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**Reader Aids**

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

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# Presidential Documents

**Title 3—**

## The President

**Presidential Determination No. 2017–03 of December 1, 2016**

## Suspension of Limitations Under the Jerusalem Embassy Act

**Memorandum for the Secretary of State**

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States, including section 7(a) of the Jerusalem Embassy Act of 1995 (Public Law 104–45) (the ''Act''), I hereby determine that it is necessary, in order to protect the national security interests of the United States, to suspend for a period of 6 months the limitations set forth in sections 3(b) and 7(b) of the Act.

You are authorized and directed to transmit this determination to the Congress, accompanied by a report in accordance with section 7(a) of the Act, and to publish the determination in the *Federal Register.*

This suspension shall take effect after transmission of this determination and report to the Congress.

THE WHITE HOUSE,
*Washington, December 1, 2016*

[FR Doc. 2016–29742
Filed 12–8–16; 8:45 am]
Billing code 4710–10–P

# Rules and Regulations

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## FARM CREDIT ADMINISTRATION

### 12 CFR Part 602

**RIN 3052–AD18**

### Releasing Information; Availability of Records of the Farm Credit Administration; FOIA Fees

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice of effective date.

**SUMMARY:** The Farm Credit Administration (FCA or Agency) issued a final rule amending its regulations to reflect changes to the Freedom of Information Act (FOIA). The FOIA Improvement Act of 2016 requires FCA to amend its FOIA regulations to extend the deadline for administrative appeals, to add information on dispute resolution services, and to amend the way FCA charges fees. In accordance with the law, the effective date of the rule is no earlier than 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session.

**DATES:** *Effective date:* Under the authority of 12 U.S.C. 2252, the regulation amending 12 CFR part 602 published on September 15, 2016 (81 FR 63365) is effective December 9, 2016.

**FOR FURTHER INFORMATION CONTACT:**
Michael T. Wilson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4124, TTY (703) 883–4056, or
Autumn Agans, Attorney-Advisor, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4056.

**SUPPLEMENTARY INFORMATION:** The Farm Credit Administration (FCA or Agency) issued a final rule amending its regulations to reflect changes to the Freedom of Information Act (FOIA). The FOIA Improvement Act of 2016 requires FCA to amend its FOIA regulations to extend the deadline for administrative appeals, to add information on dispute resolution services, and to amend the way FCA charges fees. In accordance with 12 U.S.C. 2252, the effective date of the final rule is no earlier than 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is December 9, 2016. (12 U.S.C. 2252(a)(9) and (10))

Dated: December 6, 2016.

**Dale L. Aultman,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 2016–29555 Filed 12–8–16; 8:45 am]

**BILLING CODE 6705–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 15 CFR Part 902

### 50 CFR Parts 300 and 600

**[Docket No. 150507434–6638–02]**

**RIN 0648–BF09**

### Magnuson-Stevens Fishery Conservation and Management Act; Seafood Import Monitoring Program

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

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA), this final rule establishes permitting, reporting and recordkeeping procedures relating to the importation of certain fish and fish products, identified as being at particular risk of illegal, unreported, and unregulated (IUU) fishing or seafood fraud, in order to implement the MSA's prohibition on the import and trade, in interstate or foreign commerce, of fish taken, possessed, transported or sold in violation of any foreign law or regulation or in contravention of a treaty or a binding conservation measure of a regional fishery organization to which the United States is a party. Collection of catch and landing documentation for certain fish and fish products will be accomplished through the government-wide International Trade Data System (ITDS) by electronic submission of data through the Automated Commercial Environment (ACE) maintained by the Department of Homeland Security, Customs and Border Protection (CBP). The information will be collected through the ITDS electronic single window consistent with the Safety and Accountability for Every (SAFE) Port Act of 2006 and other applicable statutes. Specifically, this rule revises an existing NMFS requirement for the importer of record to file electronically through ACE data prescribed under certain existing NMFS programs (and to retain records supporting such filings) to also cover the data required to be reported under this rule. This rule requires data to be reported on the harvest of fish and fish products. In addition, this rule requires retention of additional supply chain data by the importer of record and extends an existing NMFS requirement to obtain an annually renewable International Fisheries Trade Permit (IFTP) to the fish and fish products regulated under this rule. The information to be reported and retained, as applicable, under this rule will help authorities verify that the fish or fish products were lawfully acquired by providing information to trace each import shipment back to the initial harvest event(s). The rule will also decrease the incidence of seafood fraud by requiring the reporting of this information to the U.S. Government at import and requiring retention of documentation so that the information reported (*e.g.,* regarding species and harvest location) can be verified.

**DATES:** *Effective date:* This final rule is effective January 9, 2017. Title 50 CFR 300.324(a)(3) is stayed indefinitely. NMFS will publish a document in the **Federal Register** lifting the stay and announcing the effective date of 50 CFR 300.324(a)(3).

*Compliance date:* The compliance date for this rule for the species included at 50 CFR 300.324(a)(2) is January 1, 2018.

**ADDRESSES:** Applications for the International Fisheries Trade Permit may be completed and submitted at: *https://fisheriespermits.noaa.gov/.* Copies of the Final Regulatory Impact Review, Final Regulatory Flexibility Analysis and the information collection

request submitted to OMB may be obtained at: *http://www.iuufishing.noaa.gov/.*

**FOR FURTHER INFORMATION CONTACT:** Christopher Rogers, Office for International Affairs and Seafood Inspection, NOAA Fisheries (phone 301–427–8350, or email *christopher.rogers@noaa.gov*).

**SUPPLEMENTARY INFORMATION:**

## Background

On June 17, 2014, the White House released a *Presidential Memorandum* entitled ''Establishing a Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud.'' Among other actions, the Memorandum established a Presidential Task Force on Combating Illegal, Unreported, and Unregulated (IUU) Fishing and Seafood Fraud (Task Force), co-chaired by the Departments of State and Commerce, with membership including a number of other Federal agency and White House offices. The Task Force provided recommendations to the President through the National Ocean Council, and NMFS requested comments from the public on how to effectively implement the recommendations of the Task Force (79 FR 75536, December 18, 2014). Oversight for implementing the recommendations of the Task Force has been charged to the National Ocean Council Standing Committee on IUU Fishing and Seafood Fraud (NOC Committee).

Of the recommendations advanced to the President, Recommendations 14 and 15 called for the development of a risk-based traceability program (including defining operational standards and the types of information to be collected) as a means to combat IUU fishing and seafood fraud. The multiple steps toward implementation of Recommendations 14 and 15, as set out in the Task Force Action Plan, were described in the preamble to the proposed rule (81 FR 6210, February 5, 2016) and are not repeated here (see also *https://www.regulations.gov/docket?D=NOAA-NMFS-2014-0090*).

The proposed rule set forth a program of permitting, reporting and recordkeeping applicable to importers of record for imported fish and fish products within the scope of the initial phase of the seafood traceability program. A number of public webinars and meetings were held to explain the proposed rule and to take comments about the potential impacts of the trade reporting and recordkeeping requirements on entities engaged in seafood trade. Written comments that were received through the Federal e-rulemaking portal are available for viewing in the docket for this rulemaking (see *https://www.regulations.gov/docket?D=NOAA-NMFS-2015-0122*).

## Comments and Responses

NMFS received comments on the proposed rule from fishing industry groups, including fish importers, processors, trade organizations, non-governmental organizations (NGOs), private citizens, other government agencies, and foreign governments. Comments are summarized by category and NMFS responses are presented. NMFS received more than 67,933 signatures on group comment letters from private citizens through environmental NGOs supporting implementation of the Seafood Import Monitoring Program (Program). Comments are summarized by category and NMFS responses are presented.

Several comments received were not germane to this rulemaking and are not addressed in this section. These comments addressed actions outside the scope of the statutory mandate (*e.g.,* sharing information with consumers) or actions covered under other rulemakings (*e.g.,* the International Trade Data System integration or the Marine Mammal Protection Act fish import requirements.) In the following section, NMFS responds to the specific comments applicable to this rulemaking.

### *General Comments*

*Comment 1:* Many commenters asked the agency to implement a Seafood Inspection Monitoring Program that includes all seafood and traceability from the point of harvest to the point of final sale, and to incorporate consumer labeling.

*Response:* As indicated in the Task Force's recommendations to the President, it is the goal of the U.S. government ''to eventually expand the program to all seafood at first point of sale or import.'' The process for expansion will account for, among other factors, consideration of authorities needed for more robust implementation, stakeholder input, and the cost-effectiveness of program expansion. The NOC Committee will issue a report that includes an evaluation of the program as set out in a final rule, as well as recommendations of how and under what timeframe it would be expanded and measures that could be taken to provide traceability information to the consumer.

In recognition of the fact that expansion of the seafood traceability program to include all species will result in the inclusion of species having a lower perceived risk of IUU fishing and seafood fraud, NMFS will refer to the species that have been identified as ''at-risk'' of IUU fishing and seafood fraud as ''priority'' species in this rulemaking and associated guidance and outreach materials. See response to Comment 14 below for additional discussion on the transition from use of the term ''at risk'' in the final rule.

*Comment 2:* NMFS received numerous comments questioning the extent to which the rule, as proposed, meets U.S. obligations to comply with international trade agreements, and in particular with respect to national treatment.

*Response:* As described in the preamble to the proposed rule, this regulation addresses only the collection of information on imported fish and fish products at the point of entry into U.S. commerce. For U.S. domestic wild capture fisheries, entry into U.S. commerce occurs at the first point of landing or sale or transfer to a dealer or processor in the United States. For U.S. aquaculture products, entry into U.S. commerce is the first sale to a processor or directly to a consumer market.

For the priority species to which this rule applies, equivalent information is already being collected at the point of entry into commerce for the products of U.S. domestic fisheries pursuant to various federal and/or state fishery management and reporting programs. For this reason, this regulation does not duplicate data reporting requirements already in place for products of U.S. domestic fisheries, and instead focuses on accessing the data necessary to establish traceability from point of harvest or production to entry into U.S. commerce for imported fish and fish products.

However, current data collection for U.S. aquacultured shrimp and abalone is not equivalent to the data that would be reported for imports. Consequently, the effective date of this rule for imported shrimp and abalone products is stayed indefinitely.

*Comment 3:* A number of comments were driven by assumptions that, through this rulemaking, NMFS intended to require that fish and fish products from individual harvest events be segregated throughout the supply chain and identifiable by harvest event at the point of entry into U.S. commerce.

*Response:* NMFS clarifies that segregation of harvest events through the supply chain was not an intended requirement in the proposed rule and is not a requirement in the final rule.

Instead, a product offered for entry may be comprised of products from more than one harvest event. In such instances, an importer of record must provide information on each harvest event relevant to the contents of the shipment offered for entry but does not need to provide specific links between portions of the shipment and particular harvest events. See response to Comment 27 for further discussion. A mass balance calculation will not be applied at the time of entry to determine admissibility of the shipment because all of the product from any single harvest event may not be exported to the U.S. market.

*Scope of the Program*

*Comment 4:* Several commenters from the seafood industry expressed their opinion that the Program will not combat illegal fishing and seafood fraud, arguing that limited resources to combat these issues would be most effectively spent on international capacity building.

*Response:* NMFS and the other agencies contributing to this effort agree that the Program will in fact serve to reduce IUU fishing. On June 17, 2014, the White House released a Presidential Memorandum entitled ''Establishing a Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud'' which established and directed the President's Task Force on Combating Illegal, Unreported and Unregulated Fishing and Seafood Fraud to develop a comprehensive framework of integrated programs to combat IUU fishing and seafood fraud that emphasizes areas of greatest need. Per the Task Force's recommendations, it is in the national interest to prevent the entry of illegal seafood into U.S. commerce. Creating the Program, an information system that better facilitates data collection, sharing, and analysis among relevant regulators and enforcement authorities is a significant step forward in addressing IUU fishing and seafood fraud. The National Ocean Council Committee on IUU Fishing and Seafood Fraud continues to move forward on all of the 15 recommendations of the Task Force, including development of a program for capacity building and assistance as called for in Recommendation 6 of the Task Force action plan. The approach to capacity building will include technical assistance with fisheries governance, monitoring, recordkeeping and enforcement. For more information please visit *www.iuufishing.noaa.gov.*

*Comment 5:* NOAA received several comments regarding the inclusion of aquaculture products in the Program, noting that the application of measures to combat IUU fishing to aquaculture products is inappropriate.

*Response:* NOAA agrees that IUU fishing is not a concern directly related to the aquaculture industry. That said, the recommendations of the Presidential Task Force were intended to combat both IUU fishing and seafood fraud, and the scope of its recommendation to establish a seafood traceability program includes both wild-capture and aquaculture fish and fish products. Specifically, the Program is intended and designed to trace seafood from its entry into commerce back to the point of harvest or production. Inclusion of aquaculture products in the Program addresses several concerns. First, some imported fish products are sourced from both wild capture fisheries and aquaculture operations, yet are indistinguishable in product form. Excluding aquaculture products from the import reporting requirement of the Program presents enforcement issues if shipments are declared to be of aquaculture origin with no information to support such declaration. Additionally, similar to wild capture fisheries, aquaculture operations are likely to be subject to foreign laws or regulations pertaining to licensing and reporting on production and distribution; importation of aquaculture products harvested in violation of those laws would make them subject to the MSA provision under which this rule is promulgated. Finally, evidence exists that aquaculture products have been subject to various types of product misrepresentation, some of which can cause risk to human health. As is the case for wild capture fisheries, collecting information on the origin of aquaculture products supports the determination of conformance with foreign law or regulation, including the determination that the fish products are not fraudulently misrepresented.

*Comment 6:* NMFS received comment that, with respect to misrepresented products, the Program is redundant to existing Food and Drug Administration (FDA) programs and authorities. A commenter also questioned whether MSA section 307(1)(Q) provided authority to determine if seafood imports were the product of unregulated or unreported fishing.

*Response:* NMFS disagrees that the Program is redundant with existing programs and authorities. When developing its recommendations to the President, the Task Force on Combating IUU Fishing and Seafood Fraud considered existing rules and authorities and determined that measures to ensure that misrepresented products do not enter the U.S. market should be expanded. The Task Force's evaluation indicated the need to develop and implement a seafood traceability program that placed greater scrutiny of the source of seafood products and on the entire supply chain from point of harvest to entry into U.S. commerce. While existing authorities empower the FDA to enforce the accuracy of seafood labeling and trace food products through the supply chain, it does not currently administer any laws or programs which enable the U.S. government to ensure that seafood products imported into the United States were not taken, possessed, transported, or sold in violation of any foreign law or regulation. For example, the co-mingling of legally harvested and IUU seafood products between the point of harvest and entry into U.S. commerce would not be identified by existing FDA inspections.

MSA section 307(1)(Q) prohibits, among other things, imports of fish ''taken, possessed, transported, or sold *in violation of* any foreign law or regulation or any treaty or in contravention of any binding conservation measures adopted by an international agreement or organization to which the United States is a party.'' 16 U.S.C. 1857(1)(Q) (emphasis added). To effectively enforce this section, NMFS is adopting the reporting and recordkeeping requirements set forth in this rule. NMFS has broad discretion under the MSA to promulgate regulations as necessary to carry out provisions of the MSA. *Id.* 1855(d).

*Comment 7:* A number of comments were received urging NMFS to establish data collection programs for domestic shrimp and abalone aquaculture production to ensure that shrimp and abalone can be included in the Program when it begins.

*Response:* As described in the preamble to the proposed rule, gaps exist in the collection of traceability information for domestic aquaculture-raised shrimp and abalone, which is currently largely regulated at the state level. (81 FR 6212, February 5, 2016). Since publication of the proposed rule, NMFS has explored the opportunity to work with its state partners to establish reporting and recordkeeping requirements for aquaculture traceability information that could be shared with NMFS. However, this did not prove to be a viable approach at the present time. NMFS is thus staying the effective date of the rule as it pertains to shrimp and abalone until appropriate reporting and/or recordkeeping requirements for domestic aquaculture production can be established. To that

end, NMFS is continuing to work with its Presidential Task Force partner agencies with respect to measures that could be adopted to close the gaps and to ensure comparability between traceability requirements and NMFS' access to traceability information for imported and domestic shrimp and abalone.

For example, FDA, whose parent agency Health & Human Services is also a member of the Presidential Task Force, is currently exploring which of its authorities could fill the gap, including regulations that would require designating high risk foods for certain additional recordkeeping by food processors under the authority of section 204 of the Food Safety Modernization Act (21 U.S.C. 2223), which addresses enhanced tracking and tracing of food through recordkeeping and was passed by Congress in 2011. *See, e.g., Designation of High-Risk Foods for Tracing; Request for Comments and Scientific Data and Information* (79 FR 6596, February 4, 2014). Such additional recordkeeping requirements to enhance food safety are expected to facilitate FDA's ability to track the origin of and prevent the spread of foodborne illness. FDA is also planning to make revisions to its Seafood Hazard Analysis and Critical Control Points (Seafood HACCP) provisions.

As FDA conducts this work, NMFS, together with the other Presidential Task Force agencies, would assess the extent to which FDA's program, or other changes in state or federal law or regulation, have resulted in closing gaps in traceability requirements between domestic and imported shrimp and abalone. At such time that the domestic reporting and recordkeeping gaps have been closed, NMFS will then publish an action in the **Federal Register** to lift the stay of the effective date for § 300.324(a)(3) of the rule pertaining to shrimp and abalone. Adequate advance notice to the trade community would be provided in setting the effective date so that producers, processors, exporters and importers will have the opportunity to establish recordkeeping and reporting systems necessary to comply with the program.

*Comment 8:* One commenter asserted that NMFS only has the authority to trace aquaculture conducted in federal waters.

*Response:* Under the Magnuson-Stevens Act, NMFS cannot establish reporting requirements for domestic aquaculture that occurs within state waters or in terrestrially located facilities, which is where most domestic aquaculture occurs.

*Comment 9:* A number of commenters proposed that NMFS include reporting on production method for aquaculture imports of priority species, as a way to ascertain whether the feed used to raise imported farmed fish may have been illegally harvested.

*Response:* The Task Force clearly defined traceability for the purpose of the Program as beginning at the point of harvest for wild-capture fisheries, and at the point of production for aquaculture products. Therefore, it is outside the scope of Program to trace feed sources for imported aquaculture seafood, even if those feeds contain priority species.

*Comment 10:* NMFS received comments questioning the appropriateness of addressing both IUU fishing and seafood fraud through one data collection program.

*Response:* While IUU fishing and seafood fraud are indeed different issues, both can be effectively addressed through traceability within the scope of the Program (from the point of harvest or production to entry into U.S. commerce) because both are enabled by lack of transparency within the seafood supply chain. Many commenters referred to seafood fraud further down in the supply chain—at the dealer and wholesale level—and NMFS acknowledges these concerns but notes that they are beyond the scope of the Program.

*Comment 11:* Several groups suggested various reasons and methods for which the Program can and should be used to combat forced labor in the seafood industry.

*Response:* While NMFS agrees that forced labor and unfair labor practices are important issues in several fisheries and in the fish processing sector, the stated objective of the Program is to trace seafood products from the point of entry into U.S. commerce back to the point of harvest or production for the purpose of ensuring that illegally harvested or falsely represented seafood does not enter U.S. commerce. The data elements captured by the reporting and recordkeeping requirements were chosen to serve this specific objective. Data collected under the authority of the Magnuson-Stevens Act is considered to be confidential and may not be shared publicly. However, subject to the data confidentiality provisions of the Magnuson-Stevens Act (16 U.S.C. 1881a (b)), and other federal law, NMFS will provide information regarding entries of seafood product to aid in the investigation or prosecution of labor crimes by one of the U.S. government agencies that has the mandate and authority to do so. NMFS will determine the legal basis to share such information with those government agencies for such enforcement purposes.

*Species and Harmonized Tariff Schedule Codes*

*Comment 12:* Several commenters questioned the description of species included in this rulemaking as ''at-risk'' and suggested that NMFS had failed to provide adequate rationale for inclusion of certain species in the Program. Commenters also recommended that species be added or removed from the initial phase of Program. Species suggested for addition included orange roughy, skates and rays. Species suggested for removal include Atlantic and Pacific cod, shrimp, and blue crab, in some cases on the basis that keeping individual harvest events separated throughout the supply chain would place an unnecessary burden on industry relative to the risk of IUU fishing for these species.

*Response:* NMFS led a rigorous, interactive public process to identify the priority species for the Program and did not find sufficient new information from commenters to warrant changes to the ''at-risk'' (now referred to as, ''priority'') species list as was included in the proposed rule. The Presidential Task Force on Combating Illegal, Unreported and Unregulated Fishing and Seafood Fraud directed development of an initial traceability program for seafood products of particular concern because the species at issue are subject to significant seafood fraud or because they are at significant risk of being caught through IUU fishing.

In developing the seafood traceability program, NMFS requested and received extensive public comment regarding principles for identifying species at particular risk of IUU fishing or seafood fraud and on the application of those principles to a list of candidate species. An interagency expert working group reviewed public comments and confidential enforcement information and developed a draft list of ''at-risk'' species and once again sought public comment prior to publication of the final list of species to which this rule applies in October 2015 (80 FR 66867, October 30, 2015). In publishing the final list of species, NMFS provided the rationale for inclusion of each species on the list. NMFS considers the list of species to which this rule applies to be accurately and appropriately identified as those species most ''at-risk'' of IUU fishing or seafood fraud. The issue of reporting burden with respect to the risks applicable to particular species will become less relevant as traceability systems expand in global commerce and industry improves its ability to comply

with them in a cost-effective manner. However, the response to Comment 42 below addresses reporting burden issues for this initial phase of the Program.

*Comment 13:* Several commenters requested that species managed under Regional Fisheries Management Organization (RFMO) catch documentation schemes (CDS) be excluded from the scope of this rule.

*Response:* Bluefin tuna is the only priority species currently managed under an RFMO CDS, and NMFS, in the preamble to the proposed rule, discussed its reasons for inclusion in the Program. Although bluefin tuna species were determined to be at a lower risk of IUU fishing and seafood fraud than other tuna species and were not included on the list of at-risk species, the reporting and recordkeeping requirements proposed in this rule apply to HTS codes for fish and fish products of all tuna species including bluefin tuna. NMFS notes that bluefin tuna was historically a target of IUU fishing, and in response, two RFMOs implemented a CDS which together, include two of the three species worldwide. While NMFS continues to view the bluefin tuna to be at considerably lower risk of IUU fishing and seafood fraud than other tuna species and has made no modification to the list of at-risk species published on October 30, 2015, NMFS proposed to cover bluefin tuna in this rule (and has therefore included the HTS codes for bluefin tuna in the list of HTS codes to which this rule applies) in order to establish consistent treatment of tuna species, and avoid possible concerns that one species of tuna may be treated differently than others and therefore affect certain producers less favorably.

*Comment 14:* NMFS received comments from members of the domestic seafood sector as well as from several national governments expressing the opinion that the determination of ''at-risk'' was an implicit indictment of the management and biological status of fisheries for those species both in the United States and abroad and expressing concern that the inference will have a negative impact on the consumer's willingness to purchase products from those fisheries.

*Response:* NMFS has been clear about the fact that identification of priority species has been necessarily broad with respect to both area (it is applied at the species level without distinction of specific fisheries across the geographic range of the species) and principles (species were identified as priority on the basis of IUU-related principles, seafood fraud related principles, or any combination thereof). Records and data from both domestic and international sources were considered by the priority species working group. The process for making these determinations is described at: *http://www.iuufishing.NMFS.gov/RecommendationsandActions/RECOMMENDATION1415.aspx.*

NMFS has been clear throughout the process that inclusion of any species in the risk-based first phase of implementation of this seafood traceability program should not be considered in any way an indictment, either explicit or implicit, of the management system or biological status of a fishery in the United States or any foreign nation. NMFS believes that the seafood traceability program will ultimately serve to reassure the U.S. seafood consumer that seafood products harvested in, or imported to, the United States are harvested legally and conveyed through a transparent supply chain.

*Comment 15:* NMFS received a number of comments noting that priority species could be imported under HTS codes not listed in the proposed rule, and that some HTS codes not listed clearly contain priority species (*e.g.* Shrimp frozen in ATC, canned light meat tuna) while other HTS codes for highly processed products could contain priority species (*e.g.* Fish NSPF Dried, Marine Fish NSPF Frozen).

*Response:* NMFS notes that importers are legally obligated under CBP regulations to use the most detailed and descriptive HTS code applicable to the product being entered (see 19 CFR 141.90), and NMFS will monitor shifts in HTS code usage to ensure that importers are not illegally avoiding obligations to provide information pursuant to this rule through the use of less specific codes. While it remains operationally infeasible to apply this rule to all highly-processed products, NMFS will include in the set of HTS codes to which the Program applies all seafood products, including highly processed products, for which the priority species can be accurately determined and tracked from its point of harvest. NMFS will not apply this rule to HTS codes representing products such as fish oil, slurry, sauces, sticks, balls, cakes, puddings, meal and other similar highly processed fish products for which the species of fish comprising the product or the harvesting event(s) or aquaculture operation(s) of the product being entered, cannot be feasibly identified, either through inspection, labeling, or HTS code. NMFS disagrees that the failure to apply the rule to those products would provide sufficient economic incentive for businesses to increase production of highly processed products over traditional product forms in order to circumvent the requirements of the rule.

*Comment 16:* One commenter noted that a number of duplicate HTS codes were listed in the proposed rule.

*Response:* NMFS has removed duplicate HTS codes in the associated compliance guide, where HTS codes applicable to this rule will be updated as needed. This approach, which NMFS has used in other recent rulemakings, allows the agency to update the list of applicable HTS codes for priority species as described in the rule in the compliance guide as codes are revised by the U.S. International Trade Commission and published in the **Federal Register** (see 19 U.S.C. 1202). NMFS, however, wants to be clear that the expansion of the Program through its application to additional species will require new rulemaking with opportunity for public comment.

*Comment 17:* NMFS received comments expressing concern that importers may resort to the use of generic HTS codes in order to circumvent reporting and recordkeeping requirements associated with the Program and suggesting that those HTS codes should be included in the rule. One commenter identified several HTS codes for priority species products that were not included in the publication of the proposed rule.

*Response:* NMFS acknowledges the potential risk that an importer seeking to circumvent the requirements of this rule might attempt to utilize a more general HTS code to which the rule is not being applied. As NMFS noted in the response to Comment 15, importers are legally obligated to use the most detailed and descriptive HTS code applicable to the product being entered. Therefore, if a more specific HTS code (to which this rule is applied) is not used for the entry filing, such misspecification would be a violation of customs regulations. NMFS considered applying this rule to generic (non-species specific) HTS codes and requiring a disclaimer from the importer of record that the shipment does not include any of the species to which the Program applies, but decided against doing so as it would expand considerably the universe of importers required to obtain an International Fisheries Trade Permit for the sole purpose of making that disclaimer. NMFS does not consider such an approach to be a reasonable burden on the trade community for the initial phase of the Program. NMFS will monitor for significant increases in the

use of generic HTS codes or decreases in the use of HTS codes to which this Program applies.

NMFS has made corrections to the list of HTS codes to which the rule is applied. This list is not included in the regulatory language but will instead be described in the compliance guidance. This will allow for technical corrections and adjustments in the list of HTS codes applicable to the priority species without requiring additional rulemaking.

*Comment 18:* NMFS received numerous comments regarding the use of various combinations of names and codes for providing species information under this rulemaking.

*Response:* Per the recommendation of the interagency working group for the Presidential Task Force's Recommendation 10, the proposed rule required that for each entry, the scientific name, the accepted common name, and the United Nations Food and Agriculture Organization's (FAO) Aquatic Sciences and Fisheries Information System (ASFIS) 10-digit number and 3-alpha code must be reported. The recommendation and its inclusion in the proposed rule intentionally created redundancies within that data reporting element that would serve as a ''cross-check'' to reduce unintentional reporting errors.

NOAA agrees that reporting all three (scientific name, common name, and ASFIS code) may represent an unnecessary burden on industry and has, therefore, modified the rule to require only the ASFIS 3-alpha code. NOAA is confident that elimination of the requirement to report the scientific and common name of the fish or fish products while requiring the use of the ASFIS 3-alpha code will not diminish the effectiveness of the Program. If needed, a cross-check can be made between the product description reported to CBP, the HTS code, the product code reported to FDA, and the ASFIS 3-alpha code.

*Data Requirements/Elements*

*Comment 19:* A number of comments were received requesting clarity on expectations for the fishing area data element, whether it be FAO area, exclusive economic zone (EEZ), GPS coordinates (as the European Union (EU) requires) or otherwise.

*Response:* In consideration of comments received regarding area of wild capture, NMFS has described the format and coding for this data element in greater detail in the NMFS Implementation Guide posted by CBP at *http://www.cbp.gov/trade/ace/catair.* Several format options are recognized given the many differences in data collection and reporting conventions world-wide. For fisheries conducted in a nation's exclusive economic zone (EEZ) or territorial waters, the area of wild capture is the area that the competent authority exercising jurisdiction over the wild capture operation requires to be reported (*e.g.,* sub-area of the harvesting nation's EEZ). If no such reporting requirement exists, then for fishing within the EEZ, the area of wild capture is specified using the relevant International Organization for Standardization (ISO) 2-alpha code. See *http://www.fao.org/3/a-az126e.pdf* and *ftp://ftp.fao.org/FI/STAT/by_FishArea/Fishing_Areas_list.pdf.* For fishing beyond national jurisdiction, the United Nations Food and Agriculture Organization (FAO) Major Fishing Area codes (*http://www.fao.org/fishery/cwp/handbook/H/en*) should be used. Specific instructions for reporting fishing area are provided in the NMFS Implementation Guide.

*Comment 20:* A number of commenters suggested that NMFS include transshipment information as a reporting data element.

*Response:* NMFS acknowledges the value and importance of tracking transshipment information as a tool for combating IUU fishing. As drafted, the rule establishes access to this data by NMFS through audits of chain of custody information for selected entries. During the first year of implementation of the Program, NMFS will consider key chain of custody data elements that could be established as mandatory reporting requirements; as part of that process, the merits of requiring the reporting of transshipment data will be assessed. Any new mandatory reporting requirements for chain of custody data would be promulgated through a rulemaking.

*Comment 21:* NMFS received several comments regarding the value of using established naming and code conventions for fishing gear.

*Response:* As with fishing area, in response to comments, NMFS is providing further detail on the format and coding for the fishing gear data element in the NMFS Implementation Guide posted by CBP at *http://www.cbp.gov/trade/ace/*catair. The type of fishing gear should be specified per the reporting convention and codes used by the competent authority exercising jurisdiction over the wild capture operation. If no such reporting requirements exist, the FAO fishing gear code should be used. *See http://www.fao.org/fishery/cwp/handbook/M/en* (providing International Standard Statistical Classification of Fishing Gear).

*Comment 22:* Several groups commented on the requirement of Automatic Identification Systems and International Maritime Organization numbers for all fishing vessels whose seafood is imported into the United States.

*Response:* While noting that some entities utilize Automatic Identification System (AIS) for vessel monitoring, the purpose of AIS is to ensure vessel safety at sea and AIS is not an appropriate substitute for a Vessel Monitoring System (VMS) as a primary means of vessel monitoring for fisheries. The fifteen Task Force recommendations for combating IUU fishing and seafood fraud represent a broad set of tools and strategies for combating IUU fishing including international engagement, enforcement authorities, partnerships, and supply-chain transparency. Specifically, Recommendation 3 speaks to the enhancement of maritime domain awareness, a goal for which AIS may be, in certain circumstances, an effective tool.

Recommendation 2 of the Task Force Action Plan focuses on efforts to advance the elimination of IUU fishing through Regional Fishery Management Organizations. Within those fora and others, the U.S. government has consistently advocated for use of unique, permanent identifiers in support of a global record. Included in the set of data elements to be reported at the time of entry for wild-capture fish and fish products is the ''unique vessel identifier(s)'' (if available). For larger scale vessels, this may be a number assigned by the International Maritime Organization, or an identifier assigned by a Regional Fishery Management Organization. Smaller scale vessels may be assigned registration numbers by national or regional governments.

*Reporting and Recordkeeping*

*Comment 23:* Numerous commenters provided detailed feedback regarding the significant burden that the Program's data collection requirements would pose to small-scale fisheries. In addition to the substantial number of individual catches that could be contained in a single shipment of seafood, and the burden to industry that reporting each of those harvest events would represent, it was noted that small commercial fishing vessels in some developing countries are not required to have unique vessel identifiers, and in some cases unique identifiers for small vessels are required but not enforced. NMFS was also asked to consider the EU's approach to an aggregated

reporting for small-scale fisheries in an effort to reduce the burden to industry.

*Response:* NMFS agrees that small-scale fisheries should be addressed. To this end, the final rule would exempt an importer from providing vessel- or aquaculture facility-specific information, if the importer provides other required data elements based on an aggregated harvest report. The rule defines aggregated harvest report as a record that covers: (1) Harvests at a single collection point in a single calendar day from small-scale vessels (*i.e.,* twelve meters in length or less or 20 gross tons or less); (2) landing by a vessel to which catches of small-scale vessels were made at sea; or (3) deliveries made to a single collection point (processing facility, broker, or transport) on a single calendar day by aquaculture facilities that each deliver 1,000 kg or less in that day. Even if there is an Aggregated Harvest Report, the importer must still provide all of the information required under § 300.324(b)(2)–(3), (*e.g.,* total quantity and/or weight of the product(s) as landed/delivered, harvest or landing date, fishing area, species).

This provision will substantially reduce the amount of data that is required to be provided by importers of record of seafood originating from small-boat fisheries. NMFS does not consider this provision to negatively impact the effectiveness of the Program. As explained above, in order to invoke the exemption, an importer must provide data based on an aggregated harvest report. That report will record information on aggregated harvests or landings and establish the point to which a trace back would occur. This will enable NMFS to ascertain the jurisdiction/authority whose laws and regulations are relevant to the harvests or landings. NMFS notes that, in its catch certification program design, the European Union established similar provisions to address concerns related to small vessels.

*Comment 24:* Two commenters noted that the 5-year recordkeeping requirement could be burdensome to industry.

*Response:* In many federally-managed fisheries, recordkeeping is required for 2 years, and that time frame has proven to be effective for enforcement purposes. In the final rule, NMFS has reduced the record retention period from 5 to 2 years and has accounted for the costs associated with data storage in the final regulatory flexibility analysis. However, importers must take note that CBP recordkeeping requirements may differ from NMFS requirements, depending on the commodity and the circumstances of entry filing.

*Comment 25:* A number of comments from foreign industry sectors and governments requested decreased reporting or recordkeeping requirements at the national level, similar to the individual national reporting forms for some countries under the EU catch documentation scheme.

*Response:* NMFS will not offer nation-level treatment differences because, unlike the EU system which requires nation-level certification, the Program does not lend itself to nation-level treatment or considerations. Under the Program, accuracy in recordkeeping and reporting is the responsibility of the IFTP holder for seafood imports from any nation. The basic data about the harvest event are necessary to enable NMFS to ascertain the jurisdiction/authority whose laws and regulations are relevant to harvests or landings.

*Comment 26:* One commenter suggested that some or all of the harvest and landing data to be reported at the time of entry should be moved to the category of ''summary data'' that can be provided up to 10 days following the date of entry.

*Response:* NMFS believes that delayed reporting of key harvest and landing data could undermine its ability to apply risk-based enforcement strategies to identify IUU-sourced and misrepresented seafood and prevent the entry of such seafood into U.S. commerce. While NMFS does not intend to ask that CBP hold all shipments until reported data are verified, it will make that request when intelligence or risk analysis indicates that the source of the entry should be scrutinized. The final rule therefore requires that all data be reported at the time of entry. NMFS will reconsider this comment in the context of the elements and design of a Commerce Trusted Trader Program. See response to Comment 34 for further information.

*Comment 27:* NMFS received several comments regarding the logistical feasibility of tracking seafood from entry into U.S. commerce back to point of harvest or production, particularly in situations involving complex chains of custody and co-mingling of products from numerous harvest events, fishing areas, and processing facilities.

*Response:* NMFS points out that complexity of the supply chain was one of the principles established to determine the list of priority species to which this rule will initially apply, and the reporting and recordkeeping requirements of the rule will enhance NMFS' ability to track product from point of harvest to entry into U.S. commerce.

NMFS acknowledges that co-mingling of product is an established and essential practice within the seafood supply chain and does not consider the tracing of like products from each individual harvest event through one or more co-mingling processes to be logistically feasible or necessary for the success of the Program. Under this rule, in cases where product offered for entry is comprised of one or more events of co-mingling of fish (*e.g.,* at the landing point, processor, re-processor, etc.), the importer of record would be required to provide data on all harvest events contributing to the product(s) offered for entry that are made from priority species subject to this rule. The rule does not require, however, that the importer provide data linking each unit (*e.g.,* each fish, fillet, block, etc.) of the product(s) offered for entry to a specific harvest event. This will in some cases result in reported harvest records totaling more than the product weight of the shipment in question, but mass balance is not a criterion for admissibility. Reporting requirements under the Program will enable NMFS to ascertain, among other things, the jurisdiction/authority whose laws and regulations are relevant to harvests or landings.

*Comment 28:* NMFS received comment that the proposed requirement that importers of record retain chain of custody records for five years creates a significant burden that could be mitigated by allowing suppliers to retain records and provide them to importers as needed.

*Response:* One of the Program's basic design objectives is that importers devote adequate attention to their supply chain so as to confirm that the fish and fish products that they are importing were legally harvested and are accurately represented. NMFS has therefore maintained a recordkeeping requirement in the final rule, and as noted in response to Comment 24, has reduced the requirement from 5 to 2 years. For purposes of this record keeping, digital records are entirely acceptable.

*Comment 29:* NMFS received comment stressing that the timeline for expanding the reporting requirements for inclusion of chain of custody information in the ITDS message set should be specified in the final rule.

*Response:* The preamble to the proposed rule for the Program describes NMFS' intent to consider, during the first year of implementation of the Program, key chain of custody data elements to be reported rather than kept

as records as currently proposed. Modifying that requirement of the Program will require additional rulemaking.

NMFS chose to not require the reporting of chain of custody information at this time for three primary reasons: (1) Introduction of data elements that are less similar to those message sets already developed for ITDS implementation of NMFS-administered catch documentation programs would very likely expand and prolong the ITDS programming requirements, resulting in implementation uncertainty; (2) were NMFS to require document images as a means to collect chain of custody data at the time of entry, it would have no way of manipulating and analyzing the data through automated processes as it can with data provided through the ITDS message sets; and (3) chain of custody events represent a broad and diverse universe of potential movements and transactions and cannot, without some analysis of baseline reports, establish standardized chain of custody data elements that will be useful for screening entries and informing risk-based enforcement.

Following implementation of the Program, NMFS intends to evaluate chain of custody information as part of the post-entry auditing process. These evaluations will, over time, inform the Agency as to the types of chain of custody data that can feasibly be collected through the ITDS reporting process and the costs and benefits associated with requiring reporting of the additional data.

*Harmonization/Intersection With Other Relevant Programs/Requirements*

*Comment 30:* NMFS received several comments asking that it consider potential interfaces of the Program and third-party traceability and certification entities. One commenter advised that NMFS take care in not expressing an implicit endorsement or requirement for use of, or participation in, any such third-party programs as a condition for compliance with the rule.

*Response:* The Program neither prevents nor requires the use of third-party certification or traceability systems in support of compliance with its reporting and recordkeeping requirements. NMFS acknowledges that some third-party programs use data similar to that required by the Program. To the extent that third-party traceability systems or certification programs serve as conduits for data elements described in this rule, there is nothing prohibiting the importer of record or their authorized agent from utilizing those data, either manually or electronically, to meet the Program reporting requirements or from using those systems to meet Program recordkeeping requirements. The Program thus affords flexibility in terms of meeting reporting and recordkeeping requirements, but does not endorse, explicitly or implicitly any third party traceability systems. NMFS requested, and will consider, comments regarding the use of third-party certification and traceability systems in the context of the Commerce Trusted Trader Program. See response to Comment 34 for further information.

*Comment 31:* NMFS received several comments that it should consider, recognize, or adopt the EU's Catch Documentation Program in the design of the U.S. Program.

*Response:* The Task Force considered the European Union's Catch Documentation Program in developing its recommendation to establish a risk-based traceability program to allow fish and fish product to be tracked from point of harvest or production to entry into U.S. commerce. The United States recognizes and appreciates the European Union's leadership and innovation in establishing its program and fully supports its continued application. While fundamental structural differences exist between the European Union's program and both the domestic and import components of the United States' seafood traceability program, the types of information and actual data elements with respect to harvest and landing information are highly comparable. Furthermore, NMFS looked to the European Union's example in addressing operational challenges for small-boat fleets and structured the small boat provision in the Program to closely resemble that approach. Further consideration will be given to the European Union's Catch Documentation Program in the development of the Commerce Trusted Trader Program. See response to Comment 34 for further information.

*Comment 32:* NMFS received numerous comments describing the importance of data standardization across other national and RFMO catch documentation and traceability programs and data interoperability in the design of the Program. Commenters also noted the importance of careful integration of the Program and the Tuna Tracking and Verification Program.

*Response:* NMFS acknowledges the benefit of standardization and interoperability of data and has, in its design of the Program, attempted to balance those values against the specific strategic and operational objectives of the Program. For example, while the EU catch documentation program is essentially a ''government-to-government'' framework, the Program is designed to shift the responsibility for preventing the import of IUU-sourced and misrepresented seafood to the supply chain itself and stands as a ''government-to-business'' program. That said, the harvest and landing data elements captured by the two programs are quite similar. In order to minimize the burden of similar, but not identical data and reporting requirements, NMFS designed the Program for maximum flexibility in both the source and format of supporting documentation. Recognizing that harvest and landing data are reported and collected differently in various fisheries and regions of the United States, the Program is intended to accommodate the same diversity of approaches with respect to imported seafood.

With respect to the Tuna Tracking and Verification Program (TTVP), NMFS agrees that the data elements and compliance requirements of the two programs should be as closely aligned as possible given their differences in underlying authorities and regulatory objectives. To that end, NMFS published an interim final rule intended to improve the regulatory framework within which the Dolphin Protection Consumer Information Act is implemented (81 FR 15444, March 23, 2016). Among other things, this rule would bring the chain of custody recordkeeping requirements for the TTVP in closer alignment with the requirements of the Program, as proposed. For HTS codes to which both the Program and the TTVP apply, ITDS programming will ensure that common data elements are reported no more than once.

*Timeframe for Implementation*

*Comment 33:* Many commenters offered feedback on the implementation time frame for this rule. Some recommended a phased-in approach where mandatory reporting would be required earlier for some species than others. Suggested implementation periods ranged from six months to one year, with one commenter suggesting a 3–6 month period when industry could practice submission to the ACE portal. Some countries commented that additional capacity building and clear explanation of compliance guidelines will be necessary to meet a one year implementation time frame.

*Response:* NMFS agrees with commenters' interests in allowing time for the Program to be implemented smoothly and without disruption to

trade. To allow for development of both the ACE software maintained by the Department of Homeland Security, CBP and the industry data submission software, testing data input into ACE, and international capacity building, the Program will be implemented (*i.e.,* required permitting, reporting and recordkeeping will be mandatory) approximately twelve months following the publication of this rule, except for shrimp and abalone. NMFS believes that this implementation schedule will provide adequate time for foreign exporters to establish systems for conveying harvest, landing, and chain of custody information to the U.S. importers of record. The requirements for the U.S. importer to obtain the IFTP, to report harvest event data at entry filing, and to maintain supply chain records for auditing purposes, will be enforced beginning January 1, 2018 (except for shrimp and abalone). However, this means that U.S. importers must work with exporters to obtain harvest and supply chain records for products harvested earlier than January 1, 2018 if these products will be entered into the United States on or after that date. NMFS evaluated the time interval from harvest date to entry date for several fish products currently subject to import monitoring programs (*e.g.,* bluefin tuna, swordfish, toothfish) and determined that in most cases U.S. imports occur within a few months of the harvest event. Some products may be in the supply chain for longer periods due to processing, cold storage and shipping time. U.S. importers should work with their suppliers in advance of the compliance date of January 1, 2018 to ensure that the required information is available. NMFS will publish a document in the **Federal Register** to establish the effective date of the rule for shrimp and abalone products and, in establishing that date, due consideration will be given to the need for adequate advance notice. See response to Comment 7.

*Comment 34:* One commenter noted that the timeline for implementation of the Program should not be established until the Commerce Trusted Trader Program is closer to implementation.

*Response:* NMFS disagrees. The NOC Committee considers the development of a Commerce Trusted Trader Program to be a critical element in the long-term implementation and success of the Program. The Trusted Trader Program would allow NMFS and the trade to segment risk in supply chain management and allow for streamlined entry processing and reduced inspections for entities granted program status. NMFS announced a 60-day public comment period on the elements and design of a Commerce Trusted Trader Program on April 29, 2016 (81 FR 25646). That announcement identifies a variety of issues that will be considered in the development and implementation of a Commerce Trusted Trader Program. It also acknowledges that while NMFS will make every effort to implement the Commerce Trusted Trader Program simultaneously with the Program, rulemaking and implementation requirements remain uncertain, and those factors could preclude simultaneous implementation. NMFS sought comment on the potential impacts and benefits of having the Commerce Trusted Trader Program implemented some weeks or months following implementation of the Program and recommendations for design and implementation of the Commerce Trusted Trader Program as well as measures that can be taken to minimize the cost and burden of those impacts and maximize available benefits. As NMFS considers comments and initiates design of the Trusted Trader Program, the requirements for additional rulemaking will be determined and the time frame for implementation will be clarified.

*Comment 35:* NMFS received comment that the timing of expansion of the seafood traceability program to all species should be prescribed in the final rule.

*Response:* NMFS disagrees. The Administration has indicated and described in the Action Plan its goal to expand the Program to all seafood, after consideration of factors including authorities needed, stakeholder input, and cost-effectiveness, which includes a risk-based implementation. The need to evaluate operational successes and challenges before expanding the Program to more, or all, species was clearly recognized by the Task Force as evidenced by its recommendation that the National Ocean Council Committee on IUU fishing and Seafood Fraud publish a report in December of 2016 evaluating the Program as set out in this final rule, identifying hurdles and potential approaches for addressing those hurdles, costs and benefits of expanding the Program, and issues associated with sharing traceability information at the consumer level.

Due to existing operational uncertainties regarding the implementation of this first phase of the Program such as the scheduling of, and time required for, the programming of the ITDS for data reporting by the importer of record, NMFS has established an implementation date for the Program of approximately 12 months following the publication of the final rule. For similar reasons, it would be inadvisable to project a schedule for expansion of the Program at this time. Furthermore, specifying the expansion of the Program to all species in this rulemaking would require that the supporting analyses (Regulatory Impact Review and Final Regulatory Flexibility Analysis) include in their scope reporting and recordkeeping for all seafood. NMFS does not consider those analyses to be feasible at this time and therefore cannot define a schedule for expansion for inclusion in this rule.

*Outreach and Assistance to Industry*

*Comment 36:* Several national governments commented on the importance of outreach and capacity building to support implementation of, and compliance with, the Program implementing regulations.

*Response:* NMFS recognizes the need for outreach and education in support of implementation of the Program and compliance with its requirements. NMFS noted in the proposed rule the intention to provide assistance to exporting nations to support compliance with the requirements of the program, including by providing assistance to strengthen fisheries governance structures and enforcement bodies to combat IUU fishing and seafood fraud and to establish systems to enable export shipments of fish and fish products to be traced back to the point of harvest. However, outreach will not be limited to international engagement. NMFS will work closely with the U.S. seafood trade sector as well to ensure awareness and understanding of the program requirements in support of importers' compliance with the rule. Additionally, NMFS intends to publish compliance guidance as well as a ''plain language'' description of the final regulation.

*Burden to Industry/Regulatory Impact/ Alternatives*

*Comment 37:* A number of commenters requested additional detail on how the reported data will be used. Some comments called for the data to be used to support enforcement of other statutes (*e.g.,* Lacey Act), others requested a more robust description of enforcement and auditing procedures.

*Response:* Historically, much of the enforcement effort to address imports of illegally-harvested or misrepresented seafood has been reactive, working at the border posts and following suspected shipments. The intent of this rulemaking is to enhance the ability of NOAA and its law enforcement partners to detect misrepresented or illegally

harvested fish and fish product before it enters U.S. Commerce. The data and records required by this regulation will be used to screen products in an effort to detect and prevent illegally-harvested and misrepresented seafood from entering U.S. commerce.

The National Marine Fisheries Service Seafood Inspection Program (SIP) inspects over two billion pounds of seafood per year for export and domestic consumption. About 20 percent of domestic consumption is examined by SIP. These examinations include checks for proper labeling, proper net weight and proper nomenclature. The NOAA Office of Law Enforcement also conducts inspections of imported fish and fish products. These inspections are conducted in collaboration with our federal and state law enforcement partners to ensure compliance with statutes administered by NOAA, such as the requirements of the Magnuson-Stevens Fishery Conservation and Management Act and the Lacey Act. The new data and reporting requirements will further enhance the effectiveness of these inspections and provide information that will allow limited enforcement resources to be better targeted at fish and fish products suspected of being misrepresented or illegally harvested.

NOAA has also actively increased collaboration on analysis of U.S. fisheries imports with other law enforcement agencies in an effort to detect and prevent illegally-harvested and misrepresented fish and fish products from entering the U.S. market. To this end, NOAA has entered into information sharing agreements with other law enforcement agencies and is also a partner government agency with CBP in the transition to electronic reporting of trade data through the ITDS, an initiative highlighted in the President's recent Executive Order on streamlining export/import processes.

NOAA has also recently signed a memorandum of understanding with Customs and Border Protection to participate as a member agency of its Commercial Targeting and Analysis Center (CTAC). At the multiagency CTAC facility, members have direct access to a wide array of import processing and law enforcement systems, as well as other member agencies' data systems, to enable collaborative analysis, development and coordination of operational targeting of import shipments for a wide variety of regulatory and enforcement concerns. CTAC member agencies such as NOAA, FDA and CBP are increasing collaboration to target potential seafood fraud in an effort to develop intelligence driven targeting of high risk seafood product imports.

These partnerships, combined with the additional information and records required by this rulemaking will significantly increase the likelihood of detecting illegal seafood products before admission into U.S. commerce, allow more effective use of limited law enforcement resources available to enforce the various federal statutes designed to prevent illegal importation of products into the United States, and reduce the need for random inspections which can slow the entry of legal products into the United States.

*Comment 38:* NMFS received a number of comments requesting that it remove certain species, in particular Atlantic and Pacific cod, from the initial phase of the Seafood Import Monitoring Program based on a lack of documented foreign illegal fishing activity for the species in question.

*Response:* Many factors were considered in determining the potential for a species to be susceptible to IUU fishing or seafood fraud, including known foreign or domestic unlawful harvest of the species, susceptibility to mislabeling or species substitution, and presence of international catch documentation schemes among others. While not widespread, there have been reports to NOAA of illegal fishing of both Atlantic and Pacific cod species. Additionally, there are reports of, and significant risk of, species substitution.

We note that a preliminary review of 2015 data, for example, demonstrates that at least 94% of the cod imported by the United States is filleted and/or dried or otherwise processed. The majority of such processed product is imported under tariff codes which are not specific with regard to ocean area of origin (Atlantic, Pacific). Given the use of non-specific tariff codes, there is considerable potential for such generic and ready-to-use cod products to be described, for instance, ''Atlantic cod fillets'', even if not of Atlantic origin—the sort of misrepresentation that would be precluded by requiring a report on the harvest event. It is also important to consider that processing into fillets is regarded under international customs convention and implementing national regulations as a ''substantial transformation'' of the underlying product, and therefore the product acquires a new country of origin with the result that the harvesting nation may no longer be apparent without specific data on the harvest event.

*Comment 39:* A number of commenters provided input on liability for data accuracy. One commenter saw a lack of clarity in NMFS' definition of the 'importer of record' and expressed that this person may not always be the best person to hold responsible for accuracy of the information submitted to ACE. One nation's comments indicated that it would be helpful for NMFS to clarify if there is any liability for nations/flag states under this rule.

*Response:* Nations or flag states are not expected to certify the accuracy of data. Under the Program, responsibility for accurate reporting is borne by the IFTP holder, which NMFS has referred to as the importer of record as required to be designated on each entry filed with CBP. See response to Comment 49 for further information.

*Comment 40:* The U.S. Small Business Administration Office of Advocacy (Advocacy) commented that NMFS did not adequately comply with requirements under the Regulatory Flexibility Act, and expressed concerns that NMFS did not adequately assess the burden on small businesses.

*Response:* NMFS has made adjustments to the final rule that reduce the burden on industry without compromising the integrity of the Program. As discussed in the Initial Regulatory Flexibility Analysis (IRFA), all businesses directly affected by this rulemaking are considered small businesses. The Regulatory Flexibility Act (RFA) has two main requirements for an initial regulatory flexibility analysis (IRFA): (1) ''describe the impact'' the rule would have on small entities, and (2) discuss alternatives that ''minimize any significant economic impact . . . on small entities.'' NMFS did both with the information available at the time the proposed rule was published. To assess the impact on small entities, in the Regulatory Impact Review (RIR) and IRFA together, NMFS analyzed the costs associated with the proposed rule which included the precise amount of permit fees and an acknowledgement of incremental costs of reporting and recordkeeping. As much of the reporting is either already required or already otherwise undertaken by the impacted entities, NMFS could not definitively provide precise incremental costs and, instead, described the types of incremental costs that regulated entities would face. The RFA specifically acknowledges that costs often cannot be precisely quantified and, thus, allows that ''an agency may provide . . . more general descriptive statements if quantification is not practicable or reliable.'' 5 U.S.C. 607. NMFS sought comment on these incremental costs to allow small entities the chance to provide relevant quantifiable information. Granting small businesses a voice in the rulemaking

process is one of the main purposes of the RFA. *See* Regulatory Flexibility Act of 1980, Public Law 96–354 (2)(a)(8).

The commenter incorrectly states that ''NMFS asserts that the only new cost will be the industry wide cost of $60,000 due to permitting fees.'' The proposed rule did not state that this would be the *only* cost—it simply stated that ''there will be approximately 2,000 new applications for the IFTP, with an estimated industry-wide increase in annual costs to importers of $60,000 in permit fees.'' NMFS then later states that ''[i]ncremental costs are likely to consist of developing interoperable systems . . .''. NMFS also discusses the issue of incremental costs in the IRFA summary in the proposed rule and section 1.3.2 of the RIR.

The commenter asserted that ''the IRFA does not have information about the costs of the reporting requirements''. However, NMFS states that there will not likely be significant additional costs because the industry is otherwise in compliance with the rule. The IRFA stated that ''[d]ata sets to be submitted electronically . . . are, to some extent, either already collected by the trade in the course of supply chain management, already required to be collected and submitted . . ., or collected in support of third-party certification schemes voluntarily adopted by the trade.'' NMFS acknowledges that there will be incremental costs; it just could not quantify them.

The commenter also stated that the number of required data points increases the economic burden on small entities and encouraged NMFS to reconsider whether all of the data points were necessary to collect from small entities. NMFS notes that the proposed rule explains why each data point is necessary to establish the chain of custody and an effective traceability scheme (81 FR 6210, February 5, 2016). In addition, the third alternative that was analyzed in the IRFA discussed a ''reduced data set'' and was not selected as the preferred alternative because it would not achieve the objectives of the rule.

*Comment 41:* Advocacy also requested that NMFS consider ''less burdensome alternatives'' including the voluntary third party certification, Trusted Trader, and European Union catch certification programs and, if these three programs are not viable alternatives, explain why. Advocacy requested that NMFS analyze and take advantage of opportunities to harmonize the Program requirements with the existing EU catch certification scheme and third party certification to minimize the burden on industry.

*Response:* The proposed rule noted that NMFS did not have sufficient information to analyze the extent to which voluntary third party certification, Trusted Trader, and European Union Catch Certification programs could minimize burden to industry and whether any of them could achieve the rule's statutory objectives, and specifically sought and received public comment on these programs. NMFS received and took into consideration public comment on these programs. Throughout the Response to Comments section of this final rule, NMFS has noted where changes have been made that minimize the burden on industry without compromising the integrity of the Program and those changes are also reflected in the regulatory text and in the Final Regulatory Flexibility Analysis accompanying this rule.

*Comment 42:* NMFS received comments that the Program will impose substantial costs on the international seafood supply chain. Commenters challenged the cost estimated in the Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis, suggesting that the compliance burden for this rulemaking will often be incrementally higher due to multiple harvest events associated with an entry. Commenters also suggested that the total hourly cost to an importer for the labor required to enter traceability data through ITDS is $31.25 per hour. Commenters also identified additional costs not incorporated in the Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis, including the cost of paying harvesters and farmers for traceability data, the cost of auditing suppliers to insure that reported information is accurate and complete, and the cost of insuring themselves against the risk that imported information is erroneous, and the related risk of delayed entry of imported products. Comments suggest that enforcement of the regulations implementing the Program will cause exporters to choose alternative markets to the United States.

*Response:* NMFS noted in the Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis the difficulty of estimating certain costs associated with compliance with the rule for a new program, and identified specific issues about which the public was encouraged to comment. NMFS is greatly appreciative of the thoughtful and detailed comments offered in this regard. Commenters affirmed that the operational attributes of some, if not all of the fisheries for species subject to the Program are such that entries of fish or fish products from those fisheries will represent, and require the reporting of data for, more than one harvest event. This was anticipated by NMFS and described in the proposed rule. In response to public comment, NMFS has made some revisions in the final rule. See response to Comment 43 for information on the revisions.

With regard to cost of labor to enter data, NMFS estimated that the average hourly total cost was $15.00 per hour in the Draft Regulatory Impact Review. In light of public comment, NMFS updated the hourly rate to $25.00 per hour in the Final Regulatory Impact Review and Final Regulatory Flexibility Analysis, based on the Bureau of Labor Statistics' estimate of total cost to the employer for office and administrative support services in the fourth quarter of 2015.

Commenters apparently assume a linear relationship between the number of harvest events related to an import entry and the amount of time required to provide the traceability data. This would be the case if all data were manually entered. NMFS has consulted with software developers who are in the business of automating the ITDS data-input process for importers and customs brokers. As they point out, many of the data elements will be identical across numerous harvest events, and developers will likely identify ''loop-backs'' that preclude the need to repeatedly enter the same species, harvest area, address, etc. for a series of harvest events in the same fishery. As well, importers are likely to build databases from which previously reported information can be pulled and entered as appropriate. These efficiencies will create economies of scale such that the actual (average) time needed to complete the harvest information associated with an entry will decrease as the number of harvest events increases.

NMFS does not agree that harvesters and farmers will be in a position to demand payment for traceability data, and commenters did not provide quantitative or qualitative information regarding the likelihood of such risks. There is no indication that the imposition of existing catch documentation systems (*e.g.,* the EU system) resulted in measurable increases in the cost of seafood. The harvest event data required to be provided under the U.S. program aligns very closely with those data on the harvest event required in the European Union catch certification program. Providing this information to U.S. importers subject to the Program should be no more costly or burdensome.

However, we recognize that some businesses and some countries do not currently export to the EU and, for these entities, providing harvest, landing, and chain of custody information to U.S. importers subject to this rule could result in new burdens for these exporters to supply priority species to the U.S. market. There are few affected countries not currently exporting the designated priority species to the E.U. market, suggesting compliance with the U.S. requirements would not pose an inordinate burden on U.S. importers or consumers given the relatively small volume of trade involved. We note, however, that individual businesses located within each country may have different levels of experience with exporting to the EU market. While this analysis assumes minimal incremental regulatory burden for businesses located in countries that ship to the EU, it is possible that some businesses within these countries will incur costs as a consequence of this rule, in particular the chain-of-custody recordkeeping in cases of complex supply chains, that may be either passed through to U.S. consumers or result in a decline in exports to the U.S. market. Both of these responses to the Program could affect prices in the U.S. market. However, evidence indicates that there were not significant effects on supply to the EU seafood market in response to the EU's IUU regulation.

The rule does not require any formal audits by suppliers. Adoption of that practice by an importer would likely be informed by the importer's business model, relationship with suppliers, and perceived risk that the supplier might, whether intentional or not, provide incorrect traceability information to the importer.

Commenters pointed to the cost of insurance indemnifying importers against the cost of civil penalties for failure to comply with the rule. NMFS is not familiar with such insurance but assumes that need for indemnification would also pertain to risks associated with existing other agency regulations on seafood safety and trade documentation.

NMFS disagrees that implementation of the Program will result in exporters choosing alternative markets to the United States. Similar information requirements relative to harvesting authorizations and documentation of processing and transshipment were placed on fisheries exporting to the European Union through the implementation of its catch documentation program. No significant disruptions in European seafood markets were observed. The United States represents an equally attractive international market, access to which is well worth the effort of providing traceability data to exporters.

*Comment 43:* One commenter developed three scenarios (mahi mahi, blue swimming crab, and Atlantic cod) for the purpose of demonstrating the number of harvest events that may be associated with an import entry of those species. The commenter stated that there is no evidence showing that the Program's data reporting requirements will lead to reduction of either IUU fishing or seafood mislabeling.

*Response:* NMFS greatly appreciates the detailed information provided. On the basis of those comments as well as similar information from other commenters, NMFS revised the final rule to exempt an importer from having to provide vessel- or aquaculture facility-specific information where certain criteria are met for small-scale vessels and aquaculture facilities, if the importer provides other information required under this rule from an aggregated harvest report. See response to Comment 23 for detailed explanation of the exemption.

A detailed response to each scenario follows. While NMFS does not agree with a number of assumptions and methodologies applied in the comment, the commenter's overall approach to estimating potential harvest events is sound. Below, NMFS applies the commenter's overall estimation approach to the three scenarios adjusting the estimates to reflect the aforementioned provision for aggregating data from small-scale fisheries. These alternative estimates are also provided in the Final Regulatory Impact Review and Final regulatory Flexibility Analysis.

*Mahi-Mahi From Ecuador*

NMFS finds the general description of the fishery operations in the comment to be consistent with information provided in publicly available peer-reviewed literature. Based on fleet composition data with respect to small ''day-boats'' and mothership operations described in the same journal publication, NMFS believes that the new aggregated harvest report exemption will significantly reduce the number of harvest events potentially associated with any given entry of product from this fishery. Assuming that the average aggregated harvest amount was only 20,000 pounds (considering both shore-based aggregations not to exceed one day and trip-based aggregations by motherships), a thirty-five percent yield of processed product as described in the comments would result in one ''harvest event'' accounting for 7,350 pounds of mahi-mahi portions. Following the commenter's methodology, which estimated that a full container of mahi-mahi is 44,000 pounds, there would only be six harvest events that must be reported on entry of that container into the United States.

NMFS agrees that the relationship between yield of specific portions and products included in an entry may impact the actual number of harvest events associated with a shipment. That said, there are many additional variables that could incrementally increase or decrease that number of harvest events.

*Blue Crab From Mexico*

As noted by the commenter, blue swimming crab is not included in the list of priority species and is therefore outside the scope of this rulemaking. NMFS appreciates these comments, and notes that the new aggregated harvest report exemption will significantly reduce the number of landing events that would need to be reported by the importer of record for species covered under the Program.

*Atlantic Cod*

Of the major exporters of Atlantic cod products to the United States, Iceland is particularly transparent with respect to trade and fisheries statistics and will be referenced throughout this response due to the public availability of data from that nation. NMFS takes issue with several elements of the commenter's description of the Atlantic Cod fishery. Comments focused solely on minced block and treated that product as an exclusively secondary product, noting a 2.5 percent recovery rate. While minced product may, as stated in the comments, represent 2.5 percent of the catch, that does not equate to using 2.5 percent of each fish out of each harvest event. To the extent that minced product is made from mis-cut fillets or as a primary form of production, recovery per fish could approach 30 percent (FAO lists the yield of skinless cod fillets as 36 percent).

The exclusive focus on minced block product mischaracterizes the nature of U.S. imports of Atlantic cod. From 2013 through 2015, imports of product reported under the tariff schedule code for ''GROUNDFISH COD NSPF MINCED FROZEN >6.8KG'' made up, on average, 0.6 percent of total cod imports according to NMFS's seafood trade database. During the years 2010 through 2014, Iceland's export of minced cod block ranged from 147 metric tons to 214 metric tons, while its export of fresh and frozen fillet products to the U.S. ranged from 1,799 to 4,779 metric tons. While the use of secondary-product

minced cod block as described in the comments may be useful in making an extreme example, it would be inappropriate to extrapolate the results to the entirety of U.S. Atlantic cod imports.

Comments characterize the average catch of small ''in shore'' boats to be about 400 pounds, or 180 kilograms per day. A review of cod landings by a variety of Icelandic harvesting vessels ranging from small inshore boats (<12 meters) to large trawlers in Iceland's web-based catch reporting system (*http://www.fiskistofa.is*) indicates that 180 kilogram landings are much more the exception than the rule. While examples of landings less than 1,000 kilograms can be identified, there are many more that can be found in the tens of thousands of kilograms.

To the extent that small cod landings occur, small vessels are likely to be the source of those landings and the final rule exempts importers from providing vessel-specific information from small-scale vessels (*i.e.,* twelve meters in length or less or 20 gross tons or less), if the importer provides other information required under the rule based on an aggregated harvest report. See response to Comment 23 for further detail on the exemption. Under this exemption, the importer of record would be responsible for reporting fewer harvest events at the time of entry into U.S. commerce.

When considering the more common-sized cod landings in Iceland using a conservative example of 25,000 kilograms per landing, a much more probable scenario for reporting requirements emerges. Assuming a 35% yield of processed product for cod fillets, a 50,000 pound container requires 142,900 pounds of round cod, (68,836 kilograms), which results in an estimated minimum of three harvest events that an importer would be required to report upon entry of the container into U.S. commerce.

NMFS points to the recommendations of the Task Force to address the concern that NMFS has not demonstrated that the Program will lead to a decrease in IUU fishing and seafood fraud. Supply chain traceability is one of four thematic approaches identified by the Task Force. Others include international engagement, enforcement capabilities, and partnerships. NMFS considers the sum of the entire suite of recommendations to be an integrated and effective framework for combating IUU fishing and seafood fraud. Additionally, the Program's recordkeeping and reporting requirements are very closely aligned with those used in other catch documentation schemes which share the objective of preventing the entry of illegally harvested and misrepresented fish and fish products into commerce and reflect many of the best practices associated with seafood traceability.

*Comment 44:* Commenters asserted that NMFS failed to consider costs of audits of the information received from overseas suppliers, training costs, the longer lead time, or additional insurance for inaccurate uploads in development of the IRFA.

*Response:* NMFS appreciates comments on the cost evaluation presented in the Initial Regulatory Flexibility Analysis (IRFA) accompanying this rule. While NMFS disagrees with the comments on the actual cost of these variables, NMFS has taken all comments into consideration and included new cost estimates in the Final Regulatory Flexibility Analysis.

*Comment 45:* Two commenters expressed concern that reported information could contain trade secrets that would pose significant business impacts if disclosed to competitors.

*Response:* NMFS believes industry has or can employ measures to support this transfer of information securely to the IFTP holder. As explained in the proposed rule, data security will be given the highest priority. Information collected via ACE and maintained in CBP systems is highly sensitive commercial, financial and proprietary information, generally exempt from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552(b)(4)) and prohibited from disclosure by the Trade Secrets Act (18 U.S.C. 1905). Further, information required to be submitted under the MSA is subject to confidentiality of information requirements at 16 U.S.C. 1881a(b).

*Comment 46:* A commenter requested clarification on what constitutes a ''harvest event'' in the case of multi-day trips on large catcher vessels or catcher processors. The commenter pointed out that a ''harvest event'' could be applied to each set or tow, each day, or to the entire fishing trip in the aggregate.

*Response:* In response to that comment, NMFS has added a definition of ''harvest event'' in § 300.321. For trips occurring in more than one harvest area, catch from each harvest area during the trip will be considered a separate harvest event. As discussed in response to Comment 23 and other comments, the final rule includes an exemption related to an aggregated harvest report.

*Comment 47:* NMFS received comments expressing concern regarding the likely frequency of product inspection and post-entry audits and verification of traceability information provided in accordance with this rule. One commenter noted that inspections and real-time verification of data provided at the time of entry may slow the flow of seafood imports into the United States, having an especially detrimental effect on shippers of fresh (unfrozen) product.

*Response:* NMFS agrees that frequent or lengthy delays of imported seafood import entries at the U.S. border may be costly to industry. NMFS intends to focus the use of its authority to request holds on incoming shipments primarily when risk indicators or specific intelligence indicate reason to do so. Post-entry audit and verification will be more frequent, but those activities will not impact the flow of trade or speed of entry, provided that all necessary data are provided at the time of entry.

*Comment 48:* Several commenters expressed concern over NMFS's definition of ''importer of record'' in the proposed rule, stating that import entry functions and product ownership is handled in a variety of ways across importing companies and in some cases, the proposed definition may not fit the business model.

*Response:* NMFS believes the Program has been designed to accommodate all of the scenarios described in the comment provided the entity in question is located in the U.S. The determination of who should act as the importer of record is a private, business decision between the parties involved in the importation process. The importer of record is the entity required to be designated on the entry filing and this rule requires that the entity so designated is issued an IFTP. That permit number must be reported to make the entry. In some instances, there may be more than one entity involved in a transaction that holds an IFTP. In that instance, it is again up to the parties involved in the transaction to determine whose permit will be used for the entry and who will therefore be designated as the importer of record on the filing with CBP.

*Comment 49:* One commenter noted that seafood importers do not have the ability to ground-truth claims by exporters that the product is from legitimate fishing operations.

*Response:* NMFS disagrees. Per the Magnuson-Stevens Act authority by which this rule is promulgated, it is illegal to import any fish taken, possessed, transported, or sold in violation of any foreign law or regulation. Therefore, NMFS considers it to be the responsibility of seafood importers to determine the source of the product entering the U.S. market, and it

is one of the reasons that the National Ocean Council Committee determined that a ''government-to-business'' model would be most effective in ensuring that the U.S. seafood supply chain is closed to IUU and misrepresented fish and fish products.

**Changes From the Proposed Rule**

In response to comments received on the proposed rule, NMFS has made a number of changes in the final rule. In addition, certain other changes in the regulatory text are necessary because final rules, promulgated after the proposed rule for the Seafood Traceability Program was published, amended regulatory text that is also amended by this rule.

*Redesignation of 50 CFR Part 300 Subpart Q*

In publishing the proposed rule for integration of NMFS current trade monitoring programs within the ITDS (see 80 FR 81251, December 29, 2015), NMFS incorrectly numbered the sections of the proposed new subpart R to 50 CFR part 300 such that the section numbers were out of sequence with existing subpart Q. Consequently, the final rule for ITDS integration (81 FR 51126, August 3, 2016) redesignated existing subpart Q as new subpart R and inserted a new subpart Q for the ITDS regulations with sections numbered in the correct order. Because the proposed rule for the Seafood Traceability Program (81 FR 6210, February 5, 2016) would have further revised regulatory text in the proposed subpart R to 50 CFR part 300, this final rule amends regulations that now exist in subpart Q.

*Electronic System for Atlantic Bluefin Tuna*

In a final rule published April 1, 2016 (81 FR 18796), NMFS amended the regulatory text at 50 CFR 300.181 through 300.189 to reflect the implementation of the electronic bluefin tuna catch document program of the International Commission for the Conservation of Atlantic Tunas (ICCAT). As a contracting party to ICCAT, the United States has implemented the electronic bluefin tuna catch document program and has established simplified entry and export reporting requirements for bluefin tuna accordingly. The simplified ACE reporting requirements for bluefin tuna catches recorded in the ICCAT system are sufficient to meet the requirements of the Program established under this rule. Therefore, this rule does not amend those reporting requirements.

*Aggregated Harvest Report Exemption*

This final rule has been revised to exempt an importer of record from providing vessel-, farm-, or aquaculture facility-specific information under § 300.324(b)(1), if the importer provides other required information from an Aggregated Harvest Report. Even if there is an Aggregated Harvest Report, the importer is still required to provide harvest information under § 300.324(b)(2)–(3).

Following an approach similar to that of the EU's CDS regarding small-scale vessels, the final rule at § 300.321 defines Aggregated Harvest Report to mean a record made at a single collection point on a single calendar day for aggregated catches by multiple small-scale fishing vessels (20 measured gross tons or less or 12 meters length overall or less) offloaded at that collection point on that day, or for a landing by a vessel to which the catches of one or more small-scale vessels were transferred at sea. A report would include non-vessel specific harvest event information in aggregate for all fish from small-scale vessels received by an entity (*e.g.,* fish receiver) operating at a collection point on a single calendar day. As there may be multiple receivers at a landing point, each fish receiver would generate one or more harvest event reports for their respective aggregate receipts on each day.

Aggregated Harvest Report is also defined at § 300.321 to mean a record made at a single collection point or processing facility on a single calendar day for aggregated deliveries from multiple small-scale aquaculture facilities, where each aquaculture facility delivers 1,000 kg or less to that collection point or processing facility on that day. The entity operating at the collection point or processing facility may record the harvest event information in aggregate for all receipts by that entity or processing facility on that day. As there may be multiple receivers at an intermediate collection point prior to delivery to a processor, each receiver would generate a daily harvest event report for its respective aggregate receipts.

*Implementation of Mandatory Reporting and Recordkeeping*

This rule establishes a compliance date of January 1, 2018, except for shrimp and abalone for which the effective date is stayed pending further action by NMFS. The requirements for permitting, ACE reporting and recordkeeping will be enforced beginning on that date, though permits would be available for issuance and ACE reporting would be available for testing prior to that date. NMFS will publish a notice in the **Federal Register** when ACE programming has been completed to allow testing of the entry reporting. For products harvested prior to the compliance date, U.S. importers should work with their foreign suppliers to ensure that the harvest event and supply chain records are available for any entries made on or after January 1, 2018.

*Electronic Filing Instructions*

The proposed rule explained that the format for data elements required under this rule would be specified in the following documents: Customs and Trade Automated Interface Requirements—Appendix PGA, Customs and Trade Automated Interface Requirements—PGA Message Set, and Automated Broker Interface (ABI) Requirements—Implementation Guide for NMFS. For ease of reference, NMFS has added at § 300.323 references to where import and export electronic filing instructions can be found on the internet.

*Information on Fish Species, Product Description and Quantity and/or Weight*

Proposed § 300.324(b)(2) required that importers provide information on fish species using the scientific name, acceptable market name, and Aquatic Sciences Fishery Information System (ASFIS) number. In response to comment, the final rule requires reporting of only the ASFIS 3-alpha code and provides a reference to where the codes may be found on the internet. A list of ASFIS 3-Alpha codes as associated with HTS codes is provided in the NMFS Implementation Guide posted by CBP at *http://www.cbp.gov/trade/ace/catair.*

Proposed § 300.324(b)(2) required a ''product description'' data element referring to the product form as it exists at the time it is offered for entry. After reconsidering other data reported at entry and public comments, NMFS has deleted ''product description'' from the final rule, as this information is reported on transportation manifests and to FDA in prior notice reports as well as part of the entry summary reported to CBP. As in the proposed rule, NMFS will still require information on product form as landed (*e.g.,* whole, headed/gutted). Such information is necessary to interpret the landed weight and ensure that IUU product is not associated with that harvest event if inserted later in the supply chain. If there is an Aggregated Harvest Report, NMFS has added in § 300.324(b)(2) that the importer may provide the total quantity and/or weight

of the product(s) as landed/delivered on the date of the report.

*Format for Data Elements: Area of Wild Capture and Fishing Gear*

Proposed § 300.324(b)(1) and (3) required information on area of wild capture and type of fishing gear used to harvest fish. NMFS has not changed this text in the final rule, but as explained in response to Comments 19 and 21, will provide further information on the format for these data elements in the NMFS Implementation Guide.

*Segregation of Individual Harvest Events*

The final rule defines a harvest event for the purposes of reporting landings or deliveries, and allows for reporting in the aggregate for small-scale vessels and aquaculture facilities. As explained above, the rule does not require that inbound shipments segregate imported product by each harvesting event. NMFS has clarified in § 300.324(b)(3) that a product offered for entry may be comprised of products from more than one harvest event and each harvest event must be documented. However, specific links between portions of the shipment and particular harvest events are not required.

*Record Retention Period*

The record retention period for supply chain information required by NMFS is reduced from the proposed five years to two years from the date of import for entries subject to the recordkeeping requirements of this rule.

*Requirements for Shrimp and Abalone*

As described in the preamble to the proposed rule, gaps exist in the collection of traceability information for domestic aquaculture-raised shrimp and abalone, which is currently largely regulated at the state level. (*See* 81 FR 6212, February 5, 2016). Since publication of the proposed rule, NMFS has explored the opportunity to work with its state partners to establish reporting and recordkeeping requirements for aquaculture traceability information that could be shared with NMFS. However, this did not prove to be a viable approach at the present time. NMFS is thus staying the effective date of the rule for shrimp and abalone until appropriate reporting and/or recordkeeping requirements for domestic aquaculture production can be established. To that end, NMFS is continuing to work with its Presidential Task Force partner agencies with respect to measures that could be adopted to close the gaps and to ensure comparability between traceability requirements and NMFS' access to traceability information for imported and domestic shrimp and abalone.

For example, FDA, whose parent agency Health & Human Services is also a member of the Presidential Task Force, is currently exploring which of its authorities could fill the gap, including regulations that would require designating high risk foods for certain additional recordkeeping by food processors under the authority of section 204 of the Food Safety Modernization Act, which addresses enhanced tracking and tracing of food through recordkeeping and was passed by Congress in 2011. *See, e.g., Designation of High-Risk Foods for Tracing; Request for Comments and Scientific Data and Information* (79 FR 6596, Feb. 4, 2014). Such additional recordkeeping requirements to enhance food safety are expected to facilitate FDA's ability to track the origin of and prevent the spread of foodborne illness. FDA is also planning to make revisions to its Seafood Hazard Analysis and Critical Control Points (Seafood HACCP) provisions.

This final rule changes the proposed rule by staying the effective date of the program requirements to imported shrimp and abalone, originating from both wild capture fisheries and aquaculture operations. In addition, the final rule clarifies that for shrimp and abalone, the program consists of two components, reporting of harvest events at the time of entry and permitting and recordkeeping requirements with respect to both harvest events and chain of custody information. (For covered species or species groups other than shrimp and abalone, the program similarly consists of two components, reporting of harvest events and permitting and recordkeeping requirements with respect to both harvest events and chain of custody information.)

NMFS will lift the stay of the effective date as to the reporting and/or recordkeeping components of the program once commensurate reporting and/or recordkeeping requirements have been established for domestic aquaculture-raised shrimp and abalone and will determine and announce an effective date for the rule as to these species. Application of the program's reporting and/or recordkeeping requirements to shrimp and abalone will enable audits of imports to be conducted to determine the origin of the products and confirm that they were lawfully acquired.

**Summary of Requirements**

Under this rule, importers are subject to permitting, reporting and recording keeping requirements applicable to imports of the designated priority species and species groups. The HTS codes applicable to the products subject to the requirements of this rule may be revised from time to time by the International Trade Commission. Any such changes will be reflected in the NMFS Implementation Guides for ACE that are posted to the internet by CBP. At the time of issuing this final rule, entries of the fish and fish products filed under the following HTS codes are subject to the permitting and recordkeeping requirements of this rule and are designated in ACE as requiring the additional NMFS data set in order to obtain release of the inbound shipment:

| HTS code | Commodity description |
|---|---|
| 0301940100 | TUNA BLUEFIN ATLANTIC, PACIFIC LIVE. |
| 0301950000 | TUNA BLUEFIN SOUTHERN LIVE. |
| 0302310000 | TUNA ALBACORE FRESH. |
| 0302320000 | TUNA YELLOWFIN FRESH. |
| 0302330000 | TUNA SKIPJACK FRESH. |
| 0302340000 | TUNA BIGEYE FRESH. |
| 0302350100 | TUNA BLUEFIN ATLANTIC, PACIFIC FRESH. |
| 0302360000 | TUNA BLUEFIN SOUTHERN FRESH. |
| 0302470010 | SWORDFISH STEAKS FRESH. |
| 0302470090 | SWORDFISH FRESH. |
| 0302510010 | GROUNDFISH COD ATLANTIC FRESH. |
| 0302510090 | GROUNDFISH COD NSPF FRESH. |
| 0302810010 | SHARK DOGFISH FRESH. |
| 0302810090 | SHARK NSPF FRESH. |

| HTS code | Commodity description |
|---|---|
| 0302895058 | SNAPPER (LUTJANIDAE SPP.) FRESH. |
| 0302895061 | GROUPER FRESH. |
| 0302895072 | DOLPHIN FISH FRESH. |
| 0303410000 | TUNA ALBACORE FROZEN. |
| 0303420020 | TUNA YELLOWFIN WHOLE FROZEN. |
| 0303420040 | TUNA YELLOWFIN EVISCERATED HEAD-ON FROZEN. |
| 0303420060 | TUNA YELLOWFIN EVISCERATED HEAD-OFF FROZEN. |
| 0303430000 | TUNA SKIPJACK FROZEN. |
| 0303440000 | TUNA BIGEYE FROZEN. |
| 0303450110 | TUNA BLUEFIN ATLANTIC FROZEN. |
| 0303450150 | TUNA BLUEFIN PACIFIC FROZEN. |
| 0303460000 | TUNA BLUEFIN SOUTHERN FROZEN. |
| 0303490200 | TUNA NSPF FROZEN. |
| 0303570010 | SWORDFISH STEAKS FROZEN. |
| 0303570090 | SWORDFISH FROZEN. |
| 0303630010 | GROUNDFISH COD ATLANTIC FROZEN. |
| 0303630090 | GROUNDFISH COD NSPF FROZEN. |
| 0303810010 | SHARK DOGFISH FROZEN. |
| 0303810090 | SHARK NSPF FROZEN. |
| 0303890067 | SNAPPER (LUTJANIDAE SPP.) FROZEN. |
| 0303890070 | GROUPER FROZEN. |
| 0304440010 | GROUNDFISH COD ATLANTIC FILLET FRESH. |
| 0304440015 | GROUNDFISH COD NSPF FILLET FRESH. |
| 0304450000 | SWORDFISH FILLET FRESH. |
| 0304530010 | GROUNDFISH COD ATLANTIC MEAT FRESH. |
| 0304530010 | GROUNDFISH COD ATLANTIC MEAT FRESH. |
| 0304530015 | GROUNDFISH COD NSPF MEAT FRESH. |
| 0304530015 | GROUNDFISH COD NSPF MEAT FRESH. |
| 0304540000 | SWORDFISH MEAT FRESH. |
| 0304711000 | GROUNDFISH COD NSPF FILLET BLOCKS FROZEN >4.5KG. |
| 0304711000 | GROUNDFISH COD NSPF FILLET BLOCKS FROZEN >4.5KG. |
| 0304715000 | GROUNDFISH COD NSPF FILLET FROZEN. |
| 0304715000 | GROUNDFISH COD NSPF FILLET FROZEN. |
| 0304870000 | TUNA NSPF FILLET FROZEN. |
| 0304895055 | DOLPHINFISH FILLET FROZEN. |
| 0304895055 | DOLPHINFISH FILLET FROZEN. |
| 0304911000 | SWORDFISH MEAT FROZEN >6.8KG. |
| 0304919000 | SWORDFISH MEAT FROZEN NOT >6.8KG. |
| 0304951010 | GROUNDFISH COD NSPF MINCED FROZEN >6.8KG. |
| 0304951010 | GROUNDFISH COD NSPF MINCED FROZEN >6.8KG. |
| 0304991190 | TUNA NSPF MEAT FROZEN >6.8KG. |
| 0305320010 | GROUNDFISH COD NSPF FILLET DRIED/SALTED/BRINE. |
| 0305494020 | GROUNDFISH COD, CUSK, HADDOCK, HAKE, POLLOCK SMOKED. |
| 0305510000 | GROUNDFISH COD NSPF DRIED. |
| 0305620010 | GROUNDFISH COD NSPF SALTED MOISTURE CONTENT >50%. |
| 0305620025 | GROUNDFISH COD NSPF SALTED MOISTURE CONTENT BET 45–50%. |
| 0305620030 | GROUNDFISH COD NSPF SALTED MOISTURE CONTENT BET 43–45%. |
| 0305620045 | GROUNDFISH COD NSPF SALTED MOISTURE CONTENT NOT >43%. |
| 0305620050 | GROUNDFISH COD NSPF FILLET SALTED MOISTURE >50%. |
| 0305620060 | GROUNDFISH COD NSPF FILLET SALTED MOISTURE CONTENT 45–50%. |
| 0305620070 | GROUNDFISH COD NSPF FILLET SALTED MOISTURE CONTENT 43–45%. |
| 0305620080 | GROUNDFISH COD NSPF FILLET SALTED MOISTURE NOT >43%. |
| 0305710000 | SHARK FINS. |
| 0306142000 | CRABMEAT NSPF FROZEN. |
| 0306144010 | CRAB KING FROZEN. |
| 0306144090 | CRAB NSPF FROZEN. |
| 0308110000 | SEA CUCUMBERS LIVE/FRESH. |
| 0308190000 | SEA CUCUMBERS FROZEN/DRIED/SALTED/BRINE. |
| 1604141010 | TUNA NSPF IN ATC (FOIL OR FLEXIBLE) IN OIL. |
| 1604141091 | TUNA ALBACORE IN ATC (OTHER) IN OIL. |
| 1604141099 | TUNA NSPF IN ATC (OTHER) IN OIL. |
| 1604142251 | TUNA ALBACORE IN ATC (FOIL OR FLEXIBLE) NOT IN OIL IN QUOTA. |
| 1604142259 | TUNA ALBACORE IN ATC (OTHER) NOT IN OIL IN QUOTA. |
| 1604142291 | TUNA NSPF IN ATC (FOIL OR FLEXIBLE) NOT IN OIL IN QUOTA. |
| 1604142299 | TUNA NSPF IN ATC (OTHER) NOT IN OIL IN QUOTA. |
| 1604143051 | TUNA ALBACORE IN ATC (FOIL/FLEXIBLE) NOT IN OIL OVER QUOTA. |
| 1604143059 | TUNA ALBACORE IN ATC (OTHER) NOT IN OIL OVER QUOTA. |
| 1604143091 | TUNA NSPF IN ATC (FOIL OR FLEXIBLE) NOT IN OIL OVER QUOTA. |
| 1604143099 | TUNA NSPF IN ATC (OTHER) NOT IN OIL OVER QUOTA. |
| 1604144000 | TUNA NSPF NOT IN ATC NOT IN OIL >6.8KG. |
| 1604145000 | TUNA NSPF NOT IN ATC NOT IN OIL NOT >6.8KG. |
| 1605100510 | CRAB PRODUCTS PREPARED DINNERS IN ATC. |
| 1605100590 | CRAB PRODUCTS PREPARED DINNERS NOT IN ATC. |
| 1605102010 | CRABMEAT KING IN ATC. |

| HTS code | Commodity description |
|---|---|
| 1605102051 | CRABMEAT SWIMMING (CALLINECTES) IN ATC. |
| 1605104002 | CRABMEAT KING FROZEN. |
| 1605104025 | CRABMEAT SWIMMING (CALLINECTES) FROZEN. |
| 1605104025 | CRABMEAT SWIMMING (CALLINECTES) FROZEN. |

Application of this rule to entries of fish and fish products filed under the following HTS codes is stayed pending publication of an action in the **Federal Register** lifting the stay and announcing an effective date for shrimp and abalone. After the effective date, these HTS codes will be designated in ACE as requiring a NMFS data set in order to obtain release of the inbound shipment:

| HTS code | Commodity description |
|---|---|
| 0306160003 | SHRIMP COLD-WATER SHELL-ON FROZEN <15. |
| 0306160006 | SHRIMP COLD-WATER SHELL-ON FROZEN 15/20. |
| 0306160009 | SHRIMP COLD-WATER SHELL-ON FROZEN 21/25. |
| 0306160012 | SHRIMP COLD-WATER SHELL-ON FROZEN 26/30. |
| 0306160015 | SHRIMP COLD-WATER SHELL-ON FROZEN 31/40. |
| 0306160018 | SHRIMP COLD-WATER SHELL-ON FROZEN 41/50. |
| 0306160021 | SHRIMP COLD-WATER SHELL-ON FROZEN 51/60. |
| 0306160024 | SHRIMP COLD-WATER SHELL-ON FROZEN 61/70. |
| 0306160027 | SHRIMP COLD-WATER SHELL-ON FROZEN >70. |
| 0306160040 | SHRIMP COLD-WATER PEELED FROZEN. |
| 0306170003 | SHRIMP WARM-WATER SHELL-ON FROZEN <15. |
| 0306170006 | SHRIMP WARM-WATER SHELL-ON FROZEN 15/20. |
| 0306170009 | SHRIMP WARM-WATER SHELL-ON FROZEN 21/25. |
| 0306170012 | SHRIMP WARM-WATER SHELL-ON FROZEN 26/30. |
| 0306170015 | SHRIMP WARM-WATER SHELL-ON FROZEN 31/40. |
| 0306170018 | SHRIMP WARM-WATER SHELL-ON FROZEN 41/50. |
| 0306170021 | SHRIMP WARM-WATER SHELL-ON FROZEN 51/60. |
| 0306170024 | SHRIMP WARM-WATER SHELL-ON FROZEN 61/70. |
| 0306170027 | SHRIMP WARM-WATER SHELL-ON FROZEN >70. |
| 0306170040 | SHRIMP WARM-WATER PEELED FROZEN. |
| 0306260020 | SHRIMP COLD-WATER SHELL-ON FRESH/DRIED/SALTED/BRINE. |
| 0306260040 | SHRIMP COLD-WATER PEELED FRESH/DRIED/SALTED/BRINE. |
| 0306270020 | SHRIMP WARM-WATER SHELL-ON FRESH/DRIED/SALTED/BRINE. |
| 0306270040 | SHRIMP WARM-WATER PEELED FRESH/DRIED/SALTED/BRINE. |
| 1605211000 | SHRIMPS AND PRAWNS, NOT IN AIRTIGHT CONTAINERS. |
| 1605291000 | SHRIMPS AND PRAWNS, OTHER. |
| 1605570500 | ABALONE PRODUCTS PREPARED DINNERS. |
| 1605576000 | ABALONE PREPARED/PRESERVED. |

When the above listed HTS codes are listed in entry filings, the ASFIS 3-alpha code indicating the scientific name will be required to discern whether the shipment offered for entry is subject to additional data collection under the Program. Highly processed fish products (fish oil, slurry, sauces, sticks, balls, cakes, puddings, and other similar highly processed fish products) for which the species of fish comprising the product or the harvesting event(s) or aquaculture operation(s) of the product cannot be feasibly identified are not subject to the requirements of this rule. Therefore, HTS codes for such fish and fish products have not been included in the lists above. However, importers are advised to determine if other NMFS program requirements (*e.g.,* TTVP) or other agency requirements (*e.g.,* Fish and Wildlife Service, State Department, Food and Drug Administration) have ACE data reporting requirements applicable to HTS codes used for entry filing, whether or not those codes have been identified for the Seafood Traceability Program.

