on the date specified in § 80.1504(b). This section does not apply to ethanol flex fuel bulk blender-refiners meeting the requirements in § 80.1522 and ethanol flex fuel blender pump-refiners meeting the requirements in § 80.1523.

(b) *Ethanol flex fuel composition.* Ethanol flex fuel full-refiners and ethanol flex fuel importers may only produce ethanol flex fuel using the following components:

(1) Ethanol that meets the requirements of paragraph (b)(1)(i) or (b)(1)(ii) of this section, as applicable.

(i) Denatured fuel ethanol that meets the requirements of § 80.1610.

(ii) Undenatured ethanol at an ethanol production facility that has a sulfur content not greater than 10 ppm and is composed solely of carbon, hydrogen, nitrogen, oxygen, and sulfur unless a waiver has been granted under 42 U.S.C. 7545(f)(4).

(2) For ethanol flex fuel sold, offered for sale, dispensed, supplied, or offered

for supply in areas other than the reformulated gasoline areas described in § 80.70:

(i) Conventional gasoline or CBOB that meets the applicable requirements of this part, including subparts L and O.

(ii) Reformulated gasoline or RBOB that meets the applicable requirements of this part, including subparts D, L, and O.

(3) For ethanol flex fuel sold, offered for sale, dispensed, supplied, or offered for supply in the reformulated gasoline areas described in § 80.70:

(i) Reformulated gasoline or RBOB that meets the applicable requirements of this part, including subparts D, L, and O.

(ii) [Reserved]

(4) Certified natural gasoline ethanol flex fuel blendstock that meets the requirements of § 80.1524.

(5) Uncertified natural gasoline ethanol flex fuel blendstock that meets the following requirements:

(i) *RVP standard.* (A) The maximum RVP standard for uncertified natural gasoline ethanol flex fuel blendstock is 15.0 psi.

(B) Compliance with the RVP standard in paragraph (b)(5)(i)(A) of this section shall be determined by sampling and testing each batch of uncertified natural gasoline ethanol flex fuel blendstock pursuant to § 80.1553(g).

(ii) *T90 distillation point and final distillation point.* (A) The per-gallon T90 distillation point for uncertified natural gasoline ethanol flex fuel blendstock shall be no higher than 135 °C (275 °F). The per-gallon final distillation point for uncertified natural gasoline ethanol flex fuel blendstock shall be no higher than 190 °C (375 °F).

(B) Compliance with the T90 distillation point and final distillation point standards in paragraph (b)(5)(ii)(A) of this section shall be determined by sampling and testing each batch pursuant to § 80.1553(h).

(iii) *Elemental composition requirements.* (A) All uncertified natural gasoline ethanol flex fuel blendstock shall be composed solely of carbon, hydrogen, oxygen, nitrogen, and/or sulfur, unless a waiver has been granted under 42 U.S.C. 7545(f)(4).

(B) To demonstrate compliance with the elemental composition requirements in paragraph (b)(5)(iii)(A) of this section, the uncertified natural gasoline ethanol flex fuel blendstock must have been produced from a processing unit (e.g., a distillation tower or desulfurization unit) at a natural gas processing plant or crude oil refinery and must not contain any additives that are composed of elements other than carbon, hydrogen, oxygen, nitrogen, and sulfur.

(6) The combined concentration of certified and uncertified natural gasoline ethanol flex fuel blendstock blended to produce ethanol flex fuel must not exceed 30 volume percent. This 30 volume percent cap on the amount of natural gasoline that may be blended to produce ethanol flex fuel is in addition to the amount of natural gasoline that may be added to denature the denatured fuel ethanol used as an ethanol flex fuel blendstock pursuant to the requirements of § 80.1610(a)(4).

(7) Ethanol flex fuel additives that meet the requirements of § 80.1525.

(c) *Sulfur content*—(1) *Annual average standard.* Compliance with the annual average sulfur content standard in § 80.1520(b)(1)(i) shall be determined by sampling and testing each batch of ethanol flex fuel pursuant to § 80.1553(e) and calculating the annual average sulfur level in accordance with paragraph (c)(3) of this section.

(2) *Calculation of the annual average sulfur level.* (i) The annual ethanol flex fuel refinery or ethanol flex fuel import facility average ethanol flex fuel sulfur level is calculated as follows:

$$S_a = \frac{\sum_{i=1}^n (V_i \times S_i)}{\sum_{i=1}^n V_i}$$

Where:

S_a = The ethanol flex fuel refinery or ethanol flex fuel import facility annual average sulfur level, in ppm (mg/kg).

V_i = The volume of ethanol flex fuel produced or imported in batch i, in gallons.

S_i = The sulfur content of batch i determined using the procedure specified in § 80.1553(e), in ppm (mg/kg).

n = The number of batches of ethanol flex fuel produced or imported during the averaging period.

i = Individual batch of ethanol flex fuel produced or imported during the averaging period.

(ii) The annual average sulfur level calculation in paragraph (c)(2)(i) of this section shall be conducted to two decimal places using the rounding procedure specified in § 80.1503.

(3) *Per-gallon cap standard.* Compliance with the sulfur per-gallon cap standard in § 80.1520(b)(1)(ii)(A) shall be determined by sampling and testing each batch of ethanol flex fuel pursuant to § 80.1553(e).

(d) *Benzene content*—(1) *Benzene compliance.* Compliance with the annual average benzene content standard in § 80.1520(b)(2)(i) shall be determined by sampling and testing each batch of ethanol flex fuel pursuant to § 80.1553(f) and calculating the annual average benzene level in

accordance with paragraph (d)(2) of this section.

(2) *Calculation of the annual average benzene level.* (i) The annual ethanol flex fuel refinery or ethanol flex fuel import facility average ethanol flex fuel benzene level is calculated as follows:

$$B_a = \frac{\sum_{i=1}^n (V_i \times B_i)}{\sum_{i=1}^n V_i}$$

Where:

B_a = The ethanol flex fuel refinery or ethanol flex fuel import facility annual benzene level, in volume percent.

V_i = The volume of ethanol flex fuel produced or imported in batch i , in gallons.

B_i = The benzene content of batch i determined using the procedure specified in § 80.1553(f), in volume percent.

n = The number of batches of ethanol flex fuel produced or imported during the averaging period.

i = Individual batch of ethanol flex fuel produced or imported during the averaging period.

(ii) The annual benzene level calculation in paragraph (d)(2)(i) of this section shall be conducted to two decimal places using the rounding procedure specified in § 80.1503.

(e) *Elemental composition compliance.* Compliance with the elemental composition standard in § 80.1520(b)(3) shall be demonstrated by maintaining records to demonstrate that the only blend components used are compliant with the requirements of paragraph (b) of this section pursuant to the recordkeeping requirements of § 80.1552(a).

(f) *RVP standard compliance.* Compliance with the applicable RVP standard in § 80.1520(c) shall be determined by sampling and testing each batch of ethanol flex fuel pursuant to § 80.1553(g).

(g) *Batch numbering.* Every batch of ethanol flex fuel produced by an ethanol flex fuel full-refiner or imported by an ethanol flex fuel importer shall be assigned a number (the “batch number”), consisting of the EPA-assigned ethanol flex fuel refiner or ethanol flex fuel importer registration number, the EPA facility registration number, the last two digits of the year in which the batch was produced, and a unique number for the batch, beginning with the number one for the first batch produced or imported each calendar year and each subsequent batch during the calendar year being assigned the next sequential number (e.g., 4321–54321–95–000001, 4321–54321–95–000002, etc.).

■ 79. Section 80.1522 is added to read as follows:

§ 80.1522 Requirements for ethanol flex fuel produced by ethanol flex fuel bulk blender-refiners.

(a) *Applicability.* Any ethanol flex fuel bulk blender-refiner may choose to demonstrate compliance with the standards of § 80.1520 by complying with the requirements of this section for all ethanol flex fuel that they produce beginning on the date specified in § 80.1504(b).

(b) *Ethanol flex fuel composition.* Ethanol flex fuel bulk blender-refiners may only produce ethanol flex fuel using the following components:

(1) Ethanol that meets the requirements of paragraph (b)(1)(i) or (ii) of this section, as applicable.

(i) Denatured fuel ethanol that meets the requirements of § 80.1610.

(ii) Undenatured ethanol at an ethanol production facility that has a sulfur content not greater than 10 ppm and is composed solely of carbon, hydrogen, nitrogen, oxygen, and sulfur unless a waiver has been granted under 42 U.S.C. 7545(f)(4).

(2) For ethanol flex fuel sold, offered for sale, dispensed, supplied, or offered for supply in areas other than the reformulated gasoline areas described in § 80.70:

(i) Conventional gasoline or CBOB that meets the applicable requirements of this part, including subparts L and O.

(ii) Reformulated gasoline or RBOB that meets the applicable requirements of this part, including subparts D, L, and O.

(3) For ethanol flex fuel sold, offered for sale, dispensed, supplied, or offered for supply in the reformulated gasoline areas described in § 80.70:

(i) Reformulated gasoline or RBOB that meets the applicable requirements of this part, including subparts D, L, and O.

(ii) [Reserved]

(4) Certified natural gasoline ethanol flex fuel blendstock that meets the requirements of § 80.1524. The concentration of certified natural gasoline ethanol flex fuel blendstock blended to produce ethanol flex fuel shall be limited to 30 volume percent. This 30 volume percent cap on the amount of natural gasoline that may be blended to produce ethanol flex fuel is in addition to the amount natural gasoline that may be added to denature the denatured fuel ethanol used as an ethanol flex fuel blendstock pursuant to the requirements of § 80.1610(a)(4).

(5) Ethanol flex fuel additives that meet the requirements of § 80.1525.

(c) *Compliance demonstration—(1) Sulfur, benzene, and elemental composition compliance.* Compliance with the sulfur content, benzene

content, and elemental composition standards in § 80.1520(b) shall be demonstrated by maintaining records for each batch of ethanol flex fuel to demonstrate that the only blend components used are compliant with the requirements of paragraph (b) of this section pursuant to the recordkeeping requirements of § 80.1552(b).

(2) *RVP standard compliance.* Compliance with the applicable RVP standard in § 80.1520(c) shall be determined by sampling and testing each batch of ethanol flex fuel pursuant to § 80.1553(g) or using the alternative provisions of § 80.1553(j).

(d) *Batch numbering.* Every batch of ethanol flex fuel produced by an ethanol flex fuel bulk blender-refiner shall be assigned a number (the “batch number”), consisting of the EPA-assigned ethanol flex fuel refiner or ethanol flex fuel importer registration number, the EPA facility registration number, the last two digits of the year in which the batch was produced, and a unique number for the batch, beginning with the number one for the first batch produced or imported each calendar year and each subsequent batch during the calendar year being assigned the next sequential number (e.g., 4321–54321–95–000001, 4321–54321–95–000002, etc.).

■ 80. Section 80.1523 is added to read as follows:

§ 80.1523 Requirements for ethanol flex fuel produced by blender pump-refiners.

(a) *Applicability.* Any blender pump-refiner may choose to demonstrate compliance with the standards of § 80.1520 by complying with the requirements of this section for all ethanol flex fuel that they produce beginning on the date specified in § 80.1504(b).

(b) *Ethanol flex fuel composition.* Blender pump-refiners may only produce ethanol flex fuel using the following components:

(1) Ethanol flex fuel produced by an ethanol flex fuel full-refiner or imported by an ethanol flex fuel importer that meets the requirements of §§ 80.1520 and 80.1521, or produced by an ethanol flex fuel bulk blender-refiner that meets the requirements of §§ 80.1520 and 80.1522.

(2) For ethanol flex fuel sold, offered for sale, dispensed, supplied, or offered for supply in areas other than the reformulated gasoline areas described in § 80.70:

(i) Conventional gasoline that meets the applicable requirements of this part, including subparts L and O.

(ii) Reformulated gasoline that meets the applicable requirements of this part, including subparts D, L, and O.

(3) For ethanol flex fuel sold, offered for sale, dispensed, supplied, or offered for supply in the reformulated gasoline areas described in § 80.70:

(i) Reformulated gasoline that meets the applicable requirements of this part, including subparts D, L, and O.

(ii) [Reserved]

(4) Ethanol flex fuel additives that meet the requirements of § 80.1525.

(c) *Compliance demonstration*—(1) *Sulfur, benzene, and elemental composition compliance.* Compliance with the sulfur content, benzene content, and elemental composition standards in § 80.1520(b) shall be demonstrated by maintaining records to demonstrate that the only blend components used are compliant with the requirements of paragraph (b) of this section pursuant to the recordkeeping requirements of § 80.1552(c).

(2) *RVP standard compliance.* Compliance with the applicable RVP standard in § 80.1520(c) shall be demonstrated by maintaining records to demonstrate that the only blend components used are compliant with the requirements of paragraph (b) of this section pursuant to the recordkeeping requirements of § 80.1552(c).

■ 81. Section 80.1524 is added to read as follows:

§ 80.1524 Standards and requirements for certified natural gasoline ethanol flex fuel blendstock.

(a) *Applicability.* All certified natural gasoline ethanol flex fuel blendstock produced, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, or transported shall meet the requirements of this section beginning on the date specified in § 80.1504(b).

(b) *Sulfur standard.* (1) The sulfur per-gallon cap standard for certified natural gasoline ethanol flex fuel blendstock is a maximum of 10.00 ppm.

(2) The sulfur content of certified natural gasoline ethanol flex fuel blendstock shall be determined by sampling and testing each batch pursuant to § 80.1553(e).

(c) *Benzene standard.* (1) The benzene per-gallon cap standard for certified natural gasoline ethanol flex fuel blendstock is a maximum of 0.62 volume percent.

(2) The benzene content of certified natural gasoline ethanol flex fuel blendstock shall be determined by sampling and testing each batch pursuant to § 80.1553(f).

(d) *RVP standard.* (1) The maximum RVP standard for certified natural

gasoline ethanol flex fuel blendstock is 15.0 psi.

(2) Compliance with the RVP standard in paragraph (d)(1) of this section shall be determined by sampling and testing each batch of certified natural gasoline ethanol flex fuel blendstock pursuant to § 80.1553(g).

(e) *T90 distillation point and final distillation point.* (1) The per-gallon T90 distillation point for certified natural gasoline ethanol flex fuel blendstock shall be no higher than 135 °C (275 °F). The per-gallon final distillation point for certified natural gasoline ethanol flex fuel blendstock shall be no higher than 190 °C (375 °F).

(2) Compliance with the T90 distillation point and final distillation point standards in paragraph (e)(1) of this section shall be determined by sampling and testing each batch pursuant to § 80.1553(h).

(f) *Elemental composition requirements.* (1) All certified natural gasoline ethanol flex fuel blendstock shall be composed solely of carbon, hydrogen, oxygen, nitrogen, and/or sulfur, unless a waiver has been granted under 42 U.S.C. 7545(f)(4).

(2) To demonstrate compliance with the elemental composition requirements in paragraph (f)(1) of this section, the uncertified natural gasoline ethanol flex fuel blendstock must have been produced from a processing unit (e.g., a distillation tower or desulfurization unit) at a natural gas processing plant or crude oil refinery.

(g) *Batch numbering.* Every batch of certified natural gasoline ethanol flex fuel blendstock produced by a certified natural gasoline ethanol flex fuel blendstock refiner or imported by a certified natural gasoline ethanol flex fuel blendstock importer shall be assigned a number (the “batch number”), consisting of the EPA-assigned certified natural gasoline ethanol flex fuel blendstock refiner or certified natural gasoline ethanol flex fuel blendstock importer registration number, the EPA facility registration number, the last two digits of the year in which the batch was produced, and a unique number for the batch, beginning with the number one for the first batch produced or imported each calendar year and each subsequent batch during the calendar year being assigned the next sequential number (e.g., 4321–54321–95–000001, 4321–54321–95–000002, etc.).

(h) Natural gasoline ethanol flex fuel blendstock cannot be sold as gasoline or used as a gasoline blendstock unless the party that uses natural gasoline to manufacture gasoline complies with all applicable gasoline refiner requirements

in 40 CFR part 80, including subparts L and O. Natural gasoline ethanol flex fuel blendstock may not be commingled with gasoline unless it is being blended with gasoline by an ethanol flex fuel full-refiner or ethanol flex fuel bulk blender-refiner in the process of producing ethanol flex fuel.

(i) No additives may be added to certified natural gasoline ethanol flex fuel blendstock after the point of production or importation.

■ 82. Section 80.1525 is added to read as follows:

§ 80.1525 Standards and requirements for manufacturers and blenders of additives used in ethanol flex fuel.

(a) Ethanol flex fuel additive manufacturers must meet the following requirements:

(1) Except as otherwise provided, this section applies to any ethanol flex fuel additive manufactured for use in ethanol flex fuel and is sold for use at a concentration of less than 1.0% by volume.

(2) The ethanol flex fuel additive must contribute no more than 3 ppm on a per-gallon basis to the sulfur content of ethanol flex fuel when used at the maximum recommended treatment rate.

(3) The ethanol flex fuel additive manufacturer must maintain records of its additive production quality control activities that demonstrates that the sulfur content of its additive production batches complies with the sulfur requirement in paragraph (a)(2) of this section and make these records available to EPA upon request.

(4) The ethanol flex fuel additive shall be composed solely of carbon, hydrogen, oxygen, nitrogen, and/or sulfur, unless a waiver has been granted under 42 U.S.C. 7545(f)(4).

(5) The maximum treatment rate on the product transfer document for the additive must state all the following:

(i) The maximum concentration.

(ii) The maximum allowed treatment rate that corresponds to the maximum concentration. The maximum allowed concentration must comply with the requirements in paragraph (a)(2) of this section.

(b) The following provisions in paragraphs (b)(1) and (2) of this section apply to parties who are downstream of the ethanol flex fuel refiner or ethanol flex fuel importer and who blend additives into ethanol flex fuel.

(1) On any occasion where an ethanol flex fuel additive blender blends an ethanol flex fuel additive (subject to the requirements of this section) at a concentration of less than 1.0% by volume, it is subject to the prohibitions in § 80.1564 and the ethanol flex fuel sulfur standards of § 80.1520(b)(1).

(2) On any occasion where an ethanol flex fuel additive blender blends an ethanol flex fuel additive at a concentration of 1.0% by volume or greater, it is a fuel manufacturer as defined in § 79.2(d) of this chapter, and is subject to all the provisions that apply to ethanol flex fuel refiners and importers under this subpart.

§§ 80.1526–80.1529 [Reserved]

■ 83. Reserved §§ 80.1526 through 80.1529 are added.

■ 84. Section 80.1530 is added to read as follows:

§ 80.1530 Requirements for E15 gasoline produced by blender pump-refiners.

(a) *Applicability.* (1) Beginning February 1, 2018, and thereafter, a blender pump-refiner that produces E15 may demonstrate compliance with the gasoline registration requirements in 40 CFR part 79 and the gasoline refiner requirements in this part, except those that pertain to the volatility standards for conventional gasoline in subpart B of this part and those that pertain to the hydrocarbon standard for reformulated gasoline in subpart D of this part, by complying with the requirements in paragraph (b) of this section and using only the following components to produce E15:

(i) Ethanol flex fuel produced by an ethanol flex fuel full-refiner or imported by an ethanol flex fuel importer that meets the requirements of §§ 80.1520 and 80.1521, or produced by an ethanol flex fuel bulk blender-refiner that meets the requirements of §§ 80.1520 and 80.1522.

(ii) For E15 sold, offered for sale, dispensed, supplied, or offered for supply in areas other than the reformulated gasoline areas described in § 80.70:

(A) Conventional gasoline that meets the applicable requirements of this part, including subparts L and O.

(B) Reformulated gasoline that meets the applicable requirements of this part, including subparts D, L, and O.

(iii) For E15 sold, offered for sale, dispensed, supplied, or offered for supply in the reformulated gasoline areas described in § 80.70:

(A) Reformulated gasoline that meets the applicable requirements of this part, including subpart D, L, and O.

(B) [Reserved]

(iv) Gasoline additives that meet the requirements of § 80.1613.

(2) Beginning February 1, 2018, and thereafter, a blender pump-refiner that produces E15 may demonstrate compliance with the gasoline registration requirements in 40 CFR part 79 and the gasoline refiner requirements

in this part, including those that pertain to the volatility standards for conventional gasoline in subpart B of this part and those that pertain to the hydrocarbon standard for reformulated gasoline in subpart D of this part, by complying with the requirements in paragraph (b) of this section and using only the following components to produce E15:

(i) Ethanol flex fuel produced by an ethanol flex fuel full-refiner or imported by an ethanol flex fuel importer that meets the requirements of §§ 80.1520 and 80.1521, or produced by an ethanol flex fuel bulk blender-refiner that meets the requirements of §§ 80.1520 and 80.1522.

(ii) For E15 sold, offered for sale, dispensed, supplied, or offered for supply in areas where the 1 psi RVP waiver for E10 in § 80.27(d) does not apply other than the reformulated gasoline areas described in § 80.70:

(A) E10 conventional gasoline that meets the applicable requirements of this part, including subparts L and O.

(B) E10 reformulated gasoline that meets the applicable requirements of this part, including subparts D, L, and O.

(iii) For E15 sold, offered for sale, dispensed, supplied, or offered for supply in the reformulated gasoline areas described in § 80.70:

(A) E10 reformulated gasoline that meets the applicable requirements of this part, including subpart D, L, and O.

(B) [Reserved]

(iv) Gasoline additives that meet the requirements of § 80.1613.

(b) *Compliance demonstration.* Compliance with the gasoline composition standards in paragraphs (a)(1) and (a)(2) of this section shall be demonstrated by maintaining records to demonstrate that the only blend components used are compliant with the applicable requirements of paragraphs (a)(1)(i) through (iv) and (a)(2)(i) through (iv) of this section pursuant to the recordkeeping requirements of § 80.1552(c).

■ 85. Section 80.1531 is added to read as follows:

§ 80.1531 Controls and prohibitions on ethanol flex fuel volatility.

(a) *Prohibited activities in 2018 and beyond.* Beginning in 2018 and thereafter, from June 1 through September 15, no person, including without limitation, no retailer or wholesale purchaser-consumer, and from May 1 through September 15, no refiner, importer, distributor, reseller, or carrier shall sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce ethanol flex

fuel whose RVP exceeds the applicable standard specified in this section. As used in this section and in § 80.1564, “applicable standard” means the standard listed in this paragraph for the state and time period in which the ethanol flex fuel is intended to be dispensed to flexible fuel vehicles.

(1) *Alabama.* No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard.

(2) *Arizona.* No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard except that no person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 7.8 psi standard from June 1 through September 15 in that part of Maricopa county commencing at a point which is the intersection of the eastern line of Range 7 East, Gila and Salt River Baseline and Meridian, and the southern line of Township 2 South, said point is the southeastern corner of the Maricopa Association of Governments Urban Planning Area; thence, running northerly along the eastern line of Range 7 East to a point where the eastern line of Range 7 East intersects the northern line of Township 1 North; thence, running westerly along the northern line of Township 1 North to approximately the southwest corner of the southeast quarter of Section 35, Township 2 North, Range 7 East, said point being the boundary of the Tonto National Forest and Utery Mountain Semi-Regional Park; thence running northerly along the Tonto National Forest Boundary, which is generally the western line of the east half of Sections 26 and 35 of Township 2 North, Range 7 East, to a point which is where the quarter section line intersects with the northern line of Section 26, Township 2 North, Range 7 East, said point also being the northeast corner of the Utery Mountain Semi-Regional Park; thence running westerly along the Tonto National Forest Boundary, which is generally the south line of Sections 19, 20, 21 and 22 and the southern line of the west half of Section 23, Township 2 North, Range 7 East, to a point which is the southwest corner of Section 19, Township 2 North, Range 7 East; thence running northerly along the Tonto National Forest Boundary to a point where the Tonto National Forest Boundary intersects with the eastern boundary of the Salt River Indian Reservation, generally described as the center line of the Salt River Channel; thence running northeasterly and northerly along the common boundary of the Tonto National Forest and the Salt River

Indian Reservation to a point which is the northeast corner of the Salt River Indian Reservation and the southeast corner of the Fort McDowell Indian Reservation; thence running northeasterly along the common boundary between the Tonto National Forest and the Fort McDowell Indian Reservation to a point which is the northeast corner of the Fort McDowell Indian Reservation; thence running southwesterly along the northern boundary of the Fort McDowell Indian Reservation, which line is a common boundary with the Tonto National Forest, to a point where the boundary intersects with the eastern line of Section 12, Township 4 North, Range 6 East; thence running northerly along the eastern line of Range 6 East to a point where the eastern line of Range 6 East intersects with the southern line of Township 5 North, said line is the boundary between the Tonto National Forest and the east boundary of McDowell Mountain Regional Park; thence running westerly along the southern line of Township 5 North to a point where the southern line intersects with the eastern line of Range 5 East which line is the boundary of Tonto National Forest and the north boundary of McDowell Mountain Regional Park; thence running northerly along the eastern line of Range 5 East to a point where the eastern line of Range 5 East intersects with the northern line of Township 5 North, which line is the boundary of the Tonto National Forest; thence running westerly along the northern line of Township 5 North to a point where the northern line of Township 5 North intersects with the easterly line of Range 4 East, said line is the boundary of Tonto National Forest; thence running northerly along the eastern line of Range 4 East to a point where the eastern line of Range 4 East intersects with the northern line of Township 6 North, which line is the boundary of the Tonto National Forest; thence running westerly along the northern line of Township 6 North to a point of intersection with the Maricopa-Yavapai County line, which is generally described in Arizona Revised Statutes Section 11–109 as the center line of the Aqua Fria River (Also the north end of Lake Pleasant); thence running southwesterly and southerly along the Maricopa-Yavapai County line to a point which is described by Arizona Revised Statutes Section 11–109 as being on the center line of the Aqua Fria River, two miles southerly and below the mouth of Humbug Creek; thence running southerly along the center line of Aqua Fria River to the intersection of

the center line of the Aqua Fria River and the center line of Beardsley Canal, said point is generally in the northeast quarter of Section 17, Township 5 North, Range 1 East; thence running southwesterly and southerly along the center line of Beardsley Canal to a point which is the center line of Beardsley Canal where it intersects with the center line of Indian School Road; thence running westerly along the center line of West Indian School Road to a point where the center line of West Indian School Road intersects with the center line of North Jackrabbit Trail; thence running southerly along the center line of Jackrabbit Trail approximately nine and three-quarter miles to a point where the center line of Jackrabbit Trail intersects with the Gila River, said point is generally on the north-south quarter section line of Section 8, Township 1 South, Range 2 West; thence running northeasterly and easterly up the Gila River to a point where the Gila River intersects with the northern extension of the western boundary of Estrella Mountain Regional Park, which point is generally the quarter corner of the northern line of Section 31, Township 1 North, Range 1 West; thence running southerly along the extension of the western boundary and along the western boundary of Estrella Mountain Regional Park to a point where the southern extension of the western boundary of Estrella Mountain Regional Park intersects with the southern line of Township 1 South; thence running easterly along the southern line of Township 1 South to a point where the south line of Township 1 South intersects with the western line of Range 1 East, which line is generally the southern boundary of Estrella Mountain Regional Park; thence running southerly along the western line of Range 1 East to the southwest corner of Section 18, Township 2 South, Range 1 East, said line is the western boundary of the Gila River Indian Reservation; thence running easterly along the southern boundary of the Gila River Indian Reservation which is the southern line of Sections 13, 14, 15, 16, 17, and 18, Township 2 South, Range 1 East, to the boundary between Maricopa and Pinal Counties as described in Arizona Revised Statutes Sections 11–109 and 11–113, which is the eastern line of Range 1 East; thence running northerly along the eastern boundary of Range 1 East, which is the common boundary between Maricopa and Pinal Counties, to a point where the eastern line of Range 1 East intersects the Gila River; thence running southerly up the Gila River to a point where the Gila River

intersects with the southern line of Township 2 South; thence running easterly along the southern line of Township 2 South to the point of beginning which is a point where the southern line of Township 2 South intersects with the eastern line Range 7 East; except that portion of the area defined by paragraphs 1 through 28 above that lies within the Gila River Indian Reservation.

(3) *Arkansas*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard.

(4) *Colorado*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard except that no person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 7.8 psi standard from June 1 through September 15 in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson Counties, and that part of Larimer County that lies south of a line described as follows: Beginning at a point on Larimer County's eastern boundary and Weld County's western boundary intersected by 40 degrees, 42 minutes, and 47.1 seconds north latitude, proceed west to a point defined by the intersection of 40 degrees, 42 minutes, 47.1 seconds north latitude and 105 degrees, 29 minutes, and 40.0 seconds west longitude, thence proceed south on 105 degrees, 29 minutes, 40.0 seconds west longitude to the intersection with 40 degrees, 33 minutes and 17.4 seconds north latitude, thence proceed west on 40 degrees, 33 minutes, 17.4 seconds north latitude until this line intersects Larimer County's western boundary and Grand County's eastern boundary), and part of Weld (That portion of the county that lies south of a line described as follows: Beginning at a point on Weld County's eastern boundary and Logan County's western boundary intersected by 40 degrees, 42 minutes, 47.1 seconds north latitude, proceed west on 40 degrees, 42 minutes, 47.1 seconds north latitude until this line intersects Weld County's western boundary and Larimer County's eastern boundary.

(5) *Connecticut*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 7.0 psi standard.

(6) *Delaware*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 7.0 psi standard.

(7) *District of Columbia*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex

fuel that has an RVP that exceeds a 7.0 psi standard.

(8) *Florida*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard.

(9) *Georgia*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard except that no person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 7.8 psi standard from June 1 through September 15 in Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale Counties.

(10) *Idaho*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard.

(11) *Illinois*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard except that no person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 7.0 psi standard in Cook, Du Page, Jersey, Kane, Lake, Madison, McHenry, Monroe, St. Clair, and Will Counties, and the townships of Aux Sable and Goose Lake in Grundy County and Oswego Township in Kendall County.

(12) *Indiana*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard except that no person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 7.0 psi standard in Lake and Porter Counties.

(13) *Iowa*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard.

(14) *Kansas*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard except that no person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 7.8 psi standard from June 1 through September 15 in Johnson and Wyandotte Counties.

(15) *Kentucky*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard except that no person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 7.0 psi standard in Boone, Campbell, Jefferson, and Kenton

Counties and the portion of Bullitt county beginning at the intersection of Ky 1020 and the Jefferson-Bullitt County Line proceeding to the east along the county line to the intersection of county road 567 and the Jefferson-Bullitt County Line; proceeding south on county road 567 to the junction with Ky 1116 (also known as Zoneton Road); proceeding to the south on KY 1116 to the junction with Hebron Lane; proceeding to the south on Hebron Lane to Cedar Creek; proceeding south on Cedar Creek to the confluence of Floyds Fork turning southeast along a creek that meets Ky 44 at Stallings Cemetery; proceeding west along Ky 44 to the eastern most point in the Shepherdsville city limits; proceeding south along the Shepherdsville city limits to the Salt River and west to a point across the river from Mooney Lane; proceeding south along Mooney Lane to the junction of Ky 480; proceeding west on Ky 480 to the junction with Ky 2237; proceeding south on Ky 2237 to the junction with Ky 61 and proceeding north on Ky 61 to the junction with Ky 1494; proceeding south on Ky 1494 to the junction with the perimeter of the Fort Knox Military Reservation; proceeding north along the military reservation perimeter to Castleman Branch Road; proceeding north on Castleman Branch Road to Ky 44; proceeding a very short distance west on Ky 44 to a junction with Ky 1020; and proceeding north on Ky 1020 to the beginning, and the portion of Oldham county beginning at the intersection of the Oldham-Jefferson County Line with the southbound lane of Interstate 71; proceeding to the northeast along the southbound lane of Interstate 71 to the intersection of Ky 329 and the southbound lane of Interstate 71; proceeding to the northwest on Ky 329 to the intersection of Zaring Road on Ky 329; proceeding to the east-northeast on Zaring Road to the junction of Cedar Point Road and Zaring Road; proceeding to the north-northeast on Cedar Point Road to the junction of Ky 393 and Cedar Point Road; proceeding to the south-southeast on Ky 393 to the junction of county road 746 (the road on the north side of Reformatory Lake and the Reformatory); proceeding to the east-northeast on county road 746 to the junction with Dawkins Lane (also known as Saddlers Mill Road) and county road 746; proceeding to follow an electric power line east-northeast across from the junction of county road 746 and Dawkins Lane to the east-northeast across Ky 53 on to the La Grange Water Filtration Plant; proceeding on to the east-southeast

along the power line then south across Fort Pickens Road to a power substation on Ky 146; proceeding along the power line south across Ky 146 and the Seaboard System Railroad track to adjoin the incorporated city limits of La Grange; then proceeding east then south along the La Grange city limits to a point abutting the north side of Ky 712; proceeding east-southeast on Ky 712 to the junction of Massie School Road and Ky 712; proceeding to the south-southwest and then north-northwest on Massie School Road to the junction of Ky 53 and Massie School Road; proceeding on Ky 53 to the north-northwest to the junction of Moody Lane and Ky 53; proceeding on Moody Lane to the south-southwest until meeting the city limits of La Grange; then briefly proceeding north following the La Grange city limits to the intersection of the northbound lane of Interstate 71 and the La Grange city limits; proceeding southwest on the northbound lane of Interstate 71 until intersecting with the North Fork of Currys Fork; proceeding south-southwest beyond the confluence of Currys Fork to the south-southwest beyond the confluence of Floyds Fork continuing on to the Oldham-Jefferson County Line; and proceeding northwest along the Oldham-Jefferson County Line to the beginning.

(16) *Louisiana*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard except that no person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 7.8 psi standard from June 1 through September 15 in Ascension, Beauregard, Calcasieu, East Baton Rouge, Iberville, Jefferson, Lafayette, Lafourche, Livingston, Orleans, Point Coupee, St. Bernard, St. Charles, St. James, St. Mary, and West Baton Rouge parishes.

(17) *Maine*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard except that no person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 7.0 psi standard in Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Sagadahoc, and York Counties.

(18) *Maryland*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard except that no person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 7.0 psi standard in Anne

Arundel, Baltimore, Calvert, Carroll, Charles, Cecil, Frederick, Harford, Howard, Kent, Montgomery, Prince George's, and Queen Anne's Counties and the City of Baltimore.

(19) *Massachusetts*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard except that no person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 7.0 psi standard in Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk, and Worcester Counties.

(20) *Michigan*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard.

(21) *Minnesota*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard.

(22) *Mississippi*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard.

(23) *Missouri*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard except that no person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 7.8 psi standard from June 1 through September 15 in Clay, Jackson, and Platte Counties, and a 7.0 psi standard in St. Louis, Franklin, Jefferson, and St. Charles Counties and the city of St. Louis.

(24) *Montana*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard.

(25) *Nebraska*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard.