**Data for Reporting and Recordkeeping**

The NMFS data to be reported at entry would be in addition to the information required by CBP as part of normal entry processing via the ACE portal. After consideration of comments as outlined above, this rule requires that, at the time of entry for species covered by this rule, importers of record would be required to report the following information for each entry (unless the Aggregated Harvest Report exemption under § 300.324(b)(1) is applicable) in addition to any other information that CBP and other agencies, including NMFS, currently require:

- Information on the entity(ies) harvesting or producing the fish (as applicable): Name and flag state of harvesting vessel(s) and evidence of authorization; Unique vessel identifier(s) (if available); Type(s) of fishing gear; Name(s) of farm or aquaculture facility.
- Information on the fish that was harvested and processed, including: Species of fish (ASFIS code); Product form (whole, gilled and gutted, etc.) at point of first landing; Quantity and/or weight of the product(s) as landed/delivered.
- Information on where and when the fish were harvested and landed: Area(s) of wild-capture or aquaculture harvest; Location(s) of aquaculture facility; Point of first landing; Date of first landing or removal from aquaculture facility; Name of entity(ies) (processor, dealer, vessel) to which fish was landed.
- The NMFS IFTP number issued to the importer of record for the entry.

Additional information on each point in the chain of custody regarding the shipment of the fish or fish product to point of entry into U.S. commerce is established as a recordkeeping requirement on the part of the importer of record to ensure that information is

readily available to NMFS to allow it to trace the fish or fish product from the point of entry into U.S. commerce back to the point of harvest or production to verify the information that is reported upon entry. Such information could include records regarding each custodian of the fish and fish product, including, as applicable, transshippers, processors, storage facilities, and distributors. The information contained in the records must be provided to NMFS upon request and be sufficient for NMFS to conduct a trace back to verify the veracity of the information that is reported on entry. NMFS expects that typical supply chain records that are kept in the normal course of businesses, including declarations by harvesting/carrier vessels, bills of lading and forms voluntarily used or required under foreign government or international monitoring programs which include such information as the identity of the custodian, the type of processing, and the weight of the product, would provide sufficient information for NMFS to conduct a trace back. In addition to relying on such records, the trade may choose to use model forms that NMFS has developed to track and document chain of custody information through the supply chain.

**Reporting Mechanism**

As explained above, this rule requires that the importer of record, or entry filer acting on their behalf, report the data required via the ACE portal as part of the CBP entry/entry summary process. To this end, importers of record who make entries under the designated HTS codes are required to report the data electronically through the ACE Partner Government Agency Message Set for NMFS (NMFS Message Set) and/or the Digital Image System (DIS). The format for the NMFS Message Set is designated for each of the affected commodities (by HTS code) and specified in the following documents jointly developed by NMFS and CBP and made available to importers and other entry filers by CBP (*http://www.cbp.gov/trade/ace/catair*):

- CBP and Trade Automated Interface Requirements—Appendix PGA
- CBP and Trade Automated Interface Requirements—PGA Message Set
- Automated Broker Interface (ABI) Requirements—Implementation Guide for NMFS

To obtain the IFTP, U.S. importers of record for designated priority species covered by this rule and seafood products derived from such species must electronically submit their application and fee for the IFTP via the National Permitting System Web site designated by NMFS (*see* **ADDRESSES**). The fee charged for the IFTP will be calculated, at least annually, in accordance with procedures set forth in Chapter 9 of the NOAA Finance Handbook for determining the administrative costs for special products and services (*http://www.corporateservices.noaa.gov/finance/Finance%20Handbook.html*); the permit fee will not exceed such costs. An importer of record who is required to have an IFTP only needs one IFTP. Separate permits are not required, for example, if the imported species are covered under more than one NMFS import monitoring program or the importer trades in more than one covered species. Note, however, that for some commodities, other agency permits may also be required (*e.g.,* U.S. Fish and Wildlife Service permits for products of species listed under the Convention for International Trade in Endangered Species).

**Verification of Entries**

To implement this regulation, business rules are programmed into ACE to automatically validate that the importer of record has satisfied all of the NMFS Message Set and document image requirements as applicable to HTS codes subject to this rule and other applicable programs (*e.g.,* all data fields are populated and conform to format and coding specifications, required image files are attached). Absent validation of the NMFS requirements in ACE, the entry filed would be rejected and the entry filer would be notified of the deficiencies that must be addressed in order for the entry to be certified by ACE prior to release by NMFS and CBP.

In addition to automated validation of the data submitted, entries may be subject to verification by NMFS that the supplied data elements are true and can be corroborated via auditing procedures (*e.g.,* vessel was authorized by the flag state, legal catch was landed to an authorized entity, processor receipts correspond to outputs). For shipments selected for verification, if verification of the data cannot be completed by NMFS pre-release, NMFS may request that CBP place a hold on a shipment pending verification by NMFS or allow conditional release, contingent upon timely provision of records by the importer of record to allow data verification. Entries for which timely provision of records is not provided to NMFS or that cannot be verified as lawfully acquired and non-fraudulent by NMFS, will be subject to enforcement or other appropriate action by NMFS in coordination with CBP. Such responses could include, but are not limited to, a re-delivery order for the shipment, exclusion from admission into commerce of the shipment, forfeiture of the fish or fish product, and enforcement action against the entry filer or importer of record.

To select entries for verification, NMFS will work with CBP to develop a specific program within ITDS to screen information for the covered commodities based on risk criteria. For example, risk-based screening and targeting procedures can be programmed to categorize entries by volume and certain attributes (*e.g.,* ocean area of catch, vessel type or gear), and then randomly select entries for verification on a percentage basis within groups of entries defined by the associated attributes. In applying these procedures, NMFS will implement a verification scheme, including levels of inspection sufficient to assure that imports of the priority species are not products of illegal fisheries and are not fraudulently represented. Given the volume of imports, and the perishable nature of seafood, it would not likely be cost-effective for most verifications to be conducted on a pre-release basis. However, the verification scheme may involve targeted operations on a pre-release basis that are focused on particular products or ports of concern.

A verification program as described above will facilitate a determination of whether imported seafood has been lawfully acquired and not misrepresented and deter the infiltration of illegally harvested and misrepresented seafood into the supply chain. In addition to such deterrent effect, there may be price effects in that illegal or would-be fraudulent seafood would be diverted from the U.S. market to lower value markets. Taken together, deterrent and price effects would reduce the incentives for IUU fishing operations and for seafood fraud. Conversely, authorized fisheries stand to benefit from import monitoring programs that aim to identify and exclude products of IUU fishing and seafood fraud, both through enhanced market share and potentially higher prices.

**Trusted Trader Program**

NMFS received comments on the applicability of trusted trader programs in response to the proposed rule. Additionally, NMFS issued a separate notice (81 FR 25646, April 29, 2016) to specifically request comments on the potential scope of a Commerce Trusted Trader Program and how it could be applied to streamline entry processing for shipments subject to this rule. NMFS

is considering the comments received and has determined that separate rulemaking will be required to establish the Commerce Trusted Trader Program and how it would be integrated with the Seafood Traceability Program.

**Program Expansion**

NMFS received comments on the lead time needed for seafood trade participants to implement potential expansion of this rule, by inclusion of additional species and/or additional data elements. NMFS acknowledges the need for adequate lead time for program expansion and would implement changes to reporting and recordkeeping requirements for species and data elements through notice and comment rulemaking. Future proposed rules would specify the fish and fish products to be covered by the expanded program and any changes to reporting and recordkeeping requirements. The notice of proposed rulemaking would direct potentially affected parties to the pertinent CBP documents (Appendix PGA, PGA Message Set, Implementation Guide for NMFS) that would be developed jointly by NMFS and CBP to provide the implementation details (*e.g.,* species by HTS code, data elements, message set format, DIS requirements).

**International Cooperation and Assistance**

During the period prior to the effective date of this rule, NMFS will undertake a program of communication and outreach to U.S. importers and foreign exporters to ensure understanding of the requirements of this rule. Subject to the availability of resources, NMFS intends to provide technical assistance to exporting nations to support compliance with the requirements of this proposed rule, including by providing assistance to build capacity to: (1) Undertake effective fisheries management; (2) strengthen fisheries governance structures and enforcement bodies to combat IUU fishing and seafood fraud; and (3) establish, maintain, or support systems to enable export shipments of fish and fish products to be traced back to point of harvest.

**Intersection With Other Applicable Requirements**

The requirements for additional data collection at the time of entry into the United States for imported fish and fish products of, or derived from, the priority species within the scope of this final rule could intersect with data collection requirements applicable to imports of those same species under other authorities, including programs implemented by NMFS and other agencies. Some of these authorities are related to combating IUU fishing, while other authorities are aimed at other concerns such as managing bycatch in commercial fisheries. Through use of the ITDS single window, importers are generally able to meet all applicable requirements through a consolidated entry filing. Importers should consult the compliance guides issued by CBP for NMFS and other agency import monitoring programs (*https://www.cbp.gov/trade/ace/catair*) to determine all requirements that apply to a specific import based on the HTS codes within the scope of the respective monitoring programs.

**Classification**

This rule implements MSA section 307(1)(Q), which makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish taken, possessed, transported, or sold in violation of any foreign law or regulation or any treaty or in contravention of any binding conservation measure adopted by an international agreement or organization to which the United States is a party. *See* 16 U.S.C. 1857(1)(Q). The NMFS Assistant Administrator has determined that this final action is consistent with the provisions of this and other applicable laws.

*Executive Order 12866*

This rule has been determined to be significant for the purposes of Executive Order (E.O.) 12866 because it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866. NMFS has prepared a final regulatory impact review of this action, which is available from NMFS (see **ADDRESSES**). This analysis describes the economic impact this proposed action, if adopted, would have on U.S. businesses and consumers.

The regulatory action, and its legal basis, was described in the preamble of the proposed rule. This rule requires a permit (IFTP) for importers of species within the scope of the program. Additionally, information pertaining to the harvest and landing of the product prior to U.S. import is required at the time of entry into U.S. commerce, and certain records must be retained. NMFS prepared a draft Regulatory Impact Review (RIR) and released it for comment in conjunction with the proposed rule. NMFS received numerous comments, particularly focused on the costs of compliance with the proposed requirements. In consideration of comments received, NMFS revised the RIR. With regard to the possible economic effects of this action, NMFS concludes that U.S. entities would not be significantly affected by this action because it does not directly restrict trade in the designated species and does not pose entirely new burdens with regard to the collection and submission of information necessary to determine product admissibility. Some of the data proposed to be collected at entry or to be subject to recordkeeping requirements is already collected by the seafood industry in order to comply with food safety and product labeling requirements. In addition, the majority of the countries exporting fish and fish products derived from the designated priority species to the U.S. market also export a number of these same fish and fish products to the European Union (EU) market. Consequently, many harvesting states, port states, and intermediary/exporting states that are affected by this rule may already have comparable information collection systems in place to satisfy the requirements of EU regulation on IUU fishing.

NMFS has estimated that this rule would affect 2,000 importers and 600 customs brokers making 215,000 entries per year for the priority species subject to the initial phase of the traceability program. Total costs for permits, software, data entry, recordkeeping and data storage are estimated by NMFS to amount to $7,875,000 in the first year (including one-time broker software acquisition), and $6,075,000 annually thereafter.

However, to obtain an upper-bound on estimated compliance costs, NMFS calculated an alternative estimate using information provided by NFI through the E.O. 12866 regulatory review (*http://www.reginfo.gov/public/do/viewEO12866Meeting?viewRule=true&rin=0648-BF09&meetingId=2004&acronym=0648-DOC/NOAA*) as well as NFI's written comments on the proposed rule (*https://www.regulations.gov/document?D=NOAA-NMFS-2015-0122-0098*). Specifically, NMFS used NFI's estimate of cost per year for complex supply chains. In certain instances, NMFS revised the NFI assumptions and resulting estimates where the assumptions were based on an inaccurate understanding of the rule or to account for changes from the proposed rule (*e.g.,* the provision for aggregated harvest reports of landings by small vessels and small-scale aquaculture).

Based on NFI's assumptions as modified by NMFS and the methodology applied to generate a cost estimate suggested by NFI, NMFS estimates an upper-bound estimate of compliance cost for reporting, recordkeeping and supply chain auditing of $17,815,225 per year. A species-by-species breakdown of that cost estimate is provided in Table 11. A total compliance cost for the program must also include an additional $2,500,000 in permit fees, ACE reporting software and data storage costs. Thus, the upper bound estimate for compliance with all program requirements is $20,315,225 for the first year (including software acquisition) and $18,515,225 thereafter. Given the approximate $9 billion annual value of seafood imports into the United States for the priority species subject to the initial phase of the seafood traceability program, the estimated annual compliance costs of about $5.5 to $18.5 million amount to less than one half of one percent of product value. Copies of the final RIR/FRFA are available from NMFS (see **ADDRESSES**).

*Regulatory Flexibility Act*

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA described the economic impact this proposed rule will have on small entities and includes a description of the action, why it is being considered, and the legal basis for this action. NMFS received a number of comments on the burden likely to be placed on small businesses should the rule be implemented. The purpose of the RFA is to ameliorate, to the extent possible, small businesses, small organizations, and small governmental entities of burdensome regulations and recordkeeping requirements. Major goals of the RFA are: (1) To increase agency awareness and understanding of the impact of their regulations on small business, (2) to require agencies to communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility where possible to provide regulatory relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities and the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action. In response to comments on the IRFA, NMFS prepared a Final Regulatory Flexibility Analysis (FRFA). Below is a summary of the FRFA for this final rule which was prepared in conjunction with the RIR. Copies of the final RIR/FRFA are available from NMFS (see **ADDRESSES**).

The primary objective of the rule is to collect or have access to additional data on imported fish and fish products to determine that they have been lawfully harvested and are not misrepresented as well as to deter illegally caught or misrepresented seafood from entering into U.S. commerce. These data reporting and recordkeeping requirements affect mainly importers of seafood products, many of which are small businesses. Given the level of imports contributing to the annual supply of seafood, collecting and evaluating information about fish and fish products sourced overseas are a part of normal business practices for U.S. seafood dealers. The permitting, electronic reporting and recordkeeping requirements proposed by this rulemaking would build on current business practices (*e.g.,* information systems to facilitate product recalls, to maintain product quality, or to reduce risks of food borne illnesses) and are not estimated to pose significant adverse or long-term economic impacts on small entities.

In implementing the final rule, NMFS estimates there will be approximately 2,000 new applicants for the IFTP, with an estimated industry-wide increase to importers of $60,000 in annual costs for permit fees. Data sets to be submitted electronically to determine product admissibility are, to some extent, either already collected by the trade in the course of supply chain management, already required to be collected and submitted under existing trade monitoring programs (*e.g.,* tuna, swordfish, toothfish), or collected in support of third-party certification schemes voluntarily adopted by the trade. Incremental costs, separate from the permit fees, are likely to consist of developing interoperable systems to ensure that the data are transmitted along with the product to ensure the information is available to the entry filer. NMFS has estimated that the software, data entry and recordkeeping costs would amount to $7,875,000 in the first year (including one-time broker software acquisition), and $6,075,000 annually thereafter for importers to submit data and retain records of imports of the priority species subject to the Program. An alternative approach to estimating compliance costs yields an upper bound estimate of $20,315,225 in the first year and $18,515,225 annually thereafter.

The rule applies to entities authorized to import fish and fish products derived from the designated species within the scope of the Program. This rule has been developed to avoid duplication or conflict with any other Federal rules. To the extent that the requirements of the rule overlap with other reporting requirements applicable to the designated species, this has been taken into account to avoid collecting data more than once or by means other than the single window (ACE portal). Given the large volume of fish and fish product imports to the U.S. market, the number of exporting countries, and the fact that traceability systems are being increasingly used within the seafood industry, it is not expected that this rule will significantly affect the overall volume of trade or alter trade flows in the U.S. market for fish and fish products that are legally harvested and accurately represented.

NMFS considered several alternatives in this rulemaking: The requirements described in the proposed rule, a no-action alternative and various combinations of data reporting and recordkeeping for the supply chain information applicable to the priority species. NMFS believes that the final rule effectively implements the initial phase of a traceability program as envisioned by Recommendations 14 and 15 of the Task Force. In addition, it is consistent with the existing requirement that all applicable U.S. government agencies are required to implement ITDS under the authority of the SAFE Port Act and Executive Order 13659, Streamlining the Export/Import Process (79 FR 10657, February 28, 2014). Also, the Seafood Traceability Program takes into account the burden of data collection from the trade and the government requirements for admissibility determinations and has mitigated that burden to the extent possible by, among other things, implementing the Aggregated Harvest Report exemption as a change to the final rule from the proposed rule.

*National Environmental Policy Act*

Under NOAA Administrative Order (NAO 216–6), the promulgation of regulations that are procedural and administrative in nature are categorically excluded from the requirement to prepare an Environmental Assessment. This final regulation to implement a seafood traceability program is procedural and administrative in nature in that they would impose reporting and recordkeeping requirements for ongoing authorized catch and trade activities. There are no further restrictions on fishing activity or trade in seafood products relative to any existing laws or regulations, either foreign or domestic. Given the procedural and administrative

nature of this rulemaking, an Environmental Assessment was not prepared.

*Paperwork Reduction Act*

This final rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB and has been assigned Control Number 0648–0739. The information collection burden for the requirements under this rule (IFTP, harvest and landing data submitted at entry, image files submitted at entry, recordkeeping and data storage, and provision of records of supply chain information when selected for audit) as applicable to imports of the designated species is estimated to be 367,115 hours. Compliance costs are estimated to total $60,000 for the permit application fees, $1,800,000 for data entry software, and $431,630 for data storage. An upper bound estimate of compliance costs for harvest event data reporting in ACE, recordkeeping and auditing is $11,742,311 annually.

*IFTP Requirement:* With the requirement to obtain an IFTP under this program, there would be approximately 2,000 respondents who would need approximately 5 minutes to fill out the online IFTP form (estimate consistent with that used for ITDS proposed rule 0648–AX63) resulting in a total annual burden of 167 hours and a cost of $4,175. This estimate of the number of entities that would be required to obtain the permit under the seafood traceability program is in addition to those entities that would be required to obtain the permit under the ITDS rule. However, there may be some overlap in that importers of multiple seafood products that are covered under more than one trade monitoring program would not be required to obtain a separate permit for each program. A single, consolidated permit would suffice for all commodities covered under all programs.

*Data Set Submission Requirement:* Data sets to be submitted electronically to determine product admissibility are, to some extent, either already collected by the trade in the course of supply chain management, already required to be collected and submitted under existing trade monitoring programs (*e.g.,* tuna, swordfish, toothfish), or collected in support of third party certification schemes voluntarily adopted by the trade. Incremental costs are likely to consist of developing interoperable systems to ensure that the data are transmitted along with the product to ensure the information is available to the entry filer. Initial feedback from one seafood importer indicates, however, that importers may already have arrangements with software developers to update entry filing programs as needed to address required changes so no extra incremental costs may be involved to accommodate this new requirement.

Taking into account differences in fisheries (small and large catch volume), but also the allowance for aggregated harvest reports by small scale vessels, NMFS estimates that the data entry costs for vessel information would average about $10.00 or 24 minutes for each import. In addition to the vessel information to be reported in each entry filing, the NMFS Message Set requires some header records and structural records so that the data are correctly interpreted when loaded into ACE, as well as permit data for the importer. NMFS estimates that the data entry costs for this type of information to be about 12 minutes or $5.00 per import.

Based on 2014 CBP import records of seafood products derived from the priority species subject to the traceability program, it can be expected that approximately 215,000 entries per year would require a NMFS message set reported via ACE. However, in the final rule, NMFS has delayed shrimp and abalone imports from harvest event data reporting due to present concerns about parity with harvest data reporting in the U.S. domestic aquaculture sector. Approximately 70,000 entries of shrimp and abalone products would not immediately require permitting, harvest event data reporting in ACE, or chain-of-custody recordkeeping on the part of the U.S. importer. NMFS will request approval of these information collection requirements at the time that shrimp and abalone imports will be included in the Seafood Traceability Program. This will be dependent on the establishment of reporting and recordkeeping requirements for the domestic aquaculture industry through separate actions by other agencies.

Therefore, excluding these shrimp and abalone entries would incur reporting and recordkeeping costs for approximately 145,000 entries annually. These 145,000 entries would be subject to submission of harvest event data that would require 36 minutes of data entry each. The total increase in hours for the 145,000 responses for the data set submission requirement would therefore total 87,000 hours and labor costs of $2,175,000@$25/hour.

*Recordkeeping Requirement:* The rule also requires that the harvest event records and the chain-of-custody records be retained by the importer for two years from cargo release. NMFS estimates that organizing and filing the records would require 24 minutes or $10.00 for each entry subject to import reporting. The burden for the NMFS-specific recordkeeping requirements under this rule would amount to 58,000 hours or $1,450,000 in labor costs, excluding shrimp and abalone imports. The burden for the NMFS-specific recordkeeping requirements under this rule would amount to 86,000 hours or $2,150,000 in labor costs, when fully implemented after the compliance date for shrimp and abalone is established.

*Alternative Estimate:* As an alternative estimate, NMFS considered the NFI comments and modified certain assumptions of NFI to account for changes from the proposed rule. This yielded a burden estimate of 289,769 hours for reporting and recordkeeping, excluding the monitoring of shrimp and abalone. Under this methodology (again excluding shrimp and abalone), the information collection burden attributed to auditing of shipments is an additional 77,188 hours to assemble records requested by NMFS.

*Summary of Requirements:* Assuming that this rule would affect 2,000 importers and 600 customs brokers making 215,000 entries per year for the priority species subject to the initial phase of the traceability program (once shrimp and abalone imports are included), the total burden estimated by NMFS for permits, data entry, recordkeeping and audits would amount to 189,317 hours, and labor costs of $4,732,925 at $25/hour. However, in consideration of public comments received on the proposed rule, NMFS calculated an alternative estimate for reporting, recordkeeping. Assuming the NFI estimated cost of $32.00 per hour of labor for the data reporting, recordkeeping and auditing, the burden hour estimate derived by applying the NFI methodology as modified by NMFS amounts to 328,913 hours for reporting and recordkeeping and 227,813 hours for auditing, yielding a total burden of 556,726 hours.

Excluding shrimp and abalone imports lowers the NFI adjusted burden estimate to 289,760 hours for reporting and recordkeeping and 77,188 hours for auditing, yielding a total burden of 367,115 hours. NMFS has requested, and OMB has approved, the upper bound (NFI) estimate, excluding shrimp and abalone imports. A revision to the approved information collection burden will be requested of OMB when the program is expanded to include shrimp and abalone.

NMFS received public comment regarding aspects of the information collection, and has responded to those

comments (see Comments and Responses). In particular, NMFS revised the model catch certificate and provided instructions for each data element. NMFS concludes that data reporting is necessary for the enforcement of the import restrictions under MSA, that the information collected is of practical utility; that the burden estimate is as accurate as possible pending implementation of the rule; that ways to enhance the quality, utility, and clarity of the information to be collected were considered and addressed; and that ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology have been applied.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. The control number assigned to the information collection contained in this final rule is listed in the table appearing at 15 CFR part 902. In addition, the table is updated to reflect several other information collections previously approved by OMB under separate final rules recently published by NMFS (RIN 0648–AV12, RIN 0648–AX63) that are affected by the revisions to 50 CFR part 300 subpart Q in this rule.

**List of Subjects**

*15 CFR Part 902*

Reporting and recordkeeping requirements.

*50 CFR Part 300*

Exports, Fisheries, Fishing, Fishing vessels, Illegal, Unreported or unregulated fishing, Foreign relations, Imports, International trade permits, Treaties.

*50 CFR Part 600*

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: December 2, 2016.

**Samuel D. Rauch III,**

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

For the reasons set out in the preamble, 15 CFR part 902, 50 CFR part 300, subpart Q, and 50 CFR part 600 are amended as follows:

**15 CFR Chapter IX—National Oceanic and Atmospheric Administration, Department of Commerce**

## PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under ''50 CFR'' is amended by removing the entries for ''300.13,'' ''300.14'' and ''300.17,'' and adding, in numerical order, entries for ''300.322,'' ''300.323,'' ''300.324,'' ''300.333,'' ''300.336,'' ''300.337,'' ''300.338,'' ''300.339'' and ''300.341'' to read as follows:

**§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

* * * * *

(b) * * *

| CFR part or section where the information collection requirement is located | Current OMB control No. (all numbers begin with 0648–) |
|---|---|
| * * * * * | |
| 50 CFR: | |
| * * * * * | |
| 300.322 | –0732 |
| 300.323 | –0732 |
| 300.324 | –0739 |
| 300.333 | –0304 |
| 300.336 | –0304 |
| 300.337 | –0304 |
| 300.338 | –0304 |
| 300.339 | –0304 |
| 300.341 | –0304 |
| * * * * * | |

* * * * *

**50 CFR Chapter III—International Fishing and Related Activities**

## PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 3. The authority citation for 50 CFR part 300 continues to read as follows:

**Authority:** 16 U.S.C. 951 *et seq.,* 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 5501 *et seq.,* 16 U.S.C. 2431 *et seq.,* 31 U.S.C. 9701 *et seq.*

■ 4. In § 300.321:

■ a. Add, in alphabetical order, a definition for ''Aggregated Harvest Report'';

■ b. Revise the definitions of ''Catch and Statistical Document/Documentation'', ''Documentation and data sets required under this subpart'' and ''Fish or fish products regulated under this subpart''; and

■ c. Add, in alphabetical order, definitions for ''Harvest Event'' and ''Seafood Traceability Program''.

The additions and revisions read as follows:

**§ 300.321 Definitions.**

* * * * *

*Aggregated Harvest Report* means a record made at a single collection point on a single calendar day for aggregated catches by multiple small-scale fishing vessels (20 measured gross tons or less or 12 meters length overall or less) offloaded at that collection point on that day, or for a landing by a vessel to which the catches of one or more small-scale vessels were transferred at sea. An Aggregated Harvest Report also means a record made at a single collection point or processing facility on a single calendar day for aggregated deliveries from multiple small-scale aquaculture facilities, where each aquaculture facility delivers 1,000 kg or less to that collection point or processing facility on that day. An Aggregated Harvest Report may not be used for information for catches from vessels greater than 20 measured gross tons or 12 meters length overall, and deliveries of more than 1000 kg from aquaculture facilities.

* * * * *

*Catch and Statistical Document/Documentation* means a document or documentation, in paper or electronic form, accompanying regulated seafood imports and exports that is submitted by importers and exporters to document compliance with TTVP, AMLR trade program, and HMS ITP trade documentation programs or the Seafood Traceability Program as described in this subpart.

* * * * *

*Documentation and data sets required under this subpart* refers to documentation and data that must be submitted by an importer or exporter to NMFS at the time of, or in advance of, import, export, or re-export, as applicable for those seafood products regulated under the TTVP, AMLR trade program, and HMS ITP or the Seafood Traceability Program as described in this subpart. The required data sets and document images to be submitted for specific programs and transactions are posted by CBP as indicated in § 300.323.

*Fish or fish products regulated under this subpart* means species and products containing species regulated under this subpart, and the AMLR trade program, the HMS ITP, the TTVP, or the Seafood Traceability Program.

*Harvest Event* means, for wild-capture fisheries, the landing of fish in port or

offloading of fish from a fishing vessel that caught the fish to a carrier vessel at sea or in port, and for aquaculture production, the delivery of fish from the facility to a consolidator or a processor. For wild-capture fisheries, the harvest event is considered to occur at the fishing trip level, such that the harvest event concludes at the time catch is landed or offloaded from the catching vessel. For fishing trips occurring in more than one area, each area fished during the trip must be identified in the report on the harvest event.

* * * * *

*Seafood Traceability Program* means the data reporting and recordkeeping requirements established under § 300.324 and includes the permitting requirements of § 300.322, and the requirements under § 300.323 as they pertain to species or species group subject to the Seafood Traceability Program.

* * * * *

■ 5. Revise § 300.323 to read as follows:

**§ 300.323 Reporting and Recordkeeping Requirements.**

(a) *Reporting.* Any person, including a resident agent for a nonresident entity (see 19 CFR 141.18), who imports as defined in § 300.321, exports, or re-exports fish or fish products regulated under this subpart must file all data sets, reports, and documentation as required under the AMLR program, HMS ITP, TTVP and Seafood Traceability Program, and under other regulations that incorporate by reference the requirements of this subpart. For imports, specific instructions for electronic filing are found in Customs and Trade Automated Interface Requirements (CATAIR) Appendix PGA (*https://www.cbp.gov/document/guidance/appendix-pga*). For exports, specific instructions for electronic filing are found in Automated Export System Trade Interface Requirements (AESTIR) Appendix Q (*https://www.cbp.gov/document/guidance/aestir-draft-appendix-q-pga-record-formats*). For fish and fish products regulated under this subpart, an ACE entry filing or AES export filing, as applicable, is required, except in cases where CBP provides alternate means of collecting NMFS-required data and/or document images.

(b) *Recordkeeping.* A paper or electronic copy of all documentation and data sets required under this subpart, and all supporting records upon which an entry filing or export declaration is made, must be maintained by the importer of record or the exporting principal party in interest as applicable, and made available for inspection, at the importer's/exporter's place of business for a period of two years from the date of the import, export or re-export.

**§ 300.324 [Redesignated as § 300.325]**

■ 6. Redesignate § 300.324 as § 300.325.

■ 7. Add new § 300.324 and immediately stay paragraph (a)(3) indefinitely to read as follows:

**§ 300.324 Seafood Traceability Program.**

This section establishes a Seafood Traceability Program which has data reporting requirements at the time of entry for imported fish or fish products and recordkeeping requirements for fish or fish products entered into U.S. commerce. The data reported and retained will facilitate enforcement of section 307(1)(Q) of the Magnuson-Stevens Act and the exclusion of products from entry into U.S. commerce that are misrepresented or the product of illegal or unreported fishing. The data reporting and recordkeeping requirements under the program enable verification of the supply chain of the product offered for entry back to the harvesting event(s). In addition, the permitting requirements of § 300.322 pertain to importers of products within the scope of the program.

(a)(1) For species or species groups subject to this Seafood Traceability Program, data is required to be reported and retained under this program for all fish and fish products, whether fresh, frozen, canned, pouched, or otherwise prepared in a manner that allows, including through label or declaration, the identification of the species contained in the product and the harvesting event. Data is not required to be reported or retained under this program for fish oil, slurry, sauces, sticks, balls, cakes, pudding and other similar fish products for which it is not technically or economically feasible to identify the species of fish comprising the product or the harvesting event(s) contributing to the product in the shipment.

(2) The following species or species groups are subject to this Seafood Traceability Program: Atlantic Cod; Pacific Cod; Blue Crab; Red King Crab; Dolphinfish (Mahi Mahi); Grouper; Red Snapper; Sea Cucumber; Sharks; Swordfish; Tunas (Albacore, Bigeye, Skipjack, Yellowfin, and Bluefin). The harmonized tariff schedule (HTS) numbers applicable to these species or species groups are listed in the documents referenced in paragraph (c) of this section. Compliance with the requirements of the Seafood Traceability Program for these species or groups of species is mandatory beginning January 1, 2018.

(3) The following species or species groups are also subject to this Seafood Traceability Program: Abalone and Shrimp. The harmonized tariff schedule (HTS) numbers applicable to these species or species groups are listed in the documents referenced in paragraph (c) of this section. The Seafood Traceability Program for these species or species groups consists of two components:

(i) The data reporting requirements of paragraphs (b)(1) through (3) and (c) of this section in conjunction with § 300.323(a); and

(ii) The permit requirements of § 300.322, the IFTP number reporting requirement in paragraph (b)(4) of this section in conjunction with § 300.323(a), and the recordkeeping requirements of § 300.323(b) which includes the recordkeeping of all information specified in paragraphs (b) and (e) of this section.

(b) In addition to data reporting requirements applicable, pursuant to other authorities and requirements set out elsewhere in U.S. law and regulation (*e.g.,* under other NMFS programs or U.S. Customs and Border Protection (CBP) requirements), to the particular commodity offered for entry, the importer of record is required to provide the following data set in ACE at the time of entry for each entry containing the species or species groups listed under paragraph (a) of this section:

(1) Information on the entity(ies) harvesting or producing the fish: Name and flag state of harvesting vessel(s) and evidence of fishing authorization; Unique vessel identifier(s) (if available); Type(s) of fishing gear used to harvest the fish; Name(s) of farm or aquaculture facility. Vessel-, farm-, or aquaculture facility-specific information is not required if the importer of record provides information from an Aggregated Harvest Report, unless the product offered for entry is subject to another NMFS program that requires data reporting or documentation at an individual vessel, farm, or aquaculture facility level.

(2) Information on the fish that was harvested and processed: Species of fish (Aquatic Sciences Fishery Information System 3-alpha code as listed at *http://www.fao.org/*); Product form(s) at the point of first landing whether unprocessed or processed prior to landing/delivery; Quantity and/or weight of the product(s) as landed/delivered. When an Aggregated Harvest Report is used, the importer must provide all of the information under this

paragraph (b)(2), but may provide the total quantity and/or weight of the product(s) as landed/delivered on the date of the report.

(3) Information on where and when the fish were harvested and landed: Area(s) of wild-capture or aquaculture location; Location of aquaculture facility; Point(s) of first landing; Date(s) of first landing, transshipment or delivery; Name of entity(ies) (processor, dealer, vessel) to which fish was landed or delivered. When an Aggregated Harvest Report is used, the importer must provide all of the information under this paragraph (b)(3). Some product offered for entry may be comprised of products from more than one harvest event and each such harvest event relevant to the contents of the shipment must be documented; however, specific links between portions of the shipment and a particular harvest event are not required.

(4) The NMFS-issued IFTP number for the importer of record.

(c) The importer of record, either directly or through an entry filer, is required to submit the data under paragraph (b) of this section through ACE as a message set and/or image files in conformance with the procedures and formats prescribed by the NMFS Implementation Guide and CBP and made available at: *http://www.cbp.gov/trade/ace/catair.* All harvest events contributing to the inbound shipment must be reported, but links between portions of the shipment and particular harvest events are not required.

(d) Import shipments of fish or fish products subject to this program may be selected for inspection and/or the information or records supporting entry may be selected for audit, on a pre- or post-release basis, in order to verify the information submitted at entry. To support such audits, the importer must retain records of the information reported at entry under paragraph (b) of this section in electronic or paper format, and make them available for inspection, at the importer's place of business for a period of two years from the date of the import.

(e) In addition to the entry recordkeeping requirements specified at 19 CFR part 163 and § 300.323(b), the importer of record is required to maintain records containing information on the chain of custody of the fish or fish products sufficient to trace the fish or fish product from point of entry into U.S. commerce back to the point of harvest, including individual or Aggregated Harvest Reports, if any, and information that identifies each custodian of the fish or fish product (such as any transshipper, processor, storage facility or distributor). The latter may include widely used commercial documents such as declarations by the harvesting/carrier vessels or bills of lading. The importer must retain such chain-of-custody records in electronic or paper format, and make them available for inspection, at the importer's/exporter's place of business for a period of two years from the date of the import.

■ 8. Revise newly redesignated § 300.325 to read as follows:

**§ 300.325 Prohibitions.**

In addition to the prohibitions specified in §§ 300.4, 300.117, and 300.189 and 600.725 and 635.71 of this title, it is unlawful for any person subject to the jurisdiction of the United States to:

(a) Violate any provision of this subpart, or the conditions of any IFTP issued under this subpart;

(b) Import, export or re-export fish or fish products regulated under this subpart, including imports or exports otherwise eligible for informal filing procedures or the de minimis value exemption from filing requirements under CBP procedures, without a valid IFTP as required under § 300.322 or without submitting complete and accurate information as required under § 300.323; and

(c) Import species listed in § 300.324(a) without a valid IFTP or without submitting complete and accurate information as required under § 300.324(b) and (c) or without maintaining for inspection records as required under § 300.324(d) and (e).

**50 CFR Chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce**

## PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 9. The authority citation for part 600 continues to read as follows:

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 10. In § 600.725, revise paragraph (a) to read as follows:

**§ 600.725 General prohibitions.**

* * * * *

(a) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, import, export or re-export, any fish or parts thereof taken or retained in violation of the Magnuson-Stevens Act or any other statute administered by NOAA or any regulation or permit issued thereunder, or import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish taken, possessed, transported, or sold in violation of any foreign law or regulation, or any treaty or in contravention of a binding conservation measure adopted by an international agreement or organization to which the United States is a party.

* * * * *

[FR Doc. 2016–29324 Filed 12–8–16; 8:45 am]

**BILLING CODE 3510–22–P**

## TENNESSEE VALLEY AUTHORITY

## 18 CFR Part 1301

## Tennessee Valley Authority Procedures

**AGENCY:** Tennessee Valley Authority.

**ACTION:** Final rule.

**SUMMARY:** The Tennessee Valley Authority is amending its regulations which contain TVA's procedures for the Privacy Act. These amendments reflect changes in position titles and addresses; conform references to Privacy Act systems of records to the most current publication of TVA's Privacy Act Systems Notices in the **Federal Register**; and make other editorial changes.

**DATES:** *Effective:* December 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Christopher A. Marsalis, Senior Privacy Program Manager, Tennessee Valley Authority, 400 W. Summit Hill Dr. (WT 5D), Knoxville, Tennessee 37902–1401; telephone (865) 632–2467 or by email at *camarsalis@tva.gov.*

**SUPPLEMENTARY INFORMATION:** Section 1301.24(a) originally contained specific exemptions for the TVA system ''Employee Alleged Misconduct Investigatory File—TVA.'' Notice that system of records was retired appeared in 80 **Federal Register** 24012 (April 29, 2015). TVA is revising § 1301.24(a) to replace the language for ''Employee Alleged Misconduct Investigatory File—TVA'' with the specific exemptions for the TVA system '' Nuclear Access Authorization and Fitness for Duty Records—TVA'' which were first published at 76 FR 1888 (January 11, 2011).

This rule was not published in proposed form since it relates to agency procedure and practice. TVA considers this rule to be a procedural rule which is exempt from notice and comment under 5 U.S.C. 533(b)(3)(A). This rule is not a significant rule for purposes of Executive Order 12866 and has not been reviewed by the Office of Management

and Budget. As required by the Regulatory Flexibility Act, TVA certifies that these regulatory amendments will not have a significant impact on small business entities. Since this rule is nonsubstantive, it is being made effective December 9, 2016.

**List of Subjects in 18 CFR Part 1301**

Freedom of Information, Government in the Sunshine, Privacy.

For the reasons stated in the preamble, TVA amends 18 CFR part 1301 as follows:

## PART 1301—PROCEDURES

■ 1. The authority citation for part 1301 continues to read as follows:

**Authority:** 16 U.S.C. 831–831dd, 5 U.S.C. 552.

### Subpart B—Privacy Act

■ 2. In § 1301.12, revise paragraphs (d) and (f) to read as follows:

**§ 1301.12 Definitions.**

* * * * *

(d) The term TVA system notice means a notice of a TVA system published in the **Federal Register** pursuant to the Act. TVA has published TVA system notices about the following TVA systems:

Apprentice Training Records—TVA.
Personnel Files—TVA.
Discrimination Complaint Files—TVA.
Work Injury Illness System—TVA.
Employee Accounts Receivable—TVA.
Health Records—TVA.
Payroll Records—TVA.
Travel History Records—TVA.
Employment Applicant Files—TVA.
Grievance Records—TVA.
Employee Supplementary Vacancy Announcement Records—TVA.
Consultant and Contractor Records—TVA.
Nuclear Quality Assurance Personnel Records—TVA.
Questionnaire—Land Use Surveys in Vicinity of Proposed or Licensed Nuclear Power Plant—TVA.
Radiation Dosimetry Personnel Monitoring Records—TVA.
Retirement System Records—TVA.
Energy Program Participant Records—TVA.
OIG Investigative Records—TVA.
Call Detail Records—TVA.
Project/Tract Files—TVA.
Section 26a Permit Application Records—TVA.
U.S. TVA Police Records—TVA.
Wholesale, Retail, and Emergency Data Files—TVA.
Nuclear Access Authorization and Fitness for Duty Records—TVA.

* * * * *

(f) The term reviewing official means TVA's Senior Vice President, Chief Human Resources Officer (or incumbent of a successor position), or another TVA official designated by the Senior Vice President in writing to decide an appeal pursuant to § 1301.19;

* * * * *

■ 3. In § 1301.24, revise paragraph (a) to read as follows:

**§ 1301.24 Specific exemptions.**

(a) The TVA system Nuclear Access Authorization and Fitness for Duty Records is exempt from subsections (d); (e)(4)(H); and (f)(2), (3), and (4) of 5 U.S.C. 522a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, and to the extent that disclosure of testing or examination material would compromise the objectivity or fairness of the testing or examination process. This exemption is pursuant to 5 U.S.C. 552a (k)(5) and (6).

* * * * *

**Philip D. Propes,**

*Director, Enterprise Information Security and Policy.*

[FR Doc. 2016–29457 Filed 12–8–16; 8:45 am]

**BILLING CODE 8120–08–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[TD 9801]**

**RIN 1545–BM46**

## Issue Price Definition for Tax-Exempt Bonds

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations on the definition of issue price for purposes of the arbitrage investment restrictions that apply to tax-exempt bonds and other tax-advantaged bonds. These final regulations affect State and local governments that issue tax-exempt bonds and other tax-advantaged bonds.

**DATES:** *Effective date:* These regulations are effective on December 9, 2016.

*Applicability date:* For the date of applicability, see § 1.148–11(m).

**FOR FURTHER INFORMATION CONTACT:** Lewis Bell at (202) 317–6980 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1347. The collection of information in these final regulations is in § 1.148–1(f)(2)(ii), which requires the underwriter to provide to the issuer a certification and reasonable supporting documentation for use of the initial offering price to the public, § 1.148–1(f)(2)(iii), which requires the issuer to obtain a certification from the underwriter for competitive sales, and § 1.148–1(f)(2)(iv), which requires the issuer to identify in its books and records the rule used to determine the issue price of the bonds. The respondents are issuers of tax-exempt bonds that want to apply the special rules in § 1.148–1(f)(2) to determine the issue price of the bonds.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by section 6103.

**Background**

This document contains amendments to the Income Tax Regulations (26 CFR part 1) on the arbitrage investment restrictions under section 148 of the Internal Revenue Code (Code). On June 18, 1993, the Department of the Treasury (Treasury Department) and the IRS published comprehensive final regulations in the **Federal Register** (TD 8476, 58 FR 33510) on the arbitrage investment restrictions and related provisions for tax-exempt bonds under sections 103, 148, 149, and 150. Since that time, those final regulations have been amended in various limited respects, including most recently in final regulations published in the **Federal Register** (TD 9777, 81 FR 46582) on July 18, 2016 (the regulations issued in 1993 and the various amendments thereto are collectively referred to as the Existing Regulations).

A notice of proposed rulemaking was published in the **Federal Register** (78 FR 56842; REG–148659–07) on

September 16, 2013 (the 2013 Proposed Regulations), which, among other things, proposed to amend the definition of ''issue price.'' Subsequently, the Treasury Department and the IRS withdrew § 1.148–1(f) of the 2013 Proposed Regulations regarding the definition of issue price and published another notice of proposed rulemaking in the **Federal Register** (80 FR 36301; REG–138526–14) on June 24, 2015, which re-proposed a definition of issue price (the 2015 Proposed Regulations). Comments were received and a public hearing was held on October 28, 2015. After consideration of all of the public comments, the Treasury Department and the IRS adopt the 2015 Proposed Regulations, with revisions, by this Treasury decision (the Final Regulations).

**Summary of Comments and Explanation of Provisions**

This section discusses the comments received from the public regarding the 2015 Proposed Regulations. The comments are available for public inspection at *www.regulations.gov*. This section also explains revisions made in the Final Regulations.

*1. Introduction*

Under section 103, interest received by investors on eligible State and local bonds is exempt from Federal income tax. As a result, tax-exempt bonds tend to have lower interest rates than taxable obligations. Section 148 generally limits investment of proceeds of tax-exempt bonds to investment yields that are not materially higher than the yield on the bond issue. Section 148 also generally requires that excess investment earnings be paid to the Federal Government at periodic intervals. For purposes of these arbitrage investment restrictions, section 148(h) provides that yield on an issue is to be determined on the basis of the issue price (within the meaning of sections 1273 and 1274). The reason for using issue price (rather than sales proceeds less the costs of issuance) to determine yield for purposes of section 148(h) is to ensure that issuers bear the costs of issuance, rather than recover these costs through arbitrage profits. See H. Rep. No. 99–426, at 517 (1985). The report of the Committee on Ways and Means states that the Committee believed that this requirement would encourage issuers to scrutinize costs of issuance more closely and would encourage better targeting of the federal subsidy associated with tax-exempt bonds. Id., at 517–518. In general, the lower the issue price for bonds bearing a stated interest rate, the higher the yield. An issuer has an economic incentive to receive the highest price for bonds and to pay the lowest yield. This aligns with the purpose of the arbitrage restrictions, which is to minimize arbitrage investment benefits and remove incentives to issue more tax-exempt bonds, and thus to limit the federal revenue cost of the tax subsidy for tax-exempt bonds.

The issue price definition under the Existing Regulations generally follows the issue price definition used for computing original issue discount on debt instruments under sections 1273 and 1274, with certain modifications. The definition of issue price under the Existing Regulations provides generally that the issue price of bonds that are publicly offered is the first price at which a substantial amount of the bonds is sold to the public. The Existing Regulations define a substantial amount to mean ten percent. Further, the Existing Regulations include a special rule that applies a reasonable expectations standard (rather than a standard based on actual sales) to determine, as of the sale date,[1] the issue price for bonds for which a bona fide public offering is made, based on reasonable expectations regarding the initial offering price. The issue prices of bonds with different payment and credit terms are determined separately. Tax-exempt bond issues often include bonds with different payment and credit terms that generally sell at different prices.

The special rule in the Existing Regulations that provides for the determination of issue price as of the sale date based on reasonable expectations about the initial public offering price aims, in part, to provide certainty that the bonds will qualify as tax-exempt bonds and meet State or local requirements for debt issuance. Generally, the sale date is the date when the syndicate or sole underwriter in contractual privity with the issuer signs the agreement to buy the bonds from the issuer and when the terms of the bond issue are set. In the municipal bond market, due largely to the serial maturity structure and, in many cases, an inability to sell a substantial amount of each of the different maturities of the bonds with different terms (for which issue price must be determined separately) by the sale date, issuers may have difficulties in establishing the issue price of all of the bonds included within an issue by the sale date, unless a special rule is available.

*2. General Rule: Actual Sale of a Substantial Amount of Bonds*

Consistent with section 148(h), the 2015 Proposed Regulations proposed to retain the rule that issue price generally will be determined under the rules of sections 1273 and 1274. The 2015 Proposed Regulations also proposed a general rule similar to that in the regulations under section 1273 that the issue price of bonds issued for money is the first price at which a substantial amount of the bonds is sold to the public. The 2015 Proposed Regulations proposed to retain the rule in the Existing Regulations that ten percent is the measure of a substantial amount. The 2015 Proposed Regulations also proposed to retain the rule that the issue prices of bonds with different payment and credit terms are determined separately.

Commenters recommended adding an express rule to address the treatment of private placements (for example, bank loans), which in the municipal bond industry typically do not involve underwriters. Commenters also recommended clarifying that an issuer may use the general rule to determine issue price even if the issuer had sought to use the special rule based on the initial offering price to the public discussed in section 3 of this preamble. The Treasury Department and the IRS agree with these recommendations.

The Final Regulations retain the rules in the Existing Regulations and the general rule of the 2015 Proposed Regulations that, for bonds issued for money, the issue price is the first price at which a substantial amount of the bonds is sold to the public, and a substantial amount is ten percent. In addition, in response to comments, the Final Regulations expressly provide that, for a bond issued for money in a private placement to a single buyer that is not an underwriter or a related party (as defined in § 1.150–1(b)) to an underwriter, the issue price of the bond is the price paid by that buyer. Further, the Final Regulations clarify that for bonds for which more than one rule for determining issue price is available, for example, the general rule and one of the special rules discussed in sections 3 and 4 of this preamble, an issuer may select the rule it will use to determine the issue price for the bonds at any time on or before the issue date of the bonds. On or before the issue date of the bonds, the issuer must identify the rule selected in its books and records maintained for the bonds.

[1] Under § 1.150–1(c)(6), the sale date of a bond is the first day on which there is a binding contract in writing for the sale or exchange of the bond. By comparison, under § 1.150–1(b), the issue date for a bond is the date on which the issuer receives the purchase price in exchange for that bond, commonly referred to as the closing date or settlement date.

A commenter suggested that a specific time on the sale date should be established as the proper time for determining issue price. The Treasury Department and the IRS understand that it has been a longstanding practice to determine issue price on the sale date without regard to a specific time and that it is unlikely for bonds to be sold to the public at different prices on that date. Thus, the imposition of a specific time deadline for such determination seems unnecessary and would add to the administrative burden. The Final Regulations do not adopt this comment.

*3. Special Rule for Use of the Initial Offering Price to the Public*

The 2015 Proposed Regulations proposed a special rule that would allow an issuer to treat the initial offering price to the public as the issue price as of the sale date, provided certain requirements were met. That proposed special rule (referred to as the ''alternative method'' in the 2015 Proposed Regulations) proposed to require that the lead underwriter (or sole underwriter, if applicable) certify certain matters, including that no underwriter would sell bonds after the sale date and before the issue date at a price higher than the initial offering price except if the higher price was the result of a market change for the bonds after the sale date (for example, due to a change in market interest rates), and that the lead underwriter provide the issuer with supporting documentation for the matters covered by the certifications, including a justification for any higher price based on a market change. (This proposed requirement for underwriters generally to hold the price at no higher than the initial offering price to the public until the issue date is sometimes referred to herein as the ''hold-the-offering-price'' requirement.)

Commenters favored a special rule to allow use of the initial offering price to the public to set the issue price as of the sale date. Numerous commenters, however, expressed concerns about various aspects of the eligibility requirements for this proposed special rule. One concern expressed by underwriters was that the requirement for the lead underwriter to provide certification as to the actions of the entire underwriting syndicate or selling group was overly broad. Instead, underwriters recommended allowing members of an underwriting syndicate or a selling group to agree individually to act in accordance with the specific matters required under the special rule. The Final Regulations adopt the comment that each underwriter is individually or severally responsible for its agreement (rather than jointly responsible with other underwriters).

Several commenters suggested that the hold-the-offering-price requirement would result in lower offering prices and should not be included in the special rule. One concern expressed related to the differing time periods between the sale date and the issue date for various issuers. One commenter recommended limiting the time period for holding the price to six business days after the sale date. Further, notwithstanding the potential flexibility in pricing afforded by the proposed market change exception to the hold-the-offering-price requirement, commenters overwhelmingly objected to this exception as unworkable because of the absence of meaningful benchmarks for municipal bond prices. Commenters also expressed concern that use of this exception could lead to audit disputes over appropriate documentation to support such price changes.

Accordingly, the Final Regulations adopt a modified hold-the-offering-price requirement that requires underwriters to hold the price for offering and selling unsold bonds at a price that is no greater than the initial offering price to the public for a shorter time period that ends on the earlier of (1) the close of the date that is the fifth (5th) business day after the sale date or (2) the date on which the underwriters have sold a substantial amount of the bonds to the public. Further, in response to the overwhelming negative comments about the proposed market change exception to the proposed hold-the-offering-price requirement, the Final Regulations omit the market change exception.

The modified hold-the-offering-price requirement in the Final Regulations provides a standardized time period for application of the requirement to bonds regardless of the differing time periods among issuers between sales and closings of municipal bond issues. Further, the shorter time period for this requirement should reduce potential associated risks to underwriters and thereby limit the effects of this requirement on initial pricing to issuers and, at the same time, ensure that market pricing behavior is consistent with the initial offering price used for issue price determinations.

Two commenters suggested confirming that, for purposes of the hold-the-offering-price requirement, an underwriter may sell bonds to anyone at a price that is lower (rather than higher) than the initial offering price to the public under this special rule. This special rule expressly provides for this result under the Final Regulations. One commenter sought clarification that underwriters may sell bonds to other underwriters at prices that are higher than the initial offering price to the public under this special rule. Sales to underwriters at such higher prices are inconsistent with a purpose of this special rule to use the initial offering price to the public as a proxy for the issuer's agreement with the underwriters about the maximum amount of underwriters' compensation that is reflected in setting the issue price. Thus, the Final Regulations clarify that underwriters may not sell the bonds at a price that is higher than the initial offering price to the public.

Several commenters recommended a different special rule that would base determinations of issue price on sales of an aggregate percentage of all of the bonds included within an issue, as distinguished from the bond-by-bond method required to determine issue price for bonds with different interest rates, maturities, credits, or payment terms under the Existing Regulations and the 2015 Proposed Regulations. Commenters recommended different percentages of sales of aggregate principal amounts of bonds within an issue to determine issue price, including 25 percent, 50 percent, and 65 percent.

Although a rule that would focus on actual sales of greater percentages of the aggregate principal amounts of bonds included within an issue to determine issue price has potential utility, the Treasury Department and the IRS have concerns about the comparability of the terms of unsold bonds with the terms of sold bonds, which would serve as a proxy for setting the issue price of the unsold bonds, and about the attendant potential complexity to ensure appropriate comparability. Further, the Treasury Department and the IRS have concerns about selection of an appropriate percentage of aggregate sales for such a rule and whether issuers would be able to sell the required percentage of the aggregate principal amount of bonds within the issue. The public comments did not reflect any consensus on an appropriate percentage of aggregate sales for such a rule. In addition, several of the comments in favor of such a rule focused particularly on the need for a more workable rule for competitive sales. In response to this concern, the Final Regulations provide a simplified special rule for competitive sales, as described in section 4 of this preamble. Accordingly, the Final Regulations do not adopt a rule that would focus on actual sales of greater percentages of the aggregate principal amounts of bonds included within an issue.

In summary, the Final Regulations provide a special rule under which an issuer may treat the initial offering price to the public as the issue price of the bonds as of the sale date if: (1) The underwriters offered the bonds to the public at a specified initial offering price on or before the sale date, and the lead underwriter in the underwriting syndicate or selling group (or, if applicable, the sole underwriter) provides, on or before the issue date, a certification to that effect to the issuer, together with reasonable supporting documentation for that certification, such as a copy of the pricing wire or equivalent communication; and (2) each underwriter agrees in writing that it will neither offer nor sell the bonds to any person at a price that is higher than the initial offering price during the period starting on the sale date and ending on the earlier of the close of the fifth (5th) business day after the sale date, or the date on which the underwriters have sold a substantial amount of the bonds to the public at a price that is no higher than the initial offering price to the public.

*4. Special Rule for Competitive Sales*

Numerous commenters, including four States, strongly urged a streamlined special rule for competitive sales to allow the reasonably expected initial offering price to the public reflected in the winning bid in a competitive sale to establish the issue price without a hold-the-offering-price requirement or other restrictions. Commenters suggested that the public bidding process for pricing municipal bonds in competitive sales itself provides a sufficient basis to achieve the best pricing for issuers. The Treasury Department and the IRS recognize that competitive sales favor competition and price transparency that may result in better pricing for issuers. The Final Regulations adopt these comments and provide that, for bonds issued for money pursuant to an eligible competitive sale, an issuer may treat the reasonably expected initial offering price to the public of the bonds as the issue price of the bonds as of the sale date if the issuer obtains a certification from the winning bidder regarding the reasonably expected initial offering price to the public of the bonds upon which the price in the winning bid is based.

For purposes of this special rule, the Final Regulations define *competitive sale* to mean a sale of bonds by an issuer to an underwriter that is the winning bidder in a bidding process in which the issuer offers the bonds for sale to underwriters at specified written terms and that meets the following requirements: (1) The issuer disseminates the notice of sale to potential underwriters in a manner reasonably designed to reach potential underwriters; (2) all bidders have an equal opportunity to bid; (3) the issuer receives bids from at least three underwriters of municipal bonds who have established industry reputations for underwriting new issuances of municipal bonds; and (4) the issuer awards the sale to the bidder who offers the highest price (or lowest interest cost).

*5. Definitions*

The 2015 Proposed Regulations proposed to define the term ''public'' for purposes of determining the issue price of tax-exempt bonds to mean any person other than an underwriter or a related party to an underwriter. Several commenters recommended expanding the definition of public to include related parties to underwriters. This recommended change would allow various affiliates of underwriters, such as entities involved in proprietary trading, to qualify as members of the public for purposes of determining issue price. The Final Regulations do not adopt this comment. The Final Regulations retain this related party restriction on the definition of the public as a safeguard to protect against potential abuse.

The 2015 Proposed Regulations proposed to define ''underwriter'' to include: (1) Any person that contractually agrees to participate in the initial sale of the bonds to the public by entering into a contract with the issuer or into a contract with a lead underwriter to form an underwriting syndicate and (2) any person that, on or before the sale date, directly or indirectly enters into a contract or other arrangement with any of the foregoing to sell the bonds. Numerous commenters expressed significant concern that the phrase ''other arrangement'' in the definition of underwriter was vague and unworkable. One commenter asked if distribution arrangements (for example, a retail distribution contract between a member of an underwriting syndicate or selling group and another dealer that is not in the syndicate or selling group) were included. Another commenter suggested changes to clarify that a contract to sell the bonds be limited to a contract with respect to the initial sale of the bonds to the public. In response to these comments, the Final Regulations omit the phrase ''or other arrangement'' from the definition of underwriter. The Final Regulations also clarify that covered agreements must relate to the initial sale of the bonds to the public and that these agreements include retail distribution agreements.

*6. Standard for Reliance on Certifications and Consequences of Violations*

The 2015 Proposed Regulations proposed a standard that would limit an issuer's ability to rely on certifications from underwriters to circumstances in which an issuer did not know or have reason to know, after exercising due diligence, that the certifications were false. Several commenters expressed concerns about this proposed standard for reliance on certifications. One commenter expressed particular concern that the proposed standard appeared to be higher than or different from the general due diligence standard for determining reasonable expectations that bonds are not arbitrage bonds under § 1.148–2(b) of the Existing Regulations. The existing definition of reasonable expectations, found in § 1.148–1(b) of the Existing Regulations, treats an issuer's expectations or actions as reasonable only if a prudent person in the same circumstances as the issuer would have those same expectations or take those same actions, based on all the objective facts and circumstances. One commenter also sought confirmation that issuers could rely on certifications from underwriters without independent verification.

In response to the comments, the Final Regulations omit the proposed special standard for reliance on underwriters' certifications. Instead, the existing due diligence standard under the Existing Regulations for reasonable expectations or reasonableness will apply to any certification under the Final Regulations. For example, this existing due diligence standard will apply under the special rule on competitive sales to an issuer's reliance on a certification from the winning bidder regarding the reasonably expected initial offering price to the public of the bonds upon which the price in the winning bid is based.

Several commenters urged providing conclusive legal certainty for issue price determinations as of the sale date based on receipt of required underwriter certifications without regard to whether such certifications subsequently proved to be false. Although the Final Regulations generally will allow issuers to establish the issue price as of the sale date, the Final Regulations do not adopt this comment. Accordingly, a failure to meet a specific eligibility requirement of a rule for determining issue price, such as an underwriter's breach of its hold-the-offering-price agreement under the special rule for use of initial offering

price, will result in a failure to establish issue price under that rule and a redetermination of issue price under a different rule. The potential invalidation of an issue price determination is important to ensure compliance with the arbitrage restrictions and the legal availability of penalties against underwriters for false statements. A false statement by an underwriter in a certification or in the agreement among underwriters under one of these special rules may result in a penalty against the underwriter under section 6700, depending on the facts and circumstances.

In accordance with section 6001, the issuer must maintain reasonable documentation in its books and records to support its issue price determinations. In addition, the Final Regulations require that the issuer obtain from the underwriter certain certifications and other reasonable supporting documentation such as a pricing wire to establish its issue price determination under a specific rule in the Final Regulations. A certification from the underwriter of the first price at which ten percent of the bonds were sold to the public is an example of reasonable supporting documentation to establish the issue price of the bonds under the general rule in the Final Regulations.

*7. Other Comments*

A commenter requested a special rule under section 148 to determine issue price in a debt-for-debt exchange, including an exchange resulting from a significant modification under § 1.1001–3. Under the special rule, an issuer would have the option to use a tax-exempt bond's stated principal amount as the issue price rather than the issue price that otherwise would apply under section 1273 or 1274. The commenter requested the rule because, in the commenter's experience, the stated interest rate on a tax-exempt bond issued in a debt-for-debt exchange was generally less than the adjusted applicable Federal rate (AAFR) used under section 1288 to determine whether the bond has adequate stated interest for purposes of section 1274. In this situation, the issue price of the bond would be less than the bond's stated principal amount, resulting in an arbitrage yield that is higher than it otherwise would be if the bond were treated as issued for an amount equal to the bond's stated principal amount. The Final Regulations do not include such a rule because, since the date of the commenter's request, the method to determine the AAFR has been modified in TD 9763, 81 FR 24482 (April 26, 2016). As a result of this modification, it is more likely that the issue price of a tax-exempt bond issued in a debt-for-debt exchange will be the bond's stated principal amount under section 1273 or 1274 (for example, because the AAFR will not be greater than the corresponding applicable Federal rate for taxable bonds, as it was in certain years before the modification).

In addition, some commenters recommended allowing the use of issue price as defined for arbitrage purposes in applying various limitations for other tax-exempt bond purposes, such as those based on principal amounts, face amounts, and sale proceeds. The Final Regulations do not adopt this recommendation because it raises issues that are beyond the scope of the 2015 Proposed Regulations, and the recommended extension of the application of the definition of issue price beyond arbitrage purposes appropriately warrants a separate opportunity for public comment. The Treasury Department and the IRS, however, expect to consider this recommendation in connection with future guidance.

**Applicability Date**

The Final Regulations apply to bonds that are sold on or after June 7, 2017.

**Special Analyses**

Certain IRS regulations, including these Final Regulations, are exempt from the requirements of Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory impact assessment is not required.

It is hereby certified that these Final Regulations will not have a significant economic impact on a substantial number of small entities. This certification is based generally on the fact that any effect on small entities by these rules generally flows from section 148 of the Code. Section 148(h) of the Code requires the yield on an issue of bonds to be determined on the basis of issue price (within the meaning of sections 1273 and 1274). Under section 1273(b), the issue price is the first price at which a substantial amount of the bonds is sold to the public. Section 1.148–1(f)(2) of the Final Regulations gives effect to the statute by requiring the issuer to (1) obtain certain documentation from the underwriter, which is the party that sells the bonds to the public, to support the issuer's determination of issue price and (2) indicate in its books and records the rule used by the issuer to determine issue price. This information will be used to support the issue price of the bonds for audit and other purposes. Any economic impact of obtaining this information is minimal because most of the information already is provided to issuers by the underwriters under existing industry practices. Accordingly, these changes do not add to the impact on small entities imposed by the statutory provision. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Code, the 2015 Proposed Regulations preceding these Final Regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

**Drafting Information**

The principal authors of these regulations are Johanna Som de Cerff and Lewis Bell, Office of Associate Chief Counsel (Financial Institutions and Products), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

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

Income taxes, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.148–0(c) is amended by adding entries for §§ 1.148–1(f) and 1.148–11(m) to read as follows:

**§ 1.148–0 Scope and table of contents.**

* * * * *

(c) * * *

**§ 1.148–1 Definitions and elections.**

* * * * *

(f) Definition of issue price.

(1) In general.

(2) Bonds issued for money.

(3) Definitions.

(4) Other special rules.

* * * * *

**§ 1.148–11 Effective/applicability dates.**

* * * * *

(m) Definition of issue price.

■ **Par. 3.** Section 1.148–1 is amended by revising the definition of ''Issue price'' in paragraph (b) and adding paragraph (f) to read as follows:

**§ 1.148–1 Definitions and elections.**

* * * * *

(b) * * *

*Issue price* means issue price as defined in paragraph (f) of this section.

* * * * *

(f) *Definition of issue price*—(1) *In general.* Except as otherwise provided in this paragraph (f), ''issue price'' is defined in sections 1273 and 1274 and the regulations under those sections.

(2) *Bonds issued for money*—(i) *General rule.* Except as otherwise provided in this paragraph (f)(2), the issue price of bonds issued for money is the first price at which a substantial amount of the bonds is sold to the public. If a bond is issued for money in a private placement to a single buyer that is not an underwriter or a related party (as defined in § 1.150–1(b)) to an underwriter, the issue price of the bond is the price paid by that buyer. Issue price is not reduced by any issuance costs (as defined in § 1.150–1(b)).

(ii) *Special rule for use of initial offering price to the public.* The issuer may treat the initial offering price to the public as of the sale date as the issue price of the bonds if the requirements of paragraphs (f)(2)(ii)(A) and (B) of this section are met.

(A) The underwriters offered the bonds to the public for purchase at a specified initial offering price on or before the sale date, and the lead underwriter in the underwriting syndicate or selling group (or, if applicable, the sole underwriter) provides, on or before the issue date, a certification to that effect to the issuer, together with reasonable supporting documentation for that certification, such as a copy of the pricing wire or equivalent communication.

(B) Each underwriter agrees in writing that it will neither offer nor sell the bonds to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

(*1*) The close of the fifth (5th) business day after the sale date; or

(*2*) The date on which the underwriters have sold a substantial amount of the bonds to the public at a price that is no higher than the initial offering price to the public.

(iii) *Special rule for competitive sales.* For bonds issued for money in a competitive sale, an issuer may treat the reasonably expected initial offering price to the public as of the sale date as the issue price of the bonds if the issuer obtains from the winning bidder a certification of the bonds' reasonably expected initial offering price to the public as of the sale date upon which the price in the winning bid is based.

(iv) *Choice of rule for determining issue price.* If more than one rule for determining the issue price of the bonds is available under this paragraph (f)(2), at any time on or before the issue date, the issuer may select the rule it will use to determine the issue price of the bonds. On or before the issue date of the bonds, the issuer must identify the rule selected in its books and records maintained for the bonds.

(3) *Definitions.* For purposes of this paragraph (f), the following definitions apply:

(i) *Competitive sale* means a sale of bonds by an issuer to an underwriter that is the winning bidder in a bidding process in which the issuer offers the bonds for sale to underwriters at specified written terms, if that process meets the following requirements:

(A) The issuer disseminates the notice of sale to potential underwriters in a manner that is reasonably designed to reach potential underwriters (for example, through electronic communication that is widely circulated to potential underwriters by a recognized publisher of municipal bond offering documents or by posting on an Internet-based Web site or other electronic medium that is regularly used for such purpose and is widely available to potential underwriters);

(B) All bidders have an equal opportunity to bid (within the meaning of § 1.148–5(d)(6)(iii)(A)(*6*));

(C) The issuer receives bids from at least three underwriters of municipal bonds who have established industry reputations for underwriting new issuances of municipal bonds; and

(D) The issuer awards the sale to the bidder who submits a firm offer to purchase the bonds at the highest price (or lowest interest cost).

(ii) *Public* means any person (as defined in section 7701(a)(1)) other than an underwriter or a related party (as defined in § 1.150–1(b)) to an underwriter.

(iii) *Underwriter* means:

(A) Any person (as defined in section 7701(a)(1)) that agrees pursuant to a written contract with the issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the bonds to the public; and

(B) Any person that agrees pursuant to a written contract directly or indirectly with a person described in paragraph (f)(3)(iii)(A) of this section to participate in the initial sale of the bonds to the public (for example, a retail distribution agreement between a national lead underwriter and a regional firm under which the regional firm participates in the initial sale of the bonds to the public).

(4) *Other special rules.* For purposes of this paragraph (f), the following special rules apply:

(i) *Separate determinations.* The issue price of bonds in an issue that do not have the same credit and payment terms is determined separately. The issuer need not apply the same rule to determine issue price for all of the bonds in the issue.

(ii) *Substantial amount.* Ten percent is a substantial amount.

(iii) *Bonds issued for property.* If a bond is issued for property, the adjusted applicable Federal rate, as determined under section 1288 and § 1.1288–1, is used in lieu of the applicable Federal rate to determine the bond's issue price under section 1274.

■ **Par. 4.** Section 1.148–11 is amended by adding paragraph (m) to read as follows:

**§ 1.148–11 Effective/applicability dates.**

* * * * *

(m) *Definition of issue price.* The definition of issue price in § 1.148–1(b) and (f) applies to bonds that are sold on or after June 7, 2017.

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

Approved: November 22, 2016.

**Mark J. Mazur,**

*Assistant Secretary of the Treasury for Tax Policy.*

[FR Doc. 2016–29486 Filed 12–8–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 301

**[TD 9802]**

**RIN 1545–BN64**

## Disclosures of Return Information Reflected on Returns to Officers and Employees of the Department of Commerce for Certain Statistical Purposes and Related Activities

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

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations that authorize the disclosure of certain items of return information to the Bureau of the Census (Bureau) in conformance with section 6103(j)(1) of the Internal Revenue Code (Code). These temporary regulations are

made pursuant to a request from the Secretary of Commerce. These temporary regulations also provide clarifying language for an item of return information and remove duplicative paragraphs contained in the existing regulations. These temporary regulations require no action by taxpayers and have no effect on their tax liabilities. Thus, no taxpayers are likely to be affected by the disclosures authorized by this guidance. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section in this issue of the **Federal Register**.

**DATES:** *Effective Date:* These temporary regulations are effective on December 9, 2016.

*Applicability Date:* For dates of applicability, see § 301.6103(j)(1)–1T(e).

**FOR FURTHER INFORMATION CONTACT:** William Rowe, (202) 317–6834 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## Background and Explanation of Provisions

This document contains amendments to 26 CFR part 301. Section 6103(j)(1)(A) of the Internal Revenue Code authorizes the Secretary of the Treasury (Secretary) to furnish, upon written request by the Secretary of Commerce, such returns or return information as the Secretary may prescribe by regulation to officers and employees of the Bureau for the purpose of, but only to the extent necessary in, the structuring of censuses and national economic accounts and conducting related statistical activities authorized by law. Section 301.6103(j)(1)–1 of the existing regulations further defines such purposes by reference to 13 U.S.C. chapter 5 and provides an itemized description of the return information authorized to be disclosed for such purposes.

By letter dated August 2, 2016, the Secretary of Commerce requested amendments to § 301.6103(j)(1)-1 to allow disclosure of several additional items of return information to the Bureau for purposes of its economic statistics program, structuring the censuses, and related program evaluations. The Secretary of Commerce's letter lists the additional items of return information requested based on the Bureau's specific need for each item of information.

The Secretary of Commerce's letter requested additional expense items from business tax returns in order to improve the expense data that is collected by the Bureau. Specifically, the Secretary of Commerce requested disclosure of the following enumerated components of total expenses or total deductions from business tax returns (Forms 1065, Forms in the 1120 series, and Form 1040, Schedule C, E or C/EZ): (1) Repairs (and maintenance) expense; (2) rents (or lease) expense; (3) taxes and licenses expense; (4) interest expense, including mortgage or other interest; (5) depreciation expense; (6) depletion expense; (7) advertising expense; (8) pension and profit-sharing plans (retirement plans) expense; (9) employee benefit programs expense; (10) utilities expense; (11) supplies expense; (12) contract labor expense; and (13) management (and investment advisory) fees. The Secretary of Commerce has also requested purchases from Form 1125–A and the following additional items from Form 1040, Schedule C: (1) Materials and supplies; and (2) purchases less cost of items withdrawn for personal use. The Secretary of Commerce determined that these additional items are needed to evaluate the quality of expense data collected from surveys and to improve the Bureau's imputation models as the Bureau faces a trend of rising non-response rates in its surveys.

The Secretary of Commerce's letter also requested additional items of return information from business tax returns for the purpose of directing a high proportion of research and development surveys towards businesses with known research activities. Specifically, the Secretary of Commerce requested the following additional items of return information from Forms 6765 (when filed with corporation income tax returns): (1) Cycle posted; and (2) the research tax credit amount to be carried over to a business return, schedule, or form. The Secretary of Commerce determined that the amount of research tax credit is needed to improve the coverage and reliability of surveys that collect research and development data, and determined that the cycle posted is needed in order to align the research tax credit with the appropriate survey year for sampling purposes.

The Secretary of Commerce's letter also requested additional items of return information for purposes of maintaining a centralized, continuous Business Register that comprehensively lists and characterizes United States business establishments and their domestic parent enterprises. The Business Register provides the central business list necessary to support the Bureau's economic census and survey activities. Specifically, the Secretary of Commerce requested the following additional items of return information from employment tax returns: (1) If a business has closed or stopped paying wages; (2) final date a business paid wages; and (3) if a business is a seasonal employer and does not have to file a return for every quarter of the year. The Secretary of Commerce has determined that these items of return information are vital to reducing or eliminating costly mailings to businesses that have closed or are seasonal in nature. The Secretary of Commerce also requested the electronic system filing indicator from business tax returns and the cycle from the IRS's Business Master Files. The Secretary of Commerce determined that the electronic system filing indicator is needed to help establish the ideal survey mode for a particular entity (electronic or paper reporting forms).

The Secretary of Commerce's letter also requested additional items of return information for purposes of modeling firm survival for production of statistics on business dynamics. Specifically, the Secretary of Commerce has requested the following additional items of return information from business tax returns: (1) Dividends, including ordinary and qualified; and (2) type of REIT (from Form 1120–REIT). The Secretary of Commerce has determined that these items are needed to estimate models of firm survival and to estimate an owner's percentage of capital.

The Secretary of Commerce's letter also requested additional items of return information for purposes of the Survey of Business Owners. Specifically, the Secretary of Commerce has requested the following additional items of return information from Form 1065, Schedule K–1: (1) Publicly-traded partnership indicator; (2) partner's share of nonrecourse, qualified nonrecourse, and recourse liabilities; and (3) ordinary business income (loss). The Secretary of Commerce has also requested ordinary business income (loss) from Forms 1120S, Schedule K–1. The Secretary of Commerce has determined that the ordinary business income (loss) and partner's share of liabilities items are needed in order to ascertain which owner's demographic information to use for the entity and as a proxy for ownership share of the partner. The publicly-traded partnership indicator is needed to save the cost of mailing surveys to publicly-traded partnerships since it is unlikely that publicly-traded partnerships could accurately provide demographic information about their owners.

Finally, the Secretary of Commerce's letter also requested additional items of return information for purposes of developing and preparing the Quarterly Financial Report. Specifically, the Secretary of Commerce requested the following additional items of return

information from Forms 1120–REIT: (1) Type of Real Estate Investment Trust (''REIT''); and (2) gross rents from real property. The Secretary of Commerce also requested the corporation's method of accounting from Form 1120F and the total amount reported from Form 1096. The Secretary of Commerce determined that gross rents from real property is needed to design and select the annual Quarterly Financial Report sample, and that the type of REIT is needed for editing and imputation purposes in the event that there are characteristic differences between the types of REITs. The Secretary of Commerce determined that the corporation's method of accounting is needed to understand how businesses with different accounting methods might report differently in the Quarterly Financial Report surveys. The Secretary of Commerce has determined that the total amounts reported from Form 1096 are needed to measure labor inputs for productivity since it would provide information on labor costs not covered by administrative records or survey reports of payroll.

The Secretary of Commerce asserted that good cause exists to amend § 301.6103(j)(1)–1 of the regulations to add these additional items to the list of items of return information that may be disclosed to the Bureau. The Treasury Department and the IRS agree that amending existing regulations to permit disclosure of these items to the Bureau is appropriate to meet the needs of the Bureau. These temporary regulations amend the existing regulations to allow disclosure of the items requested by the Secretary of Commerce.

This temporary regulation also amends language in the existing regulations to clarify that the T.D. 9500, which was published in the **Federal Register** (75 FR 52458), authorized disclosure only of categorical information for total qualified research expenses from Forms 6765. In accordance with the preamble to T.D. 9500, the existing regulations do not authorize the disclosure of the exact amount of total research expenses as reported on Form 6765. By letter dated February 6, 2006, the Secretary of Commerce requested disclosure of categorical information on total qualified research expenses in three ranges: Greater than zero, but less than $1 million; greater than or equal to $1 million, but less than $3 million; and, greater than or equal to $3 million. These temporary regulations amend the existing regulations to more clearly reflect the categorical nature of the disclosure of total research expenses from Form 6765.

Lastly, this temporary regulation also removes duplicate paragraphs contained in the existing regulations. Under the existing regulations, each of the following items of return information from business-related returns was authorized for disclosure by two identical paragraphs: Social Security tip income; total Social Security taxable earnings; and gross distributions from employer-sponsored and individual retirement plans from Form 1099–R. Because there is no need for duplicate paragraphs that authorize disclosure of the same items of return information for the same purpose, the duplicate paragraphs are removed.

The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

### Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations do not impose a collection of information on small entities. Accordingly, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

### Drafting Information

The principal author of these temporary regulations is William Rowe, Office of the Associate Chief Counsel (Procedure & Administration).

### List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

### Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

## PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 2.** Section 301.6103(j)(1)-1T is added to read as follows:

**§ 301.6103(j)(1)–1T Disclosures of return information reflected on returns to officers and employees of the Department of Commerce, for certain statistical purposes and related activities (Temporary).**

(a) through (b)(2)(iii)(H) [Reserved]. For further guidance see § 301.6103(j)(1)–1(a) through (b)(2)(iii)(H).

(I) Total taxable wages paid for purposes of chapter 21; (J) [Reserved]. For further guidance see § 301.6103(j)(1)–1(b)(2)(iii)(J).

(K) If a business has closed or stopped paying wages;

(L) Final date a business paid wages; and

(M) If a business is a seasonal employer and does not have to file a return for every quarter of the year;

(b)(2)(iv) through (b)(3)(iv) [Reserved]. For further guidance see § 301.6103(j)(1)–1(b)(2)(iv) through (b)(3)(iv).

(v) Total expenses or deductions, including totals of the following components thereof:

(A) Repairs (and maintenance) expense;

(B) Rents (or lease) expense;

(C) Taxes and licenses expense;

(D) Interest expense, including mortgage or other interest;

(E) Depreciation expense;

(F) Depletion expense;

(G) Advertising expense;

(H) Pension and profit-sharing plans (retirement plans) expense;

(I) Employee benefit programs expense;

(J) Utilities expense;

(K) Supplies expense;

(L) Contract labor expense; and

(M) Management (and investment advisory) fees.

(b)(3)(vi) through (b)(3)(xxiv) [Reserved]. For further guidance see § 301.6103(j)(1)–1(b)(3)(vi) through (b)(3)(xxiv).

(xxv) From Form 6765 (when filed with corporation income tax returns)—

(A) Indicator that total qualified research expenses is greater than zero, but less than $1 million; greater than or equal to $1 million, but less than $3 million; or, greater than or equal to $3 million;

(B) Cycle posted; and

(C) Research tax credit amount to be carried over to a business return, schedule, or form.

(xxvi) Total number of documents reported on Form 1096 transmitting Forms 1099–MISC.

(xxvii) Total amount reported on Form 1096 transmitting Forms 1099–MISC.

(xxviii) Type of REIT.
(xxix) From Form 1125–A—purchases.
(xxx) From Form 1040, Schedule C—
(A) Purchases less cost of items withdrawn for personal use; and
(B) Materials and supplies.
(xxxi) Electronic filing system indicator.
(xxxii) Posting cycle date relative to filing.
(xxxiii) Dividends, including ordinary or qualified.
(xxxiv) From Form 1120S, Schedule K–1—ordinary business income (loss).
(xxxv) From Form 1065, Schedule K–1—
(A) Publicly-traded partnership indicator;
(B) Partner's share of nonrecourse, qualified nonrecourse, and recourse liabilities; and
(C) Ordinary business income (loss).
(b)(4) through (b)(6)(i)(B) [Reserved]. For further guidance see § 301.6103(j)(1)–1(b)(4) through (b)(6)(i)(B).
(C) From Form 1120–REIT—
(*1*) Type of REIT; and
(*2*) Gross rents from real property;
(D) From Form 1120F—corporation's method of accounting.
(E) From Form 1096—total amount reported.
(b)(6)(ii) through (d)(3)(ii) [Reserved]. For further guidance see § 301.6103(j)(1)–1(b)(6)(ii) through (d)(3)(ii).
(e) *Applicability date.* This section applies to disclosures to the Bureau of the Census made on or after December 9, 2016.
(f) *Expiration date.* The applicability of this section expires on or before December 9, 2019.

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

Approved: November 23, 2016.

**Mark J. Mazur,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2016–29488 Filed 12–8–16; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2016–1023]**

### Drawbridge Operation Regulation; Annisquam River and Blynman Canal, Gloucester, MA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Blynman (SR127) Bridge across the Annisquam River and Blynman Canal at mile 0.0 at Gloucester, MA. The deviation is necessary due to the construction of a new operator's house. This deviation allows the bridge to be opened with a two hour advanced notice during the hours of 8 p.m. through 4 a.m. from December 6, 2016 through April 30, 2017.

**DATES:** This deviation is effective without actual notice from December 9, 2016 through 4 a.m. on April 30, 2017. For the purposes of enforcement, actual notice will be used from December 6, 2016, until December 9, 2016.

**ADDRESSES:** The docket for this deviation, [USCG–2016–1023] is available at *http://www.regulations.gov*. Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Mr. Jeffrey Stieb, First Coast Guard District Bridge Branch, Coast Guard; telephone 617–223–8364, email *Jeffrey.D.Stieb@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Blynman (SR 127) Bridge across the Annisquam River and Blynman Canal, mile 0.0, at Gloucester, Massachusetts, has a vertical clearance in the closed position of 8.2 feet at mean high water and 16 feet at mean low water. The existing bridge operating regulations are found at 33 CFR 117.586. The owner of the bridge, the Massachusetts Department of Transportation, requested a temporary deviation from the normal operating schedule to open on signal after at least a two-hour advance notice is provided between the hours of 8 p.m. to 4 a.m. for the period of December 6, 2016 through April 30, 2017.

The settling of the operator's house has rendered the structure unsafe for occupancy. As a result, a temporary control system in a temporary booth has been installed. Electricians from a private contractor are required to operate the temporary control system at an extraordinary high cost to the bridge owner. The deviation will have negligible effect on vessel navigation. The waterways are transited primarily by seasonal recreation vessels of various sizes. Bridge records indicate an average of less than three requests for openings per month occurred during the hours covered by this deviation. The Coast Guard contacted local waterway users regarding the Commonwealth's request for a temporary deviation and received no objections.

Vessels able to pass through the bridge in the closed position may do so at any time. The bridge will not be able to open immediately for emergencies. However, the northern entrance to the Annisquam River can be used as an alternate route for vessels unable to pass through the bridge in closed position. The Coast Guard will inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 6, 2016.

**C.J. Bisignano,**

*Supervisory Bridge Management Specialist, First Coast Guard District.*

[FR Doc. 2016–29554 Filed 12–8–16; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2016–0308; FRL–9956–26–Region 3]**

### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Removal of Stage II Gasoline Vapor Recovery Requirements for Gasoline Dispensing Facilities; Withdrawal of Direct Final Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** Due to the receipt of adverse public comments, the Environmental Protection Agency (EPA) is withdrawing the direct final rule published on October 21, 2016, to approve revisions to the Virginia state implementation plan (SIP). The revision serves to remove requirements for installation and operation of vapor recovery equipment (also referred to as Stage II vapor recovery) from subject gasoline stations in areas of Virginia that were formally subject to a Stage II vapor recovery program under the Clean Air Act.