(26) *Nevada*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard except that no person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 7.8 psi standard from June 1 through September 15 in Washoe County.

(27) *New Hampshire*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard except that no person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 7.0 psi standard in

Hillsborough, Rockingham, Merrimack, and Strafford Counties.

(28) *New Jersey*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 7.0 psi standard.

(29) *New Mexico*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard.

(30) *New York*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard except that no person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 7.0 psi standard in Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester Counties, and the portion of Essex County that consists of the portion of Whiteface Mountain above 4,500 feet in elevation.

(31) *North Carolina*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard.

(32) *North Dakota*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard.

(33) *Ohio*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard.

(34) *Oklahoma*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard.

(35) *Oregon*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard except that no person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 7.8 psi standard from June 1 through September 15 in Clackamas, Multnomah, and Washington Counties and the parts of Marion and Polk Counties that are part of the Salem Area Transportation Study.

(36) *Pennsylvania*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard except that no person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 7.0 psi standard in Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties.

(37) *Rhode Island*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that

has an RVP that exceeds a 7.0 psi standard.

(38) *South Carolina*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard.

(39) *South Dakota*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard.

(40) *Tennessee*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard except that no person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 7.8 psi standard from June 1 through September 15 in Davidson, Rutherford, Shelby, Sumner, Williamson, and Wilson Counties.

(41) *Texas*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard except that no person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 7.8 psi standard from June 1 through September 15 in El Paso, Hardin, Jefferson, and Orange Counties, and a 7.0 psi standard in Brazoria, Chambers, Collin, Dallas, Denton, Fort Bend, Galveston, Harris, Liberty, Montgomery, Tarrant, and Waller Counties.

(42) *Utah*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard except that no person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 7.8 psi standard from June 1 through September 15 in Davis and Salt Lake Counties.

(43) *Vermont*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard.

(44) *Virginia*. Ethanol flex fuel intended to be dispensed to flexible fuel vehicles in Virginia shall meet a 9.0 psi standard except that no person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 7.0 psi standard in Arlington, Charles City, Chesterfield, Fairfax, Hanover, Henrico, James City, Loudoun, Prince William, Stafford, and York Counties and the cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Hampton, Hopewell, Manassas, Manassas Park, Newport News, Norfolk, Poquoson, Portsmouth, Richmond,

Suffolk, Virginia Beach, and Williamsburg.

(45) *Washington*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard.

(46) *West Virginia*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard.

(47) *Wisconsin*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard except that no person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 7.0 psi standard in Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha Counties.

(48) *Wyoming*. No person may sell, offer for sale, dispense, supply, or offer for supply ethanol flex fuel that has an RVP that exceeds a 9.0 psi standard.

(b) *Determination of compliance*. Compliance with the standards listed in paragraph (a) of this section shall be determined by the use of the sampling and testing methodologies specified in § 80.1553(g) or (j).

(c) *Liability*. Liability for violations of paragraph (a) of this section shall be determined according to the provisions of § 80.1564. Where the terms refiner, importer, distributor, reseller, carrier, retailer, or wholesale purchaser-consumer are expressed in the singular in § 80.1564, these terms shall include the plural.

§§ 80.1532–80.1549 [Reserved]

■ 86. Reserved §§ 80.1532 through 80.1549 are added.

■ 87. Section 80.1550 is added to read as follows:

§ 80.1550 Registration requirements for ethanol flex fuel refiners, ethanol flex fuel importers, natural gasoline ethanol flex fuel blendstock refiners, and certified natural gasoline ethanol flex fuel blendstock importers.

The following registration requirements apply under this subpart:

(a) *Registration*. Registration is required for the following:

(1) Any ethanol flex fuel full-refiner or importer.

(2) Any ethanol flex fuel bulk blender-refiner.

(3) Any certified natural gasoline ethanol flex fuel blendstock refiner or importer.

(b) *Registration requirements*. (1) Registration shall be on forms and use procedures prescribed by the Administrator, and shall include all of the following information, as applicable, for each ethanol flex fuel full-refiner,

ethanol flex fuel importer, ethanol flex fuel bulk blender-refiner, certified natural gasoline ethanol flex fuel blendstock refiner, and certified natural gasoline ethanol flex fuel blendstock importer:

(i) The name, business address, contact name, email address, and telephone number of the refiner or importer.

(ii) For each separate refinery or import facility, the facility name, physical location, contact name, email address, telephone number, and type of facility.

(iii) For each separate refinery or importer's operations in a single Petroleum Administration for Defense District (PADD)—

(A) Whether records are kept on-site or off-site of the refinery or import facility's registered address.

(B) If records are kept off-site, the primary off-site storage facility name, physical location, contact name, email address, and telephone number.

(iv) The type(s) of ethanol flex fuel or natural gasoline ethanol flex fuel blendstock that is produced, imported, or blended.

(v) Registrations for certified natural gasoline ethanol flex fuel blendstock refiners and importers must contain sufficient information to demonstrate that the refiner produces natural gasoline ethanol flex fuel blendstock solely from natural gas processing plants or a crude oil refineries.

(2) EPA will supply a company registration number to each refiner or importer and a facility registration number for each refinery or import facility that is identified. These registration numbers shall be used in all reports to the Administrator.

(3) Any refiner or importer shall submit updated registration information to the Administrator within thirty days of any occasion when the registration information previously supplied becomes incomplete or inaccurate.

■ 88. Section 80.1551 is added to read as follows:

§ 80.1551 Reporting requirements for ethanol flex fuel refiners and importers and certified natural gasoline ethanol flex fuel blendstock refiners and importers.

Beginning with the compliance date specified in § 80.1504(b) and continuing for each averaging period thereafter, any ethanol flex fuel full-refiner, ethanol flex fuel importer, ethanol flex fuel bulk blender-refiner, certified natural gasoline ethanol flex fuel blendstock refiner, or certified natural gasoline ethanol flex fuel blendstock importer, shall submit annual reports to EPA that contain the information required in this

section, and any other information as EPA may require. Reporting shall be on forms and use procedures prescribed by the Administrator. Blender pump-refiners that comply with the requirements of § 80.1523 are exempt from the annual reporting requirements of this section.

(a) *Annual reports for ethanol flex fuel full-refiners and importers*. Any ethanol flex fuel full-refiner, for each of its refineries, and any ethanol flex fuel importer, for the ethanol flex fuel that it imports, shall submit a report for each calendar year period that includes all of the following information:

(1) The EPA-issued company registration number.

(2) The EPA-issued facility registration number.

(3) The total volume of ethanol flex fuel produced or imported, in gallons, reported to the nearest whole number.

(4) For each batch of ethanol flex fuel produced or imported during the calendar year, all of the following:

(i) The batch number assigned under § 80.1521(g).

(ii) The date the batch was produced.

(iii) The volume of the batch, in gallons, reported to the nearest whole number.

(iv) The volume percent ethanol content of the batch, reported to one decimal place.

(v) The sulfur content of the batch, reported to the nearest ppm, and the benzene content of the batch, reported to two decimal places, along with identification of the test methods used to determine the sulfur content and benzene content of the batch, as determined under § 80.1553(e) and (f), respectively.

(vi) For batches sold, offered for sale, dispensed, supplied, or offered for supply from May 1 through September 15, the RVP of the batch, reported to two decimal places, along with identification of the test method used to determine the RVP of the batch, as determined under § 80.1553(g).

(vii) The type and volume of each hydrocarbon and ethanol blendstock that was used to produce the ethanol flex fuel, as applicable (*i.e.*, conventional gasoline, reformulated gasoline, CBOB, RBOB, certified natural gasoline ethanol flex fuel blendstock, uncertified natural gasoline ethanol flex fuel blendstock, denatured fuel ethanol, and undenatured ethanol).

(5) The annual average sulfur level and annual average benzene level of the ethanol flex fuel produced or imported, reported to two decimal places.

(6) Certification that all batches of ethanol flex fuel produced or imported

were compliant with the requirements of §§ 80.1520 and 80.1521.

(b) *Annual reports for ethanol flex fuel bulk blender-refiners.* Any ethanol flex fuel bulk blender-refiner, for each of its refineries, shall submit a report for each calendar year period that includes all of the following information:

(1) The EPA importer, or refiner and refinery facility registration numbers.

(2) The total volume of ethanol flex fuel produced, in gallons, reported to the nearest whole number.

(3) For each batch of ethanol flex fuel blended during the calendar year, all of the following:

(i) The batch number assigned under § 80.1522(d).

(ii) The date the batch was produced.

(iii) The volume of the batch, in gallons, reported to the nearest whole number.

(iv) The ethanol content of the batch, reported to one decimal place.

(v) For batches sold, offered for sale, dispensed, supplied, or offered for supply from May 1 through September 15, the RVP of the batch, reported to two decimal places, and the method used to demonstrate compliance with the applicable RVP standard, as determined by either:

(A) The use of an EPA-approved RVP compliance tool under § 80.1553(j).

(B) A test method pursuant to the requirements of § 80.1553(g).

(vi) The type and volume of each hydrocarbon and ethanol blendstock that was used to produce the ethanol flex fuel, as applicable (*i.e.*, conventional gasoline, reformulated gasoline, CBOB, RBOB, certified natural gasoline ethanol flex fuel blendstock, denatured fuel ethanol, and undenatured ethanol).

(4) Certification that all batches of ethanol flex fuel blended were compliant with the requirements of §§ 80.1520 and 80.1522.

(c) *Annual reports for refiners and importers of certified natural gasoline ethanol flex fuel blendstock.* Any certified natural gasoline ethanol flex fuel blendstock refiner, for each of its refineries, and any certified natural gasoline ethanol flex fuel blendstock importer, for the certified natural gasoline ethanol flex fuel blendstock that it imports, shall submit a report for each calendar year averaging period that includes all of the following information:

(1) The EPA-issued company registration number.

(2) The EPA-issued facility registration number.

(3) The total volume of certified natural gasoline ethanol flex fuel blendstock produced or imported

during the calendar year, in gallons, reported to the nearest whole number.

(4) For each batch of certified natural gasoline ethanol flex fuel blendstock produced or imported during the calendar year, all of the following:

(i) The batch number assigned under § 80.1524(g).

(ii) The date the batch was produced.

(iii) The volume of the batch, in gallons, reported to the nearest whole number.

(iv) The sulfur content of the batch, reported to the nearest ppm, and the benzene content of the batch, reported to two decimal places, along with identification of the test methods used to determine the sulfur content and benzene content of the batch, as determined under § 80.1553(e) and (f), respectively.

(v) The RVP of the batch, reported to two decimal places, along with identification of the test method used to determine the RVP of the batch, as determined under § 80.1553(g).

Documentation from the certified natural gasoline ethanol flex fuel blendstock refiner may be used to satisfy the requirement of this paragraph. In lieu of using a procedure specified in § 80.1553(g), if the RVP of the batch is less than atmospheric pressure as evidenced by its storage/handling procedures, a natural gasoline ethanol flex fuel blendstock refiner or natural gasoline ethanol flex fuel blendstock importer may report an RVP value of 15.0 psi for the batch.

(vi) The T90 distillation point and final distillation point temperatures of the batch reported to nearest whole degree F, along with identification of the test method used, as determined under § 80.1553(h). Documentation from the supplier of the natural gasoline used to produce certified natural gasoline ethanol flex fuel blendstock may be used to satisfy the requirement of this paragraph.

(vii) For each imported batch of certified natural gasoline ethanol flex fuel blendstock, the source refinery's EPA registration number.

(5) Certification that all batches of certified natural gasoline ethanol flex fuel blendstock produced or imported were compliant with the requirements of § 80.1524.

(d) *Report submission.* Any annual report required under this section shall meet the following requirements:

(1) Be signed and certified as meeting all of the applicable requirements of this subpart by the owner or a responsible corporate officer of the refiner or importer.

(2) Be submitted to EPA no later than the March 31 each year for the prior calendar year.

(3) All values measured or calculated pursuant to the requirements of this subpart shall be in accordance with the rounding procedure specified in § 80.1503.

(e) *Attest reports.* Any attest engagement reports required under § 80.1569 shall be submitted to the Administrator by June 1 of each year for the prior calendar year.

■ 89. Section 80.1552 is added to read as follows:

§ 80.1552 Recordkeeping requirements.

Unless otherwise provided for in this section, the records required by this section shall be kept beginning on the compliance date specified in § 80.1504(b) and retained for a period of five years from the date of creation, and shall be delivered to the EPA Administrator or to the Administrator's authorized representative upon request.

(a) *Records that ethanol flex fuel full-refiners and importers must keep.* Any ethanol flex fuel full-refiner, for each of its ethanol flex fuel refineries, and any ethanol flex fuel importer, for the ethanol flex fuel that it imports, must keep records that include all of the following information:

(1) The product transfer document information required under § 80.1563.

(2) The date each batch was produced or imported.

(3) The batch volume.

(4) For each batch, all of the following information for any sampling and testing for sulfur content, benzene content, and RVP required under this subpart:

(i) The location, date, time, and storage tank or truck identification for each sample collected.

(ii) The name and title of the person who collected the sample and the person who performed the test.

(iii) The results of the test as originally printed by the testing apparatus, or where no printed result is produced, the results as originally recorded by the person who performed the test.

(iv) Any record that contains a test result for the sample that is not identical to the result recorded under paragraph (a)(4)(iii) of this section.

(v) The test methodology used.

(5) The batch number assigned under § 80.1521(g) and the appropriate designation under paragraph (a)(9) of this section.

(6) A copy of all registration records submitted to EPA under § 80.1550.

(7) A copy of all reports submitted to EPA under § 80.1551.

(8) Any calculations used to determine compliance with the applicable benzene content, sulfur content, and RVP standards of §§ 80.1520 and 80.1521.

(9) If appropriate, the designation of the batch as exempt ethanol flex fuel for national security purposes under § 80.1555, exempt ethanol flex fuel for research and development under § 80.1556, exempt ethanol flex fuel used in American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands under § 80.1557, California ethanol flex fuel that meets the requirements of § 80.1558, or for export outside the United States.

(10) Bills of lading, invoices, certificates of analysis, and other commercial documents relating to the blendstocks used to produce the batch.

(11) For each batch of uncertified natural gasoline ethanol flex fuel used during the calendar year to produce ethanol flex fuel:

(i) The RVP of the batch, along with identification of the test method used, as determined under § 80.1553(g).

(ii) The T90 distillation point and final distillation point temperatures, along with identification of the test method used, as determined under § 80.1553(h).

(iii) Documentation from the supplier of the natural gasoline used by the ethanol flex fuel full-refiner or importer as uncertified natural gasoline ethanol flex fuel blendstock that demonstrates the uncertified natural gasoline ethanol flex fuel blendstock was produced from a processing unit (e.g., a distillation tower or desulfurization unit) at a natural gas processing plant or crude oil refinery.

(iv) Documentation from the supplier of the natural gasoline used by the ethanol flex fuel full-refiner or importer as uncertified natural gasoline ethanol flex fuel blendstock may be used to satisfy the requirements in paragraphs (a)(11)(i) and (a)(11)(ii) of this section.

(b) *Records that ethanol flex fuel bulk blender-refiners must keep.* Any ethanol flex fuel bulk blender-refiner, for each of its ethanol flex fuel bulk blender-refineries, must keep records that include all of the following information:

(1) *Product transfer documents.* (i) The product transfer document information required under § 80.1563 for the blendstocks used to produce ethanol flex fuel.

(ii) The product transfer document information required under § 80.1610 for any DFE used to producer ethanol flex fuel.

(iii) Any product transfer document information for gasoline used to produce ethanol flex fuel, as required

under § 80.77, § 80.106, § 80.210, § 80.219, § 80.1563, and/or § 80.1651.

(2) The date each batch was produced.

(3) The batch volume.

(4) In cases where natural gasoline ethanol flex fuel blendstock is used to produce ethanol flex fuel, the test or modeling results on the RVP of each batch and the test methodology used.

(5) For each batch, documentation concerning the composition of the ethanol flex fuel, including:

(i) The volume or concentration of the ethanol blend component as described in § 80.1522(b)(1).

(ii) The volume or concentration of any gasoline, CBOB, or RBOB blending component(s), as described in § 80.1522(b)(2) and (b)(3).

(iii) The volume or concentration of any natural gasoline ethanol flex fuel blendstock as described in § 80.1522(b)(4).

(iv) The type and amount of any ethanol flex fuel additives as described in § 80.1522(b)(5).

(v) Bills of lading, invoices, certificates of analysis, and other commercial documents relating to the blendstocks used to produce the batch.

(6) The batch number assigned under § 80.1522(d) and the appropriate designation under paragraph (b)(10) of this section.

(7) A copy of all registration records submitted to EPA under § 80.1550.

(8) A copy of all reports submitted to EPA under § 80.1551.

(9) Records related to the participation in a survey program under § 80.1561 or § 80.1562, as applicable.

(10) If appropriate, the designation of the batch as exempt ethanol flex fuel for national security purposes under § 80.1555, exempt ethanol flex fuel for research and development under § 80.1556, exempt ethanol flex fuel used in American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands under § 80.1557, California ethanol flex fuel that meets the requirements of § 80.1558, or for export outside the United States.

(c) *Records that blender pump-refiners must keep.* Any blender pump-refiner, for each of its blender pump-refineries, shall keep records that include all of the following information:

(1) The product transfer document information required under § 80.1563 for the ethanol flex fuel used as a blendstock to produce ethanol flex fuel at a blender pump.

(2) Any product transfer document information for gasoline used to produce ethanol flex fuel, as required under § 80.77, § 80.106, § 80.210, § 80.219, § 80.1563, and/or § 80.1651.