**DATES:** The direct final rule published at 81 FR 72724 on October 21, 2016, is withdrawn effective December 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Brian Rehn, (215) 814–2176, or by email at *rehn.brian@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the direct final rule published on October 21, 2016 (81 FR 72724), we stated that if we received comment by November 21, 2016, the rule would be withdrawn and not take effect. EPA received comments before the November 21, 2016 deadline. EPA will address the comment received in a subsequent final action based upon the proposed action also published on October 21, 2016 (81 FR 72757). EPA will not institute a second comment period on this action.

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

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

Dated: November 28, 2016.

**Shawn M. Garvin,**

*Regional Administrator, Region III.*

■ Accordingly, the direct final rule which published in the **Federal Register** on October 21, 2016, at 81 FR 72724 is withdrawn as of December 9, 2016.

[FR Doc. 2016–29586 Filed 12–8–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R06–OAR–2012–0812; FRL–9955–28–Region 6]**

## Approval and Promulgation of Air Quality Implementation Plans; Oklahoma; Infrastructure for the Lead, Ozone, Nitrogen Dioxide and Sulfur Dioxide National Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Under the Federal Clean Air Act (CAA), the Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) submissions from the State of Oklahoma regarding the 2008 Lead (Pb), 2008 Ozone, 2010 Nitrogen Dioxide ($NO_2$), and 2010 Sulfur Dioxide ($SO_2$) National Ambient Air Quality Standards (NAAQS or standards). The four submittals address how the existing SIP provides for implementation, maintenance, and enforcement of these four NAAQS (infrastructure SIP or i-SIP). These i-SIPs ensure that the Oklahoma SIP is adequate to meet the State's responsibilities under the CAA, including the CAA requirements for interstate transport of Pb and $NO_2$ emissions.

**DATES:** This rule is effective on January 9, 2017.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2012–0812. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carrie Paige, 214–665–6521, *paige.carrie@epa.gov*.

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

### I. Background

The background for this action is discussed in detail in our September 20, 2016, proposal (81 FR 64377). In that document we proposed to approve the Oklahoma i-SIP submittals dated October 5, 2012; February 28, 2014; and January 28, 2015, which addressed the 2008 Pb NAAQS; the 2010 $NO_2$ NAAQS; and the 2008 ozone and 2010 $SO_2$ NAAQS as meeting the requirements of an i-SIP. Two of the submittals did not address Section 110(a)(2)(D)(i)(I), prongs 1 and 2, regarding the contribution to nonattainment and interfere with maintenance of the 2008 ozone and 2010 $SO_2$ NAAQS in other states, so we did not propose to take action on such elements for these two NAAQS. In addition, we did not propose to take action on section 110(a)(2)(D)(i)(II)—the prong that specifically addresses visibility protection for the 2010 $SO_2$ NAAQS. We will take separate action on these three prongs for the 2008 ozone and 2010 $SO_2$ NAAQS. We did not receive any comments regarding our proposal.

### II. Final Action

EPA is approving in part the October 5, 2012, February 28, 2014, and January 28, 2015, infrastructure SIP submissions from Oklahoma, which address the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2008 Pb, 2010 $NO_2$, 2008 ozone, and 2010 $SO_2$ NAAQS. Table 1 outlines the specific actions we are approving.

TABLE 1—FINAL ACTION ON OKLAHOMA INFRASTRUCTURE SIP SUBMITTALS FOR VARIOUS NAAQS

| 110(a)(2) Element | 2008 ozone | 2008 Pb | 2010 $NO_2$ | 2010 $SO_2$ |
|---|---|---|---|---|
| (A): Emission limits and other control measures | A | A | A | A |
| (B): Ambient air quality monitoring and data system | A | A | A | A |
| (C)(i): Enforcement of SIP measures | A | A | A | A |
| (C)(ii): PSD program for major sources and major modifications | A | A | A | A |
| (C)(iii): Permitting program for minor sources and minor modifications | A | A | A | A |
| (D)(i)(I): Contribute to nonattainment/interfere with maintenance of NAAQS (requirements 1 and 2) | SA | A | A | SA |
| (D)(i)(II): PSD (requirement 3) | A | A | A | A |
| (D)(i)(II): Visibility Protection (requirement 4) | A | A | A | SA |
| (D)(ii): Interstate and International Pollution Abatement | A | A | A | A |
| (E)(i): Adequate resources | A | A | A | A |
| (E)(ii): State boards | A | A | A | A |

TABLE 1—FINAL ACTION ON OKLAHOMA INFRASTRUCTURE SIP SUBMITTALS FOR VARIOUS NAAQS—Continued

| 110(a)(2) Element | 2008 ozone | 2008 Pb | 2010 $NO_2$ | 2010 $SO_2$ |
|---|---|---|---|---|
| (E)(iii): Necessary assurances with respect to local agencies | A | A | A | A |
| (F): Stationary source monitoring system | A | A | A | A |
| (G): Emergency power | A | A | A | A |
| (H): Future SIP revisions | A | A | A | A |
| (I): Nonattainment area plan or plan revisions under part D | NG | NG | NG | NG |
| (J)(i): Consultation with government officials | A | A | A | A |
| (J)(ii): Public notification | A | A | A | A |
| (J)(iii): PSD | A | A | A | A |
| (J)(iv): Visibility protection | A | A | A | A |
| (K): Air quality modeling and data | A | A | A | A |
| (L): Permitting fees | A | A | A | A |
| (M): Consultation and participation by affected local entities | A | A | A | A |

Key to Table 1:
NG—Element is not germane to infrastructure SIPs.
A—Approving in this action.
SA—Acting on this infrastructure requirement in a separate rulemaking.

Based upon review of these infrastructure SIP submissions and relevant statutory and regulatory authorities and provisions referenced in these submissions and referenced in the Oklahoma SIP, we find Oklahoma has the infrastructure in place to address all applicable required elements of sections 110(a)(1) and (2), except as noted in Table 1, to ensure that the 2008 Pb, 2008 Ozone, 2010 $NO_2$, and 2010 $SO_2$ NAAQS are implemented in the State. This action is being taken pursuant to section 110 of the Act.

## III. Statutory and Executive Order Reviews

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

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 7, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Interstate transport of pollution, Lead, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 6, 2016.

**Ron Curry,**

*Regional Administrator, Region 6.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

**Subpart LL—Oklahoma**

■ 2. In § 52.1920(e) the first table titled ''EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Oklahoma SIP'' is amended by adding the following entries at the end:

**§ 52.1920 Identification of plan**

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE OKLAHOMA SIP

| Name of SIP provision | Applicable geographic or non-attainment area | State submittal date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| Infrastructure for the 2008 Pb NAAQS. | Statewide ..... | 10/5/2012 | 12/9/2016, [Insert **Federal Register** citation]. | |
| Infrastructure for the 2010 $NO_2$ NAAQS. | Statewide ..... | 2/28/2014 | 12/9/2016, [Insert **Federal Register** citation]. | |
| Infrastructure for the 2008 Ozone NAAQS. | Statewide ..... | 1/28/2015 | 12/9/2016, [Insert **Federal Register** citation] | Does not address 110(a)(2)(D) (i)(I). |
| Infrastructure for the 2010 $SO_2$ NAAQS. | Statewide ..... | 1/28/2015 | 12/9/2016, [Insert **Federal Register** citation] | Does not address 110(a)(2)(D) (i)(I) or 110(a)(2)(D) (i)(II) (visibility portion). |

[FR Doc. 2016–29585 Filed 12–8–16; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 150903814–5999–02]**

**RIN 0648–XF061**

## Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

**ACTION:** Temporary rule; quota transfer.

**SUMMARY:** NMFS announces that the State of New Jersey is transferring a portion of its 2016 commercial summer flounder quota to the Commonwealth of Virginia. These quota adjustments are necessary to comply with the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan quota transfer provision. This announcement informs the public of the revised commercial quotas for New Jersey and Virginia.

**DATES:** Effective December 8, 2016, through December 31, 2016.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Hanson, Fishery Management Specialist, (978)–281–9180.

**SUPPLEMENTARY INFORMATION:** Regulations governing the summer flounder fishery are found in 50 CFR 648.100 through 648.110. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.102, and the initial 2016 allocations were published on December 28, 2015 (80 FR 80689).

The final rule implementing Amendment 5 to the Summer Flounder Fishery Management Plan, as published in the **Federal Register** on December 17, 1993 (58 FR 65936), provided a mechanism for transferring summer flounder commercial quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider the criteria in § 648.102(c)(2)(i)(A) through (C) in the evaluation of requests for quota transfers or combinations.

New Jersey is transferring 226 lb (103 kg) of summer flounder commercial quota to Virginia. This transfer was requested by New Jersey to repay landings by a New Jersey-permitted vessel that landed in Virginia under a safe harbor agreement.

The revised summer flounder quotas for calendar year 2016 are now: New Jersey, 1,381,653 lb (626,707 kg); and Virginia, 1,759,787 lb (798,226 kg); based on the initial quotas published in the 2016–2018 Summer Flounder, Scup, and Black Sea Bass Specifications.

### Classification

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

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

Dated: December 6, 2016.

**Emily H. Menashes,**

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

[FR Doc. 2016–29574 Filed 12–8–16; 8:45 am]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 81, No. 237
Friday, December 9, 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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

**[Docket No. PRM–50–114; NRC–2016–0204]**

## Power Reactors in Extended Shutdowns

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; notice of docketing and request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has received a petition for rulemaking (PRM), dated September 1, 2016, from David Lochbaum on behalf of the Union of Concerned Scientists and two co-petitioners (the petitioners). The petitioners request that the NRC ''promulgate regulations applicable to nuclear power reactors with operating licenses issued by the NRC but in an extended outage.'' The PRM was docketed by the NRC on September 14, 2016, and has been assigned Docket No. PRM–50–114. The NRC is examining the issues raised in PRM–50–114 to determine whether they should be considered in rulemaking. The NRC is requesting public comment on the petition.

**DATES:** Submit comments by February 22, 2017. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0204. 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.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

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:** Jennifer Tobin, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2328, email: *Jennifer.Tobin@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2016–0204 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–2016–0204.
- *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 petition for rulemaking is available in ADAMS under Accession No. ML16258A486.
- *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–2016–0204 in 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 will post all comment submissions at *http://www.regulations.gov* as well as enter 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. The Petitioners

The petition was filed by David Lochbaum on behalf of the Union of Concerned Scientists and two co-petitioners: Jim Riccio for Greenpeace, and Geoffrey H. Fettus for the Natural Defense Resource Council.

### III. The Petition

The petitioners request that the NRC ''promulgate regulations applicable to nuclear power reactors with operating licenses issued by the NRC but in an extended outage. The petitioners note that the existing regulations only address operating reactors and those undergoing decommissioning. The petitioners recognize that ''[m]any issues being addressed by the NRC's ongoing decommissioning rulemaking would apply to reactors during extended shutdowns.'' However, the petitioners further state that ''[t]he reactor in extended shutdown scenario entails issues beyond those being addressed by the NRC's decommissioning rulemaking.'' Specifically, ''[t]he petitioners request that the NRC issue a final rule that defines a reactor extended shutdown condition, establishes the requirements applicable during a reactor extended

shutdown, and establishes the requirements that must be satisfied for a reactor to restart from an extended shutdown.'' In addition, the petitioners request NRC issue a final rule that explicitly states that ''a licensee providing the NRC with written certification under 10 CFR [title 10 of the *Code of Federal Regulations*] 50.82(a)(1)(i) of permanent cessation of reactor operations cannot retract that certification and opt to place the reactor into an extended shutdown en route to resumption of reactor operations.''

The petitioners propose two criteria to define when a reactor is placed into an extended shutdown. First, similar to how licensees notify the NRC of their intentions to permanently cease reactor operations under 10 CFR 50.4(b)(8) and 10 CFR 50.82(a)(1)(i), a licensee would ''notify the NRC of its intention to put a reactor into an extended shutdown.'' Second, a reactor that has been shutdown for 2 years but is not actively pursuing restart under a formal NRC process would fall under the petitioners' proposed new regulatory requirements for a reactor in extended shutdown.

The petitioners propose the NRC issue a final rule requiring licensees be required to submit a ''Reactor Extended Shutdown Activities Report (RESAR)'' prior to a reactor entering extended shutdown, similar to the Post-Shutdown Decommissioning Activities Report required by 10 CFR 50.82(a)(4)(i). The petitioners listed seven activities, at a minimum, which should be described in the RESAR. The petitioners note that if the regulations ''do[es] not generically address topics like emergency planning exercises, Design Basis Threats and associated physical protection measures, and handling operating experience (*i.e.,* NRC bulletins and generic letters as well as vendor advisories and manual updates), the RESAR should describe how these topics will be handled.''

The petitioners state a new rule should contain requirements for a reactor exiting extended shutdown by either of two pathways: Restart of the reactor or enter decommissioning. For reactor restart, the petitioners state that ''the final rule must establish how deferred and suspended activities are resumed'' and ''for each activity deferred, suspended, or reduced during the period of reactor extended shutdown, the final rule and its associated regulatory guidance must clearly establish how these activities are resumed or reinstated.'' The petitioners state that the final rule must clearly establish when and to what extent a power ascension startup program is required for reactor re-operation.

The petitioners request the NRC issue a final rule that addresses ''whether decommissioning funds may be used for activities during a reactor extended shutdown and, if so, the criteria and conditions governing use of decommissioning funds.'' The petitioners assert that the final rule ''must require licensees to submit a preliminary decommissioning cost estimate to the NRC at five-year intervals throughout the period of reactor extended shutdown.''

## IV. Request for Comment

The NRC is seeking public comment on the following questions:

1. The petition outlines a scenario where a reactor is in an extended shutdown condition due to economic or other reasons and would at some unspecified later date return to operation. The petition uses the Brown's Ferry Nuclear Plant as an example, where the Tennessee Valley Authority voluntarily shut down one unit from 1985 to 2007. Are there any facilities or licensees who may be likely to use the petitioners' extended shutdown scenario in the future? Please provide technical, scientific, or other data or information demonstrating the basis for your position.

2. The petitioners contend that the NRC's existing regulations were promulgated for operating reactors, and that specific regulations are needed to address non-operating reactors in an ''extended shutdown.'' Assuming the extended shutdown scenario is credible, in what specific ways are the existing regulations identified in the PRM insufficient to address the scenario described by the petitioners? Please provide technical, scientific, or other data or information demonstrating the basis for your position.

3. Assuming that the existing regulations identified in the PRM are insufficient to address the extended shutdown scenario, what specific changes to those regulations are needed to facilitate the requested rulemaking? Please provide technical, scientific, or other data or information demonstrating the basis for your position.

4. The petition describes a plant in an ''extended shutdown,'' and proposes two criteria to enter into this non-operating state (submission of 10 CFR 50.82(a)(1)(i) and 10 CFR 50.4(b)(8) notifications; and a shutdown period of 2 years). Should the term ''extended shutdown'' be defined in 10 CFR 50.2, ''Definitions,'' and should the regulations specify the timeframe for this scenario? Please provide technical, scientific, or other data or information demonstrating the basis for your position.

5. Given the NRC's long-standing, well-understood Reactor Oversight Program (ROP), what potential changes would need to be considered to ensure adequate oversight of a reactor during an extended shutdown? Please provide technical, scientific, or other data or information demonstrating the basis for your position.

6. What additional reporting to the NRC should be required for a reactor in an extended shutdown, and with what level of detail and frequency (*e.g.,* the potential changes to the submission of the decommissioning trust fund reports)? Please provide technical, scientific, or other data or information demonstrating the basis for your position.

## V. Conclusion

The NRC has determined that the petition generally meets the threshold sufficiency requirements for docketing a PRM under 10 CFR 2.802, ''Petition for rulemaking—requirements for filing,'' and the PRM has been docketed as PRM–50–114. The NRC will examine the issues raised in PRM–50–114, to determine whether they should be considered in the rulemaking process. The petitioners have requested a public meeting with the NRC for the purpose of reaching a common understanding of the problems to be resolved by the requested rulemaking. Unlike the public meeting opportunity afforded in the NRC's § 2.206 process mentioned in the PRM, there is no public meeting opportunity required in the petition for rulemaking process (§ 2.802). At this time, the NRC does not intend to hold a public meeting on the PRM.

Dated at Rockville, Maryland, this 5th day of December, 2016.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 2016–29484 Filed 12–8–16; 8:45 am]

**BILLING CODE 7590–01–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2016–6661; Airspace Docket No. 16–ASW–10]**

## Proposed Establishment of Class E Airspace; Grand Chenier, LA

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

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

**SUMMARY:** This action proposes to establish Class E airspace at Grand Chenier, LA. Controlled airspace is necessary to accommodate new special Instrument Approach Procedures developed at Little Pecan Island Airport, for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

**DATES:** Comments must be received on or before January 23, 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 Little Pecan Island Airport, Grand Chenier, LA.

## 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–2016–6661/Airspace Docket No. 16–ASW–10.'' 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-mile radius of Little Pecan Island Airport, Grand Chenier, LA, to accommodate new special 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:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**ASW LA E5 Grand Chenier, LA [New]**

Little Pecan Island Airport, LA
(Lat. 29°47′59″ N., long. 092°48′13″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Little Pecan Island Airport.

Issued in Fort Worth, TX, on November 30, 2016.

**Walter Tweedy,**

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

[FR Doc. 2016–29430 Filed 12–8–16; 8:45 am]

**BILLING CODE 4910–13–P**

## RAILROAD RETIREMENT BOARD

### 20 CFR Part 295

**RIN 3220–AB69**

## Payments Pursuant to Court Decree or Court-Approved Property Settlement

**AGENCY:** Railroad Retirement Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Railroad Retirement Board (Board) proposes to amend its regulations addressing who may receive a portion of an employee annuity due to a former spouse of a railroad annuitant under a court decree of divorce or court-approved property settlement, but which was unpaid at the time of the former spouse's death. The current regulation states that the Board will follow the priority order provided for employee annuities unpaid at death in Section 234.1 of the Board's regulations. The proper section pertaining to employee annuities due but unpaid at death is located in Section 234.31 of the Board's regulations. This amendment is necessary to insert the correct section reference.

**DATES:** Submit comments on or before February 7, 2017.

**ADDRESSES:** You may submit comments, identified by *3220–AB69,* by any of the following methods:

1. Internet—Send comments via email to *SecretarytotheBoard@rrb.gov*
2. Fax—(312) 751–7102.
3. Mail—Secretary to the Board, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois, 60611–2092.

Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to RIN number 3220–AB69.

Caution: You should be careful to include in your comments only information that you wish to make publicly available as comments are made public without change, with any personal information provided. The Board strongly urges you not to include in your comments any personal information, such as Social Security numbers or medical information.

**FOR FURTHER INFORMATION CONTACT:** Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611–2092, (312) 751–4945, TTD (312) 751–4701.

**SUPPLEMENTARY INFORMATION:**

**Background Information**

The Railroad Retirement Act (RRA) provides monthly annuities for railroad employees based on age and years of service in the railroad industry. Section 14(b)(2) of the RRA [45 U.S.C. 231m(b)(2)] provides that portions of an employee annuity calculated under sections 2(b), 3(b), 3(f), and 3(h) of the RRA [45 U.S.C. 231a(b), 231b(b), 231c(f), and 231c(h)] may be characterized as community property and subject to distribution in accordance with a court decree of divorce, annulment, or legal separation or the terms of any court-approved property settlement incident to any such court decree. The current version of Board regulations at Title 20 of the Code of Federal Regulations, Part 295, sections 295.1–7 implement this provision.

The current version of section 295.5(d) of the Board's regulations explains that payments to a spouse or former spouse pursuant to a court order will not be made to the heirs, legatees, creditors, or assignees of a deceased spouse or former spouse. Any annuity amounts due to the spouse or former spouse but unpaid at the time of the spouse or former spouse's death will be made in accordance with the Board's regulations governing payments of employee annuities due but unpaid at the death of the employee. At the time section 295.5(d) was published in the **Federal Register**, the Board regulations governing employee annuities due but unpaid at death were found in section 234.1 of the Board's regulations. Part 234 of the Board's regulations has since been amended and the section governing employee annuities due but unpaid at death is now designated as section 234.31 of the Board's regulations.

**Proposed Changes**

We propose to amend section 295.5(d) of the Board's regulations to provide the correct cross-reference to the section of the Board's regulations governing employee annuities due but unpaid at death. This change is not intended to be substantive.

**Clarity of This Proposed Rule**

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make it easier to understand.

For example:

- Are the requirements for the rule clearly stated?
- Have we organized the material to meet your needs?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand?

**When will we start to use this rule?**

We will not use this rule until we evaluate public comments and publish a final rule in the **Federal Register**. All final rules we issue include an effective date. We will continue to use our current rules until that date. If we publish a final rule, we will include a

summary of relevant comments we received, if any, and responses to them. We will also include an explanation of how we will apply the new rule.

**Regulatory Procedures**

*Executive Order 12866, as Supplemented by Executive Order 13563*

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, no regulatory impact analysis is required.

*Regulatory Flexibility Act*

The Board certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

*Paperwork Reduction Act*

This Proposed Rule imposes no reporting or recordkeeping requirements subject to OMB clearance.

**List of Subjects in 20 CFR Part 295**

Railroad retirement.

For the reasons set out in the preamble, the Railroad Retirement Board proposes to amend title 20, chapter II, subchapter B, part 295 of the Code of Federal Regulations as follows:

## PART 295—PAYMENTS PURSUANT TO COURT DECREE OR COURT-APPROVED SETTLEMENT

■ 1. The authority citation for part 295 continues to read as follows:

**Authority:** 45 U.S.C. 231f; 45 U.S.C. 231m.

**§ 295.5 [Amended]**

■ 2. Amend § 295.5 to revise paragraph (d) to read as follows:

**§ 295.5 Limitations.**

* * * * *

(d) *Payees.* Payment of an amount awarded to a spouse or former spouse by a court decree or property settlement will be made only to the spouse or former spouse except where the Board determines that another person shall be recognized to act on behalf of the spouse or former spouse as provided in Part 266 of the chapter, relating to incompetence. Payment will not be made to the heirs, legatees, creditors or assignees of a spouse or former spouse, except that where an amount is payable to a spouse or former spouse pursuant to this part, but is unpaid at the death of that spouse or former spouse, the unpaid amount may be paid in accordance with § 234.31 of this chapter, pertaining to employee annuities unpaid at death.

* * * * *

Dated: December 6, 2016.

By Authority of the Board.

**Martha P. Rico,**

*Secretary to the Board.*

[FR Doc. 2016–29496 Filed 12–8–16; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### 25 CFR Part 140

**[178A2100DD/AAKC001030/A0A501010.999900 253G]**

**RIN 1076–AF30**

### Traders With Indians

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Advance notice of proposed rulemaking; solicitation of comments.

**SUMMARY:** The Department of the Interior (Department) is considering whether to propose an administrative rule that would comprehensively update 25 CFR part 140 (Licensed Indian Traders) in an effort to modernize the implementation of the Indian Trader statutes consistent with the Federal policies of Tribal self-determination and self-governance. The current regulations were promulgated in 1957 and have not been comprehensively updated since 1965. The purpose of this advance notice of proposed rulemaking (ANPRM) is to solicit public comments on whether and how the Department should update 25 CFR part 140, including how the Indian Trader regulations might be updated to govern who trades on Indian land and how the regulations can better promote Tribal self-determination regarding trade on Indian lands. In this ANPRM, the Department also announces dates and locations for Tribal consultations and public meetings to consider this issue.

**DATES:** Comments must be submitted on or before April 10, 2017.

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

*Federal rulemaking portal: http://www.regulations.gov.* The rule is listed under the agency name ''Bureau of Indian Affairs.'' The rule has been assigned Docket ID: BIA–2016–0007.

*Mail or hand delivery:* Elizabeth K. Appel, Director, Office of Regulatory Affairs & Collaborative Action, Indian Affairs, U.S. Department of the Interior, 1849 C St. NW., Mail Stop 3642–MIB, Washington, DC 20240.

Please see the **SUPPLEMENTARY INFORMATION** section of this document for information on Tribal consultation sessions.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Appel, Director, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary—Indian Affairs; telephone (202) 273–4680, *elizabeth.appel@bia.gov.*

**SUPPLEMENTARY INFORMATION:**

**Public Comment**

The Department is considering whether to propose an administrative rule that would comprehensively update 25 CFR part 140 (Licensed Indian Traders) in an effort to modernize the implementation of the Indian Trader statutes consistent with the Federal policies of Tribal self-determination and self-governance. We are interested in hearing from federally recognized tribes. We also welcome comments and information from states and their agencies and from the public.

To be most useful, and most likely to inform decisions on the content of a potential administrative rule, comments should:

—Be specific;

—Be substantive;

—Explain the reasoning behind the comments; and

—Address the issues outlined in the ANPRM.

For the purpose of this ANPRM, we are seeking input solely on questions related to a potential administrative rule on whether and how the Department of the Interior should update 25 CFR part 140, including how the Indian Trader regulations might be updated to govern who trades on Indian land in a manner more consistent with Tribal self-governance and self-determination.

We are seeking comments solely on following questions:

1. Should the Federal government address trade occurring in Indian Country through an updated 25 CFR part 140, and why?

2. Are there certain components of the existing rule that should be kept, and if so, why?

3. How can revisions to the existing rule ensure that persons who conduct trade are reputable and that there are mechanisms in place to address traders who violate Federal or Tribal law?

4. How do Tribes currently regulate trade in Indian Country and how might

revisions to 25 CFR part 140 help Tribes regulate trade in Indian Country?

5. What types of trade should be regulated and what type of trader should be subject to regulation?

6. How might revisions to the regulations promote economic viability and sustainability in Indian Country?

7. What services do Tribes currently provide to individuals or entities doing business in Indian Country and what role do tax revenues play in providing those services?

In addition to receiving comments through the Federal *eRulemaking* Portal, U.S. mail, courier services, and hand delivery (see **ADDRESSES** section above), we will conduct a series of in-person consultations with federally recognized Tribes, as listed below.

Before including your address, phone number, email address, or other personal information in your comment—including personal identifying information—please be aware that your comment may be made publically available at any time. While you may ask in your comment that we withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

**Tribal Consultations**

The Department of the Interior will be hosting consultation sessions with Indian Tribes on this ANPRM We will accept both oral and written communications at these consultation sessions.

The following table lists dates and tentative locations for the consultations. Specifics on the venue for each location will be provided in a subsequent **Federal Register** notice.

| Date | Time (local time zone) | Location |
|---|---|---|
| Thursday, February 23, 2017 | 8:30 a.m.–12:00 p.m | Seattle area. |
| Tuesday, February 28, 2017 | 8:30 a.m.–12:00 p.m | Southeastern U.S. |
| Thursday, March 2, 2017 | 8:30 a.m.–12:00 p.m | Southern California. |
| Tuesday, March 7, 2017 | 8:30 a.m.–12:00 p.m | Billings, Montana. |
| Thursday, March 9, 2017 | 8:30 a.m.–12:00 p.m | Rapid City, South Dakota. |
| Tuesday, March 14, 2017 | 8:30 a.m.–12:00 p.m | Prior Lake, Minnesota. |
| Thursday, March 16, 2017 | 8:30 a.m.–12:00 p.m | Northeastern U.S. |

**Background**

The Department is considering whether to propose a rule that would comprehensively update 25 CFR part 140 (Licensed Indian Traders) to modernize the implementation of the Indian Trader statutes consistent with the Federal policies of Tribal self-government and self-determination. The current Indian Trader regulations were promulgated in 1957, revised in 1965, and modified in 1984 in a piecemeal fashion. The current regulations largely reflect policies that ignore Tribal self-determination and the growth of Tribal economies.

Congress granted the Department broad and comprehensive authority to regulate trade in Indian Country by determining the proper persons to be ''Indian traders.'' *See* 25 U.S.C. 261 *et seq.; see also* 25 U.S.C. 9. The Department would seek to implement these responsibilities in a manner that reflects the current Nation-to-Nation relationship with Tribes should the Department propose a rule that updates 25 CFR part 140. The Department recognizes that many Tribes have enacted comprehensive laws concerning economic activity occurring on Tribal lands and that Tribal courts often retain jurisdiction over Indian traders. This ANPRM solicits information regarding current Tribal regulatory activity over trade occurring within Indian Country.

Additionally, the Department recognizes that dual taxation on Tribal lands can undermine the Federal policies supporting Tribal economic development, self-determination, and strong Tribal governments. Dual taxation of traders and activities conducted by traders and purchasers can impede a Tribe's ability to attract investment to Indian lands where such investment and participation are critical to the vitality of Tribal economies. Tribal communities continue to struggle with unmet needs, such as in their schools and housing, as well as economic development, to name a few. Moreover, beyond the operation of their governments, Tribes continually pursue funding for infrastructure, roads, dams, irrigation systems and water delivery. Thus, the Department solicits information under this ANPRM about how revisions to the regulations could promote economic viability and sustainability in Indian Country.

**Description of the Information Requested**

We are particularly interested in receiving comments on the following questions relating to revisions of the 25 CFR part 140 we may develop concerning trade occurring in Indian Country:

1. Should the Federal government address trade occurring in Indian Country through an updated 25 CFR part 140, and why?

We are seeking views on whether there is a need in Indian Country for the Federal government to revise 25 CFR part 140. As mentioned, Congress granted the Department broad authority to regulate trade in Indian Country. Specifically, under 25 U.S.C. 261, *Power to appoint traders with Indians,* the Department of the Interior (previously the Commissioner of Indian Affairs) has authority to make rules specifying the kind and quantity of goods that may be sold to Indians and the prices at which such goods shall be sold. Under 25 U.S.C. 262, *Persons permitted to trade with Indians,* the Department has the authority to establish rules and regulations governing trade on Indian reservations for the protection of the Indians.

The Department acknowledges the comprehensive Federal regulation of Indian traders in some areas of Indian Country, but also notes that many Tribes currently regulate trade occurring within their jurisdictions under Tribal laws and authority, often without Federal involvement. The Department also acknowledges its trust responsibility to Tribes and solicits information on whether there is a need for updated regulations addressing a modern approach to the Federal role concerning trade occurring in Indian Country.

2. Are there certain components of the existing rule that should be kept, and if so, why?

Should the Department conclude that there is a need for revisions to the existing rule, the Department seeks comments as to which parts, if any, of the existing rule should be kept. For instance, where the Department has issued licenses, should there be a grandfathering clause for currently valid licenses that the Department has issued under part 140?

Alternatively, if commenters believe there is a need to update 25 CFR part 140, and that no components of the existing rule should be kept, the

Department requests information as to why this should be so. Additionally, the Department seeks views and proposals on what an entirely new proposed rule may look like. For instance, if the Department should no longer issue licenses, what do commenters envision Federal involvement to be?

3. How can revisions to the existing rule ensure that persons who conduct trade are reputable and that there are mechanisms in place to address traders who violate Federal or Tribal law?

If there is a need to update 25 CFR part 140, we solicit information and suggestions on how revisions to the existing rule can ensure that there are reputable actors in Indian Country. Further, the Department requests information and suggestions on revisions to the existing rule to ensure that violations of Federal or Tribal law are properly addressed. The Department acknowledges that many Tribes have comprehensive schemes in place regulating traders conducting business within their jurisdiction.

4. How do Tribes currently regulate trade in Indian Country, and how might revisions to 25 CFR part 140 help Tribes regulate trade in Indian Country?

As mentioned, the Department recognizes that many Tribes have enacted comprehensive laws concerning economic activity occurring on Tribal lands and that many Tribal courts retain jurisdiction over Indian traders. For example, the Department is aware that some Tribes have required disclosure of violations of business licenses and of enforcement actions taken by a Federal, Tribal, or State entity for trade-related activity. Tribes have also required the disclosure of any pending lawsuits involving the person and the business, and disclosure of tax liens against the business and other unsatisfied judgments. Other items that Tribes have required include a Federal employer identification number, a State registration number, insurance or bonding information, copies of all licenses (state, county, city or Tribal) currently held by the business, and affiliation with any other businesses.

With this in mind, the Department requests information on how Tribes currently regulate trade within their jurisdiction. The Department requests specific information and suggestions, including language on how the Federal government can bolster those Tribes that currently comprehensively regulate trade, as well as those Tribes that do not do so presently.

5. What types of trade should be regulated and what types of traders should be subject to regulation?

The Department has received numerous proposals from various Tribes pertaining to Indian Trader regulation. Many of these proposals suggest that trade regulated under part 140 should include not only commercial activities, but also mineral and energy development and any form of natural-resources extraction or agriculture.

Currently, section 140.5(a)(1) of the existing rule has the following definitions:

(5) *Contract* means any agreement made or under negotiation with any Indian for the purchase, transportation or delivery of goods or supplies.

(6) *Trading* means buying, selling, bartering, renting, leasing, permitting and any other transaction involving the acquisition of property or services.

(7) *Commercial trading* means any trading transaction where an employee engages in the business of buying or selling services or items which he/she is trading.

The Department seeks comments on whether the definitions of contract, trading, and commercial trading should be revised, or struck in their entirety, and why.

Additionally, the current definitions do not define the type of trader conducting business with an Indian Tribe. The draft proposals the Department has received recommend that the revised rule apply to any person conducting trade in Indian Country, including non-Indians. The Department solicits comments on whether an updated part 140 should define who the rule would apply to and whether or not this definition should broadly include any person conducting trade within Indian Country.

6. How might revisions to the regulations promote economic viability and sustainability in Indian Country?

The Department is interested in receiving feedback on how revisions to the trade regulations could facilitate economic activity in Indian country and tribal economic self-sufficiency.

7. What services do Tribes currently provide to individuals or entities doing business in Indian Country and what role do tax revenues play in providing such services?

The Department recognizes that Tribes provide a range of services to Indians and non-Indians doing business within their Indian Country. The Department seeks comments identifying the types of services offered, such as law enforcement, food sanitation and health inspections, transportation and other infrastructure, etc. The Department also seeks information on whether and to what extent Tribes are able to rely on tax revenues to provide such services.

Dated: December 1, 2016.

**Lawrence S. Roberts,**

*Principal Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 2016–29253 Filed 12–8–16; 8:45 am]

**BILLING CODE 4337–15–P**

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 57

**[REG–134438–15]**

**RIN 1545–BN10**

## Health Insurance Providers Fee

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations that would modify the current definition of ''net premiums written'' for purposes of the fee imposed by section 9010 of the Patient Protection and Affordable Care Act, as amended. The proposed regulations will affect persons engaged in the business of providing health insurance for United States health risks.

**DATES:** Comments and requests for a public hearing must be received by March 9, 2017.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–134438–15), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–134438–15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, or sent electronically, via the Federal eRulemaking portal at *www.regulations.gov* (IRS REG–134438–15)

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Rachel S. Smith, (202) 317–6855; concerning submissions of comments and request for a hearing, Regina Johnson, (202) 317–6901 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 9010 of the Patient Protection and Affordable Care Act (PPACA), Public Law 111–148 (124 Stat. 119 (2010)), as amended by section 10905 of PPACA, and as further amended by section 1406 of the Health Care and Education Reconciliation Act of 2010,

Public Law 111–152 (124 Stat. 1029 (2010)) (collectively, the Affordable Care Act or ACA) imposes an annual fee on covered entities that provide health insurance for United States health risks. Section 9010 did not amend the Internal Revenue Code (Code) but contains cross-references to specified Code sections. In this preamble all references to section 9010 are references to section 9010 of the ACA and all references to ''fee'' are references to the fee imposed by section 9010.

Section 9010(a) imposes an annual fee on each covered entity engaged in the business of providing health insurance. The fee is due by the annual date specified by the Secretary, but in no event later than September 30th of each calendar year in which a fee must be paid (fee year).

Section 9010(b) requires the Secretary to determine the annual fee for each covered entity based on the ratio of the covered entity's net premiums written for health insurance for any United States health risk that are taken into account for the calendar year immediately before the fee year (data year) to the aggregate net premiums written for health insurance of United States health risks of all covered entities that are taken into account during the data year. In calculating the fee, the Secretary must determine each covered entity's net premiums written for United States health risks based on reports submitted to the Secretary by the covered entity and through the use of any other source of information available to the Secretary. Section 9010 does not define the term ''net premiums written.''

On November 29, 2013, the Treasury Department and the IRS published in the **Federal Register** (TD 9643; 78 FR 71476) final regulations regarding the fee (final regulations). The final regulations define *net premiums written* to mean premiums written, including reinsurance premiums written, reduced by reinsurance ceded, and reduced by ceding commissions and medical loss ratio (MLR) rebates with respect to the data year. Net premiums written do not include premiums written for indemnity reinsurance (and are not reduced by indemnity reinsurance ceded) because indemnity reinsurance is not considered health insurance for purposes of section 9010. However, net premiums written do include premiums written (and are reduced by premiums ceded) for assumption reinsurance; that is, reinsurance for which there is a novation and the reinsurer takes over the entire risk.

The preamble to the final regulations explained that, for covered entities that file the Supplemental Health Care Exhibit (SHCE) with the National Association of Insurance Commissioners (NAIC), net premiums written for health insurance generally will equal the amount reported on the SHCE as direct premiums written minus MLR rebates with respect to the data year, subject to any applicable exclusions under section 9010. The instructions to Form 8963, *Report of Health Insurance Provider Information,* provide additional information on how to determine net premiums written using the SHCE and any equivalent forms as the source of data, and can be updated to reflect changes to the SHCE.

**Explanation of Provisions**

The proposed regulations would amend and clarify the rules for how ''net premiums written'' take into account certain premium adjustments and payments.

*1. Retrospective Premium Adjustments*

Following the publication of the final regulations, the Treasury Department and the IRS received comments requesting that premium adjustments related to retrospectively rated contracts be taken into account in determining net premiums written. The NAIC's Accounting Practices and Procedures Manual Statement of Statutory Accounting Principles No. 66, *Retrospectively Rated Contracts,* defines a retrospectively rated contract as a contract which has the final policy premium calculated based on the loss experience of the insured during the term of the policy (including loss development after the term of the policy) and on the stipulated formula set forth in the policy or a formula required by law. These premium adjustments, made periodically, may involve either the payment of return premium to the insured (a ''retrospectively rated contract payment'') or payment of an additional premium by the insured (a ''retrospectively rated contract receipt''), or both, depending on experience.

Commenters recommended that in calculating net premiums written, premiums written should be increased by retrospectively rated contract receipts and reduced by retrospectively rated contract payments. Commenters asserted that retrospectively rated contract payments are refunded to policyholders in much the same way as MLR rebates. Therefore, without an adjustment for retrospectively rated contract payments, covered entities that make these payments will bear a liability for an amount of the annual fee that correlates to premiums from which they do not actually receive an economic benefit.

In response to these comments, the proposed regulations would modify the current definition of net premiums written to account for premium adjustments related to retrospectively rated contracts, computed on an accrual basis. These amounts are received from and paid to policyholders annually based on experience. Retrospectively rated contract receipts and payments do not include changes to funds or accounts that remain under the control of the covered entity, such as changes to premium stabilization reserves.

*2. Risk Adjustment Payments and Charges*

Following the publication of the final regulations, questions also arose about the treatment of risk adjustment payments under the ACA. Section 1343 of the ACA provides a permanent risk adjustment program for certain plans in the individual and small group markets. In general, the program transfers risk adjustment funds from health insurance plans with relatively lower-risk enrollees to issuers that disproportionately attract high-risk populations, such as individuals with chronic conditions. Section 1343(a)(1) generally requires each state, or the Department of Health and Human Services (HHS) acting on behalf of the state, to assess a charge on health plans and health insurance issuers in the individual or small group markets within a state (with respect to health insurance coverage) if the actuarial risk of the enrollees of such plans or coverage for a year is less than the average actuarial risk of all enrollees in all plans or coverage in the state for the year that are not self-insured group health plans. Section 1343(a)(2) generally requires each state, or HHS acting on behalf of the state, to make a payment to health plans and health insurance issuers in the individual or small group markets within a state (with respect to health insurance coverage) if the actuarial risk of the enrollees of such plans or coverage for a year is greater than the average actuarial risk of all enrollees in all plans and coverage in the state for the year that are not self-insured group health plans.

Although not specifically listed, net premiums written, as defined in the final regulations, include risk adjustment payments received by a covered entity under section 1343(a)(2) of the ACA and are reduced for risk adjustment charges paid by a covered entity under section 1343(a)(1) of the ACA. Nonetheless, several covered entities asked whether net premiums

written included risk adjustment payments received and charges paid. Therefore, these proposed regulations add specific language to the definition of net premiums written to clarify that net premiums written include risk adjustment payments received and are reduced for risk adjustment charges paid. If a covered entity did not include risk adjustment payments received as direct premiums written on its SHCE or did not file an SHCE, these amounts are still part of net premiums written and must be reported as such on Form 8963. For this purpose, risk adjustment payments received and charges paid are computed on an accrual basis.

*3. Other Premium Adjustments*

These proposed regulations would authorize the IRS to provide rules in guidance published in the Internal Revenue Bulletin for additional amounts to be taken into account in determining net premiums written. If the Treasury Department and the IRS determine that published guidance providing additional adjustments to net premiums written is warranted, such guidance will be published in the Internal Revenue Bulletin.

**Proposed Effective/Applicability Date**

These regulations are proposed to apply with respect to any fee that is due on or after September 30, 2018.

**Special Analyses**

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. Because these regulations do not include a collection of information, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to Code section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are requested on all aspects of these proposed regulations. The Treasury Department and the IRS specifically request comments on the following:

1. How the adjustments to net premiums written under these proposed regulations tie to amounts reported on the SHCE.

2. Whether there should be a transition rule for premium adjustments related to retrospectively rated contracts and how any such rule should be implemented.

All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of these proposed regulations is Rachel S. Smith, IRS Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

**List of Subjects in 26 CFR Part 57**

Health Insurance, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 57 is proposed to be amended as follows:

## PART 57—HEALTH INSURANCE PROVIDERS FEE

■ 1. The authority citation for part 57 continues to read in part as follows:

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

* * * * *

■ 2. Section 57.2 is amended by revising paragraph (k) to read as follows:

**§ 57.2 Explanation of terms.**

* * * * *

(k) *Net premiums written*—(1) *In general.* The term *net premiums written* means premiums written, adjusted as provided in paragraph (k)(2) of this section.

(2) *Adjustments.* Net premiums written include adjustments to account for:

(i) *Assumption reinsurance, but not indemnity reinsurance.* Net premiums written include reinsurance premiums written, reduced by reinsurance ceded, and reduced by ceding commissions with respect to the data year. Net premiums written do not include premiums written for indemnity reinsurance and are not reduced by indemnity reinsurance ceded because indemnity reinsurance within the meaning of paragraph (h)(5)(i) of this section is not health insurance under paragraph (h)(1) of this section. However, in the case of assumption reinsurance within the meaning of paragraph (h)(5)(ii) of this section, net premiums written include premiums written for assumption reinsurance, reduced by assumption reinsurance premiums ceded.

(ii) *Medical loss ratio (MLR) rebates.* Net premiums written are reduced by MLR rebates with respect to the data year. For this purpose, MLR rebates are computed on an accrual basis.

(iii) *Premium adjustments related to retrospectively rated contracts.* Net premiums written include retrospectively rated contract receipts and are reduced by retrospectively rated contract payments with respect to the data year. For this purpose, net premium adjustments related to retrospectively rated contracts are computed on an accrual basis.

(iv) *Amounts related to the risk adjustment program under section 1343 of the ACA.* Net premiums written include risk adjustment payments (within the meaning of 42 U.S.C. 18063(b)) received with respect to the data year and are reduced by risk adjustment charges (within the meaning of 42 U.S.C. 18063(a)) paid with respect to the data year. For this purpose, risk adjustment payments and risk adjustment charges are computed on an accrual basis.

(v) *Additional adjustments published in the Internal Revenue Bulletin.* The IRS may provide rules in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) for additional adjustments against premiums written in determining net premiums written.

■ 3. Section 57.10 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

**§ 57.10 Effective/applicability date.**

(a) *In general.* Except as provided in paragraphs (b) and (c) of this section, §§ 57.1 through 57.9 apply to any fee that is due on or after September 30, 2014.

* * * * *

(c) *Paragraph (k) of § 57.2.* Paragraph (k) of § 57.2 applies to any fee that is due on or after September 30, 2018.

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2016–29487 Filed 12–8–16; 8:45 am]

**BILLING CODE 4830–01–P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 57**

**[REG–123829–16]**

**RIN 1545–BN57**

## Electronic Filing of the Report of Health Insurance Provider Information

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend the Health Insurance Providers Fee regulations to require certain covered entities engaged in the business of providing health insurance for United States health risks to electronically file Form 8963, ''Report of Health Insurance Provider Information.'' These proposed regulations affect those entities.

**DATES:** Written or electronic comments and requests for a public hearing must be received by March 9, 2017.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–123829–16), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–123829–16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (indicate IRS REG–123829–16).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, David Bergman, (202) 317–6844; concerning submissions of comments or to request a public hearing, Regina Johnson, (202) 317–6901 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

This document proposes to amend the Health Insurance Providers Fee Regulations (26 CFR part 57) under section 9010 of the Patient Protection and Affordable Care Act (PPACA), Public Law 111–148 (124 Stat. 119 (2010)), as amended by section 10905 of PPACA, and as further amended by section 1406 of the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (124 Stat. 1029 (2010)) (collectively, the Affordable Care Act or ACA). All references in this preamble to section 9010 are references to the ACA.

Section 9010(a) imposes an annual fee on each covered entity engaged in the business of providing health insurance. A covered entity, defined under section 9010(c), is any entity that provides health insurance for any United States health risk during each year, subject to certain exclusions. The total aggregate amount of the fee for all covered entities is determined by statute and is called the applicable amount. *See* section 9010(e). Each covered entity's annual fee is equal to an amount that bears the same ratio to the applicable amount as the covered entity's portion of net premiums written with respect to health insurance for United States health risks that are taken into account compared to the aggregate amount of net premiums written for all covered entities that are taken into account. Section 9010(b)(2) clarifies which net premiums are taken into account for purposes of calculating the fee. A covered entity (including a controlled group) with no more than $25 million in net premiums written does not have any premiums taken into account and is not liable for a fee.

Section 9010(b)(3) requires the Secretary to calculate the amount of each covered entity's fee on a calendar year basis. To facilitate these calculations, section 9010(g)(1) requires that each covered entity must report to the Secretary the covered entity's net premiums written for health insurance for any United States health risk for the preceding calendar year by the date prescribed by the Secretary. Section 9010(g)(1) also provides the Secretary with authority to prescribe the manner in which a covered entity reports its net premiums written. The reporting requirement applies regardless of whether a covered entity will be liable for a fee. Section 9010(g)(2) imposes a penalty on a covered entity for any failure to report the required information by the date prescribed by the Secretary (determined with regard to any extension of time for filing), unless such failure is due to reasonable cause. Section 9010(g)(3) imposes an accuracy-related penalty for understating the covered entity's net premiums written for health insurance for any United States health risk for any calendar year.

Section 57.3 of the Health Insurance Providers Fee regulations implements section 9010(g) and provides the rules for covered entities to report net premiums written for health insurance of United States health risks to the IRS. Under that section, information is reported to the IRS on Form 8963, ''Report of Health Insurance Provider Information,'' which must be filed in accordance with the form instructions by April 15 of the year following the calendar year for which data is being reported. That section further provides that rules for the manner of reporting may be provided in guidance in the Internal Revenue Bulletin. The IRS uses the information reported on Form 8963 as part of the determination of each covered entity's annual fee under section 9010. Neither the statute nor the regulations currently specify whether Form 8963 must be submitted electronically or on paper. Covered entities currently have the option of filing the form in either manner.

Section 57.5 requires the IRS to send each covered entity notice of a preliminary fee calculation for that fee year (the calendar year in which the fee must be paid, beginning with 2014), and provides the content of that notice. Section 57.5 further provides that the timing of the notice will be provided in guidance published in the Internal Revenue Bulletin. Notice 2013–76 (2013–51 IRB 769) provides that the IRS will mail each covered entity its notice of preliminary fee calculation by June 15 of each fee year. Section 57.6 requires that a covered entity correct any errors identified after receiving the preliminary fee calculation by filing a corrected Form 8963. Notice 2013–76 provides that a corrected Form 8963 must be filed by July 15 of the fee year. The corrected Form 8963 replaces the original Form 8963 for all purposes, including the determination of whether an accuracy-related penalty applies. The covered entity remains liable for any failure to report penalty if it failed to timely submit the original Form 8963. As with the original report, the corrected Form 8963 may currently be submitted either electronically on paper.

Under § 57.7(b), the IRS must send each covered entity its final fee calculation no later than August 31. The IRS validates the data on Form 8963 in performing the final calculation, and, pursuant to section 9010(b)(3), the IRS is authorized to use any other source of information to determine each covered entity's net premiums written for health insurance of United States health risks. The covered entity must pay the fee by September 30 of the fee year, as provided by section 9010(a)(2). The fee must be paid by electronic funds transfer. *See* §§ 57.7(d); 57.6302–1.

The Consolidated Appropriations Act of 2016 imposes a moratorium on the fee for the 2017 calendar year. Public Law 114–113, section 201. Thus, covered entities are not required to pay the fee or file Form 8963 for the 2017 fee year.

### Explanation of Provisions

The IRS has now had three years of experience administering the Health

Insurance Providers Fee. Based on this experience, the IRS concludes that the fee could be more efficiently administered if certain covered entities were required to file Forms 8963 and corrected Forms 8963 electronically.

The calculation of the fee is complex, and the statute requires that it be paid by the covered entity by September 30. The calculation of any one covered entity's fee depends upon the data reported on Form 8963 by all covered entities—an adjustment to one covered entity's fee affects other covered entities' fees. Covered entities need time after the end of the year to compile the information that needs to be reported. Accordingly, there is a short window of time for (1) the IRS to compile and analyze the reported information and send out preliminary letters, (2) covered entities to respond with any corrections, (3) the IRS to compile and analyze the amended reporting and issue final fee letters, and (4) covered entities to pay the fee.

Paper reporting slows this process because paper forms take time to travel through the mail. Additionally, once the paper Form 8963 (or corrected Form 8963) reaches IRS personnel, the information on the paper form must be transcribed into IRS computers to calculate the fee. Transcription of paper forms is costly and time-consuming. And, because of the nature of the fee, no entity's proposed or final assessment can be determined until all the reporting of all payers has been taken into account.

The IRS uses electronic filing in several other contexts to streamline the collection of large volumes of paper forms and to efficiently use the information provided. Electronic filing of Forms 8963 and corrected Forms 8963 would benefit the administration of the fee by significantly reducing delays and the resources needed to calculate the preliminary and final fee amounts. Electronic filing will also benefit fee payers by facilitating the process for computing the fee for all covered entities.

Accordingly, pursuant to section 9010(g)(1), which provides authority to prescribe the manner for reporting, the proposed regulations amend § 57.3(a)(2) to provide that a covered entity (including a controlled group) reporting more than $25 million in net premiums written on a Form 8963 or corrected Form 8963 must electronically file these forms after December 31, 2017. Forms 8963 reporting $25 million or less in net premiums written are not required to be electronically filed. This is because a covered entity (including a controlled group) reporting no more than $25 million in net premiums written is not liable for a fee and therefore the time constraints applicable to computation of the fee are not applicable with respect to these entities. *See* § 57.4(a)(4). The proposed regulation also provides that if a Form 8963 or corrected Form 8963 is required to be filed electronically, any subsequently filed Form 8963 filed for the same fee year must also be filed electronically, even if such subsequently filed Form 8963 reports $25 million or less in net premiums written. In addition, the proposed regulation provides that failure to electronically file will be treated as a failure to file for purposes of § 57.3(b).

**Proposed Effective/Applicability Date**

These amendments are proposed to apply to any covered entity reporting more than $25 million in net premiums written on any Form 8963 filed after December 31, 2017.

**Special Analyses**

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It is hereby certified that the electronic filing requirement would not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that the rule is expected to affect primarily larger entities because the electronic filing requirement is not met unless the filer must report more than $25 million in net premiums. Accordingly, a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small business.

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available for public inspection and copying at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of the proposed regulations is David Bergman of the Office of the Associate Chief Counsel (Procedure and Administration).

**List of Subjects in 26 CFR Part 57**

Health Insurance, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 57 is proposed to be amended to read as follows:

## PART 57—HEALTH INSURANCE PROVIDERS FEE

**Paragraph 1.** The authority citation for 26 CFR part 57 continues to read in part as follows:

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

**Par. 2.** Section 57.3 is amended by revising paragraph (a)(2) to read as follows:

**§ 57.3 Reporting requirements and associated penalties.**

* * * * *

(a) * * *

(2) *Manner of reporting*—(i) *In general.* The IRS may provide rules in guidance published in the Internal Revenue Bulletin for the manner of reporting by a covered entity under this section, including rules for reporting by a designated entity on behalf of a controlled group that is treated as a single covered entity.

(ii) *Electronic filing required.* Any Form 8963 (including corrected forms) filed pursuant to paragraph (a)(1) of this section reporting more than $25 million in net premiums written must be filed electronically in accordance with the instructions to the form. If a Form 8963 or corrected Form 8963 is required to be filed electronically under this paragraph (a)(2)(ii), any subsequently filed Form 8963 filed for the same fee year must also be filed electronically. For purposes of paragraph (b) of this section, any Form 8963 required to be filed electronically under this section will not be considered filed unless it is filed electronically.

* * * * *

**Par. 3.** Section 57.10 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

**§ 57.10 Effective/applicability date.**

(a) Except as provided paragraphs (b) and (c) of this section, §§ 57.1 through 57.9 apply to any fee that is due on or after September 30, 2014.

* * * * *

(c) Section 57.3(a)(2)(ii) applies to Forms 8963, including corrected Forms 8963, filed after December 31, 2017.

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2016–29489 Filed 12–8–16; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 301

**[REG–133353–16]**

**RIN 1545–BN63**

## Disclosures of Return Information Reflected on Returns to Officers and Employees of the Department of Commerce for Certain Statistical Purposes and Related Activities

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

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulation.

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register** the IRS is issuing temporary regulations authorizing the disclosure of specified return information to the Bureau of the Census (Bureau) for purposes of structuring the censuses and national economic accounts and conducting related statistical activities authorized by title 13. The temporary regulations are made pursuant to a request from the Secretary of Commerce. The temporary regulations also provide clarifying language for an item of return information and remove duplicative paragraphs contained in the existing final regulations. These regulations require no action by taxpayers and have no effect on their tax liabilities. Thus, no taxpayers are likely to be affected by the disclosures authorized by this guidance. The text of the temporary regulations published in the Rules and Regulations section of the **Federal Register** serves as the text of these proposed regulations.

**DATES:** Written and electronic comments and requests for a public hearing must be received by March 9, 2017.

*Applicability Date:* For dates of applicability, see § 301.6103(j)(1)–1(e).

**ADDRESSES:** Send submissions to CC:PA:LPD:PR (REG–133533–16), Room 5203, Internal Revenue Service, Post Office Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–133533–16), Courier's Desk, Internal Revenue Service, 1111 Constitutional Avenue NW., Washington, DC 20224, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–133533–16).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, William Rowe, (202) 317–6834; concerning submissions of comments, Regina Johnson, (202) 317–5177 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background and Explanation of Provisions

This document contains proposed amendments to 26 CFR part 301 relating to section 6103(j)(1)(A) of the Internal Revenue Code (Code). Section 6103(j)(1)(A) authorizes the Secretary of the Treasury to furnish, upon written request by the Secretary of Commerce, such returns or return information as the Secretary of Treasury may prescribe by regulation to officers and employees of the Bureau for the purpose of, but only to the extent necessary in, the structuring of censuses and national economic accounts and conducting related statistical activities authorized by law. Section 301.6103(j)(1)–1 of the regulations further defines such purposes by reference to 13 U.S.C. chapter 5 and provides an itemized description of the return information authorized to be disclosed for such purposes. This document contains proposed regulations authorizing the disclosure of additional items of return information requested by the Secretary of Commerce. These proposed regulations also provide clarifying language for an item of return information and remove duplicative paragraphs contained in the existing regulations. Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 301. The text of those temporary regulations serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

### Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations do not impose a collection of information on small entities. Accordingly, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

### Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The IRS and Treasury Department request comments on all aspects of the proposed regulations. All comments that are submitted will be available for public inspection and copying at *www.regulations.gov* or upon request. A public hearing may be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

### Drafting Information

The principal author of these proposed regulations is William Rowe, Office of the Associate Chief Counsel (Procedure & Administration).

### List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

## PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 2.** Section 301.6103(j)(1)–1 is amended by adding paragraphs (b)(2)(iii)(K) through (M), (b)(3)(xxxi) through (xxxv), and (b)(6)(i)(C) through

(E), and revising paragraphs (b)(2)(iii)(I), (b)(3)(v), (b)(3)(xxv) through (xxx), and (e) to read as follows:

**§ 301.6103(j)(1)–1 Disclosures of return information reflected on returns to officers and employees of the Department of Commerce for certain statistical purposes and related activities.**

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(I) [The text of proposed amendments to § 301.6103(j)(1)–1(b)(2)(iii)(I) is the same as the text of § 301.6103(j)(1)–1T(b)(2)(iii)(I) published elsewhere in this issue of the **Federal Register**].

* * * * *

(K) through (M) [The text of proposed amendments to § 301.6103(j)(1)–1(b)(2)(iii)(K) through (M) is the same as the text of § 301.6103(j)(1)–1T(b)(2)(iii)(K) through (M) published elsewhere in this issue of the **Federal Register**].

* * * * *

(3) * * *

(v) [The text of proposed amendments to § 301.6103(j)(1)–1(b)(3)(v) is the same as the text of § 301.6103(j)(1)–1T(b)(3)(v) published elsewhere in this issue of the **Federal Register**].

* * * * *

(xxv) through (xxxv) [The text of proposed amendments to § 301.6103(j)(1)–1(b)(3)(xxv) through (xxxv) is the same as the text of § 301.6103(j)(1)–1T(b)(3)(xxv) through (xxxv) published elsewhere in this issue of the **Federal Register**].

* * * * *

(6) * * *

(i) * * *

(C) through (E) [The text of proposed amendments to § 301.6103(j)(1)–1T(b)(6)(i)(C) through (E) is the same as the text of § 301.6103(j)(1)–1T(b)(6)(i)(C) through (E) published elsewhere in this issue of the **Federal Register**].

* * * * *

(e) *Applicability date.* Paragraphs (b)(2)(iii)(I), (b)(2)(iii)(K) through (M), (b)(3)(v), (b)(3)(xxv), (b)(3)(xxv) through (xxxv), and (b)(6)(i)(C) through (E) of this section apply to disclosure of the Bureau of the Census made on or after December 9, 2016. For rules that apply to disclosure to the Bureau of the Census before that date, see 26 CFR 301.6103(j)(1)–1 (revised as of April 1, 2016).

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2016–29490 Filed 12–8–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF JUSTICE

### 28 CFR Part 50

**[Docket No. OIP 100]**

## Request for Public Comment on Draft ''Release to One, Release to All'' Presumption

**AGENCY:** Department of Justice.

**ACTION:** Request for public comment.

**SUMMARY:** The Department of Justice (the ''Department'') is requesting public comment on the draft ''Release to One, Release to All'' policy, which was prepared by the Office of Information Policy (OIP). This draft policy is not final, and should not be construed to represent Agency policy or views. The draft policy takes into account lessons learned from the DOJ pilot and all of the issues examined through the Chief FOIA Office Council, including certain exceptions to the policy and two different options for the timing of when documents should be posted online. The Department requests your comments on the entire draft policy. All public comments submitted in response to this notice will be considered when finalizing this document.

**DATES:** Written comments must be postmarked and electronic comments must be submitted on or before December 23, 2016. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Mail:* Bobby Talebian, U.S. Department of Justice; Office of Information Policy; 1425 New York Avenue NW., Suite 11050; Washington, DC 20530–0001. To ensure proper handling, please reference OIP Docket No. 100 on your correspondence.

See **SUPPLEMENTARY INFORMATION** for further instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Bobby Talebian, by mail at U.S. Department of Justice; Office of Information Policy; 1425 New York Avenue NW., Suite 11050; Washington, DC 20530–0001, or by phone at 202–514–3642.

**SUPPLEMENTARY INFORMATION:**

### I. About the Release to All Presumption

In conjunction with President Obama's signing of the FOIA Improvement Act of 2016, the Administration announced new steps to build on a record of openness and transparency, including promoting broader release of records through a ''release to one is a release to all'' presumption. The President directed the Chief FOIA Officer Council to consider the lessons learned from DOJ's pilot program and work to develop a Federal Government policy establishing a ''release to one is a release to all'' presumptive standard for Federal agencies when releasing records under the FOIA.

### II. Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name and address) voluntarily submitted by the commenter. You are not required to submit personal identifying information in order to comment on this rule. Nevertheless, if you want to submit personal identifying information (such as your name and address) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. Personal identifying information and confidential business information identified as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the paragraph above entitled **FOR FURTHER INFORMATION CONTACT**.

Dated: December 6, 2016.

**Melanie Ann Pustay,**

*Director, Office of Information Policy.*

[FR Doc. 2016–29727 Filed 12–8–16; 8:45 am]

**BILLING CODE 4410–BE–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R09–OAR–2016–0318; FRL–9956–25–Region 9]**

## Approval of California Air Plan Revisions, Imperial County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOCs) and particulate matter (PM) from large confined animal facilities (LCAFs). We are proposing to approve local rules to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by January 9, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2016–0318 at *http://www.regulations.gov,* or via email to *Steckel.Andrew@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov*. For either manner of submission, 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For 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:** Nancy Levin, EPA Region IX, (415) 972–3848, *levin.nancy@epa.gov.*

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

### Table of Contents



## I. The State's Submittal

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

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

| Local agency | Rule No. | Rule title | Amended | Submitted |
|---|---|---|---|---|
| ICAPCD | 217 | Large Confined Animal Facilities (LCAF) Permits Required | 02/09/2016 | 04/21/2016 |
| ICAPCD | 101 | Definitions | 02/09/2016 | 04/21/2016 |
| ICAPCD | 202 | Exemptions | 02/09/2016 | 04/21/2016 |

On May 18, 2016, the EPA determined that the submittal for ICAPCD Rules 217, 101 and 202 met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

### *B. Are there other versions of these rules?*

There are no previous versions of Rule 217 in the SIP, although the ICAPCD adopted an earlier version of Rule 217 on October 10, 2006, and CARB submitted it to us on August 24, 2007. CARB withdrew this version of Rule 217 on May 17, 2011. We approved earlier versions of Rules 101 and 202 into the SIP on October 2, 2014 (79 FR 59433) and May 9, 2011 (76 FR 26615), respectively. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

### *C. What is the purpose of the submitted rules or rule revisions?*

VOCs contribute to the production of ground-level ozone, smog and PM, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. PM, including PM equal to or less than 2.5 microns in diameter ($PM_{2.5}$) and PM equal to or less than 10 microns in diameter ($PM_{10}$), contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires states to submit regulations that control PM emissions. These rules also help to control ammonia, which contributes to PM formation.

Rule 217 is designed to limit VOC and ammonia emissions from LCAFs, including dairies, beef feedlots, poultry houses, swine facilities and other confined animal facilities. The rule applies to operations at or above certain size thresholds specified in the rule.[1] These operations must obtain an ICAPCD permit, submit an emissions mitigation plan and implement mitigation measures. Rule 217 lists mitigation measure requirements for each type of LCAF. The measures are grouped into categories.[2] The LCAF owner/operator must implement the

[1] Table 1 of Rule 217 provides large confined animal facility (LCAF) thresholds for each type of livestock for which the rule applies. For example, the beef feedlot LCAF threshold is 3,500 beef cattle, the dairy LCAF threshold is 500 milking cows, and the poultry LCAF threshold is 400,000 chickens or ducks.

[2] For example, the mitigation measure requirements for beef feedlots are grouped into the following categories: A. Feed, B. Silage, C. Housing, D. Solid Manure/Separated Solids, E. Liquid Manure and F. Land Application.

requirements within each category.[3] Rules 101—Definitions, and 202—Exemptions, were revised to be consistent with the LCAF thresholds for dairy cows, chicken and ducks established in Rule 217.

The EPA's technical support document (TSD) has more information about these rules.

## II. The EPA's Evaluation and Action

*A. How is the EPA evaluating the rules?*

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document, and for each non-CTG major source of VOCs in ozone nonattainment areas classified as moderate or above (see CAA section 182(b)(2)). The ICAPCD regulates sources in an ozone nonattainment area classified as moderate for the 1997 and the 2008 8-hour ozone standards (40 CFR 81.305). Therefore, we are evaluating whether this rule implements RACT-level controls for this area source category. Rules 101 and 202 support the requirements in Rule 217 but do not contain emission limitations directly, so we are not evaluating them for rule stringency.

Generally, SIP rules must also implement Reasonably Available Control Measures (RACM), including RACT, in moderate $PM_{2.5}$ nonattainment areas (see CAA sections 172(c)(1) and 189(a)(1)(C)). The ICAPCD regulates sources in a $PM_{2.5}$ nonattainment area classified as moderate for the 2006 24-hour and the 2012 annual standards. (40 CFR 81.305). RACM evaluations are generally performed in context of a broader implementation plan. Therefore, we are not proposing to determine whether this rule fulfills RACM requirements at this time, although we did evaluate Rule 217 with respect to RACT-level controls in the TSD.

[3] For example, Rule 217 Table 2.1 (C. Housing) states ''An owner/operator of a beef feedlot CAF shall implement mitigation measures 1, 2, 3, and 4 and at least one (1) additional mitigation measure in each of the animal housing structures (*e.g.,* each corral, etc.):'' and lists the mitigation measures below, numbered 1–7.

Guidance and policy documents that we use to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 59 FR 41998 (August 16, 1994).

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

We believe these rules are consistent with CAA requirements and relevant guidance regarding enforceability, RACT and SIP revisions. The TSD has more information on our evaluation.

*C. EPA Recommendations To Further Improve the Rules*

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the rules.

*D. Public Comment and Proposed Action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rules because we believe they fulfill all relevant requirements. We will accept comments from the public on this proposal until January 9, 2017. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP.

## III. Incorporation by Reference

In this rule, the EPA is proposing to include, in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the ICAPCD rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## IV. Statutory and Executive Order Reviews

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

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

In addition, the SIP is not approved to apply on any Indian reservation land

or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

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

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

Dated: November 21, 2016.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 2016–29594 Filed 12–8–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 63

**[EPA–HQ–OAR–2012–0522; FRL–9956–00–OAR]**

**RIN 2060–AT14**

## Phosphoric Acid Manufacturing and Phosphate Fertilizer Production Risk and Technology Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Reconsideration; proposed rule.

**SUMMARY:** This action proposes amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories. The proposed amendments are in response to two petitions for reconsideration filed by industry stakeholders on the rule revisions to NESHAP for the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories that were promulgated on August 19, 2015 (80 FR 50386) (hereafter the ''August 2015 Final Rule''). We are proposing to revise the compliance date by which affected sources must include emissions from oxidation reactors when determining compliance with the total fluoride (TF) emission limits for superphosphoric acid (SPA) process lines. We are also proposing to add a new option, and clarify an existing option, to the monitoring requirements for low-energy absorbers. In addition, we are proposing to revise the compliance date for the monitoring requirements for low-energy absorbers.

**DATES:** *Comments.* Comments must be received on or before January 23, 2017.

*Public Hearing.* If anyone contacts the EPA requesting to speak at a public hearing by December 14, 2016, we will hold a public hearing on December 27, 2016 on the EPA campus at 109 T.W. Alexander Drive, Research Triangle Park, North Carolina.

**ADDRESSES:** *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2012–0522, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

*Instructions.* Direct your comments to Docket ID No. EPA–HQ–OAR–2012–0522. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/dockets.*

*Docket.* The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2012–0522. All documents in the docket are listed in the *Regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue 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 EPA Docket Center is (202) 566–1742.

*Public Hearing.* A public hearing will be held, if requested by December 14, 2016, to accept oral comments on this proposed action. If a hearing is requested, it will be held at the EPA's North Carolina campus located at 109 T.W. Alexander Drive, Research Triangle Park, NC 27711. The hearing, if requested, will begin at 10:00 a.m. (local time) and will continue until the earlier of 5:00 p.m. or 1 hour after the last registered speaker has spoken. To request a hearing, to register to speak at a hearing, or to inquire if a hearing will be held, please contact Ms. Pamela Garrett at (919) 541–7966 or by email at *garrett.pamela@epa.gov.* The last day to pre-register to speak at a hearing, if one is held, will be December 22, 2016. Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk, although preferences on speaking times may not be able to be fulfilled. Please note that registration requests received before the

hearing will be confirmed by the EPA via email.

Please note that any updates made to any aspect of the hearing, including whether or not a hearing will be held, will be posted online at *https://www.epa.gov/stationary-sources-air-pollution/phosphate-fertilizer-production-plants-and-phosphoric-acid.* We ask that you contact Pamela Garrett at (919) 541–7966 or by email at *garrett.pamela@epa.gov* or monitor our Web site to determine if a hearing will be held. The EPA does not intend to publish a notice in the **Federal Register** announcing any such updates. Please go to *https://www3.epa.gov/ttn/atw/phosph/phosphpg.html* for more information on the public hearing.

**FOR FURTHER INFORMATION CONTACT:** For questions about this proposed action, contact Ms. Susan Fairchild, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5167; email address: *fairchild.susan@epa.gov.* For information about the applicability of the NESHAP or the new source performance standards to a particular entity, contact Scott Throwe, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, EPA WJC South Building, Mail Code 2227A, 1200 Pennsylvania Avenue NW., Washington DC 20460; telephone number: (202)562–7013; and email address: *throwe.scott@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:

CAA Clean Air Act
CBI Confidential business information
CFR Code of Federal Regulations
EPA U.S. Environmental Protection Agency
FR Federal Register
MACT Maximum achievable control technology
NAICS North American Industry Classification System
NESHAP National emission standards for hazardous air pollutants
OMB Office of Management and Budget
PRA Paperwork Reduction Act
RTR Risk and technology review
SPA Superphosphoric acid
TF Total fluoride
TFI The Fertilizer Institute
tpy Tons per year
UMRA Unfunded Mandates Reform Act

*Organization of this Document.* The information in this preamble is organized as follows:



## I. General Information

### A. Does this action apply to me?

*Regulated Entities.* Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

| NESHAP and source category | NAICS [a] code |
|---|---|
| Phosphoric Acid Manufacturing .... | |
| Phosphate Fertilizer Production ... | 325312 |

[a] North American Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the proposed action for the source category listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

### B. What action is the Agency taking?

The EPA is proposing amendments to 40 CFR part 63, subpart AA and 40 CFR part 63, subpart BB in response to two petitions for reconsideration on the August 2015 Final Rule. One petition was filed by The Fertilizer Institute (TFI) and the other petition was filed by Phosphate Corporation of Saskatchewan, including: PCS Phosphate Company, Inc.; White Springs Agricultural Chemical, Inc., d/b/a PCS Phosphate-White Springs; and PCS Nitrogen Fertilizer, L.P., (collectively ''PCS''). The standards for the Phosphoric Acid Manufacturing source category are found in 40 CFR part 63, subpart AA, and the standards for the Phosphate Fertilizer Production source category are found in 40 CFR part 63, subpart BB.

The petitions are available in the docket for this action (see docket items EPA–HQ–OAR–2012–0522–0084 and EPA–HQ–OAR–2012–0522–0085).

For 40 CFR part 63, subpart AA, we are proposing to:

- Revise the compliance date by which affected sources must include emissions from oxidation reactors when determining compliance with the TF emission limits for SPA process lines from August 19, 2016, to August 19, 2018.

For both 40 CFR part 63, subpart AA and 40 CFR part 63, subpart BB, we are proposing to:

- Clarify one option and include an additional option for determining the liquid-to-gas ratio of low-energy absorbers; and
- Revise the compliance date for this monitoring requirement from August 19, 2015, to August 19, 2017.

In addition to the issues above, one petitioner, PCS, requested that the EPA reconsider the TF emission limits for phosphate rock calciners. However, PCS subsequently withdrew this request and this issue is no longer part of this reconsideration.

The rationale for these proposed amendments is provided in section III of this preamble. This action is limited to the specific issues raised in the petitions for reconsideration. Therefore, we will respond only to comments addressing issues that were raised in the petitions

for reconsideration. There are no changes to emission limits as a result of these proposed amendments, and we expect the proposed additional compliance time for oxidation reactors will have an insignificant effect on a phosphoric acid manufacturing plant's overall emissions. As stated in the preamble to the August 2015 Final Rule, the EPA's technology review revealed that SPA process lines at four different facilities include an oxidation reactor to remove organic impurities from the acid. Hydrogen fluoride emissions from SPA process lines including oxidation reactors account for less than 1 percent of all hydrogen fluoride emissions from the source category. Consequently, the risk assessment in the August 2015 final risk and technology review (RTR) is unchanged by these proposed amendments.

*C. Where can I get a copy of this document and other related information?*

In addition to being available in the docket, an electronic copy of this action will also be available on the Internet through the Technology Transfer Network (TTN) Web site, a forum for information and technology exchange in various areas of air pollution control. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/phosphate-fertilizer-production-plants-and-phosphoric-acid.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents on this same Web site.

*D. What is the agency's authority for taking this action?*

The statutory authority for this action is provided by sections 112 and 307(d)(7)(B) of the Clean Air Act (CAA) as amended (42 U.S.C. 7412 and 7607(d)(7)(B)).

*E. What are the incremental cost impacts of this action?*

There are 12 facilities in the United States that manufacture phosphoric acid; two of these make only phosphoric acid. There are 11 operating facilities that produce phosphate fertilizers; one of these makes only fertilizer. While Phosphoric Acid Manufacturing and Phosphate Fertilizer Production are two different source categories, 10 facilities manufacture both phosphoric acid and phosphate fertilizer, and are, therefore, considered to be in both source categories.[1]

In this action, we have revised the estimated incremental cost impacts that were presented in the August 2015 Final Rule to reflect new information provided by TFI that takes into account the installation of an additional absorber at the Agrium Nu-West facility. Agrium Nu-West's costs are in addition to those for PCS Aurora, whose absorber installation costs were included in the August 2015 Final Rule. Each of these two facilities are in both the Phosphoric Acid Manufacturing and the Phosphate Fertilizer Production source categories. Table 2 of this preamble compares the overall total capital investment (TCI) and associated total annualized cost (TAC) from the August 2015 Final Rule and the revised total costs for the proposed reconsideration. Detailed information about these revised costs are provided in section IV of this preamble.

TABLE 2—COMPARISON OF COSTS TO COMPLY WITH AUGUST 2015 FINAL RULE, AS PROVIDED IN 2015 AND AS REVISED IN PROPOSED RECONSIDERATION

| Cost item | August 2015 final rule | | 2016 Proposed reconsideration | |
|---|---|---|---|---|
| | Total capital investment | Total annualized cost | Total capital investment | Total annualized cost |
| Oxidation Reactor Absorber | $270,500 | $95,300 | $541,000 | $243,400 |
| Bag Leak Detection System | 75,600 | 29,700 | 75,600 | 29,700 |
| Testing | 0 | 98,400 | 0 | 98,400 |
| Recordkeeping and Reporting | 0 | 70,600 | 0 | 70,600 |
| Total | 346,100 | 294,000 | 616,600 | 442,100 |

## II. Background

On June 10, 1999 (64 FR 31358), the EPA promulgated 40 CFR part 63, subpart AA for the Phosphoric Acid Manufacturing source category and 40 CFR part 63, subpart BB for the Phosphate Fertilizer Production source category. On August 19, 2015 (80 FR 50386), the EPA published amended rules for both of these source categories that took into consideration the technology review and residual risk review required by sections 112(d)(6) and 112(f) of the CAA, respectively. In addition to other changes, the amendments revised the SPA process line definition in 40 CFR part 63, subpart AA to include oxidation reactors and revised the monitoring provisions for low-energy absorbers in 40 CFR part 63, subpart AA and subpart BB to require monitoring of liquid-to-gas ratio rather than pressure drop. For more information on the final amendments, see 80 FR 50386.

Following promulgation of the August 2015 Final Rule, the EPA received two petitions for reconsideration. On October 15, 2015, and October 16, 2015, TFI and PCS, respectively, requested administrative reconsideration of amended 40 CFR part 63, subpart AA and subpart BB under CAA section 307(d)(7)(B).

TFI requested that the EPA reconsider: (1) The compliance schedule for requiring affected sources to include emissions from oxidation reactors when determining compliance with the TF emission limits for SPA process lines; (2) the compliance schedule for continuously monitoring the liquid-to-gas ratio for low-energy absorbers; (3) the regulatory language describing the option for using design blower capacity to determine the gas flow rate through the absorber for use in monitoring the liquid-to-gas ratio; and (4) other available options to determine the gas flow rate through the absorber for use in monitoring the liquid-to-gas ratio. PCS requested an administrative reconsideration of these same provisions, and also requested that the EPA reconsider the monitoring requirements for different types of low-energy absorbers.

We considered all the petitioners' requests, consolidated the similar issues

[1] These are 2014 data.

regarding alternative monitoring options for low-energy absorbers, and grouped the issues into the following three distinct topics:

- Compliance deadlines for air oxidation reactors that are within SPA lines;
- Monitoring options for low-energy absorbers;
- Compliance deadlines for low-energy absorbers.

On December 4, 2015, the EPA granted reconsideration on all petitioners' issues pursuant to section 307(d)(7)(B) of the CAA (see docket items EPA–HQ–OAR–2012–0522–0086 and EPA–HQ–OAR–2012–0522–0087). CAA section 307(d)(7)(B) provides that the EPA shall convene a proceeding to reconsider a rule if a person raising an objection can demonstrate: (1) That it was impracticable to raise the objection during the comment period, or that the grounds for such objection arose after the comment period, but within the time specified for judicial review (*i.e.,* within 60 days after publication of the final rulemaking notice in the **Federal Register**), and (2) that the objection is of central relevance to the outcome of the rule. We granted reconsideration on these specific issues because the grounds for petitioner's objections arose after the public comment period (but within the time specified for judicial review) and the objections are of central relevance to the outcome of the final rule pursuant to CAA section 307(d)(7)(B).

## III. Discussion of the Issues Under Reconsideration

### *A. What amendments are we proposing for oxidation reactors and what is the rationale?*

In response to TFI's and PCS's requests to reconsider the compliance schedule for requiring affected sources to include emissions from oxidation reactors when determining compliance with the TF emission limits for SPA process lines, we are proposing to revise the compliance date from August 19, 2016, to August 19, 2018.[2] As part of their request for reconsideration, TFI stated that one facility (Agrium Nu-West) had commenced an evaluation of how best to control its oxidation reactor emissions. The petitioner stated that this evaluation could result in Agrium Nu-West deciding to install an entirely new absorber for the oxidation reactor, which would involve permitting, budgeting, design, and construction. Agrium Nu-West subsequently provided additional details about its evaluation project, stating that they needed at least another 6 months to complete the installation of ductwork to redirect the exhaust from their existing oxidation reactor to an existing absorber. Agrium Nu-West also said that it would need more time to conduct performance testing in order to determine if the existing absorber could handle the additional emissions loading. If the performance testing demonstrated that the absorber is unable to meet the existing TF limits, Agrium Nu-West said it would need an additional 24 to 36 months to install a new absorber on its oxidation reactor. Furthermore, both petitioners (TFI, the industry trade group, and PCS, the affected company which is also represented by TFI) confirmed that PCS Aurora will need to install a new absorber to achieve compliance with the SPA process line TF emission limit. PCS Aurora stated that they would need 24 months to install a new absorber on their oxidation reactors.

Both PCS Aurora and Agrium Nu-West provided the EPA with timelines (see docket item EPA–HQ–OAR–2012–0522–0088) detailing specific permitting, budgeting, design, and construction milestones that each facility would need to reach in order to comply with the requirement to control emissions from oxidation reactors for SPA process lines. The EPA determined that these milestones are necessary, and the estimated timelines are reasonable and are consistent with the timing allowed by CAA section 112(i)(3) (*i.e.,* no more than 3 years after promulgation). Therefore, in order to allow time for permitting, budgeting, design, and construction, the EPA is proposing an additional 2-year compliance period by which affected sources must include emissions from oxidation reactors when determining compliance with the TF emission limits for SPA process lines. This extension provides a total of 3 years from promulgation to comply with the rule. This compliance period is the maximum amount of time that the CAA allows, and is consistent with similar rulemakings where facilities comply by installing add-on control equipment.

### *B. What amendments are we proposing for absorber monitoring and what is the rationale?*

In today's action, we are clarifying why we are retaining the requirement to monitor the liquid-to-gas ratio for low-energy absorbers. We have determined that liquid-to-gas ratio for low-energy absorbers is the most appropriate option to ensure proper TF control. For gaseous absorbers (such as those controlling TF), increasing the scrubbing liquid flow maximizes the liquid surface area available for absorption and normally favors a higher control efficiency (see docket item EPA–HQ–OAR–2012–0522–0089). The requirement to develop the minimum liquid-to-gas ratio during a performance test establishes the minimum amount of scrubbing liquid that is necessary to absorb the TF at the level necessary to achieve the standard under the operating conditions at which the performance test was conducted. At a constant gas flow rate, increasing the scrubbing liquid flow rate may result in better TF control, but decreasing the liquid flow rate may lead to insufficient absorption and reduce the control efficiency. The liquid-to-gas ratio provides an indication of whether enough scrubbing liquid (*e.g.,* water) is present to provide adequate TF absorption for the amount of gas flowing through the system. As such, if the liquid-to-gas ratio is not monitored for low-energy absorbers, then sources cannot be certain an absorber is sufficiently controlling TF.

In response to TFI's and PCS's request for reconsideration of the compliance schedule for continuously monitoring the liquid-to-gas ratio for low-energy absorbers, we are proposing to revise the compliance date for existing sources to no later than August 19, 2017. We are changing the compliance date in order to allow owners and operators additional time to obtain and certify the instruments needed to monitor liquid-to-gas ratio. Until this proposed compliance date, owners and operators must continue to demonstrate compliance by monitoring the influent absorber liquid flow rate and the pressure drop through the absorber, and conform to the applicable operating limit or range established using the methodologies in 40 CFR 63.605(d)(1) and 40 CFR 63.625(d)(1).[3]

Additionally, in response to TFI's and PCS's request for reconsideration of the regulatory language describing the option for using design blower capacity to determine the gas flow rate through the absorber for use in monitoring the liquid-to-gas ratio, we are proposing to clarify the procedure for using measured pressure drop and ''design blower capacity'' to determine the gas flow rate through the absorber. Table 3 to subpart AA of 40 CFR part 63 currently requires owners and operators to monitor the liquid-to-gas ratio by measuring both the absorber inlet liquid flow rate, and inlet or outlet gas flow rate. However, the

[2] Refer to proposed footnote ''c'' of Tables 1 and 2 of 40 CFR part 63, subpart AA.

[3] Refer to proposed footnote ''b'' of Table 3 of 40 CFR part 63, subpart AA and of Table 3 of 40 CFR part 63, subpart BB.

rule also allows owners and operators the option to use measured pressure drop and ''design blower capacity'' to determine the gas flow rate through the absorber in lieu of direct measurement. Although we are retaining the requirement to monitor the liquid-to-gas ratio for low-energy absorbers, we are proposing to clarify and change the term ''design blower capacity'' in Table 3 to subpart AA of 40 CFR part 63 and Table 3 to subpart BB of 40 CFR part 63 to ''blower design capacity.'' We are proposing other minor text edits to these tables in order to use the phrase ''gas flow rate through the absorber'' more consistently. We are also proposing to insert footnote ''c'' into Table 3 to subpart AA of 40 CFR part 63 and Table 3 to subpart BB of 40 CFR part 63 to clarify that the option to use blower design capacity is available regardless of the location of the blower (influent or effluent), as long as the gas flow rate through the absorber can be established. The blower design capacity option allows the owner or operator to determine a maximum possible gas flow rate through the absorber based on the blower's specifications. The owner or operator can monitor the influent liquid flow rate and use the maximum possible gas flow rate through the absorber to calculate the liquid-to-gas ratio. This option allows the owner or operator to reduce the monitoring requirements associated with the rule because the gas flow rate through the absorber is not required to be continuously monitored. However, if an owner or operator would like to have the flexibility to decrease the liquid flow rate through the absorber, the owner or operator can choose to monitor actual gas flow rate (along with liquid flow rate). As the gas flow rate decreases below the maximum possible gas flow rate, the minimum liquid flow rate required to achieve the minimum liquid-to-gas ratio also decreases.

Furthermore, the intent to allow ''appropriate adjustments for pressure drop'' when blower design capacity is used, is to account for the effect of pressure drop on gas flow when establishing the maximum possible gas flow rate through the absorber under actual operating conditions using manufacturer information (*e.g.,* a performance curve). The requirement is not intended to require continuous monitoring of the blower pressure drop. Because the pressure drop of the system changes the gas flow rate delivered by the blower, adjustments for pressure drop are required in cases where gas flow rate increases. We determined that it would not be technically appropriate to specify a single method for making this adjustment, because the method would vary depending on the design configuration of an individual gas handling system. However, to provide clarification (and to allow sources the flexibility to use best engineering judgment and calculations), we are proposing a requirement at 40 CFR 63.608(e) and 40 CFR 63.628(e) to document, in the site-specific monitoring plan, the calculations that were used to make adjustments for pressure drop if blower design capacity is used to establish the maximum possible gas flow rate through an absorber. Additional details and background on monitoring the liquid-to-gas ratio are included in the docket (see docket item EPA–HQ–OAR–2012–0522–0089 and the guidance document, ''Clarification of Absorber Monitoring Requirements for National Emission Standards for Hazardous Air Pollutants (NESHAP)—Subparts AA and BB'' which is also available in the docket for this action).

Also, in response to TFI's and PCS's requests for reconsideration of other available options to determine the gas flow rate through the absorber for use in monitoring the liquid-to-gas ratio, we are proposing to provide an additional option for determining the liquid-to-gas ratio. Petitioners (TFI and PCS) took issue with the fact that the EPA did not consider other options (in lieu of direct measurement or using blower design capacity) for determining gas flow rate through the absorber. We acknowledge that there are other techniques for determining gas flow rate through an absorber (*e.g.,* use of a damper setting to document a maximum gas flow rate through the absorber in lieu of the blower design capacity; back-calculating the gas flow rate by developing a correlation between static pressure and brake horsepower of the blower; or use of amperage of the blower as a surrogate). In particular, Mosaic Fertilizer, LLC (Mosaic) submitted to the EPA a case study (see ''Mosaic Case Study (Regression Model Example)'' available in the docket for this action) which simultaneously compared direct measurements of actual gas flow rate through an absorber to gas flow rates calculated using a regression model. The regression model that Mosaic used in this particular case study was developed using a design fan curve that correlates gas flow rate to static pressure (*i.e.,* fan suction pressure) and brake horsepower of the blower. A paired t-test [4] of the test data used in the case study reveals that there is a statistical difference between the gas flow rates that were directly measured and the gas flow rates that were calculated using the regression model; however, the regression model predicts a higher gas flow rate than was determined through direct measurement. A higher gas flow rate would require a higher liquid flow rate in order to maintain an established influent liquid-to-gas ratio operating limit; therefore, it is reasonable to conclude that the use of the regression model developed in this case study, in lieu of direct measurement, is a conservative method for determining gas flow rate through the absorber.

In the Regression Model Example that is available in the docket for this action, the brake horsepower of a blower is calculated by multiplying the blower amperage by the blower's voltage and efficiency (which can both be determined from the blower's motor nameplate), a power factor (which can be determined using tables that list typical power factors for various size motors), a conversion factor, and, if necessary, a constant to correct for 3-phase power. The calculated brake horsepower is then used in the regression model along with the blower static pressure (*i.e.,* fan suction pressure) to determine gas flow rate through an absorber. As a result of our considering the Mosaic case study, we are proposing to include an option in Table 3 to subpart AA of 40 CFR part 63 and Table 3 to subpart BB of 40 CFR part 63 that allows facilities to develop and use a regression model, by way of a design fan curve that correlates gas flow rate to static pressure (*i.e.,* fan suction pressure) and brake horsepower of a blower, to determine gas flow rate through an absorber (in lieu of direct measurement or using blower design capacity). If this option is used, we are proposing a requirement in footnote ''a'' of Table 4 to subpart AA of 40 CFR part 63 and Table 4 to subpart BB of 40 CFR part 63 that requires continuous monitoring of blower amperage, blower static pressure (*i.e.,* fan suction pressure), and any other parameters used in the regression model that are not constants.

We have not included equations that must be used in the regression model in order to allow owners and operators the flexibility to adjust this approach as necessary on a site-specific basis. As such, we are also proposing that the regression model must be developed using direct measurements of gas flow rate during a performance test, and then

[4] A paired t-test is a statistical tool used to compare one set of values with another set of values, by checking to see if their means are equivalent at a specified confidence level.

annually checked via performance testing in order to ensure the correlation remains current and accurate. The annual regression model verification could be conducted during, or separately from, the annual performance testing that is required in the rule. To allow the flexibility to use best engineering judgment and calculations, we are proposing an annual requirement at 40 CFR 63.608(f) and 40 CFR 63.628(f) to document, in the site-specific monitoring plan, the calculations that were used to develop the regression model and to require that the site-specific monitoring plan be updated annually to maintain accuracy and reflect data used in the annual regression model verification.

Lastly, in response to PCS's request for reconsideration of monitoring requirements for different types of low-energy absorbers, we are proposing to insert footnote ''a'' into Table 3 to subpart AA of 40 CFR part 63 and Table 3 to subpart BB of 40 CFR part 63 to remind affected entities that they can request an alternative monitoring method under the provisions of 40 CFR 63.8(f) on a site-specific basis. Such a request should include enough information to demonstrate the correlation between the selected operating parameter and gas flow rate through the absorber. Similarly, the petitioners also took issue that the EPA did not consider relevant design differences of low-energy absorbers such that the requirement to monitor the liquid-to-gas ratio may not be possible. In such cases, we are also proposing that the procedures at 40 CFR 63.8(f) be used to request to monitor an alternative operating parameter.

## IV. Summary of Cost, Environmental, and Economic Impacts

As part of their request for reconsideration (see docket item EPA–HQ–OAR–2012–0522–0084), TFI notified the EPA that another facility (Agrium Nu-West) may also need to install an absorber in order to meet the SPA process line TF standard, when oxidation reactor emissions are included. The impacts for this other facility are in addition to those for PCS Aurora, whose absorber installation costs were included in the August 2015 Final Rule. Therefore, in this action, we are revising our estimate for overall TCI and associated TAC to comply with the August 2015 Final Rule to take into account this additional absorber. Based on this revised analysis, we anticipate an overall TCI of $616,600, with an associated TAC of approximately $442,100. Similar to the August 2015 Final Rule, these compliance costs also include estimates for all existing sources to add the necessary monitoring devices, conduct performance tests, and implement recordkeeping and reporting requirements to comply with the rules.

Installing an absorber on the oxidation reactor at Agrium Nu-West will result in additional hydrogen fluoride emissions reductions of 0.047 tons per year from the oxidation reactor (*i.e.,* a reduction from 0.049 tons per year to 0.002 tons per year(tpy)) and TF emissions reductions of 0.14 tpy from the oxidation reactor (*i.e.,* a reduction from 0.147 tpy to 0.007 tpy). The details of the cost analyses and emissions reductions estimates are provided in the memorandum, ''Control Costs and Emissions Reductions for Phosphoric Acid and Phosphate Fertilizer Production source categories—Reconsideration,'' which is available in the docket for this action. The economic impact associated with the revised cost estimate is an annualized control cost of about 0.01 percent of the parent company's annual revenues. The details on the economic impact analysis are provided in the memorandum, ''Economic Impact Analysis for the Proposed Reconsideration of the National Emission Standards for Hazardous Air Pollutants: Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories,'' which is available in the docket for this action.

This action will have no other cost, environmental, energy, or economic impacts. This action primarily revises compliance dates specific to oxidation reactors in the Phosphoric Acid Manufacturing source category, and absorber monitoring in both the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories. The clarifications and other revisions we are proposing in response to reconsideration are cost neutral.

## V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

### *B. Paperwork Reduction Act (PRA)*

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0361. With this action, the EPA is seeking comments on proposed amendments to the 40 CFR part 63, subpart AA and 40 CFR part 63, subpart BB that are mainly clarifications to existing rule language to aid in implementation issues raised by stakeholders, or are being made to allow more time for compliance. Therefore, the EPA believes that there are no changes to the information collection requirements of the August 2015 Final Rule, so that the information collection estimate of project cost and hour burden from the final rules have not been revised.

### *C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action seeks comments on proposed amendments to the 40 CFR part 63, subpart AA and 40 CFR part 63, subpart BB that are mainly clarifications to existing rule language to aid in implementation issues raised by stakeholders, or are being made to allow more time for compliance.

### *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 not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

### *E. Executive Order 13132: Federalism*

This action does not have federalism implications. 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. It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175.

Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action seeks comments on proposed amendments to the 40 CFR part 63, subpart AA and 40 CFR part 63, subpart BB that are mainly clarifications to existing rule language to aid in implementation issues raised by stakeholders, or are being made to allow more time for compliance. We expect the proposed additional compliance time for oxidation reactors will have an insignificant effect on a phosphoric acid manufacturing plant's overall emissions. Hydrogen fluoride emissions from SPA process lines including oxidation reactors account for less than 1 percent of all hydrogen fluoride emissions from the source category. Therefore, the proposed amendments should not appreciably increase risk for any populations.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

This action does not involve any new technical standards from those contained in the August 2015 Final Rule. Therefore, the EPA did not consider the use of any voluntary consensus standards.

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

The EPA believes that this action does *not* have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The environmental justice finding in the August 2015 Final Rule remains relevant in this action, which seeks comments on proposed amendments to these rules that are mainly clarifications to existing rule language to aid in implementation issues raised by stakeholders, or are being made to allow more time for compliance. We expect the proposed additional compliance time for oxidation reactors will have an insignificant effect on a phosphoric acid manufacturing plant's overall emissions. Hydrogen fluoride emissions from SPA process lines including oxidation reactors account for less than 1 percent of all hydrogen fluoride emissions from the source category. Therefore, the proposed amendments should not appreciably increase risk for any populations.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 28, 2016.

**Gina McCarthy,**

*Administrator.*

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend title 40, chapter I, of the Code of Federal Regulations as follows:

## PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

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

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

### Subpart AA—National Emission Standards for Hazardous Air Pollutants from Phosphoric Acid Manufacturing Plants

■ 2. Section 63.608 is amended by adding paragraphs (e) and (f) to read as follows:

**§ 63.608 General requirements and applicability of general provisions of this part.**

* * * * *

(e) If you use blower design capacity to determine the gas flow rate through the absorber for use in the liquid-to-gas ratio as specified in Table 3 to this subpart, then you must include in the site-specific monitoring plan specified in paragraph (c) of this section calculations showing how you determined the maximum possible gas flow rate through the absorber based on the blower's specifications (including any adjustments you made for pressure drop).

(f) If you use a regression model to determine the gas flow rate through the absorber for use in the liquid-to-gas ratio as specified in Table 3 to this subpart, then you must include in the site-specific monitoring plan specified in paragraph (c) of this section the calculations that were used to develop the regression model, including the calculations you use to convert amperage of the blower to brake horsepower. You must describe any constants included in the equations (*e.g.,* efficiency, power factor), and describe how these constants were determined. If you want to change a constant in your calculation, then you must conduct a regression model verification to confirm the new value of the constant. In addition, the site-specific monitoring plan must be updated annually to reflect the data used in the annual regression model verification that is described in Table 3 to this subpart.

■ 3. Table 1 to subpart AA of part 63 is amended by revising footnote ''c'' to read as follows:

TABLE 1 TO SUBPART AA OF PART 63—EXISTING SOURCE EMISSION LIMITS [a] [b]

* * * * *

[c] Beginning on August 19, 2018, you must include oxidation reactors in superphosphoric acid process lines when determining compliance with the total fluorides limit.

* * * * *

■ 4. Table 2 to subpart AA of part 63 is amended by revising footnote ''c'' to read as follows:

TABLE 2 TO SUBPART AA OF PART 63—NEW SOURCE EMISSION LIMITS [a] [b]

* * * * *

[c] Beginning on August 19, 2018, you must include oxidation reactors in superphosphoric acid process lines when determining compliance with the total fluorides limit.

■ 5. Table 3 to subpart AA of part 63 is amended by:

■ a. Revising the column headings ''And you must monitor. . .'' and

''And. . .'' by including a reference to footnote a;

■ b. Revising the entry ''Install CPMS for liquid and gas flow at the inlet of the absorber''; and

■ c. Adding footnotes ''a'' through ''d'' to read as follows:

TABLE 3 TO SUBPART AA OF PART 63—MONITORING EQUIPMENT OPERATING PARAMETERS

| You must . . . | If . . . | And you must monitor . . . [a] | And . . . [a] |
|---|---|---|---|
| * * | * * | * | * * |
| Install CPMS for liquid and gas flow at the inlet of the absorber [b]. | Your absorber is designed and operated with pressure drops of 5 inches of water column or less; or<br>Your absorber is designed and operated with pressure drops of 5 inches of water column or more, and you choose to monitor the liquid-to-gas ratio, rather than only the influent liquid flow, and you want the ability to lower liquid flow with changes in gas flow. | Liquid-to-gas ratio as determined by dividing the influent liquid flow rate by the gas flow rate through the absorber. The units of measure must be consistent with those used to calculate this ratio during the performance test. | You must determine the gas flow rate through the absorber by:<br>Measuring the gas flow rate at the absorber inlet or outlet;<br>Using the blower design capacity, with appropriate adjustments for pressure drop; [c] or<br>Using a regression model. [d] |
| * * | * * | * | * * |

[a] To monitor an operating parameter that is not specified in this table (including process-specific techniques not specified in this table to determine gas flow rate through an absorber), you must request, on a site-specific basis, an alternative monitoring method under the provisions of 40 CFR 63.8(f).

[b] For existing sources, if your absorber is designed and operated with pressure drops of 5 inches of water column or less, the compliance date is August 19, 2017. In the interim, for existing sources with an absorber designed and operated with pressure drops of 5 inches of water column or less, you must install CPMS for pressure at the gas stream inlet and outlet of the absorber, and monitor pressure drop through the absorber.

[c] If you select this option, then you must comply with § 63.608(e). The option to use blower design capacity is intended to establish the maximum possible gas flow through the absorber; and is available regardless of the location of the blower (influent or effluent), as long as the gas flow rate through the absorber can be established.

[d] If you select this option, then you must comply with § 63.608(f). The regression model must be developed using direct measurements of gas flow rate during a performance test, and design fan curves that correlate gas flow rate to static pressure (*i.e.,* fan suction pressure) and brake horsepower of the blower. You must conduct an annual regression model verification using direct measurements of gas flow rate during a performance test to ensure the correlation remains accurate. The annual regression model verification may be conducted during, or separately from, the annual performance testing that is required in § 63.606(b).

■ 6. Table 4 to subpart AA of part 63 is amended by revising the entry ''Influent liquid flow rate and gas stream flow rate'' to read as follows:

TABLE 4 TO SUBPART AA OF PART 63—OPERATING PARAMETERS, OPERATING LIMITS AND DATA MONITORING, RECORDKEEPING AND COMPLIANCE FREQUENCIES

| For the operating parameter applicable to you, as specified in Table 3 . . . | You must establish the following operating limit . . . | And you must monitor, record, and demonstrate continuous compliance using these minimum frequencies . . . | | |
|---|---|---|---|---|
| | | Data measurement | Data recording | Data averaging period for compliance |
| * * | * | * * | * | * |
| Influent liquid flow rate and gas stream flow rate. | Minimum influent liquid-to-gas ratio [a]. | Continuous ..... | Every 15 minutes ..... | Daily. |
| * * | * | * * | * | * |

[a] If you select the regression model option to monitor influent liquid-to-gas ratio as described in Table 3 to this subpart, then you must also continuously monitor (*i.e.,* record every 15 minutes, and use a daily averaging period) blower amperage, blower static pressure (*i.e.,* fan suction pressure), and any other parameters used in the regression model that are not a constant.

## Subpart BB—National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants

■ 7. Section 63.628 is amended by adding paragraphs (e) and (f) to read as follows:

### § 63.628 General requirements and applicability of general provisions of this part.

(e) If you use blower design capacity to determine the gas flow rate through the absorber for use in the liquid-to-gas ratio as specified in Table 3 to this subpart, then you must include in the site-specific monitoring plan specified in paragraph (c) of this section calculations showing how you determined the maximum possible gas flow rate through the absorber based on the blower's specifications (including any adjustments you made for pressure drop).

(f) If you use a regression model to determine the gas flow rate through the absorber for use in the liquid-to-gas ratio as specified in Table 3 to this subpart, then you must include in the site-specific monitoring plan specified in paragraph (c) of this section the calculations that were used to develop the regression model, including the calculations you use to convert amperage of the blower to brake horsepower. You must describe any constants included in the equations (*e.g.,* efficiency, power factor), and describe how these constants were

determined. If you want to change a constant in your calculation, then you must conduct a regression model verification to confirm the new value of the constant. In addition, the site-specific monitoring plan must be updated annually to reflect the data used in the annual regression model verification that is described in Table 3 to this subpart.

■ 8. Table 3 to subpart BB of part 63 is amended by:

■ a. Revising the column headings ''And you must monitor. . .'' and ''And. . .'' by including a reference to footnote a;

■ b. Revising the entry ''Install CPMS for liquid and gas flow at the inlet of the absorber''; and

■ c. Adding footnotes ''a'' through ''d'' to read as follows:

TABLE 3 TO SUBPART BB OF PART 63—MONITORING EQUIPMENT OPERATING PARAMETERS

| You must . . . | If . . . | And you must monitor . . .[a] | And . . .[a] |
|---|---|---|---|
| * * | * * | * * | * * |
| Install CPMS for liquid and gas flow at the inlet of the absorber[b]. | Your absorber is designed and operated with pressure drops of 5 inches of water column or less; or<br>Your absorber is designed and operated with pressure drops of 5 inches of water column or more, and you choose to monitor the liquid-to-gas ratio, rather than only the influent liquid flow, and you want the ability to lower liquid flow with changes in gas flow. | Liquid-to-gas ratio as determined by dividing the influent liquid flow rate by the gas flow rate through the absorber. The units of measure must be consistent with those used to calculate this ratio during the performance test. | You must determine the gas flow rate through the absorber by:<br>Measuring the gas flow rate at the absorber inlet or outlet;<br>Using the blower design capacity, with appropriate adjustments for pressure drop;[c] or<br>Using a regression model.[d] |
| * * | * * | * * | * * |

[a] To monitor an operating parameter that is not specified in this table (including process-specific techniques not specified in this table to determine gas flow rate through an absorber), you must request, on a site-specific basis, an alternative monitoring method under the provisions of 40 CFR 63.8(f).

[b] For existing sources, if your absorber is designed and operated with pressure drops of 5 inches of water column or less, the compliance date is August 19, 2017. In the interim, for existing sources with an absorber designed and operated with pressure drops of 5 inches of water column or less, you must install CPMS for pressure at the gas stream inlet and outlet of the absorber, and monitor pressure drop through the absorber.

[c] If you select this option, then you must comply with § 63.628(e). The option to use blower design capacity is intended to establish the maximum possible gas flow through the absorber; and is available regardless of the location of the blower (influent or effluent), as long as the gas flow rate through the absorber can be established.

[d] If you select this option, then you must comply with § 63.628(f). The regression model must be developed using direct measurements of gas flow rate during a performance test, and design fan curves that correlate gas flow rate to static pressure (*i.e.,* fan suction pressure) and brake horsepower of the blower. You must conduct an annual regression model verification using direct measurements of gas flow rate during a performance test to ensure the correlation remains accurate. The annual regression model verification may be conducted during, or separately from, the annual performance testing that is required in § 63.626(b).

■ 9. Table 4 to subpart BB of part 63 is amended by revising the column headings and entry for ''Influent liquid flow rate and gas stream flow rate'' to read as follows:

TABLE 4 TO SUBPART BB OF PART 63—OPERATING PARAMETERS, OPERATING LIMITS AND DATA MONITORING, RECORDKEEPING AND COMPLIANCE FREQUENCIES

| For the operating parameter applicable to you, as specified in Table 3 . . . | You must establish the following operating limit during your performance test . . . | And you must monitor, record, and demonstrate continuous compliance using these minimum frequencies . . . | | |
|---|---|---|---|---|
| | | Data measurement | Data recording | Data averaging period for compliance |
| * * | * * | * * | * * | * |
| Influent liquid flow rate and gas stream flow rate. | Minimum influent liquid-to-gas ratio[a]. | Continuous ..... | Every 15 minutes ..... | Daily. |
| * * | * * | * * | * * | * |

[a] If you select the regression model option to monitor influent liquid-to-gas ratio as described in Table 3 to this subpart, then you must also continuously monitor (*i.e.,* record every 15 minutes, and use a daily averaging period) blower amperage, blower static pressure (*i.e.,* fan suction pressure), and any other parameters used in the regression model that are not a constant.

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**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 97

**[FRL–9956–22–OAR]**

## Allocations of Cross-State Air Pollution Rule Allowances From New Unit Set-Asides for 2016 Control Periods

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of data availability (NODA).

**SUMMARY:** The Environmental Protection Agency (EPA) is providing notice of the availability of preliminary lists of units eligible for allocations of emission allowances under the Cross-State Air Pollution Rule (CSAPR). Under the CSAPR federal implementation plans (FIPs), portions of each covered state's annual emissions budgets for each of the CSAPR emissions trading programs are reserved for allocation to electricity generating units that commenced commercial operation on or after a certain date (new units) and certain other units not otherwise obtaining allowance allocations under the FIPs. The quantities of allowances allocated to eligible units from each new unit set-aside (NUSA) under the FIPs are calculated in an annual one- or two-round allocation process. EPA previously completed the first round of NUSA allowance allocations for the 2016 control periods for all the CSAPR trading programs, as well as the second round of allocations for the CSAPR $NO_X$ Ozone Season Trading Program, and is now making available preliminary lists of units eligible for allocations in the second round of the NUSA allocation process for the CSAPR $NO_X$ Annual, $SO_2$ Group 1, and $SO_2$ Group 2 Trading Programs. EPA has posted spreadsheets containing the preliminary lists on EPA's Web site. EPA will consider timely objections to the lists of eligible units contained in the spreadsheets and will promulgate a document responding to any such objections no later than February 15, 2017, the deadline for recording the second-round allocations of CSAPR $NO_X$ Annual, $SO_2$ Group 1, and $SO_2$ Group 2 allowances in sources' compliance accounts. This document may concern CSAPR-affected units in the following states: Alabama, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

**DATES:** Objections to the information referenced in this document must be received on or before January 9, 2017.

**ADDRESSES:** Submit your objections via email to *CSAPR_NUSA@epa.gov.* Include ''2016 NUSA allocations'' in the email subject line and include your name, title, affiliation, address, phone number, and email address in the body of the email.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning this action should be addressed to Robert Miller at (202) 343–9077 or *miller.robertL@epa.gov* or Kenon Smith at (202) 343–9164 or *smith.kenon@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Under the CSAPR FIPs, the mechanisms by which initial allocations of emission allowances are determined differ for ''existing'' and ''new'' units. For ''existing'' units—that is, units commencing commercial operation before January 1, 2010 for purposes of the original four [1] CSAPR trading programs—the specific amounts of CSAPR FIP allowance allocations for all control periods have been established through rulemaking. EPA has announced the availability of spreadsheets showing the CSAPR FIP allowance allocations to existing units in previous document.[2]

''New'' units—that is, units commencing commercial operation on or after January 1, 2010 for purposes of the original four CSAPR trading programs—as well as certain older units that would not otherwise obtain FIP allowance allocations do not have pre-established allowance allocations. Instead, the CSAPR FIPs reserve a portion of each state's total annual emissions budget for each CSAPR emissions trading program as a new unit set-aside (NUSA) [3] and establish an annual process for allocating NUSA allowances to eligible units. States with Indian country within their borders have separate Indian country NUSAs. The annual process for allocating allowances from the NUSAs and Indian country NUSAs to eligible units is set forth in the CSAPR regulations at 40 CFR 97.411(b) and 97.412 ($NO_X$ Annual Trading Program), 97.511(b) and 97.512 ($NO_X$ Ozone Season Trading Program), 97.611(b) and 97.612 ($SO_2$ Group 1 Trading Program), and 97.711(b) and 97.712 ($SO_2$ Group 2 Trading Program). Each NUSA allowance allocation process involves up to two rounds of allocations to new units followed by the allocation to existing units of any allowances not allocated to new units. EPA provides public notice at certain points in the process.

EPA has already completed the first round of allocations of 2016 NUSA allowances for all the CSAPR trading programs, as well as the second round of 2016 NUSA allocations to units subject to the CSAPR Ozone Season Trading Program, as announced in documents previously published in the **Federal Register**.[4] The first and second-round NUSA allocation process was discussed in those previous documents. This document concerns the second round of NUSA allowance allocations for the CSAPR NOx Annual, $SO_2$ Group 1, and $SO_2$ Group 2 Trading Programs for the 2016 control period.[5]

The units eligible to receive second-round NUSA allocations for the CSAPR $NO_X$ Annual, $SO_2$ Group 1, and $SO_2$ Group 2 Trading Programs are defined in §§ 97.411(b)(1)(iii) and 97.412(a)(9)(i), 97.611(b)(1)(iii) and 97.612(a)(9)(i), and 97.711(b)(1)(iii) and 97.712(a)(9)(i), respectively. Generally, eligible units include any CSAPR-affected unit that commenced commercial operation between January 1 of the year before the control period in question and November 30 of the year of the control period in question. In the case of 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 ozone season program will be renamed the CSAPR $NO_X$ Ozone Season Group 1 Trading Program.) The 2016 allowance allocations described in this document concern the CSAPR annual trading programs and are not affected by the CSAPR Update Rule.

[2] The latest spreadsheet of CSAPR FIP allowance allocations to existing units covered by CSAPR $NO_X$ Annual, $SO_2$ Group 1, and $SO_2$ Group 2 Trading Programs, updated in 2014 to reflect changes to CSAPR's implementation schedule but with allocation amounts unchanged since June 2012, is available at *https://www.epa.gov/csapr/date-change-affirmation-rules-cross-state-air-pollution-rule-csapr* under the ''Notice of Data Availability'' header. *See* Availability of Data on Allocations of Cross-State Air Pollution Rule Allowances to Existing Electricity Generating Units, 79 FR 71674 (December 3, 2014).

[3] The NUSA amounts range from two percent to eight percent of the respective state budgets. The variation in percentages reflects differences among states in the quantities of emission allowances projected to be required by known new units at the time the budgets were set or amended.

[4] 81 FR 33636 (May 27, 2016); 81 FR 50630 (August 2, 2016); 81 FR 63156 (September 14, 2016); 81 FR 80593 (November 16, 2016).

[5] At this time, EPA is not aware of any unit eligible for a second-round allocation from any Indian country NUSA.

2016 control period, an eligible unit therefore must have commenced commercial operation between January 1, 2015 and November 30, 2016 (inclusive).

The total quantity of allowances to be allocated through the 2016 NUSA allowance allocation process for each state and emissions trading program—in the two rounds of the allocation process combined—is generally the state's 2016 emissions budget less the sum of (1) the total of the 2016 CSAPR FIP allowance allocations to existing units and (2) the amount of the 2016 Indian country NUSA, if any.[6] The amounts of CSAPR $NO_X$ Annual, $SO_2$ Group 1, and $SO_2$ Group 2 NUSA allowances may be increased in certain circumstances as set forth in §§ 97.412(a)(2), 97.612(a)(2), and 97.712(a)(2), respectively.

Second-round NUSA allocations for a given state, trading program, and control period are made only if the NUSA contains allowances after completion of the first-round allocations.

The amounts of second-round allocations of CSAPR $NO_X$ Annual, $SO_2$ Group 1, and $SO_2$ Group 2 allowances to eligible new units from each NUSA are calculated according to the procedures set forth in §§ 97.412(a)(9), (10) and (12), 97.612(a)(9), (10), and (12), and 97.712(a)(9), (10), and (12), respectively. Generally, the procedures call for each eligible unit to receive a second-round 2016 NUSA allocation equal to the positive difference, if any, between its emissions during the 2016 annual control periods (*i.e.,* January 1, 2016 through December 31, 2016) as reported under 40 CFR part 75 and any first-round allocation the unit received, unless the total of such allocations to all eligible units would exceed the amount of allowances in the NUSA, in which case the allocations are reduced on a pro-rata basis.

Any allowances remaining in the CSAPR $NO_X$ Annual, $SO_2$ Group 1, or $SO_2$ Group 2 NUSA for a given state and control period after the second round of NUSA allocations to new units will be allocated to the existing units in the state according to the procedures set forth in §§ 97.412(a)(10) and (12), 97.612(a)(10) and (12), and 97.712(a)(10) and (12), respectively.

EPA notes that an allocation or lack of allocation of allowances to a given EGU does not constitute a determination that CSAPR does or does not apply to the EGU. EPA also notes that allocations are subject to potential correction if a unit to which NUSA allowances have been allocated for a given control period is not actually an affected unit as of the start of that control period.[7]

The preliminary lists of units eligible for second-round 2016 NUSA allowance allocations for the three CSAPR annual trading programs are set forth in Excel spreadsheets titled ''CSAPR_NUSA_2016_$NO_X$_Annual_2nd_Round_Prelim_Data,'' ''CSAPR_NUSA_2016_$SO_2$_Group_1_2nd_Round_Prelim_Data,'' and ''CSAPR_NUSA_2016_$SO_2$_Group_2_2nd_Round_Prelim_Data'' available on EPA's Web site at *https://www.epa.gov/csapr/csapr-compliance-year-2016-nusa-nodas.* Each spreadsheet contains a separate worksheet for each state covered by that program showing each unit preliminarily identified as eligible for a second-round NUSA allocation.

Each state worksheet also contains a summary showing (1) the quantity of allowances initially available in that state's 2016 NUSA, (2) the sum of the 2016 NUSA allowance allocations that were made in the first-round to new units in that state (if any), and (3) the quantity of allowances in the 2016 NUSA available for distribution in second-round allocations to new units (or ultimately for allocation to existing units).

Objections should be strictly limited to whether EPA has correctly identified the new units eligible for second-round 2016 NUSA allocations of CSAPR $NO_X$ Annual, $SO_2$ Group 1, and $SO_2$ Group 2 allowances according to the criteria described above and should be emailed to the address identified in **ADDRESSES**. Objections must include: (1) Precise identification of the specific data the commenter believes are inaccurate, (2) new proposed data upon which the commenter believes EPA should rely instead, and (3) the reasons why EPA should rely on the commenter's proposed data and not the data referenced in this document.

**Authority:** 40 CFR 97.411(b), 97.611(b), and 97.711(b).

Dated: December 1, 2016.

**Reid P. Harvey,**

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

[FR Doc. 2016–29441 Filed 12–8–16; 8:45 am]

**BILLING CODE 6560–50–P**

[6] The quantities of allowances to be allocated through the NUSA allowance allocation process may differ slightly from the NUSA amounts set forth in §§ 97.410(a), 97.510(a), 97.610(a), and 97.710(a) because of rounding in the spreadsheet of CSAPR FIP allowance allocations to existing units.

[7] *See* 40 CFR 97.411(c), 97.611(c), and 97.711(c).

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2014–0008; FRL–9953–69]**

## Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of filing of petitions and request for comment.

**SUMMARY:** This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

**DATES:** Comments must be received on or before January 9, 2017.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

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

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Michael L. Goodis, P.E., Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following

list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT** for the division listed at the end of the pesticide petition summary of interest.

*B. What should I consider as I prepare my comments for EPA?*

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

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

## II. What action is the Agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

*Amended Tolerance*

*1. PP 5F8396.* EPA–HQ–OPP–2015–0796. Gowan Company, P.O. Box 5569, Yuma, AZ, 85366, requests to amend the tolerances in 40 CFR 180.448 for residues of the insecticide hexythiazox in or on Alfalfa, forage from 15 parts per million (ppm) to 20 ppm; and Alfalfa, hay from 30 ppm to 60 ppm. High performance liquid chromatography (HPLC) using mass spectrometric detection (LC–MS/MS) analytical method is used to measure and evaluate residues of hexythiazox and its metabolites containing the PT–1–3 moiety. Contact: RD.

*New Tolerances*

*1. PP 5F8412.* EPA–HQ–OPP–2015–0795. Gowan Company, P.O. Box 5569, Yuma, AZ, 85366–5569, requests to establish tolerances in 40 CFR part 180.448 for residues of the insecticide hexythiazox in or on Bermudagrass, forage at 40.0 parts per million (ppm); and Bermudagrass, hay at 70.0 ppm. High performance liquid chromatography (HPLC) method using mass spectrometric detection (LC–MS/MS) is proposed for enforcement purposes. Contact: RD.

*2. PP 5F8413.* EPA–HQ–OPP–2015–0797. Gowan Company, P.O. Box 5569, Yuma, AZ, 85366–5569, requests to establish tolerances in 40 CFR part 180.448 for residues of the insecticide hexythiazox, in or on Beet, sugar, dried pulp at 0.60 parts per million (ppm); Beet, sugar, molasses at 0.21 ppm; Beet, sugar, roots at 0.15 ppm; and Beet, sugar, tops at 1.5 ppm. High performance liquid chromatography (HPLC) method using mass spectrometric detection (LC–MS/MS) is proposed for enforcement purposes. Contact: RD.

*3. PP 6E8494.* EPA–HQ–OPP–2016–0595. Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE, 19808, requests to establish an import tolerance in 40 CFR part 180.511 for residues of the insecticide buprofezin, in or on Rice at 0.3 parts per million (ppm). Gas chromatography/mass spectrometry with nitrogen phosphorus detection (GC/NPD), and a gas chromatography/mass spectrometry (GC/MS) method for confirmation of buprofezin residues in plant commodities is proposed for enforcement purposes. Contact: RD.

*4. PP 6F8502.* EPA–HQ–OPP–2011–0971. Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE, 19808, requests to establish tolerances in 40 CFR part 180 for residues of the insecticide pyrifluquinazon, in or on Almond, hulls at 0.01 parts per million (ppm); Brassica, head and stem vegetables (crop group 5–16) at 0.4 ppm; Cattle, fat at 0.01 ppm; Cattle, meat at 0.01 ppm; Cattle, meat byproducts at 0.01 ppm; Citrus fruits (crop group 10–10) at 0.5 ppm; Citrus, oil at 14 ppm; Cotton, gin byproducts at 4 ppm; Cotton, undelinted seed at 0.2 ppm; Cucurbit vegetables (crop group 9) at 0.06 ppm; Fruiting vegetables, tomato (crop group 8–10A) at 0.2 ppm; Fruiting vegetables, pepper/eggplant (crop group 8–10B) at 0.15 ppm; Goat, fat at 0.01 ppm; Goat, meat at 0.01 ppm; Goat, meat byproducts at 0.01ppm; Horse, fat at 0.01 ppm; Horse, meat at 0.01 ppm; Horse, meat byproducts at 0.01 ppm; Leaf petiole vegetables (crop subgroup 22B) at 1.5 ppm; Leafy vegetables (crop group 4–16) at 5 ppm; Milk at 0.01 ppm;

Pome fruits (crop group 11–10) at 0.04 ppm; Sheep, fat at 0.01 ppm; Sheep, meat at 0.01 ppm; Sheep, meat byproducts at 0.01 ppm; Small fruit vine climbing subgroup (crop subgroup 13–07F) (except fuzzy kiwifruit) at 0.6 ppm; Stone fruits, cherry (crop group 12–12A) at 0.2 ppm; Stone fruits, peach (crop group 12–12B) at 0.03 ppm; Stone fruits, plum (crop group 12–12C) at 0.015 ppm; Tree nuts (crop group 14–12) at 0.01 ppm; and Tuberous and corm vegetables (crop subgroup 1C) at 0.01 ppm. Gas chromatography/mass spectrometry with nitrogen phosphorus detection (GC/NPD), and a gas chromatography/mass spectrometry (GC/MS) method for confirmation of buprofezin residues in plant commodities is proposed for enforcement purposes. Contact: RD.

*5. PP 5F8416.* EPA–HQ–OPP–2011–0985. ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, Ohio, 44077, requests to establish an import tolerance in 40 CFR part 180.613 for residues of the combined residues of the insecticide flonicamid [N-(cyanomethyl)-4-trifluoromethyl)-3-pyridinecarboxamide (CA) or N-cyanomethyl-4-trifluoromethylnicotinamide (IUPAC)] and its metabolites, TFNA [4-trifluoromethylnicotinic acid], TFNA–AM [4-trifluoromethylnicotinamide) and TFNG [N(4-trifluoromethylnicotinoyl)-glycine] in or on dried tea leaves at 40 parts per million (ppm). Analytical methodology has been developed to determine the residues of flonicamid and its three major plant metabolites, TFNA, TFNG, and TFNA–AM in various crops. The residue analytical method for the majority of crops includes an initial extraction with acetonitrile (CAN)/deionized (DI) water, followed by a liquid-liquid partition with ethyl acetate. The residue analytical method for wheat straw is similar, except that a C18 solid phase extraction (SPE) is added prior to the liquid-liquid partition. The final sample solution is quantified using a liquid chromatograph (LC) equipped with a reverse phase column and a quadruple mass spectrometer (MS/MS). Contact: RD.

**Authority:** 21 U.S.C. 346a.

Dated: November 30, 2016.

**Michael Goodis,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2016–29580 Filed 12–8–16; 8:45 am]

**BILLING CODE 6560–50–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 1816 and 1852

**[NFS Case 2016–N027]**

**RIN 2700–AE32**

## NASA Federal Acquisition Regulation Supplement: Award Term

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Proposed rule.

**SUMMARY:** NASA is proposing to amend the NASA Federal Acquisition Regulation (FAR) Supplement (NFS) to add policy on the use of additional contract periods of performance or ''award terms'' as a contract incentive.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before February 7, 2017, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by NFS Case 2016–N027, using any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''NFS Case 2016–N027'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''NFS Case 2016–N027.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''NFS Case 2016–N027'' on your attached document.
- *Email: marilyn.chambers@nasa.gov.* Include NFS Case 2016–N027 in the subject line of the message.
- *Fax:* (202) 358–3082.
- *Mail:* National Aeronautics and Space Administration, Headquarters, Office of Procurement, Contract and Grant Policy Division, Attn: Marilyn E. Chambers, LP–011, 300 E Street SW., Washington, DC 20546–0001.

**FOR FURTHER INFORMATION CONTACT:** Marilyn E. Chambers, NASA HQ, Office of Procurement, Contract and Grant Policy Division, Suite 5H38, 300 E Street SW., Washington, DC 20456–0001. Telephone 202–358–5154; facsimile 202–358–3082.

**SUPPLEMENTARY INFORMATION:**

### I. Background

NASA is proposing to amend the NFS to implement policy addressing the use of ''award terms'' or additional contract periods of performance for which a contractor may earn if the contractor's sustained performance is superior, the Government has an on-going need for the requirement, and funds are available for the additional period of performance. The purpose of the policy is to provide a non-monetary incentive for contractors whose sustained performance is excellent. An award term incentive would be used where a longer term relationship (generally more than five years) between the Government and a contractor would provide benefits to both parties. Benefits of award term incentives include a more stable business relationship both for the contractor and its employees (thus retaining a skilled, experienced workforce), motivating excellent performance (including cost savings), fostering contractor capital investment, increasing the desirability of the award (potentially increasing competition), and reduced administrative costs and disruptions in preparing for and negotiating replacement contracts.

Award terms are an incentive and not the same as exercising an option as set forth in FAR 17.207. While there are similarities between an award term and an option, such as funds must be available and the requirement must fulfill an existing Government need, the key difference is that an option may be exercised when the contractor's performance is acceptable, while earning an award term requires sustained excellent performance.

### II. Discussion

The FAR subpart 16.4, Incentive Contracts, addresses a variety of techniques to incentivize contractor delivery or technical performance by connecting the amount of profit or fee payable under the contract to the contractor's performance and payable during the current period of performance. Under conventional incentives, funds are reserved to cover the incentive for the instant performance period. Conversely, an award term could be earned after the base period of performance and any option(s) are exercised; an award term does not involve additional funds beyond the amount of the current performance period.

NASA is proposing to add section 1816.405–277 to address the use of award term incentives and covers the following areas:

- Considerations when planning to use award term incentives.
- Differences between contract options and award term incentives.
- Identifying plans to use award term incentives in acquisition planning.
- Procurement procedures related to processing award term incentives.

• Establishes a minimum contract value of twenty million dollars in order to use award term incentives.

• Sets forth the requirement for an award term plan to be incorporated into the contract and lists the elements of such a plan.

• The Government's unilateral right to not grant or to cancel award terms and the conditions under which this may occur.

Additionally, the clause at 1852.216–XX, Award Term, is added to inform the contractor of the conditions for earning an award term and the fact that, even if the contractor meets the standards of eligibility for an award term, the Government may not grant the award term or cancel the award term under certain listed conditions.

**III. Executive Orders 12866 and 13563**

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

**IV. Regulatory Flexibility Act**

NASA does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because, based on current usage, NASA does not expect to award a large number of award term contracts. In those instances when used, award term contracts will include small businesses to the same extent that small businesses are included in other NASA procurements. NASA anticipates that this rule will provide all entities, both large and small, with a positive benefit. However, an initial regulatory flexibility analysis (IRFA) has been performed and is summarized as follows:

The Federal Procurement Data System (FPDS) does not track award term contracts, but a survey of NASA's procurement organizations shows there are currently ten (10) active award term contracts. Of these, six (6) are with small businesses. A range of services are covered, such as logistics, facilities or technical management and information technology.

The rule imposes no reporting, recordkeeping, or other information collection requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules, and there are no known significant alternatives to the rule. NASA invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (NFS Case 2016–N027), in correspondence.

**V. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Parts 1816 and 1852**

Government procurement.

**Manuel Quinones,**

*NASA FAR Supplement Manager.*

Accordingly, 48 CFR parts 1816 and 1852 are proposed to be amended as follows:

■ 1. The authority citation for parts 1816 and 1852 continues to read as follows:

**Authority:** 51 U.S.C. 20113(a) and 48 CFR chapter 1.

## PART 1816— TYPES OF CONTRACTS

■ 2. Amend section 1816.001 by adding in alphabetical order the definition ''Term-determining official'' to read as follows:

**1816.001 Definitions.**

* * * * *

*Term-determining official* means the designated Agency official who reviews the recommendations of the Award-Term Board in determining whether the contractor is eligible for an award term.

* * * * *

■ 3. Add section 1816.405–277 to read as follows:

**1816.405–277 Award term.**

(a) An award term enables a contractor to become eligible for additional periods of performance or ordering periods under a service contract (as defined in FAR 37.101) by achieving and sustaining the prescribed performance levels under the contract. It incentivizes the contractor for maintaining superior performance by providing an opportunity for extensions of the contract term.

(b) Award terms are best suited for acquisitions where a longer term relationship (generally more than five years) between the Government and a contractor would provide significant benefits to both. Motivating excellent performance, fostering contractor capital investment, and increasing the desirability of the award, thus potentially increasing competition, are benefits that may justify the use of award terms.

(c) While the administrative burden and cost of more frequent procurements to both the Government and potential offerors should be considered when determining whether to use award terms, this decision must be weighed against market stability, the potential changes and advancements in technology, and flexibility to change direction with mission changes and associated frequent procurements.

(d) Award terms may be used in conjunction with contract options under FAR 17.2. Award terms are similar to contract options in that they are conditioned on the Government's continuing need for the contract and the availability of funds. However, FAR 17.207(c)(7) states the contracting officer must determine that the contractor's performance has been acceptable, *e.g.,* received satisfactory ratings. In contrast, to become eligible for an award term, the contractor must maintain a level of performance above acceptable as specified in the Award Term Plan (see 1816.405–277(i)). In contracts with both option periods and award terms, the award term period of performance or ordering period shall begin after completion of any option period of performance or ordering period.

(e) Contracts with award terms shall include a base period of performance or ordering period and may include a designated number of option periods during which the Government will observe and evaluate the contractor's performance allowing the contractor to earn an award term. Additionally, as specified in the Award Term Plan, the contractor may also be evaluated for additional award terms during performance of an earned award term. If the contractor meets or exceeds the performance requirements, there is an on-going need for and desire to continue the contract, funds are available, and the contractor is not listed in the System for Award Management Exclusions, then the contractor is eligible for contract

extension for the period of the award term.

(f) Contracts with award terms shall comply with FAR and NFS restrictions on the overall contract length, such as the 5-year period of performance limitation found at NFS 1817.204.

(g) Award terms may only be used in acquisitions for services exceeding $20 million dollars. Use of award terms for lower-valued acquisitions may be authorized in exceptional situations such as contract requirements having direct health or safety impacts, where the judgmental assessment of the quality of contractor performance is critical.

(h) Consistent with the Competition in Contracting Act and general procurement principles, the potential award term periods in a procurement must be priced, evaluated, and considered in the initial contract selection process in order to be valid.

(i) Award term plan. All contracts including award terms shall be supported by an Award Term Plan that establishes criteria for earning an award term and the methodology and schedule for evaluating contractor performance. A copy of the Award Term Plan shall be included in the contract. The Contracting Officer may unilaterally revise the Award Term Plan. Award Term Plans shall—

(1) Identify the officials to include Term-Determining Official involved in the award term evaluation and their function;

(2) Identify and describe each evaluation factor, any subfactors, related performance standards, adjectival ratings, and numerical ranges or weights to be used. The contracting officer should follow the guidance at 1816.405–274 in establishing award term evaluation factors and 1816.405–275 in establishing adjectival rating categories, associated descriptions, numerical scoring system, and weighted scoring system;

(3) Specify the annual overall rating required for the contractor to be eligible for an award term that reflects a level of performance above acceptable and the number of award terms the contractor may qualify for based on the rating score;

(4) Identify the evaluation period(s) and the evaluation schedule to be conducted at stated intervals during the contract period of performance or ordering period so that the contractor will periodically be informed of the quality of its performance and the areas in which improvement is expected (*e.g.,* six months, nine months, twelve months, or at other specific milestones), and when the decision points are for the determination that the contractor is eligible for an award term; and

(5) Identify the contract's base period of performance or ordering period, any option period(s), and total award-term periods(s). Award term periods shall not exceed one year.

(j)(1) The Government has the unilateral right not to grant or to cancel award term periods and the associated Award Term Plans if—

(i) The contractor has failed to achieve the required performance measures for the corresponding evaluation period;

(ii) After earning an award term, the contractor fails to earn an award term in any succeeding year of contract performance, the contracting officer may cancel any award terms that the contractor has earned, but that have not begun.

(iii) The contracting officer notifies the contractor that the Government no longer has a need for the award term period before the time an award term period is to begin;

(iv) The contractor represented that it was a small business concern prior to award of the contract, the contract was set-aside for small businesses, and the contractor rerepresents in accordance with FAR clause 52.219–28 Post-Award Small Business Program Rerepresentation, that it is no longer a small business; or

(v) The contracting officer notifies the contractor that funds are not available for the award term.

(2) When an award term period is not granted or cancelled, any—

(i) Prior award term periods for which the contractor remains otherwise eligible are unaffected.

(ii) Subsequent award term periods are also cancelled.

(k) Cancellation of an award term period that has not yet commenced for any of the reasons set forth in paragraph (j) shall not be considered either a termination for convenience or termination for default, and shall not entitle the Contractor to any termination settlement or any other compensation. If the award term is cancelled, a unilateral modification will cite the clause as the authority.

■ 4. Amend section 1816.406–70 by adding paragraph (g) to read as follows:

**1816.406–70 NASA contract clauses.**

* * * * *

(g) Insert the clause at 1852.216–72, Award Term in solicitations and contracts for services exceeding $20 million when award terms are contemplated.

## PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Add section 1852.216–XX to read as follows:

**1852.216–XX Award term.**

As prescribed in 1816.406(g), insert the following clause:

**AWARD TERM**

**(MONTH YEAR)**

(a) Based on overall Contractor performance as evaluated in accordance with the Award Term Plan, the Contracting Officer may extend the contract for the number and duration of award terms as set forth in the Award Term Plan subject to the Government's continuing need for the contract and the availability of funds.

(b) The Contracting Officer will execute any earned award term period(s) through a unilateral contract modification. All contract provisions continue to apply throughout the contract period of performance or ordering period, including any award term period(s).

(c) The Government will evaluate offerors for award purposes by adding the total price for all options and award terms to the price for the basic requirement. This evaluation will not obligate the Government to exercise any options or award term periods.

(d) The Award Term Plan is attached in Section J. The Award Term Plan provides the methodology and schedule for evaluating Contractor performance, determining eligibility for an award term, and, together with Agency need for the contract and availability of funding, serves as the basis for award term decisions. The Contracting Officer may unilaterally revise the Award Term Plan. Any changes to the Award Term Plan will be in writing and incorporated into the contract through a unilateral modification citing this clause prior to the commencement of any evaluation period. The Contracting Officer will consult with the Contractor prior to the issuance of a revised Award Term Plan; however, the Contractor's consent is not required.

(e) The award term evaluation(s) will be completed in accordance with the schedule in the Award Term Plan. The Contractor will be notified of the results and its eligibility to be considered for the respective award term no later than 120 days after the evaluation period set forth in the Award Term Plan. The Contractor may request a review of an award term evaluation which has resulted in the Contractor not earning the award term. The request shall be

submitted in writing to the Contracting Officer within 15 days after notification of the results of the evaluation.

(f) *Right not to grant or cancel the award term.* (1) The Government has the unilateral right not to grant or to cancel award term periods and the associated Award Term Plan if—

(i) The Contractor has failed to achieve the required performance measures for the corresponding evaluation period;

(ii) After earning an award term, the contractor fails to earn an award term in any succeeding year of contract performance, the contracting officer may cancel any award terms that the contractor has earned, but that have not begun.

(iii) The Contracting Officer has notified the Contractor that the Government no longer has a need for the award term period before the time an award term period is to begin;

(iv) The Contractor represented that it was a small business concern prior to award of this contract, the contract was set-aside for small businesses, and the Contractor rerepresents in accordance with FAR clause 52.219–28, Post-Award Small Business Program Rerepresentation, that it is no longer a small business; or

(v) The Contracting Officer has notified the Contractor that funds are not available for the award term.

(2) When an award term period is not granted or cancelled, any—

(i) Prior award term periods for which the contractor remains otherwise eligible are unaffected, except as provided in paragraph (g) of this section; or

(ii) Subsequent award term periods are also cancelled.

(g) Cancellation of an award term period that has not yet started for any of the reasons set forth in paragraph (f) shall not be considered either a termination for convenience or termination for default, and shall not entitle the Contractor to any termination settlement or any other compensation.

(h) Cancellation of an award term period that has not yet commenced for any of the reasons set forth in paragraph (f) and (g) of this clause shall not be considered either a termination for convenience or termination for default, and shall not entitle the Contractor to any termination settlement or any other compensation. If the award term is cancelled, a unilateral modification will cite this clause as the authority.

(i) Funds are not presently available for any award term. The Government's obligation under any award term is contingent upon the availability of appropriated funds from which payment can be made. No legal liability on the part of the Government for any award term payment may arise until funds are made available to the Contracting Officer for an award term and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

[FR Doc. 2016–29443 Filed 12–8–16; 8:45 am]

BILLING CODE 7510–13–P

# Notices

Federal Register
Vol. 81, No. 237
Friday, December 9, 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

### Submission for OMB Review; Comment Request

December 6, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 9, 2017 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**National Agricultural Statistics Service**

*Title:* Feral Swine Survey.

*OMB Control Number:* 0535–0256.

*Summary of Collection:* Authority to collect these data is authorized under 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276. On February 3, 1999, Executive Order 13112 was signed by President Clinton establishing the National Invasive Species Council. The Executive Order requires that a Council of Departments dealing with invasive species be created. Currently there are 13 Departments and Agencies on the Council. A benchmark survey was conducted in 2015 in 11 States (Alabama, Arkansas, California, Florida, Georgia, Louisiana, North Carolina, Mississippi, Missouri, South Carolina, and Texas). Target population within these states consisted of farm operations who have historically produced one or more of the following crops: Corn, soybeans, wheat, rice, peanuts or sorghum (Texas only).

In 2017, this survey will be conducted in Alabama, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas, to measure the damage to livestock that is associated with the presence of feral swine. These States have high feral swine densities and a significant presence of cattle, hogs, sheep and/or goats.

*Need and Use of the Information:* The 2017 proposed initial survey will be used to create a benchmark to develop national and State estimates of the monetary loss of feral swine damage to agriculture, animal health, and property to producers of cattle, hogs, sheep and/or goats in each of the surveyed states. Information on feral swine control costs including hunting, trapping, use of fencing, or the use of repellents and the total net income for allowing the hunting of feral swine on their operations will also be collected. Without the survey, it would be impossible to measure the current level of feral swine damage to American agriculture and livestock.

*Description of Respondents:* Farms.

*Number of Respondents:* 12,000.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 9,280.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2016–29502 Filed 12–8–16; 8:45 am]

**BILLING CODE 3410–20–P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

December 5, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 9, 2017 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information

unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**DEPARTMENT OF AGRICULTURE**

Office of the Chief Information Officer

*Title:* USDA eAuthentication Service Customer Registration.

*OMB Control Number:* 0503–0014.

*Summary of Collection:* The USDA Office of the Chief Information Officer (OCIO) has developed the eAuthentication system as a management and technical process that addresses user authentication and authorization prerequisites for providing services electronically. The process requires a voluntary one-time electronic self-registration to obtain an eAuthentication account for each USDA customer desiring access to online services or applications that require user eAuthentication. The information collected through the electronic self-registration process is necessary to enable the electronic authentication of users and grant them access to only those resources for which they are authorized. The authority to collect this information as well as the new Online Identity Proofing function can be found in Section 2(c), of the Freedom to E-File Act (Pub. L. 106–222), the Government Paperwork Elimination Act (GPEA, Pub. L. 105–277), the Electronic Signatures in Global and National Commerce Act (E-Sign, Pub. L. 106–229), the E-Government Act of 2002 (H.R. 2458), and Gramm-Leach Bliley Act (Pub. L., 106–102, 502–504).

*Need and Use of the Information:* The USDA eAuthentication Service provides public and government businesses single sign-on capability for USDA applications, management of user credentials, and verification of identify, authorization, and electronic signatures. USDA eAuthentication obtains customer information through an electronic self-registration process provided through the eAuthentication Web site. The voluntary online self-registration process applies to USDA Agency customers, as well as employees who request access to protected USDA web applications and services via the Internet. Users can register directly from the eAuthentication Web site located at *www.eauth.egov.usda.gov.* The information collected through the online self-registration process will be used to provide an eAuthentication account that will enable the electronic authentication of users. The users will then have access to authorized resources without needing to reauthenticate within the context of a single Internet session.

*Description of Respondents:* Farms; Individuals or Households; Business or other for-profit; Not-for-profit institutions; Federal government; State, Local or Tribal Government.

*Number of Respondents:* 114,256.

*Frequency of Responses:* Reporting: On occasion; Third party disclosure.

*Total Burden Hours:* 28,941.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2016–29458 Filed 12–8–16; 8:45 am]

**BILLING CODE 3410–KR–P**

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

### Commodity Credit Corporation

### Information Collection Request; Discharge and Delivery Survey Summary and Rate Schedule Forms

**AGENCY:** Farm Service Agency and Commodity Credit Corporation, USDA.

**ACTION:** Notice; request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) and Commodity Credit Corporation (CCC) are requesting comments from all interested individuals and organizations on a revision and extension of a currently approved information collection request. This information collection is necessary to support the procurement of agricultural commodities for domestic and export food donation programs. FSA and CCC issue invitations to purchase or sell and transport commodities, as well as sample, inspect and survey, agricultural commodities at both domestic and foreign locations for use in international food donation programs on a monthly, multiple monthly, quarterly, and yearly basis. Special invitations, however, are issued throughout the month. The Kansas City Commodity Office acting under the authority granted by these acts, purchases discharge survey services conducted at the foreign destinations to ensure count and condition of the commodities shipped.

**DATES:** We will consider comments that we receive by February 7, 2017.

**ADDRESSES:** We invite you to submit comments on this notice. In your comment, include the date and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: Go to http://regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Penny Carlson, Chief, Business Operations Support Division, Kansas City Commodity Office (KCCO), P.O. Box 419205, Kansas City, Missouri 64141–6205.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Penny Carlson, (816) 926–2597.

**SUPPLEMENTARY INFORMATION:**

*Title:* Discharge and Delivery Survey Summary and Rate Schedule Forms.

*OMB Number:* 0560–0177.

*Expiration Date:* February 28, 2017.

*Type of Request:* Extension with a Revision.

*Abstract:* The United States donates agricultural commodities domestically and overseas for famine or other relief requirements, to combat malnutrition, and sells or donates commodities to promote economic development. FSA and CCC issue invitations to purchase or sell agricultural commodities and services for use in domestic and export programs. Vendors respond by making offers using various FSA and CCC commodity offer forms through Web-based Supply Chain System (WBSCM). The Kansas City Commodity Office acting under the authority granted by these acts, purchases discharge survey services conducted at the foreign destinations to ensure count and condition of the commodities shipped. The form for discharge survey services are not in WBSCM.

The renewal to the information collection request is for the respondents to submit information electronically in WBSCM for all processes with the exception of the discharge/delivery survey summary and the rates schedule. Vendors will be able to access WBSCM to see the date and time the system shows for receipt of bid, bid modification, or bid cancellation information. At bid opening date and time, the bid information are evaluated through the system. Acceptances will be sent to the successful offerors electronically. Awarded contracts will be posted to the FSA Web site and also to the WBSCM portal and FedBizOpps (*https://www.fbo.gov/*). The discharge/delivery survey summary (KC–334) will be collected electronically and by mail and the rate schedule (KC–337) will be collected by mail. The burden hours

reduced because some forms in the information collection request were exempted from Paperwork Reduction Act.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hours is the estimated average time per responses multiplied by the estimated total annual of responses.

*Estimate of Average Time to Respond:* Public reporting burden for collecting information under this notice is estimated to average 0.482 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Respondents:* Business and other for-profit organizations.

*Estimated Number of Respondents:* 41.

*Estimated Average Number of Responses per Respondent:* 11.83.

*Estimated Total Annual Responses:* 485.

*Estimated Total Annual Burden on Respondents:* 234 hours.

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of burden of the collection of information including the validity of the methodology and assumptions used;

(3) Evaluate the quality, utility and clarity of the information technology; and

(4) Minimize the burden of the information collection on those who respond through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses where provided, will be made a matter of public record. Comments will be summarized and included in the request for OMB approval.

**Val Dolcini,**

*Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 2016–29526 Filed 12–8–16; 8:45 am]

**BILLING CODE 3410–05–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Proposed New Fee Site

**AGENCY:** Tahoe National Forest, Forest Service, USDA.

**ACTION:** Notice of Proposed New Fee Site.

**SUMMARY:** The Tahoe National Forest is proposing a new recreation fee for the Sardine Lookout, which would be made available as an overnight rental. The rental fee is proposed at $45 per night. Lookout rentals offer a unique experience and are a widely popular offering on National Forests. The Tahoe National Forest currently operates one lookout for public rental, the Calpine Lookout on the Sierraville Ranger District. Sardine Lookout is eligible for the National Register of Historic Places.

Fees are assessed based on the level of amenities and services provided, cost of operations and maintenance, and market assessment. These fees are proposed and will be determined upon further analysis and public comment. Funds from fees would be used for the continued operation, maintenance, enhancement and protection of this lookout and the historical integrity of the facility.

An analysis of nearby recreation facilities shows that the proposed fees are reasonable and typical of similar sites in the area.

**DATES:** Comments will be accepted through February 7, 2017. The Sardine Lookout rental will be listed with the National Recreation Reservation Service.

**ADDRESSES:** Eli Ilano, Forest Supervisor, Tahoe National Forest, 631 Coyote St., Nevada City, California 95959.

**FOR FURTHER INFORMATION CONTACT:** Quentin Youngblood, Sierraville District Ranger, (530) 994–3401, ext. 6601. Information about proposed fee changes can also be found on the Tahoe National Forest Web site: *http://www.fs.fed.us/r5/tahoe.*

**SUPPLEMENTARY INFORMATION:** The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. These new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Sardine Lookout was built in 1935 and is eligible for the National Register of Historic Places. The cabin has two twin beds, period correct linoleum floor, a table and fire finder pedestal that are copies of originals from Calpine Fire Lookout. There is a fire pit, picnic table and accessible vault toilet. The area is very remote with tremendous views and solitude.

Dated: November 30, 2016.

**Teresa Benson,**

*Deputy Forest Supervisor.*

[FR Doc. 2016–29462 Filed 12–8–16; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF COMMERCE

### Economic Development Administration

### Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

**AGENCY:** Economic Development Administration, Department of Commerce.

**ACTION:** Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[11/22/2016 through 12/5/2016]

| Firm name | Firm address | Date accepted for investigation | Product(s) |
|---|---|---|---|
| Byers' Choice, Ltd | 4355 County Line Road, Chalfont, PA 18914. | 11/30/2016 | The firm manufactures ornamental figurines, known as ''The Carolers.'' |
| Pyott-Boone Electronics, Inc | 1459 Wittens Mill Road, North Tazewell, VA 24630. | 11/30/2016 | The firm manufactures amplifiers, passive units and gas monitors. |
| Valtech Corporation | 2113 Sanatoga Station Road, Pottstown, PA 19464. | 12/1/2016 | The firm manufactures thermoset plastic materials with unique properties that are used in the production of semiconductor or solar wafers. |
| Supreme Manufacturing Company d/b/a C&L Supreme. | 1755 East Birchwood Avenue, Des Plaines, IL 60018. | 12/5/2016 | The firm manufactures rollers, brackets, housing and other miscellaneous metal components for data processing machines. |

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

**Miriam Kearse,**

*Lead Program Analyst.*

[FR Doc. 2016–29480 Filed 12–8–16; 8:45 am]

**BILLING CODE 3510–WH–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–900]**

### Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014–2015

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (the PRC). The period of review (POR) is November 1, 2014, through October 31, 2015. The Department has preliminarily determined that certain companies covered by this review made sales of subject merchandise at less than normal value. Interested parties are invited to comment on these preliminary results.

**DATES:** Effective December 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Yang Jin Chun or Bryan Hansen, 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) 482–5760 and (202) 482–3683, respectively.

#### Scope of the Order

The merchandise subject to the order is diamond sawblades and parts thereof. The diamond sawblades subject to the order are currently classifiable under subheadings 8202 to 8206 of the Harmonized Tariff Schedule of the United States (HTSUS), and may also enter under 6804.21.00. While the HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.[1]

#### Preliminary Determination of No Shipments

Five companies that received a separate rate in previous segments of the proceeding and are subject to this review reported that they did not have any exports of subject merchandise during the POR.[2] U.S. Customs and Border Protection (CBP) data for the POR indicated that these companies had no shipments.[3] Additionally, we requested that CBP report any contrary information.[4] To date, CBP has not responded to our inquiry with any contrary information and we have not received any evidence that these companies had any shipments of the subject merchandise sold to the United States during the POR. Further, consistent with our practice, we find that it is not appropriate to rescind the review with respect to these companies but, rather, to complete the review and issue appropriate instructions to CBP based on the final results of review.[5]

#### Separate Rates

The Department preliminarily determines that 24 respondents are eligible to receive separate rates in this review.[6]

#### Separate Rates for Eligible Non-Selected Respondents

Consistent with our practice, we assigned to eligible non-selected respondents the weighted-average margin calculated for Bosun Tools Co., Ltd. as the separate rate for the preliminary results of this review.[7]

[1] *See* the Memorandum from Deputy Assistant Secretary Christian Marsh to Assistant Secretary Paul Piquado entitled, ''Diamond Sawblades and Parts Thereof from the People's Republic of China: Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review; 2014–2015,'' dated concurrently with and hereby adopted by this notice (Preliminary Decision Memorandum).

[2] *See* the February 11, 2016, no-shipment letters from Danyang City Ou Di Ma Tools Co., Ltd., Qingdao Hyosung Diamond Tools Co., Ltd., and Shanghai Starcraft Tools Company Limited, the February 12, 2016, no-shipment letter from Qingdao Shinhan Diamond Industrial Co., Ltd., and the April 1, 2016, letter correcting the separate rate certification and certifying no shipment from Danyang Tsunda Diamond Tools Co., Ltd.

[3] *See* the CBP data attached to the letter to all interested parties dated January 15, 2016.

[4] *See* CBP message numbers 6294301, 6294302, 6294305, 6294306, and 6294307 dated October 20, 2016, available at *http://adcvd.cbp.dhs.gov/adcvdweb/*.

[5] *See, e.g., Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission, In Part, of Administrative Review and Final Results of New Shipper Review; 2013,* 80 FR 34619 (June 17, 2015).

[6] *See* Preliminary Decision Memorandum at 4–8, for more details.

[7] *Id.*

**PRC-Wide Entity**

The Department's change in policy regarding conditional review of the PRC-wide entity applies to this administrative review.[8] Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review and the entity's rate is not subject to change (*i.e.,* 82.05 percent).[9] Aside from the no-shipments and separate rate companies discussed above, and the company for which the review is being rescinded, the Department considers all other companies for which a review was requested (which did not file a separate rate application) to be part of the PRC-wide entity.[10]

**Methodology**

The Department conducted this review in accordance with section 751(a)(1)(B) of the Act. For Bosun Tools Co., Ltd., constructed export price was calculated in accordance with section 772 of the Act. Because the PRC is a non-market economy within the meaning of section 771(18) of the Act, normal value was calculated in accordance with section 773(c) of the Act. For the Jiangsu Fengtai Single Entity,[11] we assigned a margin based on adverse facts available pursuant to section 776(b) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. 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 *http://access.trade.gov* and 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.*

**Preliminary Results of Review**

The Department preliminarily determines that the following weighted-average dumping margins exist:

| Exporter | Margin (percent) |
|---|---|
| Bosun Tools Co., Ltd | 6.20 |
| Chengdu Huifeng Diamond Tools Co., Ltd | 6.20 |
| Danyang Hantronic Import & Export Co., Ltd | 6.20 |
| Danyang Huachang Diamond Tools Manufacturing Co., Ltd | 6.20 |
| Danyang Like Tools Manufacturing Co., Ltd | 6.20 |
| Danyang NYCL Tools Manufacturing Co., Ltd | 6.20 |
| Danyang Weiwang Tools Manufacturing Co., Ltd | 6.20 |
| Guilin Tebon Superhard Material Co., Ltd | 6.20 |
| Hangzhou Deer King Industrial and Trading Co., Ltd | 6.20 |
| Hangzhou Kingburg Import & Export Co., Ltd | 6.20 |
| Huzhou Gu's Import & Export Co., Ltd | 6.20 |
| Jiangsu Fengtai Single Entity | 82.05 |
| Jiangsu Inter-China Group Corporation | 6.20 |
| Jiangsu Youhe Tool Manufacturer Co., Ltd | 6.20 |
| Qingyuan Shangtai Diamond Tools Co., Ltd | 6.20 |
| Quanzhou Zhongzhi Diamond Tool Co., Ltd | 6.20 |
| Rizhao Hein Saw Co., Ltd | 6.20 |
| Saint-Gobain Abrasives (Shanghai) Co., Ltd | 6.20 |
| Shanghai Jingquan Industrial Trade Co., Ltd | 6.20 |
| Sino Tools Co., Ltd | 6.20 |
| Weihai Xiangguang Mechanical Industrial Co., Ltd | 6.20 |
| Wuhan Wanbang Laser Diamond Tools Co., Ltd.[12] | 6.20 |
| Xiamen ZL Diamond Technology Co., Ltd | 6.20 |
| Zhejiang Wanli Tools Group Co., Ltd | 6.20 |

**Disclosure and Public Comment**

The Department intends to disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[13] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[14] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the cases briefs are filed.[15]

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for

[8] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[9] *See, e.g., Diamond Sawblades and Parts Thereof From the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012–2013,* 80 FR 32344, 32345 (June 8, 2015).

[10] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 736, 737 (January 7, 2016) (''All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below.''). Companies that are subject to this administrative review that are considered to be part of the PRC-wide entity are ASHINE Diamond Tools Co., Ltd., Hebei XMF Tools Group Co., Ltd., Henan Huanghe Whirlwind Co., Ltd., Henan Huanghe Whirlwind International Co., Ltd., and Pujiang Talent Diamond Tools Co., Ltd.

[11] We preliminarily treat Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd., Jiangsu Fengtai Tools Co., Ltd., and Jiangsu Fengtai Sawing Industry Co., Ltd., as a single entity. *See* Preliminary Decision Memorandum at 2, n. 4 for details.

[12] Wuhan Wanbang Laser Diamond Tools Co., Ltd., is the successor-in-interest to Wuhan Wanbang Laser Diamond Tools Co. *See Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review,* 81 FR 20618 (April 8, 2016).

[13] *See* 19 CFR 351.309(c).

[14] *See* 19 CFR 351.309(c)(2).

[15] *See* 19 CFR 351.309(d).

Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by the Department's ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[16] Hearing requests should contain (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. Unless extended, the Department intends to issue the final results of this review, including the results of its analysis of issues raised by parties in their comments, within 120 days after the publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

**Assessment Rates**

Upon issuing the final results of review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[17] If a respondent's weighted-average dumping margin is above *de minimis* (*i.e.,* 0.5 percent) in the final results of this review, we will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of those sales in accordance with 19 CFR 351.212(b)(1). Specifically, the Department will apply the assessment rate calculation method adopted in *Final Modification for Reviews.*[18] Where an importer- (or customer-) specific *ad valorem* rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[19]

For entries that were not reported in the U.S. sales databases submitted by exporters individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.[20] The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of review.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by the companies listed above that have separate rates, the cash deposit rate will be that established in the final results of review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

**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 POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: December 5, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

**Appendix—List of Topics Discussed in the Preliminary Decision Memorandum**



[FR Doc. 2016–29542 Filed 12–8–16; 8:45 am]

**BILLING CODE 3510–DS–P**

[16] *See* 19 CFR 351.310(c).

[17] *See* 19 CFR 351.212(b)(1).

[18] *See Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8103 (February 14, 2012) (*Final Modification for Reviews*).

[19] *See* 19 CFR 351.106(c)(2).

[20] *Id.*

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–805]**

### Certain Circular Welded Non-Alloy Steel Pipe From Mexico; Preliminary Results, Preliminary Determination of No Shipments, and Partial Rescission of Antidumping Duty Administrative Review; 2014–2015

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain circular welded non-alloy steel pipe from Mexico. The period of review (POR) is November 1, 2014, through October 31, 2015. This review covers eight producers/exporters of the subject merchandise, including two respondents selected for individual examination: Maquilacero, S.A. de C.V. (Maquilacero) and Regiomontana de Perfiles y Tubos, S.A. de C.V. (Regiopytsa). We preliminarily determine that Maquilacero and Regiopytsa made sales of subject merchandise at less than normal value during the POR. Additionally, we preliminarily determine that Lamina y Placa Comercial, S.A. de C.V. (Lamina y Placa) and Mueller Comercial de Mexico, S. de R.L. de C.V. (Mueller) had no shipments during the POR. Whirlpool Corporation (Whirlpool) timely withdrew its request for review of Burner Systems International (BSI); consequently, we rescind the administrative review with regard to

BSI. Interested parties are invited to comment on these preliminary results.

**DATES:** Effective December 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Mark Flessner or Erin Kearney, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6312 or (202) 482–0167, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On January 7, 2016, the Department published a notice of initiation of an administrative review of the antidumping duty order [1] on certain circular welded non-alloy steel pipe from Mexico.[2] This administrative review covers eight producers/exporters of the subject merchandise.[3] As explained in the memorandum from the Acting Assistant Secretary for Enforcement & Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government.[4] All deadlines in this segment of the proceeding have been extended by four business days. On July 26, 2016, and October 20, 2016, the Department extended the deadline for the preliminary results.[5] The revised deadline for the preliminary results of this review is now December 5, 2016.

## Scope of the Order

The products covered by the order are circular welded non-alloy steel pipes and tubes. The merchandise covered by the order and subject to this review is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive. A full description of the scope of the order is contained in the Preliminary Decision Memorandum,[6] which is hereby adopted by this notice and incorporated herein by reference. 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 available to all parties in the Central Records Unit, Room 7046 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*. The signed Preliminary Decision Memorandum and electronic versions of the Preliminary Decision Memorandum are identical in content.

## Partial Rescission of Administrative Review

On November 3, 2015, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping order on certain circular welded non-alloy steel pipe from Mexico.[7] The Department received multiple timely requests for an administrative review of the AD order on certain circular welded non-alloy steel pipe from Mexico and, on January 7, 2016, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), the Department initiated a review of nine companies in this proceeding.[8] In response to a timely-filed withdrawal request by Whirlpool, we are rescinding this administrative review with respect to BSI pursuant to 19 CFR 351.213(d)(1).[9] Accordingly, the companies subject to the instant review are: Conduit, Lamina y Placa, Maquilacero, Mueller, Prolamsa, PYTCO, Regiopytsa, and Ternium, of which the Department has selected Maquilacero and Regiopytsa as the mandatory respondents.[10]

## Preliminary Determination of No Shipments

Lamina y Placa and Mueller reported that they made no sales of subject merchandise during the POR.[11] On November 28, 2016, we issued a no-shipment inquiry to CBP to confirm the claims of no shipments by Lamina y Placa and Mueller. We have not yet received CBP's response to our inquiry. Therefore, based on the claims of no shipments by Lamina y Placa and Mueller, and because the record currently contains no information to the contrary, we preliminarily determine that Lamina y Placa and Mueller had no shipments of subject merchandise and, therefore, no reviewable transactions during the POR. However, we intend to consider information received from CBP in response to our no-shipment inquiry for the final results of this review. Moreover, consistent with our practice, we are not preliminarily rescinding the review with respect to Lamina y Placa and Mueller but, rather, we will complete the review with respect to these companies and issue appropriate instructions to CBP based on the final results of this review.[12]

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[1] *See Notice of Antidumping Duty Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Welded Non-Alloy Steel Pipe from Korea,* 57 FR 49453 (November 2, 1992) (the *Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 736 (January 7, 2016) (*Initiation Notice*).

[3] Those eight companies are: (1) Conduit, S.A. de C.V. (Conduit), (2) Lamina y Placa, (3) Maquilacero, (4) Mueller, (5) Productos Laminados de Monterrey, S.A. de C.V. (Prolamsa), (6) PYTCO, S.A. de C.V. (PYTCO), (7) Regiopytsa, and (8) Ternium Mexico, S.A. de C.V. (Ternium). In addition, a review was requested by Whirlpool for BSI; however, all review requests for BSI were timely withdrawn; *see* the section entitled ''Partial Rescission of Administrative Review,'' below.

[4] *See* Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas,'' dated January 27, 2016.

[5] *See* Memorandum from Mark Flessner to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled, ''Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,'' dated July 26, 2016; *see also* Memorandum from Mark Flessner to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled, ''Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,'' dated October 20, 2016.

[6] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled, ''Preliminary Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review: Certain Circular Welded Non-Alloy Steel Pipe from Mexico; 2014–2015'' (Preliminary Decision Memorandum).

[7] *See Antidumping or Countervailing Duty Order, Finding, or Suspension Agreement; Opportunity to Request Administrative Review,* 80 FR 67706 (November 3, 2015).

[8] *See Initiation Notice.*

[9] *See* the Preliminary Decision Memorandum at the section entitled, ''Partial Rescission.''

[10] *See* Memorandum from Mark Flessner to Scot Fullerton, Director, Antidumping and Countervailing Duty Operations Office VI, entitled, ''Respondent Selection for the Administrative Review Circular Welded Non-Alloy Steel Pipe from Mexico, 2014–2015,'' dated March 21, 2016 (Respondent Selection Memorandum).

[11] *See* Letter from Lamina y Placa to the Secretary of Commerce entitled, ''Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Notice of No Sales,'' dated January 19, 2016. *See also* Letter from Mueller to the Secretary of Commerce entitled, ''Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Certification of No Shipments,'' dated February 9, 2016.

[12] *See, e.g., Certain Frozen Warmwater Shrimp From Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR at 51306 (August 28, 2014).

**Methodology**

The Department is conducting this review in accordance with section 751(a)(2) of the Act. Export price (EP) is calculated in accordance with section 772 of the Act. Normal value (NV) 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.

**Preliminary Results of the Review**

As a result of this review, we preliminarily determine the following weighted-average dumping margins for the POR:

| Exporter or producer | Weighted-average dumping margin (%) |
|---|---|
| Maquilacero, S.A. de C.V | 7.32 |
| Regiomontana de Perfiles y Tubos, S.A. de C.V. and PYTCO, S.A. de C.V.[13] | 2.14 |
| Conduit, S.A. de C.V | 3.30 |
| Productos Laminados de Monterrey, S.A. de C.V | 3.30 |
| Ternium Mexico, S.A. de C.V | 3.30 |

For the rate for non-selected respondents in an administrative review, generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' Because applying our normal methodology of calculating a weighted-average dumping margin in this case could indirectly disclose business proprietary information, we have instead calculated a weighted-average margin for the non-selected respondents using the publicly available, ranged total U.S. sales values of the selected respondents.[14] Accordingly, we have applied a rate of 3.30 percent to the non-selected companies, as set forth in the chart above.

**Assessment Rates**

Upon completion of the administrative review, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.[15] For any individually examined respondent whose weighted-average dumping margin is above *de minimis* (*i.e.,* 0.50 percent), 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). Where either a 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. For entries of subject merchandise during the POR produced by each respondent for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate un-reviewed entries at the all-others rate if there is no rate for the intermediate company involved in the transaction.[16]

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

**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 circular welded non-alloy steel pipe from Mexico 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 Conduit, Maquilacero, Prolamsa, Regiopytsa, and Ternium will be the weighted-average dumping margins established in the final results of this administrative review except if the rates are *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rates will be zero; (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 in which the manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original 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 the proceeding for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 32.62 percent *ad valorem,* the all-others rate established in the original less-than-fair-value investigation.[17] These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Disclosure and Public Comment**

The Department intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.[18] Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs no 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 no later than five days after the date for filing case briefs.[19] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[20] Case and rebuttal briefs should be filed using ACCESS.[21]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[22] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the

[13] The Department has preliminarily determined to treat Regiomontana de Perfiles y Tubos, S.A. de C.V., and PYTCO, S.A. de C.V., as a single entity. *See* Preliminary Decision Memorandum.

[14] For further discussion, *see* the Preliminary Decision Memorandum.

[15] 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 Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

[16] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[17] *See Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Mexico,* 57 FR 42953 (September 17, 1992).

[18] *See* 19 CFR 351.224(b).

[19] *See* 19 CFR 351.309(d).

[20] *See* 19 CFR 351.309(c)(2) and (d)(2).

[21] *See* 19 CFR 351.303.

[22] *See* 19 CFR 351.310(c).

respective case briefs. If a request for a hearing is made, parties will be notified of the date and time of the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in all written case briefs, within 120 days after the issuance of these preliminary results.

### Notification to Importers

This notice also 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.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h)(1).

Dated: December 5, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

### Appendix—List of Topics Discussed in the Preliminary Decision Memorandum



[FR Doc. 2016–29544 Filed 12–8–16; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–831]**

## Fresh Garlic From the People's Republic of China: Preliminary Results and Partial Rescission of the 21st Antidumping Duty Administrative Review; 2014–2015

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Department) is conducting the 21st administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC), covering the period of review (POR) November 1, 2014, through October 31, 2015. This review covers 42 manufacturers/exporters of subject merchandise. We preliminarily find that the mandatory respondents Zhengzhou Harmoni Spice Co., Ltd (Harmoni) and Qingdao Tiantaixing Foods Co., Ltd. (QTF) each failed to cooperate to the best of its ability. As a result, we preliminarily find that Harmoni has not rebutted the presumption that it is part of the PRC-wide entity, and we preliminarily base QTF's dumping margin on adverse facts available. In addition, we preliminarily find that voluntary respondent Shenzhen Xinboda Industrial Co., Ltd. (Xinboda) made sales of subject merchandise at less than normal value (NV). We invite interested parties to comment on these preliminary results.

**DATES:** Effective December 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Wallace or Alexander Cipolla, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6251 or (202) 482–4956.

### Scope of the Order

The merchandise covered by the order includes all grades of garlic, whole or separated into constituent cloves. Fresh garlic that are subject to the order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) 0703.20.0010, 0703.20.0020, and 0703.20.0090. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive. For a full description of the scope of this order, please see ''III. Scope of the Order'' in the accompanying Preliminary Decision Memorandum.[1]

### Partial Rescission of Administrative Review

On January 7, 2016, the Department initiated a review of 42 companies in this proceeding.[2] On March 11, 2016, withdrawal requests were timely filed for 14 companies.[3] The Department is, therefore, partially rescinding this review with respect to the companies listed in Appendix I, in accordance with 19 CFR 351.213(d)(1).

### Affiliation

For the reasons set forth in the Preliminary Decision Memorandum and in accordance with 19 CFR 351.401(f), and the Department's practice, we are treating QTF, Qingdao Tianhefeng Foods Co., Ltd. (QTHF), Qingdao Beixing Trading Co., Ltd. (QBT), Qingdao Lianghe International Trade Co., Ltd. (Lianghe), and Qingdao Xintianfeng Foods Co., Ltd (QXF) as a single entity, for the purposes of this preliminary determination.[4]

### Methodology

The Department is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). Export prices were calculated in accordance with section 772(a) of the Act. Because the PRC is a non-market economy (NME) within the meaning of section 771(18) of the Act, NV has been calculated in accordance with section 773(c) of the Act. We relied, in part, on the facts available, with adverse inferences, for our preliminary determination, in accordance with section 776 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum, which is hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's

[1] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Decision Memorandum for the Preliminary Results of the 2014–2015 Antidumping Duty Administrative Review: Fresh Garlic From the People's Republic of China'' (December 5, 2016) (Preliminary Decision Memorandum).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 736 (January 7, 2016) (*Initiation Notice*). For a list of the 42 companies, *see id. at 81 FR 738–739.*

[3] *See* Letter from Petitioners, ''21st Administrative Review of the Antidumping Duty Order on Fresh Garlic From the People's Republic of China—Petitioners' Withdrawal of Certain Requests for Administrative Review,'' (March 11, 2016).

[4] *See* Preliminary Decision Memorandum ''Affiliations'' section.

Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://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/*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

**PRC-Wide Entity**

The Department's policy regarding conditional review of the PRC-wide entity applies to this administrative review.[5] Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review and the entity's rate (*i.e.,* $4.71/kg) is not subject to change. Aside from the no shipments companies discussed below, and the companies for which the review is being rescinded, the Department considers all other companies for which a review was requested, and which did not preliminarily qualify for a separate rate, to be part of the PRC-wide entity. For additional information, *see* the Preliminary Decision Memorandum.

**Preliminary Determination of Separate Rates for Non-Selected Companies**

In accordance with section 777A(c)(2)(B) of the Act, the Department employed a limited examination methodology, as it determined that it would not be practicable to examine individually all companies for which a review request was made.[6] There were five exporters of subject merchandise from the PRC that have demonstrated their eligibility for a separate rate but were not selected for individual examination in this review. These five exporters are listed in Appendix II.

Neither the Act nor the Department's regulations address the establishment of the rate applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in cases involving limited selection based on exporters accounting for the largest volume of imports has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act instructs the Department to use rates established for individually investigated producers and exporters, excluding any rates that are zero, *de minimis,* or based entirely on facts available in investigations. In this review, we calculated a preliminary weighted-average dumping margin for Xinboda, while we preliminarily determined that the application of facts available with adverse inferences is warranted for Harmoni and QTF. Therefore for the preliminary results, the Department has preliminarily determined to assign Xinboda's rate to the non-selected separate-rate companies.

**Preliminary Determination of No Shipments**

The companies listed in Appendix III timely filed ''no shipment'' certifications stating that they had no entries into the United States of subject merchandise during the POR. Consistent with its practice, the Department asked U.S. Customs and Border Protection (CBP) to conduct a query of potential shipments made by these companies. CBP provided information [7] that indicated that one of the companies had shipments into the United States during the POR. In addition, the Department has found two of these companies to be a part of the QTF entity, discussed further in the ''Affiliations'' section of the Preliminary Decision Memorandum. Based on the certifications by the remaining companies and our analysis of CBP information, we preliminarily determine that the companies listed in Appendix III did not have any reviewable transactions during the POR. In addition, the Department finds that consistent with its refinement to its assessment practice in NME cases, further discussed below, it is appropriate not to preliminarily rescind the review, in part, in these circumstances, but rather to complete the review with respect to these 10 companies, and issue appropriate instructions to CBP based on the final results of the review.[8]

**Preliminary Results of Review**

The Department preliminarily determines that the following weighted-average dumping margins exist for the period November 1, 2014, through October 31, 2015:

| Exporter | Weighted-average margin (dollars per kilogram) |
|---|---|
| Shenzhen Xinboda Industrial Co., Ltd | 2.27 |
| Jinan Farmlady Trading Co., Ltd | 2.27 |
| Jining Alpha Food Co., Ltd | 2.27 |
| Shandong Jinxiang Zhengyang Import & Export Co., Ltd | 2.27 |
| Shenzhen Bainong Co., Ltd | 2.27 |
| Weifang Hongqiao International Logistics Co., Ltd | 2.27 |
| Qingdao Tiantaixing Foods Co., Ltd | 4.71 |
| PRC-Wide Rate | 4.71 |

[5] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[6] *See* Memorandum to Edward Yang, ''Administrative Review of the Antidumping Duty Order on Fresh Garlic From the People's Republic of China: Respondent Selection Memorandum,'' dated March 1, 2016.

[7] *See* Memorandum from Alexander Cipolla, ''21st Administrative Review of Fresh Garlic From the People's Republic of China: Concerning Shenzhen Yuting Foodstuff Co., Ltd.'s No Shipment Certification,'' dated December 5, 2016.

[8] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011); *see also* ''Assessment Rates'' section below.

**Disclosure, Public Comment and Opportunity To Request a Hearing**

The Department intends to disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Interested parties may submit written comments (case briefs) no later than 30 days after the date of publication of these preliminary results of review, pursuant to 19 CFR 351.309(c)(ii) and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs, pursuant to 19 CFR 351.(d)(1). Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments 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. *See* 19 CFR 351.303 (for general filing requirements). All electronically filed documents must be received successfully in its entirety by the Department's electronic records system, ACCESS.

Pursuant to 19 CFR 351.310, any interested party may request a hearing within 30 days of publication of this notice. Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the case and rebuttal briefs. *Id.* If a party requests a hearing, the Department 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. Parties should confirm by telephone the date, time, and location of the hearing.

The Department intends to issue the final results of this review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

**Assessment Rates**

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review, in accordance with 19 CFR 351.212(b). For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(l)(i).[9] The Department will direct CBP to assess rates based on the per-unit (*i.e.,* per kilogram) amount on each entry of the subject merchandise during the POR. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of review.

The Department announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for merchandise that was not reported in the U.S. sales databases submitted by an exporter individually examined during this review, but that entered under the case number of that exporter (*i.e.,* at the individually-examined exporter's cash deposit rate), the Department will instruct CBP to liquidate such entries at the NME-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.[10]

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2) of the Act: (1) For the companies listed above, the cash deposit rate will be the rate established in these final results of review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 4.71 U.S. dollars per kilogram; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These requirements, when imposed, shall remain in effect until further notice.

**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.

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h) and 351.221(b)(4).

Dated: December 5, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

**Appendix I—Companies For Which Reviews Have Been Rescinded**

1. Anqiu Friend Food Co., Ltd.
2. Jinxiang Chengda Import & Export Co., Ltd.
3. Jinxiang Infarm Fruits & Vegetables Co., Ltd.
4. Jinxiang Tianma Freezing Storage Co., Ltd.
5. Nanyang Nianfeng Food Co., Ltd.
6. Qingdao Jia Shan Trade Co.
7. Qingdao Ritai Food Co., Ltd.
8. Shandong Helu International Trade Co., Ltd.
9. Shandong Libaqiang
10. Shandong Longtai Fruits and Vegetables Co., Ltd.
11. Weifang Naike Foodstuffs Co., Ltd.
12. Weifang Shennong Foodstuff Co., Ltd.
13. Weifang Wangyuan Food Co., Ltd.
14. Zhengzhou Xiwannian Food Co., Ltd.

**Appendix II—Non-Selected Separate Rate Companies**

1. Jinan Farmlady Trading Co., Ltd.
2. Jining Alpha Food Co., Ltd.
3. Shandong Jinxiang Zhengyang Import & Export Co., Ltd.
4. Shenzhen Bainong Co., Ltd.
5. Weifang Hongqiao International Logistics Co., Ltd.

**Appendix III—Companies That Have Certified No Shipments**

1. Jining Yifa Garlic Produce Co., Ltd.
2. Jining Shengtai Fruits & Vegetables Co., Ltd.
3. Jining Shunchang Import & Export Co., Ltd.
4. Jinxiang Guihua Food Co., Ltd.
5. Jinxiang Richfar Fruits & Vegetables Co., Ltd.
6. Qingdao Maycarrier Import & Export Co., Ltd.
7. Qingdao Sea-Line International Trading

[9] If our determination in the final results is to rescind this administrative review with respect to Kaihua, then we will not issue liquidation instructions for Jinxiang Kaihua Import & Export Co., unless the preliminary injunction entered on October 22, 2015, in Court of International Trade case number 15–00289 has lifted.

[10] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

Co., Ltd.
8. Shandong Chenhe International Trading Co., Ltd.
9. Shijiazhuang Goodman Trading Co., Ltd.
10. Yantai Jinyan Trading, Inc.

[FR Doc. 2016–29569 Filed 12–8–16; 8:45 a.m.]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–844]**

### Steel Concrete Reinforcing Bar From Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2014–2015

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on steel concrete reinforcing bar (rebar) from Mexico, covering the period April 24, 2014, through October 31, 2015. The review covers Deacero S.A.P.I de C.V. (Deacero), and Grupo Simec S.A.B. de C.V. (Grupo Simec). We preliminarily determine that Deacero made sales of subject merchandise at less than normal value during the period of review (POR), and that Grupo Simec did not. Interested parties are invited to comment on these preliminary results.