(3) Records related to the participation in a survey program under § 80.1561 or § 80.1562, as applicable.

(4) Records related to any quality control program, including any calibration or certification required by a federal, state, or local government entity, conducted by the blender pump-refiner.

(5) Bills of lading, invoices, certificates of analysis, and other commercial documents relating to any parent blend used to produce ethanol flex fuel.

(d) *Records that natural gasoline ethanol flex fuel blendstock refiners and natural gasoline ethanol flex fuel blendstock importers must keep.* Any natural gasoline ethanol flex fuel blendstock refiner, for each of its natural gasoline ethanol flex fuel blendstock refineries, and any natural gasoline ethanol flex fuel blendstock importer, for the natural gasoline ethanol flex fuel blendstock that it imports, must keep records that include all of the following information:

(1) The product transfer document information required under § 80.1563.

(2) The date each batch was produced.

(3) The batch volume.

(4) The sulfur content, benzene content, and RVP of the batch, as determined pursuant to the requirements of § 80.1553, as applicable. For batches reporting an RVP value of 15.0 pursuant to § 80.1551(c)(4)(v), the storage/handling procedures demonstrating an RVP less than atmospheric pressure.

(5) All of the following information for any sampling and testing for sulfur content, benzene content, and RVP required under this subpart:

(i) The location, date, time, and storage tank or truck identification for each sample collected.

(ii) The name and title of the person who collected the sample and the person who performed the test.

(iii) The results of the test as originally printed by the testing apparatus, or where no printed result is produced, the results as originally recorded by the person who performed the test.

(iv) Any record that contains a test result for the sample that is not identical to the result recorded under paragraph (d)(5)(iii) of this section.

(v) The test methodology used.

(6) The batch number assigned under § 80.1524(g).

(7) Documentation from the supplier of the natural gasoline used to produce certified natural gasoline ethanol flex fuel blendstock that demonstrates the certified natural gasoline ethanol flex fuel blendstock was produced from a

processing unit (e.g., a distillation tower or desulfurization unit) at a natural gas processing plant or crude oil refinery.

(8) A copy of all registration records submitted to EPA under § 80.1550.

(9) A copy of all reports submitted to EPA under § 80.1551.

(10) Bills of lading, invoices, certificates of analysis, and other commercial documents relating to the natural gasoline used to produce certified natural gasoline ethanol flex fuel blendstock.

(11) For each imported batch of certified ethanol flex fuel blendstock, the source refinery's EPA registration number.

(e) *Records that parties that take custody of ethanol flex fuel must keep.* All parties that take custody of ethanol flex fuel other than when ethanol flex fuel is sold or dispensed for use in flex-fuel vehicles or engines at a retail outlet or wholesale purchaser-consumer facility, must retain records of the product transfer document information under § 80.1563.

(f) *Records that parties who take custody of certified natural gasoline ethanol flex fuel blendstock must keep.* All parties that take custody of certified natural gasoline ethanol flex fuel blendstock—from the refiner or importer through to the ethanol flex fuel full-refiner or ethanol flex fuel bulk blender-refiner—must retain records of the product transfer document information required in § 80.1563.

(g) *Records that ethanol flex fuel additive manufacturers must keep.* Any ethanol flex fuel additive manufacturer, for the ethanol flex fuel additives that it produces or imports, must keep records that include all of the following information:

(1) The product transfer document information for each batch.

(2) The date each batch was produced or imported.

(3) The batch volume.

(4) The maximum recommended treatment rate.

(5) Records of the additive manufacturer's control practices that demonstrate that the additive will contribute no more than 3 ppm on a per-gallon basis to the sulfur content of ethanol flex fuel when used at the maximum recommended treatment rate.

(h) *Make records available to EPA.* On request by EPA, the records required in this section shall be provided to the Administrator's authorized representative. For records that are electronically generated or maintained, the equipment and software necessary to read the records shall be made available to EPA; or, if requested by EPA, electronic records shall be

converted to paper documents which shall be provided to the Administrator's authorized representative.

■ 90. Section 80.1553 is added to read as follows:

§ 80.1553 Sampling and testing requirements for ethanol flex fuel refiners and importers and certified natural gasoline ethanol flex fuel blendstock refiners and importers.

The sampling methods and test methods specified in this section shall be used to collect and test samples of ethanol flex fuel produced by ethanol flex fuel full-refiners, ethanol flex fuel importers, and ethanol flex fuel bulk blender-refiners pursuant to the requirements of §§ 80.1520, 80.1521 and 80.1522, and certified natural gasoline ethanol flex fuel blendstock produced by certified natural gasoline ethanol flex fuel blendstock refiners and certified natural gasoline ethanol flex fuel blendstock importers pursuant to the requirements of § 80.1524, for purposes of determining compliance with the requirements of this subpart.

(a) *Manual sampling.* Manual sampling of tanks and pipelines shall be performed according to the applicable procedures specified in ASTM D4057.

(b) *Automatic sampling.* Automatic sampling of petroleum products in pipelines shall be performed according to the applicable procedures specified in ASTM D4177.

(c) *Sampling and sample handling for volatility measurement.* Samples to be analyzed for RVP shall be collected and handled according to the applicable procedures specified in ASTM D5842.

(d) *Sample compositing.* Composite samples shall be prepared using the applicable procedures specified in ASTM D5854.

(e) *Sulfur.* Sulfur content of ethanol flex fuel and certified natural gasoline ethanol flex fuel blendstock shall be determined by use of one of the following methods:

(1) ASTM D2622.

(2) ASTM D1266, ASTM D3120, ASTM D5453, ASTM D6920, ASTM D7220, or ASTM D7039, provided the test result is correlated with the method specified in paragraph (e)(1) of this section.

(f) *Benzene.* Benzene content of ethanol flex fuel and natural gasoline ethanol flex fuel blendstock shall be determined by use of one of the following methods:

(1) ASTM D5769.

(2) ASTM D5580, ASTM D3606, or ASTM D6730, provided the test result is correlated with the method specified in paragraph (f)(1) of this section.

(g) *Reid vapor pressure.* The RVP of ethanol flex fuel and natural gasoline

ethanol flex fuel blendstock shall be determined by use of one of the following methods:

(1) ASTM D5191.

(2) ASTM D5482 or ASTM D6378, provided the test result is correlated with the method specified in paragraph (g)(1) of this section.

(h) *Distillation.* The distillation point at which ninety percent of the natural gasoline ethanol flex fuel blendstock has evaporated and the final boiling point shall be determined by use of one of the following methods:

(1) ASTM D86.

(2) [Reserved]

(i) *Oxygenate and ethanol content.* Oxygenate and ethanol content of ethanol flex fuel shall be determined by use of one of the following methods:

(1) ASTM D5599.

(2) ASTM D4815, provided the test result is correlated with the method specified in paragraph (i)(1) of this section.

(j) *Alternative requirements to RVP sampling and testing.* Ethanol flex fuel bulk blender-refiners may use the provisions in this paragraph (j)(1) of this section as an alternative to the RVP sampling and testing requirements in paragraph (g) of this section.

(1) *Alternative sampling and testing provisions.* (i) The RVP of each batch of ethanol flex fuel shall be determined by using the RVP equations specified in this paragraph.

(ii) The RVP of the CBOB, RBOB, E0, certified natural gasoline ethanol flex fuel blendstock, and/or ethanol denaturant hydrocarbon blend components used to produce the ethanol flex fuel shall be volume weighted to arrive at a RVP of the mixture of the hydrocarbon blend components. In cases where denatured fuel ethanol is used as a blending component, the denaturant concentration in the denatured fuel ethanol may be assumed to be 3 volume percent and the RVP of the denaturant to be 15.0 psi.

(iii) The volume weighted RVP of the mixture of the hydrocarbon blend components determined pursuant to the requirements of paragraph (j)(1)(ii) of this section shall be used in determining the RVP of the finished ethanol flex fuel blend using the RVP equations described in paragraph (j)(1)(iv) of this section.

(iv) RVP equations: RVP expressed in pounds per square inch (psi).

$$K_{\text{undenatured ethanol}} = 46.321 (\text{vol\% undenatured ethanol})^{-0.8422}$$

$$K_{\text{hydrocarbon}} = -7E-07(\text{vol\% undenatured ethanol})^3 + 0.0002 (\text{vol\% undenatured ethanol})^2$$

$$+ 0.0024 (\text{vol}\% \text{ undenatured ethanol}) + 1 \\ \text{RVP}_{\text{EFF blend}} = K_{\text{hydrocarbon}} (\text{vol}\% \\ \text{hydrocarbon}/100) \text{RVP}_{\text{hydrocarbon}} \\ + K_{\text{undenatured ethanol}} (\text{vol}\% \text{ undenatured ethanol}/ \\ 100) 2.4$$

(2) [Reserved]

■ 91. Section 80.1554 is added to read as follows:

§ 80.1554 Sample retention requirements for ethanol flex fuel and certified natural gasoline ethanol flex fuel blendstock refiners and importers.

(a) Beginning on the date specified in § 80.1504(b), any ethanol flex fuel refiner, ethanol flex fuel importer, certified natural gasoline ethanol flex fuel blendstock refiner, or certified natural gasoline ethanol flex fuel blendstock importer shall:

(1) Retain a representative sample portion of each sample collected under § 80.1553, of at least 330 mL in volume.

(2) Retain such sample portions for the most recent 20 samples collected, or for each sample collected during the most recent 21 day period, whichever is greater, not to exceed 90 days for any given sample.

(3) Comply with the ethanol flex fuel or natural gasoline ethanol flex fuel blendstock sample handling procedures under § 80.1553(c) for each sample portion retained.

(4) Comply with any request by EPA to:

(i) Provide a retained sample portion to the Administrator's authorized representative.

(ii) Ship a retained sample portion to EPA, within two working days of the date of the request, by an overnight shipping service or comparable means, to the address and following procedures specified by EPA, and accompanied with the sulfur, benzene, RVP, and distillation test result for the sample determined pursuant to § 80.1553.

(b) [Reserved]

■ 92. Section 80.1555 is added to read as follows:

§ 80.1555 National security exemptions.

(a) The ethanol flex fuel standards of § 80.1520 do not apply to ethanol flex fuel that is produced, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, or transported for use in any of the following:

(1) Tactical military vehicles, engines, or equipment having an EPA national security exemption from the gasoline emission standards under 40 CFR part 86.

(2) Tactical military vehicles, engines, or equipment that are not subject to a national security exemption from vehicle or engine emissions standards as described in paragraph (a)(1) of this

section but, for national security purposes (for purposes of readiness for deployment overseas), need to be fueled on the same ethanol flex fuel as the vehicles, engines, or equipment for which EPA has granted such a national security exemption.

(b) The exempt fuel must meet all the following conditions:

(1) It must be accompanied by product transfer documents as required under § 80.1563.

(2) It must be segregated from non-exempt ethanol flex fuel at all points in the distribution system.

(3) It must be dispensed from a fuel pump stand, fueling truck, or tank that is labeled with the appropriate designation of the fuel.

(4) It may not be used in any vehicles, engines, or equipment other than those referred to in paragraph (a) of this section.

(c) Any national security exemptions approved under subparts H and O of this part will remain in place under this subpart.

■ 93. Section 80.1556 is added to read as follows:

§ 80.1556 Exemptions for ethanol flex fuel used for research, development, or testing purposes.

(a) *Written request for a research and development exemption.* Any person may receive an exemption from the provisions of this subpart for ethanol flex fuel used for research, development, or testing ("R&D") purposes by submitting the information listed in paragraph (c) of this section to EPA. Applications for R&D exemptions must be submitted to the address in paragraph (h) of this section.

(b) *Criteria for a research and development exemption.* For a R&D exemption to be granted, the person requesting an exemption must do all the following:

(1) Demonstrate a purpose that constitutes an appropriate basis for exemption.

(2) Demonstrate that an exemption is necessary.

(3) Design a R&D program that is reasonable in scope.

(4) Have a degree of control consistent with the purpose of the program and EPA's monitoring requirements.

(c) *Information required to be submitted.* To demonstrate each of the elements in paragraph (b) of this section, the person requesting an exemption must include all the following information:

(1) A concise statement of the purpose of the program demonstrating that the program has an appropriate R&D purpose.

(2) An explanation of why the stated purpose of the program cannot be achieved in a practicable manner without performing one or more of the prohibited acts under this subpart.

(3) A demonstration of the reasonableness of the scope of the program, including all of the following:

(i) An estimate of the program's beginning and ending dates.

(ii) An estimate of the maximum number of vehicles or engines involved in the program and the number of miles and engine hours that will be accumulated on each.

(iii) The sulfur content, benzene content, and RVP of the ethanol flex fuel expected to be used in the program.

(iv) The quantity of ethanol flex fuel that does not comply with the requirements of § 80.1520.

(v) The manner in which the information on vehicles and engines used in the program will be recorded and made available to the Administrator upon request.

(4) With regard to control, a demonstration that the program affords EPA a monitoring capability, including all the following:

(i) A description of the technical and operational aspects of the program.

(ii) The site(s) of the program (including facility name, street address, city, county, state, and zip code).

(iii) The manner in which information on the fuel used in the program (including quantity, fuel properties, name, address, telephone number and contact person of the supplier, and the date received from the supplier), will be recorded and made available to the Administrator upon request.

(iv) The manner in which the party will ensure that the R&D fuel will be segregated from ethanol flex fuel meeting the standards of this subpart and how fuel pumps will be labeled to ensure proper use of the R&D fuel.

(v) The name, address, telephone number, and title of the person(s) in the organization requesting an exemption from whom further information on the application may be obtained.

(vi) The name, address, telephone number, and title of the person(s) in the organization requesting an exemption who is responsible for recording and making available the information specified in this paragraph (c), and the location where such information will be maintained.

(d) *Additional requirements.* (1) The product transfer documents associated with R&D ethanol flex fuel must comply with the requirements of § 80.1563.

(2) The R&D ethanol flex fuel must be designated by the refiner or supplier, as

applicable, as exempt R&D ethanol flex fuel.

(3) The R&D ethanol flex fuel must be kept segregated from non-exempt ethanol flex fuel at all points in the distribution system.

(4) The R&D ethanol flex fuel must not be sold, distributed, offered for sale or distribution, dispensed, supplied, offered for supply, transported to or from, or stored by a fuel retail outlet, or by a wholesale purchaser-consumer facility, unless the wholesale purchaser-consumer facility is associated with the R&D program that uses the ethanol flex fuel.

(5) At the completion of the program, any emission control systems or elements of design which are damaged or rendered inoperative shall be replaced on vehicles remaining in service, or the responsible person will be liable for a violation of the Clean Air Act section 203(a)(3) (42 U.S.C. 7522(a)(3)) unless sufficient evidence is supplied that the emission controls or elements of design were not damaged.

(e) *Memorandum of exemption.* The Administrator will grant an R&D exemption upon a demonstration that the requirements of this section have been met. The R&D exemption will be granted in the form of a memorandum of exemption signed by the applicant and the Administrator (or delegate), which may include such terms and conditions as the Administrator determines necessary to monitor the exemption and to carry out the purposes of this section, including restoration of emission control systems.

(1) The volume of fuel subject to the approval shall not exceed the estimated amount under paragraph (c)(3) of this section, unless EPA grants a greater amount in writing.

(2) Any exemption granted under this section will expire at the completion of the test program or three years from the date of approval, whichever occurs first, and may only be extended upon re-application consistent with all requirements of this section.

(3) EPA may elect at any time to review the information contained in the request, and where appropriate may notify the responsible person of disapproval of the exemption.

(4) In granting an exemption the Administrator may include terms and conditions, including replacement of emission control devices or elements of design, which the Administrator determines are necessary for monitoring the exemption and for assuring that the purposes of this subpart are met.

(5) Any violation of a term or condition of the exemption, or of any

requirement of this section, will cause the exemption to be void ab initio.

(6) If any information required under paragraph (c) of this section should change after approval of the exemption, the responsible person must notify EPA in writing immediately. Failure to do so may result in disapproval of the exemption or may make it void ab initio, and may make the party liable for a violation of this subpart.

(f) *Effects of exemption.* Ethanol flex fuel that is subject to a R&D exemption under this section is exempt from other provisions of this subpart provided that the fuel is used in a manner that complies with the purpose of the program under paragraph (c) of this section and all other requirements of this section.

(g) *Notification of completion.* The party shall notify EPA in writing within 30 days after completion of the R&D program.

(h) *Submission.* Requests for R&D exemptions shall be sent to the attention of: "Ethanol Flex Fuel Program (R&D Exemption Request)" to the address in § 80.10(a).

■ 94. Section 80.1557 is added to read as follows:

§ 80.1557 Requirements for ethanol flex fuel for use in American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

The ethanol flex fuel standards of this subpart do not apply to ethanol flex fuel that is produced, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, or transported for use in the Territories of Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, provided that such ethanol flex fuel meets all the following requirements:

(a) The ethanol flex fuel is designated by the ethanol flex fuel refiner or ethanol flex fuel importer as ethanol flex fuel only for use in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

(b) The ethanol flex fuel is used only in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

(c) The ethanol flex fuel is accompanied by documentation that complies with the product transfer document requirements of § 80.1563.

(d) The ethanol flex fuel is segregated from non-exempt ethanol flex fuel at all points in the distribution system from the point the fuel is designated as ethanol flex fuel only for use in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, while the fuel is in the United States but outside these Territories.

■ 95. Section 80.1558 is added to read as follows:

§ 80.1558 California ethanol flex fuel requirements.

(a) *California ethanol flex fuel exemption.* California ethanol flex fuel that complies with all the requirements of this section is exempt from all other provisions of this subpart.

(b) *Requirements for California ethanol flex fuel.* (1) Each batch of California ethanol flex fuel must be designated as such by its refiner or importer.

(2) Designated California ethanol flex fuel must be kept segregated from ethanol flex fuel that is not California ethanol flex fuel at all points in the distribution system.

(3) Designated California ethanol flex fuel must ultimately be dispensed into flex-fuel vehicles and engines in the State of California for their use.

(4) For California ethanol flex fuel produced outside the State of California, the transferors and transferees must meet the product transfer document requirements of paragraph (b)(5) of this section.

(5)(i) Any refiner that operates a refinery located outside the State of California at which California ethanol flex fuel is produced must provide to any person to whom custody or title of such gasoline has transferred, and each transferee must provide to any subsequent transferee, documents that include all the following information:

(A) The name and address of the transferor.

(B) The name and address of the transferee.

(C) The volume of ethanol flex fuel which is being transferred.

(D) The location of the ethanol flex fuel at the time of the transfer.

(E) The date and time of the transfer.

(F) The identification of the ethanol flex fuel as California ethanol flex fuel.

(ii) Each refiner and transferee of California ethanol flex fuel must maintain copies of the product transfer documents required to be provided by paragraph (b)(5)(i) of this section for a period of five years from the date of creation and shall deliver such documents to the Administrator or to the Administrator's authorized representative upon request.

(6) Ethanol flex fuel that is ultimately used or dispensed in any part of the United States outside of the State of California must comply with the standards of § 80.1520 and any associated applicable requirements, regardless of any designation as California ethanol flex fuel.

§§ 80.1559–80.1560 [Reserved]

■ 96. Reserved §§ 80.1559 and 80.1560 are added.

■ 97. Newly redesignated § 80.1561 is amended by revising the section heading and paragraphs (b)(3)(ii), (b)(3)(iii) introductory text, (b)(3)(v), (c)(4), (d)(3), and (e) introductory text to read as follows:

§ 80.1561 Survey requirements related to E15.

* * * * *

(b) * * *

(3) * * *

(ii)(A) Obtain samples of gasoline offered for sale at gasoline retail outlets in accordance with the survey program plan approved under this paragraph (b), or immediately notify EPA of any refusal of retail outlets to allow samples to be taken.

(B) Samples of E15 collected from blender pump-refineries shall be collected using a method specified in NIST Handbook 1XX (incorporated by reference, see § 80.1580).

(iii) Test, or arrange to be tested, the samples required under paragraph (b)(3)(ii) of this section for RVP and oxygenate content as follows:

* * * * *

(v) Confirm that each fuel dispenser sampled is labeled as required in § 80.1502 by confirming that:

(A) The label meets the appearance and content requirements of § 80.1502.

(B) The label is located on the fuel dispenser according to the requirements in § 80.1502.

* * * * *

(c) * * *

(4) The survey program plan must be sent to the attention of “E15 Survey Program Plan” to the address in § 80.10(a).

* * * * *

(d) * * *

(3) For the first year in which a survey program will be conducted, no later than 15 days preceding the start of the survey EPA must receive a copy of the contract with the independent surveyor and proof that the money necessary to carry out the survey plan has either been paid to the independent surveyor or placed into an escrow account; if the money has been placed into an escrow account, a copy of the escrow agreement must be sent to the official designated in paragraph (c)(4) of this section.

* * * * *

(e) Consequences of failure to fulfill requirements. A failure to fulfill or cause to be fulfilled any of the requirements of this section is a prohibited act under Clean Air Act section 211(c) and § 80.1564.

* * * * *

■ 98. Section 80.1562 is added to read as follows:

§ 80.1562 Ethanol flex fuel survey requirements.

(a) General blender pump survey requirements—(1) Survey program participation. Any ethanol flex fuel bulk blender-refiner or blender pump-refiner who manufactures, introduces into commerce, sells, or offers for sale ethanol flex fuel produced at an ethanol flex fuel bulk blender-refinery or blender pump must have an independent survey association conduct a statistically valid program of compliance surveys pursuant to a survey program plan that has been approved by EPA, in accordance with the requirements of paragraphs (a)(2) through (a)(5) of this section.

(2) Survey program requirements. The survey program must be:

(i) Planned and conducted by a survey association that is independent of the ethanol flex fuel bulk blender-refiner and blender pump-refiners that arrange to have the survey conducted. In order to be considered independent, all of the following conditions must be met:

(A) Representatives of the survey association shall not be an employee of any ethanol flex fuel bulk blender-refinery or blender pump-refiner.

(B) The survey association shall be free from any obligation to or interest in any ethanol flex fuel bulk blender-refinery or blender pump-refiner.

(C) The ethanol flex fuel bulk blender-refinery and blender pump-refiners that arrange to have the survey conducted shall be free from any obligation to or interest in the survey association.

(ii) Conducted separately at all ethanol flex fuel retail stations and at a subset of blender pump-refineries.

(iii) Represent all ethanol flex fuel retail stations and blender pump-refineries that dispense ethanol flex fuel nationwide.

(3) Independent survey association requirements. The independent survey association conducting the survey program described in paragraph (a)(1) of this section shall:

(i) Submit to EPA for approval each calendar year a proposed survey program plan in accordance with the requirements of paragraph (a)(4) of this section.

(ii)(A) Obtain samples representative of the ethanol flex fuel offered for sale separately from all ethanol flex fuel stations and the subset of blender pump-refineries in accordance with the survey program plan approved by EPA, or immediately notify EPA of any refusal of blender pump-refineries or ethanol flex fuel retail stations that

operate blender pumps to allow samples to be taken.

(B) Samples of ethanol flex fuels collected from blender pump-refineries shall be collected using a method specified in NIST Handbook 158 (incorporated by reference, see § 80.1580).

(iii) Test, or arrange to be tested, the samples required under paragraph (a)(3)(ii) of this section for oxygenate content, sulfur content, benzene content, and RVP (from June 1 through September 15), as follows:

(A) Samples collected shall be shipped the same day the samples are collected via ground service to the laboratory and analyzed for oxygenate content, sulfur content, benzene content, and RVP. Such analysis shall be completed within 10 days after receipt of the sample in the laboratory.

(B) Any laboratory to be used by the independent survey association for oxygenate content, sulfur content, benzene content, or RVP testing shall be approved by EPA and its test method for determining oxygenate content, sulfur content, benzene content, and RVP shall be an appropriate method as described in § 80.1553(e) through (i).

(iv) In the case of any test that yields a result that a sample potentially exceeds the 95 ppm sulfur standard of § 80.1520(b)(1)(ii)(B) or applicable RVP standard of § 80.1520(c), the independent survey association shall, within 24 hours after the laboratory has completed analysis of the sample, send notification of the test result as follows:

(A) In the case of a sample collected at a blender pump-refinery at which the brand name of a refiner or importer is displayed, to the ethanol flex fuel refiner or ethanol flex fuel importer, and EPA. This initial notification to the ethanol flex fuel refiner or ethanol flex fuel importer shall include specific information concerning the name and address of the blender pump-refinery or ethanol flex fuel retail station, contact information, the brand, and the sulfur content and/or RVP of the sample.

(B) In the case of a sample collected at any other blender pump-refineries or ethanol flex fuel retail stations, to the ethanol flex fuel bulk blender-refiner or blender pump-refiner and EPA, and such notice shall contain the same information as in paragraph (a)(3)(iv)(A) of this section.

(C) The independent survey association shall provide notice to the identified contact person or persons for each party in writing (which includes email or facsimile) and, if requested by the identified contact person, by telephone.

(v) Provide to EPA quarterly and annual summary survey reports which include the information specified in paragraph (a)(5) of this section.

(vi) Maintain all records relating to the surveys conducted under this paragraph (a) for a period of at least five (5) years.

(vii) Permit any representative of EPA to monitor at any time the conducting of the surveys, including sample collection, transportation, storage, and analysis.

(4) *Survey Plan Design Requirements.* The proposed survey program plan required under paragraph (a)(3)(i) of this section shall, at a minimum, include the following:

(i) *Number of Surveys.* The survey program plan shall include four surveys each calendar year, which shall occur during the following time periods:

(A) One survey during the period of January 1 through March 31.

(B) One survey during the period of April 1 through June 30.

(C) One survey during the period of July 1 through September 30.

(D) One survey during the period of October 1 through December 31.

(ii) *No advance notice of surveys.* The survey plan shall include procedures to keep the identification of the sampling areas that are included in any survey plan confidential from any regulated

party prior to the beginning of a survey in an area. However, this information shall not be kept confidential from EPA.

(iii) *Blender pump-refinery and ethanol flex fuel retail station selection.*

(A) The blender pump-refineries and ethanol flex fuel retail stations to be sampled in a sampling area shall be selected from among all blender pump-refineries and ethanol flex fuel retail stations in the sampling area that sell ethanol flex fuel, with the probability of selection proportionate to the volume of ethanol flex fuel sold at the blender pump-refineries or ethanol flex fuel retail station. The sample should also include blender pump-refineries and ethanol flex fuel retail stations with different brand names as well as those blender pump-refineries and ethanol flex fuel retail stations that are unbranded.

(B) In the case of any ethanol flex fuel blender pump-refinery or ethanol flex fuel retail station from which a sample of ethanol flex fuel was collected during a survey and determined to have a dispenser containing fuel whose sulfur content does not comply with the 95 ppm sulfur standard in

§ 80.1520(b)(1)(ii)(B) or whose RVP does not comply with the applicable RVP standard in § 80.1520(c), that blender pump-refinery or ethanol flex fuel retail

station shall be included in the subsequent survey.

(C) At least one sample of a product dispensed as ethanol flex fuel shall be collected at each blender pump-refinery and ethanol flex fuel retail station, and separate samples must be taken that represent the gasoline or ethanol flex fuel contained in each storage tank, unless collection of separate samples is not practicable.

(iv) *Number of samples.* (A) The number of stations to be sampled shall be independently calculated for the total number of ethanol flex fuel retail stations and the total number of blender pump-refineries.

(B) If the number of blender pump-refineries from participating blender pump-refiners or ethanol flex fuel retail stations is less than 500, the minimum number of samples to be included in the survey plan for each calendar year shall be sufficient to ensure that each blender pump-refinery or ethanol flex fuel retail station is sampled at least once during the calendar year.

(C) If the number of blender pump-refineries from participating blender pump-refiners or ethanol flex fuel retail stations is 500 or greater, the minimum number of samples to be included in the survey plan for each calendar year shall be calculated as follows:

$$n = \left\{ \frac{[(Z_{\alpha} + Z_{\beta})]^2}{4 \times [\arcsin(\sqrt{\phi_1}) - \arcsin(\sqrt{\phi_0})]^2} \right\} \times F_a \times F_b \times Su_n$$

Where:

n = Minimum number of samples in a year-long survey series. However, in no case shall n be smaller than 500.

Z_{α} = Upper percentile point from the normal distribution to achieve a one-tailed 95% confidence level (5% α -level). Thus, Z_{α} equals 1.645.

Z_{β} = Upper percentile point to achieve 95% power. Thus, Z_{β} equals 1.645.

ϕ_1 = The maximum proportion of non-compliant stations for a region to be deemed compliant. In this test, the parameter needs to be 5% or greater, *i.e.*, 5% or more of the stations, within a stratum such that the region is considered non-compliant. For this survey, ϕ_1 will be 5%.

ϕ_0 = The underlying proportion of non-compliant stations in a sample. For the first survey plan, ϕ_0 will be 2.3%. For subsequent survey plans, ϕ_0 will be the average of the proportion of stations found to be non-compliant over the previous four surveys.

F_a = Adjustment factor for the number of extra samples required to compensate for

collected samples that cannot be included in the survey, based on the number of additional samples required during the previous four surveys.

However, in no case shall the value of F_a be smaller than 1.1.

F_b = Adjustment factor for the number of samples required to resample each blender pump-refinery with test results exceeding the sulfur content or RVP standard pursuant to § 80.1520, based on the rate of resampling required during the previous four surveys. However, in no case shall the value of F_b be smaller than 1.1.

Su_n = Number of surveys per year. For purposes of this survey program, Su_n equals 4.

(D) The number of samples determined pursuant to paragraphs (a)(4)(iv)(B) and (a)(4)(iv)(C) of this section, after being incremented as necessary to allocate whole numbers of samples to each cluster, shall be distributed approximately equally for

the four surveys conducted during the calendar year.

(5) *Summary survey reports.* The quarterly and annual summary survey reports required under paragraph (a)(3)(v) of this section shall include the following information:

(i) An identification of the parties that are participating in the survey.

(ii) The identification of each sampling area included in a survey and the dates that the samples were collected in that area.

(iii) For each retail blender pump-refinery and ethanol flex fuel retail station sampled:

(A) The identification of the blender pump-refinery or ethanol flex fuel retail station.

(B) The refiner or importer brand name displayed, if any.

(C) The fuel dispenser labeling (*e.g.*, "E20").

(D) The sample test result for oxygenate content, sulfur content, benzene content, and RVP result, if any.

(E) The test method used to determine oxygenate content as described in § 80.1553(i).

(F) The test method used to determine sulfur content as described in § 80.1553(e).

(G) The test method used to determine benzene content as described in § 80.1553(f).

(H) The test method used to determine RVP as described in § 80.1553(g).

(iv) Ethanol level, sulfur content, benzene content, and RVP summary statistics by brand and unbranded for each sampling area and survey series. These summary statistics shall:

(A) Include the number of samples and the average, median, and range of: ethanol content, expressed in volume percent; sulfur content, expressed in parts per million; benzene content, expressed in volume percent; and RVP, expressed in pounds per square inch.

(B) [Reserved]

(v) The quarterly reports required under paragraph (a)(3)(v) of this section are due 60 days following the end of each survey period as described in paragraph (a)(4)(i) of this section. The annual reports required under paragraph (a)(3)(v) of this section are due 60 days following the end of the calendar year.

(vi) The reports required under this paragraph (a)(3)(v) shall be submitted to EPA in an electronic spreadsheet.

(b) *Procedures for obtaining approval of survey plan and providing required notices.* (1) A survey program plan that complies with the requirements of paragraph (a) of this section must be submitted to EPA no later than November 15 of the year preceding the calendar year in which the survey will be conducted.

(2) The survey program plan must be signed by a responsible officer of the independent surveyor conducting the survey program.

(3) The survey program plan must be sent to the attention of "Ethanol Flex Fuel Survey Requirements" to the address in § 80.10(a).

(4) EPA will send a letter to the party submitting the survey program plan that indicates whether EPA approves or disapproves the survey plan.

(5) The approving official for a survey plan under this section is the Director of the Compliance Division, Office of Transportation and Air Quality.

(6) Any notifications or reports required to be submitted to EPA under this section must be directed to the

official designated in paragraph (b)(5) of this section.

(c) *Independent surveyor contract.* (1) No later than December 15 of the year preceding the year in which the survey will be conducted, the contract with the independent surveyor shall be in effect, and an amount of money necessary to carry out the entire survey plan shall be paid to the independent surveyor or placed into an escrow account with instructions to the escrow agent to pay the money to the independent surveyor during the course of the survey plan.

(2) No later than December 15 of the year preceding the year in which the survey will be conducted, EPA must receive a copy of the contract with the independent surveyor and proof that the money necessary to carry out the survey plan has either been paid to the independent surveyor or placed into an escrow account; if placed into an escrow account, a copy of the escrow agreement must be sent to the official designated in paragraph (b)(5) of this section.

(d) *Consequences of failure to fulfill survey requirements.* No person shall fail to fulfill or cause to be fulfilled any of the requirements of this section and is a prohibited act under Clean Air Act section 211(c) and § 80.1564.

(1) EPA may revoke its approval of a survey plan under this section for cause, including, but not limited to, an EPA determination that the approved survey plan has proved to be inadequate in practice.

(2) EPA may void *ab initio* its approval of a survey plan if EPA's approval was based on false information, misleading information, or incomplete information, or if there was a failure to fulfill, or cause to be fulfilled, any of the requirements of the survey plan.

99. Newly redesignated § 80.1563 is amended by:

- a. Revising the section heading;
- b. Revising paragraphs (a)(1)(vi)(A) and (b)(1)(vi)(E); and
- c. Redesignating paragraphs (c) and (d) as paragraphs (f) and (g) and adding new paragraphs (c) and (d) and paragraph (e).

The revisions and additions read as follows:

§ 80.1563 Product transfer document requirements for ethanol flex fuel, certified natural gasoline ethanol flex fuel blendstock, gasolines, and conventional blendstocks for oxygenate blending subject to this subpart.

- (a) * * *
- (1) * * *
- (vi) * * *

(A) The maximum RVP, as determined by an applicable method

permitted under § 80.46, § 80.47, § 80.1553(g), or § 80.1553(j), stated in the following format: "The RVP of this gasoline does not exceed [fill in appropriate value]."; and

- * * * * *
- (b) * * *
- (1) * * *
- (vi) * * *

(E) For all ethanol flex fuels, the following statement: "Ethanol Flex Fuel—Contains XX% ethanol." The term XX refers to the volume percent of ethanol present in the ethanol flex fuel.

* * * * *

(c) *Product transfer documentation for ethanol flex fuel.* (1) On each occasion when any person transfers custody or title of ethanol flex fuel other than when ethanol flex fuel is sold or dispensed for use in flex-fuel vehicles or engines at a retail outlet or wholesale purchaser-consumer facility, the transferor shall provide to the transferee product transfer documents that include all of the following information, as applicable:

(i) The name and address of the transferor.