**DATES:** Effective December 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Moore for Deacero or Patricia Tran for Grupo Simec, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3692 or (202) 482–1503, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On January 7, 2016, the Department published a notice of initiation of an administrative review of the antidumping order on rebar from Mexico.[1]

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll all administrative deadlines due to a closure of the Federal Government. As a result, the revised deadline for the preliminary results of this review was August 5, 2016.[2] On July 14, 2016, the Department extended the deadline for the preliminary results to December 5, 2016.[3]

#### Scope of the Order

Imports covered by the order are shipments of steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade. The merchandise subject to review is currently classifiable under items 7213.10.0000, 7214.20.0000, and 7228.30.8010. The subject merchandise may also enter under other Harmonized Tariff Schedule of the United States (HTSUS) numbers including 7215.90.1000, 7215.90.5000, 7221.00.0015, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6085, 7228.20.1000, and 7228.60.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.[4]

#### Methodology

The Department is conducting this review in accordance with section 751(a)(1) and (2) of the Tariff Act of 1930, as amended (the Act). Constructed export price or export price is 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 preliminary results, *see* the Preliminary Decision Memorandum dated concurrently with this notice and hereby adopted by 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 the following weighted-average dumping margins for the period April 24, 2014, through October 31, 2015:

| Producer and/or exporter | Weighted-average dumping margin (percent) |
|---|---|
| Deacero | 0.56 |
| Grupo Simec[5] | 0.00 |

#### Assessment Rate

Upon issuance of the final results, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[6] If the weighted-average dumping margin for Deacero or Grupo Simec is not zero or *de minimis* (*i.e.,* less than 0.5 percent), we will calculate importer-specific *ad valorem* antidumping 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). 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 not zero or *de minimis.* Where either the respondent's weighted-average dumping

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 736 (January 7, 2016).

[2] *See* Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement & Compliance, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm 'Jonas,' '' dated January 27, 2016. If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day.

[3] *See* Memorandum, titled ''Steel Concrete Reinforcing Bar from Mexico: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated July 14, 2016.

[4] For a full description of the scope of the order, *see* the ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bar from Mexico; 2014–2015,'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, dated concurrently with this notice (Preliminary Decision Memorandum).

[5] Pursuant to section 771(33)(B), (F) and (G) of the Act, the Department found Grupo Simec S.A.B. de C.V. affiliated with the following producers: Orge S.A. de C.V.; Compania Siderurgica del Pacifico S.A. de C.V.; Grupo Chant S.A.P.I. de C.V.; RRLC S.A.P.I. de C.V.; Siderurgica del Occidente y Pacifico S.A. de C.V.; Simec International 6 S.A. de C.V.; Simec International 7 S.A. de C.V.; and Simec International 9 S.A. de C.V. and collapsed and treated as a single entity in this administrative review pursuant to 19 CFR 351.401(f). The collective entity is Grupo Simec.

[6] *See* 19 CFR 351.212(b).

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.[7] 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. We intend to issue instructions to CBP 15 days after publication of the final results of this review.

**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)(C) of the Act: (1) The cash deposit rate for respondents noted above will be the rate established in the final results of this administrative review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(I), in which case the cash deposit rate will be zero; (2) for merchandise exported by producers or exporters not covered in this administrative 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 original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 20.58 percent, the all-others rate established in the antidumping investigation.[8] These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Disclosure and Public Comment**

The Department will 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.[9] Pursuant to 19 CFR 351.309(c), interested parties may submit cases 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.[10] Parties who submit comments are requested to submit: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[11] All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by 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, and an electronically filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Standard Time, within 30 days of publication of this notice.[12] 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, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.[13] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 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.[14]

**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 Secretary's presumption that reimbursement of antidumping duties occurred and increase the subsequent assessment of the antidumping duties by the amount of antidumping duties reimbursed.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: December 5, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix

**List of Topics Discussed in the Preliminary Decision Memorandum**



[FR Doc. 2016–29571 Filed 12–8–16; 8:45 am]

**BILLING CODE 3510–DS–P**

[7] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings: Final Modification,* 77 FR 8101, 8103 (February 14, 2012); 19 CFR 351.106(c)(2).

[8] *See Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 79 FR 54967 (September 15, 2014).

[9] *See* 19 CFR 351.224(b).

[10] *See* 19 CFR 351.309(d).

[11] *See* 19 CFR 351.309(c)(2) and (d)(2).

[12] *See* 19 CFR 351.310(c).

[13] *See* 19 CFR 351.310.

[14] *See* section 75l(a)(3)(A) of the Act and 19 CFR 351.213(h).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–583–837]**

### Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From Taiwan: 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 August 12, 2016, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty (AD) order on polyethylene terephthalate film, sheet, and strip (PET Film) from Taiwan in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). *See Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014–2015,* 81 FR 53441 (August 12, 2016) (*Preliminary Results*). This review covers Nan Ya Plastics Corporation (Nan Ya) and Shinkong Materials Technology Corporation (SMTC). We invited interested parties to comment on the *Preliminary Result* and received no comments or requests for a hearing. Therefore, for the final results, we continue to find that sales of subject merchandise by Nan Ya were not made at prices less than normal value during the period of review (POR). We continue to find that SMTC had no shipments of subject merchandise during the POR.

**DATES:** Effective December 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline Arrowsmith, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5255.

**SUPPLEMENTARY INFORMATION:**

#### Background

On August 12, 2016, the Department published the *Preliminary Results.*[1] The POR is July 1, 2014, through June 30, 2015. We invited interested parties to comment on the *Preliminary Results.* We received no comments or requests for a hearing from any party. The Department conducted this administrative review in accordance with section 751(a)(2) of the Act.

#### Scope of the Order

The products covered by the antidumping duty order are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metalized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of polyethylene terephthalate film, sheet, and strip are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the antidumping duty order is dispositive.

#### Final Results of Review

As noted above, the Department received no comments concerning the *Preliminary Results* on the record of this segment of the proceeding. As there are no changes from, or comments upon, the *Preliminary Results,* the Department finds that there is no reason to modify its analysis and calculations. Thus, we continue to find that sales of subject merchandise by Nan Ya were not made at less than normal value during the POR. Further, we continue to find that SMTC had no shipments of subject merchandise during the POR. For further details of the issues addressed in this proceeding, *see* the *Preliminary Results* and the accompanying Preliminary Decision Memorandum.[2] The final weighted-average dumping margin for the period July 1, 2014, through June 30, 2015, for Nan Ya is zero percent.

#### Final Determination of No Shipments

Based on our analysis of U.S. Customs and Border Protection (CBP) information and information provided by SMTC and its affiliate Shinkong Synthetic Fibers Corporation (SSFC), we determine that SMTC had no shipments of subject merchandise, and, therefore, no reviewable transactions, during the POR.[3] For a full discussion of this determination, *see* the Preliminary Decision Memorandum, which is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[4] ACCESS is available to registered users at http://access.trade.gov and is available to all parties in the Central Records Unit in room B8024 of the main 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 and electronic versions of the Decision Memorandum are identical in content.

#### Assessment Rates

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries in this review, in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1). The Department intends to issue assessment instructions directly to CBP 15 days after publication of these final results of review. Because we calculated a zero margin in the final results of this review for Nan Ya, in accordance with 19 CFR 351.212 we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Nan Ya will be zero percent, the rate established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not

[1] *See Preliminary Results.*

[2] *See* ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments: Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan; 2013–2014,'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, dated August 5, 2016 (Preliminary Decision Memorandum), which can be accessed directly at http://enforcement.trade.gov/frn/index.html.

[3] In the *Preliminary Results* for the 2008–2009 antidumping duty administrative review, we determined that for the purposes of calculating an antidumping margin, SMTC, and its parent company Shinkong Synthetic Fibers Corporation (SSFC) should be treated as a single entity. *See Polyethylene Terephthalate Film, Sheet and Strip from Taiwan: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 49902 (August 16, 2010), (unchanged in the *Final Results* for the 2008–2009 antidumping duty administrative review (*Polyethylene Terephthalate Film, Sheet and Strip from Taiwan: Final Results of Antidumping Duty Administrative Review,* 76 FR 9745 (February 22, 2011))).

[4] *See* Preliminary Decision Memorandum at 3.

a firm covered in this or any previous review or in the original less-than-fair-value (LTFV) investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the investigation, the cash-deposit rate will continue to be the all-others rate of 2.40 percent which is the all-others rate established by the Department in the LTFV investigation.[5] These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Reimbursement of Duties**

This notice also 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 Order**

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation, which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: December 5, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2016–29568 Filed 12–8–16; 8:45 am]

**BILLING CODE 3510–DS–P**

[5] *See PET Film from Taiwan Amended Final Determination,* 67 FR at 44175, *unchanged in Correction Notice,* 67 FR at 46566.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–533–825]**

### Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Countervailing Duty Administrative Review; 2014

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On August 3, 2016, the Department published the preliminary results of the administrative review of the countervailing duty order on polyethylene terephthalate film, sheet, and strip (PET film) from India. This review covers two companies: Jindal Poly Films Limited (Jindal), and SRF Limited. The period of review (POR) is January 1, 2014, through December 31, 2014. Based on an analysis of the comments received, the Department has made changes to the subsidy rate determined for Jindal. The final subsidy rates are listed in the ''Final Results of Administrative Review'' section below.

**DATES:** Effective December 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elfi Blum, AD/CVD Operations, Office VII, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0197.

**Scope of the Order**

For the purposes of the order, the products covered are all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet and strip, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the order is dispositive.

**Analysis of Comments Received**

The issues raised by Petitioners [1] and Jindal in their case briefs are addressed in the Issues and Decision Memorandum.[2] Neither party submitted rebuttal briefs. The issues are identified in the Appendix to this notice. The Issues and 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 *http://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://trade.gov/enforcement/frn/index.html.* The signed Issues and Decision Memorandum and electronic versions of the Issues and Decision Memorandum are identical in content.

**Changes Since the Preliminary Results**

The Department published the preliminary results of this administrative review of PET film from India on August 3, 2016.[3] Based on the comments received from Petitioners, in these final results, we corrected a ministerial error made in the context of our analysis of the Export Promotion Capital Goods Scheme (EPCGS).[4]

**Methodology**

The Department conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] For a description of the methodology underlying all of the Department's conclusions, see the Issues and Decision Memorandum.

[1] DuPont Teijin Films, Inc., Mitsubishi Polyester Film, Inc. and SKC, Inc. (collectively, Petitioners).

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Issues and Decision Memorandum for the Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India; 2013,'' dated concurrently with this notice and herein incorporated by reference (Issues and Decision Memorandum).

[3] *See Polyethylene Terephthalate Film, Sheet and Strip From India: Preliminary Results And Partial Rescission of Countervailing Duty Administrative Review; 2014,* 81 FR 51186 (August 3, 2016) (*Preliminary Results 2014*).

[4] For a discussion of these issues, *see* the Issues and Decision Memorandum, and Memorandum to the File from Elfi Blum, International Trade Compliance Analyst, titled ''Final Results of 2014 Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India—Jindal Polyfilms Limited,'' each dated concurrently with these final results.

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and, section 771(5A) of the Act regarding specificity.

**Final Results of Administrative Review**

In accordance with section 777A(e)(1) of the Act and 19 CFR 351.221(b)(5), we determine the total estimated net countervailable subsidy rates for the period January 1, 2014, through December 31, 2014 to be:

| Manufacturer/exporter | Subsidy rate (percent *ad valorem*) |
|---|---|
| Jindal Poly Films of India Limited | 5.52 |
| SRF Limited | 2.16 |

**Assessment and Cash Deposit Requirements**

In accordance with 19 CFR 351.212(b)(2), the Department intends to issue appropriate instructions to U.S. Customs and Border Protection (CBP) 15 days after publication of the final results of this review. The Department will instruct CBP to liquidate shipments of subject merchandise produced and/or exported by the companies listed above, entered or withdrawn from warehouse, for consumption from January 1, 2014, through December 31, 2014, at the percent rates, as listed above for each of the respective companies, of the entered value.

The Department intends also to instruct CBP to collect cash deposits of estimated countervailing duties, in the amounts shown above for each of the respective companies shown above, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most-recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Administrative Protective Order**

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 1, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

**Appendix I**

**Issues and Decision Memorandum**



[FR Doc. 2016–29570 Filed 12–8–16; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–489–819]**

## Steel Concrete Reinforcing Bar From the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind the Review in Part; 2014

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey). The period of review (POR) is September 15, 2014, through December 31, 2014. This review covers two producers/exporters of subject merchandise that the Department selected for individual examination: Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas) and Kaptan Demir Celik Endustrisi ve Ticaret A.S. and Kaptan Metal Dis Ticaret ve Nakliyat A.S. (Kaptan Demir Companies) (collectively, the mandatory respondents). This review also covers the following firms that were not individually examined: 3212041 Canada Inc.; Acemar International Limited; As Gaz Sinai ve Tibbi Azlar A.S.; Colakoglu Dis Ticaret A.S. (also known as Colakoglu Disticaret AS); Colakoglu Metalurji A.S.; Del Industrial Metals; Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (also known as Habas Sinai 199, Habas Sinai ve Tibbi Gazlar, and/or Habas Sinai ve Tibbi Gazlar Istihsal); Izmir Demir Celik Sanayi A.S.; Ozkan Demir Celik Sanayi A.S.; Tata Steel International (Hong Kong) Limited (also known as Tata Steel International (Hong Kong)); and Tata Steel UK.

We preliminarily find that the mandatory respondents each received a *de minimis* net subsidy rate during the POR. *See* ''Preliminary Results of Review'' section of this notice below for the preliminary rates calculated for the companies covered in this review.

**DATES:** Effective December 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Kristen Johnson (Icdas) and Samuel Brummitt (Kaptan Demir), 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) 482–4793, and (202) 482–7851, respectively.

**SUPPLEMENTARY INFORMATION:**

**Scope of the Order**

The scope of the order consists of steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade. The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010. The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0015, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6085, 7228.20.1000, and 7228.60.6000. While HTSUS subheadings are provided for convenience and customs purposes, the

written description of the scope of this *Order* is dispositive.[1]

**Methodology**

We are conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily find that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[2] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

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 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/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

A list of topics discussed in the Preliminary Decision Memorandum is provided in the Appendix to this notice.

**Intent To Rescind Administrative Review, in Part**

Entries of merchandise produced and exported by Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas) are not subject to countervailing duties because the Department's final determination with respect to this producer/exporter combination was negative.[3] However, as stated in the *Initiation Notice,* any entries of merchandise produced by any other entity and exported by Habas or produced by Habas and exported by another entity are subject to the *Order.*[4]

Because there is no evidence on the record of entries of merchandise produced by another entity and exported by Habas, or entries of merchandise produced by Habas and exported by another entity, we preliminarily determine that Habas is not subject to this administrative review. Therefore, pursuant to 19 CFR 351.213(d)(3), we intend to rescind the review with respect to Habas. A final decision regarding whether to rescind the review of Habas will be made in the final results of this review.

**Preliminary Results of the Review**

We preliminarily find that the following net subsidy rates exist for the period September 15, 2014, through December 31, 2014:

| Company | Subsidy rate Ad Valorem (percent) |
|---|---|
| Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S | [5] 0.00 |
| Kaptan Demir Celik Endustrisi ve Ticaret A.S. and Kaptan Metal Dış Ticaret ve Nakliyat A.S. | * 0.02 |
| 3212041 Canada Inc | 0.00 |
| Acemar International Limited | 0.00 |
| As Gaz Sinai ve Tibbi Azlar A.S | 0.00 |
| Colakoglu Dis Ticaret A.S. (also known as Colakoglu Disticaret AS) | 0.00 |
| Colakoglu Metalurji A.S | 0.00 |
| Del Industrial Metals | 0.00 |
| Izmir Demir Celik Sanayi A.S | 0.00 |
| Ozkan Demir Celik Sanayi A.S | 0.00 |
| Tata Steel International (Hong Kong) Limited (also known as Tata Steel International (Hong Kong)) | 0.00 |
| Tata Steel UK[6] | 0.00 |

* *De minimis.*

In accordance with the U.S. Court of Appeals for the Federal Circuit's decision in *Albemarle Corp.* v. *United States,*[7] we are applying to the non-selected companies the rates preliminarily calculated for the mandatory respondents, which are *de minimis.*

**Assessment Rates**

Consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), upon issuance of the final results, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of this review.

**Cash Deposit Requirements**

Pursuant to section 751(a)(2)(C) of the Act, the Department intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount shown above for the reviewed companies should the final results remain the same as these preliminary results. For all non-reviewed firms, we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

[1] *See Steel Concrete Reinforcing Bar From the Republic of Turkey: Countervailing Duty Order,* 79 FR 65926 (November 6, 2014) (*Order*). For a full description of the scope of this 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 Countervailing Duty Administrative Review: Steel Concrete Reinforcing Bar from the Republic of Turkey,'' dated concurrently with, and hereby adopted by this notice. (Preliminary Decision Memorandum).

[2] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[3] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination Final Affirmative Critical Circumstances Determination,* 79 FR 54963, 54964 (September 15, 2014).

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 736, 740 (at footnote 4) (January 7, 2016) (*Initiation Notice).*

[5] For Icdas, we preliminarily calculate a *de minimis* rate, which, when rounded to the hundredth place, is zero.

[6] The name of Tata Steel UK was incorrectly spelled in the *Initiation Notice.* The company's name was inadvertently listed as ''Tata Steel U.'' *See Initiation Notice,* 81 FR at 740.

[7] *See Albemarle Corp. & Subsidiaries* v. *United States,* 821 F.3d 1345 (Fed. Cir. 2016).

## Disclosure and Public Comment

We will disclose to the parties in this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of this notice.[8] Interested parties may submit written arguments (case briefs) on the preliminary results no later than 30 days from the date of publication of this **Federal Register** notice, and rebuttal comments (rebuttal briefs) within five days after the time limit for filing the case briefs.[9] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) Statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days after the date of publication of this notice.[10] 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 the Department receives a request for a hearing, we will inform parties of the scheduled date for the hearing, which will be held at the main Department of Commerce building at a time and location to be determined.[11] Parties should confirm by telephone the date, time, and location of the hearing.

Parties are reminded that briefs and hearing requests are to be filed electronically using ACCESS and that electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, we intend to issue the final results of this administrative review, including the results of our analysis of the issues raised by parties in their comments, within 120 days after publication of these preliminary results.

## Notification to Interested Parties

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 351.221(b)(4).

[8] *See* 19 CFR 351.224(b).

[9] *See* 19 CFR 351.309(c)(1)(ii); 351.309(d)(1); and 19 CFR 351.303 (for general filing requirements).

[10] *See* 19 CFR 351.310(c).

[11] *See* 19 CFR 351.310.

Dated: December 5, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix—List of Topics Discussed in the Preliminary Decision Memorandum



[FR Doc. 2016–29572 Filed 12–8–16; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–580–809]**

## Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2014–2015

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on circular welded non-alloy steel pipe (CWP) from the Republic of Korea (Korea). The period of review (POR) is November 1, 2014, through October 31, 2015. The Department preliminarily determines that the one individually-examined respondent in this review, Husteel Co., Ltd. (Husteel), made sales of the subject merchandise at prices below normal value, and that Hyundai Steel Company (Hyundai Steel) had no shipments of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results.

**DATES:** Effective December 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Joseph Shuler, 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) 482–1293.

**Scope of the Order**

The merchandise subject to the order is circular welded non-alloy steel pipe and tube. Imports of the product are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. While the HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.[1]

**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 price is 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 provided as Appendix I 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) available to registered users at *http://access.trade.gov* and 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 at *http://enforcement.trade.gov/frn/index.html.*

**Preliminary Determination of No Shipments**

We received a timely submission from Hyundai Steel reporting to the Department that it had no exports, sales, or entries of subject merchandise to the United States during the POR.[2] Based on the certification submitted by Hyundai Steel and our analysis of information from U.S. Customs and Border Protection (CBP), we preliminarily determine that Hyundai Steel had no shipments of subject merchandise during the POR. For additional information on our preliminary no shipments determination, *see* the Preliminary Decision Memorandum.

**Preliminary Results of the Administrative Review**

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist for the respondents for the period November 1, 2014, through October 31, 2015. The rate for the companies not selected for individual examination is equal to the weighted-average dumping margin for the selected respondent, Husteel.

| Producer or exporter | Weighted-average dumping margin (percent) |
|---|---|
| Husteel Co., Ltd | 1.77 |
| AJU Besteel | 1.77 |
| NEXTEEL | 1.77 |
| SeAH Steel Corporation | 1.77 |

**Disclosure and Public Comment**

We intend to disclose to interested parties the calculations performed for these preliminary results within five days of the date of publication of this notice.[3] Interested parties may submit case briefs no later than 30 days after the date of publication of the preliminary results.[4] Rebuttal briefs, limited to the issues raised in the case briefs, may be filed no later than five days after the submission of case briefs.[5] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[6]

Interested parties who wish to request a hearing, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically *via* ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, no later than 5:00 p.m. Eastern Time within 30 days of publication of this notice.[7] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Act.

**Assessment Rates**

If Husteel's weighted-average dumping margin is above *de minimis* in the final results of this review, we will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of antidumping duties calculated for the importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).[8] If Husteel's weighted-average dumping margin is zero or *de minimis* in the final results of reviews, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews*.[9]

For entries of subject merchandise during the POR produced by Husteel for which it did not know its 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 companies involved in the transaction. Consistent with our practice, if we continue to find that Hyundai Steel had no shipments of subject merchandise to the United States in the final results of this review, we intend to instruct CBP to liquidate any existing entries of merchandise produced by Hyundai Steel and exported by other parties at the all-others rate.

For AJU Besteel, NEXTEEL, and SeAH Steel Corporation (the companies not selected for individual examination), we will instruct CBP to apply the rate assigned to them in the final results of this review to all entries of subject merchandise produced and/or exported by these companies.

We intend to issue liquidation instructions to CBP 15 days after

[1] For a full description of the scope of the order, *see* the Memorandum from Deputy Assistant Secretary Christian Marsh to Assistant Secretary Paul Piquado, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: 2014–2015,'' dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum).

[2] *See* Hyundai Steel's Letter to the Department, ''Certain Circular Welded Non-Alloy Steel Pipe from Korea: No Shipment Letter,'' dated February 11, 2016.

[3] *See* 19 CFR 351.224(b).

[4] *See* 19 CFR 351.309(c)(1)(ii).

[5] *See* 19 CFR 351.309(d)(1).

[6] *See* 19 CFR 351.309(c)(2) and (d)(2).

[7] *See* 19 CFR 351.310(c).

[8] 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 Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

[9] *See Final Modification for Reviews,* 77 FR at 8102.

publication of the final results of these reviews.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the notice of final results of this administrative review for all shipments of CWP from Korea 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 Husteel, AJU Besteel, NEXTEEL, and SeAH Steel Corporation will be equal to the weighted-average dumping margins established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published 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 producer has been covered in a prior complete segment of this proceeding, the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 4.80 percent, the ''all others'' rate established in the order.[10] These cash deposit requirements, when imposed, shall remain in effect until further notice.

**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 Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

The Department is issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

[10] *See Notice of Antidumping Duty Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non-Alloy Steel Pipe from Korea,* 57 FR 49453 (November 2, 1992).

Dated: December 6, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

**Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum**



[FR Doc. 2016–29543 Filed 12–8–16; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–520–803]**

### Polyethylene Terephthalate Film, Sheet, and Strip From the United Arab Emirates: Preliminary Results of Antidumping Duty Administrative Review; 2014–2015

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET Film) from the United Arab Emirates (UAE). The period of review (POR) is November 1, 2014, through October 31, 2015. The review covers one producer/exporter of the subject merchandise, JBF RAK LLC (JBF). The Department preliminarily determines that sales of subject merchandise have been made below normal value by JBF. Interested parties are invited to comment on these preliminary results.

**DATES:** Effective December 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Andrew Huston, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4261.

**SUPPLEMENTARY INFORMATION:**

**Scope of the Order**

The merchandise subject to the order is polyethylene terephthalate film. The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheading: 3920.62.00.90. Although the HTSUS number is provided for convenience and for customs purposes, the written product description, available in the Preliminary Decision Memorandum, remains dispositive.[1]

**Methodology**

The Department is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export price is 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, which is hereby adopted by this notice.[2] A list of topics included in the Preliminary Decision Memorandum is included as an Appendix to this notice. The Preliminary Decision Memorandum 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 *http://access.trade.gov* and in the Central Records Unit in Room B8024 of the main 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/.* The signed Preliminary Decision Memorandum and electronic versions of the Preliminary Decision Memorandum are identical in content.

[1] *See* the 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 the Preliminary Results of Antidumping Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates'' (Preliminary Decision Memorandum), dated concurrently with this notice.

[2] *Id.*

**Preliminary Results of Review**

As a result of our review, we preliminarily determine the following weighted-average dumping margin for the period November 1, 2014, through October 31, 2015:

| Manufacturer/exporter | Weighted-average margin (percent) |
|---|---|
| JBF RAK LLC ..... | 7.93 |

**Disclosure and Public Comment**

The Department intends to disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results of this review. 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 not be filed later than five days after the time limit for filing case briefs.[3] Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each brief: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[4] Executive summaries should be limited to five pages total, including footnotes.[5]

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. If a hearing is requested, the Department will notify interested parties of the hearing schedule. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs.

We intend to issue the final results of this administrative review, including the results of our analysis of issues raised by the parties in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**, unless otherwise extended.[6]

[3] *See* 19 CFR 351.309(d)(1).

[4] *See* 19 CFR 351.309(c)(2), (d)(2).

[5] *Id.*

[6] *See* section 751(a)(3)(A) of the Act.

**Assessment Rates**

Upon issuing the final results of the review, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of 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).[7] 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.* 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 and for future deposits of estimated duties, where applicable.

**Cash Deposit Requirements**

The following deposit requirements will be effective for all shipments of PET Film from the UAE entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies under review will be the rate established in the final results of this review (except, if the rate is zero or *de minimis,* no cash deposit will be required); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (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 recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 4.05 percent, the all-others rate established in the investigation.[8] These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) 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 administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 5, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

**Appendix—List of Topics Discussed in the Preliminary Decision Memorandum**

1. Summary
2. Background
3. Scope of the Order
4. Date of Sale
5. Discussion of Methodology
6. Product Comparisons
7. Export Price
8. Normal Value
9. Currency Conversions
10. Conclusion

[FR Doc. 2016–29541 Filed 12–8–16; 8:45 am]

**BILLING CODE 3510–DS–P**

[7] In these preliminary results, the Department applied the assessment rate calculation methodology 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).

[8] *See Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates,* 73 FR 66595, 66597 (November 10, 2008).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–992]**

### Monosodium Glutamate From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On August 5, 2016, the Department of Commerce (the

Department) published the preliminary results of the administrative review of the antidumping duty (AD) order on monosodium glutamate (MSG) from the People's Republic of China (PRC) covering the period of review (POR) May 8, 2014 through October 31, 2015 in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). *See Monosodium Glutamate from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 81 FR 51853 (August 5, 2016) (*Preliminary Results*). This review covers 38 exporters of the subject merchandise. None of these companies filed a separate rate application (SRA) and/or a separate rate certification (SRC) to establish its separate rate status. Therefore, the Department preliminarily found that the companies are part of the PRC-wide entity. We invited interested parties to comment on the *Preliminary Results.* No party filed comments or requested a hearing. Accordingly, the final results remain unchanged from the *Preliminary Results.*

**DATES:** Effective December 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline Arrowsmith, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5255.

**SUPPLEMENTARY INFORMATION:**

## Scope of the Order

The product covered by this order is MSG, whether or not blended or in solution with other products. Specifically, MSG that has been blended or is in solution with other product(s) is included in this scope when the resulting mix contains 15 percent or more of MSG by dry weight. Products with which MSG may be blended include, but are not limited to, salts, sugars, starches, maltodextrins, and various seasonings. Further, MSG is included in this order regardless of physical form (including, but not limited to, in monohydrate or anhydrous form, or as substrates, solutions, dry powders of any particle size, or unfinished forms such as MSG slurry), end-use application, or packaging. MSG in monohydrate form has a molecular formula of $C5H8NO4Na\text{-}H_2O$, a Chemical Abstract Service (CAS) registry number of 6106–04–3, and a Unique Ingredient Identifier (UNII) number of W81N5U6R6U. MSG in anhydrous form has a molecular formula of C5H8NO4Na, a CAS registry number of 142–47–2, and a UNII number of C3C196L9FG. Merchandise covered by the scope of this order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2922.42.10.00. Merchandise subject to the order may also enter under HTS subheadings 2922.42.50.00, 2103.90.72.00, 2103.90.74.00, 2103.90.78.00, 2103.90.80.00, and 2103.90.90.91. The tariff classifications, CAS registry numbers, and UNII numbers are provided for convenience and customs purposes; however, the written description of the scope is dispositive.[1]

## Final Results of Review

As noted above, the Department received no comments concerning the *Preliminary Results* on the record of this segment of the proceeding. As there are no changes from, or comments upon, the *Preliminary Results,* the Department finds that there is no reason to modify its analysis. Therefore, in these final results of review, we have continued to treat all 38 exporters subject to this review as part of the PRC-wide entity.[2] The PRC-wide entity rate is 40.41 percent.[3]

## Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries in this review, in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1). The Department intends to issue assessment instructions directly to CBP 15 days after publication in the **Federal Register** of these final results of this administrative review.

## Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed PRC and non-PRC exporters not under review in this segment of the proceeding, but who have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (2) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide entity rate (*i.e.,* 40.41 percent); and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

## Reimbursement of Duties

This notice also 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 Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation, which is subject to sanction.

We are issuing and publishing this notice in accordance with sections

[1] *See Monosodium Glutamate From the People's Republic of China: Second Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Order,* 80 FR 487 (January 6, 2015).

[2] In the *Preliminary Results,* we found all 38 exporters subject to this review to be part of the PRC-wide entity as each exporter failed to submit an SRA and/or an SRC to establish its eligibility for separate rate status. As noted above, no party submitted comments regarding the *Preliminary Results* on the record of this segment of the proceeding. Accordingly, no decision memorandum accompanies this **Federal Register** notice. For further details of the issues addressed in this proceeding, *see* the *Preliminary Results* and the ''Decision Memorandum for Preliminary Results of the Antidumping Duty Administrative Review of Monosodium Glutamate from the People's Republic of China; 2014–2015,'' from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, dated August 5, 2016, which can be accessed directly at *http://enforcement.trade.gov/frn/index.html.*

[3] *See Monosodium Glutamate From the People's Republic of China: Second Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order,* 80 FR 487 (January 6, 2015).

751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h).

Dated: December 5, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2016–29564 Filed 12–8–16; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

**[Docket No.: 161115999–6999–01]**

### National Cybersecurity Center of Excellence (NCCoE) Privacy-Enhancing Identity Federation Building Block

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** The National Institute of Standards and Technology (NIST) invites organizations to provide products and technical expertise to support and demonstrate technology platforms for the Privacy-Enhancing Identity Federation Building Block. This notice is the initial step for the National Cybersecurity Center of Excellence (NCCoE) in collaborating with technology companies to address cybersecurity challenges identified under the Privacy-Enhancing Identity Federation Building Block. Participation in the building block is open to all interested organizations.

**DATES:** Interested parties must contact NIST to request a letter of interest template to be completed and submitted to NIST. Letters of interest will be accepted on a first come, first served basis. Collaborative activities will commence as soon as enough completed and signed letters of interest have been returned to address all the necessary components and capabilities, but no earlier than January 9, 2017. When the building block has been completed, NIST will post a notice on the NCCoE Web site at *https://nccoe.nist.gov/projects/building_blocks/privacy-enhanced-identity-brokers* announcing the completion of the building block and informing the public that it will no longer accept letters of interest for this project.

**ADDRESSES:** The NCCoE is located at 9700 Great Seneca Highway, Rockville, MD 20850. Letters of interest must be submitted to *petid-nccoe@nist.gov;* or via mail to National Institute of Standards and Technology, NCCoE; 100 Bureau Drive, M/S 2002 Gaithersburg, MD 20899. Organizations whose letters of interest are accepted in accordance with the process set forth in the **SUPPLEMENTARY INFORMATION** section of this notice will be asked to sign a Cooperative Research and Development Agreement (CRADA) with NIST. A CRADA template can be found at: *https://nccoe.nist.gov/library/nccoe-consortium-crada-example.*

**FOR FURTHER INFORMATION CONTACT:** Paul Grassi via email at *petid-nccoe@nist.gov;* by telephone 240–614–3686; or by mail to National Institute of Standards and Technology, NCCoE; 100 Bureau Drive, M/S 2002 Gaithersburg, MD 20899. Additional details about the Privacy-Enhancing Federation Building Block are available at *https://nccoe.nist.gov/projects/building_blocks.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The NCCoE, part of NIST, is a public-private collaboration for accelerating the widespread adoption of integrated cybersecurity tools and technologies. The NCCoE brings together experts from industry, government, and academia under one roof to develop practical, interoperable cybersecurity approaches that address the real-world needs of complex Information Technology (IT) systems. By accelerating dissemination and use of these integrated tools and technologies for protecting IT assets, the NCCoE will enhance trust in U.S. IT communications, data, and storage systems; reduce risk for companies and individuals using IT systems; and encourage development of innovative, job-creating cybersecurity products and services.

*Process:* NIST is soliciting responses from all sources of relevant security capabilities (see below) to enter into a Cooperative Research and Development Agreement (CRADA) to provide products and technical expertise to support and demonstrate security platforms for the Privacy-Enhancing Identity Federation Building Block. The full building block can be viewed at: *https://nccoe.nist.gov/projects/building_blocks/privacy-enhanced-identity-brokers.*

Interested parties should contact NIST using the information provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. NIST will then provide each interested party with a letter of interest template, which the party must complete, certify that it is accurate, and submit to NIST. NIST will contact interested parties if there are questions regarding the responsiveness of the letters of interest to the building block objective or requirements identified below. NIST will select participants who have submitted complete letters of interest on a first come, first served basis within each category of product components or capabilities listed below up to the number of participants in each category necessary to carry out this building block. However, there may be continuing opportunity to participate even after initial activity commences. Selected participants will be required to enter into a consortium CRADA with NIST (for reference, see **ADDRESSES** section above). NIST published a notice in the **Federal Register** on October 19, 2012 (77 FR 64314), inviting U.S. companies to enter into National Cybersecurity Excellence Partnerships (NCEPs) in furtherance of the NCCoE. For this demonstration project, NCEP partners will not be given priority for participation.

*Building Block Objective:* The primary objective of this building block is to demonstrate how federated identity services, leveraging market dominant standards, can include privacy enhancements for individuals and organizations that are not widely available in market available identity solutions. More specifically, this project seeks innovative ways to protect user attributes in order to prevent intermediaries in federated identity transactions from gaining access to personal information. Additionally, it seeks architectures in which organizations and identity brokers do not know each other's organizational identities, so that neither entity can track or link user activities beyond what is known from their direct relationship with the user. Any approach utilized to achieve this goal must be able to mitigate common online attacks, such as a man-in-the-middle attack.

This project will result in a freely available NIST Cybersecurity Practice Guide, describing in depth the technical decisions, trade-offs, lessons-learned, and build instructions, based on market dominant standards, such that organizations can accelerate the deployment of a similar privacy enhancing federated identity architectures.

A detailed description of the Privacy-Enhancing Identity Federation Building Block is available at *https://nccoe.nist.gov/projects/building_blocks/privacy-enhanced-identity-brokers.*

**Requirements**

Each responding organization's letter of interest should identify which security platform component(s) or capability(ies) it is offering. Letters of interest should not include company

proprietary information, and all components and capabilities must be commercially available. Components are listed in section ten of the Privacy-Enhancing Identity Federation Building Block (for reference, please see the link in the PROCESS section above) and include, but are not limited to:

1. Relying Party Host(s)
2. Identity Provider Host(s)
3. Identity Federation Manager
4. Multi-factor credentials
5. Attribute Provider Host(s)
6. Cryptographic Module(s) to include key management (if required by commercial product)
7. Network, Compute, and Storage

Each responding organization's letter of interest should identify how their products address one or more of the following desired solution characteristics in Chapter 6—Desired Solution Objectives, of the Privacy-Enhancing Identity Federation Building Block (for reference, please see the link in the PROCESS section above): Responding organizations need to understand and, in their letters of interest, commit to provide:

1. Access for all participants' project teams to component interfaces and the organization's experts necessary to make functional connections among security platform components
2. Support for development and demonstration of the Privacy-Enhancing Identity Federation Building Block in NCCoE facilities which will be conducted in a manner consistent with Federal requirements (*e.g.,* FIPS 200, FIPS 201, SP 800–53, and SP 800–63)

Additional details about the Privacy-Enhancing Identity Federation Building Block are available at *https://nccoe.nist.gov/projects/building_blocks/privacy-enhanced-identity-brokers.*

NIST cannot guarantee that all of the products proposed by respondents will be used in the demonstration. Each prospective participant will be expected to work collaboratively with NIST staff and other project participants under the terms of the consortium CRADA in the development of the Privacy-Enhancing Identity Federation Building Block. Prospective participants' contribution to the collaborative effort will include assistance in establishing the necessary interface functionality, connection and set-up capabilities and procedures, demonstration harnesses, environmental and safety conditions for use, integrated platform user instructions, and demonstration plans and scripts necessary to demonstrate the desired capabilities. Each participant will train NIST personnel, as necessary, to operate its product in capability demonstrations. Following successful demonstrations, NIST will publish a description of the security platform and its performance characteristics sufficient to permit other organizations to develop and deploy technology platforms that meet the security and privacy objectives of the Privacy-Enhancing Identity Federation Building Block. These descriptions will be public information.

Under the terms of the consortium CRADA, NIST will support development of interfaces among participants' products by providing IT infrastructure, laboratory facilities, office facilities, collaboration facilities, and staff support to component composition, security platform documentation, and demonstration activities.

The dates of the demonstration of the Privacy-Enhancing Identity Federation Building Block capability will be announced on the NCCoE Web site at least two weeks in advance at *http://nccoe.nist.gov/.* The expected outcome of the demonstration is to improve privacy-enhancing identity federation within the enterprise. Participating organizations will gain from the knowledge that their products are interoperable with other participants' offerings.

For additional information on the NCCoE governance, business processes, and NCCoE operational structure, visit the NCCoE Web site *http://nccoe.nist.gov/.*

**Kevin Kimball,**

*NIST Chief of Staff.*

[FR Doc. 2016–29482 Filed 12–8–16; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF026**

### Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Approved Monitoring Service Providers

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

**ACTION:** Notice of approved monitoring service providers.

**SUMMARY:** NMFS has approved five companies to provide at-sea monitoring services to Northeast multispecies sectors in fishing years 2017 and 2018. Regulations implementing the Northeast Multispecies Fishery Management Plan require at-sea monitoring companies to apply to, and be approved by, NMFS in order to be eligible to provide at-sea monitoring services to sectors. This action will allow sectors to contract at-sea monitoring services with any of the approver providers for fishing years 2017 and 2018.

**ADDRESSES:** The list of NMFS-approved sector monitoring service providers are available at: *http://www.greateratlantic.fisheries.noaa.gov/sustainable/species/multispecies/,* or by sending a written request to: 55 Great Republic Drive, Gloucester, MA 01930, Attn: Kyle Molton.

**FOR FURTHER INFORMATION CONTACT:** Kyle Molton, Fishery Management Specialist, (978) 281–9236, fax (978) 281–9135, email *Kyle.Molton@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

Amendment 16 (75 FR 18262; April 9, 2010) to the Northeast Multispecies Fishery Management Plan (FMP) expanded the sector management program, including a requirement for industry-funded monitoring of catch by sector vessels. Framework Adjustment 48 to the FMP (78 FR 26118; May 3, 2013) revised the goals and objectives for sector monitoring programs. Sectors must employ approved independent third-party monitoring companies to provide at-sea monitoring services to their vessels.

#### Standards for Approving At-Sea Monitoring Service Providers

We are transitioning from an annual approval process to biennial approval to provide sectors additional stability and flexibility in negotiating contracts with monitoring companies. Applications approved this year will cover both fishing year 2017 and fishing year 2018 (May 1, 2017, through April 30, 2019). There will be an opportunity in 2017 for additional monitoring companies to apply for approval to provide services in fishing year 2018.

The regulations at 50 CFR 648.87(b)(4) describe the criteria for approval of at-sea monitoring service providers. We approve service providers based on: (1) Completeness and sufficiency of applications; (2) determination of the applicant's ability to meet the performance requirements of a sector monitoring service provider; and (3) documented successful performance in the prior fishing year. We can disapprove any previously approved service provider during the fishing year if the provider fails to meet the performance standards, including

required coverage levels. We must notify service providers of disapproval in writing.

**Approved Monitoring Service Providers**

We received complete applications from five companies: A.I.S., Inc.; East West Technical Services, LLC; MRAG Americas, Inc.; Fathom Research, LLC; and ACD USA Ltd. These five companies were approved for fishing year 2016. We approve all five companies to provide at-sea monitoring services in fishing years 2017 and 2018 because they have met the application requirements, documented their ability to comply with service provider standards, and have met the service provider performance criteria to date in fishing year 2016.

TABLE 1—APPROVED FISHING YEAR 2016 PROVIDERS

| Provider name | Address | Phone | Fax | Website |
|---|---|---|---|---|
| ACD USA Ltd | 1801 Hollis St., Suite 1220, Halifax, Nova Scotia, Canada B35 3N4. | 902–749–5107 | 902–749–4552 | *www.atlanticcatchdata.ca.* |
| A.I.S., Inc | 14 Barnabas Rd., P.O. Box 1009, Marion, MA 02738. | 508–990–9054 | 508–990–9055 | *aisobservers.com.* |
| East West Technical Services, LLC | 1415 Corona Ln., Vero Beach, FL 32963. | 860–910–4957 | 860–223–6005 | *www.ewts.com.* |
| Fathom Research, LLC | 1213 Purchase St., Suite 302, New Bedford, MA 02740. | 508–990–0997 | 508–991–7372 | *www.fathomresearchllc.com.* |
| MRAG Americas, Inc | 1810 Shadetree Circle, Anchorage, AK 99502. | 978–768–3880 | 978–768–3878 | *www.mragamericas.com.* |

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

Dated: December 6, 2016.

**Emily H. Menashes,**

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

[FR Doc. 2016–29575 Filed 12–8–16; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF078**

### Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting (work session).

**SUMMARY:** The Pacific Fishery Management Council (Pacific Council) will convene a work session of its Coastal Pelagic Species (CPS) Management Team (CPSMT). The work session is open to the public.

**DATES:** The work session will be held Tuesday–Thursday, January 17–19, 2017. The meeting will begin the first day at 8:30 a.m. Pacific Daylight Time, and at 8 a.m. each following day. The meeting will adjourn each day at 5 p.m., or when business for the day has been completed.

**ADDRESSES:** The meeting will be held in the Plankton Room of the NOAA Southwest Fisheries Science Center, 8901 La Jolla Shores Dr., La Jolla, CA 92037–1508.

*Council address:* Pacific Fishery Management Council, 7700 NE. Ambassador Place, Suite 101, Portland, OR 97220.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kerry Griffin, Staff Officer; telephone: (503) 820–2409.

**SUPPLEMENTARY INFORMATION:** The primary purposes of the work session are to review and continue development of a final analysis and fishery management plan (FMP) language for small-scale fisheries, in preparation for Council final action in April 2017; explore potential changes to CPS management categories; consider potential for periodic review of monitored stock harvest specifications and management measures; discuss ecosystem information and concerns as they relate to CPS management, forage needs, and other ecosystem needs; and workload planning for 2017 and 2018.

**Special Accommodations**

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Dale Sweetnam (858) 546–7170 at least 10 business days prior to the meeting date.

Dated: December 6, 2016.

**Tracey L. Thompson,**

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

[FR Doc. 2016–29508 Filed 12–8–16; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XE954**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Breakwater Replacement Project in Eastport, Maine

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

**ACTION:** Notice; proposed incidental harassment authorization; request for comments.

**SUMMARY:** NMFS has received a request from the Maine Department of Transportation (ME DOT) for authorization to take marine mammals, by harassment, incidental to in-water construction activities from the Eastport Breakwater Replacement Project (EBRP) in Eastport, ME. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to the ME DOT to incidentally take marine mammals, by Level B harassment only, during the specified activity.

**DATES:** Comments and information must be received no later than January 9, 2017.

**ADDRESSES:** Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West

Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Egger@noaa.gov.*

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Egger, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

## Availability

An electronic copy of the ME DOT's application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* In case of problems accessing these documents, please call the contact listed above.

## National Environmental Policy Act

NMFS is preparing an Environmental Assessment (EA) in accordance with the National Environmental Policy Act (NEPA) and will consider comments submitted in response to this notice as part of that process.

## Background

Sections 101(a)(5)(D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).''

## Summary of Request

On August 31, 2016, we received an application from the ME DOT for authorization to take marine mammals incidental to construction activities associated with the replacement and expansion of the pier and breakwater in Eastport, Maine. The project includes the removal of the original filled sheet pile structure (built in 1962), the replacement of the approach pier, expansion of the existing pier head, and the construction of a new wave attenuator. The ME DOT submitted a revised version of the application on October 21, 2016, and a final application on December 2, 2016, which we deemed adequate and complete.

The proposed activity would begin January 2017 and work may be authorized for one year, however, the pile driving activity is expected to be accomplished between January and August 2017. Harbor seal (*Phoca vitulina*), gray seal (*Halichoerus grypus*), harbor porpoise (*Phocoena phocoena*), and Atlantic white-sided dolphin (*Lagenorhynchus acutus*) are expected to be present during the proposed work. Pile driving activities are expected to produce in-water noise disturbance that has the potential to result in the behavioral harassment of marine mammals. NMFS is proposing to authorize take, by Level B Harassment, of the marine mammals, listed above, as a result of the specified activity.

On August 4, 2016, NMFS released its Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Guidance). This new guidance established new thresholds for predicting auditory injury, which equates to Level A harassment under the MMPA. The ME DOT project used this new guidance when determining the injury (Level A) zones.

## Description of the Specified Activities

### *Overview*

The Eastport Breakwater is a solid fill multi-use pier serving the local fishing community by providing a safe harbor for berthing as well as a loading and off-loading point for the fishing fleet. It also serves as a berth for larger commercial and passenger ships and a docking area for U.S. Coast Guard vessels. It is an 'L' shaped structure with one leg perpendicular to the shoreline and the outer leg parallel (see Appendix A, Project Plans, of the ME DOT IHA application). The existing pier was built in 1962 and is on the verge of being taken out of service due to public safety concerns. Recently, emergency repairs have been completed to prevent shutdown, however, these repairs are only temporary and will not keep the pier in service indefinitely. The overall replacement structure consists of an open pier supported by 151 piles, which would consist of steel pipe piles, reinforced concrete pile caps, and a precast pre-stressed plank deck with structural overlay. The approach pier would be 40 feet (ft) by 300 ft and the proposed main pier section that would be parallel to the shoreline would be 50 ft by 400 ft.

ME DOT was issued an IHA for their previous work on this project in 2014 (79 FR 59247; October 4, 2014) with a revised date for project activities in 2015 (80 FR 46565; July 20, 2015). This prosed IHA is a continuation of the work to complete the project that began in 2015.

### *Dates and Duration*

ME DOT plans to begin in-water construction in January 2017. The potential construction schedule is presented in Table 1. In-water pile driving activities are expected by completed by August 2017. Pile driving

would only occur in weather that provides adequate visibility for marine mammal monitoring activities. The proposed IHA would be valid for one year from the date of issuance.

TABLE 1—CONSTRUCTION SCHEDULE FOR THE EASTPORT BREAKWATER REPLACEMENT PROJECT

| Activity | Duration | Expected timeframe of activities with potential to result in harassment | Approximate hours of in-water noise producing activities with sound levels over 120 dB RMS | Pile type to be driven/activity with potential to result in harassment * |
|---|---|---|---|---|
| Construction of new pile supported pier | 8 weeks ..... | January 2017–August 2017 ... | 190 | 16″–36″ steel pipe pile. |
| Breakwater construction ..... | 32 weeks ..... | January 2017–August 2017 ... | 100 | 16″–36″ steel pipe pile; sheet steel. |
| Installation of fender piles ..... | 2 weeks ..... | January 2017–August 2017 ... | 60 | 16″–36″ steel pipe pile. |

*Specified Geographic Region*

The proposed activity would occur in Cobscook Bay (Washington County) in Eastport, ME. The breakwater lies near the mouth of the St. Croix River at the end of a long peninsula adjacent to Quoddy Head. Cobscook Bay has extremely strong tidal currents and notably high tides, creating an extensive intertidal habitat for marine and coastal species. Water depths at the proposed project location are between 8 and 55 ft (2.4–17 meter (m)). The Bay is considered a relatively intact marine system, as the area has not experienced much industrialization.

*Detailed Description of Activities*

The replacement pier consists of two different sections. The approach pier will be replaced in kind by placing fill inside of a sheet pile enclosure, supported by driven piles. The approach section will consist of sheet piles that are driven just outside of the existing sheet piles. The sheet piles can be installed by use of a vibratory hammer only. The main pier, fender system, and wave fence system will be pile supported with piles ranging from 16 inch to 36 inch diameter pipe piles. These piles will be driven with a vibratory hammer to a point and must be seated with an impact hammer to ensure stability.

The vibratory hammer will drive the pile by applying a rapidly alternating force to the pile by rotating eccentric weights resulting in a downward vibratory force on the pile. The vibratory hammer will be attached to the pile head with a clamp. The vertical vibration in the pile functions by disturbing or liquefying the soil next to the pile, causing the soil particles to lose their frictional grip on the pile. The pile moves downward under its own weight, plus the weight of the hammer. It takes approximately one to three minutes to drive one pile. An impact hammer will be used to ensure the piles are embedded deep enough into the substrate to remain stable for the life of the pier. The impact hammer works by dropping a mass on top of the pile repeatedly to drive it into the substrate. Diesel combustion is used to push the mass upwards and allow it to fall onto the pile again to drive it. The breakdown of the size and amount of piles that is needed to complete the project can be found in Table 2.

TABLE 2—PILE TYPES AND AMOUNTS REQUIRED TO COMPLETE THE PROJECT

| Pile size and type | Number of piles remaining to be installed |
|---|---|
| 16″ steel pipe pile (vibratory hammer). | 37. |
| 20″ steel pipe pile (impact and vibratory hammer). | 25. |
| 36″ steel pipe pile (impact and vibratory hammer). | 2. |
| Steel sheet pile (vibratory hammer). | 80 pairs. |

The breakwater/wave attenuation component of the facility consists of two portions; Section 1 will consists of sheet piles will be installed along the back of the main pier and Section 2 will be a full depth wave attenuator consisting of king piles and sheet piles. Each king pile is designed as a cantilever beam to resist lateral loads. The king piles may also be able to be used to anchor the floating docks. The wave attenuator will be placed on the inshore side of the pier structure to reduce overall length and eliminate interference with the berthing face.

Electrical and water utilities will be installed inside of the approach pier and also under the main pier. This will require a small amount of trenching under the main pier to bury portions of these lines.

At this stage of the project, the demolition of the old breakwater/pier system will take place. This is likely to be staged after a portion of the construction of the new pier is completed to help with access during demolition. The existing pier is a solid fill pier that is surrounded by sheet piles. Demolition will include removal of the fill material between the sheet piles, and cutting the sheet piles off at the mud line for removal. The fill will likely be removed with an excavator.

Standard ME DOT construction best management practices (BMPs) will also be used throughout the project. The erosion and sedimentation control BMPs can be found at *http://www.maine.gov/dep/land/erosion/escbmps/*. A spill prevention, control, and countermeasure plan will also be required for the project. This plan will ensure that all contaminants are properly stored and a cleanup plan is in place in case of any spills.

**Description of Marine Mammals in the Area of the Specified Activity**

The marine mammal species under NMFS jurisdiction, proposed for incidental Level B take as a result of project activities, are the harbor seal, gray seal, harbor porpoise, and Atlantic white-sided dolphin. In the species accounts provided below, we offer a brief introduction to the species and relevant stock as well as available information regarding population trends and threats, and describe any information regarding local occurrence (Table 3). Other species that may possibly occur in the vicinity of the proposed activity include North Atlantic right whale (*Eubalaena glacialis*), humpback whale (*Megaptera novaengliae*), fin whale (*Balaenoptera physalus*), minke whale (*Balaenoptera acutorostrata*), and sei whale (*Balaenoptera borealis*). However, these five species are generally associated

with open ocean habitats and occur in more offshore locations. NMFS has concluded that the specified activity will not impact these five species and they are not discussed further.

TABLE 3—MARINE MAMMAL INFORMATION FOR THE PROJECT AREA

| Species | Stock | ES)/MMPA status; strategic (Y/N) [1] | Stock abundance (CV, $N_{min}$, most recent abundance survey) [2] | PBR [3] | Annual M/SI [4] | Relative occurrence/ season of occurrence |
|---|---|---|---|---|---|---|
| Harbor seal | Western North Atlantic | –; N | 75,834 (0.15; 66,884; 2012). | 2,006 | 420 | Harbor seals are year-round inhabitants of the coastal waters of Maine and eastern Canada. |
| Gray seal | Western North Atlantic | –; N | unknown 505,00 (best estimate 2014 Canadian population DFO 2014). | unknown | 5,004 | Gray seals currently pup at two established colonies in Maine: Green and Seal Islands. |
| Harbor porpoise | Gulf of Maine/Bay of Fundy. | –; N | 79,883 (0.32; 61,415; 2011). | 706 | 564 | During winter (January to March), intermediate densities of harbor porpoises can be found in waters off New York to New Brunswick, Canada. In spring (April–June), harbor porpoises are widely dispersed from ME to NJ, with lower densities farther north and south. |
| Atlantic white-sided dolphin. | Western North Atlantic | –; N | 48,819 (0.61; 30,403; 2011). | 304 | 102 | During January to May, low numbers of white-sided dolphins are found from Georges Bank (separates the Gulf of Maine from the Atlantic Ocean to Jeffreys Ledge (in the Western Gulf of Maine off of New Hampshire). |

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] CV is coefficient of variation; $N_{min}$ is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the species (or similar species) life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore. The most recent abundance survey that is reflected in the abundance estimate is presented; there may be more recent surveys that have not yet been incorporated into the estimate.

[3] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP).

[4] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, subsistence hunting, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value. All values presented here are from the final 2015 Pacific SAR. (*http://www.nmfs.noaa.gov/pr/sars/region.htm*)

*Harbor Seals*

On the east coast, harbor seals range from the Canadian Arctic to southern New England, New York, and occasionally the Carolinas. Seals are year-round inhabitants of the coastal waters of Maine and eastern Canada (Katona *et al.* 1993 as cited in Waring *et al.* 2016). A northward movement from southern New England to ME and eastern Canada occurs prior to the pupping season, which takes place from mid-May through June along the ME Coast (Richardson 1976; Wilson 1978; Whitman and Payne 1990; Kenney 1994; deHart 2002 as cited in Waring *et al.* 2016). Earlier research identified no pupping areas in southern New England (Payne and Schneider 1984; Barlas 1999 as cited in Waring *et al.* 2016); however, more recent documentation suggests that some pupping is occurring at high-use haulout sites at the Isles of Shoals, ME and off Manomet, Massachusetts (MA). The overall geographic range throughout coastal New England has not changed significantly during the last century (Payne and Selzer 1989 as cited in Waring *et al.* 2016). Harbor seals can be observed year-round in Cobscook Bay. The last surveys in Cobscook Bay were conducted in 2001 where a total of 193 harbor seals were observed on the U.S. side (144 adults and 49 pups) (Gilbert *et al.* 2005). Harbor seals travel back and forth under the bridge at Lubec, ME (approximately three miles (mi) south of the project area) and Campbello Island, New Brunkswick, Canada (J. Gilbert, University of ME and S. Wood, NOAA pers. comm. 2016).

During the 2001 surveys, a major haulout was observed on Campebello Island. Harbor seals also pass through the Eastport area to their haulouts with the nearest largest site in South Bay (LuBec, ME) (J. Gilbert and S. Wood, pers. comm. 2016).

Harbor seals are typically found in temperate coastal habitats and use rocks, reefs, beaches, and drifting glacial ice as haul outs and pupping sites. Seals use terrestrial habitat ''haul-out sites'' throughout the year, particularly during the pupping and molting periods. In northern New England, they typically haul-out on tidal ledges. Haul-out behavior is strongly influenced by tide stage, air temperature, time of day, wind speed, and precipitation. Human disturbance can also affect haul-out behavior although harbor seals appear to acclimate to some human activity (*e.g.,* lobster boats along the coast of ME) (Weilgart 2007). Prey species for harbor seals include sandlance, silver hake, Atlantic herring, and redfish. Other species included cod, haddock, pollock, flounders, mackerel, and squid.

Pinnipeds, such as the harbor seal (and also the gray seal as discussed below) produce a wide range of social signals, most occurring at relatively low frequencies (Southall *et al.* 2007), suggesting that hearing is keenest at these frequencies. Pinnipeds communicate acoustically both on land and underwater, but have different hearing capabilities dependent upon the medium (air or water). Based on numerous studies, as summarized in Southall *et al.* (2007), pinnipeds are more sensitive to a broader range of sound frequencies underwater than in air. The generalized hearing range for pinnipeds is 50 Hz to 86 kHz (NOAA 2016). Please also refer to NMFS' Web site (*http://www.fisheries.noaa.gov/pr/species/mammals/seals/harbor-seal.html*) for the harbor seal account and see NMFS' Stock Assessment Reports (SAR), available at *http://www.nmfs.noaa.gov/pr/sars,* for more detailed accounts of the harbor seal stocks' status and abundance.

*Gray seals*

The Western North Atlantic stock of the gray seal ranges from eastern Canada to the northeastern United States. Current estimates of the total Western North Atlantic stock are not available; although, estimates of portions of the stock are available for select time periods. Gray seal abundance is likely increasing in the U.S. Atlantic U.S. Exclusive Economic Zone (EEZ), but the rate of increase is unknown. Maine coast-wide surveys conducted during the summer found 597 and 1,731 gray seals in 1993 and 2001, respectively (Gilbert *et al.* 2005 as cited in Waring *et al.* 2016). In March 1999, a maximum of 5,611gray seals were observed in the region south of ME (between Isles of Shoals, ME and Woods Hole, MA) (Barlas 1999 as cited in Waring *et al.* 2016). During the 2001 surveys (May and June), no gray seals were observed in Cobscook Bay (J. Gilbert and S. Wood pers. comm. 2016) and also none during a survey in early 2000's (January to March) (J. Gilbert pers. comm. 2016, Nelson *et al.* 2006). Given where gray seals have been observed during the harbor seal pupping flights (May and June) Cobscook Bay does not appear to be important habitat except for the gray seals on nearby Campebello Island, New Brunkswick, Canada (south of the project area) (S. Wood pers. comm. 2016).

Gray seals pup at two established colonies off the coast of ME, Green Island and Seal Island. Aerial survey data from these sites indicate that pup production is increasing with a minimum of 2,620 pups born in the U.S. in 2008 (Green Island (59 seals), Seal Island (466 seals), Muskeget Island, MA (2,095 seals)) (Wood LaFond 2009 as cited in Waring *et al.* 2016). Both colonies are tens of miles away from the proposed project area. There is no gray seal pupping in Cobscook Bay (J. Gilbert and S. Wood pers. comm. 2016). Overall there have not been many reconnaissance flight surveys for gray seal pupping so some areas of occurrence may be unknown with the exception of gray seals pupping along the mid-coast of ME (*i.e.* Penobscot Bay) (S. Wood pers. comm. 2016).

Gray seals reside in coastal waters and also inhabit islands, sandbars, ice shelves, and icebergs. Please also refer to NMFS' Web site (*http://www.fisheries.noaa.gov/pr/species/mammals/seals/gray-seal.html*) for the generalized gray seal account and see NMFS' Stock Assessment Reports (SAR), available at *http://www.nmfs.noaa.gov/pr/sars,* for more detailed accounts of the gray seal stocks' status and abundance.

*Harbor Porpoises*

In the Western North Atlantic, the harbor porpoise stock is found in U.S. and Canadian Atlantic waters. Harbor porpoises in U.S. waters are divided into 10 stocks, based on genetics, movement patterns, and management (Waring *et al.* 2016). Any harbor porpoises encountered during the proposed project would be part of the Gulf of Maine-Bay of Fundy stock. A current trend analysis has not been conducted for this stock (Waring *et al.* 2016). During the winter months (January to March), medium densities are found in waters off of New Brunswick, Canada to NY. During the spring (April to June) and fall (October to December), harbor porpoises are widely dispersed from ME to NJ, with lower densities farther north and south (Waring *et al.* 2016). In the summer (July to September), harbor porpoises are concentrated in the northern Gulf of Maine and southern Bay of Fundy region, generally in waters less than 150 m deep (Gaskin 1977; Kraus *et al.* 1983; Palka 1995a, 1995b as cited in Waring *et al.* 2016), with a few sightings in the upper Bay of Fundy and on Georges Bank (Palka 2000 as cited in (Waring *et al.* 2016).

Harbor porpoises reside in northern temperate and subarctic coastal and offshore waters. They are commonly found in bays, estuaries, harbors, and fjords less than 200 m (650 ft) deep. Harbor porpoises are considered high-frequency cetaceans and their generalized hearing ranges from 275 Hz to 160 kHz (NOAA 2016). Please also refer to NMFS' Web site (*http://www.fisheries.noaa.gov/pr/species/mammals/porpoises/harbor-porpoise.html*) for the generalized harbor porpoise account and see NMFS' Stock Assessment Reports (SAR), available at *http://www.nmfs.noaa.gov/pr/sars,* for more detailed accounts of the harbor porpoise stocks' status and abundance.

*Atlantic White-Sided Dolphins*

The Western North Atlantic stock of Atlantic white-sided dolphins ranges from Greenland to North Carolina. A current trend analysis has not been conducted for this stock (Waring *et al.* 2016). Any Atlantic white-sided dolphins encountered during the proposed project would likely be part the Gulf of Maine population and are most common in continental shelf waters from Hudson Canyon (approximately 39° N) to Georges Bank, and in the Gulf of ME and lower Bay of Fundy (Waring *et al.* 2016). During January to May, low numbers of white-sided dolphins are found from Georges Bank to Jeffreys Ledge (off New Hampshire), with even lower numbers south of Georges Bank (Waring *et al.* 2016). From June through September, large numbers of white-sided dolphins are found from Georges Bank to the lower Bay of Fundy. From October to December, white-sided dolphins occur at intermediate densities from southern Georges Bank to southern Gulf of ME (Payne and Heinemann 1990 as cited in Waring *et al.* 2016).

Atlantic white-sided dolphins are found in temperate and sub-polar waters, primarily in continental shelf waters to the 100-m contour and exhibit seasonal movements between inshore northern waters and southern offshore waters (Waring *et al.* 2016). They are considered mid-frequency cetaceans and their generalized hearing ranges from150 Hz to 160 kHz (NOAA 2016). Please also refer to NMFS' Web site (*http://www.fisheries.noaa.gov/pr/species/mammals/dolphins/atlantic-white-sided-dolphin.html*) for the generalized Atlantic white-sided dolphin account and see NMFS' Stock Assessment Reports (SAR), available at *http://www.nmfs.noaa.gov/pr/sars,* for more detailed accounts of the species status and abundance. The Atlantic white-sided dolphin is assessed in the Atlantic SAR (Waring *et al.* 2016).

**Potential Effects of the Specified Activity on Marine Mammals**

This section includes a summary and discussion of the ways that components of the specified activity (*e.g.,* pile driving) may impact marine mammals. This discussion includes reactions that we consider to rise to the level of a take and those that we do not consider to rise to the level of a take (for example, with acoustics, we may include a discussion of studies that showed animals not reacting at all to sound or exhibiting barely measurable avoidance). This section is intended as a background of potential effects and does not consider either the specific manner in which this activity will be carried out or the mitigation that will be implemented, and how either of those will shape the anticipated impacts from this specific activity. The Estimated Take by Incidental Harassment section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis section will include the analysis of how this specific activity will impact marine mammals and will consider the content of this section, the Estimated Take by Incidental Harassment section, the Proposed Mitigation section, and the Anticipated Potential Effects on Marine Mammal Habitat section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

*Description of Sound Terms and Sources*

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks of a sound wave; lower frequency sounds have longer wavelengths than higher frequency sounds and attenuate (decrease) more rapidly in shallower water. Amplitude is the height of the sound pressure wave or the 'loudness' of a sound and is typically measured using the decibel (dB) scale. A dB is the ratio between a measured pressure (with sound) and a reference pressure (sound at a constant pressure, established by scientific standards). It is a logarithmic unit that accounts for large variations in amplitude. Therefore, relatively small changes in dB ratings correspond to large changes in sound pressure. When referring to sound pressure levels (SPLs; the sound force per unit area), sound is referenced in the context of underwater sound pressure to 1 microPascal (μPa). One pascal is the pressure resulting from a force of one newton exerted over an area of one square meter (m). The source level (SL) represents the sound level at a distance of 1 m from the source (referenced to 1 μPa). The received level is the sound level at the listener's position. Note that all underwater sound levels in this document are referenced to a pressure of 1 μPa and all airborne sound levels in this document are referenced to a pressure of 20 μPa.

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Rms is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick 1983). Rms accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in all directions away from the source (similar to ripples on the surface of a pond), except in cases where the source is directional. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.* 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction). A number of sources contribute to ambient sound, including the following (Richardson *et al.* 1995):

- *Wind and waves:* The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient noise for frequencies between 200 Hz and 50 kHz (Mitson 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf noise becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions.
- *Precipitation:* Sound from rain and hail impacting the water surface can become an important component of total noise at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times.
- *Biological:* Marine mammals can contribute significantly to ambient noise levels, as can some fish and shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz.
- *Anthropogenic:* Sources of ambient noise related to human activity include transportation (surface vessels and aircraft), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Shipping noise typically dominates the total ambient noise for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly (Richardson *et al.* 1995). Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.,* a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity), but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

Noise levels from the previous EBRP project were monitored in 2015/2016 (see application). The underwater acoustic environment in Eastport, ME is likely to be dominated by noise from day-to-day port and vessel activities. It is reasonable to believe that levels will generally be similar to the previous IHA for the EBRP as there is a similar type and degree of activity within the same type of environment.

In-water construction activities associated with the project include impact and vibratory pile driving. The sounds produced by these activities fall into one of two general sound types: Pulsed and non-pulsed. The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts.

Pulsed sound sources (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI 1986; Harris 1998; NIOSH 1998; ISO 2003; ANSI 2005) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

The sounds produced by vibratory pile driving falls into the general sound type of non-pulsed. Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI 1995, NIOSH 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak SPLs may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards 2002; Carlson *et al.* 2005).

*Marine Mammal Hearing*

Hearing is the most important sensory modality for marine mammals, and exposure to sound can have deleterious effects. To appropriately assess these potential effects, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.* 1995; Wartzok and Ketten 1999; Au and Hastings 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into hearing groups based on measured or estimated hearing ranges on the basis of available behavioral data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. NMFS made modifications to the marine mammal hearing groups proposed in Southall *et al.* (2007) that is reflected in the new *Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (July 2016)* (*http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm*). The hearing group, pinnipeds, high frequency cetaceans (harbor porpoise) and mid-frequency cetaceans (Atlantic white-sided dolphin) which are the subject of this project, and the associated generalized hearing range is indicated in Table 4 below:

TABLE 4—MARINE MAMMAL HEARING GROUPS

[as referenced in NOAA 2016, Technical Guidance]

| Hearing group | Generalized hearing range * |
|---|---|
| Phocid pinnipeds (PW) (underwater) (true seals) | 50 Hz to 86 kHz. |
| High-frequency (HF) cetaceans (true porpoises) | 275 Hz to 160 kHz. |
| Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales) | 150 Hz to 160 kHz. |

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

*Acoustic Effects, Underwater*

*Potential Effects of Pile Driving Sound*—The effects of sounds from pile driving might result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, and masking (Richardson *et al.* 1995; Gordon *et al.* 2003; Nowacek *et al.* 2007; Southall *et al.* 2007). The effects of pile driving on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the depth, intensity, and duration of the pile driving sound; the depth of the water column; the substrate of the habitat; the standoff distance between the pile and

the animal; and the sound propagation properties of the environment. Impacts to marine mammals from pile driving activities are expected to result primarily from acoustic pathways. As such, the degree of effect is intrinsically related to the received level and duration of the sound exposure, which are in turn influenced by the distance between the animal and the source. The further away from the source, the less intense the exposure should be. The substrate and depth of the habitat affect the sound propagation properties of the environment. Shallow environments are typically more structurally complex, which leads to rapid sound attenuation. In addition, substrates that are soft (*e.g.,* sand) would absorb or attenuate the sound more readily than hard substrates (*e.g.,* rock) which may reflect the acoustic wave. Soft porous substrates would also likely require less time to drive the pile, and possibly less forceful equipment, which would ultimately decrease the intensity of the acoustic source.

In the absence of mitigation, impacts to marine species would be expected to result from physiological and behavioral responses to both the type and strength of the acoustic signature (Viada *et al.* 2008). The type and severity of behavioral impacts are more difficult to define due to limited studies addressing the behavioral effects of impulsive sounds on marine mammals.

*Hearing Impairment and Other Physical Effects*—Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002, 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.* 2007). Marine mammals depend on acoustic cues for vital biological functions, (*e.g.,* orientation, communication, finding prey, avoiding predators). However, the severity of the effects of TTS on an individual and likelihood of effecting its fitness depends on the frequency and duration of TTS, as well as the biological context in which it occurs. TTS of limited duration, occurring in a frequency range that does not coincide with that used for recognition of important acoustic cues, would have little to no effect on an animal's fitness. Repeated sound exposure that leads to TTS could cause PTS. PTS constitutes injury, but TTS does not (Southall *et al.* 2007). Based on the best scientific information available, the SPLs for the EBRP may exceed the thresholds that could cause TTS or the onset of PTS based on NMFS' new acoustic guidance (NMFS 2016a, 81 FR 51694; August 4, 2016). The following subsections discuss in somewhat more detail the possibilities of TTS, PTS, and non-auditory physical effects.

*Temporary Threshold Shift*—TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter 1985). While experiencing TTS, the hearing threshold rises, and a sound must be stronger in order to be heard. In terrestrial mammals, TTS can last from minutes or hours to days (in cases of strong TTS). For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound. Available data on TTS in marine mammals are summarized in Southall *et al.* (2007).

*Permanent Threshold Shift*—When PTS occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, while in other cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter 1985). There is no specific evidence that exposure to pulses of sound can cause PTS in any marine mammal. However, given the possibility that mammals close to a sound source might incur TTS, there has been further speculation about the possibility that some individuals might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals. PTS might occur at a received sound level at least several decibels above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise time. Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as pile driving pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis and probably greater than 6 dB (Southall *et al.* 2007). On an SEL basis, Southall *et al.* (2007) estimated that received levels would need to exceed the TTS threshold by at least 15 dB for there to be risk of PTS.

*Non-auditory Physiological Effects*—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.* 2006; Southall *et al.* 2007). Studies examining such effects are limited. In general, little is known about the potential for pile driving to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would presumably be limited to short distances from the sound source and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.* 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of pile driving, including some odontocetes and some pinnipeds, are especially unlikely to incur auditory impairment or non-auditory physical effects.

*Disturbance Reactions*

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Behavioral responses to sound are highly variable and context-specific and reactions, if any, depend on species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day, and many other factors (Richardson *et al.* 1995; Wartzok *et al.* 2003; Southall *et al.* 2007).

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. Behavioral state may affect the type of response as well. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.* 1995; NRC 2003; Wartzok *et al.* 2003).

Controlled experiments with captive marine mammals showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.* 1997; Finneran *et al.* 2003). Responses to continuous sound, such as vibratory pile installation, have not been documented as well as responses to pulsed sounds.

With pile driving it is likely that the onset of this activity could result in temporary, short term changes in an animal's typical behavior and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.,* 1995): Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior; avoidance of areas where sound sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haul-outs or rookeries). Pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance (Thorson and Reyff 2006).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could potentially lead to effects on growth, survival, or reproduction include:

- Drastic changes in diving/surfacing patterns;
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic sound depends on both external factors (characteristics of sound sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.* 2007).

*Auditory Masking*

Natural and artificial sounds can disrupt behavior by masking, or interfering with, a marine mammal's ability to hear other sounds. Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher levels. Chronic exposure to excessive, though not high-intensity, sound could cause masking at particular frequencies for marine mammals, which utilize sound for vital biological functions. Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction. If the coincident (masking) sound were man-made, it could be potentially harassing if it disrupted hearing-related behavior. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. Because sound generated from in-water vibratory pile driving is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by odontocetes (toothed whales), which may hunt harbor seal. However, lower frequency man-made sounds are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey sound. It may also affect communication signals when they occur near the sound band and thus reduce the communication space of animals (*e.g.,* Clark *et al.* 2009) and cause increased stress levels (*e.g.,* Foote *et al.* 2004; Holt *et al.* 2009).

Masking has the potential to impact species at the population or community levels as well as at individual levels. Masking affects both senders and receivers of the signals and can potentially have long-term chronic effects on marine mammal species and populations. Recent research suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, and that most of these increases are from distant shipping (Hildebrand 2009). All anthropogenic sound sources, such as those from vessel traffic, pile driving, and dredging activities, contribute to the elevated ambient sound levels, thus intensifying masking.

The most intense underwater sounds by the proposed action are those produced by vibratory and impact pile driving. Given that the energy distribution of pile driving covers a broad frequency spectrum, sound from these sources would likely be within the audible range of marine mammals present in the project area.

*Acoustic Effects, Airborne*

Marine mammals that occur in the project area could be exposed to airborne sounds associated with pile driving activities that have the potential to cause harassment, depending on their distance from pile driving activities. Airborne sound would only be an issue for pinnipeds either hauled-out or looking with heads above water in the project area. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon their habitat and move further from the source. Studies by Blackwell *et al.* (2004) and Moulton *et al.* (2005) indicate a tolerance or lack of response to unweighted airborne sounds as high as 112 dB peak and 96 dB rms. However, there are no major haul-out sites in or near the project area, but pinnipeds can be exposed to airborne sound by looking with heads above water.

**Effects on Marine Mammal Habitat**

The proposed activities at the EBPR would not result in permanent impacts to habitats used directly by marine mammals, such as haul-out sites, but may have potential short-term impacts to food sources such as forage fish. There are no rookeries or major haul-out sites nearby, foraging hotspots, or other ocean bottom structure of significant biological importance to marine mammals that may be present in the marine waters in the vicinity of the project area. Therefore, the main impact issue associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously in this document. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal prey (*i.e.,* fish) near the pier and minor impacts to the immediate substrate during installation of piles and removal of the old structure during the breakwater replacement project.

*Pile Driving Effects on Potential Prey*

Construction activities would produce both pulsed (*i.e.,* impact pile driving) and continuous (*i.e.,* vibratory pile

driving) sounds. Fish react to sounds which are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005, 2009) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving (or other types of continuous sounds) on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan 2001, 2002; Popper and Hastings 2009). Sound pulses at received levels of 160 dB re 1 µPa may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.* 1992; Skalski *et al.* 1992). SPLs of sufficient strength may cause injury to fish and fish mortality. The most likely impact to fish from pile driving at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after these activities stop is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the pier replacement project.

*Pile Driving Effects on Potential Foraging Habitat*

Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the vicinity of Cobscook Bay.

Given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, in-water construction activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Therefore, pile the proposed in-water construction activities are not likely to have a permanent, adverse effect on marine mammal foraging habitat at the project area.

**Proposed Mitigation**

In order to issue an IHA for the under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, ''and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking'' for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat (50 CFR 216.104(a)(11)).

For the proposed project, ME DOT worked with NMFS and proposed the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity. The primary purposes of these mitigation measures are to minimize sound levels from the activities, and to monitor marine mammals within designated zones of influence corresponding to NMFS' current Level A and B harassment thresholds. Here we provide a description of the mitigation measures we propose to require as part of the proposed Authorization:

*Zones of Influence*

Direct measured data from the pile driving events of the EPBP IHA were used to calculate the zones of influence (ZOI) for Level B Harassment. These values were used to develop mitigation measures for pile driving activities at EBRP. The ZOIs effectively represent the mitigation zone that would be established around each pile to prevent Level A harassment to marine mammals, while providing estimates of the areas within which Level B harassment might occur. In addition to the specific measures described later in this section, the EBRP would conduct briefings between construction supervisors and crews, marine mammal monitoring team, and EBRP staff prior to the start of all pile driving activity, and if/when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

*Monitoring and Shutdown for Pile Driving*

The following measures would apply to the EBRP's mitigation through shutdown and disturbance zones:

*Shutdown Zone*—For all pile driving activities, EBPR will establish exclusion zones (shutdown zones). Shutdown zones are intended to contain the area in which SPLs equal or exceed acoustic injury criteria, with the purpose being to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing injury marine mammals (PTS) of marine mammals (as described previously under Potential Effects of the Specified Activity on Marine Mammals, serious injury or death are unlikely outcomes even in the absence of mitigation measures).

Using the user spreadsheet for the new acoustic guidance, injury zones were determined for the mid-frequency and high frequency cetacean and pinnipeds (phocids) as the hearing groups being analyzed for this project (see Table 5). The purpose of a shutdown zone is to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). As a precautionary measure, intended to reduce the unlikely possibility of injury from direct physical interaction with construction operations, ME DOT would implement a minimum shutdown zone of 10 m radius around each pile for all construction methods for all marine mammals. The shutdown zones calculated for injury were rounded to the nearest 10 m to be more conservative or species were grouped (*e.g.,* mid and high-frequency cetaceans combined into one group) for more streamlined monitoring in the field. In both impact and vibratory pile driving, the shutdown zones were increased significantly for mid-frequency cetaceans to that which was calculated for high-frequency cetaceans in order to group all cetaceans together for monitoring.

TABLE 5—INJURY ZONES AND SHUTDOWN ZONES FOR HEARING GROUPS FOR EACH CONSTRUCTION METHOD

| Hearing group | Mid-frequency cetaceans (m) | High-frequency cetaceans (m) | Phocid pinnipeds (m) |
|---|---|---|---|
| **Vibratory Pile Driving** [1] | | | |
| PTS Isopleth to threshold | 7.0 | 117.5 | 48.3 |
| Shutdown Zone | 120 | | 50 |
| **Impact Pile Driving** [2] | | | |
| PTS Isopleth to threshold | 4.6 | 155.6 | 69.9 |
| Shutdown Zone | 160 | | 70 |

[1] For vibratory driving, SL is 170, TL is15logR, weighting function is 2.5, duration is 5 hours, and distance from the source is 10 meters.
[2] For impact driving, PK SPL 202, TL is 15log R, weighting function is 2, strikes per pile is 250, number off piles per day is 3, and distance from the source is 10 meters.

*Disturbance Zone*—Disturbance zones are the areas in which SPLs equal or exceed 160 and 120 dB rms (for impulse and continuous sound, respectively). Disturbance zones provide utility for monitoring conducted for mitigation purposes (*i.e.,* shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting incidents of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see Proposed Monitoring and Reporting). Any marine mammal documented within the Level B harassment zone would constitute a Level B take (harassment), and will be recorded and reported as such. Nominal radial distances for disturbance zones are shown in Table 6. Given the size of the disturbance zone for both impact and vibratory pile driving, it is impossible to guarantee that all animals would be observed or to make comprehensive observations of fine-scale behavioral reactions to sound, and only a portion of the zone (*e.g.,* what may be reasonably observed by visual observers) would be observed.

TABLE 6—CALCULATED THRESHOLD DISTANCES (m) FOR LEVEL B HARASSMENT OF MARINE MAMMALS

| Source | Threshold distances (m) | |
|---|---|---|
| | 160 dB | 120 dB |
| Vibratory pile driving | n/a | 400 m for PZC–18 Sheet Piles.<br>665 m for PZC–26 Sheet Piles. |
| Impact pile driving | 550 | n/a. |

In order to document observed incidents of harassment, monitors will record all marine mammal observations, regardless of location. The observer's location, as well as the location of the pile being driven or removed, is known from a GPS. The location of the animal is estimated as a distance from the observer, which is then compared to the location from the pile. It may then be estimated whether the animal was exposed to sound levels constituting incidental harassment on the basis of predicted distances to relevant thresholds in post-processing of observational and acoustic data, and a precise accounting of observed incidences of harassment created. This information may then be used to extrapolate observed takes to reach an approximate understanding of actual total takes.

Two Qualified Protected Species Observers (PSO) (NMFS approved biologists, monitoring responsibilities fully described in the Proposed Monitoring section) would be stationed on the pier. One PSO would be responsible for monitoring the shutdown zones, while the second observer would conduct behavioral monitoring outwards to a distance of 1 nautical mile (nmi).

*Pile Driving Shut Down and Delay Procedures*

If a PSO sees a marine mammal within or approaching the shutdown zones prior to start of pile driving, the observer would notify the on-site project lead (or other authorized individual) who would then be required to delay pile driving until the marine mammal has moved out of the shutdown zone (exclusion zone) from the sound source or if the animal has not been resighted within 30 minutes. If a marine mammal is sighted within or on a path toward a shutdown zone during pile driving, pile driving would cease until that animal has moved out of the shutdown zone and is on a path away from the shutdown zone or 30 minutes has lapsed since the last sighting.

*Soft-Start Procedures*

A ''soft-start'' technique would be used at the beginning of each pile installation to allow any marine mammal that may be in the immediate area to leave before the pile hammer reaches full energy. For vibratory pile driving, the soft-start procedure requires contractors to initiate noise from the vibratory hammer for 15 seconds at 40–60 percent reduced energy followed by a 1-minute waiting period. The procedure would be repeated two

additional times before full energy may be achieved. For impact pile driving, contractors would be required to provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three-strike sets. Soft-start procedures would be conducted any time hammering ceases for more than 30 minutes.

*Time Restrictions*

Work would occur only during daylight hours, when visual monitoring of marine mammals can be conducted. To minimize impacts to Federally listed Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*), shortnose sturgeon (*Acipenser brevirostrum*) and Atlantic salmon (*Salmo salar*), ME DOT will follow restrictions on pile driving from April through November as directed by NMFS' Greater Atlantic Regional Office.

*Mitigation Conclusions*

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of affecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammal species or stocks;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).
2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of pile driving, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of pile driving, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of pile driving, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).
5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.
6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

**Proposed Monitoring and Reporting**

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Any monitoring requirement we prescribe should improve our understanding of one or more of the following:

- Occurrence of marine mammal species in the action area (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) Affected species (*e.g.,* life history, dive patterns); (3) Co-occurrence of marine mammal species with the action; or (4) Biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual responses to acute stressors, or impacts of chronic exposures (behavioral or physiological).
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of an individual; or (2) population, species, or stock.
- Effects on marine mammal habitat and resultant impacts to marine mammals.
- Mitigation and monitoring effectiveness.

*Visual Marine Mammal Observations*

PSOs shall be used to detect, document, and minimize impacts to marine mammals. Monitoring would be conducted before, during, and after construction activities. In addition, PSOs shall record all incidents of marine mammal occurrence, regardless of distance from activity, and document any behavioral reactions in concert with distance from construction activities. Important qualifications for PSOs for visual monitoring include:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of marine mammals on land or in the water with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Advanced education in biological science or related field (undergraduate degree or higher required);
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when construction activities were conducted; dates and times when construction activities were suspended, if necessary; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time

information on marine mammals observed in the area as necessary.

PSOs shall also conduct mandatory biological resources awareness training for construction personnel. The awareness training shall be provided to brief construction personnel on marine mammals and the need to avoid and minimize impacts to marine mammals. If new construction personnel are added to the project, the contractor shall ensure that the personnel receive the mandatory training before starting work. The PSO would have authority to stop construction if marine mammals appear distressed (evasive maneuvers, rapid breathing, inability to flush) or in danger of injury.

The ME DOT has developed a monitoring plan based on discussions between the ME DOT and NMFS. The ME DOT will collect sighting data and behavioral responses to construction activities for marine mammal species observed in the region of activity during the period of activity. All PSOs will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring.

*Data Collection*

We require that PSOs use approved data forms. Among other pieces of information, the ME DOT will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, the ME DOT will attempt to distinguish between the number of individual animals taken and the number of incidents of take. We require that, at a minimum, the following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Locations of all marine mammal observations; and
- Other human activity in the area.

*Reporting*

ME DOT is required to submit a draft monitoring report to NMFS within 90 days of completion of in-water construction activities. The report would include data from marine mammal sightings as described in the Data Collection section above (*i.e.,* date, time, location, species, group size, and behavior), any observed reactions to construction, distance to operating pile hammer, and construction activities occurring at time of sighting and environmental data for the period (*i.e.,* wind speed and direction, sea state, tidal state cloud cover, and visibility).

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury (Level A harassment), serious injury, or mortality, ME DOT would immediately cease the specified activities and immediately report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS and the Greater Atlantic Regional Fisheries Office Stranding Coordinator. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hrs preceding the incident;
- Water depth;
- Environmental conditions (*e.g.,* wind speed and direction, sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hrs preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with ME DOT to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. ME DOT may not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that ME DOT discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), ME DOT would immediately report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS and the Greater Atlantic Regional Fisheries Office Stranding Coordinator. The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS would work with ME DOT to determine whether modifications in the activities are appropriate.

In the event that ME DOT discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), ME DOT would report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS and the NMFS Stranding Hotline and/or by email to the Greater Atlantic Regional Fisheries Office Stranding Coordinator within 24 hrs of the discovery. ME DOT would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

**Estimated Take of Incidental Harassment**

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: ''. . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).''

All anticipated takes would be by Level B harassment resulting from pile driving activities involving temporary changes in behavior. The proposed mitigation and monitoring measures are expected to minimize the possibility of injurious or lethal takes such that take by Level A harassment, serious injury, or mortality is considered discountable.

If a marine mammal responds to a stimulus by changing its behavior, the response may or may not constitute taking, and is unlikely to affect the stock or the species as a whole. However, if

a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart 2007). Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound. In practice, depending on the amount of information available to characterize daily and seasonal movement and distribution of affected marine mammals, it can be difficult to distinguish between the number of individuals harassed and the instances of harassment and, when duration of the activity is considered, it can result in a take estimate that overestimates the number of individuals harassed. In particular, for stationary activities, it is more likely that some smaller number of individuals may accrue a number of incidences of harassment per individual than for each incidence to accrue to a new individual, especially if those individuals display some degree of residency or site fidelity and the impetus to use the site (*e.g.,* because of foraging opportunities) is stronger than the deterrence presented by the harassing activity.