(ii) The name and address of the transferee.

(iii) The volume of ethanol flex fuel being transferred.

(iv) The location of the ethanol flex fuel at the time of the transfer.

(v) The date of the transfer.

(vi) The concentration of ethanol pursuant to paragraph (b)(1)(vi)(E) of this section.

(vii) The type and volume of each hydrocarbon feedstock expressed in volume percent to the nearest whole number that was used to produce the ethanol flex fuel (*i.e.*, conventional gasoline, reformulated gasoline, CBOB, RBOB, uncertified natural gasoline ethanol flex fuel blendstock, certified natural gasoline ethanol flex fuel blendstock).

(viii) A statement that the ethanol flex fuel meets the applicable RVP standard.

(ix) A statement that the concentration of natural gasoline ethanol flex fuel blendstock blended in to produce ethanol flex fuel is less than or equal to 30 volume percent.

(2) [Reserved]

(d) *Product transfer documentation for certified natural gasoline ethanol flex fuel blendstock.* (1) On each occasion when any party transfers custody or title of certified natural gasoline ethanol flex fuel blendstock, the transferor shall provide to the transferee product transfer documents that include all of the following information, as applicable:

(i) The name and address of the transferor.

(ii) The name and address of the transferee.

(iii) The volume of certified natural gasoline ethanol flex fuel blendstock being transferred.

(iv) The location of the certified natural gasoline ethanol flex fuel blendstock at the time of the transfer.

(v) The date of the transfer.

(vi) The maximum RVP, as determined by an applicable method permitted under § 80.1553(g), or 15.0 psi as described § 80.1551(c)(4)(v).

(vii) Statement on the product transfer document as follows:

(A) For certified natural gasoline ethanol flex fuel blendstock that meet the requirements of § 80.1524, "Certified natural gasoline EFF blendstock—Suitable for use to manufacture ethanol flex fuels meeting EPA standards. Cannot be used as gasoline, CBOB, or RBOB."

(B) [Reserved]

(2) [Reserved]

(e) Alternative product transfer document language to that specified in paragraphs (a) through (d) of this section may be used as approved by EPA.

* * * * *

■ 100. Newly redesignated § 80.1564 is amended by:

■ a. Revising the section heading;

■ b. Revising paragraphs (a)(2) and (3);

■ c. Adding paragraph (a)(4);

■ d. Revising paragraphs (b), (c), (d), and (e)(1);

■ e. Redesignating paragraphs (h) and (i) as paragraphs (y) and (z);

■ f. Adding new paragraphs (h) and (i) and paragraphs (j) through (x); and

■ g. Revising newly redesignated paragraph (z).

The revisions and additions read as follows:

§ 80.1564 Prohibited activities.

(a) * * *

(2) Manufacture or introduce into commerce E15 in any calendar year for use in an area prior to commencement of a survey approved under 80.1561 for that area.

(3) Sell, introduce, cause, or permit the sale or introduction of gasoline containing greater than 15 volume percent ethanol (*i.e.*, greater than E15) into any model year 2001 or newer light- or medium-duty gasoline motor vehicle.

(4) Be prohibited from manufacturing, selling, introducing, causing, or allowing the sale or introduction of gasoline containing greater than 15 volume percent ethanol into any flex-fuel vehicle or flex-fuel engine, notwithstanding paragraphs (a)(1) through (3) of this section.

(b) Sell, offer for sale, dispense, or otherwise make available at a retail or

wholesale purchaser-consumer facility E15 that is not correctly labeled in accordance with § 80.1502.

(c) Fail to fully or timely implement, or cause a failure to fully or timely implement, an approved survey required under § 80.1561 or § 80.1562.

(d) Fail to generate, use, transfer, and maintain product transfer documents that accurately reflect the type of product, ethanol content, maximum RVP, and other information required under § 80.1563.

(e) * * *

(1) Improperly blend, or cause the improper blending of, ethanol into conventional blendstock for oxygenate blending, gasoline, or gasoline already containing ethanol, in a manner inconsistent with the information on the product transfer document under § 80.1563(a)(1)(vi) or (b)(1)(vi).

* * * * *

(h) Produce, import, sell, offer for sale, dispense, supply, offer for supply, store, or transport ethanol flex fuel or certified natural gasoline ethanol flex fuel blendstock that does not comply with the applicable sulfur standards under § 80.1520(b)(1) or § 80.1524(b)(1).

(i) Cause ethanol flex fuel or certified natural gasoline ethanol flex fuel blendstock to be in the distribution system that does not comply with the applicable sulfur per-gallon cap standard under § 80.1520(b)(1)(ii) or § 80.1524(b)(1).

(j) Produce, import, sell, offer for sale, dispense, supply, offer for supply, store, or transport ethanol flex fuel or certified natural gasoline ethanol flex fuel blendstock that does not comply with the applicable benzene standards under § 80.1520(b)(2) or § 80.1524(c)(1).

(k) Cause certified natural gasoline ethanol flex fuel blendstock to be in the distribution system that does not comply with the applicable benzene per-gallon cap standard under § 80.1524(c)(1).

(l) Produce, import, sell, offer for sale, dispense, supply, offer for supply, store, or transport ethanol flex fuel or natural gasoline ethanol flex fuel blendstock that does not comply with the applicable carbon, hydrogen, oxygen, nitrogen, and sulfur elemental composition standard under § 80.1520(b)(3), § 80.1521(b)(5)(iii), or § 80.1524(f) without a waiver.

(m) Produce, import, sell, offer for sale, dispense, supply, offer for supply, store, or transport ethanol flex fuel or natural gasoline ethanol flex fuel blendstock that does not comply with the applicable RVP standard under § 80.1520(c), § 80.1521(b)(5)(i), or § 80.1524(d)(1).

(n) Cause ethanol flex fuel or natural gasoline ethanol flex fuel blendstock to be in the distribution system that does not comply with the applicable RVP standard under § 80.1520(c), § 80.1521(b)(5)(i), or § 80.1524(d)(1).

(o) Produce, import, sell, offer for sale, dispense, supply, offer for supply, store, or transport natural gasoline ethanol flex fuel blendstock that does not comply with the T90 distillation point or final distillation point standards under § 80.1521(b)(5)(ii) or § 80.1524(e)(1).

(p) Cause natural gasoline ethanol flex fuel blendstock to be in the distribution system that does not comply with the T90 distillation point or final distillation point standards under § 80.1521(b)(5)(iii) or § 80.1524(e)(1).

(q) Produce ethanol flex fuel at an ethanol flex fuel full-refinery pursuant to § 80.1521 with blendstocks that do not meet the certified natural gasoline ethanol flex fuel blendstock requirements in § 80.1524, the uncertified natural gasoline ethanol flex fuel blendstock requirements in § 80.1521(b)(5), the denatured fuel ethanol requirements in § 80.1610, the undenatured ethanol requirements in § 80.1521(b)(1)(ii), or the applicable gasoline, RBOB, and CBOB requirements in this part.

(r) Produce ethanol flex fuel at an ethanol flex fuel bulk blender-refinery pursuant to § 80.1522 with blendstocks that do not meet the certified natural gasoline ethanol flex fuel blendstock requirements in § 80.1524, the denatured fuel ethanol requirements in § 80.1610, the undenatured ethanol requirements in § 80.1522(b)(1)(ii), or the applicable gasoline, RBOB, and CBOB requirements in this part.

(s) Produce ethanol flex fuel at a blender pump-refinery pursuant to § 80.1523 with blendstocks other than ethanol flex fuel that meets the requirements of § 80.1520 or gasoline.

(t) Introduce an additive into ethanol flex fuel that contributes more than 3 ppm to the sulfur content of the finished ethanol flex fuel unless acting in the capacity of an ethanol flex fuel full-refiner or ethanol flex fuel importer under § 80.1521.

(u) Cause or contribute to the introduction into commerce of an additive intended to be used in ethanol flex fuel at less than 1 volume percent that does not comply with the requirements of § 80.1525.

(v) Sell, introduce, cause, or permit the sale or introduction of a gasoline-ethanol blended fuel containing greater than 83 volume percent ethanol into a flexible fuel vehicle certified under 40 CFR part 86 or flexible fuel engine

certified under 40 CFR part 1054 after the date specified in § 80.1504(b)(2).

(w) Commingle separate batches of ethanol flex fuel except when separate batches of ethanol flex fuel are commingled in a storage tank at an ethanol flex fuel retail station or wholesale purchaser-consumer facility.

(x) Add any hydrocarbon or ethanol blendstock to previously certified ethanol flex fuel.

* * * * *

(z) Cause another person to commit an act in violation of paragraphs (a) through (y) of this section.

■ 101. Newly redesignated § 80.1565 is amended by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 80.1565 Liability for violations.

(a) *Persons liable.* Any person who violates § 80.1564 is liable for the violation. In addition, when the gasoline, ethanol flex fuel, or natural gasoline ethanol flex fuel blendstock contained in any storage tank at any facility owned, leased, operated, controlled, or supervised by any gasoline refiner, gasoline importer, oxygenate blender, carrier, distributor, reseller, retailer, ethanol flex fuel refiner, ethanol flex fuel importer, natural gasoline ethanol flex fuel blendstock refiner, natural gasoline ethanol flex fuel blendstock importer, or wholesale purchaser-consumer is found in violation of a fuel quality standard or a requirement related to the concentration of ethanol or natural gasoline in any gasoline or ethanol flex fuel, the following persons shall be deemed in violation:

(1) Each gasoline refiner, gasoline importer, oxygenate blender, ethanol flex fuel refiner, ethanol flex fuel importer, natural gasoline ethanol flex fuel blendstock refiner, natural gasoline ethanol flex fuel blendstock importer, carrier, distributor, reseller, retailer, or wholesale purchaser-consumer who owns, leases, operates, controls, or supervises the facility where the violation is found.

(2) Each gasoline refiner, gasoline importer, ethanol flex fuel refiner, ethanol flex fuel importer, natural gasoline ethanol flex fuel blendstock refiner, or natural gasoline ethanol flex fuel blendstock importer whose corporate, trade, or brand name, or whose marketing subsidiary's corporate, trade, or brand name, appears at the facility where the violation is found.

(3) Each gasoline refiner, gasoline importer, oxygenate blender, ethanol flex fuel refiner, ethanol flex fuel importer, natural gasoline ethanol flex fuel blendstock refiner, natural gasoline

ethanol flex fuel blendstock importer, distributor, or reseller who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline, ethanol flex fuel, or natural gasoline ethanol flex fuel blendstock that is in the storage tank containing gasoline, ethanol flex fuel, or natural gasoline ethanol flex fuel blendstock found to be in violation.

(4) Each carrier who dispensed, supplied, stored, or transported any gasoline, ethanol flex fuel, or natural gasoline ethanol flex fuel blendstock that is in the storage tank containing gasoline, ethanol flex fuel, or natural gasoline ethanol flex fuel blendstock found to be in violation, provided that EPA demonstrates, by reasonably specific showings using direct or circumstantial evidence, that the carrier caused the violation.

(b) For label violations under § 80.1564(b), only the wholesale purchaser-consumer or retailer and the branded gasoline refiner, branded gasoline importer, branded ethanol flex fuel refiner, or branded ethanol flex fuel importer, if any, shall be liable.

* * * * *

■ 102. Newly redesignated § 80.1566 is amended by revising the section heading and paragraph (a) to read as follows:

§ 80.1566 Penalties.

(a) Any person under § 80.1565 who is liable for a violation under § 80.1564 is subject to an administrative or civil penalty, as specified in Clean Air Act sections 205 and 211(d), for every day of each such violation and the amount of economic benefit or savings resulting from the violation.

* * * * *

■ 103. Newly redesignated § 80.1567 is amended by revising the section heading and paragraphs (a)(1) introductory text, (a)(1)(ii), (a)(1)(iii)(B), (a)(2)(i)(B), (a)(2)(i)(C), (a)(3), (b) introductory text, (b)(1), (b)(2) introductory text, (b)(3), (b)(4) introductory text, and (b)(4)(i) to read as follows:

§ 80.1567 Defenses for prohibited activities.

(a) * * *

(1) In any case in which a gasoline refiner, gasoline importer, oxygenate blender, ethanol flex fuel refiner, ethanol flex fuel importer, natural gasoline ethanol flex fuel blendstock refiner, natural gasoline ethanol flex fuel blendstock importer, carrier, distributor, reseller, retailer, or wholesale purchaser-consumer would

be in violation under § 80.1564(a) and (c) through (z) it shall be deemed not in violation if it can demonstrate:

* * * * *

(ii) That product transfer documents account for all of the gasoline, ethanol flex fuel, or natural gasoline ethanol flex fuel blendstock in the storage tank found in violation and indicate that the gasoline, ethanol flex fuel, or natural gasoline ethanol flex fuel blendstock met relevant requirements; and

* * * * *

(iii) * * *

(B) A carrier may rely on the sampling and testing program carried out by another party, including the party that owns the gasoline, ethanol flex fuel, or natural gasoline ethanol flex fuel blendstock in question, provided that the sampling and testing program is carried out properly.

* * * * *

(2) * * *

(i) * * *

(B) The action of any reseller, distributor, oxygenate blender, ethanol flex fuel bulk blender-refiner, blender pump-refiner, carrier, or a retailer or wholesale purchaser-consumer supplied by any of these persons, in violation of a contractual agreement imposed by the gasoline refiner or ethanol flex fuel refiner designed to prevent such action, and despite periodic sampling and testing by the gasoline refiner or ethanol flex fuel refiner to ensure compliance with such contractual obligation; or

(C) The action of any carrier or other distributor not subject to a contract with the gasoline refiner or ethanol flex fuel refiner but engaged by the gasoline refiner or ethanol flex fuel refiner for transportation of gasoline or ethanol flex fuel, despite specification or inspection of procedures and equipment by the gasoline refiner or ethanol flex fuel refiner that are reasonably calculated to prevent such action.

* * * * *

(3) For label violations under § 80.1564(b), the branded gasoline refiner, branded gasoline importer, branded ethanol flex fuel refiner, or branded ethanol flex fuel importer shall not be deemed liable if the requirements of paragraph (b)(4) of this section are met.

(b) *Quality assurance program.* In order to demonstrate an acceptable quality assurance program for gasoline, ethanol flex fuel, or natural gasoline ethanol flex fuel blendstock at all points in the gasoline, ethanol flex fuel, or natural gasoline ethanol flex fuel blendstock distribution network, other than at retail outlets and wholesale purchaser-consumer facilities, a party

must present evidence of the following in addition to other regular appropriate quality assurance procedures and practices:

(1)(i) For gasoline, a periodic sampling and testing program to determine if the gasoline contains applicable maximum and minimum volume percent of ethanol.

(ii) For ethanol flex fuel or natural gasoline ethanol flex fuel blendstock, a periodic sampling and testing program to determine if the ethanol flex fuel or natural gasoline ethanol flex fuel blendstock meets the applicable maximum sulfur content standard and RVP standard.

(2) That on each occasion when gasoline, ethanol flex fuel, or natural gasoline ethanol flex fuel blendstock is found in noncompliance with one of the requirements referred to in paragraph (b)(1) of this section:

* * * * *

(3) An oversight program conducted by a carrier under paragraph (b)(1) or (b)(2) of this section need not include periodic sampling and testing of gasoline, ethanol flex fuel, and natural gasoline ethanol flex fuel blendstock in a tank truck operated by a common carrier, but in lieu of such tank truck sampling and testing the common carrier shall demonstrate evidence of an oversight program for monitoring compliance with the requirements of § 80.1564 relating to the transport or storage of gasoline, ethanol flex fuel, or natural gasoline ethanol flex fuel blendstock by tank truck, such as appropriate guidance to drivers on compliance with applicable requirements and the periodic review of records normally received in the ordinary course of business concerning gasoline, ethanol flex fuel, or natural gasoline ethanol flex fuel blendstock quality and delivery.

(4) The periodic sampling and testing program specified in paragraph (b)(1) or (b)(2) of this section shall be deemed to have been in effect during the relevant time period for any party, including branded gasoline refiners, branded gasoline importers, branded ethanol flex fuel importers, and branded ethanol flex fuel refiners if:

(i) An EPA approved survey program under § 80.1561 or § 80.1562 was in effect and was implemented fully and properly;

* * * * *

■ 104. Newly redesignated § 80.1568 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (f), and adding new paragraph (b) and paragraphs (c) through (e).

The revision and additions read as follows:

§ 80.1568 What evidence may be used to determine compliance with the requirements of this subpart and liability for violations of this subpart?

(a) Compliance with the ethanol content of gasoline or ethanol flex fuel shall be determined based on the ethanol content of the gasoline or ethanol flex fuel measured or otherwise determined, as applicable, using any of the applicable methodologies specified in § 80.46, § 80.47, or § 80.1553. Any evidence or information, including the exclusive use of such evidence or information, may be used to establish the ethanol content of the gasoline or ethanol flex fuel if the evidence or information is relevant to whether the ethanol content of the gasoline or ethanol flex fuel would have been in compliance with the standard if the appropriate sampling and testing methodologies had been correctly performed. Such evidence may be obtained from any source or location and may include, but is not limited to, test results using methods other than those specified in §§ 80.46, 80.47, and 80.1553, business records, and commercial documents.

(b) Compliance with the sulfur standards of this subpart shall be determined based on the sulfur content of the gasoline, denatured fuel ethanol, oxygenate, ethanol flex fuel, or certified natural gasoline ethanol flex fuel blendstock measured or otherwise determined, as applicable, using any of the applicable methodologies specified in § 80.46, § 80.47, or § 80.1553. Any evidence or information, including the exclusive use of such evidence or information, may be used to establish the sulfur content of the gasoline, denatured fuel ethanol, oxygenate, ethanol flex fuel, or certified natural gasoline ethanol flex fuel blendstock if the evidence or information is relevant to whether the sulfur content of the gasoline, denatured fuel ethanol, oxygenate, ethanol flex fuel, or certified natural gasoline ethanol flex fuel blendstock would have been in compliance with the standards if the appropriate sampling and testing methodologies had been correctly performed. Such evidence may be obtained from any source or location and may include, but is not limited to, test results using methods other than those specified in §§ 80.46, 80.47, and 80.1553, business records, and commercial documents.

(c) Compliance with the benzene standards of this subpart shall be determined based on the benzene content of the gasoline, ethanol flex fuel, or certified natural gasoline ethanol flex fuel blendstock measured

or otherwise determined, as applicable, using any of the applicable methodologies specified in § 80.46, § 80.47, or § 80.1553. Any evidence or information, including the exclusive use of such evidence or information, may be used to establish the benzene content of the gasoline, ethanol flex fuel, or certified natural gasoline ethanol flex fuel blendstock if the evidence or information is relevant to whether the benzene content of the gasoline, ethanol flex fuel, or certified natural gasoline ethanol flex fuel blendstock would have been in compliance with the standard if the appropriate sampling and testing methodologies had been correctly performed. Such evidence may be obtained from any source or location and may include, but is not limited to, test results using methods other than those specified in §§ 80.46, 80.47, and 80.1553, business records, and commercial documents.

(d) Compliance with the RVP standards of this subpart shall be determined based on the maximum psi of the gasoline, ethanol flex fuel, or natural gasoline ethanol flex fuel blendstock measured or otherwise determined, as applicable, using any of the applicable methodologies specified in § 80.46, § 80.47, or § 80.1553. Any evidence or information, including the exclusive use of such evidence or information, may be used to establish the RVP of the gasoline, ethanol flex fuel, or natural gasoline ethanol flex fuel blendstock if the evidence or information is relevant to whether the RVP of the gasoline, ethanol flex fuel, or natural gasoline ethanol flex fuel blendstock would have been in compliance with the standard if the appropriate sampling and testing methodologies had been correctly performed. Such evidence may be obtained from any source or location and may include, but is not limited to, test results using methods other than those specified in §§ 80.46, 80.47, and 80.1553, business records, and commercial documents.

(e) Compliance with the T90 distillation point and final distillation point standards of this subpart for natural gasoline ethanol flex fuel blendstock shall be determined based on the maximum degrees Celsius of the natural gasoline ethanol flex fuel blendstock measured or otherwise determined, as applicable, using any of the applicable methodologies specified in § 80.46, § 80.47, or § 80.1553. Any evidence or information, including the exclusive use of such evidence or information, may be used to establish the T90 distillation point and final distillation point of the natural gasoline

ethanol flex fuel blendstock if the evidence or information is relevant to whether the T90 distillation point and final distillation point of the natural gasoline ethanol flex fuel blendstock would have been in compliance with the standard if the appropriate sampling and testing methodologies had been correctly performed. Such evidence may be obtained from any source or location and may include, but is not limited to, test results using methods other than those specified in §§ 80.46, 80.47, and 80.1553, business records, and commercial documents.

* * * * *

■ 105. Section 80.1569 is added to read as follows:

§ 80.1569 Attest engagement requirements.

In addition to the requirements for attest engagements that apply to refiners and importers under §§ 80.125 through 80.130, 80.1666, and other sections of this part, the following annual attest engagement procedures are required under this subpart.

(a) *Ethanol flex fuel full-refiners, ethanol flex fuel importers, ethanol flex fuel bulk blender-refiners, certified natural gasoline ethanol flex fuel blendstock refiners, and certified natural gasoline ethanol flex fuel blendstock importers, subject to national standards.* The provisions of this section apply to ethanol flex fuel full-refiners, ethanol flex fuel importers, ethanol flex fuel bulk blender-refiners, certified natural gasoline ethanol flex fuel blendstock refiners, and certified natural gasoline ethanol flex fuel blendstock importers. Blender pump-refiners that comply with the requirements of § 80.1523 are exempt from the attest engagement requirements of this section.

(b) *EPA reports for ethanol flex fuel full-refiners and importers.* (1) Obtain and read a copy of the ethanol flex fuel refiner's or importer's annual reports filed with EPA for the year under § 80.1551(a) and any underlying records maintained under § 80.1552(a).

(2) Agree the yearly volume reported to EPA with the inventory reconciliation analysis under the attest engagement provisions of § 80.128.

(3) Calculate the annual average sulfur level and annual average benzene level for all ethanol flex fuel and agree those values with the values reported to EPA.

(4) Agree the information in the ethanol flex fuel full-refiner's or importer's batch reports filed with EPA under § 80.1551(a), and any laboratory test results, with the information contained in the annual report required under § 80.1551(a).

(5) Reports as a finding any discrepancies identified in paragraphs (b)(1) through (4) of this section in the attest engagement report submitted to the EPA under § 80.130.

(c) *EPA reports for certified natural gasoline ethanol flex fuel blendstock.* (1) Obtain and read a copy of the certified natural gasoline ethanol flex fuel blendstock refinery's or importer's annual reports filed with EPA for the year under § 80.1551(c) and any underlying records maintained under § 80.1552(c).

(2) Agree the yearly volume reported to EPA with the inventory reconciliation analysis under the attest engagement provisions of § 80.128.

(3) Agree the information in the certified natural gasoline ethanol flex fuel blendstock refiner's or certified natural gasoline ethanol flex fuel blendstock importer's batch reports filed with EPA under § 80.1551(c), and any laboratory test results, with the information contained in the annual report required under § 80.1551(c).

(4) Report as a finding any discrepancies identified in paragraphs (c)(1) through (3) of this section in the attest engagement report submitted to the EPA under § 80.130.

(d) *EPA reports for ethanol flex fuel bulk blender-refiners.* (1) Obtain and read a copy of the ethanol flex fuel bulk blender-refiner's annual reports filed with EPA for the year under § 80.1551(b) and any underlying records maintained under § 80.1552(b).

(2) Agree the yearly volume reported to EPA with the inventory reconciliation analysis under the attest engagement provisions of § 80.128.

(3) Calculate the total volume of ethanol flex fuel blended, and agree those values with the values reported to EPA.

(4) Agree the information in the ethanol flex fuel bulk blender-refiners batch reports filed with EPA under § 80.1551(b), and any laboratory test results, with the information contained in the annual report required under § 80.1551(b).

(5) Report as a finding any discrepancies identified in paragraphs (d)(1) through (4) of this section in the attest engagement report submitted to the EPA under § 80.130.

§§ 80.1570–80.1579 [Reserved]

■ 106. Reserved §§ 80.1570 through 80.1579 are added.

■ 107. Section 80.1580 is added to read as follows:

§ 80.1580 Incorporation by reference.

The published materials identified in this section are incorporated by

reference into this subpart with the approval of the Director of the **Federal Register** under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, a document must be published in the **Federal Register** and the material must be available to the public. All approved materials are available for inspection at the Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center (EPA/DC) at Rm. 3334, William Jefferson Clinton Building West, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. These approved materials are also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030 or go to http://www.archives.gov/federal-register/code_of_federal_regulations/ibr_locations.html. In addition, these materials are available from the sources listed below.

(a) *ASTM International material.* The following standards are available from ASTM International, 100 Barr Harbor Dr., P.O. Box C700, West Conshohocken, PA 19428–2959, (877) 909–ASTM, or <http://www.astm.org>:

(1) ASTM D4057–12, Standard Practice for Manual Sampling of Petroleum and Petroleum Products, approved December 1, 2012.

(2) ASTM D4177–95 (Reapproved 2010), Standard Practice for Automatic Sampling of Petroleum and Petroleum Products, approved May 1, 2010.

(3) ASTM D5842–14, Standard Practice for Sampling and Handling of Fuels for Volatility Measurement, approved July 1, 2009.

(4) ASTM D5854–96 (Reapproved 2010), Standard Practice for Mixing and Handling of Liquid Samples of Petroleum and Petroleum Products, approved May 1, 2010.

(5) ASTM D2622–10, Sulfur Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry, approved February 15, 2010.

(6) ASTM D1266–13, Sulfur Test Method for Sulfur in Petroleum Products (Lamp Method), approved June 15, 2013.

(7) ASTM D3120–08 (Reapproved 2014), Standard Test Method for Trace Quantities of Sulfur in Light Liquid Petroleum Hydrocarbons by Oxidative

Microcoulometry, approved May 1, 2014.

(8) ASTM D5453–12, Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Spark Ignition Engine Fuel, Diesel Engine Fuel, and Engine Oil by Ultraviolet Fluorescence, approved November 1, 2012.

(9) ASTM D6920–13, Standard Test Method for Total Sulfur in Naphthas, Distillates, Reformulated Gasolines, Diesels, Biodiesels, and Motor Fuels by Oxidative Combustion and Electrochemical Detection, approved September 15, 2013.

(10) ASTM D7220–12, Standard Test Method for Sulfur in Automotive, Heating, and Jet Fuels by Monochromatic Energy Dispersive X-ray Fluorescence Spectrometry, approved June 15, 2012.

(11) ASTM D7039–13, Standard Test Method for Sulfur in Gasoline, Diesel Fuel, Jet Fuel, Kerosine, Biodiesel, Biodiesel Blends, and Gasoline-Ethanol Blends by Monochromatic Wavelength Dispersive X-ray Fluorescence Spectrometry, approved September 15, 2013.

(12) ASTM D5769, Standard Test Method for Determination of Benzene, Toluene, and Total Aromatics in Finished Gasolines by Gas Chromatography/Mass Spectrometry, approved May 1, 2010.

(13) ASTM D5580–13, Standard Test Method for Determination of Benzene, Toluene, Ethylbenzene, p/m-Xylene, o-Xylene, C9 and Heavier Aromatics, and Total Aromatics in Finished Gasoline by Gas Chromatography, approved September 15, 2013.

(14) ASTM D3606, Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography, approved October 1, 2010.

(15) ASTM D6730–01 (Reapproved 2011), Standard Test Method for Determination of Individual Components in Spark Ignition Engine Fuels by 100-Metre Capillary (with Precolumn) High-Resolution Gas Chromatography, approved May 1, 2011.

(16) ASTM D5191–13, Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method), approved December 1, 2013.

(17) ASTM D5482–07 (Reapproved 2013), Standard Test Method for Vapor Pressure of Petroleum Products (Mini-Method—Atmospheric), approved June 1, 2013.

(18) ASTM D6378–10, Standard Test Method for Determination of Vapor Pressure (VPx) of Petroleum Products,

Hydrocarbons, and Hydrocarbon Oxygenate Mixtures (Triple Expansion Method), approved October 1, 2010.

(19) ASTM D86–05, Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure, approved July 1, 2005.

(20) ASTM D5599–00(2010), Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection, approved October 1, 2010.

(21) ASTM D4815–15a, Standard Test Method for Determination for MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C1 to C4 Alcohols in Gasoline by Gas Chromatography, approved April 21, 2015.

(b) *National Institute of Standards and Technology Material*. NIST Handbook 158 (2016) is available from the National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899–1070, (301) 975–6478, or <http://www.nist.gov/pml/wmd/pubs/handbooks.cfm>.

Subpart O—Gasoline Sulfur

§ 80.1600 [Amended]

■ 108. Section 80.1600 is amended by removing the definition for “Ethanol denaturant”.

■ 109. Section 80.1603 is amended by:

■ a. Revising paragraph (d)(1);

■ b. Redesignating paragraph (d)(2) as paragraph (d)(3) and adding a new paragraph (d)(2); and

■ c. In the equation in paragraph (f)(1) revising the definition of “OC”.

The revisions and addition read as follows:

§ 80.1603 Gasoline sulfur standards for refiners and importers.

* * * * *

(d) * * *

(1) The refiner or importer shall calculate the sulfur content of the batch by volume weighting the sulfur content of the gasoline or BOB and the sulfur content of the added oxygenate pursuant to one of the methods listed in paragraphs (d)(1)(i) and (ii) of this section. A refiner or importer must choose to use only one method during each annual compliance period.

(i) Testing the sulfur content of a sample of the oxygenate pursuant to § 80.46 or § 80.47, as applicable. The refiner or importer must demonstrate through records relating to sampling, testing, and blending that the test result was derived from a representative sample of the oxygenate that was blended with the batch of gasoline or BOB.

(ii) If the oxygenate is denatured fuel ethanol, and the sulfur content has not

been tested under paragraph (d)(1)(i) of this section, then the sulfur content must be assumed to be 5.00 ppm.

(2) For denatured fuel ethanol, the refiner or importer may assume that the denatured fuel ethanol was blended with gasoline or BOB at a concentration of 10 volume percent, unless the refiner or importer can demonstrate that a different amount of denatured fuel ethanol was actually blended with a batch of gasoline or BOB.

(i) The refiner or importer of conventional gasoline or CBOB must comply with the requirements of § 80.101(d)(4)(ii).

(ii) The refiner or importer of reformulated gasoline or RBOB must comply with the requirements of § 80.69(a).

(ii) Any gasoline or BOB must meet the per-gallon sulfur standard of paragraph (a)(2) of this section prior to calculating any dilution from the oxygenate added downstream.

(iv) The reported volume of the batch is the combined volume of the reformulated gasoline, RBOB, conventional gasoline, or CBOB and the downstream added oxygenate.

* * * * *

(f) * * *

(1) * * *

OC = Sulfur credits used by the refinery or importer to show compliance, in ppm-gallons.

* * * * *

■ 110. Section 80.1608 is added to read as follows:

§ 80.1608 Gasoline sulfur standards and requirements for refiners that produce gasoline at a blender pump.

Beginning February 1, 2018, a refiner that produces E15 at a blender pump-refinery, as defined in § 80.1500, shall be deemed in compliance with the provisions of this subpart, provided the refiner is in compliance with the requirements for gasoline produced by blender pump-refiners in § 80.1530.

■ 111. Section 80.1609 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 80.1609 Oxygenate blender requirements.

(a) * * * Such oxygenate blenders are subject to the requirements of paragraph (b) of this section, the requirements and prohibitions applicable to downstream parties, the requirements of § 80.1603(d)(3), and the prohibition specified in § 80.1660(e).

* * * * *

■ 112. Section 80.1616 is amended by revising paragraph (c)(3) to read as follows:

§ 80.1616 Credit use and transfer.

* * * * *

(c) * * *

(3) CR_{T2} credits generated under § 80.1615(d) from January 1, 2017, through December 31, 2019, may only be traded to and ultimately used from January 1, 2017, through December 31, 2019, by small refiners and small volume refineries approved under § 80.1622.

■ 113. Section 80.1622 is amended by revising paragraph (g) to read as follows:

§ 80.1622 Approval for small refiner and small volume refinery status.

* * * * *

(g) Small refiner and small volume refinery status applications, and any other correspondence required by this section, § 80.1620, or § 80.1621 shall be sent to the attention of “Tier 3 Program (Small Refiner/Small Volume Refinery Application)” to the address in § 80.10(a).

■ 114. Section 80.1625 is amended by revising paragraph (c)(2) to read as follows:

§ 80.1625 Hardship provisions.

* * * * *

(c) * * *

(2) Hardship applications under this section must be sent to the attention of “Tier 3 Program (Hardship Application)” to the address in § 80.10(a).

■ 115. Section 80.1650 is amended by revising paragraphs (b)(3), (e)(1)(iii)(A), and (g)(1)(iii)(A) to read as follows:

§ 80.1650 Registration.

* * * * *

(b) * * *

(3) Any oxygenate blender required to register shall do so by November 1, 2016, or at least 90 days in advance of the first date that such person will blend oxygenate into gasoline, RBOB, or CBOB where the resulting gasoline is subject to the gasoline sulfur standards under this subpart O.

* * * * *

(e) * * *

(1) * * *

(iii) * * *

(A) Whether records are kept on-site or off-site of the facility.

* * * * *

(g) * * *

(1) * * *

(iii) * * *

(A) Whether records are kept on-site or off-site of the facility.

* * * * *

■ 116. Section 80.1652 is amended by revising paragraph (a)(7) introductory text and adding paragraphs (a)(7)(v) and (a)(7)(vi) to read as follows:

§ 80.1652 Reporting requirements for gasoline refiners, gasoline importers, oxygenate producers, and oxygenate importers.

* * * * *

(a) * * *

(7) For each batch of BOB or gasoline produced or imported during the averaging period, all the following:

* * * * *

(v) The type and amount of oxygenate, along with identification of the method used to determine the type and amount of oxygenate content of the batch, as determined under § 80.1603(d).

(vi) The sulfur content of the oxygenate, reported to two decimal places, along with identification of the method used to determine the sulfur content of the oxygenate, as determined under § 80.1603(d).

* * * * *

■ 117. Section 80.1656 is amended by revising paragraph (h) to read as follows:

§ 80.1656 Exemptions for gasoline used for research, development, or testing purposes.

* * * * *

(h) *Submission.* Requests for research and development exemptions shall be sent to the attention of “Tier 3 Program (R&D Exemption Request)” to the address in § 80.10(a).