Elevated in-water sound levels from pile driving activities in the proposed project area may temporarily impact marine mammal behavior. Elevated in-air sound levels are not a concern because the nearest significant pinniped haul-out is more than six nmi away. Marine mammals are continually exposed to many sources of sound. For example, lightning, rain, sub-sea earthquakes, and animals are natural sound sources throughout the marine environment. Marine mammals produce sounds in various contexts and use sound for various biological functions including, but not limited to, (1) social interactions; (2) foraging; (3) orientation; and (4) predator detection. Interference with producing or receiving these sounds may result in adverse impacts. Audible distance or received levels will depend on the sound source, ambient noise, and the sensitivity of the receptor (Richardson *et al.,* 1995). Marine mammal reactions to sound may depend on sound frequency, ambient sound, what the animal is doing, and the animal's distance from the sound source (Southall *et al.,* 2007).

Behavioral disturbances that could result from anthropogenic sound associated with these activities are expected to affect only a small number of individual marine mammals, although those effects could be recurring over the life of the project if the same individuals remain in the project vicinity.

The ME DOT has requested authorization for the incidental taking of small numbers of harbor seals, gray seals, harbor porpoise, and Atlantic white-sided dolphins incidental to the pile driving associated with the EBRP described previously in this document. In order to estimate the potential incidents of take that may occur incidental to the specified activity, we must first estimate the extent of the sound field that may be produced by the activity and then consider in combination with information about marine mammal density or abundance in the project area and the number of days the activity will be conducted. We first provide information on applicable sound thresholds for determining effects to marine mammals before describing the information used in estimating the sound fields, the available marine mammal density or abundance information, and the method of estimating potential incidents of take.

As discussed above, in-water pile driving activities generate loud noises that could potentially harass marine mammals in the vicinity of the ME DOT's proposed EBRP. No impacts from visual disturbance are anticipated because there are no known pinniped haul-outs within the proposed project area. The only potential disturbance anticipated to occur would be during driving operations, which may cause individual marine mammals to temporarily avoid the area.

*Sound Thresholds*

We use generic sound exposure thresholds to determine when an activity that produces sound might result in impacts to a marine mammal such that a take by harassment might occur. To date, no studies have been conducted that explicitly examine impacts to marine mammals from pile driving sounds or from which empirical sound thresholds have been established. These thresholds (Table 7) are used to estimate when harassment may occur (*i.e.,* when an animal is exposed to levels equal to or exceeding the relevant criterion) in specific contexts; however, useful contextual information that may inform our assessment of effects is typically lacking and we consider these thresholds as step functions. NMFS new guidance establishes new thresholds for predicting auditory injury, which equates to Level A harassment under the MMPA. The ME DOT project used this new guidance when determining the injury (Level A) zones (see Table 5).

TABLE 7—CURRENT ACOUSTIC EXPOSURE CRITERIA FOR LEVEL B HARASSMENT

| Criterion | Definition | Threshold |
|---|---|---|
| Level B harassment (underwater) ... | Behavioral disruption ..... | 160 dB (impulsive source)/120 dB (continuous source) (rms). |
| Level B harassment (airborne) ..... | Behavioral disruption ..... | 90 dB (harbor seals)/100 dB (other pinnipeds) (unweighted). |

*Distance to Sound Thresholds*

Pile driving generates underwater noise that can potentially result in disturbance to marine mammals in the project area. Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log_{10}(R_1/R_2),$$

Where

$R_1$ = the distance of the modeled SPL from the driven pile, and

$R_2$ = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log[range]). Cylindrical spreading occurs in an environment in which

sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log[range]). A practical spreading value of fifteen is often used under conditions, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions.

In this case we have measured field data available from the previous EBRP IHA at the same location and from the same type of piles/sheet piles showing at a particular point where the received level is below 120 dB, to determine the disturbance distance for the Level B ZOI. For sheet piles PZC–18, 400m is the measured distance where the Level B ZOI is below 120 dB. For sheet piles PZC–26, the farthest measurement does not go below 120 dB so the statistical analysis of 90 percent CI was used, which pointed to 665 m for the Level B ZOI. For impact pile driving, we used the third farthest point from the measured field data, which was 550 m from the source, and measured under 160 dB.

The sound field in the project area is the existing ambient noise plus additional construction noise from the proposed project. The primary components of the project expected to affect marine mammals is the sound generated by impact and vibratory pile driving. The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. In order to determine the distance to the thresholds and the received levels to marine mammals that are likely to result from pile driving at EBRP, we evaluated the acoustic monitoring data (Table 8) from the previous EBRP IHA project with similar properties to the proposed activity.

TABLE 8—EASTPORT BREAKWATER NOISE MONITORING DATA FOR UN-ATTENUATED PILE STRIKES WITH AN IMPACT HAMMER AND A VIBRATORY HAMMER

| Pile type/size | Relative water depth (m) | Max avg dB RMS |
|---|---|---|
| **Impact Pile Driving** | | |
| 20 ft/Steel Pipe | 15 | 182. |
| 20 ft/Steel Pipe ('Spin fin') | 15 | 186. |
| **Vibratory Pile Driving** | | |
| 24 ft Steel Sheet PZC–16 | 15 | 170 (max dB RMS). |

We consider the values presented in Table 8. to be representative of SPLs that may be produced by pile driving in the project area. Distances to the harassment isopleths vary by marine mammal type and pile extraction/driving tool. All calculated distances to and the total area encompassed by the marine mammal sound thresholds were provided in Tables 5 and 6.

In addition, we generally recognize that pinnipeds occurring within an estimated airborne harassment zone, whether in the water or hauled out (no haul outs within six nmi of the project area), could be exposed to airborne sound that may result in behavioral harassment. However, any animal exposed to airborne sound above the behavioral harassment threshold is likely to also be exposed to underwater sound above relevant thresholds (which are typically in all cases larger zones than those associated with airborne sound). Thus, the behavioral harassment of these animals is already accounted for in the estimates of potential take. Multiple incidents within a day of exposure to sound above NMFS' thresholds for behavioral harassment are not believed to result in increased behavioral disturbance, in either nature or intensity of disturbance reaction. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

*Acoustic Impacts*

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms have been derived using auditory evoked potentials, anatomical modeling, and other data. Southall *et al.* (2007) designated hearing groups for marine mammals and estimated the lower and upper frequencies of hearing of the groups. NMFS made modifications to the marine mammal hearing groups proposed in Southall *et al.* (2007) and is reflected in the new *Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (July 2016)* (*http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm*). The marine mammal hearing groups, pinnipeds, high frequency cetaceans (harbor porpoise) and mid-frequency cetaceans (Atlantic white-sided dolphin) which are the subject of this project, and their associated generalized hearing range were previous discussed in the Marine Mammal Hearing section and also in Table 4.

As mentioned previously in this document, four marine mammal species (two cetacean and two pinniped species) are likely to occur in the area of the proposed activity. Of the two cetacean species likely to occur in the proposed project area, the Atlantic white-sided dolphin is classified as a mid-frequency cetacean and the harbor porpoise is classified as a high-frequency cetacean (NOAA 2016). A species' hearing group and its generalized hearing range is a consideration when we analyze the effects of exposure to sound on marine mammals.

ME DOT and NMFS determined that in-water construction activities involving the use of impact and vibratory pile driving during the Eastport Breakwater replacement project have the potential to result in behavioral harassment of marine mammal species and stocks in the vicinity of the proposed activity.

*Description of Take Calculation*

The following sections are descriptions of how take was determined for impacts to marine mammals from noise disturbance related to pile driving.

Incidental take is calculated for each species by estimating the likelihood of a marine mammal being present within the ensonified area above the threshold during pile driving activities, based on information about the presence of the animal (density estimates or the best available occurrence data) and the size of the zones of influence, which in this case is based on previous measurements from the acoustic monitoring in the previous EBRP IHA. Expected marine mammal presence is determined by past observations and general abundance during the construction window. When local abundance is the best available information, in lieu of the density-area method, we may simply multiply some number of animals (as determined through counts of animals hauled-out) by the number of days of activity, under the assumption that all of those animals will be present within the area ensonified by the threshold and incidentally taken on each day of activity.

There are a number of reasons why estimates of potential incidents of take may be conservative, assuming that available density or abundance estimates and estimated ZOI areas are accurate. We assume, in the absence of information supporting a more refined conclusion, that the output of the calculation represents the number of individuals that may be taken by the specified activity. In fact, in the context of stationary activities such as pile driving and in areas where resident animals may be present, this number more realistically represents the number of incidents of take that may accrue to a smaller number of individuals. While pile driving can occur any day throughout the in-water work window, and the analysis is conducted on a per day basis, only a fraction of that time (typically a matter of hours on any given day) is actually spent pile driving. The potential effectiveness of mitigation measures in reducing the number of takes is typically not quantified in the take estimation process. For these reasons, these take estimates may be conservative.

For this project, the take requests were estimated using local marine mammal data sets and information from Federal agencies and other experts. The best available data for marine mammals in the vicinity of the project area was derived from three sources including: Three years (2007–2010) of marine mammal monitoring data from the Ocean Renewable Power Company (ORPC) tidal generator project that was located between Eastport and Lubec, ME, the 2015–2016 marine mammal monitoring data from the previous EBRP IHA, and communication with marine mammals experts from ME (Stephanie Wood, (NOAA Biologist) and Dr. James Gilbert (Wildlife Ecologist, University of ME). Although the ORPC project was located on the other side of the peninsula from the Eastport pier, the presence of species and timing of their occurrence appears similar between the ORPC data and marine mammal monitoring data from the previous EBRP IHA.

The calculation for marine mammal exposures is estimated by:

Exposure estimate = N (number of animals in the area that is ensonified above the thresholds based on the previous sound measurements) * 160 days of pile driving activities from January to August 2017.

The estimated number of animals in the area was mostly determined based on the maximum group size of animals observed during ORPC's marine mammal observation effort (six seals (harbor and gray seals combined), six harbor porpoises, and one Atlantic white-sided dolphin) multiplied by the maximum expected number of pile/sheet installation and sheet removal days. However, during the winter and spring months we expect lower numbers of harbor porpoise in the Gulf of Maine (including the project area) and therefore take estimates were lower (Jan–May). Atlantic white-sided dolphins are not expected to frequent the project area as they are more of a pelagic species. Only two Atlantic white-sided dolphins were observed in four years of marine mammal monitoring (ORPC and EBPR IHA) and therefore, the take estimates are conservative and reflection of those observations. Harbor and gray seals were combined into one pinniped group because they cannot always be identified by species level. *See* Tables 9 and 10 for total estimated incidents of take.

TABLE 9—MARINE MAMMAL CALCULATED TAKE FOR LEVEL B HARASSMENT

| Month | Pile driving days per month | Calculated harbor/gray seal take by Level B harassment | Calculated harbor porpoise take by Level B harassment | Calculated atlantic white-sided dolphin take by Level B harassment |
|---|---|---|---|---|
| Jan | 20 | 120 | 6 | 1 |
| Feb | 20 | 120 | 6 | 1 |
| March | 20 | 120 | 6 | 1 |
| April | 20 | 120 | 6 | 1 |
| May | 20 | 120 | 6 | 1 |
| June | 20 | 120 | 120 | 1 |
| July | 20 | 120 | 120 | 1 |
| August | 20 | 120 | 120 | 1 |
| Sept | | | | |
| Oct | | | | |
| Nov | | | | |
| Dec | | | | |
| Total | 160 | 960 | 390 | 8 |

TABLE 10—ESTIMATED MARINE MAMMAL TAKES BY LEVEL B HARASSMENT.

| Species | Take authorization | Abundance | Approximate percentage of estimated stock (takes authorized/ population) | Population trend |
|---|---|---|---|---|
| Harbor seal * ..... | 960 | 75,834—Western North Atlantic stock ... | 1.27 ..... | unknown. |
| Gray seal ..... | | Unknown for U.S.—Western North Atlantic stock. | unknown ..... | increasing in the U.S. (EEZ), but the rate of increase is unknown. |
| Harbor porpoise ..... | 390 | 79,883—Gulf of Maine/Bay of Fundy stock. | 0.48 ..... | unknown. |
| Atlantic white-sided dolphin. | 8 | 48,819—Western North Atlantic stock ... | 0.016 ..... | unknown. |

* **Note:** Any pinnipeds observed/taken by Level B harassment will likely be harbor seals rather than gray seal (as gray seals do not frequent the waters of the project area as much and are found more in Canadian waters/haul out).

**Analysis and Determinations**

*Negligible Impact*

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, we consider other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

Pile driving activities associated with this project have the potential to disturb or displace marine mammals. Elevated noise levels are expected to be generated as a result of these activities. No serious injury or mortality would be expected at all, and with mitigation we expect to avoid any potential for Level A harassment as a result of the EBRP activities, and none are authorized by NMFS. The specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from in-water noise from construction activities.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions from these low intensity, localized, and short-term noise exposures that may cause brief startle reactions or short-term behavioral modifications by the animals. These reactions and behavioral changes are expected to subside quickly when the exposures cease. Moreover, marine mammals are expected to avoid the area during in-water construction because animals generally move away from active sound sources, thereby reducing exposure and impacts. In addition, through mitigation measures including soft start, marine mammals are expected to move away from a sound source that is annoying prior to its becoming potentially injurious and detection of marine mammals by observers would enable the implementation of shutdowns to avoid injury. Repeated exposures of individuals to levels of noise disturbance that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior.

In-water construction activities would occur in relatively shallow coastal waters of Cobscook Bay. The proposed project area is not considered significant habitat for marine mammals and therefore no adverse effects on marine mammal habitat are expected. Marine mammals approaching the action area would likely be traveling or opportunistically foraging. There are no rookeries or major haul-out sites nearby, foraging hotspots, or other ocean bottom structure of significant biological importance to marine mammals that may be present in the marine waters in the vicinity of the project area. The closest significant pinniped haul out is more than six nmi away, which is well outside the project area's largest harassment zone. The proposed project area is not a prime habitat for marine mammals, nor is it considered an area frequented by marine mammals. Therefore, behavioral disturbances that could result from anthropogenic noise associated with breakwater replacement activities are expected to affect only a small number of marine mammals on an infrequent basis. Although it is possible that some individual marine mammals may be exposed to sounds from in-water construction activities more than once, the duration of these multi-exposures is expected to be low since animals would be constantly moving in and out of the area and in-water construction activities would not occur continuously throughout the day.

Harbor and gray seals, harbor porpoise, and Atlantic white-sided dolphins as the potentially affected marine mammal species under NMFS jurisdiction in the action area, are not listed as threatened or endangered under the ESA and are not considered strategic under the MMPA. Even after repeated Level B harassment of some small subset of the overall stocks are unlikely to result in any significant realized decrease in fitness to those individuals, and thus would not result in any adverse impact to the stocks as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the project area while the activity is occurring.

In summary, this negligible impact analysis is founded on the following factors: (1) The possibility of injury, serious injury, or mortality may reasonably be considered discountable; (2) the anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior; (3) there is no primary foraging and reproductive habitat in the project area and the project activities are not expected to result in the alteration of habitat important to these behaviors or substantially impact the behaviors themselves (4) there is no major haul out habitat within six nmi of the project area (5) the proposed project area is not

a prime habitat for marine mammals, nor will have no adverse effect on marine mammal habitat (6) and the presumed efficacy of the mitigation measures in reducing the effects of the specified activity to the level of least practicable impact. In addition, these stocks are not listed under the ESA or considered depleted under the MMPA. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, we preliminarily find that the total marine mammal take from the construction activities will have a negligible impact on the affected marine mammal species or stocks.

*Small Numbers*

The amount of take NMFS proposes to authorize is considered small, less than one percent relative to the estimated populations for harbor porpoises and Atlantic white-sided dolphins and 1.27 percent for harbor seals. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

**Impact on Availability of Affected Species for Taking for Subsistence Uses**

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

**Endangered Species Act (ESA)**

No species listed under the ESA are expected to be affected by these activities. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

**National Environmental Policy Act (NEPA)**

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), NMFS is preparing an EA to consider the environmental impacts of issuance of a one-year IHA.

**Proposed Authorization**

NMFS proposes an IHA to ME DOT for the potential harassment of small numbers of marine mammal species incidental to its EBRP, Eastport, Maine, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The draft IHA language is provided next.

1. This Authorization is valid for one year from issuance.

2. This Authorization is valid only for activities associated with the EBRP in Eastport, Maine.

3. General Conditions

(a) The species authorized for incidental harassment takings, Level B harassment only, are: Harbor seal (*Phoca vitulina*), gray seal (*Halichoerus grypus*), harbor porpoise (*Phocoena phocoena*), and Atlantic white-sided dolphin (*Lagenorhynchus acutus*). The allowed take numbers of these species are shown in Table 11.

TABLE 11—SPECIES/STOCKS AND NUMBERS OF MARINE MAMMALS ALLOWED UNDER THIS IHA

| Species | Estimated marine mammal takes |
|---|---|
| Harbor seal, Gray seal ..... | 960 |
| Harbor porpoise ..... | 390 |
| Atlantic white-sided dolphin .. | 8 |

(b) The authorization for taking by harassment is limited to the following acoustic sources and from the following activities:

- Impact and vibratory driving activities

(c) The taking of any marine mammal in a manner prohibited under this Authorization must be reported within 24 hours of the taking to the Greater Atlantic Region Fisheries Office (GARFO), National Marine Fisheries Service (NMFS) Permits and Conservation Division, Office of Protected Resources.

4. The holder of this Authorization must notify the NMFS' Permits and Conservation Division, Office of Protected Resources, at least 48 hours prior to the start of activities identified in 3(b) (unless constrained by the date of issuance of this Authorization in which case notification shall be made as soon as possible).

5. Prohibitions

(a) The taking, by incidental harassment only, is limited to the species listed under condition 3(a) above and by the numbers listed in Table 11. The taking by Level A harassment, injury or death of these species or the taking by harassment, injury or death of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this Authorization.

(b) The taking of any marine mammal is prohibited whenever the required protected species observers (PSOs), required by condition 7(a), are not present in conformance with condition 7(a) of this Authorization.

6. Mitigation:

(a) Shutdown and Level B Zones

(i) ME DOT shall implement shutdown zones (exclusion zones) for Level A Harassment and zones for Level B Harassment as described in Table 12 below.

TABLE 12—SHUTZONE AND LEVEL B ZONES FOR MARINE MAMMALS

| Activity | Pinnipeds (m) | Cetaceans (m) |
|---|---|---|
| Impact Pile Driving (Level A) ..... | 70 | 160 |
| Impact Pile Driving (Level B) ..... | 550 | |
| Vibratory Pile Driving (Level A) ..... | 50 | 120 |
| Vibratory Pile Driving (Level B): | | |

TABLE 12—SHUTZONE AND LEVEL B ZONES FOR MARINE MAMMALS—Continued

| Activity | Pinnipeds (m) | Cetaceans (m) |
|---|---|---|
| PZC–18 Sheet Piles | 400 | |
| PZC–26 Sheet Piles | 665 | |

(b) Soft Start

(i) For vibratory pile driving, contractors shall initiate noise from the vibratory hammer for 15 seconds at 40–60 percent reduced energy, followed by a 1-minute waiting period. The procedure shall be repeated two additional times before full energy may be achieved.

(ii) For impact hammering, contractors shall provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three-strike sets.

(iii) The soft-start procedure will be conducted prior to driving each pile if hammering ceases for more than 30 minutes.

(c) Shutdown Measures

(i) If a marine mammal is sighted within or approaching the shutdown zones (exclusion zone) prior to start of impact pile driving, the observer would notify the on-site project lead (or other authorized individual) who would then be required to delay pile driving until the animal has moved out of the shutdown zone (exclusion zone) or if the animal has not been resighted within 30 minutes.

(ii) If a marine mammal is sighted within or on a path toward the exclusion zone during pile driving, pile driving would cease until that animal has moved out of the shutdown (exclusion zone) or 30 minutes has lapsed since the last sighting.

(iii) Although it is unlikely, if a marine mammal that is not covered under the IHA is sighted in the vicinity of the project area and is about to enter the ZOI, ME DOT shall implement shutdown measures to ensure that the animal is not exposed to noise levels that could result a take.

(d) Timing Restrictions

(i) Work would occur only during daylight hours, when visual monitoring of marine mammals can be conducted. To minimize impacts to Federally listed Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*), shortnose sturgeon (*Acipenser brevirostrum*) and Atlantic salmon (*Salmo salar*), ME DOT will follow restrictions on pile driving from April through November as directed by NMFS'GARFO.

7. Monitoring:

(a) Visual Monitoring

(i) Protected Species Observers

ME DOT shall employ two biologically-trained, NMFS-approved protected species observers (PSOs) to conduct marine mammal monitoring for its EBRP.

(ii) Visual monitoring for marine mammals in the shutdown zone (exclusion zone) shall be conducted 30 minutes before, during, and 30 minutes after all impact pile driving activities.

(iii) PSOs shall be positioned on the pier. One observer would survey inwards toward the pile driving site and the second observer would conduct behavioral monitoring outwards to a distance of 1 km during all impact pile driving.

(iv) PSOs shall provide 100 percent coverage for marine mammal exclusion zones and conduct monitoring out to the extent of the relevant Level B harassment zones for vibratory pile driving activities.

(v) PSOs shall be provided with the equipment necessary to effectively monitor for marine mammals (*e.g.,* high-quality binoculars, compass, and range-finder as well as a digital SLR camera with telephoto lens and video capability) in order to determine if animals have entered into the exclusion zone or Level B harassment isopleth and to record species, behaviors, and responses to pile driving.

8. Reporting:

(a) ME DOT shall provide NMFS with a draft monitoring report within 90 days of the conclusion of the construction work. This report shall detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed.

(b) If comments are received from the NMFS GARFO or NMFS Office of Protected Resources on the draft report, a final report shall be submitted to NMFS within 30 days thereafter. If no comments are received from NMFS, the draft report will be considered to be the final report.

(c) In the unanticipated event that the construction activities clearly cause the take of a marine mammal in a manner prohibited by this Authorization (if issued), such as an injury, serious injury or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), ME DOT shall immediately cease all operations and immediately report the incident to NMFS Permits and Conservation Division, Office of Protected Resources, and the GARFO Stranding Coordinators. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) description of the incident;

(iii) status of all sound source use in the 24 hours preceding the incident;

(iv) environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility, and water depth);

(v) description of marine mammal observations in the 24 hours preceding the incident;

(vi) species identification or description of the animal(s) involved;

(vii) the fate of the animal(s); and

(viii) photographs or video footage of the animal (if equipment is available).

(d) Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with ME DOT to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. ME DOT may not resume their activities until notified by NMFS via letter, email, or telephone.

(e) In the event that ME DOT discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), GARFO will immediately report the incident to NMFS Permits and Conservation Division, Office of Protected Resources, and the GARFO Stranding Coordinators. The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with ME DOT to determine whether modifications in the activities are appropriate.

(f) In the event that ME DOT discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities proposed in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage),

ME DOT shall report the incident to NMFS Permits and Conservation Division, Office of Protected Resources, and the GARFO Stranding Coordinators, within 24 hours of the discovery. ME DOT shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. ME DOT can continue its operations under such a case.

9. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein or if the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals, or if there is an unmitigable adverse impact on the availability of such species or stocks for subsistence uses.

10. A copy of this proposed Authorization must be in the possession of each contractor who performs the EBRP in Eastport, Maine.

11. This Authorization may be modified, suspended, or withdrawn if the Holder fails to abide by the conditions prescribed herein or if the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

**Request for Public Comments**

NMFS requests comments on our analysis, the draft authorization, and any other aspect of the Notice of Proposed IHA for ME DOT's construction project in Eastport, Maine. Please include with your comments any supporting data or literature citations to help inform our final decision on ME DOT's request for an MMPA authorization.

Dated: December 6, 2016.

**Donna S. Wieting,**

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

[FR Doc. 2016–29597 Filed 12–8–16; 8:45 am]

**BILLING CODE 3510–22–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to and deletions from the Procurement List.

**SUMMARY:** This action adds products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes a product and services from the Procurement List previously furnished by such agencies.

**DATES:** Effective January 8, 2017.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

**FOR FURTHER INFORMATION CONTACT:** Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

**SUPPLEMENTARY INFORMATION:**

**Additions**

On 4/15/2016 (81 FR 22239) and 9/2/2016 (81 FR 60681–60683), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

**Regulatory Flexibility Act Certification**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and service proposed for addition to the Procurement List.

**End of Certification**

Accordingly, the following products and service are added to the Procurement List:

*Products*

*NSN(s)—Product Name(s):*
8465–01–608–7503—Bag, Sleeping, Outer, Extreme Cold Weather (ECW OSB) U.S. Marine Corps, Regular
8465–01–623–2346—Bag, Sleeping, Outer, Extreme Cold Weather (ECW) OSB) U.S. Marine Corps, Extra Long
*Mandatory Source(s) of Supply:* ReadyOne Industries, Inc., El Paso, TX
*Mandatory for:* 50% of the requirement of the Department of Defense
*Contracting Activity:* Defense Logistics Agency Troop Support
*Distribution:* C-List

*Service*

*Service Type:* Operation and Maintenance Service
*Mandatory for:* Defense Forensic Science Center, U.S. Army Criminal, Investigation Laboratory, Fort Gillem, 930 North 31st Street, Forest Park, GA
*Mandatory Source(s) of Supply:* PRIDE Industries, Roseville, CA
*Contracting Activity:* Dept of the Army, W074 ENDIST SAVANNAH

**Deletions**

On 10/28/2016 (81 FR 75050) and 11/4/2016 (81 FR 76923–76924), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the product and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

**Regulatory Flexibility Act Certification**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product and services deleted from the Procurement List.

**End of Certification**

Accordingly, the following product and services are deleted from the Procurement List:

*Product*

*NSN(s)—Product Name(s):* 8460–01–433–8398—Briefcase, Black
*Mandatory Source(s) of Supply:* Helena Industries, Inc., Helena, MT
*Contracting Activity:* General Services Administration, Fort Worth, TX

*Services*

*Service Type:* Mailing of Initial Tech Orders Service
*Mandatory for:* Robins Air Force Base, Robins AFB, GA
*Mandatory Source(s) of Supply:* Houston County Association for Exceptional Citizens, Inc., Warner Robins, GA
*Contracting Activity:* Dept of the Air Force, FA8501 AFSC PZIO

*Service Type:* Administrative Service
*Mandatory for:* 426 5th Avenue, Sheppard AFB, TX
*Mandatory Source(s) of Supply:* Work Services Corporation, Wichita Falls, TX
*Contracting Activity:* Dept of the Air Force, FA3020 82 CONS LGC

*Service Type:* Janitorial/Custodial Service
*Mandatory for:* Missouri Air National Guard, 10800 Lambert International Boulevard, Bridgeton, MO
*Mandatory Source(s) of Supply:* MGI Services Corporation, St. Louis, MO
*Contracting Activity:* Dept of the Air Force, FA7014 AFDW PK

*Service Type:* Food Service Attendant Service
*Mandatory for:* Kirtland Air Force Base, Kirtland AFB, NM
*Mandatory Source(s) of Supply:* LifeROOTS, Inc., Albuquerque, NM
*Contracting Activity:* Dept of the Air Force, FA7014 AFDW PK

*Service Type:* Facilities Maintenance Service
*Mandatory for:* Buckley Annex and Building 667, Buckley AFB, CO
*Mandatory Source(s) of Supply:* Professional Contract Services, Inc., Austin, TX
*Contracting Activity:* Dept of the Air Force, FA2543 460 CONF LGC

**Patricia Briscoe,**

*Deputy Director, Business Operations Pricing and Information Management.*

[FR Doc. 2016–29576 Filed 12–8–16; 8:45 am]

**BILLING CODE 6353–01–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from the Procurement List.

**SUMMARY:** The Committee is proposing to add products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products previously furnished by such agencies.

**DATES:** Comments must be received on or before January 8, 2017.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

**FOR FURTHER INFORMATION CONTACT:** Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

### Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

*Products*

*NSN(s)—Product Name(s):* MR 357—Tumblers, Red, White and Blue, Includes Shipper 10357
*Mandatory Source(s) of Supply:* Industries for the Blind, Inc., Milwaukee, WI
*Mandatory Purchase For:* The requirements of military commissaries and exchanges in accordance with the Code of Federal Regulations, Chapter 51, 51–6.4
*Contracting Activity:* Defense Commissary Agency
*Distribution:* C-List

*NSN(s)—Product Name(s):* 6645–01–NIB–0153—Clock, LCD Digital Display, Radio-Controlled, Silver, 9.75″ x 7.25″ x 1″
*Mandatory Source(s) of Supply:* Chicago Lighthouse Industries, Chicago, IL
*Mandatory Purchase For:* Total Government Requirement
*Contracting Activity:* General Services Administration, New York, NY
*Distribution:* A-List

*NSN(s)—Product Name(s):* 6840–01–523–9645—Kit, Hydration Bladder Cleaning
*Mandatory Source(s) of Supply:* The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA
*Mandatory Purchase For:* 100% of the requirement of the U.S. Army
*Contracting Activity:* Dept of the Army, W6QK ACC–APG NATICK
*Distribution:* C-List

*NSN(s)—Product Name(s):*
6515–00–NIB–0571—Glove, Exam, Nitrile, Non-Latex, Textured, Midknight, Black, Small
6515–00–NIB–0572—Glove, Exam, Nitrile, Non-Latex, Textured, Midknight, Black, Medium
6515–00–NIB–0573—Glove, Exam, Nitrile, Non-Latex, Textured, Midknight, Black, Large
6515–00–NIB–0574—Glove, Exam, Nitrile, Non-Latex, Textured, Midknight, Black, X-Large
6515–00–NIB–8229—Glove, Vinyl, Powder-Free, Evolution One, Natural Color, X-Small
6515–00–NIB–8230—Glove, Vinyl, Powder-Free, Evolution One, Natural Color, Small
6515–00–NIB–8231—Glove, Vinyl, Powder-Free, Evolution One, Natural Color, Medium
6515–00–NIB–8232—Glove, Vinyl, Powder-Free, Evolution One, Natural Color, Large
6515–00–NIB–8233—Glove, Vinyl, Powder-Free, Evolution One, Natural Color, X-Large
6515–00–NIB–8235—Glove, Exam, Nitrile, Non-Latex, Textured, Midknight, Black, X-Small
*Mandatory Source(s) of Supply:* Central Association for the Blind & Visually Impaired, Utica, NY
*Contracting Activity:* Dept of Justice, Federal Bureau of Investigation
*Distribution:* C-List

### Deletions

The following products are proposed for deletion from the Procurement List:

*Products*

*NSN(s)—Product Name(s):* 7510–00–272–9804—Envelope, Transparent, 6½″ x 10½″, Clear Plastic, Job Ticket Holder
*Mandatory Source(s) of Supply:* UNKNOWN
*Contracting Activity:* General Services Administration, New York, NY

*NSN(s)—Product Name(s):* 6910–04–000–4482—Chalkboard; 6910–04–000–4485—Chalkboard
*Mandatory Source(s) of Supply:* Tuscola County Community Mental Health Authority, Caro, MI
*Contracting Activity:* USPS, Topeka Purchasing Center

*NSN(s)—Product Name(s):* 2540–00–591–1108—Seat, Vehicular
*Mandatory Source(s) of Supply:* Tuscola County Community Mental Health Authority, Caro, MI
*Contracting Activity:* Defense Logistics Agency Land and Maritime

*NSN(s)—Product Name(s):* 2510–00–179–7093—Side Rack, Vehicle; 2510–00–590–9734—Side Rack, Vehicle Body
*Mandatory Source(s) of Supply:* Tuscola County Community Mental Health Authority, Caro, MI
*Contracting Activity:* W4GG HQ US Army TACOM

**Patricia Briscoe;**

*Deputy Director, Business Operations Pricing and Information Management.*

[FR Doc. 2016–29577 Filed 12–8–16; 8:45 am]

**BILLING CODE 6353–01–P**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 10:00 a.m., Friday, December 16, 2016.

**PLACE:** Three Lafayette Centre, 1155 21st Street NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance, enforcement, and examinations matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

**CONTACT PERSON FOR MORE INFORMATION:** Christopher Kirkpatrick, 202–418–5964.

**Natise Allen,**

*Executive Assistant.*

[FR Doc. 2016–29753 Filed 12–7–16; 4:15 pm]

**BILLING CODE 6351–01–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Record of Decision for the Final Environmental Impact Statement for Short-Term Projects and Real Property Master Plan Update for Fort Belvoir, Virginia

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of availability.

**SUMMARY:** The Department of the Army announces the decision to implement the Preferred Alternative identified in the Final Environmental Impact Statement (FEIS) for Short-Term Projects and Real Property Master Plan (RPMP) Update for U.S. Army Garrison Fort Belvoir, VA. The RPMP identifies potential future development and management of real property—land, facilities, resources, and infrastructure—and consequent population changes on Fort Belvoir through 2030. The Record of Decision (ROD) explains the potential environmental impacts associated with the selected action, which includes 52 short-term demolition, construction, and renovation projects; four short-term transportation improvement projects; and 19 long-term facility and transportation improvement projects. The short-term projects are programmed for construction through 2017; the long-term projects are intended for implementation between 2018 and 2030. The ROD also adopts mitigation measures that will minimize or eliminate adverse impacts in land, infrastructure, transportation, and environment.

**ADDRESSES:** The ROD can be obtained by contacting: Fort Belvoir Directorate of Public Works, Environmental and Natural Resources Division, Re: Real Property Master Plan EIS, 9430 Jackson Loop, Suite 200, Fort Belvoir, VA 22060–5116; or by email to *usarmy.belvoir.imcom-atlantic.mbx.enrd@mail.mil.* The ROD can also be viewed at the following Web site: *https://www.belvoir.army.mil/environdocssection9.asp.*

**FOR FURTHER INFORMATION CONTACT:** Fort Belvoir Directorate of Public Works, Environmental and Natural Resources Division, 703–806–3193 or 703–806–0020, during normal working business hours Monday through Friday, 8 a.m. to 4:00 p.m.; or by email to *usarmy.belvoir.imcom-atlantic.mbx.enrd@mail.mil.*

**SUPPLEMENTARY INFORMATION:** The RPMP and the FEIS focused on Fort Belvoir's 7,700-acre Main Post and the 800-acre Fort Belvoir North Area (FBNA, formerly the Engineer Proving Ground). The RPMP update, FEIS, and ROD do not cover Fort Belvoir property at Rivanna Station in Charlottesville, VA; the Mark Center in Alexandria, VA; or the Humphreys Engineer Center, adjacent to Main Post.

The selected action addresses the Army's current and future planning needs at Fort Belvoir. Fort Belvoir's previous master plan was completed in 1993 and was amended in 2002 and 2007. In light of the substantial changes that have occurred on post since 1993, the amended 1993 master plan no longer served to adequately guide the management and use of real property assets—land, facilities, resources, and infrastructure—on the installation. The selected action provides Fort Belvoir with a blueprint for real property planning through 2030 now that the 2005 Base Realignment and Closure (BRAC) recommendations for the post have been implemented. It shifts the planning focus to encompass non-BRAC-related as well as BRAC-related facilities, tenants, and missions and reflects current and projected missions, needs, and conditions. Future growth projections for Main Post and the FBNA indicate an increase of up to 17,000 personnel by 2030 (from 39,000 in 2011) because Fort Belvoir may need to provide additional services to support military and other government organizations.

The ROD incorporates the analyses contained in the FEIS. When preparing the ROD, the Army took into consideration all comments provided during the FEIS waiting period, which began when the Notice of Availability for the FEIS was published in the **Federal Register** on September 22, 2015 (80 FR 57156). The Army considered all comments received in making its decision, but determined that it did not constitute significant new information relevant to environmental concerns that would require supplementation of the FEIS. Comments received resulted in minor edits to the ROD.

Implementation of the selected action is expected to result in direct, indirect, and cumulative impacts. The only resource area that would experience significant adverse impacts is traffic and transportation around the surrounding area of Fort Belvoir. The Army will mitigate these and other adverse effects through various strategies, as described in the ROD. All mitigations are subject to the availability of funding.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2016–29516 Filed 12–8–16; 8:45 am]

**BILLING CODE 5001–03–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Intent To Grant an Exclusive License of U.S. Government-Owned Patents

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice.

**SUMMARY:** The Department of the Army hereby gives notice of its intent to grant an exclusive, royalty-bearing, revocable license to pending United States Provisional Patent Application 62/343,315, entitled, ''Zika Virus Vaccine and Methods of Production'' filed May 31, 2016 and an exclusive, royalty-bearing, revocable license to pending United States Provisional Patent Application 62/370,260, entitled, ''Zika Vaccine and Methods of Preparation'' filed August 3, 2016 to Sanofi Pasteur, Inc., having its principal place of business at 1 Discovery Drive, Swiftwater, PA 18370.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, MD 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** For licensing issues, Mr. Barry Datlof, Office of Research & Technology Assessment, (301) 619–0033. For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808, both at telefax (301) 619–5034.

**SUPPLEMENTARY INFORMATION:** Anyone wishing to object to grant of this license can file written objections along with supporting evidence, if any, within 15 days from the date of this publication. Written objections are to be filed with

the Command Judge Advocate (see **ADDRESSES**).

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2016–29514 Filed 12–8–16; 8:45 am]

**BILLING CODE 5001–03–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Reserve Forces Policy Board; Notice of Federal Advisory Committee Meeting

**AGENCY:** Office of the Secretary of Defense, Reserve Forces Policy Board, Department of Defense.

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Reserve Forces Policy Board (RFPB) will take place.

**DATES:** Wednesday, December 14, 2016, from 9:55 a.m. to 3:20 p.m.

**ADDRESSES:** The address is the Pentagon, Room 3E863, Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alex Sabol, Designated Federal Officer, (703) 681–0577 (Voice), (703) 681–0002 (Facsimile), Email: *Alexander.J.Sabol.Civ@Mail.Mil.* Mailing address is Reserve Forces Policy Board, 5113 Leesburg Pike, Suite 601, Falls Church, VA 22041. Web site: *http://rfpb.defense.gov/.* The most up-to-date changes to the meeting agenda can be found on the RFPB's Web site.

**SUPPLEMENTARY INFORMATION:** Due to circumstances beyond the control of the Designated Federal Officer and the Department of Defense, the Reserve Forces Policy Board was unable to provide public notification of its meeting of December 14, 2016, as required by 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

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

*Purpose of the Meeting:* The purpose of the meeting is to obtain, review, and evaluate information related to strategies, policies, and practices designed to improve and enhance the capabilities, efficiency, and effectiveness of the Reserve Components.

*Agenda:* The RFPB will hold a meeting from 9:55 a.m. to 3:20 p.m. The portion of the meeting from 9:55 a.m. to 10:45 a.m. will be closed to the public and will consist of remarks to the RFPB from the Deputy Assistant Secretary for Military Personnel Policy, who will provide an update on the Department of Defense's Duty Status Reform efforts. The portion of the meeting from 10:55 a.m. to 3:20 p.m. will be open to the public and will consist of the following: A briefing by LTG (Ret) David Barno and Dr. Nora Bensahel on their published Atlantic Council: ''Future of the Army'' Report in which they independently analyzed, and in their positions as Distinguished Scholars in Residence at the School of International Service at American University, gave five major recommendations for the Army to be ready for the challenges of the next few years, most of which involve getting more capacity out of the currently planned force; the West Virginia National Guard discussing their recent West Virginia domestic operations involving the National Guard; and a ''Think Tank'' Panel with participants from the Brookings Institute and the Center for Strategic and International Studies, as well as the President and CEO of Dumbarton Strategies, who will discuss their individual recommended priorities for the next Administration and the anticipated implications those priorities may have on Active/Reserve Component force structure, readiness, and utilization.

*Meeting Accessibility:* Pursuant to section 10(a)(1) of the FACA and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, the meeting is open to the public from 10:55 a.m. to 3:20 p.m. Seating is on a first-come, first-served basis. All members of the public who wish to attend the public meeting must contact Mr. Alex Sabol, the Designated Federal Officer, not later than 12:00 p.m. on Tuesday, December 13, as listed in the **FOR FURTHER INFORMATION CONTACT** section to make arrangements for a Pentagon escort, if necessary. Public attendees requiring escort should arrive at the Pentagon Metro Entrance with sufficient time to complete security screening no later than 10:15 a.m. on December 14. To complete the security screening, please be prepared to present two forms of identification. One must be a picture identification card. In accordance with section 10(d) of the FACA, 5 U.S.C. 552b, and 41 CFR 102–3.155, the DoD has determined that the portion of this meeting scheduled to occur from 9:55 a.m. to 10:45 a.m. will be closed to the public. Specifically, the Under Secretary of Defense (Personnel and Readiness), in coordination with the DoD FACA Attorney, has determined in writing that this portion of the meeting will be closed to the public because the Deputy Assistant Secretary of Defense for Military Personnel Policy's presentation will disclose information the premature disclosure of which is likely to significantly frustrate implementation of proposed agency action as covered by 5 U.S.C. 552b(c)(9)(B).

*Written Statements:* Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, interested persons may submit written statements to the RFPB about its approved agenda or at any time on the RFPB's mission. Written statements should be submitted to the RFPB's Designated Federal Officer at the address, email, or facsimile number listed in the **FOR FURTHER INFORMATION CONTACT** section. If statements pertain to a specific topic being discussed at the planned meeting, then these statements must be submitted no later than five (5) business days prior to the meeting in question. Written statements received after this date may not be provided to or considered by the RFPB until its next meeting. The Designated Federal Officer will review all timely submitted written statements and provide copies to all the RFPB members before the meeting that is the subject of this notice. Please note that since the RFPB operates under the provisions of the FACA, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the RFPB's Web site.

Dated: December 6, 2016.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2016–29501 Filed 12–8–16; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Availability of Government-Owned Inventions; Available for Licensing

**AGENCY:** Department of the Navy; DoD.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available

for domestic and foreign licensing by the Department of the Navy.

The following patents are available for licensing: U.S. Patent No. 8,857,463: MONITOR FOR PRESSURIZED CANISTERS//U.S. Patent No. 8,858,789: SYSTEM FOR OIL SPILL CLEAN UP AND OIL RECOVERY//U.S. Patent No. 8,860,611: RFID-BASED MOBILE VEHICLE LOCALIZATION//U.S. Patent No. 8,887,548: LAND MINE SIMULATOR//U.S. Patent No. 8,899,137: REMOTE JETTISON DISCONNECT SYSTEM FOR A MINE ROLLER//U.S. Patent No. 8,905,103: TOOL FOR FASTENING AN ATTACHMENT ELEMENT TO A SURFACE//U.S. Patent No. 8,937,641: HOLOGRAPHIC MAP//U.S. Patent No. 8,937,849: AUTO-FOCUS FOR CIRCULAR SYNTHETIC APERTURE SONAR//U.S. Patent No. 8,938,325: CONTROL SYSTEM FOR STABILIZING A SINGLE LINE SUSPENDED MASS IN YAW//U.S. Patent No. 8,982,670: MULTI-SENSOR EVENT DETECTION SYSTEM//U.S. Patent No. 8,987,598: CORROSSION RESISTANT MINESWEEPING CABLE//U.S. Patent No. 8,988,036: SOLAR PANEL STORAGE AND DEPLOYMENT SYSTEM//U.S. Patent No. 8,988,037: SOLAR PANEL STORAGE AND DEPLOYMENT SYSTEM//U.S. Patent No. 8,988,972: VARIABLE SHOCK WAVE BIO-OIL EXTRACTION SYSTEM//U.S. Patent No. 9,027,455: SLURRY LINE CHARGE MINE CLEARANCE SYSTEM AND METHOD//U.S. Patent No. 9,056,679: SYSTEM AND METHOD FOR AIRBORNE DEPLOYMENT OF OBJECT DESIGNED FOR WATERBORNE TASK//U.S. Patent No. 9,134,403: SYSTEM AND METHOD FOR RELATIVE LOCALIZATION//

**ADDRESSES:** Requests for copies of the patents cited should be directed to Office of Counsel, Naval Surface Warfare Center Panama City Division, 110 Vernon Ave., Panama City, FL 32407–7001.

**FOR FURTHER INFORMATION CONTACT:** Ms. Brenda Squires, Patent Administration, Naval Surface Warfare Center Panama City Division, 110 Vernon Ave., Panama City, FL 32407–7001, telephone 850–234–4646.

**Authority:** 35 U.S.C. 207, 37 CFR part 404.

Dated: December 5, 2016.

**A.M. Nichols,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2016–29507 Filed 12–8–16; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Availability of Government-Owned Inventions; Available for Licensing

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are assigned to the United States Government, as represented by the Secretary of the Navy and are available for domestic and foreign licensing by the Department of the Navy.

The following patent is available for licensing: Patent Application No. 14/849,788 (Navy Case No. 200254): ROPE CLIMBING SYSTEMS AND METHODS OF USE.

**ADDRESSES:** Requests for copies of the patents cited should be directed to Naval Surface Warfare Center, Crane Div., Code OOL, Bldg. 2, 300 Highway 361, Crane, IN 47522–5001.

**FOR FURTHER INFORMATION CONTACT:** Mr. Christopher Monsey, Naval Surface Warfare Center, Crane Div., Code OOL, Bldg. 2, 300 Highway 361, Crane, IN 47522–5001, Email *Christopher.Monsey@navy.mil.*

**Authority:** 35 U.S.C. 207, 37 CFR part 404.

Dated: December 5, 2016.

**A.M. Nichols,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2016–29512 Filed 12–8–16; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

**[Docket ID: USN–2014–0014]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

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

**DATES:** Consideration will be given to all comments received by January 9, 2017.

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

**SUPPLEMENTARY INFORMATION:**

*Title, Associated Form and OMB Number:* Personal Information Questionnaire; NAVMC 100064; OMB Control Number 0703–0012.

*Type of Request:* Reinstatement with change.

*Number of Respondents:* 3500.

*Responses per Respondent:* 1.

*Annual Responses:* 3500.

*Average Burden per Response:* 15 minutes.

*Annual Burden Hours:* 875.

*Needs and Uses:* The Officer Selection Officer will forward a Personal Information Questionnaire (PIQ) form to individuals to be named by the applicant for completion and return as character references. The questionnaire establishes a pattern of moral character on individuals applying for the Marine Corps Officer Program.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

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

*DOD Clearance Officer:* Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 03F09, Alexandria, VA 22350–3100.

Dated: December 6, 2016.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2016–29557 Filed 12–8–16; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Availability of Government-Owned Inventions; Available for Licensing

**AGENCY:** Department of the Navy, DoD

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are assigned to the United States Government, as represented by the Secretary of the Navy and are available for domestic and foreign licensing by the Department of the Navy.

The following patents are available for licensing: Patent No. 9,430,189: VEHICLE DAMAGE DETECTION SYSTEM AND METHOD OF MANUFACTURING THE SAME//Patent No. 9,462,264: CHARACTERIZATION AND EVALUATION OF OPTICAL ELEMENTS UNDER VIBRATIONAL LOADING//Patent No. 9,425,580: MODULAR LASER SYSYTEM//Patent No. 9,425,803: APPARATUSES AND MATHODS FOR IMPLEMENTING VARIOUS PHYSICALLY UNCLONABLE FUNCTION (PUF) AND RANDOM NUMBER GENERATOR CAPABILITIES//Patent No. 9,250,159: WHISKER MANUFACTURING, DETECTION, RESPONSE, AND COMPOUND MANUFACTURING APPARATUS AND METHOD//Patent No. 9,423,229: IMPLODING BARREL INITIATOR AND RELATED METHODS//Patent No. 9,423,228: ADVANCED FRAGMENTATION HAND GRENADE//Patent No. 9,306,701: SCENE ILLUMINATOR//Patent No. 9,321,128: HIGH POWER LASER SYSTEM//Patent No. 9,322,872: CORRELATED TESTING SYSTEM// Patent No. 9,188,400: SYSTEM AND METHOD FOR CHARGING A WEAPON//Patent No. 9,235,378: VEHICLE DAMAGE DETECTION SYSTEM AND METHOD OF MANUFACTURING THE SAME//Patent No. 9,291,435: SHAPED CHARGE INCLUDING STRUCTURES AND COMPOSITIONS HAVING LOWER EXPLOSIVE CHARGE TO LINER MASS RATIO//Patent No. 9,325,073: APPRATUS FOR ASSEMBLING DIFFERENT CATEGOREIS OF MULTI-ELEMENT ASSEMBLIES TO PREDETERMINED TOLERANCES AND ALIGNMENTS USING A RECONFIGURABLE ASSEMBLING AND ALIGNMENT APPARATUS// Patent No. 9,456,483: FIELD PROGRAMMABLE MULTI-EMITTER// Patent No. 9,325,914: ELECTROMAGNETIC (EM) POWER DENSITY AND FIELD CHARACTERIZATION TECHNIQUE// Patent No. 9,423,069: PORTABLE EQUIPMENT SYSTEM MOUNT//Patent No. 9,417,286: SENSOR ENHANCEMENT THROUGH ALGORITHMIC ACQUISITION USING SYNCHRONIZATION WITH A SCAN GENERATOR//Patent No. 9,321,081: APPARATUS AND METHODS OF TUNING AND AMPLIFYING PIEZOELECTRIC SONIC AND ULTRASONIC OUTPUTS//Patent No. 9,326,384: PROCESS TO PRODUCE CONFORMAL NANO-COMPOSITE COATING FOR MITIGATION OF MANUFACTURING DEFECTS USING CHEMICAL VAPOR DEPOSITION AND NANO-STRUCTURES//Patent No. 9,079,544: ACCESSORY MOUNTING APPARATUS FOR A VEHICLE//Patent No. 9,321,079: PROCESS FOR MANUFACTURING A PLURALITY OF WAVE ENERGY EMITTERS//Patent No. 9,322,847: APPARATUS AND METHOD FOR INTEGRATED CIRCUIT FORENSICS//Patent No. 9,337,941: ANTENNA SYSTEMS AND METHODS FOR OVER-THE-AIR TRANSMITTER SIGNAL MEASUREMENT//and Patent No. 9,250,195: WHISKER MANUFACTURING, DETECTION, RESPONSE, AND COMPOUND MANUFACTURING APPARATUS AND METHOD.

**ADDRESSES:** Requests for copies of the patents cited should be directed to Naval Surface Warfare Center, Crane Div., Code OOL, Bldg. 2, 300 Highway 361, Crane, IN 47522–5001.

**FOR FURTHER INFORMATION CONTACT:** Mr. Christopher Monsey, Naval Surface Warfare Center, Crane Div., Code OOL, Bldg. 2, 300 Highway 361, Crane, IN 47522–5001, telephone 812–854–4100.

**Authority:** 35 U.S.C. 207, 37 CFR part 404.

Dated: December 5, 2016.

**A.M. Nichols,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2016–29510 Filed 12–8–16; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

**[Docket ID USN–2014–0013]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

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

**DATES:** Consideration will be given to all comments received by January 9, 2017.

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

**SUPPLEMENTARY INFORMATION:**

*Title, Associated Form and OMB Number:* Naval Sea Systems Command and Field Activity Visitor Access Request; NAVSEA 5500/1 NAVSEA Visitor Sign In/Out Sheet; OMB Control Number 0703–0055.

*Type of Request:* Reinstatement, without change, of a previously approved collection for which approval has expired.

*Number of Respondents:* 5,200.

*Responses per Respondent:* 1.

*Annual Responses:* 5,200.

*Average Burden per Response:* 15 minutes

*Annual Burden Hours:* 1300.

*Needs and Uses:* The information collection requirement is necessary for Naval Sea Systems Command and Naval Sea Systems Command Field Activity's at Washington Navy Yard, Washington DC to verify that visitors who have appropriate credentials, clearance level, and need-to-know are granted access to NAVSEA spaces, if they have clearance for classified information, and allows NAVSEA Security to keep record of visitors to NAVSEA spaces. Respondents are Navy support contractors, individuals from other agencies visiting the Command and Field Activities, various members of the public.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

*Instructions:* All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make

these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 03F09, Alexandria, VA 22350–3100.

Dated: December 6, 2016.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2016–29506 Filed 12–8–16; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ID–6679–001; ID–7433–001; ID–7213–001]**

### Savage, Jeffrey S.; Van Abel, Brian J.; Mahling, Wendy B.; Notice of Filing

Take notice that on December 2, 2016, Jeffrey S. Savage, Brian J. Van Abel, and Wendy B. Mahling, submitted for filing, applications for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) and Part 45 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45.8 (2016).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for 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.

*Comment Date:* 5:00 p.m. Eastern Time on December 23, 2016.

Dated: December 5, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–29558 Filed 12–8–16; 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:* RP17–237–000.
*Applicants:* ANR Pipeline Company.
*Description:* § 4(d) Rate Filing: Rate Schedule Revisions to be effective 1/1/2017.
*Filed Date:* 12/1/16.
*Accession Number:* 20161201–5129.
*Comments Due:* 5 p.m. ET 12/13/16.

*Docket Numbers:* RP17–238–000.
*Applicants:* Rockies Express Pipeline LLC.
*Description:* § 4(d) Rate Filing: Neg Rate 2016–12–1 Encana, BP to be effective 12/1/2016.
*Filed Date:* 12/1/16.
*Accession Number:* 20161201–5256.
*Comments Due:* 5 p.m. ET 12/13/16.

*Docket Numbers:* RP17–239–000.
*Applicants:* Dominion Transmission, Inc.
*Description:* § 4(d) Rate Filing: DTI—December 1, 2016 Negotiated Rate Agreements to be effective 12/2/2016.
*Filed Date:* 12/1/16.
*Accession Number:* 20161201–5321.
*Comments Due:* 5 p.m. ET 12/13/16.

*Docket Numbers:* RP17–240–000.
*Applicants:* Rockies Express Pipeline LLC.
*Description:* § 4(d) Rate Filing: REX Interim FL&U Electric Power Rate Adjustment to be effective 1/1/2017.
*Filed Date:* 12/1/16.
*Accession Number:* 20161201–5342.
*Comments Due:* 5 p.m. ET 12/13/16.

*Docket Numbers:* RP17–241–000.
*Applicants:* Columbia Gas Transmission, LLC.
*Description:* § 4(d) Rate Filing: Negotiated Rate Service Agmts—Nytis to be effective 12/1/2016.
*Filed Date:* 12/1/16.
*Accession Number:* 20161201–5344.
*Comments Due:* 5 p.m. ET 12/13/16.

*Docket Numbers:* RP17–242–000.
*Applicants:* Columbia Gas Transmission, LLC.
*Description:* § 4(d) Rate Filing: Measurement Filing to be effective 1/1/2017.
*Filed Date:* 12/1/16.
*Accession Number:* 20161201–5362.
*Comments Due:* 5 p.m. ET 12/13/16.

*Docket Numbers:* RP17–243–000.
*Applicants:* El Paso Natural Gas Company, L.L.C.
*Description:* § 4(d) Rate Filing: Non-Conforming Negotiated Rate Agreement (EWM) to be effective 1/1/2017.
*Filed Date:* 12/1/16.
*Accession Number:* 20161201–5368.
*Comments Due:* 5 p.m. ET 12/13/16.

*Docket Numbers:* RP17–244–000.
*Applicants:* Tallgrass Interstate Gas Transmission, L.
*Description:* § 4(d) Rate Filing: NRA Amend 2016/30/11 Hastings—Trenton to be effective 12/1/2016.
*Filed Date:* 12/1/16.
*Accession Number:* 20161201–5407.
*Comments Due:* 5 p.m. ET 12/13/16.

*Docket Numbers:* RP17–245–000.
*Applicants:* Transcontinental Gas Pipe Line Company.
*Description:* Compliance filing Refund Report—S–2 Customer Share of Texas Eastern OFO Penalty Disbursement.
*Filed Date:* 12/2/16.
*Accession Number:* 20161202–5077.
*Comments Due:* 5 p.m. ET 12/14/16.

*Docket Numbers:* RP17–246–000.
*Applicants:* Southern Natural Gas Company, L.L.C.
*Description:* § 4(d) Rate Filing: 2016 Expansion Negotiated Rate clean up filing to be effective 12/1/2016.
*Filed Date:* 12/2/16.
*Accession Number:* 20161202–5097.
*Comments Due:* 5 p.m. ET 12/14/16.

*Docket Numbers:* RP17–247–000.
*Applicants:* Rockies Express Pipeline LLC.
*Description:* § 4(d) Rate Filing: Neg Rate 2016–12–02 Rice (2 Ks) to be effective 12/5/2016.
*Filed Date:* 12/2/16.
*Accession Number:* 20161202–5167.
*Comments Due:* 5 p.m. ET 12/14/16.

*Docket Numbers:* RP17–248–000.

*Applicants:* Kern River Gas Transmission Company.

*Description:* Stipulation and Agreement of Stipulation [including Pro Forma sheets] for Alternate Period Two rates of Kern River Gas Transmission Company under RP17–248.

*Filed Date:* 12/1/16.

*Accession Number:* 20161201–5450.

*Comments Due:* 5 p.m. ET 12/12/16.

*Reply Comments Due:* 5 p.m. ET 12/29/16.

*Docket Numbers:* RP17–249–000.

*Applicants:* Elba Express Company, L.L.C.

*Description:* § 4(d) Rate Filing: 2016 Expansion Negotiated Rate Clean-Up Filing to be effective 12/1/2016.

*Filed Date:* 12/2/16.

*Accession Number:* 20161202–5239.

*Comments Due:* 5 p.m. ET 12/14/16.

*Docket Numbers:* RP17–250–000.

*Applicants:* Eastern Shore Natural Gas Company.

*Description:* § 4(d) Rate Filing: Rate Schedule OPT Transportation Service to be effective 1/2/2017.

*Filed Date:* 12/2/16.

*Accession Number:* 20161202–5280.

*Comments Due:* 5 p.m. ET 12/14/16.

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 date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

**Filings in Existing Proceedings**

*Docket Numbers:* RP17–244–001.

*Applicants:* Tallgrass Interstate Gas Transmission, L.

*Description:* Tariff Amendment: Erata to NRA Amend Hastings—Trenton to be effective 12/1/2016.

*Filed Date:* 12/5/16.

*Accession Number:* 20161205–5000.

*Comments Due:* 5 p.m. ET 12/19/16.

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: December 5, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–29560 Filed 12–8–16; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Procedures for Submitting Reactive Power Filings

Take notice that the Commission established procedures in *Armstrong Power, LLC,* 156 FERC ¶ 61,009, at PP 21–23 (2016) [1] to be followed in making reactive power rate filings, including required informational filings.

Dated: December 5, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–29559 Filed 12–8–16; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2016–0713; FRL–9956–17]**

### Nominations to the Science Advisory Committee on Chemicals; Request for Comments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This document provides the names and affiliations of nominees currently under consideration for appointment to the Science Advisory Committee on Chemicals (SACC) established pursuant to the Frank R. Lautenberg Chemical Safety for the 21st Century Act. The purpose of the SACC is to provide independent advice and expert consultation, at the request of the EPA Administrator, with respect to the scientific and technical aspects of risk assessments, methodologies, and pollution prevention measures or approaches. The Agency, at this time, anticipates selecting approximately fourteen members to serve on the Committee. Public comments on the nominees are invited, as these comments will be used to assist the Agency in selecting the new chartered Committee members.

**DATES:** Comments must be received on or before January 9, 2017.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2016–0713, by one of the following methods:

- *Federal eRulemaking Portal: https://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:* OPPT Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Tamue Gibson, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–7642; email address: *gibson.tamue@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

This action is directed to the public in general. This action may be of interest to those involved in the manufacture, processing, distribution, disposal, and/or interested in the assessment of risks involving chemical substances and mixtures. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

*B. What is EPA's authority?*

This committee is being established under FACA, 5 U.S.C. Appendix 2, and pursuant to the Frank R. Lautenberg Chemical Safety for the 21st Century Act, which amended the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.*

**II. Background**

The SACC is being established under FACA section 9(a), and pursuant to TSCA section 2625(o), as amended, to provide advice and recommendations on the scientific basis for risk assessments, methodologies, and pollution prevention measures or approaches.

EPA's Office of Pollution Prevention and Toxics (OPPT) manages programs

[1] *Available at http://elibrary.ferc.gov/IDMWS/common/opennat.asp?fileID=14297574.*

under TSCA (as amended), 15 U.S.C. 2601 *et seq.* and the Pollution Prevention Act (PPA), 42 U.S.C. 13101 *et seq.* Under these laws, EPA evaluates new and existing chemical substances and their risks, and finds ways to prevent or reduce pollution before it is released into the environment. OPPT also manages a variety of environmental stewardship programs that encourage companies to reduce and prevent pollution.

The SACC will be composed of approximately 14 members who will serve as Special Government Employees or Regular Government Employees (RGEs). The SACC expects to meet in person or by electronic means (*e.g.,* webinar) approximately 3 to 4 times a year, or as needed and approved by the Designated Federal Officer (DFO). Meetings will be held in the Washington, DC metropolitan area. The charter will be in effect for 2 years from the date it is filed with Congress. After the initial 2-year period, the charter will be renewed as authorized in accordance with section 14 of FACA (5 U.S.C. Appendix 2, Section 14). A copy of the charter will be available on the EPA Web site and in the docket.

**III. Charter**

A Charter for the SACC will be issued in accordance with the requirements of FACA.

*A. Qualifications of Members*

Members are scientists who have sufficient professional qualifications, including training and experience, to provide expert comments on the scientific and technical aspects of risk assessments, methodologies, and pollution prevention measures or approaches. No persons shall be ineligible to serve on the Committee by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except the EPA). The Administrator appoints individuals to serve on the Committee for staggered terms of 1 to 3 years. Panel members are subject to the provisions of 40 CFR part 3, subpart F, Standards of Conduct for Special Government Employees, which include rules regarding conflicts of interest. Each nominee selected by the Administrator, before being formally appointed, is required to submit a confidential statement of employment and financial interests, which shall fully disclose, among other financial interests, the nominee's sources of research support, if any.

*B. Applicability of Existing Regulations*

EPA's existing regulations applicable to Special Government Employees, which include advisory committee members, will apply to the members of the Science Advisory Committee on Chemicals. These regulations appear in 40 CFR part 3, subpart F.

*C. Process of Obtaining Nominees*

On August 26, 2016, EPA published a **Federal Register** inviting public nominations for the Science Advisory Committee on Chemicals (81 FR 58925) (FRL–9950–66). The nomination period ended on October 11, 2016. In response, the Agency received approximately 100 nominees. EPA considered the following criteria to select candidates from these nominations: Interest and availability to participate in committee meetings, absence of financial conflicts of interest, absence of the appearance of a loss of impartiality, scientific expertise, and backgrounds and experiences that would contribute to the diversity of scientific viewpoints on the committee, including professional experiences in government, labor, public health, public interest, animal protection, industry, or other groups.

Based on these criteria, EPA has identified 29 candidates for further consideration for membership on the SACC. Nine of these candidates are members of the existing EPA Chemical Safety Advisory Committee. The following are the names and professional affiliations of these candidates. Brief biographical sketches for these candidates are posted on the EPA Web site at *https://www.epa.gov/TSCA-Peer-Review.*

1. Henry A. Anderson, M.D., Adjunct Professor, Institute for Environmental Studies, University of Wisconsin-Madison, Madison, WI.
2. Holger Behrsing, Ph.D., Principal Scientist (Respiratory Toxicology Program), Institute for In Vitro Sciences, Inc., Gaithersburg, MD.
3. James V. Bruckner, Ph.D., Professor, Pharmacology and Toxicology, Department of Pharmaceutical & Biomedical Sciences, College of Pharmacy, University of Georgia, Athens, GA.
4. Stuart Cagen, Ph.D., Senior Toxicologist, Shell Health, Houston, TX.
5. Deborah Cory-Slechta, Ph.D., Professor, Environmental Medicine, Pediatrics and Public Health Sciences, University of Rochester Medical School, Rochester, NY.
6. Holly Davies, Ph.D., Senior Toxicologist, Department of Ecology, State of Washington, Olympia, WA.
7. William Doucette, Ph.D., Professor, Department of Civil and Environmental Engineering, Utah State University, Logan, UT.
8. Panos G. Georgopoulos, Ph.D., Professor of Environmental and Occupational Health, Rutgers Biomedical and Health Sciences—School of Public Health, Rutgers, The State University of New Jersey, Piscataway, NJ.
9. Kathleen Gilbert, Ph.D., Professor, Department of Microbiology and Immunology, University of Arkansas for Medical Sciences, Little Rock, AR.
10. Gary Ginsberg, Ph.D., Senior Toxicologist, Connecticut Department of Public Health, Hartford, CT.
11. Concepcion Jimenez Gonzalez, Ph.D., Program Director, Global Manufacturing & Supply, GlaxoSmithKline, Raleigh-Durham, NC.
12. Michael A Jayjock, Ph.D. CIH, Sole Proprietor, Jayjock Associates, LLC, Langhorne, PA.
13. Alan Kaufman, Senior VP, Technical Affairs, Toy Industry Association (TIA), New York, NY.
14. John Kissel, Ph.D., Professor of Environmental and Occupational Health Sciences, University of Washington, Seattle, WA.
15. Melanie Marty, Ph.D., Former Acting Deputy Director for Scientific Affairs (Retired), Office of Environmental Hazard and Health Assessment, California Environmental Protection Agency, Sacramento, CA.
16. Jaymie Meliker, Ph.D., Associate Professor, Program in Public Health, Department of Family, Population, & Preventive Medicine, Stony Brook University, Stony Brook, NY.
17. Kenneth Portier, Ph.D., Vice President, Statistics and Evaluation Center, American Cancer Society, Atlanta, GA.
18. J. Craig Rowlands, Ph.D., Sr. Toxicologist, Business Development and Innovation, UL Supply Chain & Sustainability, Underwriters Laboratories, LLC, Northbrook, IL.
19. Sheela Sathyanarayana MD, M.P.H., Seattle Children's Research Institute, Center for Health, Behavior, and Development, Associate Professor, Pediatrics and Adjunct Associate Professor Department of Environmental and Occupational Health Sciences, University of Washington, Seattle, WA.
20. Val Schaeffer, Ph.D., Senior Health Scientist, Office of the Director, Directorate of Standards and Guidance, U.S. Occupational Safety and Health Administration, Washington, DC.
21. Daniel Schlenk, Ph.D., Professor of Aquatic Ecotoxicology and Environmental Toxicology, University of California, Riverside, Riverside, CA.
22. Kristie Sullivan, M.P.H., Director, Regulatory Testing Issues, Physicians

Committee for Responsible Medicine, Washington DC.

23. Kristina Thayer, Ph.D., Deputy Division Director of Analysis and Director, Office of Health Assessment and Translation, National Toxicology Program, National Institute of Environmental Health Sciences, Research Triangle Park, NC.

24. Leonardo Trasande, MD, M.P.P. Associate Professor in Pediatrics, Environmental Medicine and Population Health, New York University, School of Medicine, New York, NY.

25. Laura N. Vandenberg, Ph.D. Department of Environmental Health Science, School of Public Health & Health Sciences, University of Massachusetts—Amherst, Amherst, MA.

26. Chris L. Waller, Ph.D., Executive Director & Head, Scientific Modeling Platforms, Merck Research Laboratories, Boston, MA.

27. Christine Whittaker, Ph.D., Chief, Risk Evaluation Branch, Education and Information Division, National Institute for Occupational Safety and Health, Centers for Disease Control, Cincinnati, OH.

28. Catherine Willett, Ph.D., Director, Regulatory Toxicology, Risk Assessment & Alternatives Coordinator, The Humane Society of the United States, Washington, DC.

29. Tracey Woodruff, Ph.D., M.P.H., Professor in Residence and Director, Program on Reproductive Health and the Environment, Department of Obstetrics, Gynecology, and Reproductive Sciences, University of California, San Francisco, San Francisco, CA.

**Authority:** 15 U.S.C. 2601 *et seq.;* 5 U.S.C. Appendix 2 *et seq.*

Dated: December 2, 2016.

**Stanley Barone,**

*Director, Office of Science Coordination and Policy.*

[FR Doc. 2016–29579 Filed 12–8–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OGC–2016–0693; FRL–9956–37–OGC]**

## Proposed Consent Decree, Clean Air Act Citizen Suit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed consent decree; request for public comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), notice is hereby given of a proposed consent decree to address a lawsuit filed by Center for Biological Diversity, Center for Environmental Health, and Clean Air Council (collectively ''Plaintiffs'') in the United States District Court for the Northern District of California: *Center for Biological Diversity, et al.* v. *McCarthy, et al.* No. 4:16–cv–04092–PJH (N.D. Cal.). On July 21, 2016, Plaintiffs filed a complaint alleging that Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency (''EPA'') failed to perform certain duties mandated by the CAA in relation to implementation of the 1997 and 2008 National Ambient Air Quality Standard (''NAAQS'') for ozone, respectively. Specifically, Plaintiffs allege that EPA failed to make required findings of failure to submit, and to take final action on State Implementation Plan (''SIP'') submittals. On November 14, 2016, Plaintiffs filed a first amended complaint. The proposed consent decree would establish deadlines for EPA to take certain specified actions related to implementation of the 1997 and 2008 ozone standards, respectively.

**DATES:** Written comments on the proposed consent decree must be received by January 9, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA–HQ–OGC–2016–0693, online at *www.regulations.gov.* For comments submitted at *www.regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *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 generally will 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For 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:** Derek Mills, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–3341; fax number: (202) 564–5603; email address: *Mills.Derek@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Additional Information About the Proposed Consent Decree

This proposed consent decree would resolve a lawsuit filed by Plaintiffs seeking to compel the Administrator to take actions under CAA section 110(k). Under the terms of the proposed consent decree, EPA would agree to sign a notice addressing the alleged failure to issue a finding of failure to submit for certain 2008 ozone NAAQS nonattainment and OTR SIP submissions addressing elements from the areas and states listed in the proposed consent decree no later than January 19, 2017. If any State makes a listed SIP submittal, and EPA makes a completeness determination as to that submittal, prior to January 19, 2017, then EPA's obligation to address that submittal in the aforementioned notice is automatically terminated. EPA would also agree to take certain final actions to address certain submitted plans pursuant to sections 110(k)(2)–(4) of the CAA no later than the dates indicated in the proposed consent decree for the 1997 and 2008 ozone NAAQS, respectively. If any State withdraws a listed submittal, then EPA's obligation to address that submittal through the aforementioned action is automatically terminated. Please see the proposed consent decree, located in the docket for this notice, for specific dates and additional details.

Under the terms of the proposed consent decree, EPA will send notice of each action to the Office of the Federal Register for review and publication within 15 days of signature. In addition, the proposed consent decree outlines the procedure for the Plaintiff to request costs of litigation, including attorney fees.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who are not named as parties to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such

consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this proposed consent decree should be withdrawn, the terms of the consent decree will be affirmed.

## II. Additional Information About Commenting on the Proposed Consent Decree

*A. How can I get a copy of the proposed consent decree?*

The official public docket for this action (identified by EPA–HQ–OGC–2016–0693) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (''OEI'') Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

*B. How and to whom do I submit comments?*

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: November 30, 2016.

**Lorie J. Schmidt,**

*Associate General Counsel.*

[FR Doc. 2016–29581 Filed 12–8–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–9030–6]**

## 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 Statements

Filed 11/28/2016 Through 12/02/2016 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. 20160285, Draft, USFWS, WA,* Long-term Conservation Strategy for the Marbled Murrelet, Comment Period Ends: 03/09/2017, Contact: Mark Ostwald 360–753–9564.

*EIS No. 20160286, Draft, USACE, NJ,* Rahway River Basin Flood Risk Management Plan, Comment Period Ends: 01/23/2017, Contact: Kimberly Rightler 908–850–8113.

*EIS No. 20160287, Final, USFWS, WY,* Eagle Take Permits for the Chokecherry and Sierra Madre Phase I Wind Energy Project, review period ends: 01/09/2017, Contact: Louise Galiher 303–236–8677.

*EIS No. 20160288, Final, APHIS, NAT,* Petition (15–300–01p) for Determination of Nonregulated Status for ASR368 Creeping Bentgrass, review period ends: 01/09/2017, Contact: Sidney W. Abel 301–851–3896.

*EIS No. 20160289, Final, FERC, OH,* Nexus Gas Transmission Project and Texas Eastern Appalachian Lease Project, review period ends: 01/09/2017, Contact: Joanne Wachholder 202–502–8056.

*EIS No. 20160290, Final, NPS, NC,* Cape Lookout National Seashore Off-Road Vehicle Management Plan, review period ends: 01/09/2017, Contact: Michael B. Edwards 303–969–2694.

*EIS No. 20160291, Final, USFWS, CA,* Lower Klamath, Clear Lake, Tule Lake, Upper Klamath, and Bear Valley National Wildlife Refuges, Final Comprehensive Conservation Plan, review period ends: 01/09/2017, Contact: Mark Pelz 916–414–6504.

*EIS No. 20160292, Final, NPS, CA,* Golden Gate National Recreation Area Dog Management Plan, review period ends: 01/09/2017, Contact: Michael Edwards 303–969–2694.

*EIS No. 20160293, Final, NPS, VA,* ADOPTION—Potomac Yard Metrorail Station, Contact: Dan Koenig 202–219–3528.

The U.S. Department of the Interior's National Park Service has adopted the U.S. Department of Transportation's Federal Transit Authority's FEIS #20160133, file 07/11/2016 with the EPA.

NPS was a cooperating agency for the above project. Therefore, recirculation of the document is not necessary under Section 1056.3(c) of the Council on Environmental Quality.

**Amended Notices**

*EIS No. 20160218, Draft, BR, AZ,* Navajo Generating Station-Kayenta Mine Complex Project, Comment Period Ends: 12/29/2016, Contact: Sandra Eto 623–773–6254 Revision to the FR Notice Published 09/30/2016; Extending the Comment Period from 11/29/2016 to 12/29/2016.

Dated: December 6, 2016.

**Dawn Roberts,**

*Management Analyst, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 2016–29578 Filed 12–8–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9956–36–OA]**

## Announcement of the Board of Directors for the National Environmental Education Foundation

**AGENCY:** Office of External Affairs and Environmental Education, Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The National Environmental Education and Training Foundation (doing business as The National Environmental Education Foundation or NEEF) was created by Section 10 of Public Law #101–619, the National Environmental Education Act of 1990. It is a private 501(c)(3) non-profit organization established to promote and support education and training as necessary tools to further environmental protection and sustainable, environmentally sound development. It provides the common ground upon which leaders from business and industry, all levels of government, public interest groups, and others can work cooperatively to expand the reach of environmental education and training programs beyond the traditional classroom. The Foundation promotes innovative environmental education and training programs such as environmental education for medical healthcare providers and broadcast meteorologists; it also develops partnerships with government and other organizations to administer projects that promote the development of an environmentally literal public. The Administrator of the U.S. Environmental Protection Agency (EPA), as required by the terms of the Act, announces the following appointment to the National Environmental Education Foundation Board of Directors. The appointee is Mr. Kevin M. Butt, the Regional Environmental Director of Toyota's North American Environmental Sustainability Programs.

**FOR FURTHER INFORMATION CONTACT:** For information regarding this Notice of Appointment, please contact Mr. Micah Ragland, Associate Administrator for Office of Public Engagement and Environmental Education, U.S. EPA 1200 Pennsylvania Ave. NW., Washington, DC 20460. General information concerning NEEF can be found on their Web site at: *http://www.neefusa.org.*

**SUPPLEMENTARY INFORMATION:**

*Additional Considerations:* Great care has been taken to assure that this new appointee not only has the highest degree of expertise and commitment, but also brings to the Board diverse points of view relating to environmental education. This appointment is a four-year term which may be renewed once for an additional four years pending successful re-election by the NEEF nominating committee.

This appointee will join the current Board members which include:

- Decker Anstrom (NEEF Chairman), Former U.S. Ambassador, Retired Chairman, The Weather Channel Companies
- Diane Wood (NEEF Secretary) President, National Environmental Education Foundation
- Carlos Alcazar, Founder and Chairman, Culture ONE World
- Megan Reilly Cayten, Co-Founder and Chief Executive Officer, Catrinka, LLC
- David M. Kiser (NEEF Treasurer), Vice President, Environment, Health, Safety and Sustainability, International Paper
- Wonya Lucas, President and CEO, Public Broadcasting Atlanta
- Shannon Schuyler, Principal, Corporate Responsibility Leader, PricewaterhouseCoopers (PwC)
- George Basile, Ph.D., Professor, School of Sustainability, Arizona State University, Tempe, AZ
- Jennifer Harper-Taylor, Siemens Foundation
- Robert Garcia, Founding Director and Counsel, The City Project, Los Angeles, CA
- Martin Philbert, Ph.D., Dean, School of Public Health, University of Michigan, Ann Arbor, MI

*Background:* Section 10 (a) of the National Environmental Education Act of 1990 mandates a National Environmental Education Foundation. The Foundation is established in order to extend the contribution of environmental education and training to meeting critical environmental protection needs, both in this country and internationally; to facilitate the cooperation, coordination, and contribution of public and private resources to create an environmentally advanced educational system; and to foster an open and effective partnership among Federal, State, and local government, business, industry, academic institutions, community based environmental groups, and international organizations.

The Foundation is a charitable and nonprofit corporation whose income is exempt from tax, and donations to which are tax deductible to the same extent as those organizations listed pursuant to section 501(c) of the Internal Revenue Code of 1986. The Foundation is not an agency or establishment of the United States. The purposes of the Foundation are—

(A) subject to the limitation contained in the final sentence of subsection (d) herein, to encourage, accept, leverage, and administer private gifts for the benefit of, or in connection with, the environmental education and training activities and services of the United States Environmental Protection Agency;

(B) to conduct such other environmental education activities as will further the development of an environmentally conscious and responsible public, a well-trained and environmentally literate workforce, and an environmentally advanced educational system;

(C) to participate with foreign entities and individuals in the conduct and coordination of activities that will further opportunities for environmental education and training to address environmental issues and problems involving the United States and Canada or Mexico.

The Foundation develops, supports, and/or operates programs and projects to educate and train educational and environmental professionals, and to assist them in the development and

delivery of environmental education and training programs and studies.

The Foundation has a governing Board of Directors (hereafter referred to in this section as 'the Board'), which consists of 13 directors, each of whom shall be knowledgeable or experienced in the environment, education and/or training. The Board oversees the activities of the Foundation and assures that the activities of the Foundation are consistent with the environmental and education goals and policies of the Environmental Protection Agency and with the intents and purposes of the Act. The membership of the Board, to the extent practicable, represents diverse points of view relating to environmental education and training. Members of the Board are appointed by the Administrator of the Environmental Protection Agency.

Within 90 days of the date of the enactment of the National Environmental Education Act, and as appropriate thereafter, the Administrator will publish in the **Federal Register** an announcement of appointments of Directors of the Board. Such appointments become final and effective 90 days after publication in the **Federal Register**. The directors are appointed for terms of 4 years. The Administrator shall appoint an individual to serve as a director in the event of a vacancy on the Board within 60 days of said vacancy in the manner in which the original appointment was made. No individual may serve more than 2 consecutive terms as a director.

Dated: November 30, 2016.

**Gina McCarthy,**

*Administrator.*

**Mr. Kevin M. Butt**

Mr. Kevin Butt is the Regional Environmental Director of Toyota's North American Environmental Sustainability Programs. He is responsible for the development of Environmental Sustainability Programs and Regulatory/Legislative development for all of Toyota's North American operations.

Prior to Mr. Butt's current assignment he was the General Manager/Chief Environmental and Safety Officer for Toyota Motor Engineering & Manufacturing for all of Toyota's Manufacturing operations. Prior to that assignment Mr. Butt was the Assistant General Manager of Body Production Engineering for Toyota Motor Manufacturing North America, Inc., (TMMNA). He was responsible for Body Engineering for all Toyota's North American manufacturing operations. Body Engineering consists of Welding, Stamping, and Painting Operations.

Mr. Butt serves on several boards including the National Wildlife Habitat Council, Kentucky Fish and Wildlife Foundation, World Wildlife Fund National Council, North American Great Plains Advisory Board and the Yellowstone Park Foundation Board.

Mr. Butt is a member of the U.S. EPA Common Sense Initiative (CSI) Automobile Sector. He served on the Blue Ribbon Panel on Sustaining America's Diverse Fish and Wildlife Resources. He was also given the Toyota Community Star Award for volunteering and giving back to the community in a very high standard.

Mr. Butt has a Bachelors of Science degree in Environmental Science from Georgetown College. He has also completed the International Organization for Standardization (ISO) 14000 Environmental Management Auditor course, and the American National Standards Institute-Registrar Accreditation Board (ANSI–RAB) accredited Environmental Management Systems Auditor course.

[FR Doc. 2016–29591 Filed 12–8–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[Docket ID No. EPA–HQ–ORD–2013–0357; FRL–9956–24–ORD]**

## Second External Review Draft Integrated Science Assessment for Sulfur Oxides—Health Criteria

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of public comment period.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing a public comment period ending on March 20, 2017, for the draft document titled, ''Second External Review Draft Integrated Science Assessment for Sulfur Oxides—Health Criteria'' (EPA/600/R–16/351). The draft document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development (ORD) as part of the review of the primary (health-based) National Ambient Air Quality Standards (NAAQS) for sulfur dioxide ($SO_2$). The Integrated Science Assessment (ISA), in conjunction with additional technical and policy assessments, provides the scientific basis for EPA's decisions on the adequacy of the current NAAQS and the appropriateness of possible alternative standards. EPA intends to develop a separate ISA as part of an independent review for the secondary (welfare-based) NAAQS for oxides of nitrogen and sulfur.

EPA is releasing this draft document to seek review by the Clean Air Scientific Advisory Committee (CASAC) and the public (meeting date and location to be specified in a separate **Federal Register** notice). This draft document is not final as described in EPA's information quality guidelines, and it does not represent, and should not be construed to represent, Agency policy or views. When revising the document, EPA will consider any public comments submitted during the public comment period specified in this notice.

**DATES:** The public comment period begins on December 9, 2016, and ends on March 20, 2017. Comments must be received on or before March 20, 2017.

**ADDRESSES:** The ''Second External Review Draft Integrated Science Assessment for Sulfur Oxides—Health Criteria'' will be available primarily via the internet on EPA's Integrated Science Assessment for Sulfur Dioxide (Health Criteria) home page at *http://www2.epa.gov/isa/integrated-science-assessment-isa-sulfur-dioxide-health-criteria* or the public docket at *http://www.regulations.gov,* Docket ID: EPA–HQ–ORD–2013–0357. A limited number of CD–ROM copies will be available. Contact Ms. Marieka Boyd by phone: 919–541–0031; fax: 919–541–5078; or email: *boyd.marieka@epa.gov* to request a CD–ROM, and please provide your name, your mailing address, and the document title, ''Second External Review Draft Integrated Science Assessment for Sulfur Oxides—Health Criteria'' to facilitate processing of your request.

**FOR FURTHER INFORMATION CONTACT:** For information on the public comment period, contact the ORD Docket at the EPA Headquarters Docket Center; phone: 202–566–1752; fax: 202–566–9744; or email: *Docket_ORD@epa.gov*.

For technical information, contact Dr. Tom Long, NCEA; phone: 919–541–1880; fax: 919–541–1818; or email: *long.tom@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Information About the Document

Section 108(a) of the Clean Air Act directs the Administrator to identify certain pollutants which, among other things, ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare'' and to issue air quality criteria for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind

and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air . . .'' Under section 109 of the Act, EPA is then to establish NAAQS for each pollutant for which EPA has issued criteria. Section 109(d) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. EPA is also required to review and, if appropriate, revise the NAAQS, based on the revised air quality criteria (for more information on the NAAQS review process, see *http://www.epa.gov/ttn/naaqs/review.html*).

Sulfur oxides are one of six criteria pollutants for which EPA has established NAAQS. Periodically, EPA reviews the scientific basis for these standards by preparing an ISA (formerly called an Air Quality Criteria Document). The ISA, in conjunction with additional technical and policy assessments, provides the scientific basis for EPA's decisions on the adequacy of the current NAAQS and the appropriateness of possible alternative standards. The CASAC, an independent science advisory committee whose review and advisory functions are mandated by Section 109(d)(2) of the Clean Air Act, is charged (among other things) with independent scientific review of the EPA's air quality criteria.

On May 10, 2013 (78 FR 27387), EPA formally initiated its current review of the air quality criteria for the health effects of sulfur oxides and the primary (health-based) $SO_2$ NAAQS, requesting the submission of recent scientific information on specified topics. EPA held a workshop on June 12–13, 2013, to gather input from invited scientific experts, both internal and external to EPA, as well as from the public, regarding key science and policy issues relevant to the review of the health effects of sulfur oxides and the primary $SO_2$ NAAQS (78 FR 27387). These science and policy issues were incorporated in EPA's ''Integrated Review Plan for the Primary National Ambient Air Quality Standard for Sulfur Dioxide'' (EPA–452/R–14–007), which was finalized in October 2014 (79 FR 66721) with a prior draft available for public comment (79 FR 14035) and discussion by the CASAC via publicly accessible teleconference consultations (79 FR 16325, 79 FR 30137, 79 FR 34739). On June 23–24, 2014, EPA held a workshop to discuss, with invited internal and external scientific experts, initial draft materials prepared in the development of the ISA (79 FR 33750). EPA considered comments on these draft materials in preparing the first external review draft of the ISA, which was released on November 24, 2015 (80 FR 73183). The first draft ISA was discussed at a public CASAC meeting on January 27–28, 2016 (80 FR 79330). Subsequently, on April 15, 2016, the CASAC panel provided a consensus letter to the EPA Administrator summarizing their review. The second draft ISA has been developed with consideration of comments from the CASAC and the public, and includes consideration of scientific studies published through September 2016.

The ''Second External Review Draft Integrated Science Assessment for Sulfur Oxides—Health Criteria'' will be discussed by the CASAC at a public meeting. In addition to the public comment period announced in this notice, the public will have an opportunity to submit written and/or oral comments related to this second external review draft ISA to the CASAC. A separate **Federal Register** notice will inform the public of the exact date and time of the CASAC meeting and of the procedures for public participation.

## II. How To Submit Technical Comments to the Docket at *www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2013–0357, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *Email: Docket_ORD@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (ORD Docket), Mail Code: 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The ORD Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004.

The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The phone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–ORD–2013–0357. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information through *www.regulations.gov* or email that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www2.epa.gov/dockets.*

*Docket:* Documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically on *www.regulations.gov* or in hard copy at the ORD Docket in the EPA Headquarters Docket Center.

Dated: November 22, 2016.

**Mary A. Ross,**

*Deputy Director, National Center for Environmental Assessment.*

[FR Doc. 2016–29438 Filed 12–8–16; 8:45 am]

**BILLING CODE 6560–50–P**

## FARM CREDIT SYSTEM INSURANCE CORPORATION

### Regular Meeting

**SUMMARY:** Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

**DATES AND TIME:** The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 8, 2016, from 12:30 p.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Dale L. Aultman, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

**ADDRESSES:** Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102. Submit attendance requests via email to *VisitorRequest@FCA.gov.* See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

**SUPPLEMENTARY INFORMATION:** Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: Name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale L. Aultman, Secretary to the Farm Credit System Insurance Corporation Board, at (703) 883–4009. The matters to be considered at the meeting are:

**Open Session**

*A. Approval of Minutes*

- October 13, 2016

*B. Business Reports*

- September 30, 2016 Financial Reports
- Report on Insured and Other Obligations
- Quarterly Report on Annual Performance Plan

**Closed Session**

- Confidential Report on System Performance
- Audit Plan for the Year Ended December 31, 2016

**Executive Session**

- January 14, 2016 Audit Committee Minutes
- Executive Session of the Audit Committee with Auditor

Dated: December 6, 2016.