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FEDERAL REGISTER

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Part IV

The President

Proclamation 9540—American Education Week, 2016

Proclamation 9541—Get Smart About Antibiotics Week, 2016

Proclamation 9542—National Apprenticeship Week, 2016

Presidential Documents

Title 3—

Proclamation 9540 of November 10, 2016**The President****American Education Week, 2016****By the President of the United States of America****A Proclamation**

With great potential to prepare our young people for the world they will inherit and lead, education provides one of the most essential foundations for prosperity and opportunity, strengthening our democracy and civic life and serving as a pathway to economic success. It helps cultivate passion and inspire young people to build and create; analyze and discover; understand and empathize with the people around them, and through education, students can form a deeper understanding of history and society, literature and languages, and how things work and why they do. During American Education Week, we recognize the importance of education and renew our commitment to bringing a better education within reach for all our people.

America's high school graduation rate is now the highest ever recorded, and the hard work people across our country have put in is paying off. States have set higher, better standards to help us out-teach and out-compete other nations. Teachers are going that extra mile to create meaningful and memorable lessons, rather than merely teaching to a test, and we have given them more flexibility to do so through the Every Student Succeeds Act—a bipartisan bill I signed last year to improve schools, give State and local lawmakers more control, and target resources to where they are needed most. But across our country, there are unfortunately still too many places where we can do far better for our students. Too many schools are underfunded and lack the resources or structures they need to prepare students for success, and for far too many students, their zip codes still determine how far they can go.

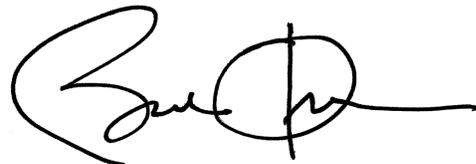
From strengthening high-quality early education and preschool to bolstering access to higher education, my Administration has made improving our education system a priority for our students from their first days of school to the days they start their careers. Nobody should be priced out of a higher education, so we are striving to make college more affordable and provide 2 years of free community college for any student willing to work for it. We also reformed the student loan system and expanded Pell grants to more students. The demands of our global economy and changing technology require students to learn real-world skills such as computer science in the classroom, so we are bringing new technology and digital tools, including high-speed internet, into classrooms to modernize education. And because too many girls, young people of color, and low-income students are not encouraged and underrepresented in science, technology, engineering, and math (STEM) courses and careers, we are investing in ways to broaden STEM participation as well as working to train more STEM teachers.

Empowering students of all ages, backgrounds, and beliefs to challenge themselves to reach higher, education can lift up a generation, allowing them to carry the torch of progress forward and make our world a better place. This week, let us recommit to the important work that remains and ensure every student in America can access the support, resources, and opportunities they need to thrive.

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 November 13 through November 19, 2016, as American Education Week. I call upon all Americans to observe this week by supporting their local schools and educators through appropriate activities, events, and programs designed to help create opportunities for every school and student in America.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of November, 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.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a horizontal line.

Presidential Documents

Proclamation 9541 of November 10, 2016

Get Smart About Antibiotics Week, 2016

By the President of the United States of America

A Proclamation

Since their discovery nearly nine decades ago, antibiotics have transformed the world of modern medicine. They have been instrumental in combating previously deadly or debilitating illnesses and have saved countless lives. Yet the misuse of antibiotics can pose risks to public health. As antibiotics have become more commonly prescribed and misused in all health care settings, bacteria have developed the capability to resist them, which can undermine their effectiveness. Get Smart About Antibiotics Week is an important opportunity to highlight the need to use antibiotics responsibly.

Antibiotic-resistant bacteria cause tens of thousands of deaths each year in the United States alone, and millions of Americans contract antibiotic-resistant illnesses that are difficult and expensive to treat. A major factor contributing to the emergence of antibiotic resistance is the inappropriate use of antibiotics, which are among the most frequently prescribed medicines and are also given to animals that are used for food. When a person takes antibiotics for a bacterial infection, bacteria sensitive to that medicine are generally destroyed or prevented from growing further—but bacteria that are resistant to that antibiotic will multiply, making current or future bacterial infections even worse and harder to treat. When antibiotics are used inappropriately, including when they are not needed—such as for treating viral infections like the common cold, or used in wrong doses or for the wrong period of time—the likelihood of antibiotic resistance is greatly increased, reducing the effectiveness of these antibiotics in the future. Antibiotic-resistant bacteria and infections cost our country tens of billions of dollars in health care expenses, but more importantly, if we lose effective antibiotic options for treating people, more patients will be put at risk—unless we act now.

That is why my Administration has taken action to reduce the emergence and spread of antibiotic-resistant bacteria and help ensure the continued availability of effective therapeutics for the treatment of bacterial infections. In 2014, I signed an Executive Order that created the Task Force for Combating Antibiotic-Resistant Bacteria, established an interagency approach to improve our Nation's antibiotic use, and built a framework to strengthen surveillance systems so important data on antibiotic-resistant bacteria can more easily be shared and tracked to prevent and control infections. We also launched the National Action Plan for Combating Antibiotic-Resistant Bacteria, through which we are working to slow the emergence of resistant bacteria and accelerate research efforts to develop alternative treatments, diagnostic tools, and vaccines. Last year, with recognition that our public health is connected to the health of animals and the environment, especially with regards to the spread of disease, we hosted the White House Forum on Antibiotic Stewardship to bring together key human and animal health stakeholders to identify successful strategies and opportunities for collaboration. We must continue working with food producers, health care providers, leaders in the private sector, and the American people to improve our antibiotic use.

With a sustained commitment to promoting the appropriate use of antibiotics, we can address this growing public health problem. In September, the United Nations General Assembly pledged their commitment to international cooperation to combat this global threat to human health, development, and security, and heads of states came together to commit to initiating, increasing, and sustaining awareness of antimicrobial resistance. This week, we resolve to improve awareness of the threat of antibiotic resistance to our public health, and we encourage medical professionals to prescribe, and patients to use, antibiotics responsibly. Let us ensure that future generations can access safe and effective antibiotics, and together let us address the harmful effects of antibiotic resistance.

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 November 13 through November 19, 2016, as Get Smart About Antibiotics Week. I call upon the scientific community, medical professionals, educators, businesses, industry leaders, and all Americans to observe this week by promoting the responsible use of antibiotics and raising awareness of the dangers inherent in their misuse and overuse.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of November, 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.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style.

Presidential Documents

Proclamation 9542 of November 10, 2016

National Apprenticeship Week, 2016

By the President of the United States of America

A Proclamation

When I took office, our economy was in freefall—millions of Americans lost their jobs and paid the price of the worst recession of our time. But with grit and determination, our people fought their way back and began working to rebuild an economy that works for everyone. Although we have added more than 15 million jobs in the last 6 years, too many people are still feeling left behind in our 21st-century economy. And because the jobs of today and tomorrow require more advanced skills and training, apprenticeship programs play an increasingly important role in helping people succeed in the workforce. This week, we celebrate the ways this job-driven training model prepares Americans for meaningful employment, and we resolve to expand access to this essential pathway to opportunity.

Registered apprenticeships connect job-seekers to better paying jobs that are in high demand, and by providing hands-on experiences and allowing Americans to earn while they learn, they help workers gain the skills and knowledge necessary to thrive in our modern economy. More than 90 percent of apprentices find employment after completing their programs, with graduates earning an average starting salary over \$60,000. In addition to benefiting employees, apprenticeship programs also help employers by increasing productivity and innovation with a high return on investment. A variety of industries—from healthcare to construction to information technology and advanced manufacturing—are using apprenticeship programs to meet their workforce needs. To bolster the competitiveness of those industries and others, it is imperative that our Nation continues investing in apprenticeship programs. Across our country, State and local leaders have done just that—in some cases expanding apprenticeships by over 20 percent in their regions. And since 2014, 290 colleges have joined in the effort to offer college credit toward a degree for completing apprenticeship programs.

My Administration applauds these widespread efforts and remains committed to supporting apprenticeship programs. Two years ago, I announced a goal to double the number of registered apprenticeships, and with 125,000 more active apprenticeships today than in 2014, we have seen the largest 3-year increase in nearly a decade. We invested unprecedented levels of Federal funding in apprenticeships, including recently awarding more than \$50 million in new grants to States through the ApprenticeshipUSA initiative. This year, we also invested over \$20 million to start new apprenticeship programs and help historically underrepresented individuals—including women, minorities, and people with disabilities—access apprenticeship programs. Last year, I signed the first-ever annual Federal funding for apprenticeship programs into law, and I will keep calling on the Congress to continue funding these efforts so that this work is carried forward for years to come. And because those who have served our country in uniform deserve every opportunity to enjoy the American dream they helped defend, we are working to provide assistance to service members and veterans who seek to enter registered apprenticeship programs.

During National Apprenticeship Week, employers, sponsors, and leaders across our country will host open houses to highlight the significant value

of apprenticeships in our economy. Let us encourage more employers to offer—and more workers to take advantage of—these indispensable learning and training opportunities, and together let us continue working to equip the American workforce to meet the demands of an ever changing future so it is filled with prosperity and opportunity for all who are willing to work for it.

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 November 13 through November 19, 2016, as National Apprenticeship Week. I urge the Congress, State and local governments, educational institutions, industry and labor leaders, and all Americans to support apprenticeship programs in the United States and to raise awareness of their contributions to our country.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of November, 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.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style.

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Federal Register

Vol. 81, No. 221

Wednesday, November 16, 2016

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FEDERAL REGISTER PAGES AND DATE, NOVEMBER

75671-76270.....	1
76271-76492.....	2
76493-76842.....	3
76843-78020.....	4
78021-78496.....	7
78497-78700.....	8
78701-78898.....	9
78899-79380.....	10
79381-79990.....	14
79991-80562.....	15
80563-80988.....	16

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

Proposed Rules:

1103.....	78356
1104.....	78356
1108.....	78360
1120.....	78369
1122.....	78376
1125.....	78356
1126.....	78382
1128.....	78382
1130.....	78382
1132.....	78382
1134.....	78382
1136.....	78382
1138.....	78382

3 CFR

Proclamations:

9529.....	76267
9530.....	76269
9531.....	76485
9532.....	76487
9533.....	76833
9534.....	76835
9535.....	76837
9536.....	76839
9537.....	76841
9538.....	79985
9539.....	79987
9540.....	80983
9541.....	80985
9542.....	80987

Executive Orders:

13745.....	76493
13746.....	78697
13747.....	78701

Administrative Orders:

Memorandums:

Memorandum of September 30, 2016.....	76483
Notices:	
Notice of October 31, 2016.....	76491
Notice of November 3, 2016.....	78495
Notice of November 8, 2016.....	79379
Notice of November 9, 2016.....	79989

5 CFR

315.....	78497
1820.....	78021
2638.....	76271
3501.....	76288

7 CFR

210.....	75671
220.....	75671
226.....	75671
250.....	75683

Proposed Rules:

56.....	78057
62.....	78057
70.....	78057

9 CFR

112.....	78499
----------	-------

10 CFR

Ch. I.....	78021
72.....	78022
429.....	79224, 79261
430.....	79261
431.....	79224, 79261, 79991

Proposed Rules:

34.....	78732
73.....	78062
430.....	76877, 80008
431.....	75742
460.....	78733
1016.....	80612

11 CFR

Proposed Rules:

1.....	76416
2.....	76416
4.....	76416
5.....	76416
6.....	76416
7.....	76416
100.....	76416
102.....	76416
103.....	76416
104.....	76416
105.....	76416
106.....	76416
108.....	76416
109.....	76416
110.....	76416
111.....	76416
112.....	76416
114.....	76416
116.....	76416
200.....	76416
201.....	76416
300.....	76416
9002.....	76416
9003.....	76416
9004.....	76416
9007.....	76416
9032.....	76416
9033.....	76416
9034.....	76416
9035.....	76416
9036.....	76416
9038.....	76416
9039.....	76416

12 CFR

708a.....	76495
708b.....	76495
747.....	78028
790.....	76495

1200.....76291	Proposed Rules:	517.....76306	686.....75926
1201.....76291	923.....78514	584.....76306	
1229.....76291		585.....76306	
1238.....76291	16 CFR		36 CFR
1239.....76291	Proposed Rules:	26 CFR	1.....77972
1261.....76291	314.....80011	1.....76496, 76497, 78908, 80587	9.....77972
1264.....76291			
1266.....76291	17 CFR	Proposed Rules:	37 CFR
1267.....76291	3.....80563	1.....76542, 76544	2.....78042
1269.....76291	Proposed Rules:		6.....76867
1270.....76291	240.....79122		7.....78042
1273.....76291		29 CFR	201.....75695
1274.....76291	18 CFR	4022.....80002	Proposed Rules:
1278.....76291	Proposed Rules:	Proposed Rules:	401.....78090
1281.....76291	33.....76542, 78756	1208.....79400	404.....78090
1282.....76291	35.....78756		
1290.....76291	40.....76542	30 CFR	40 CFR
1291.....76291	45.....76542	250.....80587	49.....78043
Proposed Rules:	153.....76542	700.....80592	52.....78043, 78048, 78052, 78688, 78691, 78722
Regulation H.....78063	157.....76542	701.....80592	62.....75708
22.....78063	340.....76542	773.....80592	81.....78688, 78691
208.....78063	341.....76542	774.....80592	97.....80593
326.....75753	342.....76315, 76542	777.....80592	180.....78509, 78913, 78917, 78923, 78928, 78932, 78937
339.....78063	343.....76315, 76542	779.....80592	Proposed Rules:
391.....75753	344.....76542	780.....80592	52.....75764, 76547, 76891, 78097, 78529, 78954
614.....78063	345.....76542	783.....80592	62.....75780
701.....78748	346.....76542	784.....80592	63.....76550
760.....78063	347.....76542	785.....80592	79.....78966, 80828
	357.....76315	800.....80592	80.....78966, 80828
13 CFR	380.....76542	816.....80592	81.....76891
Proposed Rules:		817.....80592	241.....75781
300.....79394	20 CFR	824.....80592	372.....80624
301.....79394	Proposed Rules:	827.....80592	
302.....79394	220.....78757		
303.....79394		31 CFR	
304.....79394	21 CFR	Ch. V.....76861	42 CFR
305.....79394	5.....78033	501.....76861	405.....80170
307.....79394	10.....78500	593.....76861	409.....76702
309.....79394	73.....75689	1010.....76863, 78715	410.....80170
314.....79394	74.....75689	1020.....76863	411.....80170
	117.....75692	1021.....76863	413.....77834
14 CFR	507.....75693	1022.....76863	414.....77008, 77834, 79562, 80170
29.....78707, 78708	1105.....80567	1023.....76863	416.....79562
39.....75684, 75686, 75687, 76843, 76845, 76848, 76851, 78708, 78711, 78899, 79381, 79384	1308.....79389	1024.....76863	417.....80170
71.....76854, 76855, 76857, 76858, 78902, 78904, 78905, 78906	Proposed Rules:	1025.....76863	419.....79562
73.....78029, 79998	1.....78526, 79400	1026.....76863	422.....80170
234.....76300, 76800	101.....76323		423.....80170
241.....76300	573.....78528	32 CFR	424.....80170
244.....76800		199.....76307	425.....80170
250.....76800	24 CFR	635.....78911	447.....80003
255.....76800	5.....80724	Proposed Rules:	460.....80170
256.....76800	91.....80724	21.....78442	482.....79562, 80594
257.....76800	92.....80724	22.....78442	483.....80594
259.....76800	93.....80724	32.....78442	484.....76702, 80594
399.....76800	200.....80724	33.....78442	485.....80594
Proposed Rules:	247.....80724	34.....78442	486.....79562
39.....75757, 75759, 75761, 75762, 76532, 76540, 76883, 76885, 78080, 78083, 78085, 78944, 78947, 79395, 80009	574.....80724	37.....78442	488.....79562
71.....76886, 76888, 78088, 78756, 78949, 80618, 80620	576.....80724	221.....76325	494.....77834
	578.....80724	637.....78951	495.....77008, 79562
15 CFR	880.....80724		Proposed Rules:
730.....78714	882.....80724	33 CFR	440.....78760
738.....76859	883.....80724	100.....76865, 78041, 78507	494.....76899
740.....76859	884.....80724	117.....76512, 76513, 76866, 78912, 79393	
742.....76859	886.....80724	165.....75694, 76513, 78722	43 CFR
744.....78714	888.....80567	Proposed Rules:	Proposed Rules:
746.....76859	891.....80724	117.....76889, 78952	8360.....76905
	905.....80724	165.....76545, 78759, 80621	
	960.....80724		44 CFR
	966.....80724	34 CFR	64.....76870, 78054
	982.....80567, 80724	30.....75926	
	983.....80567, 80724	668.....75926	45 CFR
	985.....80567	674.....75926	1370.....76446
	25 CFR	682.....75926	
	170.....78456	685.....75926	

47 CFR	48 CFR	49 CFR	
1.....79894	212.....78012	395.....75727	635.....76874
2.....79894	231.....78008	571.....78724	648 .....75731, 76516, 78728, 78942
10.....75710	242.....78008	800.....75729	679 .....75740, 76530, 76875, 80006, 80610
11.....75710, 76515	247.....78011	803.....75729	
15.....79894	252.....78011	804.....75729	Proposed Rules:
25.....79894	1032.....80608	Proposed Rules:	17.....75801
30.....79894	1052.....80608	393.....78103	18.....78560
64.....80594	Proposed Rules:	Ch. V.....78103	28.....79408
73.....76220	5.....80012	571.....78103	29.....79408
101.....79894	6.....80012		216.....80629
Proposed Rules:	19.....80012	50 CFR	622.....76908
10.....78539	202.....78015	17.....76311	635.....79409
11.....78539	215.....78014, 78015	28.....79948	665.....75803
25.....76551	225.....78015	29.....79948	
73.....79407	252.....78014, 78015	622.....78941, 80006	

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion

in today's **List of Public Laws**.
Last List October 19, 2016

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