**Dale L. Aultman,**

*Secretary, Farm Credit System Insurance Corporation Board.*

[FR Doc. 2016–29497 Filed 12–8–16; 8:45 am]

**BILLING CODE 6710–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–XXXX]**

### Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments should be submitted on or before January 9, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Kimberly R. Keravuori, OMB, via email *Kimberly_R_Keravuori@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–XXXX.

*Title:* Receiving Written Consent for Communication with Base Stations in Canada; Issuing Written Consent to Licensees from Canada for Communication with Base Stations in the U.S.; Description of Interoperable Communications with Licensees from Canada.

*Form Number:* N/A.

*Type of Review:* New collection.

*Respondents:* State, Local, or Tribal Governments.

*Number of Respondents and Responses:* 3,224 respondents; 3,224 responses.

*Estimated Time per Response:* 0.5 hours–1 hour.

*Frequency of Response:* On occasion reporting requirement.

*Obligation to Respond:* Written consent from the licensee of a base station repeater is required before first responders from the other country can begin communicating with that base stations repeater. Applicants are advised to include a description of how they intend to interoperate with licensees from Canada when filing applications to operate under any of the scenarios described in Public Notice DA 16–739 in order to ensure that the application is not inadvertently rejected by Canada. Statutory authority for these collections are contained in 47 U.S.C. 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, 325(b), 332, 336(f), 338, 339, 340, 399b,

403, 534, 535, 1404, 1452, and 1454 of the Communications Act of 1934.

*Total Annual Burden:* 5,642 hours.

*Total Annual Cost:* None.

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

*Nature and Extent of Confidentiality:* Applicants who include a description of how they intend to interoperate with licensees from Canada need not include any confidential information with their description. Nonetheless, there is a need for confidentiality with respect to all applications filed with the Commission through its Universal Licensing System (ULS). Although ULS stores all information pertaining to the individual license via an FCC Registration Number (FRN), confidential information is accessible only by persons or entities that hold the password for each account, and the Commission's licensing staff. Information on private land mobile radio licensees is maintained in the Commission's system of records, FCC/WTB–1, ''Wireless Services Licensing Records.'' The licensee records will be publicly available and routinely used in accordance with subsection (b) of the Privacy Act. TIN Numbers and material which is afforded confidential treatment pursuant to a request made under 47 CFR 0.459 will not be available for Public inspection. Any personally identifiable information (PII) that individual applicants provide is covered by a system of records, FCC/WTB–1, ''Wireless Services Licensing Records,'' and these and all other records may be disclosed pursuant to the Routine Uses as stated in this system of records notice.

*Needs and Uses:* This collection will be submitted as a new collection after this 60-day comment period to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance. The purpose of requiring an agency to issue written consent before allowing first responders from the other country to communicate with its base station repeater ensures to that the licensee of that base stations repeater (host licensee) maintains control and is responsible for its operation at all times. The host licensee can use the written consent to ensure that first responders from the other country understand the proper procedures and protocols before they begin communicating with its base station repeater. Furthermore, when reviewing applications filed by border area licensees, Commission staff will use any description of how an applicant intends to interoperate with licensees from Canada, including copies of any written agreements, in order to coordinate the application with Innovation, Science and Economic Development Canada (ISED) and reduce the risk of an inadvertent rejection by ISED.

Federal Communications Commission.

**Gloria J. Miles,**

*Federal Register Liaison Officer, Office of the Secretary.*

[FR Doc. 2016–29566 Filed 12–8–16; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–1087]**

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written PRA comments should be submitted on or before February 7, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

**SUPPLEMENTARY INFORMATION:**

*Title:* Section 15.615, General Administrative Requirements (Broadband Over Power Line (BPL).

*OMB Control Number:* 3060–1087.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit; not-for-profit institutions; and State, local or Tribal Government.

*Number of Respondents and Responses:* 100 respondents; 100 responses.

*Estimated Time per Response:* 26 hours.

*Frequency of Response:* On occasion reporting requirement and third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154(i), 301, 302, 303(e), 303(f) and 303(r).

*Total Annual Burden:* 2,600 hours.

*Total Annual Cost:* $60,000.

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

*Nature and Extent of Confidentiality:* The FCC does not require any confidentiality in the information provided to the database. There are no proprietary or trade/technological standards to which these BPL entities wish to restrict access.

*Needs and Uses:* The Commission will submit this expiring information collection after this 60 day comment period to the Office of Management and Budget (OMB) to obtain the full three year clearance. Section 15.615 requires entities operating Access BPL systems shall supply to an industry-recognized entity, information on all existing Access BPL systems and all proposed Access BPL systems for inclusion into a publicly available database, within 30 days prior to installation of service. Such information should include the name of the Access BPL provider; the frequencies of the Access BPL operation; the postal ZIP codes served by the specific Access BPL operation; the manufacturer and type of Access BPL equipment and its associated FCC ID number, contact information; and proposed/or actual date of operation.

Federal Communications Commission.

**Gloria J. Miles,**

*Federal Register Liaison Officer, Office of the Secretary.*

[FR Doc. 2016–29565 Filed 12–8–16; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–0250]**

### Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written PRA comments should be submitted on or before February 7, 2017. If you anticipate that you will submit comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0250.

*Title:* Sections 73.1207, 74.784 and 74.1284, Rebroadcasts.

*Form Number:* Not applicable.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

*Number of Respondents and Responses:* 6,462 respondents; 11,012 responses.

*Estimated Time per Response:* 0.50 hours.

*Frequency of Response:* Recordkeeping requirement; on occasion reporting requirement; semi-annual reporting requirement; third party disclosure requirement.

*Total Annual Burden:* 5,506 hours.

*Total Annual Costs:* None.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i) and 325(a) of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this information collection.

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

*Needs and Uses:* The information collection requirements contained in 47 CFR 73.1207 require that licensees of broadcast stations obtain written permission from an originating station prior to retransmitting any program or any part thereof. A copy of the written consent must be kept in the station's files and made available to the FCC upon request. Section 73.1207 also specifies procedures that broadcast stations must follow when rebroadcasting time signals, weather bulletins, or other material from non-broadcast services.

The information collection requirements contained in 47 CFR 74.784(b) require that a licensee of a low power television or TV translator station shall not rebroadcast the programs of any other TV broadcast station without obtaining prior consent of the station whose signals or programs are proposed to be retransmitted. Section 74.784(b) requires licensees of low power television and TV translator stations to notify the Commission when rebroadcasting programs or signals of another station. This notification shall include the call letters of each station rebroadcast. The licensee of the low power television or TV translator station shall certify that written consent has been obtained from the licensee of the station whose programs are retransmitted.

Lastly, the information collection requirements contained in 47 CFR 74.1284 require that the licensee of a FM translator station obtain prior consent to rebroadcast programs of any broadcast station or other FM translator. The licensee of the FM translator station must notify the Commission of the call letters of each station rebroadcast and must certify that written consent has been received from the licensee of that station. Also, AM stations are allowed to use FM translator stations to rebroadcast the AM signal.

Federal Communications Commission.

**Gloria J. Miles,**

*Federal Register Liaison Officer, Office of the Secretary.*

[FR Doc. 2016–29567 Filed 12–8–16; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Termination of the Receivership of 10505, GreenChoice Bank, FSB, Chicago, Illinois

The Federal Deposit Insurance Corporation (''FDIC''), as Receiver for 10505, GreenChoice Bank, FSB, Chicago, Illinois (''Receiver'') has been authorized to take all actions necessary to terminate the receivership estate of GreenChoice Bank, FSB (''Receivership Estate''); the Receiver has made all dividend distributions required by law. The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds. Effective December 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: December 6, 2016.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 2016–29532 Filed 12–8–16; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**AGENCY:** Federal Election Commission.

**DATE AND TIME:** Tuesday, November 15, 2016 at 10:00 a.m.

**PLACE:** 999 E Street NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**Federal Register** Notice of Previous Announcement—81 FR 80664.

Change in the meeting: This meeting was continued on December 6, 2016.

* * * * *

**PERSON TO CONTACT FOR INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

**Shelley E. Garr,**

*Deputy Secretary.*

[FR Doc. 2016–29662 Filed 12–7–16; 11:15 am]

**BILLING CODE 6715–01–P**

## FEDERAL MARITIME COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Federal Maritime Commission.

**TIME AND DATE:** December 14, 2016; 10:00 a.m.

**PLACE:** 800 N. Capitol Street NW., First Floor Hearing Room, Washington, DC.

**STATUS:** The first portion of the meeting will be held in Open Session; the second in Closed Session.

**MATTERS TO BE CONSIDERED:**

**Open Session**

1. Briefing by Commissioner Dye on Supply Chain Innovation Teams
2. Docket No. 16–08: Final Rule on Presentation of Evidence in Commission Adjudications

**Closed Session**

1. THE Alliance Agreement, FMC Agreement No. 012439

**CONTACT PERSON FOR MORE INFORMATION:** Rachel E. Dickon, Assistant Secretary, (202) 523–5725.

**Rachel E. Dickon,**

*Assistant Secretary.*

[FR Doc. 2016–29779 Filed 12–7–16; 4:15 pm]

**BILLING CODE 6731–AA–P**

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Sunshine Act; Notice of Meeting

**DATE AND TIME:** December 19, 2016, Telephonic, 10:00 a.m.

**PLACE:** 10th Floor Board Meeting Room, 77 K Street NE., Washington, DC 20002.

*Agenda:* Federal Retirement Thrift Investment Board Member Meeting.

**STATUS:** All parts will be open to the public.

**MATTERS TO BE CONSIDERED:**

**Open Session**

1. Approval of the minutes for the November 29, 2016 Board Member Meeting
2. Monthly Reports
   (a) Participant Activity Report
   (b) Legislative Report
   (c) Investment Performance and Policy Report
3. Vendor Financials
4. Office of the General Counsel Report

**CONTACT PERSON FOR MORE INFORMATION:** Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: December 6, 2016.

**Megan Grumbine,**

*General Counsel, Federal Retirement Thrift Investment Board.*

[FR Doc. 2016–29681 Filed 12–7–16; 11:15 am]

**BILLING CODE 6760–01–P**

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Sunshine Act; Notice of Meeting

**DATE AND TIME:** December 9, 2016, Telephonic, 4:30 p.m.

*Agenda:* Federal Retirement Thrift Investment Board Member Meeting.

**STATUS:** Closed to the public.

**MATTER TO BE CONSIDERED:** Information covered under 5 U.S.C. 552b(c)(6), and (c)(9)(B).

**CONTACT PERSON FOR MORE INFORMATION:** Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: December 7, 2016.

**Dharmesh Vashee,**

*Deputy General Counsel, Federal Retirement Thrift Investment Board.*

[FR Doc. 2016–29682 Filed 12–7–16; 11:15 am]

**BILLING CODE 6760–01–P**

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Sunshine Act; Notice of Meeting

**DATE AND TIME:** December 12, 2016, Telephonic, 10:30 a.m.

*Agenda:* Federal Retirement Thrift Investment Board Member Meeting.

**STATUS:** Closed to the public.

**MATTER TO BE CONSIDERED:** Information covered under 5 U.S.C. 552b (c)(6), and (c)(9)(B).

**CONTACT PERSON FOR MORE INFORMATION:** Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: December 7, 2016.

**Dharmesh Vashee,**

*Deputy General Counsel, Federal Retirement Thrift Investment Board.*

[FR Doc. 2016–29680 Filed 12–7–16; 11:15 am]

**BILLING CODE 6760–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### The Centers for Disease Control (CDC)/ Health Resources and Services Administration (HRSA) Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment, Department of Health and Human Services, has been renewed for a 2-year period through November 25, 2018.

*Contact Person for More Information:* Johnathan Mermin, M.D., M.P.H., Designated Federal Officer, CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment, Department of Health and Human Services, CDC, 1600 Clifton Road NE., Mailstop E07, Atlanta, Georgia 30333, telephone (404) 639–8000 or fax (404) 639–8600.

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,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2016–29455 Filed 12–8–16; 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: Notice of Charter Amendment

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Council for the Elimination of Tuberculosis (ACET), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS), has amended their charter to add a person who has had tuberculosis disease or who is the parent of a child who has had tuberculosis disease. The amended filing date is November 2, 2016.

For information, contact Hazel Dean, Sc.D., M.P.H., Designated Federal Officer, Advisory Council for the Elimination of Tuberculosis, Department of Health and Human Services, 1600 Clifton Road NE., Mailstop E–10, Atlanta, Georgia 30333, telephone 404/639–8000 or fax 404/639–8600.

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. 2016–29453 Filed 12–8–16; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (BSC, NCEH/ATSDR)

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.–4:30 p.m., EST, January 17, 2017

8:30 a.m.–11:30 a.m., EST, January 18, 2017

*Place:* CDC, 4770 Buford Highway, Atlanta, Georgia 30341

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 60 people. The public is welcome to participate during the public comment period which in tentatively scheduled on Tuesday, January 17, 2017 from 1:30 p.m. until 1:45 p.m., and on Wednesday, January 18, 2017 from 10:30 a.m. until 10:45 a.m. This meeting will also be available by teleconference. Please dial (877) 315–6535 and enter code 383520#.

*Purpose:* The Secretary, Department of Health and Human Services (HHS) and by delegation, the Director, CDC and Administrator, NCEH/ATSDR, are authorized under Section 301 (42 U.S.C. 241) and Section 311 (42 U.S.C. 243) of the Public Health Service Act, as amended, to: (1) Conduct, encourage, cooperate with, and assist other appropriate public authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments; (2) assist states and their political subdivisions in the prevention of infectious diseases and other preventable conditions and in the promotion of health and wellbeing; and (3) train state and local personnel in health work. The BSC, NCEH/ATSDR provides advice and guidance to the Secretary, HHS; the Director, CDC and Administrator, ATSDR; and the Director, NCEH/ATSDR, regarding program goals, objectives, strategies, and priorities in fulfillment of the agency's mission to protect and promote people's health. The board provides advice and guidance that will assist NCEH/ATSDR in ensuring scientific quality, timeliness, utility, and dissemination of results. The board also provides guidance to help NCEH/ATSDR work more efficiently and effectively with its various constituents and to fulfill its mission in protecting America's health.

*Matters for Discussion:* The agenda items for the BSC Meeting will include NCEH/ATSDR Office of the Director updates; Hydraulic Fracturing; NCEH/ATSDR Program Responses to BSC Guidance and Action Items; HUD's Lead Hazard Control Program and Implications for a Change in the CDC Reference Value; Update on NCEH/ATSDR Support for Flint, Michigan; Update on NCEH Lead Surveillance Program; Recommendations from the BSC Lead Poisoning Prevention Subcommittee; NCEH/ATSDR response to Public Health Emergencies; Federal Research Action Plan on Tire Crumb Used on and Playing Fields and Playgrounds; updates from the National Institute of Environmental Health Sciences, the National Institute for Occupational Safety and Health, the U.S. Department of Energy and the U.S. Environmental Protection Agency.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Amanda Malasky, ORISE Fellow, NCEH/ATSDR, 4770 Buford Highway, Mail Stop F–45, Atlanta, Georgia 30341; Telephone 770/488–7699; Email: *yoo0@cdc.gov.* The deadline for notification of attendance is January 13, 2017.

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. 2016–29454 Filed 12–8–16; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial review

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 a meeting for the initial review of applications in response to Funding Opportunity Announcement (FOA) PS17–002, Understanding the Epidemiology of Syphilis in the United States.

**TIME AND DATE:** 10:00 a.m.–5:00 p.m., EST, January 10, 2017 (Closed).

**PLACE:** Teleconference.

**STATUS:** The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

**MATTERS FOR DISCUSSION:** The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Understanding the Epidemiology of Syphilis in the United States'', PS17–002.

**CONTACT PERSON FOR MORE INFORMATION:** Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road NE., Mailstop E60, Atlanta, Georgia 30329, Telephone: (404) 718–8833.

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. 2016–29456 Filed 12–8–16; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–R–10, CMS–10487, CMS–10116, CMS–10219 and CMS–10275]**

### Agency Information Collection Activities: Proposed Collection; 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 (the 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 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: The necessity and utility of the proposed information collection for the proper performance of the agency's functions; the accuracy of the estimated burden; ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments must be received by February 7, 2017.

**ADDRESSES:** When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

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:**

#### Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–R–10 Advance Directives (Medicare and Medicaid) and Supporting Regulations

CMS–10487 Medicaid Emergency Psychiatric Demonstration (MEPD) Evaluation

CMS–10116 Conditions for Payment of Power Mobility Devices, including Power Wheelchairs and Power-Operated Vehicles

CMS–10219 Healthcare Effectiveness Data and Information Set (HEDIS®) Data Collection for Medicare Advantage

CMS–10275 CAHPS Home Health Care Survey

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. 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 requires federal agencies to publish a 60-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.

#### Information Collection

1. *Type of Information Collection Request:* Extension of a previously approved collection; *Title of Information Collection:* Advance Directives (Medicare and Medicaid) and Supporting Regulations; *Use:* The advance directives requirement was enacted because Congress wanted individuals to know that they have a right to make health care decisions and to refuse treatment even when they are unable to communicate. Steps have been taken at both the Federal and State level, to afford greater opportunity for the individual to participate in decisions made concerning the medical treatment to be received by an adult patient in the event that the patient is unable to communicate to others, a preference about medical treatment. The individual may make his preference known through the use of an advance directive, which is a written instruction prepared in advance, such as a living will or durable power of attorney. This information is documented in a prominent part of the individual's medical record. Advance directives as described in the Patient Self-Determination Act have increased the individual's control over decisions concerning medical treatment. Sections 4206 of the Omnibus Budget Reconciliation Act of 1990 defined an advance directive as a written instruction recognized under State law relating to the provision of health care when an individual is incapacitated

(those persons unable to communicate their wishes regarding medical treatment).

All states have enacted legislation defining a patient's right to make decisions regarding medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives. Participating hospitals, skilled nursing facilities, nursing facilities, home health agencies, providers of home health care, hospices, religious nonmedical health care institutions, and prepaid or eligible organizations (including Health Care Prepayment Plans (HCPPs) and Medicare Advantage Organizations (MAOs) such as Coordinated Care Plans, Demonstration Projects, Chronic Care Demonstration Projects, Program of All Inclusive Care for the Elderly, Private Fee for Service, and Medical Savings Accounts must provide written information, at explicit time frames, to all adult individuals about: (a) The right to accept or refuse medical or surgical treatments; (b) the right to formulate an advance directive; (c) a description of applicable State law (provided by the State); and (d) the provider's or organization's policies and procedures for implementing an advance directive. *Form Number:* CMS–R–10 (OMB control number: 0938–0610); Frequency: Yearly; *Affected Public:* Business or other for-profits; *Number of Respondents:* 39,479; *Total Annual Responses:* 39,479; *Total Annual Hours:* 2,836,441. (For policy questions regarding this collection contact Jeannine Cramer at 410–786–5664.)

2. *Type of Information Collection Request:* Extension of a previously approved collection; *Title of Information Collection:* Medicaid Emergency Psychiatric Demonstration (MEPD) Evaluation; *Use:* Since the inception of Medicaid, inpatient care provided to adults ages 21 to 64 in institutions for mental disease (IMDs) has been excluded from federal matching funds. The Emergency Medical Treatment and Active Labor Act (EMTALA), however, requires IMDs that participate in Medicare to provide treatment for psychiatric emergency medical conditions (EMCs), even for Medicaid patients for whose services cannot be reimbursed. Section 2707 of the Affordable Care Act (ACA) directs the Secretary of Health and Human Services to conduct and evaluate a demonstration project to determine the impact of providing payment under Medicaid for inpatient services provided by private IMDs to individuals with emergency psychiatric conditions between the ages of 21 and 64. We will use the data to evaluate the Medicaid Emergency Psychiatric Demonstration (MEPD) in accordance with the ACA mandates. This evaluation in turn will be used by Congress to determine whether to continue or expand the demonstration. If the decision is made to expand the demonstration, the data collected will help to inform both CMS and its stakeholders about possible effects of contextual factors and important procedural issues to consider in the expansion, as well as the likelihood of various outcomes. *Form Number:* CMS–10487 (OMB control number: 0938–NEW); *Frequency:* Annually; *Affected Public:* Individuals and households; State, Local and Tribal governments; Business and other for-profits and Not-for-profits; *Number of Respondents:* 93; *Total Annual Responses:* 1,944; *Total Annual Hours:* 2,046. (For policy questions regarding this collection contact Vetisha McClair at 410–786–4923.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Conditions for Payment of Power Mobility Devices, including Power Wheelchairs and Power-Operated Vehicles; *Use:* We are renewing our request for approval for the collection requirements associated with the final rule, CMS–3017–F (71 FR 17021), which published on April 5, 2006, and required a face-to-face examination of the beneficiary by the physician or treating practitioner, a written prescription, and receipt of pertinent parts of the medical record by the supplier within 45 days after the face-to-face examination that the durable medical equipment (DME) suppliers maintain in their records and make available to CMS and its agents upon request. *Form Number:* CMS–10116 (OMB control number: 0938–0971); Frequency: Yearly; *Affected Public:* Private Sector—Business or other for-profits; *Number of Respondents:* 46,000; *Number of Responses:* 72,500; *Total Annual Hours:* 14,434. (For policy questions regarding this collection contact Stuart Caplan at 410–786–8564.)

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Healthcare Effectiveness Data and Information Set (HEDIS®) Data Collection for Medicare Advantage; *Use:* We use the collected data to: Monitor Medicare Advantage organization performance, inform audit strategies, and inform beneficiary choice through their display in our consumer-oriented public compare tools and Web sites. Medicare Advantage organizations use the data for quality assessment and as part of their quality improvement programs and activities. Quality Improvement Organizations and our contractors use HEDIS® data in conjunction with their statutory authority to improve quality of care. Consumers use the information to help make informed health care choices. In addition, the data is made available to researchers and others as public use files at *www.cms.hhs.gov. Form Number:* CMS–10219 (OMB control number: 0938–1028); *Frequency:* Yearly; *Affected Public:* Private sector—Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 576; *Total Annual Responses:* 576; *Total Annual Hours:* 184,320. (For policy questions regarding this collection contact Lori Teichman at 410–786–6684.)

5. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* CAHPS Home Health Care Survey; *Use:* The national implementation of the Home Health Care Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Survey is designed to collect ongoing data from samples of home health care patients who receive skilled services from Medicare-certified home health agencies. The data collected from the national implementation of the Home Health Care CAHPS Survey will be used for the following purposes: (1) To produce comparable data on the patients' perspectives of the care they receive from home health agencies, (2) to create incentives for agencies to improve the quality of care they provide through public reporting of survey results, and (3) to enhance public accountability in health care by increasing the transparency of the quality of care provided in return for the public investment. Sampling and data collection will be conducted on a monthly basis. Survey results will be analyzed and reported on a quarterly basis, with publicly reported results based on one year's worth of data.

As part of this information collection request for the national implementation of Home Health Care CAHPS, CMS is also requesting approval to conduct a randomized mode experiment with a sample of home health agencies. The mode experiment compared the responses to the survey across the three proposed modes to determine whether adjustments are needed to ensure that the data collection mode does not influence the survey results. In addition, data from the mode experiment will be used to determine which, if any, patient characteristics may affect the patients' rating of the care they receive and, if so,

develop an adjustment model of those data based on those factors. CMS worked with RTI, the federal contractor to recruit approximately 100 home health agencies to participate in the mode experiment. The mode experiment included approximately 23,000 home health care patients.

*Form Number:* CMS–10275 (OMB control number: 0938–1066); *Frequency:* Quarterly; *Affected Public:* Individuals and households and the Private sector (Business or other for-profit and Not-for-profit institutions); *Number of Respondents:* 2,715,890; *Total Annual Responses:* 2,715,890; *Total Annual Hours:* 699,440. (For policy questions regarding this collection contact Lori Teichman at 410–786–6684.)

Dated: December 6, 2016.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2016–29584 Filed 12–8–16; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–2431–N]**

### Zika Health Care Services Program

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the November 9, 2016 publication of a funding opportunity providing up to $66.1 million available to support prevention activities and treatment services for health conditions related to the Zika virus. The funding opportunity solicited single source emergency applications for a cooperative agreement aimed at supporting prevention activities and treatment services for women (including pregnant women), children, and men adversely or potentially impacted by the Zika virus. Entities eligible to apply for this funding opportunity are states, territories, tribes or tribal organizations, with active or local transmission of the Zika virus, as confirmed by the Centers for Disease Control and Prevention (CDC). As of October 12, 2016, the CDC designated American Samoa, Puerto Rico, the U.S. Virgin Islands, and Florida as areas with laboratory-confirmed active or local Zika virus transmission. As such, this emergency funding opportunity is currently available to the territorial and state health departments in these areas.

**DATES:** The project period of performance for the Cooperative Agreement will be 36 months from the date of award.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Garbarczyk, 410–786–0426.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Zika Response and Preparedness Act (Pub. L. 114–223) provides $387,000,000 in funding to prevent, prepare for, and respond to the Zika virus. Of the funds appropriated by Public Law 114–223, Congress designated $75 million to support states, territories, tribes, or tribal organizations with active or local transmission cases of the Zika virus, as confirmed by the Centers for Disease Control and Prevention (CDC), to reimburse the costs of health care for health conditions related to the Zika virus not covered by private insurance. No less than $60 million of this funding is for territories with the highest rates of Zika transmission.

### II. Provisions of the Notice

In accordance with the Zika Response and Preparedness Act (Pub. L. 114–223), entities eligible to apply for this funding opportunity include states, territories, tribes or tribal organizations with active or local transmission of the Zika virus, as confirmed by the Centers for Disease Control and Prevention (CDC). As of October 12, 2016, the CDC reports that American Samoa, Puerto Rico, the U.S. Virgin Islands, and Florida are the only areas with laboratory-confirmed active or local transmission of the Zika virus, and therefore, these are the only territories and state eligible to receive funding as authorized under the legislation. Funding available under the ''Zika Health Care Services Program'' may be used to address the following four critical components of a comprehensive response to Zika. Applicant needs may vary and some applicants may not have unmet needs across each of the four areas. If approved by CMS, recipients may use grant funds for additional health care services for health conditions related to the Zika virus that are not listed in the following section.

1. Increase Access to Contraceptive Services for Women and Men

Contraceptive services for women and men can reduce the risk of unintended pregnancy, as well as sexual transmission of Zika. Preventing unintended pregnancy in areas affected by the Zika virus outbreak among people who may have been exposed is a primary strategy to reduce the number of pregnancies affected by Zika virus. To increase access to all FDA-approved contraceptive methods, a territory or state must use grant funds to provide client-centered contraceptive counseling to educate women (including women who are pregnant and post-partum) and men on effective contraception methods, increase contraceptive supplies in provider offices, increase family planning delivery sites, train providers on the full range of contraceptive methods and their use, including insertion and removal of long-acting reversible contraception (LARC), and to remove a patient's financial barriers to use of effective contraception through methods such as cost sharing assistance for contraceptive services.

2. Reduce Barriers to Diagnostic Testing, Screening, and Counseling for Pregnant Women and Newborns

Uninsured or underinsured pregnant women may not seek testing and medical follow-up if Zika testing does not begin at the initial point of prenatal care or if it presents financial hardship. Testing should be performed as a part of routine prenatal care. However, additional unscheduled prenatal visits may be necessary to complete the testing protocol (for example, reflex testing) and to provide pre- and post-test counseling on the interpretation of results. Funds designated for diagnostic testing, screening, and counseling will be used to ensure access to diagnostic services to test for Zika infection wherever a pregnant woman initially presents for care. This will increase the identification of pregnant women infected with Zika, who require increased monitoring and prenatal care services, and will lead to early diagnosis of infants with special medical needs.

3. Increase Access to Appropriate Specialized Healthcare Services for Pregnant Women, Children Born to Mothers With Maternal Zika Virus Infection, and Their Families

Complex clinical and psychosocial needs associated with maternal Zika virus infection require access to comprehensive and appropriate specialized healthcare, and a coordinated suite of services that serves mother, child, and their families. Increased access to prenatal care is critical to plan for post-natal care, particularly access to ultrasounds which can detect abnormalities in fetal development. In addition, high-risk pregnancies and pregnancy loss, can be stressful for both the pregnant woman and her family and require psychosocial support. Moreover, the infants themselves require enhanced follow-up,

regardless of whether microcephaly or other conditions are diagnosed prenatally or at birth. CDC has published clinical guidance for care of pregnant women with evidence of Zika infection and care of infants born to mothers who had Zika infection.

4. Improve Provider Capacity and Capability

We recognize that award recipients will have varying levels of infrastructure, provider capacity and capability, and other funding sources devoted to addressing Zika. Sufficient provider capacity and capability is critical to ensure successful implementation of an effective Zika prevention initiative in increasing access to contraceptives; reducing barriers to diagnostic testing, screening and counseling; and increasing access to appropriate specialized healthcare services.

This funding opportunity has been structured to ensure an effective Zika response that addresses the four critical components of a comprehensive response to Zika as quickly as possible. Accordingly, the single source emergency funding opportunity is solely available to the territorial and state health departments in American Samoa, Puerto Rico, the U.S. Virgin Islands, and Florida, based on their ability to quickly and efficiently expand their existing Zika response efforts and to further determine the most effective use and dissemination of funds in their respective jurisdictions. The health departments in American Samoa, Puerto Rico, U.S. Virgin Islands, and Florida are uniquely positioned to meet the goals of the emergency cooperative agreement based on their capacity, partnerships, resources, prior experience, and ability to begin implementing the project immediately. Immediate implementation is critical to successfully addressing this rapidly spreading public health threat.

The budget and project period under the specific funding opportunity will be 36 months. The total amount of federal funds available in the first round is up to $66,100,000 as follows:

- American Samoa Government Department of Health: $1,100,000
- Puerto Rico Health Department: $60,600,000
- U.S. Virgin Islands Department of Health: $2,100,000
- Florida Department of Health: $2,300,000

A majority of the first round funds are being allocated to Puerto Rico based on the magnitude of infections and likely rates of infants born to mothers with maternal Zika infection. We expect to issue a second round of funds through an additional funding opportunity announcement in 2017. The initial funding opportunity seeks to issue funds to currently support areas of greatest need, while maintaining additional funds to prevent, detect, and respond to future Zika outbreaks.

## III. Collection of Information Requirements

This notice establishes funding opportunities for health departments in areas with laboratory-confirmed active or local Zika virus transmission. Since we estimate fewer than ten respondents (American Samoa, Puerto Rico, the U.S. Virgin Islands, and Florida), any information collection requirements and burden are exempt (5 CFR 1320.3(c)) from the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: November 30, 2016.

**Andrew M. Slavitt,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 2016–29492 Filed 12–8–16; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Provision of Child Support Services in IV–D Cases under the Hague Child Support Convention; Federally Approved Forms.

*OMB No.:* 0970–0488.

On January 1, 2017, the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance will enter into force for the United States. In order to comply with the Convention, the U.S. must implement the Convention's case processing forms.

State and Federal law require states to use Federally-approved case processing forms. Section 311(b) of UIFSA 2008, which has been enacted by all 50 states, the District of Columbia, Guam, Puerto Rico and the Virgin Islands, requires States to use forms mandated by Federal law. 45 CFR 303.7 also requires child support programs to use federally-approved forms in intergovernmental IV–D cases unless a country has provided alternative forms as a part of its chapter in a Caseworker's Guide to Processing Cases with Foreign Reciprocating Countries.

OCSE received few comments on the burden estimate related to this proposed collection during the 60-day comment period, which started September 30, 2016 (**Federal Register** Volume 81, Number 190, page 67355). Therefore, we have not changed the burden estimate. Concurrent with this request, OCSE requested an emergency clearance, pursuant to section 1320.13 of the implementing rule of the Paperwork Reduction Act, so that States could begin using the forms by January 1, 2017, the effective date for the Hague Child Support Convention in the U.S. OMB granted emergency approval, which will expire on May 31, 2017.

*Respondents:* State, local, or Tribal agencies administering a child support enforcement program under title IV–D of the Social Security Act.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Annex I: Transmittal form under Article 12(2) | 54 | 46 | 1 | 2,484 |
| Annex II: Acknowledgment form under Article 12(3) | 54 | 93 | .5 | 2,511 |
| Annex A: Application for Recognition and Enforcement, including restricted information on the applicant | 54 | 19 | .5 | 513 |
| Annex A: Abstract of Decision | 54 | 5 | 1 | 270 |
| Annex A: Statement of Enforceability of Decision | 54 | 19 | 0.17 | 174 |
| Annex A: Statement of Proper Notice | 54 | 5 | .5 | 135 |

ANNUAL BURDEN ESTIMATES—Continued

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Annex A: Status of Application Report | 54 | 37 | .33 | 659 |
| Annex B: Application for Enforcement of a Decision Made or Recognized in the Requested State, including restricted information on the applicant | 54 | 19 | .5 | 513 |
| Annex B: Status of Application Report, Article 12 | 54 | 37 | .33 | 659 |
| Annex C: Application for Establishment of a Decision, including restricted information on the Applicant | 54 | 5 | .5 | 135 |
| Annex C: Status of Application Report—Article 12 | 54 | 9 | .33 | 160 |
| Annex D: Application for Modification of a Decision, including Restricted Information on the Applicant | 54 | 5 | .5 | 135 |
| Annex D: Status of Application Report—Article 12 | 54 | 9 | .33 | 160 |
| Annex E: Financial Circumstances Form | 54 | 46 | 2 | 4,968 |

*Estimated Total Annual Burden Hours:* 13,478.

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget Paperwork Reduction Project.

*Email: OIRA_SUBMISSION@OMB.EOP.GOV.*

*Attn:* Desk Officer for the Administration for Children and Families.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2016–29590 Filed 12–8–16; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request Proposed Projects:

*Title:* ADP & Services Conditions for FFP for ACF.

*OMB No.:* 0970–0417.

*Description:* State child support agencies are required to establish and operate a federally approved statewide automated data processing and information retrieval system to assist in child support enforcement. States are required to submit an initial advance automated data processing planning document (APD) containing information to assist the Secretary of the Department of Health and Human Services in determining if the state computerized support enforcement system meets federal requirements and providing federal approval. States are also required to submit annually an updated APD for oversight purposes. Based on assessment of the information provided in the initial or updated APDs, states that do not meet federal requirement approval will need to complete an independent verification and validation.

The Advance Planning Document (APD) process, established in the rules at 45 CFR part 95, Subpart F, is the procedure by which States request and obtain approval for Federal financial participation in their cost of acquiring Automatic Data Processing (ADP) equipment and services. State agencies that submit APD requests provide the Department of Health and Human Services (HHS) with the following information necessary to determine the States' needs to acquire the requested ADP equipment and/or services:

*Respondents:* States.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| RFP and Contract | 54 | 1.5 | 4 | 324 |
| Emergency Funding Request | 5 | .1 | 2 | 1 |
| Biennial Reports | 54 | 1 | 1.50 | 81 |
| Advance Planning Document | 34 | 1.2 | 120 | 4,896 |
| Operational Advance Planning Document | 20 | 1 | 30 | 600 |
| Independent Verification and Validation (ongoing) | 3 | 4 | 10 | 120 |
| Independent Verification and Validation (semiannually) | 1 | 2 | 16 | 32 |
| Independent Verification and Validation (quarterly) | 1 | 4 | 30 | 120 |
| System Certification | 1 | 1 | 240 | 240 |

*Estimated Total Annual Burden Hours:* 6,414.

In compliance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chap 35), the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing

to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201. Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2016–29583 Filed 12–8–16; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2016–N–4096]**

### Final Assessment of the Program for Enhanced Review Transparency and Communication; Public Meeting and Establishment of Docket

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public meeting and establishment of docket, request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the establishment of a docket to obtain comments on the final assessment of the Program for Enhanced Review Transparency and Communication for New Molecular Entity (NME) New Drug Applications (NDAs) and Original Biologics License Applications (BLAs) (the Program). FDA is also announcing a public meeting where the final assessment will be discussed and public stakeholders may present their views on the Program to date. The Program is part of the FDA performance commitments under the fifth authorization of the Prescription Drug User Fee Act (PDUFA), which enables FDA to collect user fees for the review of human drug and biologics applications for fiscal years (FYs) 2013–2017. The Program is described in detail in section II.B of the document entitled ''PDUFA Reauthorization Performance Goals and Procedures Fiscal Years 2013 through 2017.'' The Program is being evaluated by an independent contractor with expertise in assessing the quality and efficiency of pharmaceutical and biopharmaceutical development and regulatory review programs. As part of FDA's performance commitments, FDA is providing a period for public comment on the final assessment of the Program.

**DATES:** The public meeting will be held on March 27, 2017, from 10 a.m. to 1 p.m. Public comments will be accepted through April 3, 2017. See the **ADDRESSES** section for information about submitting comments to the public docket. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

**ADDRESSES:** The public meeting will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 2, Conference Room 2047 E, Silver Spring, MD 20993–0002. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For more information on parking and security procedures, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

You may submit comments as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

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

*Written/Paper Submissions*

Submit written/paper submissions as follows:

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

*Instructions:* All submissions received must include the Docket No. FDA–2016–N–4096. Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

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

**FOR FURTHER INFORMATION CONTACT:** Graham Thompson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1146, Silver Spring, MD 20993, 301–796–5003, FAX: 301–847–8443, *Graham.Thompson@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The timely review of the safety and efficacy of new drugs and biologics is central to FDA's mission to protect and promote the public health. Since the implementation of PDUFA I in 1993, FDA has used PDUFA resources to improve the timeliness and predictability of new drug review while maintaining FDA's rigorous standards for drug quality, safety and efficacy. With the availability of these additional fee resources, FDA was able to agree to certain review performance goals, including a complete review of NDAs and BLAs and taking regulatory action within specified timeframes. The managed review processes put in place to accomplish this, and the process enhancements including investments in modernized post-market safety and regulatory science over subsequent reauthorizations of PDUFA, have revolutionized the new drug review process, helping to bring critical products to market for patients. The PDUFA program has been reauthorized every 5 years, with the most recent and fifth authorization occurring in 2012. The PDUFA V Performance Goals and Procedures for Fiscal Years 2013 through 2017 can be accessed at *http://www.fda.gov/downloads/ForIndustry/UserFees/PrescriptionDrugUserFee/UCM270412.pdf*.

PDUFA V introduced a new review program for NME NDAs and original BLAs to enhance review transparency and communication between FDA and applicants on these complex applications. FDA committed to engaging an independent contractor to evaluate the Program to understand the Program's effect on the review of these applications. The interim assessment was published March 31, 2015, and can be accessed at *http://www.fda.gov/downloads/ForIndustry/UserFees/PrescriptionDrugUserFee/UCM436448.pdf*. The PDUFA V performance commitments also call for a final assessment of the Program to be published by December 31, 2016, for public comment. The final assessment can be accessed at *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm327030.htm*. A public meeting will be held on March 27, 2017, where the final assessment will be discussed and public stakeholders may present their views on the Program.

## II. PDUFA V NME NDA and Original BLA Review Program

FDA's performance goals for review of priority and standard new drug applications, 6 and 10 months respectively, have been in place since the late 1990s. Since that time, additional requirements in the review process and scientific advances in product development have made those goals increasingly challenging to meet, particularly for more complex applications like NME NDAs and original BLAs. FDA further recognizes that increasing communication and transparency between the Agency and applicants during FDA's review has the potential to increase efficiency in the review process.

To promote greater transparency and improve communication between the FDA review team and the applicant, FDA implemented a new review model for NME NDAs and original BLAs in PDUFA V. The Program provides opportunities for increased communication between FDA and applicants, including mid-cycle and late-cycle meetings. To accommodate the increased interaction during regulatory review and to address the need for additional time to review these complex applications, FDA's review clock begins after the 60-day administrative filing review period for applications reviewed under the Program.

The goal of the Program is to improve the efficiency and effectiveness of the first-cycle review process by increasing communications during application review. This will provide sponsors with the opportunity to clarify previous submissions and provide additional data and analyses that are readily available, potentially avoiding the need for an additional review cycle when concerns can be promptly resolved without compromising FDA's standards for approval.

## III. Meeting Attendance and Participation

FDA is holding the public meeting on March 27, 2017, from 10 a.m. to 1 p.m. If you wish to attend this public meeting, visit: *https://nmemeeting.eventbrite.com*. Please register by March 20, 2017. If you are unable to attend the public meeting in person, you can register to view a live Webcast of the public meeting. You will be asked to indicate in your registration if you plan to attend in person or via the Webcast. Seating will be limited, so early registration is recommended. Registration is free and will be on a first-come, first-served basis. However, FDA may limit the number of participants from each organization based on space limitations. Registrants will receive confirmation once they have been accepted. Onsite registration on the day of the public meeting will not be possible. If you need special accommodations because of a disability, please contact Graham Thompson (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the public meeting.

FDA will hold an open public comment period to give the public an opportunity to comment during the public meeting. Registration for open public comment will occur at the registration desk on the day of the public meeting on a first-come, first-served basis.

*Transcripts:* Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at *https://www.regulations.gov*. It may be viewed at the Division of Dockets Management (see **ADDRESSES**). A link to the transcript will also be available on the Internet at *http://www.fda.gov/Drugs/NewsEvents/ucm501389.htm*.

Dated: December 2, 2016.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2016–29589 Filed 12–8–16; 8:45 am]

**BILLING CODE 4164–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2016–D–1814]**

### Preparation of Food Contact Notifications for Food Contact Substances in Contact With Infant Formula and/or Human Milk; Draft Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance for industry entitled ''Preparation of Food Contact Notifications for Food Contact Substances in Contact with Infant Formula and/or Human Milk.'' The draft guidance, when finalized, will provide industry with our current thinking on how to prepare a food contact notification (FCN) submission for our review and evaluation of the safety of food contact substances (FCSs) used in contact with infant formula and/or human milk.

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that we consider your comment on the draft guidance before we begin work on the final version of the guidance, submit either electronic or written comments on the draft guidance by February 7, 2017.

**ADDRESSES:** You may submit comments as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

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

*Written/Paper Submissions*

Submit written/paper submissions as follows:

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

*Instructions:* All submissions received must include the Docket No. FDA–2016–D–1814 for ''Preparation of Food Contact Notifications for Food Contact Substances in Contact with Infant Formula and/or Human Milk.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

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

Submit written requests for single copies of the draft guidance to the Division of Food Contact Notifications, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition (HFS–275), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

**FOR FURTHER INFORMATION CONTACT:** Kelly Randolph, Center for Food Safety and Applied Nutrition (HFS–275), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1188.

**SUPPLEMENTARY INFORMATION:**

## I. Background

We are announcing the availability of a draft guidance for industry entitled ''Preparation of Food Contact Notifications for Food Contact Substances in Contact with Infant Formula and/or Human Milk.'' We are issuing the draft guidance consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternate approach if it satisfies the requirements of the applicable statutes and regulations.

Section 409 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 348) establishes an FCN process as the primary method by which we regulate food additives that are FCSs. As defined in section 409(h)(6) of the FD&C Act, the term ''food contact substance'' means any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food.

Under section 409(h) of the FD&C Act and FDA's implementing regulations, FCN submissions must contain a comprehensive discussion of the basis for the manufacturer's or supplier's determination that the use of the FCS that is the subject of the notification is safe. This draft guidance contains recommendations regarding how the scientific information in FCNs for infant food use should demonstrate that the FCS is safe for the specific intended use in contact with infant food. For purposes of the draft guidance, infant food is limited to infant formula and/or human milk, and this draft guidance focuses on infants 0–6 months in age. The draft guidance discusses our

recommendations and provides information for: Chemistry recommendations, including migration testing and exposure estimation; *t*oxicology recommendations including exposure-based testing tiers, minimum testing recommendations, and age-dependent cancer risk analysis of carcinogenic constituents; and *a*dministrative recommendations including acknowledgment of an FCN, non-acceptance of an FCN, final letter, inventory of effective FCNs, and premarket notification consultations.

**II. Paperwork Reduction Act of 1995**

This draft guidance contains proposed information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). ''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. Federal law at 44 U.S.C. 3506(c)(2)(A) requires Federal Agencies to publish a 60-day notice in the **Federal Register** for each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, we will publish a 60-day notice of the proposed collection of information in a future issue of the **Federal Register**.

**III. Electronic Access**

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov*. Use the FDA Web sites listed in the previous sentence to find the most current version of the guidance.

Dated: December 2, 2016.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2016–29587 Filed 12–8–16; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2014–D–0609]**

### Drug Supply Chain Security Act Implementation: Identification of Suspect Product and Notification; Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance for industry entitled ''Drug Supply Chain Security Act Implementation: Identification of Suspect Product and Notification.'' The guidance addresses provisions in the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Drug Supply Chain Security Act (DSCSA). The guidance is intended to aid certain trading partners (manufacturers, repackagers, wholesale distributors, and dispensers) in identifying a suspect product and specific scenarios that could significantly increase the risk of a suspect product entering the pharmaceutical distribution supply chain. The guidance also describes how trading partners should notify FDA of illegitimate product and sets forth a process for terminating notifications of illegitimate product in consultation with FDA. This guidance also includes a new section, for comment purposes only, that describes when manufacturers should notify FDA of a high risk that a product is illegitimate. Aside from that section, this guidance is a final guidance subsequent to the draft guidance that was issued on June 11, 2014.

**DATES:** You may submit either electronic or written comments on Agency guidances at any time. However, the portion of this guidance that describes when manufacturers should notify FDA if there is a high risk that a product is illegitimate, is being distributed for comment purposes only. To ensure that the Agency considers your comment on this draft section before it begins work on the final version of this section of the guidance, submit either electronic or written comments on this section by February 7, 2017.

**ADDRESSES:** You may submit comments as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

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

*Written/Paper Submissions*

Submit written/paper submissions as follows:

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

*Instructions:* All submissions received must include the Docket No. FDA–2014–D–0609 for ''Drug Supply Chain Security Act Implementation: Identification of Suspect Product and Notification; Guidance for Industry; Availability.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states, ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments, and you must identify this

information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

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

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Bldg. 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:** Office of Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–3130, *drugtrackandtrace@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a guidance for industry entitled ''Drug Supply Chain Security Act Implementation: Identification of Suspect Product and Notification.'' The guidance addresses provisions in the FD&C Act, as amended by the DSCSA (Pub. L. 113–54). Section 202 of the DSCSA adds section 582(h)(2) to the FD&C Act (21 U.S.C. 360eee–1(h)(2)), which requires FDA to issue guidance to aid certain trading partners (manufacturers, repackagers, wholesale distributors, and dispensers) in identifying a suspect product and terminating notifications. The guidance identifies specific scenarios that could significantly increase the risk of a suspect product entering the pharmaceutical distribution supply chain, and provides recommendations on how trading partners can identify such product and determine whether the product is a suspect product as soon as practicable.

Beginning January 1, 2015, section 582 of the FD&C Act required trading partners, upon determining that a product in their possession or control is illegitimate, to notify: (1) FDA and (2) all immediate trading partners that they have reason to believe may have received the illegitimate product, not later than 24 hours after making the determination. Manufacturers are additionally required under section 582(b)(4)(B)(ii)(II) of the FD&C Act to notify FDA and any immediate trading partners that the manufacturer has reason to believe may possess a product manufactured by (or purported to be manufactured by) the manufacturer, not later than 24 hours after the manufacturer determines or is notified by FDA or a trading partner that there is a high risk that a product is illegitimate. Section III.C of this guidance, entitled ''For Manufacturers: High Risk of Illegitimacy Notification'' and highlighted in grey, describes notifications related to products that pose a high risk of illegitimacy, and is marked ''for comment purposes only'' to provide an opportunity for comment before it is finalized. The guidance also addresses how trading partners should notify FDA using Form FDA 3911. In addition, in accordance with section 582(h)(2) of the FD&C Act, the guidance sets forth the process by which trading partners must terminate the notifications using Form FDA 3911, in consultation with FDA, regarding illegitimate product and, for a manufacturer, a product with a high risk of illegitimacy, under section 582(b)(4)(B), (c)(4)(B), (d)(4)(B), and (e)(4)(B) of the FD&C Act.

In the **Federal Register** of June 11, 2014 (79 FR 33564), FDA announced the availability of a draft guidance entitled ''Drug Supply Chain Security Act Implementation: Identification of Suspect Product and Notification.'' FDA has carefully considered the comments received and made the following changes in response to the comments: Section C, ''For Manufacturers: High Risk of Illegitimacy Notifications,'' on pgs. 8–11 of the guidance, is a new section added in response to comments and questions received. In addition, FDA made minor changes to the Form FDA 3911 and to the instructions for completing the form.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Drug Supply Chain Security Act Implementation: Identification of Suspect Product and Notification.'' It does not establish any rights for any person and, with the exception of section IV.B, is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

## II. Electronic Access

Persons with access to the Internet may obtain the guidance at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *https://www.regulations.gov.*

## III. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in this guidance was approved under OMB control number 0910–0806.

Dated: December 5, 2016.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2016–29588 Filed 12–8–16; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Council on Graduate Medical Education

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

**ACTION:** Notice of charter renewal.

**SUMMARY:** HHS is hereby giving notice that the Council on Graduate Medical Education (COGME) has been renewed. The effective date of the renewed charter is September 30, 2016.

**FOR FURTHER INFORMATION CONTACT:** Dr. Kennita Carter, Senior Advisor and Designated Federal Official, Division of Medicine and Dentistry, HRSA, HHS, 15M116, 5600 Fishers Lane, Rockville, MD 20857. Phone: (301) 945–3505; email: *kcarter@hrsa.gov.*

**SUPPLEMENTARY INFORMATION:** COGME is authorized by section 762 (42 U.S.C. 294o) of the Public Health Service Act,

as amended. Except where otherwise indicated, COGME is governed by provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), as amended, which sets forth standards for the formation and use of advisory committees. In accordance with the Federal Advisory Committee Act (FACA), COGME was initially chartered on September 30, 1996, and has been renewed at appropriate intervals.

COGME provides advice to the Secretary of HHS (Secretary) on a range of issues including: The supply and distribution of physicians in the United States; current and future physician shortages or excesses; issues relating to foreign medical school graduates; Federal policies related to the previously listed topics, including policies concerning changes in the financing of medical education training; and the development of performance measures and longitudinal evaluation of medical education programs. COGME's reports are submitted to the Secretary and Chairmen and Ranking Members of the Senate Committee on Health, Education, Labor, and Pensions and the House of Representatives Committee on Energy and Commerce.

Renewal of the COGME charter authorizes the Committee to operate until September 30, 2018.

A copy of the COGME charter is available on the COGME Web site at *http://www.hrsa.gov/advisorycommittees/bhpradvisory/cogme/index.html*. A copy of the charter also can be obtained by accessing the FACA database that is maintained by the Committee Management Secretariat under the General Services Administration. The Web site address for the FACA database is *http://www.facadatabase.gov/*.

**Jason E. Bennett,**

*Director, Division of the Executive Secretariat.*

[FR Doc. 2016–29499 Filed 12–8–16; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Public Comment Request; Children's Hospitals Graduate Medical Education Payment Program Application and Full-Time Equivalent Resident Assessment Forms

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on this ICR should be received no later than January 9, 2017.

**ADDRESSES:** Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N–39, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the information request collection title for reference.

*Information Collection Request Title:* Children's Hospitals Graduate Medical Education Payment Program Application and Full-Time Equivalent Resident Assessment Forms OMB No. 0915–0247 Revision.

*Abstract:* The Children's Hospitals Graduate Medical Education (CHGME) Payment Program was enacted by Public Law 106–129, and reauthorized by the CHGME Support Reauthorization Act of 2013 (Pub. L. 113–98) to provide Federal support for graduate medical education (GME) to freestanding children's hospitals. The legislation indicates that eligible children's hospitals will receive payments for both direct and indirect medical education. The CHGME Payment Program application and full-time equivalent (FTE) resident assessment forms received OMB clearance on June 30, 2014.

The CHGME Support Reauthorization Act of 2013 included a provision to allow certain newly qualified children's hospitals to apply for CHGME Payment Program funding. The CHGME Payment Program application forms have been revised to accommodate the new statute. In addition, a payment question included in the CHGME Payment Program application forms has been removed, since the participating children's hospitals are now required to electronically communicate their financial information to the Payment Management System through the Electronic Handbook.

The form changes are only applicable to the HRSA 99–1 (also known as Exhibit O (2)) and HRSA 99–5 forms. All other hospital and auditor forms are the same as currently approved. The changes to the HRSA 99–1 and HRSA 99–5 forms require OMB approval and are as follows:

*1. HRSA 99–1:* Add additional description to Line 4.06 (both Page 2 and Page 2 Supplemental), 5.06 and 6.06. The current description is ''FTE adjusted cap.'' The new description will be ''FTE adjusted cap or 2013 CHGME Reauthorization cap due to Public Law 113–98.''

*2. HRSA 99–5:* Remove Payment Information question and check boxes, applicable only to: (1) Hospitals which have not previously participated in the CHGME Payment Program, and (2) hospitals in which financial institution information has changed since submission of its last application.

*Need and Proposed Use of the Information:* Data on the number of FTE residents trained are collected from children's hospitals applying for CHGME Payment Program funding. These data are used to determine the amount of direct and indirect medical education payments to be distributed to participating children's hospitals. Indirect medical education payments are derived from a formula that requires the reporting of discharges, beds, and case mix index information from participating children's hospitals. As required by statute, the FTE resident assessment shall determine any changes to the FTE resident counts initially reported to the CHGME Payment Program.

*Likely Respondents:* The likely respondents include the estimated 60 children's hospitals that apply and receive CHGME Payment Program funding, as well as the 30 auditors contracted by HRSA to perform the FTE resident assessments of the children's hospitals participating in the CHGME Payment Program. Children's hospitals applying for CHGME Payment Program funding are required by the CHGME Payment Program statute to submit data on the number of FTE residents trained in an annual application. Once funded by the CHGME Payment Program, these same children's hospitals are required to submit audited data on the number of FTE residents trained during the federal fiscal year to participate in the reconciliation payment process. Contracted auditors are requested by

HRSA to submit assessed data on the number of FTE residents trained by the children's hospitals participating in the CHGME Payment Program in an FTE resident assessment summary.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Number of respondents | Number of responses per respondent | Total responses | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Application Cover Letter (Initial and Reconciliation) | 60 | 2 | 120 | 0.33 | 39.6 |
| HRSA 99 (Initial and Reconciliation) | 60 | 2 | 120 | 0.33 | 39.6 |
| HRSA 99–1 (Initial) | 60 | 1 | 60 | 26.5 | 1,590 |
| HRSA 99–1 (Reconciliation) | 60 | 1 | 60 | 6.5 | 390 |
| HRSA 99–1 (Supplemental) (FTE Resident Assessment) | 30 | 2 | 60 | 3.67 | 220.2 |
| HRSA 99–2 (Initial) | 60 | 1 | 60 | 11.33 | 679.8 |
| HRSA 99–2 (Reconciliation) | 60 | 1 | 60 | 3.67 | 220.2 |
| HRSA 99–4 (Reconciliation) | 60 | 1 | 60 | 12.5 | 750 |
| HRSA 99–5 (Initial and Reconciliation) | 60 | 2 | 120 | 1.55 | 186 |
| CFO Form Letter (Initial and Reconciliation) | 60 | 2 | 120 | 0.33 | 39.6 |
| Exhibit 2 (Initial and Reconciliation) | 60 | 2 | 120 | 0.33 | 39.6 |
| Exhibit 3 (Initial and Reconciliation) | 60 | 2 | 120 | 0.33 | 39.6 |
| Exhibit 4 (Initial and Reconciliation) | 60 | 2 | 120 | 0.33 | 39.6 |
| FTE Resident Assessment Cover Letter (FTE Resident Assessment) | 30 | 2 | 60 | 0.33 | 19.8 |
| Conversation Record (FTE Resident Assessment) | 30 | 2 | 60 | 3.67 | 220.2 |
| Exhibit C (FTE Resident Assessment) | 30 | 2 | 60 | 3.67 | 220.2 |
| Exhibit F (FTE Resident Assessment) | 30 | 2 | 60 | 3.67 | 220.2 |
| Exhibit N (FTE Resident Assessment) | 30 | 2 | 60 | 3.67 | 220.2 |
| Exhibit O(1) (FTE Resident Assessment) | 30 | 2 | 60 | 3.67 | 220.2 |
| Exhibit O(2) (FTE Resident Assessment) | 30 | 2 | 60 | 26.5 | 1590 |
| Exhibit P (FTE Resident Assessment) | 30 | 2 | 60 | 3.67 | 220.2 |
| Exhibit P(2) (FTE Resident Assessment) | 30 | 2 | 60 | 3.67 | 220.2 |
| Exhibit S (FTE Resident Assessment) | 30 | 2 | 60 | 3.67 | 220.2 |
| Exhibit T (FTE Resident Assessment) | 30 | 2 | 60 | 3.67 | 220.2 |
| Exhibit T(1) (FTE Resident Assessment) | 30 | 2 | 60 | 3.67 | 220.2 |
| Exhibit 1 (FTE Resident Assessment) | 30 | 2 | 60 | 0.33 | 19.8 |
| Exhibit 2 (FTE Resident Assessment) | 30 | 2 | 60 | 0.33 | 19.8 |
| Exhibit 3 (FTE Resident Assessment) | 30 | 2 | 60 | 0.33 | 19.8 |
| Exhibit 4 (FTE Resident Assessment) | 30 | 2 | 60 | 0.33 | 19.8 |
| Total | *90 | | *90 | | 8,164.80 |

*The total is 90 because the same hospitals and auditors are completing the forms.

HRSA specifically requests comments on (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.

**Jason E. Bennett,**

*Director, Division of the Executive Secretariat.*

[FR Doc. 2016–29503 Filed 12–8–16; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Public Comment Request; Organ Procurement and Transplantation Network

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on this Information Collection Request must be received no later than February 7, 2017.

**ADDRESSES:** Submit your comments to *paperwork@hrsa.gov* or by mail to the HRSA Information Collection Clearance Officer, at 5600 Fishers Lane, Room 14N39, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain copies of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the information request collection title for reference.

*Information Collection Request Title:* Organ Procurement and Transplantation Network OMB No. 0915–0184—Revision.

*Abstract:* HRSA is proposing additions and revisions to the following documents used to collect information from existing or potential members of the Organ Procurement and Transplantation Network (OPTN). The documents under revision include: (1) Application forms for individuals or organizations interested in membership in OPTN, (2) application forms for OPTN members applying to have organ-specific transplant programs designated within their institutions, and (3) forms submitted by OPTN members to report certain personnel changes.

*Need and Proposed Use of the Information:* Membership in the OPTN is determined by submission of application materials to the OPTN (not to HRSA) demonstrating that the applicant meets all required criteria for membership and will agree to comply with all applicable provisions of the National Organ Transplant Act, as amended, 42 U.S.C. 273, *et seq.* (NOTA), OPTN Final Rule, 42 CFR part 121, OPTN bylaws, and OPTN policies. Section 1138 of the Social Security Act, as amended, 42 U.S.C. 1320b–8 (section 1138) requires that hospitals in which transplants are performed be members of, and abide by, the rules and requirements (as approved by the Secretary of HHS) of the OPTN, including those relating to data collection, as a condition of participation in Medicare and Medicaid for the hospital. Section 1138 contains a similar provision for organ procurement organizations (OPOs) and makes membership in the OPTN and compliance with its operating rules and requirements, including those relating to data collection, mandatory for all OPOs. The membership application forms listed below enable prospective OPTN members to submit the information necessary for OPTN to make membership decisions. Likewise, the designated transplant program application forms listed below enable OPTN members to submit the information necessary for OPTN to make designation decisions.

New membership forms have been created for transplant centers seeking to perform Vascularized Composite Allograft (VCA) transplants, a new and emerging field. VCAs were added to the set of organs covered by NOTA and the OPTN final rule via regulation, effective July 3, 2014. The OPTN Board approved OPTN membership requirements for VCA programs in late 2015. Because a transplant center applying to be an OPTN-approved VCA transplant program must already have current OPTN approval as a designated transplant program for at least one other organ, the VCA membership forms were developed based on existing membership forms.

To keep pace with scientific and clinical advances in the field of transplantation, HRSA plans to submit a clearance package to OMB after reviewing comments to this notice. New forms and revisions to the current OPTN forms include the following:

- Organ-specific program and histocompatibility laboratory applications reflecting key personnel requirement revisions made to the OPTN bylaws (the bylaws revisions will be implemented upon approval of these forms).
- Program applications based on existing organ-specific application forms, for programs seeking intestinal and VCA transplantation approval OPTN-defined VCAs: VCA head and neck, VCA upper limb, VCA abdominal wall kidney, VCA abdominal wall liver, VCA abdominal wall pancreas, VCA abdominal wall intestine, and VCA other.
- Intestine program applications, based on an existing organ-specific application form.
- Cover pages, based on existing cover pages for other organ types, have been created for VCA new transplant program, VCA key personnel change, VCA other new transplant program, and VCA other key personnel change.
- Questions and tables reflecting new ordering and numbering for improved flow on various forms.

The burden of completing the new and revised forms is expected to be minimal, as these forms are based on OPTN membership applications that organizations have completed in the past.

*Likely Respondents:* Likely respondents to this notice include the following: Hospitals performing or seeking to perform organ transplants, organ procurement organizations, and medical laboratories seeking to become OPTN-approved histocompatibility laboratories.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested, including the time needed to (1) review instructions; (2) develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and transmitting, disclosing, or providing information; (3) train personnel to respond to a collection of information; (4) search data sources; (5) complete and review the information collected; (6) and transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Number of respondents | Number of responses per respondent | Total responses | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| A. New Transplant Member Application—General | 2 | 1 | 2 | 8 | 16 |
| B Kidney (KI) Designated Program Application | 118 | 2 | 236 | 4 | 944 |
| B Liver (LI) Designated Program Application | 59 | 2 | 118 | 4 | 472 |
| B Pancreas (PA) Designated Program Application | 60 | 2 | 120 | 4 | 480 |
| B Heart (HR) Designated Program Application | 92 | 2 | 184 | 4 | 736 |
| B Lung (LU) Designated Program Application | 30 | 2 | 60 | 4 | 240 |
| B Islet (PI) Designated Program Application | 2 | 2 | 4 | 3 | 12 |
| B Living Donor (LD) Recovery Program Application | 42 | 2 | 84 | 3 | 252 |
| B VCA Head and Neck Designated Program Application | 14 | 2 | 28 | 3 | 84 |
| B VCA Upper Limb Designated Program Application | 17 | 2 | 34 | 3 | 102 |
| B VCA Abdominal Wall * Designated Program Application | 13 | 2 | 26 | 3 | 78 |

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| Form name | Number of respondents | Number of responses per respondent | Total responses | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| VCA Abdominal Wall—Kidney | | | | | |
| VCA Abdominal Wall—Liver | | | | | |
| VCA Abdominal Wall—Pancreas | | | | | |
| VCA Abdominal Wall—Intestine | | | | | |
| B VCA Other** Designated Program Application | 9 | 2 | 18 | 2 | 36 |
| B Intestine Designated Program Application | 40 | 2 | 80 | 3 | 240 |
| C OPO New Application | 0 | 1 | 0 | 4 | 0 |
| D Histocompatibility Lab Application | 3 | 2 | 6 | 4 | 24 |
| E Change in Transplant Program Key Personnel | 395 | 2 | 790 | 4 | 3,160 |
| F Change in Histocompatibility Lab Director | 25 | 2 | 50 | 2 | 100 |
| G Change in OPO Key Personnel | 10 | 1 | 10 | 1 | 10 |
| H Medical Scientific Org Application | 7 | 1 | 7 | 2 | 14 |
| I Public Org Application | 4 | 1 | 4 | 2 | 8 |
| J Business Member Application | 2 | 1 | 2 | 2 | 4 |
| K Individual Member Application | 4 | 1 | 4 | 1 | 4 |
| Total = 25 forms | 948 | | 1,867 | | 7,016 |

*VCA Abdominal Wall Designated Program qualification requirements require documentation on VCA Head and Neck, VCA Upper Limb, Kidney, Liver, Intestine, or Pancreas program requirements.

**VCA Other Designated Program Application data based on four categories of ''others'' including genitourinary and lower limb as defined by the OPTN bylaws.

HRSA specifically requests comments on (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.

**Jason E. Bennett,**

*Director, Division of the Executive Secretariat.*

[FR Doc. 2016–29504 Filed 12–8–16; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

**[Document Identifier: OS–0990–New–60D]**

### Agency Information Collection Activities; Proposed Collection; Public Comment Request

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit a new Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, OS seeks comments from the public regarding the burden estimate below or any other aspect of the ICR.

**DATES:** Comments on the ICR must be received on or before February 7, 2017.

**ADDRESSES:** Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–5683.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the document identifier OS–0990–New–60D for reference.

*Information Collection Request Title:* A Client-Centered Performance Measure for Contraceptive Services.

*Abstract:* The Office of the Assistant Secretary for Health/Office of Population Affairs is seeking an approval by the Office of Management and Budget on a new information collection. We propose to evaluate a scale previously developed by our collaborators at the University of California San Francisco (UCSF)—the 11-item Interpersonal Quality of Family Planning Care (IQFP) scale—among 3,000 female family planning clients. Initially informed by qualitative work around women's preferences for contraceptive counseling, the IQFP scale has already been shown to be a valid and reliable scale in research settings but its use as a performance measure hasn't yet been evaluated. Family planning providers will also complete a short survey about provider characteristics (approximately 80 providers) and clinic demographics (approximately 10 clinics).

*Need and Proposed Use of the Information:* The proposed use of the information to be collected is to develop a patient-reported outcome performance measure (PRO–PM) on contraceptive counseling and assess its validity, reliability, feasibility, usability, and use. If we find that this measure has adequately met these criteria, UCSF and the Office of Population Affairs (OPA) will prepare it for submission to the National Quality Forum (NQF) for use in a variety of clinical settings where family planning care is provided. Measurement of the quality of contraceptive counseling can be used as part of quality improvement activities to increase awareness and use of client-centered counseling approaches. By improving client-centered services, women can choose the contraceptive method that works best for them, which can lead to reductions in rates of unintended pregnancy and other adverse reproductive outcomes.

*Likely Respondents:* Family planning providers and their patients.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

| Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|
| Survey for provider characteristics | 27 | 1 | 5/60 | 2.25 |
| Survey for clinic characteristics | 3 | 1 | 20/60 | 1 |
| Contraceptive counseling survey | 1,000 | 1 | 10/60 | 166.67 |
| Total | | | | 169.92 |

OS specifically requests comments on (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.

**Terry S. Clark,**

*Asst. Information Collection Clearance Officer.*

[FR Doc. 2016–29452 Filed 12–8–16; 8:45 am]

**BILLING CODE 4150–28–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

**[Document Identifier: HHS–OS–0990–0416–60D]**

### Agency Information Collection Activities; Proposed Collection; Public Comment Request

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). The ICR is for extending the use of the approved information collection assigned OMB control number 0990–0416, which expires March 31, 2017. Prior to submitting the ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on the ICR must be received on or before February 7, 2017.

**ADDRESSES:** Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–5683.

**FOR FURTHER INFORMATION CONTACT:** Information Collection Clearance staff, *Sherrette.funn@hhs.gov* or (202) 690–5683.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the document identifier 0990–0416–60D for reference.

*Proposed Project:* Pregnancy Assistance Fund (PAF) Performance Measures Collection Abstract: The Office of Adolescent Health (OAH), U.S. Department of Health and Human Services (HHS), is requesting an extension of a currently approved information collection request by OMB. The purpose of the renewal is to extend the period of collection through March 31, 2018 to complete the collection of the Pregnancy Assistance Fund (PAF) Performance Measures from grantees funded in August 2013, and to allow for data collection from 3 new PAF grantees funded in July 2015, increasing the number of respondents from 17 to 20. There are no changes to the data to be collected.

*Need and Proposed Use of the Information:* OAH will use the performance data to inform planning and resource allocation decisions; identify technical assistance needs; and provide Congress, OMB, and the general public with information about the individuals who participate in PAF-funded activities and the services they receive.

*Likely Respondents:* 20 PAF grantees (States and Tribes).

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The table below summarizes the total annual burden hours estimated for this ICR.

EXHIBIT 1—TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

| Forms (if necessary) | Type of respondent | Number of respondents | Number of responses per respondent | Average burden hours per respondent | Total burden hours |
|---|---|---|---|---|---|
| Participant & Partner Characteristics *(16 measures)*. | Grantees Program Staff: All PAF Grantees. | 20 | 1 | 19 | 380 |
| Category 1 Measures *(5 measures)* | Grantee Program Staff: PAF Category 1 Grantees (serving institutions of higher education). | 3 | 1 | 6 | 18 |
| Category 2 Measures *(7 measures)* | Grantee Program Staff: PAF Category 2 Grantees (serving high schools and community service centers). | 18 | 1 | 9 | 162 |

EXHIBIT 1—TOTAL ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| Forms (if necessary) | Type of respondent | Number of respondents | Number of responses per respondent | Average burden hours per respondent | Total burden hours |
|---|---|---|---|---|---|
| Category 3 Measures *(3 measures)* | Grantee Program Staff: PAF Category 3 Grantees (improve services for pregnant women who are victims of domestic violence, sexual violence, sexual assault, and stalking). | 5 | 1 | 3 | 15 |
| Category 4 Measures *(1 measure)* ... | Grantee Program Staff: PAF Category 4 Grantees (Implementing public awareness and education activities). | 9 | 1 | 1 | 9 |
| Total ..... | ..... | 20 | ..... | ..... | 584 |

OS specifically requests comments on (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.

**Terry S. Clark,**

*Asst. Information Collection Clearance Officer.*

[FR Doc. 2016–29451 Filed 12–8–16; 8:45 am]

**BILLING CODE 4168–11–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke, Special Emphasis Panel; SIREN Clinical Coordinating Center.

*Date:* December 8, 2016.

*Time:* 8:00 a.m. to 12:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Palomar, 2121 P Street NW., Washington, DC 20037.

*Contact Person:* Shanta Rajaram, Ph.D., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–6033, *rajarams@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Neurological Disorders and Stroke, Special Emphasis Panel; SIREN HUBS.

*Date:* December 8–9, 2016.

*Time:* 1:30 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Palomar, 2121 P Street NW., Washington, DC 20037.

*Contact Person:* Shanta Rajaram, Ph.D., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–6033, *rajarams@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 2, 2016.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–29459 Filed 12–8–16; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Announcement of Requirements and Registration for ''A Wearable Alcohol Biosensor: A Second Challenge''

**Authority:** 15 U.S.C. 3719.

**SUMMARY:** Through the ''A Wearable Alcohol Biosensor: A Second Challenge'' (the ''Challenge''), the National Institute on Alcohol Abuse and Alcoholism (NIAAA), a component of the National Institutes of Health (NIH), is building upon the success of the previous challenge and searching for a wearable or otherwise discreet device capable of measuring blood alcohol level in real time. The advent of alcohol biosensors that can be worn discreetly and used by individuals in the course of their daily lives will advance the mission of the NIAAA in the arenas of research, treatment, and rehabilitation. Current technological developments in electronics, miniaturization, wireless technology, and biophysical techniques of alcohol detection in humans increase the likelihood of successful development of a useful alcohol biosensor in the near future. The NIH believes that this Challenge will further stimulate investment from public and private sectors in the development of functional alcohol biosensors that will be appealing to individuals, treatment providers, and researchers and will continue to further the NIAAA's mission.

**DATES:** Submission period begins December 9, 2016, 9:00 a.m. ET.

*Submission period ends:* May 15, 2017.

*Judging period:* May 16, 2017–July 26, 2016.

*Winners announced:* On or after August 1, 2017.

The NIH will announce any changes to this timeline by amending this **Federal Register** notice.

**FOR FURTHER INFORMATION CONTACT:** M. Katherine Jung, Ph.D., Acting Director, Division of Metabolism and Health Effects, National Institute on Alcohol Abuse and Alcoholism, Phone: 301–443–8744, Email *Kathy.jung@nih.gov*. F.L. Dammann, M.P.A., Management Analyst and Special Assistant to the Executive, National Institute on Alcohol Abuse and Alcoholism, Phone: 301–480–9433, Email: *fl.dammann@nih.gov*. All questions and answers regarding the Challenge will be posted and updated as necessary at *https://stage.niaaa.nih.gov/research/challenge-prize* under Frequently Asked Questions. Questions from Solvers that may reveal proprietary information related to solutions under development addressed to NIAAA will not be posted on *Challenge.gov*.

**SUPPLEMENTARY INFORMATION:**

**The NIAAA's Statutory Authority To Conduct the Challenge**

The NIAAA is conducting this challenge under the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science (COMPETES) Reauthorization Act of 2010, 15 U.S.C. 3719. In addition, this Challenge is consistent with and advances the mission of the NIAAA, as described in 42 U.S.C. 285n, to conduct and support biomedical and behavioral research, health services research, research training, and health information dissemination with respect to the prevention of alcohol abuse and the treatment of alcoholism, and to conduct a study of alternative approaches for alcoholism and alcohol abuse treatment and rehabilitation.

**Subject of Challenge**

The winners of the first Wearable Alcohol Biosensor Challenge achieved significant improvements in detection of alcohol in sweat and sweat vapor, and their products will benefit the mission of the NIAAA in multiple ways. Innovators are challenged to design a wearable monitoring device based on alternate distinct and inventive methods of alcohol detection, specifically using non-invasive technology to detect alcohol directly in blood or interstitial fluid. Innovation is encouraged.

**Rules for Participating in the Challenge**

This Challenge is open to any ''Solver,'' where ''Solver'' is defined as an individual, a group of individuals (*i.e.,* a team), or an entity. Whether singly or as part of a group or entity, individuals younger than 18 participating in the Challenge as Solvers must provide parental consent. By allowing individuals younger than 18 to participate in the Challenge as Solvers, the NIH is not condoning or encouraging underage alcohol consumption, but is rather encouraging innovation in a manner that is consistent with all applicable laws.

1. To be eligible to win a prize under this Challenge, the Solver—

a. Shall have registered to participate in the Challenge under the rules as promulgated by the NIH as published in this Notice and *www.challenge.gov*;

b. Shall have complied with all the requirements set forth in this notice;

c. In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States; and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States. Note: Non-U.S. citizens and nonpermanent residents can participate as a member of a team that otherwise satisfies the eligibility criteria but will not be eligible to win a monetary prize (in whole or in part); however, their participation as part of a winning team, if applicable, may be recognized when results are announced;

d. May not be a federal entity;

e. May not be a federal employee acting within the scope of the employee's employment and further, in the case of the Department of Health and Human Services (HHS) employees, may not work on their submission(s) during assigned duty hours. Note: Federal ethical conduct rules may restrict or prohibit federal employees from engaging in certain outside activities, so any federal employee not otherwise excluded who seeks to participate in this Challenge should consult his/her agency's ethics official prior to developing a submission; and

f. May not be an employee of the NIH, a judge of the challenge, a member of the technical evaluation panel, or any other party involved with the design, production, execution, or distribution of the Challenge or the immediate family (specifically, a parent, stepparent, spouse, domestic partner, child, sibling, or step-sibling).

2. Federal grantees may not use federal funds to develop Challenge submissions.

3. Federal contractors may not use federal funds from a contract to develop Challenge submissions or to fund efforts in support of a Challenge submission.

4. Submissions must not infringe upon any copyright or any other rights of any third party.

5. By participating in this Challenge, each individual (whether competing singly or in a group) and entity agrees to assume any and all risks and waive claims against the federal government and its related entities (as defined in the COMPETES Act), except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in this Challenge, whether the injury, death, damage, or loss arises through negligence or otherwise.

6. Based on the subject matter of the Challenge, the type of work that it will possibly require, as well as an analysis of the likelihood of any claims for death, bodily injury, property damage, or loss potentially resulting from Challenge participation, individuals (whether competing singly or in a group) or entities participating in the Challenge are not required to obtain liability insurance or demonstrate financial responsibility in order to participate in this Challenge.

7. By participating in this Challenge, each individual (whether competing singly or in a group) and entity agrees to indemnify the federal government against third party claims for damages arising from or related to Challenge activities.

8. An individual or entity shall not be deemed ineligible because the individual or entity used federal facilities or consulted with federal employees during the Challenge if the facilities and employees are made available to all individuals and entities participating in the Challenge on an equitable basis.

9. By submitting the Submission, each Solver warrants that he or she is the sole author and owner of any copyrightable works or patentable inventions that the Submission comprises, that the works are wholly original with the Solver (or is an improved version of an existing work that the Solver has sufficient rights to use and improve), and that the Submission does not infringe on any copyright, patent or any other rights of any third party of which Solver is aware. To receive an award, Solvers will not be required to transfer their exclusive intellectual property rights to the NIH. Instead, Solvers will grant to the federal government a nonexclusive license to practice their solutions and use the materials that describe them. To participate in the Challenge, each Solver must warrant that there are no legal obstacles to providing a nonexclusive license of Solver's rights to the federal government, where such license need be provided only if the Solver wins the award. This license will be a condition

of the award and will grant to the United States government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States throughout the world any invention made by the Solvers that covers the Submission. In addition, the license will grant to the federal government and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in any copyrightable works that the Submission comprises, including the right to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly said copyrightable works.

10. The NIH reserves the right, in its sole discretion, to (a) cancel, suspend, or modify the Challenge, and/or (b) not award any prizes if no entries are deemed worthy.

11. Each individual (whether participating singly or in a group) or entity agrees to follow all applicable federal, state, and local laws, regulations, and policies.

12. Except where prohibited, participation in the Challenge constitutes consent by the Solvers to allow NIAAA or its contractors to the use or display the Solvers' names, likenesses, photographs, prototype images, and/or hometowns and states for publications and publicity purposes in any media, worldwide, without further payment or consideration.

13. Each individual (whether participating singly or in a group) and entity participating in this Challenge must comply with all terms and conditions of these rules, and participation in this Challenge constitutes each such participant's full and unconditional agreement to abide by these rules. Winning is contingent upon fulfilling all requirements herein.

14. An individual, team, or entity that is currently on the Excluded Parties List (*https://oig.hhs.gov/exclusions/*) will not be selected as a Finalist or prize winner.

**Registration and Submission Process for Participants**

Solvers must register and submit their Solutions on *www.challenge.gov* Web site under the link for ''A Wearable Alcohol Biosensor: A Second Challenge.''

**Amount of the Prize**

*First Prize:* $200,000.

*Second Prize:* $100,000.

The award approving official for this Challenge is the NIAAA Director.

**Payment of the Prize**

Prizes awarded under this competition will be paid by electronic funds transfer and may be subject to Federal income taxes. The NIAAA will comply with the Internal Revenue Service withholding and reporting requirements, where applicable.

**Basis Upon Which Winners Will Be Evaluated**

*Solution Desired*

Solvers are asked to produce a prototype of an appealing, inconspicuous, low profile, wearable technology capable of monitoring blood alcohol non-invasively. The design can take the form of jewelry, clothing, or any other format located in contact with the human body. Highest priority will be given to devices that use non-invasive technologies to measure alcohol concentration in blood or interstitial fluid, as opposed to the detection of alcohol exuded through the skin in sweat or vapor. Functionally, the solution must:

- Achieve real time-monitoring and quantification of blood alcohol level.
- Collect and interpret data, eliminating as much of the biological and device-related delays as possible through innovative, validated, and verifiable techniques.
- Store or transmit data to a smartphone or other device by wireless transmission. It is desirable that the technology permits subject identification. Data storage and transmission must be completely secure in order to protect the privacy of the individual.
- Verify standardization at regular intervals and indicate loss of functionality. Operate from a dependable and rechargeable power source.
- Be removable.

NIAAA is open to a range of design forms which can accomplish the above tasks.

*What To Submit*

This is a *reduction to practice* Challenge that requires written documentation and a working prototype of the submitted solution. The submission to the Challenge must be in English and include the following:

1. A working prototype of a wearable alcohol biosensor including all accessories necessary for functionality.

2. Written evidence of successful data storage and retrieval, of consistent function, reliability and robust reproducibility of alcohol quantification. The submitted device and the written documentation must be free of any Personally Identifiable Information (PII) accrued during prototype development. A detailed description of the proposed Solution must include an instructive account of the method of alcohol detection, interval of data sampling, the means of subject identification, proposed process of manufacture, verification of data security and integrity, and standardization of measurements. Upon receipt of the written documentation, NIAAA will provide an address for the shipment of the prototypes to NIAAA for evaluation.

3. Image or images of the proposed wearable, to include overall dimensions.

4. A video not to exceed 10 minutes demonstrating the wearable's required capabilities.

Submissions will be judged by a qualified panel of federal employees selected by the NIAAA. The award is primarily contingent upon experimental validation of the submitted Solution by the NIAAA. The panel will evaluate submissions based on the following judging criteria:

- Accuracy, reliability, and frequency of blood alcohol levels as validated by the NIAAA.
- Functionality, accuracy, and integration of data collection, data transmission and data storage.
- Safeguards for data integrity and privacy protection for the wearer.
- Plans for process of manufacture.
- Marketability and likelihood of bringing the product to market.
- Appeal and acceptability to wearers.

During the judging period, the expert panel may request additional information or clarification from the Solver in order to evaluate the entry. The judges will be assisted by a panel of technical experts in the following areas: Alcohol pharmacokinetics, chemistry, engineering, information technology and information system security, behavioral and social sciences, development of vehicular alcohol detection systems, and wearables. Depending on the nature of the entries, additional expertise may be sought to advise the judges.

**Additional Information**

*Privacy, Data Security, Ethics, and Compliance:* Solvers are required to identify and address privacy and security issues in their proposed projects and describe specific solutions for meeting them. In addition to complying with appropriate policies, procedures, and protections for data that ensures all privacy requirements and institutional policies are met, use of data should not allow the identification

of the individual from whom the data was collected. Solvers are responsible for compliance with all applicable federal, state, local, and institutional laws, regulations, and policies. These may include, but are not limited to, Health Information Portability and Accountability Act (HIPAA) protections, HHS Protection of Human Subjects regulations, and Food and Drug Administration (FDA) regulations. It is the responsibility of the Solver to obtain approvals (*e.g.,* from an Institutional Review Board), if required. The following links are intended as a starting point for addressing regulatory requirements but should not be interpreted as a complete list of resources on these issues:

**HIPAA**

*Main link: http://www.hhs.gov/hipaa/index.html.*

*Summary of the HIPAA Privacy Rule: http://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html.*

*Summary of the HIPAA Security Rule: http://www.hhs.gov/hipaa/for-professionals/security/laws-regulations/index.html.*

**Human Subjects—HHS**

*Office for Human Research Protections: http://www.hhs.gov/ohrp/.*

*Protection of Human Subjects Regulations: http://www.hhs.gov/ohrp/humansubjects/guidance/45cfr46.html.*

*Institutional Review Boards &Assurances: http://www.hhs.gov/ohrp/assurances/index.html.*

**Human Subjects—FDA**

*Clinical Trials: http://www.fda.gov/ScienceResearch/SpecialTopics/RunningClinicalTrials/default.htm.*

*Office of Good Clinical Practice: http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/OfficeofScienceandHealthCoordination/ucm2018191.*

**Consumer Protection—Federal Trade Commission**

*Bureau of Consumer Protection: https://www.ftc.gov/tips-advice/business-center/privacy-and-security.*

Dated: December 2, 2016.

**Lawrence A. Tabak,**

*Deputy Director, National Institutes of Health.*

[FR Doc. 2016–29436 Filed 12–8–16; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Council for Nursing Research.

*Date:* January 24–25, 2017.

*Open:* January 24, 2017, 1:00 p.m. to 4:45 p.m.

*Agenda:* Discussion of Program Policies and Issues.

*Place:* National Institutes of Health, Building 31, 6th Floor, C Wing, Room 6, 31 Center Drive, Bethesda, MD 20892.

*Closed:* January 25, 2017, 9:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6th Floor, C Wing, Room 6, Building 31, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Marguerite Littleton Kearney, Ph.D., R.N., FAAN, Director Division of Extramural Science Programs, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, Room 708, Bethesda, MD 20892–4870, 301–402–7932, *marguerite.kearnet@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested Person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Information is also available on the Institute's/Center's home page: *http://www.ninr.nih.gov/aboutninr/nacnr#.VxaCIE0UWpo,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: December 2, 2016.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–29460 Filed 12–8–16; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**Proposed Project: National Resource Center for Mental Health Promotion and Youth Violence Prevention—NEW**

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) will conduct an annual assessment of the performance of

the National Resource Center for Mental Health Promotion and Youth Violence Prevention (NRC). The NRC will collect the information needed to conduct the annual assessment of NRC training and technical assistance activities for the SS/HS and Project LAUNCH programs, as well as the field-at-large. There are four instruments included in this package for approval: (1) Needs Assessment, (2) Site Visit Assessment, (3) Annual Performance Assessment, and Case Study Interview. The NRC is required contractually to report its performance to SAMHSA on an annual basis.

Through a cooperative agreement, SAMHSA is funding the NRC to support the training and technical assistance (T/TA) needs of two SAMHSA grant programs: The Safe Schools/Healthy Students Program (SS/HS) and Project LAUNCH (Linking Actions for Unmet Needs in Children's Health). In addition, the NRC is funded to disseminate resources and provide technical assistance to the general field of mental health promotion and youth violence prevention. On an annual basis, this encompasses two needs assessment focus groups, 36 needs assessment surveys, 14 site visit assessment interviews, 42 site visit assessment surveys, 183 annual performance assessment surveys, and 55 case study interviews.

As a condition of its cooperative agreements with SS/HS and Project LAUNCH, the NRC is required to collect and report on its performance to SAMHSA on an annual basis, using measures that document its T/TA activities, its outputs, and changes in grantee capacity. For SAMHSA to meet its obligations under the Government Performance and Results Modernization Act of 2010 (GPRA), the NRC is also required to collect and report on three national outcome measures: (1) The number of individuals who have received training in prevention or mental health promotion; (2) the number and percent of individuals who have demonstrated improvement in their knowledge, attitudes, and/or beliefs, related to prevention or mental health promotion; and (3) the number of individuals contacted through NRC outreach requirements.

Data collection efforts will focus on two groups: (a) Project LAUNCH grantees (project directors) and their local community partners and (b) SS/HS grantees (state project coordinators) and their local education agency representatives. Assessment data will be collected through four methods: Annual grantee needs assessments, assessments of annual grantee site visits, an annual performance assessment survey, and annual case studies interviews of grantees and their local partners.

*Needs assessment.* For Project LAUNCH, a total of two focus groups of resource specialists (five per focus group), and 36 surveys (one per grantee) will be conducted annually to assess the annual training and technical assistance (T/TA) needs of grantees. The results will be reported in annual needs assessment reports, submitted to NRC leadership to support annual T/TA planning. Needs assessments are not planned for SS/HS grantees, because they are nearing the end of their grant cycle.

*Site visit assessment.* The CAT will gather information regarding the quality and impact of the NRC's T/TA site visits through interviews with seven SS/HS and seven Project LAUNCH grantees. We also conduct an online survey with up to 42 state or local partners of grantees (3 per grantee) who participated in the SS/HS or Project LAUNCH site visits. The results will be reported in grant-specific reports, submitted to NRC leadership to inform and improve NRC's T/TA approach with each grantee.

*Annual performance assessment.* This online performance assessment survey will survey seven SS/HS state project coordinators and 36 Project LAUNCH project directors and up to 140 state and local partners on an annual basis. Survey questions will focus on the content, dosage, and value of T/TA services provided over the previous year. The findings will be reported in annual performance assessment reports to the NRC and to SAMHSA for accountability and T/TA improvement purposes.

*T/TA case studies.* All seven SS/HS project directors and a purposive sample of four Project LAUNCH state project coordinators (11 total), as well as their assigned resource specialists (11 total) and three partners per grantee (33 total), will be interviewed by phone to learn more about specific ways in which the NRC has been instrumental in building grantee capacity over the last year. These new data will be combined with other collected data (such as the needs assessment findings and performance assessment survey data) to tell short, grantee-specific stories of how the combination of NRC services and contextual factors may have affected the choice and success of NRC efforts.

The average annual respondent burden for the proposed data collection is estimated below. The estimates reflect the average number of respondents, the average annual number of responses, the time it will take for each response, and the average annual burden.

TABLE 1—ESTIMATED ANNUAL RESPONDENT BURDEN

| Form name | Number of respondents | Responses per respondent | Total responses per year | Hours per response | Total annual hour burden |
|---|---|---|---|---|---|
| Needs Assessment Focus Groups | 10 | 1 | 10 | 1 | 10 |
| Needs Assessment Surveys | 36 | 1 | 36 | .33 | 11.88 |
| Site Visit Assessment Interview | 14 | 1 | 14 | .75 | 10.5 |
| Site Visit Assessment Survey | 42 | 1 | 42 | .33 | 13.86 |
| Annual Performance Survey | 183 | 1 | 183 | .5 | 91.5 |
| Case Study Interview | 55 | 1 | 55 | .75 | 41.25 |
| | 340 | 5 | 340 | ..... | 178.99 |

**Note:** Across the seven SS/HS grants, there are a total of 7 grantees (project directors) and 32 partners.

There are a total of 39 respondents across the seven SS/HS grants. In FY 2016, there were 36 grants across Project LAUNCH. In addition to the PL state project coordinator, we will collect information from three partners: the young child wellness coordinator, the young child wellness expert, and the young child wellness partner. We assume that there will be seven SS/HS and seven Project LAUNCH site visits per year.

Send comments to Summer King, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–B, Rockville, Maryland 20857, *OR* email a copy to *summer.king@samhsa.hhs.gov.*

Written comments should be received by February 7, 2017.

**Summer King,**

*Statistician.*

[FR Doc. 2016–29531 Filed 12–8–16; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

**Project: Services Accountability Improvement System—(OMB No. 0930–0208)—Revision**

The Services Accountability Improvement System (SAIS) is a real-time, performance management system that captures information on the substance abuse treatment and mental health services delivered in the United States. A wide range of client and program information is captured through SAIS for approximately 650 grantees. Continued approval of this information collection will allow SAMHSA to continue to meet Government Performance and Results Modernization Act of 2010 (GPRMA) reporting requirements that quantify the effects and accomplishments of its discretionary grant programs which are consistent with OMB guidance.

Based on current funding and planned fiscal year 2016 notice of funding announcements (NOFA), the CSAT programs that will use these measures in fiscal years 2016 through 2018 include: Access to Recovery (ATR) 3 and 4; Adult Treatment Court Collaborative (ATCC); Enhancing Adult Drug Court Services, Coordination and Treatment (EADCS); Offender Reentry Program (ORP); Treatment Drug Court (TDC); Office of Juvenile Justice and Delinquency Prevention—Juvenile Drug Courts (OJJDP–JDC); HIV/AIDS Outreach Program; Targeted Capacity Expansion Program for Substance Abuse Treatment and HIV/AIDS Services (TCE–HIV); Addictions Treatment for the Homeless (AT–HM); Cooperative Agreements to Benefit Homeless Individuals (CABHI); Cooperative Agreements to Benefit Homeless Individuals—States (CABHI–States); Recovery-Oriented Systems of Care (ROSC); Targeted Capacity Expansion—Peer to Peer (TCE–PTP); Pregnant and Postpartum Women (PPW); Screening, Brief Intervention and Referral to Treatment (SBIRT); Targeted Capacity Expansion (TCE); Targeted Capacity Expansion—Health Information Technology (TCE–HIT); Targeted Capacity Expansion Technology Assisted Care (TCE–TAC); Addiction Technology Transfer Centers (ATTC); International Addiction Technology Transfer Centers (I–ATTC); State Adolescent Treatment Enhancement and Dissemination (SAT–ED); Grants to Expand Substance Abuse Treatment Capacity in Adult Tribal Healing to Wellness Courts and Juvenile Drug Courts; and Grants for the Benefit of Homeless Individuals—Services in Supportive Housing (GBHI). Grantees in the Adult Treatment Court Collaborative program (ATCC) will also provide program-level data using the CSAT Aggregate Instrument.

SAMHSA and its Centers will use the data for annual reporting required by GPRA and for NOMs comparing baseline with discharge and follow-up data. GPRA requires that SAMHSA's report for each fiscal year include actual results of performance monitoring for the three preceding fiscal years. The additional information collected through this process will allow SAMHSA to report on the results of these performance outcomes as well as be consistent with the specific performance domains that SAMHSA is implementing as the NOMs, to assess the accountability and performance of its discretionary and formula grant programs.

Note changes have been made to add the recovery measure questions to the instrument from the previous OMB approval. The recovery measure questions are:

- How satisfied are you with the conditions of your living space?
- Have you enough money to meet your needs?
- How would you rate your quality of life?
- How satisfied are you with your health?
- Do you have enough energy for everyday life?
- How satisfied are you with your ability to perform your daily activities?
- How satisfied are you with yourself?
- How satisfied are you with your personal relationships?

ESTIMATES OF ANNUALIZED HOUR BURDEN CSAT GPRA CLIENT OUTCOME MEASURES FOR DISCRETIONARY PROGRAMS

| SAMHSA Program title | Number of respondents | Responses per respondent | Total number of responses | Burden hours per response | Total burden hours |
|---|---|---|---|---|---|
| Baseline Interview Includes SBIRT Brief TX and Referral to TX | 179,668 | 1 | 179,668 | 0.52 | 75,460 |
| Follow-Up Interview [1] | 132,954 | 1 | 143,734 | 0.52 | 60,386 |
| Discharge Interview [2] | 93,427 | 1 | 94,720 | 0.52 | 39,782 |
| SBIRT Program—Screening Only [3] | 594,192 | 1 | 594,192 | 0.13 | 77,244 |
| SBIRT Program—Brief Intervention Only [4] Baseline | 111,411 | 1 | 111,411 | .20 | 22,282 |
| SBIRT Program—Brief Intervention Only Follow-Up [1] | 82,444 | 1 | 82,444 | .20 | 16,489 |
| SBIRT Program—Brief Intervention Only Discharge [2] | 57,934 | 1 | 57,934 | .20 | 11,587 |
| CSAT Total | 1,252,030 | | 1,252,030 | | 338,748 |

**Notes:**

[1] It is estimated that 80% of baseline clients will complete this interview.

[2] It is estimated that 52% of baseline clients will complete this interview.

[3] The estimated number of SBIRT respondents receiving screening services is 80% of the total number SBIRT participants. No further data is collected from these participants.

[4] The estimated number of SBIRT respondents receiving brief intervention services is 15% of the total number SBIRT participants.

**Note:** Numbers may not add to the totals due to rounding and some individual participants completing more than one form.

Written comments and recommendations concerning the proposed information collection should be sent by January 9, 2017 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

**Summer King,**

*Statistician.*

[FR Doc. 2016–29539 Filed 12–8–16; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

**Project: SAMHSA Transformation Accountability (TRAC) Data Collection Instrument (OMB No. 093–0285)—Revised**

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS) is proposing to modify one of its current Transformation Accountability (TRAC) system data collection tools to include previously piloted recovery measures. Specifically, this revision entails the incorporation of twelve recovery measures into the current CMHS NOMs Adult Client-level Measures for Discretionary Programs Providing Direct Services data collection tool. As part of its strategic initiative to support recovery from mental health and substance use disorders, SAMHSA has been working to develop a standard measure of recovery that can be used as part of its grantee performance reporting activities.

This revision will add eight questions from the World Health Organization's (WHO) Quality of Life (QOL) to SAMHSA's existing set of Government Performance and Results Act (GPRA) measures along with four additional measures that support the WHO QOL–8. Data will be collected at two time points—at client intake and at six months post-intake. These are two points in time during which SAMHSA grantees routinely collect data on the individuals participating in their programs.

The WHO QOL–8 will assess the following domains using the items listed below:

| Question No. | Item | Domain |
|---|---|---|
| 1 | How would you rate your quality of life? | Overall quality of life. |
| 2 | How satisfied are you with your health? | Overall quality of life. |
| 3 | Do you have enough energy for everyday life? | Physical health. |
| 4 | How satisfied are you with your ability to perform your daily living activities? | Physical health. |
| 5 | How satisfied are you with yourself? | Psychological. |
| 6 | How satisfied are you with your personal relationships? | Social relationships. |
| 7 | Have you enough money to meet your needs? | Environment. |
| 8 | How satisfied are you with the conditions of your living place? | Environment. |

The revision also includes the following recovery-related performance measures:

| Question No. | Item |
|---|---|
| 9 | During the past 30 days, how much have you been bothered by these psychological or emotional problems? (This question will be placed in the instrument following the K6 questions for proper sequence). |
| 10 | I have family or friends that are supportive of my recovery. |
| 11 | I generally accomplish what I set out to do. |
| 12 | I feel capable of managing my health care needs. |

Approval of these items by the Office of Management and Budget (OMB) will allow SAMHSA to further refine the Recovery Measure developed for this project. It will also help determine whether the Recovery Measure is added to SAMHSA's set of required performance measurement tools designed to aid in tracking recovery among clients receiving services from the Agency's funded programs.

TABLE 1—ANNUALIZED RESPONDENT BURDEN HOURS, 2016–2019

| Type of response | Number of respondents | Responses per respondent | Total responses | Hours per response | Total hour burden |
|---|---|---|---|---|---|
| Client-level baseline interview | 55,744 | 1 | 55,744 | 0.58 | 32,332 |
| Client-level 6-month reassessment interview [1] | 44,595 | 1 | 44,595 | 0.58 | 25,865 |
| Client-level discharge interview [2] | 16,723 | 1 | 16,723 | 0.58 | 9,699 |

TABLE 1—ANNUALIZED RESPONDENT BURDEN HOURS, 2016–2019—Continued

| Type of response | Number of respondents | Responses per respondent | Total responses | Hours per response | Total hour burden |
|---|---|---|---|---|---|
| PBHCI—Section H Form Only Baseline | 14,000 | 1 | 14,000 | .08 | 1,120 |
| PBHCI—Section H Form Only Follow-Up[3] | 9,240 | 1 | 9,240 | .08 | 739 |
| PBHCI—Section H Form Only Discharge[4] | 4,200 | 1 | 4,200 | .08 | 336 |
| HIV Continuum of Care Specific Form Baseline | 200 | 1 | 200 | 0.33 | 66 |
| HIV Continuum of Care Follow-Up[5] | 148 | 1 | 148 | 0.33 | 49 |
| HIV Continuum of Care Discharge[6] | 104 | 1 | 104 | 0.33 | 34 |
| Subtotal | 144,954 | | 144,954 | | 70,240 |
| Infrastructure development, prevention, and mental health promotion quarterly record abstraction[7] | 982 | 4.0 | 3,928 | 2.0 | 7,856 |
| Total | 145,936 | | 148,882 | | 78,096 |

Written comments and recommendations concerning the proposed information collection should be sent by January 9, 2017 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

**Summer King,**

*Statistician.*

[FR Doc. 2016–29540 Filed 12–8–16; 8:45 am]

**BILLING CODE 4162–20–P**

[1] It is estimated that 66% of baseline clients will complete this interview.

[2] It is estimated that 30% of baseline clients will complete this interview.

[3] It is estimated that 74% of baseline clients will complete this interview.

[4] It is estimated that 52% of baseline clients will complete this interview.

[5] It is estimated that 52% of baseline clients will complete this interview.

[6] It is estimated that 30% of baseline clients will complete this interview.

[7] Grantees are required to report this information as a condition of their grant. No attrition is estimated.

**NOTE:** Numbers may not add to the totals due to rounding and some individual participants completing more than one form.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

**Project: Minority AIDS Initiative—Survey of Grantee Project Directors—NEW**

The Substance Abuse and Mental Health Services Administration (SAMHSA) is requesting approval to conduct online surveys of grantee Project Directors. This is a new project request targeting the collection of primary, organizational-level data through an online survey with grantee Project Directors. The grantee programs that will be involved are focused on integrating HIV and Hepatitis primary care, substance abuse, and behavioral health services and include: (1) TI–12–007 Targeted Capacity Expansion HIV Program: Substance Abuse Treatment for Racial/Ethnic Minority Populations at High-Risk for HIV/AIDS (TCE–HIV) grantees; (2) TI–14–013 Minority AIDS Initiative—Continuum of Care (MAI-CoC) grantees; (3) TI–13–011 Targeted Capacity Expansion HIV Program: Substance Abuse Treatment for Racial/Ethnic Minority Women at High Risk for HIV/AIDS (TCE–HIV: Minority Women) grantees; and (4) TI–15–006 Targeted Capacity Expansion: Substance Use Disorder Treatment for Racial/Ethnic Minority Populations at High-Risk for HIV/AIDS (TCE–HIV: High Risk Populations) grantees.

The goals of the grantee programs are to integrate behavioral health treatment, prevention, and HIV medical care services for racial/ethnic minority populations at high risk for behavioral health disorders and at high risk for or living with HIV. The grantee programs serve many different populations including African American, Hispanic/Latina and other racial/ethnic minorities, young men who have sex with men (YMSM), men who have sex with men (MSM) and bisexual men, adult heterosexual women and men, transgender persons, and people with substance use disorder. Project Director Surveys conducted with grantees are an integral part of evaluation efforts to: (1) Assess the impact of the SAMHSA-funded HIV programs in: Reducing behavioral health disorders and HIV infections; increasing access to substance use disorder (SUD) and mental disorder treatment and care; improving behavioral and mental health outcomes; and reducing HIV-related disparities in four specific grant programs; (2) Describe the different integrated behavioral health and medical program models; and (3) Determine which program types or models are most effective in improving behavioral health and clinical outcomes.

SAMHSA will request one web-based survey to be completed by each of the 152 grantee Project Directors. Project Directors may request assistance from another project administrator to help them complete the survey. The web-based survey will be conducted once for grantees in each grant program, in the grantee organization's final year of TCE–HIV (TI–12–007, TI–13–011, TI–15–006) or MAI CoC (TI–14–013) funding, with an annual average of 50 grantees/100 respondents per year. Project Directors will provide information on their program's integration of HIV and Hepatitis medical and primary care into

behavioral health services and project implementation. While participating in the evaluation is a condition of the grantees' funding, participating in the survey process is voluntary. The questionnaire is designed to collect information about: Grantee organizational structure, outreach and engagement, services provided through the grant-funded project, coordination of care, behavioral health/medical care integration, funding and project sustainability, staffing and staff development.

The table below is the annualized burden hours:

ESTIMATE OF ANNUAL AVERAGE REPORTING BURDEN: PROJECT DIRECTOR SURVEY

| Data collection tool | Number of respondents | Responses per respondent | Total responses | Hour per response | Total burden hours |
|---|---|---|---|---|---|
| Project Director Survey | 100 | 1 | 100 | 1 | 100 |

Written comments and recommendations concerning the proposed information collection should be sent by January 9, 2017 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

**Summer King,**

*Statistician.*

[FR Doc. 2016–29538 Filed 12–8–16; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of Saybolt LP As a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Saybolt LP as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Saybolt LP has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of April 27, 2016.

**DATES:** The accreditation and approval of Saybolt LP as commercial gauger and laboratory became effective on April 27, 2016. The next triennial inspection date will be scheduled for April 2019.

**FOR FURTHER INFORMATION CONTACT:** Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Saybolt LP, 1200 Lebanon Rd., Suite 220, West Mifflin, PA 15122, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Saybolt LP is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapters | Title |
|---|---|
| 3 | Tank Gauging. |
| 7 | Temperature Determination. |
| 8 | Sampling. |
| 9 | Density Determinations. |
| 12 | Calculations. |
| 17 | Maritime Measurement. |

Saybolt LP is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No. | ASTM | Title |
|---|---|---|
| 27–08 | D86 | Standard Test Method for Distillation of Petroleum Products. |
| 27–13 | D4294 | Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry. |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories*

Dated: December 2, 2016.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services Directorate.*

[FR Doc. 2016–29479 Filed 12–8–16; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Under Secretary for Management

### Record of Decision for the Move and Occupancy of the St. Elizabeths West Campus

**AGENCY:** Department of Homeland Security.

**ACTION:** Notice of availability.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) of 1969, the purpose of this notice is to provide the availability of the Record of Decision (ROD) of the Department of Homeland Security (DHS or Department) decision to consolidate and occupy the St. Elizabeths Campus. The ROD was prepared in accordance with DHS obligations under NEPA, the Council on Environmental Quality (CEQ) implementing regulations at 40 CFR parts 1500–1508, and DHS Management Directive 023–01 Rev 1 *Implementation of the National Environmental Policy Act.*

**ADDRESSES:** Relevant documents are posted at *www.dhs.gov/nepa.* These documents include: This notice and the ROD.

You may submit comments, identified by ''DHS Record of Decision to consolidate and occupy the St. Elizabeths Campus,'' by one of the following methods:

(1) *Mail:* Sustainability and Environmental Programs, Office of the Chief Readiness Support Officer, Management Directorate, Department of Homeland Security, 245 Murray Lane, Mail Stop 0075, Washington, DC 20528–0075 or

(2) *Email: SEP–EPHP@hq.dhs.gov.*

In choosing among these means of providing comments, please give due regard to the security screening difficulties and delays associated with delivery of mail to Federal agencies in Washington, DC, through the U.S. Postal Service.

All comments received, including any personal information provided, will become a part of the administrative record for the Department's ROD and may be posted without change on the internet at *http://www.dhs.gov/nepa.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Jennifer Hass, Environmental Planning and Historic Preservation Program Manager, Department of Homeland Security 202–834–4346 or *jennifer.hass@hq.dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

Pursuant to 40 CFR part 1506.3, DHS Directive 023–01 Rev 01, DHS Instruction 023–01–001–01 Rev 01, DHS adopted the General Services Administration (GSA) Environmental Impact Statement (EIS) entitled *Department of Homeland Security Headquarters at the St. Elizabeths West Campus To Consolidate Federal Office Space on a Secure Site Washington DC* (EIS Number 20080452) and the Supplemental EIS entitled *Department of Homeland Security Headquarters at the St. Elizabeths West Campus To Consolidate Federal Office Space on a Secure Site Washington DC* (EIS Number 20120049) on March 30, 2016. DHS is publishing this associated ROD for DHS' commencement of occupancy of our Consolidated Headquarters campus at St. Elizabeths and as the framework for considering environmental impacts for future actions on the campus. This ROD includes a summary of the EISs that DHS adopted from the GSA as well as other relevant documents and studies, such as the GSA Master Plan for St. Elizabeths and the DHS Housing Plan. This ROD includes a statement of our decision and continued commitment to assist GSA in its mitigation measures at the campus.

Dated: November 29, 2016.

**Teresa R. Pohlman,**

*Executive Director Sustainability and Environmental Programs.*

[FR Doc. 2016–29548 Filed 12–8–16; 8:45 am]

**BILLING CODE 4410–10–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5918–N–02]**

### 60-Day Notice of Proposed Information: Semi-Annual Labor Standards Enforcement Report; Local Contracting Agencies (HUD Programs)

**AGENCY:** Office of Field Policy and Management, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

**DATES:** *Comments Due Date:* February 7, 2017.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–5534 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

**FOR FURTHER INFORMATION CONTACT:** Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

#### A. Overview of Information Collection

*Title of Information Collection:* Semi-Annual Labor Standards Enforcement Report Local Contracting agencies (HUD Programs).

*OMB Approval Number:* 2501–0019.

*Type of Request:* Revision.

*Form Number:* HUD FORM 4710, 4710i.

*Description of the need for the information and proposed use:* The Department of Labor (DOL) Regulations 29 CFR 5.7(b), requires Federal agencies administering programs subject to Davis-Bacon and Related Act (DBRA) and Contract Work Hours and Safety Standards Act (CWHSSA) labor standards to furnish a Semi-Annual Labor Standards Enforcement Report to the Administrator of the Wage and Hour Division. Some HUD programs are administered by state and local agencies for the labor standards compliance. HUD must collect information from such agencies in order to capture enforcement activities for all HUD programs in its reports to DOL.

*Estimated Number of Respondents:* 45,000.

*Estimated Number of Responses:* 9,000. *Frequency of Response:* 2. *Average Hours per Response:* 2. *Total Estimated Burdens:* 18,000.

| Information collection | Number of respondents | Frequency of response | Responses per annum | Burden hour per response | Annual burden hours | Hourly cost per response | Annual cost |
|---|---|---|---|---|---|---|---|
| Total | 4,500 | 2 | 9,000 | 2 | 18,000 | $35.38 | $636,840.00 |

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: November 30, 2016.

**Nelson Bregón,**

*Associate Assistant Deputy Secretary, Office of Field Policy and Management.*

[FR Doc. 2016–29445 Filed 12–8–16; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5907–N–50]**

## Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), call the toll-free Title V information line at 800–927–7588 or send an email to *title5@hud.gov*.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to: Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 12–07, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2265 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 or send an email to *title5@hud.gov* for detailed instructions, or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*e.g.,* acreage, floor plan, condition of property, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following address(es): *AIR FORCE:* Mr. Robert E. Moriarty, P.E., AFCEC/CI, 2261 Hughes Avenue, Ste. 155, JBSA Lackland TX 78236–9853, (315)–225–7384; *HHS:* Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 12–

07, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301)–443–2265; *GSA:* Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040, Washington, DC 20405, (202)–501–0084; *NAVY:* Ms. Nikki Hunt, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685–9426 (These are not toll-free numbers).

Dated: December 1, 2016.

**Brian P. Fitzmaurice,**

*Director, Division of Community Assistance, Office of Special Needs Assistance Programs.*

**TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 12/09/2016**

**Suitable/Available Properties**

*Building*

Nevada

Dormitory; 552
Nellis AFB
Nellis AFB NV 89191
Landholding Agency: Air Force
Property Number: 18201640007
Status: Unutilized
Comments: 41,800 sq. ft.; dorm (220 rooms, avg. 290 sq. ft.) good fair conditions; 12+ mos. vacant; escort required to access property; contact AF for more details on access & other conditions.

Medical Facility; 1305
Nellis AFB
Nellis AFB NV 89191
Landholding Agency: Air Force
Property Number: 18201640008
Status: Unutilized
Comments: 8,723 sf., storage; 12+ mos. vacant; good to fair conditions; escort required to access property; contact AF for more details on access & other conditions.

Traffic Check House; 1058
Nellis AFB
Nellis AFB NV 89191
Landholding Agency: Air Force
Property Number: 18201640009
Status: Unutilized
Comments: 400 sf., 12+ mos. vacant; good to fair condition; escort required to access property; contact AF for more details on accessibility & other conditions.

Traffic Check House; 698
Nellis AFB
Nellis AFB NV 89191
Landholding Agency: Air Force
Property Number: 18201640010
Status: Unutilized
Comments: 144 sf.; 12+ mos. vacant; good to fair conditions; escort required; contact AF for more details on access & other conditions.

Maintenance Hanger
Creech AFB
Creech ABF NV 89018
Landholding Agency: Air Force
Property Number: 18201640021
Status: Unutilized
Comments: 5,872 sf., 12+ months; good to fair conditions; storage; escort required; contact AF for access & other conditions.

New Hampshire

Thomas J. McIntyre Federal
Building 80 Daniel Street
Portsmouth NH
Landholding Agency: GSA
Property Number: 54201640004
Status: Excess
GSA Number: NH0515
Directions:
Landholding Agency: Public Building Service, Disposal Agency: GSA; 107,000 sq. ft.; office & mail processing; needs significant investment pre-1978 construction; therefore, any conveyance documents will include notices for presence of asbestos & lead; eligible for Nat'l Reg. of Historic Places.
Comments: contact GSA for more information and conditions.

**Unsuitable Properties**

*Building*

Alaska

Vehicle Operations Heat Pkng.
Building 32448
JBER
JBER AK
Landholding Agency: Air Force
Property Number: 18201640004
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Hangar Maintenance
(Facility #100)
TKLH Point Barrow LRRS
USAF AK 99723
Landholding Agency: Air Force
Property Number: 18201640005
Status: Unutilized
Directions: contaminants that are located on property, documented hazardous levels. Documentation? provided represents a clear threat to personal physical safety; PCB contaminated soil.?
Comments: property located within an airport runway & within floodway which has not been correct or contained.
Reasons: Within airport runway clear zone; Floodway; Contamination

Terminal, Air Freight
(Facility #003)
AYED Barter Island LRRS
Barter Island AK 99747
Landholding Agency: Air Force
Property Number: 18201640006
Status: Unutilized
Comments: contaminants located on property; PCB, arsenic & chromium; property located within an airport runway & within floodway which has not been corrected or contained.
Reasons: Floodway; Within airport runway clear zone; Contamination

Latrine (Pedneau Range)
Building 59192
JBER
JBER AK 99505
Landholding Agency: Air Force
Property Number: 18201640019
Status: Excess
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

California

Item 07 RESM 2008, CIVIL 172
RPUID: 90515
Naval Base San Diego
San Diego CA
Landholding Agency: Navy
Property Number: 77201640008
Status: Underutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Colorado

1156
Peterson
Peterson AFB CO 80914
Landholding Agency: Air Force
Property Number: 18201640013
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Building 1154
Peterson AFB
Peterson CO 80914
Landholding Agency: Air Force
Property Number: 18201640016
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Georgia

4 Buildings
Robins Air Force Base
Robins AFB GA

Landholding Agency: Air Force
Property Number: 18201640002
Status: Underutilized
Directions: 4277; 4273; 2070; 2028
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Facility 4287
Robins Air Force Base
RAFB GA 31098
Landholding Agency: Air Force
Property Number: 18201640030
Status: Underutilized
Comments: public access denied & no alternative method to gain access without compromising national security.
Reasons: Secured Area

Facility 4285
Robins Air Force Base
RAFB GA 31098
Landholding Agency: Air Force
Property Number: 18201640031
Status: Underutilized
Comments: public access denied & no alternative method to gain access without compromising national security.
Reasons: Secured Area

Facility 4283
Robins Air Force Base
RAFB GA 31098
Landholding Agency: Air Force
Property Number: 18201640032
Status: Underutilized
Comments: public access denied & no alternative method to gain access without compromising national security.
Reasons: Secured Area

Facility 4281
Robins Air Force Base
RAFB GA 31098
Landholding Agency: Air Force
Property Number: 18201640033
Status: Underutilized
Comments: public access denied & no alternative method to gain access without compromising national security.
Reasons: Secured Area

Maryland

NIHBC Buildings 18, 18T, and 32
NIH Bethesda Campus
Bethesda MD 20892
Landholding Agency: HHS
Property Number: 57201640001
Status: Unutilized
Directions: 40506–00–0018; 40506–00–0018T; 40506–00–0032
Comments: radioactive materials present clear threat to physical safety; public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area; Contamination

Nevada

51; 152 AW/NVANG
1776 National Guard Way
Reno NV 89502
Landholding Agency: Air Force
Property Number: 18201640012
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Aircraft Maintenance Shop 290
Nellis AFB
Nellis NV 89191
Landholding Agency: Air Force
Property Number: 18201640036
Status: Unutilized
Comments: friable asbestos present.
Reasons: Contamination

New Jersey

Facility HEKP 5953, Gymnasium
JBMDL
JBMDL NJ
Landholding Agency: Air Force
Property Number: 18201640014
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Facility HEKP 5891
Refuse Garbage Building
JBMDL
JBMDL NJ
Landholding Agency: Air Force
Property Number: 18201640015
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Facility 1931, Disaster Prep
JBMDL
JBMDL NJ
Landholding Agency: Air Force
Property Number: 18201640017
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Facility 1732
Aerial Port Training Facility
JBMDL
JBMDL NJ
Landholding Agency: Air Force
Property Number: 18201640018
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Faculty 281
Transformer Vault Building
JBMDL
JBMDL NJ
Landholding Agency: Air Force
Property Number: 18201640037
Status: Underutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

New Mexico

Building 247
Cannon AFB
Cannon NM
Landholding Agency: Air Force
Property Number: 18201640035
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Building 1800
Cannon AFB
Cannon NM 88103
Landholding Agency: Air Force
Property Number: 18201640039
Status: Underutilized
Comments: property located within a military airfield; public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area; Within airport runway clear zone

Building 1801
Cannon AFB
Cannon NM 88103
Landholding Agency: Air Force
Property Number: 18201640040
Status: Underutilized
Comments: property located within a military airfield; public access denied and no alternative method to gain access without compromising national security.
Reasons: Within airport runway clear zone; Secured Area

Building 1802
Cannon AFB
Cannon NM 88103
Landholding Agency: Air Force
Property Number: 18201640041
Status: Underutilized
Comments: property located within a military airfield; public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area; Within airport runway clear zone

442
Cannon AFB
Cannon NM 88103

Landholding Agency: Air Force
Property Number: 18201640042
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Building 1400
Cannon AFB
Cannon NM 88103
Landholding Agency: Air Force
Property Number: 18201640043
Status: Underutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Ohio

Facility 34071
Wright Patterson AFB
Green County OH 45433
Landholding Agency: Air Force
Property Number: 18201640028
Status: Excess
Comments: public access denied and no alternative method to gain access without compromising national security; located within an airport runway.
Reasons: Secured Area; Within airport runway clear zone

Facility 34065
Wright Patterson Air Force Base
WPAFB OH 45433
Landholding Agency: Air Force
Property Number: 18201640029
Status: Excess
Comments: public access denied & no alternative method to gain access without compromising national security; property located within an airport runway clear zone or military airfield.
Reasons: Secured Area; Within airport runway clear zone

Pennsylvania

Building 112
Horsham Air Guard Station
Horsham PA 19044
Landholding Agency: Air Force
Property Number: 18201640011
Status: Underutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

South Carolina

2 Buildings
Shaw AFB
Shaw AFB SC
Landholding Agency: Air Force
Property Number: 18201640003
Status: Underutilized
Directions: 98; 1047
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

114
Shaw AFB
Shaw AFB SC
Landholding Agency: Air Force
Property Number: 18201640020
Status: Underutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

1407
Shaw Air Force Base
Shaw SC
Landholding Agency: Air Force
Property Number: 18201640022
Status: Underutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

1408
Shaw Air Force Base
Shaw SC
Landholding Agency: Air Force
Property Number: 18201640024
Status: Underutilized
Comments: Public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

1409
Shaw Air Force Base
Shaw SC
Landholding Agency: Air Force
Property Number: 18201640025
Status: Underutilized
Comments: Public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

1413
Shaw Air Force Base
Shaw SC
Landholding Agency: Air Force
Property Number: 18201640026
Status: Underutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

399
Shaw Air Force Base
Shaw SC
Landholding Agency: Air Force
Property Number: 18201640027
Status: Underutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Virginia

663 Darcy Pl
JBLE (Ft. Eustis)
ft. Eustis VA
Landholding Agency: Air Force
Property Number: 18201640038
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

[FR Doc. 2016–29207 Filed 12–8–16; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5913–N–35]**

## 60-Day Notice of Proposed Information Collection: Section 811 Project Rental Assistance for Persons With Disabilities

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

**DATES:** *Comments Due Date:* February 7, 2017.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

**FOR FURTHER INFORMATION CONTACT:** Robert G. Iber, Acting Director, Office of

Asset Management and Portfolio Oversight, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3730 (this is not a toll free number) for copies of the proposed forms and other available information.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

**A. Overview of Information Collection**

*Title of Information Collection:* Section 811 Supportive Housing for Persons with Disabilities—Project Rental Assistance (811 PRA) Program.

*OMB Approval Number:* 2502–0608.

*Type of Request:* Revision of currently approved collection.

*Form Numbers:* SF–424, SF–424 Supplement, SF–LLL, HUD–2880, HUD–424CB, HUD–2993, HUD–2990, HUD–96011, HUD–2994–A, HUD–96010, HUD–92235, HUD–92236, HUD–92237, HUD–92238, HUD–92240, HUD–92239, HUD–92241, HUD–92243, HUD–93205.

*Description of the need for the information and proposed use:* The collection of this information is necessary to the Department to assist HUD in determining applicant eligibility and capacity to award and administer the HUD PRA funds within statutory and program criteria. A thorough evaluation of an applicant's submission is necessary to protect the Government's financial interest.

*Respondents (i.e. affected public):* State, Local or Tribal Government, Not-for-profit institutions, Business or other for-profit.

*Estimated Number of Respondents:* 5,020.

*Estimated Number of Responses:* 5,065.

*Frequency of Response:* On occasion.

*Average Hours per Response:* Varies from 30 minutes to 40 hours.

*Total Estimated Burden:* 24,833.05.

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 1, 2016.

**Genger Charles,**

*Senior Policy Advisor for Housing—Federal Housing Commissioner.*

[FR Doc. 2016–29449 Filed 12–8–16; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R6–MB–2016–N205; FF06M00000–XXX–FRMB48720660090]**

### Availability of Final Environmental Impact Statement for Eagle Take Permits for the Chokecherry and Sierra Madre Phase I Wind Energy Project

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have prepared a final environmental impact statement (EIS) under the National Environmental Policy Act of 1969, as amended, in response to an application from Power Company of Wyoming (PCW) for eagle take permits (ETPs) pursuant to the Bald and Golden Eagle Protection Act (BGEPA) and its implementing regulations. PCW has applied for standard and programmatic ETPs for the Chokecherry and Sierra Madre Phase I Wind Energy Project in Carbon County, Wyoming. The final EIS is now available for review.

**DATES:** The final EIS is available for public review for 30 days, after which we will issue a record of decision.

**ADDRESSES:** Copies of the final EIS, as well as the permit application and the supporting eagle conservation plan, are available for review at the Carbon County Library System at 215 West Buffalo Street, Rawlins, Wyoming; the Saratoga Public Library at 503 West Elm Street, Saratoga, Wyoming; the U.S. Fish and Wildlife Service (USFWS) Wyoming Ecological Services Office at 5353 Yellowstone Road, Suite 308A, Cheyenne, Wyoming (contact Nathan Darnall to coordinate access, at *nathan_darnall@fws.gov* or 307–772–2374 ext. 246); and the USFWS Region 6 Office at 134 South Union Boulevard, Lakewood, Colorado (contact Louise Galiher to coordinate access, at *louise_galiher@fws.gov* or 303–236–8677). These documents are also available electronically on the USFWS Web site at *https://www.fws.gov/mountain-prairie/wind/ChokecherrySierraMadre/index.html.*

You may contact us regarding the final EIS via the following methods:

- *Email: CCSM_EIS@fws.gov.*
- *U.S. Mail:* Chokecherry and Sierra Madre EIS, U.S. Fish and Wildlife Service, Mountain-Prairie Region, Attention: Louise Galiher, P.O. Box 25486 DFC, Denver, CO 80225.
- *Hand-Delivery/Courier:* Chokecherry and Sierra Madre EIS, U.S. Fish and Wildlife Service, Mountain-Prairie Region, Attention: Louise Galiher, 134 Union Blvd., Lakewood, CO 80228.

**FOR FURTHER INFORMATION CONTACT:** Louise Galiher, at 303–236–8677 (phone) or *louise_galiher@fws.gov* (email); or Clint Riley, at 303–236–5231 (phone) or *clint_riley@fws.gov* (email). Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 1–800–877–8339 to contact the above individuals. The Federal Relay Service is available 24 hours a day, 7 days a week, for you to leave a message or question with the above individuals. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), have prepared a final environmental impact statement (EIS) under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), in response to an application from Power Company of Wyoming (PCW) for eagle take permits (ETPs) pursuant to the Bald and Golden Eagle Protection Act (BGEPA), (16 U.S.C. 668–668c) and its implementing regulations. PCW has applied for standard and programmatic ETPs for the Chokecherry and Sierra Madre (CCSM) Phase I Wind Energy Project in Carbon County, Wyoming. The final EIS is now available for review.

**Public Coordination**

The notice of intent to prepare an EIS for this project was published in the **Federal Register** on December 4, 2013 (78 FR 72926). Two public scoping meetings for the USFWS EIS were held, on December 16 and 17, 2013, in conjunction with Bureau of Land

Management (BLM) scoping meetings for an environmental assessment (EA) of the Phase I CCSM Project. A draft EIS was prepared and a notice of availability of the draft EIS was published in the **Federal Register** on April 29, 2016 (81 FR 25688), opening a 60-day comment period. The comment period was subsequently reopened for 2 weeks after it was discovered that a hyphen replaced an underscore in the public comment email address in several outreach materials. The draft EIS provided discussion of the potential impacts of the proposed action and an analysis of reasonable alternatives to the proposed action. Two public comment meetings for the draft EIS were held, on June 6 and 7, 2016.

The alternatives analyzed in the draft EIS were carried forward for full analysis in the final EIS. Agencies, tribes, organizations, and interested parties provided comments on the draft EIS via mail, email, and public meetings.

**Background Information**

*A. Migratory Birds and Eagle Protections.* Raptors and most other birds in the United States are protected by the Migratory Bird Treaty Act (16 U.S.C. 703–711). The President's Executive Order 13186 directs agencies to consider migratory birds in environmental planning by avoiding or minimizing to the extent practicable adverse impacts on migratory bird resources when conducting agency actions, and by ensuring environmental analyses of Federal actions as required by NEPA or other established environmental review processes.

Bald eagles and golden eagles are provided further protection under BGEPA, which prohibits anyone without a permit issued by the Secretary of the Interior from ''taking'' eagles, including their parts, nests, or eggs. An ETP authorizes the take of live eagles and their eggs where the take is associated with, but not the purpose of, a human activity or project that is otherwise a lawful activity. Regulations governing permits for bald and golden eagles can be found in the Code of Federal Regulations at 50 CFR 22.26. The Service is in the process of finalizing revisions to these regulations. However, because PCW's application has already been submitted, it is governed by the existing regulations. The proposed new regulations, if finalized, would authorize this course of action, *i.e.,* the new regulations would allow the Service to issue eagle take permits to PCW under the currently applicable regulations.

ETPs authorize the take of eagles where the take is compatible with the preservation of eagles; where it is necessary to protect an interest in a particular locality; where it is associated with, but not the purpose of, an otherwise lawful activity; and where take is unavoidable. The Service will issue permits for such take only after an applicant has committed to undertake all practicable measures to avoid and minimize such take and mitigate anticipated take to the maximum extent achievable to be compatible with the preservation of eagles. Standard ETPs authorize eagle take in an identifiable timeframe and location. Programmatic ETPs authorize eagle take that is recurring and not within a specific, identifiable timeframe and/or location. Standard and programmatic ETPs may be issued for a period of up to 5 years.

*B. Power Company of Wyoming Application.* As proposed by PCW, the CCSM Phase I Project will consist of approximately 500 wind turbines, a haul road, a quarry to supply materials for road construction, access roads, a rail distribution facility, underground and overhead electrical and communication lines, laydown areas, operation and maintenance facilities, and other supporting infrastructure needed for Phase I to become fully operational. PCW has applied for a standard ETP for disturbance related to construction of CCSM Phase I wind turbines and infrastructure components, and a programmatic ETP for operation of the CCSM Phase I Project.

The applicant has prepared an ECP identifying measures it intends to undertake to avoid, minimize, and compensate for potential impacts to bald and golden eagles. To help meet requirements of the Migratory Bird Treaty Act, the applicant has also prepared a Bird and Bat Conservation Strategy (BBCS) containing measures the applicant proposes to implement to avoid or minimize impacts of the project on other migratory birds. The Service has considered the information presented in the ECP and BBCS in our analysis of environmental impacts in the final EIS.

*C. The BLM's NEPA Review.* The CCSM Phase I Project would be situated in an area of alternating sections of private, State, and Federal lands that are administered by the BLM. In 2012, the BLM completed a final EIS (FEIS) to evaluate whether the project area would be acceptable for development of a wind facility in a manner compatible with applicable Federal laws. On October 9, 2012, BLM published a record of decision (ROD) determining that the portions of the area for which PCW seeks right-of-way grants ''are suitable for wind energy development and associated facilities.'' As explained in the ROD, the BLM's decision does not authorize development of the wind energy project; rather, it allows BLM to accept and evaluate future right-of-way applications subject to the requirements of all future wind energy development described therein (ROD at 6–1).

PCW has since submitted to the BLM site-specific plans of development from which the BLM is developing site-specific tiered EAs. In 2014, the BLM published a final EA 1, which analyzes major components of project infrastructure, including the haul road, rail facility, and rock quarry. On March 9, 2016, BLM published EA 2, which analyzes the wind turbines and pads, access roads, laydown areas, electrical and communication lines, and a construction camp.

The Service has incorporated by reference information from the BLM FEIS, ROD, EA1, and EA2 into our environmental analysis in the final EIS in order to avoid redundancy and unnecessary paperwork. Council for Environmental Quality (CEQ) regulations authorize incorporation by reference (40 CFR 1502.21, CEQ 40 Most Asked Questions #30; see also 43 CFR 46.135).

**Alternatives**

In the final EIS, the Service analyzed the proposed action alternative, the proposed action with different mitigation, an alternative to issue ETPs for Phase I of Sierra Madre Wind Development Area only, and the no-action alternative. The Service identified the proposed action as the preferred alternative.

*Alternative 1: Proposed Action.* Alternative 1 is for the Service to issue ETPs for the construction of the Phase I wind turbines and infrastructure components and for the operation of the Phase I CCSM project, based on the ETP applications submitted by PCW. The proposed action includes avoidance and minimization measures, best management practices, and compensatory mitigation described in detail in the EIS and in PCW's application and ECP. PCW has proposed to retrofit high-risk power poles as compensatory mitigation, thereby reducing eagle mortality from electrocution.

*Alternative 2: Proposed Action with Different Mitigation.* Under Alternative 2, the Service would issue ETPs for the construction and operation of the Phase I CCSM Project as under Alternative 1, but would require PCW to implement a different form of compensatory

mitigation than proposed in its ETP applications. We are considering mitigation of older wind facilities, lead abatement, carcass removal, carcass avoidance, wind conservation easements, habitat enhancement (focusing on prey habitat), and rehabilitation of injured eagles as possible alternative forms of compensatory mitigation.

*Alternative 3: Issue ETPs for Phase I of Sierra Madre Wind Development Area Only.* The Service received numerous comments during the scoping process requesting that we examine a different development scenario from that proposed by PCW. However, to issue an ETP, we must analyze a specific project and ECP to determine if it meets the requirements for an ETP. Alternative 3 represents an example of a different development scenario PCW could present in a new application if the Service were to determine that the Phase I CCSM Project would meet all the criteria for issuing an ETP, but not at the scale proposed. Alternative 3 is for the Service to issue ETPs for the construction of Phase I infrastructure and the construction and operation of wind turbines only in the Sierra Madre Wind Development Area (WDA) (298 turbines total). This alternative includes avoidance and minimization measures, best management practices, and compensatory mitigation described in PCW's application as they apply to the Sierra Madre WDA.

*Alternative 4: No Action.* Under Alternative 4, the Service would deny PCW standard and programmatic ETPs for construction and operation of the Phase I CCSM Project. In addition to being a potential outcome of the permit review process, analysis of the No Action alternative is required by CEQ regulation (40 CFR 1502.14) and provides a baseline against which to compare the environmental impacts of the proposed action and other reasonable alternatives. ETPs are not required in order for PCW to construct and operate the project; therefore, if we deny the ETPs, PCW may choose to construct and operate the Phase I CCSM Project without ETPs and without adhering to an ECP. Alternative 4 analyzes both a ''No Build'' scenario and a ''Build Without ETPs'' scenario.

This final EIS further incorporates information received during the public comment period for the draft EIS, and finalizes the analyses and conclusions in the document.

**National Environmental Policy Act Compliance**

Our decision on whether to issue standard and programmatic ETPs to PCW triggers compliance with NEPA. NEPA requires the Service to analyze the direct, indirect, and cumulative impacts of the CCSM Phase I project before we make our decision, and to make our analysis available to the public. We have prepared the final EIS to inform the public of our proposed permit action, alternatives to that action, the environmental impacts of the alternatives, and measures to minimize adverse environmental effects.

**Public Availability of Submissions**

Before including your address, phone number, email address, or other personal identifying information in your correspondence, you should be aware that your entire correspondence—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information for public review, we cannot guarantee that we will be able to do so.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the offices where the comments are being submitted.

**Authorities**

This notice is published in accordance with the National Environmental Policy Act of 1969; the CEQ's regulations for implementing NEPA, 40 CFR parts 1500 through 1508; and the Department of the Interior's NEPA regulations, 43 CFR part 46.

**Stephen A. Smith,**

*Acting Regional Director, Mountain-Prairie Region*

[FR Doc. 2016–29333 Filed 12–8–16; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R1–ES–2016–N170; FXES11120100000–167–FF01E00000]**

### Draft Environmental Impact Statement; Amendment to the 1997 Washington State Department of Natural Resources Habitat Conservation Plan and Incidental Take Permit for the Long-Term Conservation Strategy for the Marbled Murrelet

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** With the Washington State Department of Natural Resources (WDNR), we, the U.S. Fish and Wildlife Service (Service), have jointly developed a draft environmental impact statement (DEIS) addressing an amendment to the 1997 WDNR Habitat Conservation Plan (HCP) to cover implementation of a long-term conservation strategy (LTCS) for the marbled murrelet. The DEIS also addresses an amendment to the Endangered Species Act (ESA) section 10 incidental take permit (ITP) for the WDNR HCP to cover implementation of the LTCS. The DEIS is intended to satisfy the requirements of both the National Environmental Policy Act (NEPA) and the Washington State Environmental Policy Act (SEPA). We request comments on these documents.

**DATES:** To ensure consideration, please send your written comments by March 9, 2017.

*Public Meetings and Webinar:* Four public meetings will be held to solicit public comments on the DEIS. For locations, dates and times of the public meetings and webinar, see Public Meetings and Webinar under **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** To view documents, request further information, or submit comments, please use one of the following methods, and note that your information request or comments are in reference to the DEIS addressing an amendment to the 1997 WDNR HCP and ITP to cover implementation of a marbled murrelet LTCS:

*Viewing Documents:*

- *Internet:* You can view the DEIS on the Internet at *www.fws.gov/WWFWO/* or *www.dnr.wa.gov/non-project-actions.*
- *Hard Copies:* There are limited numbers of hard copies of the DEIS available for distribution (see **FOR FURTHER INFORMATION CONTACT**).
- Comments and materials we receive, as well as supporting documentation we use in preparing the DEIS, will be available for public inspection by appointment, during normal business hours, at our Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

*Submitting Comments:*

- *Email:* Comments may be submitted electronically to WDNR at *sepacenter@dnr.wa.gov*. WDNR will transmit all comments received to the Service.
- *U.S. Mail:* Comments may be submitted in writing to Lily Smith, SEPA Responsible Official, Washington Department of Natural Resources, SEPA Center, P.O. Box 47001, Olympia, WA 98504–7015. WDNR will transmit all comments received to the Service.

**FOR FURTHER INFORMATION CONTACT:** Mark Ostwald, U.S. Fish and Wildlife Service, by telephone at (360) 753–9564,

by email at *Mark_Ostwald@fws.gov,* or by U.S. mail at U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Dr., Suite 102, Lacey, WA 98503. Alternatively, contact the SEPA Center, WDNR, by telephone at (360) 902–2117, or by email at *sepacenter@dnr.wa.gov.*

**SUPPLEMENTARY INFORMATION:** With the WDNR, we, the U.S. Fish and Wildlife Service (Service), have jointly developed a draft environmental impact statement (DEIS) addressing an amendment to the 1997 WDNR Habitat Conservation Plan (HCP) to cover implementation of a long-term conservation strategy (LTCS) for the marbled murrelet *(Brachyamphus marmoratus).* The DEIS also addresses an amendment to the Endangered Species Act ESA) section 10 incidental take permit (ITP) for the WDNR HCP to cover implementation of the LTCS. The DEIS is intended to satisfy the requirements of both the National Environmental Policy Act (NEPA) and the Washington State Environmental Policy Act (SEPA). If approved, the proposed LTCS will replace an interim conservation strategy for the marbled murrelet, which is currently being implemented under the WDNR HCP. It is anticipated that one of the alternatives described in the DEIS will form the basis of the LTCS. The scope of the proposed amendment to the WDNR HCP and ITP, and the DEIS, are exclusively limited to consideration of the LTCS.

In addition to this notice of availability of the DEIS that the Service is publishing, the U.S. Environmental Protection Agency (EPA) is publishing a notice announcing the DEIS, as required under section 309 of the Clean Air Act (42 U.S.C. 7401 *et seq.*). The publication of EPA's notice is the official start of the minimum requirement for the public comment period for an EIS (see EPA's Role in the EIS Process).

The Service and WDNR have jointly developed a DEIS for the purpose of analyzing alternatives for the LTCS for the marbled murrelet, a seabird that was listed as threatened under the ESA in 1992. The DEIS analyses five action alternatives and a no action alternative. The DEIS does not identify a preferred alternative. The no action alternative involves continuation of the interim conservation strategy for the marbled murrelet under the WDNR HCP. If approved, the amended ITP would authorize incidental take of the marbled murrelet that may occur as a result of implementation of the LTCS over the remaining 50-year term of the WDNR HCP.

**Background**

In 1996, the WDNR released their draft HCP for forest management activities covering 1.6 million acres of forested State trust lands within the range of the northern spotted owl (*Strix occidentalis caurina*) in Washington. A DEIS, dated March 1996, that was jointly developed by the Service, National Marine Fisheries Service, and the WDNR to address the issuance of ITPs for the HCP, was announced in the **Federal Register** on April 5, 1996 (61 FR 15297). The 1996 DEIS analyzed reasonable alternatives, including the HCP, for forest management activities on forested State trust lands that would be covered by the ITPs. A notice of availability for the final EIS (FEIS) was published in the **Federal Register** on November 1, 1996 (61 FR 56563). On January 30, 1997, the Service issued an ITP (PRT No. 812521) for the WDNR HCP. The Service's ITP decision and the availability of related decision documents were announced in the **Federal Register** on February 27, 1997 (62 FR 8980).

**Interim Conservation Strategy**

The WDNR HCP (see *www.dnr.wa.gov/programs-and-services/forest-resources/habitat-conservation-state-trust-lands*) commits the WDNR to developing a LTCS for the marbled murrelet (HCP IV. 39). At the time the HCP was prepared, it was determined that development of a LTCS was not possible due to a lack of scientific information. For this reason, the WDNR developed an interim conservation strategy for the marbled murrelet, which is currently being implemented. The proposed amendment to the WDNR HCP is the final step of the process for development of the LTCS.

Briefly, the interim conservation strategy for the marbled murrelet includes the following components:

(1) Identification of blocks of suitable marbled murrelet habitat on which timber harvest would be deferred;

(2) Implementation of a habitat relationship study using marbled murrelet occupancy surveys to determine the relative importance of forested habitats;

(3) Based on the findings of the habitat relationship study, identification of the lowest quality habitat blocks to be made available for timber harvest (these areas, in the poorest quality habitats, were expected to contain about 5 percent of the marbled murrelet-occupied sites on HCP-covered lands);

(4) Implementation of surveys of higher quality habitat blocks identified by the habitat relationship study to determine marbled murrelet occupancy, and protection of murrelet-occupied habitats, along with some unoccupied habitat; and

(5) Development of a LTCS for the marbled murrelet on WDNR lands.

To inform the development of the DEIS addressing the amendment of the WDNR HCP and ITP to cover a LTCS for the marbled murrelet, we conducted four public scoping meetings in 2012 (77 FR 23743). In 2013, the WDNR, for the purposes of SEPA, conducted four additional public meetings to provide more opportunity for comment on the conceptual alternatives. Service staff attended all of the 2012 and 2013 public meetings. We received substantial public comments during public scoping. These comments were considered in the development of the DEIS.

**Endangered Species Act Section 9 Requirements**

Section 9 of the ESA prohibits take of fish and wildlife species listed as endangered or threatened under section 4 of the ESA. Under the ESA, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term ''harm,'' as defined in our regulations, includes significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term ''harass'' is defined in our regulations as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

However, under specified circumstances, the Service may issue permits that authorize take of federally listed species, provided the take is incidental to, and not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively. Section 10(a)(1)(B) of the ESA contains provisions for issuing ITPs to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

(1) The taking will be incidental;

(2) The applicant will prepare a conservation plan that, to the maximum extent practicable, identifies the steps the applicant will take to minimize and mitigate the impact of such taking;

(3) The applicant will ensure that adequate funding for the plan will be provided;

(4) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(5) The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the plan.

**National Environmental Policy Act Compliance**

The proposed amendment of the WDNR ITP and the 1997 WDNR HCP to cover a marbled murrelet LTCS is a Federal action that triggers the need for compliance with NEPA (42 U.S.C. 4321 *et seq.*). We and WDNR have jointly developed the DEIS for the purpose of analyzing the environmental impacts of implementing alternatives for the marbled murrelet LTCS under the HCP and ITP. Five action alternatives and a no-action alternative are analyzed in the DEIS. The DEIS does not identify a preferred alternative. WDNR manages approximately 1.3 million acres within 55 miles of marine waters, which is the known inland limit of the nesting range for the marbled murrelet. The alternatives in the DEIS are restricted to implementation within this area. To appreciate the details of the alternatives, it is necessary to review the DEIS (see **ADDRESSES** for access to the DEIS). However, each of the alternatives in the DEIS is briefly summarized below.

The alternatives represent a range of approaches to long-term marbled murrelet habitat conservation on WDNR lands. The alternatives differ in the amount and location of WDNR-managed forest land designated for long-term conservation of the murrelet, and also include a variety of conservation measures proposed to protect marbled murrelet habitat. The alternatives also differ in the amount and quality of marbled murrelet habitat removed through timber harvest.

The acres of forest land proposed for continued conservation under the alternatives for an amended WDNR HCP include those lands already protected as long-term forest cover by WDNR, such as old-growth forests, high-quality spotted owl habitat, riparian areas, natural areas, and other conservation commitments included in the 1997 HCP and in WDNR's Policy for Sustainable Forests. These areas provide conservation benefits to the marbled murrelet, either by supplying current and/or future nesting habitat or by providing security to that habitat from predation, disturbance, and other threats. The alternatives also designate additional forestlands with specific importance for marbled murrelet conservation, and these are referred to as Special Habitat Areas, Emphasis Areas, or Marbled Murrelet Management Areas, depending on the alternative and conservation approach. All of alternatives considered in the DEIS protect known marbled murrelet nest sites.

Alternative A is the no-action alternative and it continues the interim conservation strategy for the marbled murrelet. Alternative B primarily relies on protecting occupied marbled murrelet sites without additional conservation approaches. Alternatives C, D, E, and F focus new conservation in important areas for the marbled murrelet, protecting more habitat in these areas than is protected under the no action alternative. Each alternative designates a different amount of land for conservation of the marbled murrelet. Alternative F protects the most habitat for the murrelet within the analysis area.

**EPA's Role in the EIS Process**

The EPA is charged under section 309 of the Clean Air Act to review all Federal agencies' EISs and to comment on the adequacy and the acceptability of the environmental impacts of proposed actions in the EISs.

EPA also serves as the repository (EIS database) for EISs prepared by Federal agencies and provides notice of their availability in the **Federal Register**. The EIS database provides information about EISs prepared by Federal agencies, as well as EPA's comments concerning the EISs. All EISs are filed with EPA, which publishes a notice of availability on Fridays in the **Federal Register**.

For more information, see *http://www.epa.gov/compliance/nepa/eisdata.html.* You may search for EPA comments on EISs, along with EISs themselves, at *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

**Public Comments and Webinar**

The Service and WDNR are committed to providing access to these meetings for all participants. The public meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Brian G. Bailey, Outreach Manager, Legislative Session Coordinator, Washington State Department of Natural Resources, at 360–902–1715, and Mark Ostwald, U.S. Fish and Wildlife Service, at 360–753–9564. To allow sufficient time to process requests, please call at least 7 working days prior to the public meeting dates.

Four public meetings will be held to provide an overview of the DEIS and an opportunity for public comment. The public meeting dates, times, and locations are:

- Tuesday, January 10, 2017, 6 p.m. to 8 p.m., WDNR, Northwest Region Office, NW Conference Center, 919 N Township Street, Sedro Woolley, WA 98284.
- Thursday, January 12, 2017, 6 p.m. to 8 p.m., Whitman Middle School Auditorium, 9201 15th Avenue NW., Seattle, WA 98117.
- Tuesday, January 17, 2017, 6 p.m. to 8 p.m., Port Angeles High School, Commons-Lunch Room, 304 E Park Avenue, Port Angeles, WA 98362.
- Thursday, January 19, 2017, 6 p.m. to 8 p.m., Julius A. Wendt Elementary School, Multi-purpose Room, 265 S 3rd Street, Cathlamet, WA 98612.

*Public Webinar Information:* A public webinar will provide an overview of the DEIS. The public webinar date, time, and link are:

- Tuesday, January 24, 2017, 2 p.m. to 3 p.m., the link for accessing the webinar will be available at *www.dnr.wa.gov/mmltcs.*

**Public Comments**

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We specifically request information, views, and opinions from the public on the alternatives for the marbled murrelet LTCS and identification of any other aspects of the human environment not already identified in the DEIS that may be affected, pursuant to NEPA regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6.

**Public Availability of Comments**

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personally identifiable information in your comments, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety. Comments and materials we receive, as well as supporting documentation we use in preparing the

FEIS, will be available for public inspection by appointment, during normal business hours, at our Washington Fish and Wildlife Office (see **ADDRESSES**).

**Next Steps**

We expect to receive a permit application from WDNR requesting an amendment of their ITP and HCP to cover the LTCS for the marbled murrelet. It is anticipated that one of the alternatives analyzed in the DEIS will form the basis of the LTCS that would be implemented under the HCP. An interim conservation strategy for the marbled murrelet is currently being implemented under the HCP. The HCP amendment for the LTCS is intended to replace the interim conservation strategy for the marbled murrelet. We will evaluate that request, associated documents, and public comments in reaching a final decision on whether the application for a permit amendment meets the requirements of section 10 of the ESA. We will prepare responses to public comments and publish a notice of availability for the FEIS. The FEIS will identify the preferred alternative for the LTCS for the marbled murrelet and analyze its impact on the human environment. We will also evaluate whether the proposed permit action would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to approve the proposed amendment of the WDNR ITP and HCP. If the ESA section 10 issuance requirements are met, we will approve the amendment of the ITP and HCP. We will issue a record of decision and approve or deny the ITP and HCP amendment request by WDNR no sooner than 30 days after publication of the EPA's notice of availability of the FEIS.

**Authority:** We provide this notice in accordance with the requirements of section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA and its implementing regulations (40 CFR 1506.6).

**Theresa Rabot,**

*Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service, Portland, Oregon.*

[FR Doc. 2016–29062 Filed 12–8–16; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R8–NWRS–2016–N192; FXRS12610800000–178–FF08R00000]**

### Lower Klamath, Clear Lake, Tule Lake, Upper Klamath, and Bear Valley National Wildlife Refuges, Klamath County, OR; Siskiyou and Modoc Counties, CA: Final Comprehensive Conservation Plan/Environmental Impact Statement

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** We, the Fish and Wildlife Service (Service), announce the availability of a final comprehensive conservation plan (CCP) and environmental impact statement (EIS) for Lower Klamath, Clear Lake, Tule Lake, Upper Klamath, and Bear Valley National Wildlife Refuges (Refuges). The Refuges are part of the Klamath Basin Complex. The final CCP/EIS, prepared under the National Wildlife Refuge Improvement Act of 1997, and in accordance with the National Environmental Policy Act of 1969, describes how the Service proposes to manage the refuges for the next 15 years. Final compatibility determinations for uses proposed under the preferred alternative are also included as an appendix.

**ADDRESSES:** *Document Availability:* You may obtain copies of the documents in the following places:

- *Internet: http://www.fws.gov/refuge/Tule_Lake/what_we_do/conservation.html.*
- *In Person:*
  - Klamath Refuge Basin National Wildlife Refuge Complex Headquarters, 4009 Hill Road, Tulelake, CA 96134.
  - The following libraries:

| Library | Address | Phone No. |
|---|---|---|
| Klamath County Main | 126 South Third Street, Klamath Falls, OR 97601 | (541) 882–8894 |
| Keno Branch | 15555 Hwy 66, #1, Keno, OR 97627 | (541) 273–0750 |
| Malin Branch | 2307 Front Street, Malin, OR 97632 | (541) 723–5210 |
| Merrill Branch | 365 Front Street, Merrill, OR 97633 | (541) 798–5393 |
| S. Suburban Branch | 3625 Summers Lane, Klamath Falls, OR 97603 | (541) 273–3679 |
| Tulelake Branch | 451 Main Street, Tulelake, CA 96134 | (530) 667–2291 |
| Butte Valley Branch | 800 West Third Street, Dorris, CA 96023 | (530) 397–4932 |
| Redding | 1100 Parkview Ave., Redding, CA 96001 | (530) 245–7250 |
| Multnomah Co. Central | 801 SW 10th Ave, Portland, OR 97205 | (530) 988–5123 |
| Sacramento Public Central Branch | 828 I St., Sacramento, CA 95814 | (916) 264–2700 |
| Medford | 205 S. Central Ave, Medford, OR 95701 | (541) 774–8689 |

**FOR FURTHER INFORMATION CONTACT:** Klamath Refuge Planner, (916) 414–6464 (phone).

**SUPPLEMENTARY INFORMATION:** We publish this notice to announce the availability of the final CCP/EIS for the Klamath Basin Refuges. The final CCP/EIS, which we prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), describes and analyzes a range of management alternatives for the Klamath Basin Refuges.

**EPA's Role in the EIS Process**

The EPA is charged under section 309 of the CAA (42 U.S.C. 7401 *et seq.*) to review all Federal agencies' environmental impact statement (EISs) and to comment on the adequacy and acceptability of the environmental impacts of proposed actions in the EISs.

EPA also serves as the repository (EIS database) for EISs prepared by Federal agencies and provides notice of their availability in the **Federal Register**. The EIS database provides information about EISs prepared by Federal agencies, as well as EPA's comments concerning the EISs. All EISs are filed with EPA, which publishes a notice of availability on Fridays in the **Federal Register**.

The notice of availability is the start of the 30-day ''wait period'' for final EISs, during which agencies are generally required to wait 30 days before making a decision on a proposed action. For more information, see *http://www.epa.gov/compliance/nepa/eisdata.html.* You may search for EPA comments on EISs, along with the EISs themselves, at *https://*

*cdxnodengn.epa.gov/cds-enepa-public/action/eis/search.*

**Background**

*The CCP Process*

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), which amended the National Wildlife Refuge System Administration Act of 1966, requires the Service to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs also evaluate the potential for providing wildlife-dependent recreational opportunities to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

**Klamath Basin Refuges**

The Klamath Basin Refuges consist of a variety of habitats, including freshwater marshes, open water, grassy meadows, coniferous forests, sagebrush and juniper grasslands, agricultural lands, and rocky cliffs and slopes. These habitats support diverse and abundant populations of resident and migratory wildlife, with 433 species having been observed on or near the Refuges. In addition, each year the Refuges serve as a migratory stopover for about three-quarters of the Pacific Flyway waterfowl, with peak fall concentrations of over 1 million birds.

**NEPA Compliance**

We are conducting environmental review in accordance with the requirements of NEPA, as amended (42 U.S.C. 4321 *et seq.*), its implementing regulations (40 CFR parts 1500–1508), other applicable regulations, and our procedures for compliance with those regulations. The final EIS discusses the direct, indirect, and cumulative impacts of the alternatives on biological resources, cultural resources, water quality, and other environmental resources. Measures to minimize adverse environmental effects are identified and discussed in the final CCP/EIS.

**Alexandra Pitts,**

*Acting Regional Director, Pacific Southwest Region, Sacramento, California.*

[FR Doc. 2016–29518 Filed 12–8–16; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

## U.S. Geological Survey

**[GX16GG00995TR00]**

## Announcement of Scientific Earthquake Studies Advisory Committee Meeting

**AGENCY:** U.S. Geological Survey, Department of the Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Public Law 106–503, the Scientific Earthquake Studies Advisory Committee (SESAC) advises the Director of the U.S. Geological Survey (USGS) on matters relating to the USGS's participation in the National Earthquake Hazards Reduction Program. The Committee, which is comprised of members from academia, industry, and State government, will hold its next meeting by teleconference on January 5, 2017, as specified below. In this meeting, the Committee will review the current activities of the USGS Earthquake Hazards Program and discuss future priorities.

**DATES:** The meeting will be held from 2:00 p.m. to 6:00 p.m. (EST) on January 5, 2017. All persons interested in joining the meeting must notify Linda Huey (*lhuey@usgs.gov,* tel. 703–648–6712) by 5:00 p.m. EST on January 3, 2017, to obtain the information necessary to join the teleconference.

**FOR FURTHER INFORMATION CONTACT:** Dr. William Leith, U.S. Geological Survey, MS 905, 12201 Sunrise Valley Drive, Reston, Virginia 20192, (703) 648–6712, *wleith@usgs.gov*.

**SUPPLEMENTARY INFORMATION:** Meetings of the Scientific Earthquake Studies Advisory Committee are open to the public.

**William Leith,**

*Senior Science Advisor for Earthquake and Geologic Hazards.*

[FR Doc. 2016–29556 Filed 12–8–16; 8:45 am]

**BILLING CODE 4338–11–P**

## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–NAGPRA–22485; PPWOCRADN0–PCU00RP14.R50000]**

## Notice of Inventory Completion: Wisconsin Historical Society, Madison, WI, and Lawrence University, Appleton, WI

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Wisconsin Historical Society and Lawrence University have completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and have determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Wisconsin Historical Society. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Wisconsin Historical Society at the address in this notice by January 9, 2017.

**ADDRESSES:** Jennifer Kolb, Wisconsin Historical Society, 816 State Street, Madison, WI 53706, telephone (608) 264–6434, email *Jennifer.Kolb@wisconsinhistory.org.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Wisconsin Historical Society, Madison, WI, and in the physical custody of Lawrence University, Appleton, WI. The human remains and associated funerary objects were removed from the Rock Island II site, Door County, WI.

This notice is published as part of the National Park Service's administrative

responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains was made by the Wisconsin Historical Society and Lawrence University professional staff in consultation with representatives of the Forest County Potawatomi Community, Wisconsin; the Ho-Chunk Nation of Wisconsin; the Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; the Little Traverse Bay Bands of Odawa Indians, Michigan; and the Menominee Indian Tribe of Wisconsin.

**History and Description of the Remains**

Between 1968 and 1973, human remains representing, at minimum, 12 individuals were removed from the Rock Island II site in Door County, WI. During that time period, extensive excavations of the southwestern portion of the island were conducted by Lawrence University under the direction of archaeologist Ronald Mason. One component of the site was an early historic Native American village and associated cemetery located in the eastern portion of the site and used between 1760 and 1770. Excavation of the cemetery uncovered fourteen burials with remains representing twelve individuals, including an adult male, an adult female, and ten juveniles all under the age of twelve, and their associated funerary objects; two burials no longer contained remains but did contain funerary objects. The remains and most of the associated funerary objects are currently in the physical custody of Lawrence University, but under the control of the Wisconsin Historical Society as the Rock Island II site is located on state land. No known individuals were identified. The 228 associated funerary objects are 14 lots of wood fragments from coffins, 20 lots of beads, 3 samples of red ochre, 2 spoons, 2 samples of vermilion, 1 polished pebble, 7 brass trade kettles, 3 unidentifiable objects, 1 cut and polished shell, 1 lot of silver brooches, 18 individual brooches, 6 silver brooches attached to a fabric fragment, 10 earrings, 1 bell or cup, 3 pendants, 1 wooden paint box, 1 perforated elk tooth, 1 lot of tinklers, 5 individual tinklers, 1 thimble, 10 lots of textile fragments, 1 silver cross, 4 armbands, 5 knives, 1 lot of burned faunal remains, 3 firesteels, 2 awls, 1 catlinite pipe, 2 necklaces, 7 Jesuit rings, 2 samples of charred organic materials, 1 musket, 1 French perfume bottle, 6 gunflints, 1 musket ball, 4 pieces of shot, 2 hairpullers, 1 mirror in shards, 1 sheet of folded brass, 1 kettle handle, 1 pipe tomahawk head, 1 lot of nails, 1 lot of bird bone tubes, 1 lot of antler fragments, 2 bells, 8 scraps of brass, 8 pieces of brass wire, 1 piece of cut iron, 1 piece of lead, 2 pieces of worked wood, 3 silver cylinders, 1 embellished antler tine, 1 carved stone, 2 pot sherds, 20 flint chips, 1 bone comb, 2 ear ornaments, 1 hafted iron ax, 1 cup, 1 French pistol, 2 brass bells, 8 bracelets, 1 limestone cobble, and 1 plaque.

The Rock Island II site is a multi-component site that was episodically occupied starting in the Middle Woodland period. Mason identified four phases of early historic Native American occupation. He attributed the occupation associated with the village and cemetery to the Odawa due, in part, to the 1766 account of Jonathan Carver, a European-American, of spending time with the Odawa there. One of the burials in the cemetery was partially cremated, which Mason noted was uncommon in the Great Lakes region during this period, but accounts from this time referenced this practice among several clans of the Odawa and one Potawatomi clan. According to evidence provided by the Little Traverse Bay Band of Odawa Indians in Michigan, the village and associated cemetery were Odawa, with some Menominee, Ojibwe, and Potawatomi individuals living there because of intermarriage.

**Determinations Made by the Wisconsin Historical Society**

Officials of the Wisconsin Historical Society have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 12 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 228 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; the Bay Mills Indian Community, Michigan; the Forest County Potawatomi Community, Wisconsin; the Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; the Hannahville Indian Community, Michigan; the Ho-Chunk Nation of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; the Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; the Little River Band of Ottawa Indians, Michigan; the Little Traverse Bay Bands of Odawa Indians, Michigan; the Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; the Menominee Indian Tribe of Wisconsin; the Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); the Pokagon Band of Potawatomi Indians, Michigan and Indiana; the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; the Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; the Sokaogon Chippewa Community, Wisconsin; and the St. Croix Chippewa Indians of Wisconsin (hereto referred to as the Culturally Affiliated Tribes).

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Jennifer Kolb, Wisconsin Historical Society, 816 State Street, Madison, WI 53706, telephone (608) 264–6434, email *Jennifer.Kolb@wisconsinhistory.org,* by January 9, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Culturally Affiliated Tribes may proceed.

The Wisconsin Historical Society is responsible for notifying the Culturally Affiliated Tribes that this notice has been published.

Dated: November 28, 2016.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2016–29536 Filed 12–8–16; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–22482; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Fowler Museum at the University of California Los Angeles, Los Angeles, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Fowler Museum at the University of California Los Angeles (UCLA) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Fowler Museum at UCLA. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Fowler Museum at UCLA at the address in this notice by January 9, 2017.

**ADDRESSES:** Wendy G. Teeter, Ph.D., Fowler Museum at UCLA, Box 951549, Los Angeles, CA 90095–1549, telephone (310) 825–1864, email *wteeter@arts.ucla.edu.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Fowler Museum at UCLA, Los Angeles, CA. The human remains and associated funerary objects were removed from Ventura County, California.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

#### Consultation

A detailed assessment of the human remains was made by the Fowler Museum at UCLA professional staff in consultation with representatives of Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California; and the following non-federally recognized Indian groups: Gabrieleno/Tongva Tribal Council; San Gabriel Band of Mission Indians; Traditional Council of Pimu (Ti'at Society); the Gabrielino/Tongva Indians of California Tribe; Gabrielino/Tongva Nation; Barbareno/Ventureno Band of Mission Indians; Fernandeño Tataviam Band of Mission Indians; Barbareno Chumash Council; Coastal Band of the Chumash Nation; and Northern Chumash Tribe.

#### History and Description of the Remains and Associated Funerary Objects

In 1961, 1969, and 1970, human remains representing, at minimum, one individual were removed from CA–VEN–137 in Ventura County, CA. These human remains were part of a surface collection made by Thomas Blackburn involving Chester King, Nelson Leonard, and Clay Singer during a field project that surveyed over 32 archeological sites. A small collection was formed and curated at UCLA upon completion of the survey. No date was identified for the site other than it was part of a prehistoric complex. A field identified large mammal limb bone collected from the site was later identified as an extremely burned human femur shaft fragment. No known individuals were identified. No associated funerary objects are identified.

In 1978, human remains representing, at minimum, three individuals were removed from Lindero Canyon (CA–VEN–606) in Ventura County, CA. Collections from the site derive from a survey and excavation led by Dr. William Clewlow, Jr., during the North Ranch Inland Chumash research project. The second investigation was conducted the same year under the direction of Holly Love and Rheta Resnick. Excavations took place on land privately owned by the Prudential Insurance Company. The collections were curated at UCLA in 1979. The site has been dated to the Late Period, A.D. 1300–1650. Fragmentary human remains represent one adult of unknown sex and one infant of unknown sex. The last individual is likely a cremation; neither sex nor age could be determined. No known individuals were identified. The 17 associated funerary objects consist of two pieces and one bag of unmodified animal bone, eight pieces and one bag of stone flakes, one bag of charcoal fragments, one piece and one bag of shell fragments, and two ochre fragments.

The sites detailed in this notice have been identified through consultation to be within the traditional territory of the Chumash. These locations are consistent with ethnographic and historic documentation.

The Chumash territory, anthropologically defined first on the basis of linguistic similarities, and subsequently on broadly shared material and cultural traits, reaches from San Luis Obispo to Malibu on the coast, inland to the western edge of the San Joaquin Valley, to the edge of the San Fernando Valley, and includes the four Northern Channel Islands. The sites in this notice are located in Ventura County and fall within the geographical area identified as Chumash. Some consultants state that these areas were the responsibility of regional leaders, who were themselves organized into a pan-regional association of both political power and ceremonial knowledge. Further, these indigenous areas are identified by some consultants to be relational with clans, or associations of traditional practitioners of specific kinds of indigenous medicinal and ceremonial practices. Some consultants identified these clans as existing in the pre-contact period, and identified some as also existing in the present day. Other consultants do not recognize present-day geographical divisions to be related to clans of traditional practitioners. Ethnographic evidence suggests that the social and political organizations of the pre-contact Channel Islands were primarily at the village level, with a hereditary chief, in addition to many other specialists who wielded power.

The associated funerary objects are consistent with funerary objects placed by groups ancestral to the present-day Chumash people. The material culture of those earlier groups living in the geographical areas mentioned above is characterized by archeologists as having passed through developmental stages over the past 10,000 years. Many local archeologists assert that the changes in the material culture reflect evolving ecological adaptations and related changes in social organization of the same populations, and do not represent

population displacements or movements. The same range of artifact types and materials were used from the early pre-contact period until historic times. Native consultants explicitly state that population mixing, which did occur on a small scale, would not alter the continuity of the shared group identities of people associated with specific locales. Based on this evidence, continuity of occupation by the Chumash people can be traced for all sites listed in this notice.

**Determinations Made by the Fowler Museum at UCLA**

Officials of the Fowler Museum at UCLA have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 4 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 17 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Wendy G. Teeter, Ph.D., Fowler Museum at UCLA, Box 951549, Los Angeles, CA 90095–1549, telephone (310) 825–1864, email *wteeter@arts.ucla.edu,* by January 9, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California may proceed.

The Fowler Museum is responsible for notifying the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California that this notice has been published.

Dated: November 28, 2016.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2016–29534 Filed 12–8–16; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–AKRO–WRST–22338; PPAKAKROR4; PPMPRLE1Y.LS0000]**

### Notice of an Open Public Meeting for the Wrangell-St. Elias National Park Subsistence Resource Commission

**AGENCY:** National Park Service, Interior.

**ACTION:** Meeting notice.

**SUMMARY:** As required by the Federal Advisory Committee Act, the National Park Service (NPS) is hereby giving notice that the Wrangell-St. Elias National Park Subsistence Resource Commission (SRC) will hold a public meeting to develop and continue work on NPS subsistence program recommendations, and other related regulatory proposals and resource management issues. The NPS SRC program is authorized under Section 808 of the Alaska National Interest Lands Conservation Act.

**SUPPLEMENTARY INFORMATION:** SRC meetings are open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the SRC. SRC meetings will be recorded and meeting minutes will be available upon request from the Superintendent for public inspection approximately six weeks after the meeting. Before including your address, telephone 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 may 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.

*Dates and Locations:* The Wrangell-St. Elias National Park SRC will meet from 10:00 a.m. to 5:00 p.m. or until business is completed on Wednesday, March 1, 2017, at the Mentasta Lake School in Mentasta Lake Village, AK. On Thursday, March 2, 2017, the Wrangell-St. Elias National Park SRC will reconvene and meet from 9:00 a.m. to 4:00 p.m. or until business is completed. For more detailed information regarding the meetings, or if you are interested in applying for SRC membership, contact Barbara Cellarius, Subsistence Coordinator, at (907) 822–7236 or by email at *barbara_cellarius@nps.gov* or Clarence Summers, Subsistence Manager, at (907) 644–3603 or via email at *clarence_summers@nps.gov*.

*Proposed meeting agenda:* The agenda may change to accommodate SRC business. The proposed meeting agenda includes the following:

1. Call to Order—Confirm Quorum
2. Welcome and Introduction
3. Review and Adoption of Agenda
4. Approval of Minutes
5. Superintendent's Welcome and Review of the SRC Purpose
6. SRC Membership Status
7. SRC Chair and Members' Reports
8. Superintendent's Report
9. Old Business
10. New Business
11. Federal Subsistence Board Update
12. Alaska Boards of Fish and Game Update
13. National Park Service Reports
    a. Ranger Update
    b. Resource Manager's Report
    c. Subsistence Manager's Report
14. Public and Other Agency Comments
15. Work Session
16. Set Tentative Date and Location for Next SRC Meeting
17. Adjourn Meeting

If this meeting is postponed, the alternate meeting dates are Wednesday, March 8, 2017, from 9:00 a.m. to 5:00 p.m., and Thursday, March 9, 2017, from 9:00 a.m. to 4:00 p.m. The alternate meeting location is the Kenny Lake School in Kenny Lake, AK. SRC meeting locations and dates may change based on inclement weather or exceptional circumstances. If the meeting dates and locations are changed, the Superintendent will issue a press release and use local newspapers and radio stations to announce the rescheduled meeting.

**Alma Ripps,**

*Chief, Office of Policy.*

[FR Doc. 2016–29551 Filed 12–8–16; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–PWR–GOGA–22437; PPSESER003, PPMPSASIY.YPOOOO]**

### Final Environmental Impact Statement Dog Management Plan for Golden Gate National Recreation Area, California

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** Pursuant to the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the Final Environmental Impact Statement (FEIS) for the Dog Management Plan (Plan), Golden Gate National Recreation Area (GGNRA), California.

**DATES:** December 9, 2016.

**ADDRESSES:** An electronic copy of the Plan/FEIS will be available for public inspection at *http://parkplanning.nps.gov/dogplan.* A limited number of hard copies will be available at Park Headquarters, Fort Mason, Building 201, San Francisco, CA 94123.

**FOR FURTHER INFORMATION CONTACT:** Michael Savidge, Park Headquarters, Fort Mason, Building 201, San Francisco, CA 94123; phone (415) 561–4725.

**SUPPLEMENTARY INFORMATION:** Current dog management in the park is based on a number of factors. Areas included in the GGNRA Citizens' Advisory Commission's 1979 pet policy, followed by the park for over twenty years, are currently managed in accordance with the June 2, 2005, decision by the U.S. District Court for the Northern District of California (*U.S.* vs. *Barley*, 405 F.Supp. 2d 1121 (2005)) which prohibited the NPS from enforcing the NPS-wide regulation requiring on leash walking of pets (36 CFR 2.15(a)(2)) in areas where the park had previously allowed off leash use until notice and comment rulemaking under 36 CFR 1.5(b) is completed. A Notice of Proposed Rulemaking was published for a 90-day notice and public comment period on February 24, 2016. A final rule will be published after a 30-day no action period on the FEIS, and after a Record of Decision has been signed.

The purpose of the Plan/FEIS is to determine the manner and extent of dog use in appropriate areas of the park, provide a clear, enforceable dog management policy, preserve and protect natural and cultural resources and natural processes, provide a variety of visitor experiences, improve visitor and employee safety, and reduce user conflicts.

The Plan/FEIS evaluates the impacts of six alternatives for dog management in 22 areas of GGNRA. The range of alternatives includes the consensus recommendations of the GGNRA Negotiated Rulemaking Committee for Dog Management, the 1979 Pet Policy, the current NPS policy 36 CFR 2.15, voice and sight-control dog walking and commercial dog walking. The preferred alternative includes site specific treatments from multiple action alternatives that together allow for a balanced range of visitor experiences, including areas that prohibit dogs, and areas that allow on-leash and voice and sight-control dog walking. It includes the following key elements: The Negotiated Rulemaking Committee's consensus agreement on overarching plan guidelines and committee recommendations on commercial dog walking limits; on-leash and/or voice and sight-control—dog walking in multiple specific areas of the park where impacts to sensitive resources and visitor experience were minimized; no dogs in areas of the park where impacts would be unacceptable and could not be mitigated; a monitoring-based management program measuring compliance in on-leash and voice and sight-control dog walking areas which will provide information that can result in a range of management responses as needed, including further restrictions, training requirements or temporary or long-term closures to a use if that use approaches an unacceptable level; and permit requirements for both private and commercial dog walkers for more than three dogs, with a maximum of six, in limited areas of the park.

Dated: December 2, 2016.

**Laura E. Joss,**

*Regional Director, Pacific West Region.*

[FR Doc. 2016–29529 Filed 12–8–16; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–OIA–22277; PIN00IO14.XI0000]**

## 15-Day Notice of Opportunity for Public Comment on Planned Additions to the U.S. World Heritage Tentative List and Proposed Future U.S. Nominations to the World Heritage List

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** This is a First Notice for the public to comment on the next potential U.S. nominations from the existing U.S. World Heritage Tentative List (''Tentative List'') to the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage List, and announces additions to the Tentative List. The public may also make suggestions for additions to the Tentative List. This notice complies with Sec. 73.7(c) of the World Heritage Program regulations (36 CFR part 73).

**DATES:** Comments will be accepted on or before December 27, 2016. There have been several opportunities for public comment on this subject in past notices, and the National Park Service has also received suggestions from the public and through other channels since 2008 and throughout the process of revising the Tentative List in 2015 and 2016.

**ADDRESSES:** Please provide all comments directly to Jonathan Putnam, Office of International Affairs, National Park Service, 1201 Eye Street NW. (0050), Washington, DC 20005 or by Email to: *jonathan_putnam@nps.gov* . Phone: 202–354–1809. Fax 202–371–1446.

*Comments:* Comments on whether to nominate any of the properties on the Tentative List must address:

(i) How well the property(ies) would meet the World Heritage nomination criteria, requirements for authenticity, integrity, legal protection and management. Information on these criteria and requirements can be found on the Web site noted below; and

(ii) The readiness and ability of the property owner(s) to prepare a satisfactory nomination document.

Suggestions for additions to the Tentative List not previously submitted must address:

(i) How the property(ies) would meet the World Heritage nomination criteria, requirements for authenticity, integrity, legal protection and management. Information on these criteria and requirements can be found on the Web site noted below; and

(ii) The U.S. legal prerequisites that include the agreement of all property owners to the nomination of their property, an official determination that the property is nationally significant (such as by designation as a National Historic or National Natural Landmark), and effective legal protection.

All previous suggestions for the Tentative List made during previous comment periods or otherwise submitted since 2008, have been retained and considered and should not be resubmitted at this time.

All public comments will be summarized and provided to Department of the Interior officials, who will obtain the advice of the Federal Interagency Panel for World Heritage before making any selection of properties for World Heritage nomination. The selection may include the following considerations:

(i) How well the particular type of property (*i.e.,* theme or region) is represented on the World Heritage List in both the United States and other nations;

(ii) The balance between cultural and natural properties already on the List and those under consideration;

(iii) Opportunities that the property affords for public visitation, interpretation, and education;

(iv) Potential threats to the property's integrity or its current state of preservation;

(v) Likelihood of being able to complete a satisfactory nomination; and

(vi) Other relevant factors, including the possible implications of the fact that the United States is currently prohibited by law from providing any funding to UNESCO, including UNESCO and World Heritage member dues.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Putnam, 202–354–1809. General information about U.S. participation in the World Heritage Program and the process used to develop the Tentative List is posted on the Office of International Affairs Web site at: *https://www.nps.gov/subjects/internationalcooperation/worldheritage.htm.*

To request a paper copy of the U.S. Tentative List, please contact April Brooks, Office of International Affairs, National Park Service, 1201 Eye Street NW., (0050) Washington, DC 20005. Email: *april_brooks@nps.gov.*

For the World Heritage nomination format, see the World Heritage Centre Web site at: *http://whc.unesco.org/en/nominations.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The World Heritage List is an international list of cultural and natural properties nominated by the signatories to the World Heritage Convention (1972), an international treaty for the preservation of natural and cultural heritage sites of global significance. The United States has served several terms on the elected 21-nation World Heritage Committee, but is not currently on the Committee. There are 1,052 sites in 165 of the 192 signatory countries. Currently there are 23 World Heritage Sites in the United States.

U.S. participation and the roles of the Department of the Interior and the National Park Service are authorized by Title IV of the Historic Preservation Act Amendments of 1980 and conducted in accordance with 36 CFR part 73—World Heritage Convention.

The National Park Service serves as the principal technical agency for the U.S. Government to the Convention and manages all or parts of 18 of the 23 U.S. World Heritage Sites currently listed.

A Tentative List is a national list of natural and cultural properties appearing to meet the World Heritage Committee eligibility criteria for nomination to the World Heritage List. It is a list of candidate sites which a country intends to consider for nomination within a given time period, but does not guarantee future nomination. The World Heritage Committee's *Operational Guidelines* ask participating nations to provide Tentative Lists, which aid in evaluating properties for the World Heritage List on a comparative international basis and help the Committee to schedule its work over the long term. A country cannot nominate a property unless it has been on its Tentative List for a minimum of a year. Countries also are limited at this time to nominating no more than one site in any given year.

Neither inclusion in the Tentative List nor inscription as a World Heritage Site imposes legal restrictions on owners or neighbors of sites, nor does it give the United Nations any management authority or ownership rights in U.S. World Heritage Sites, which continue to be subject to U.S. laws.

*Current U.S. World Heritage Tentative List:* The current U.S. World Heritage Tentative List was transmitted to the UNESCO World Heritage Centre on January 24, 2008. Since 2008, five properties on the Tentative List have been nominated to the World Heritage List: Three have been successfully inscribed on the World Heritage List, and are therefore no longer included on the Tentative List.

On June 26, 2012, the U.S. Department of the Interior announced in the **Federal Register** (77 FR 38079) that it intended to update the Tentative List in 2016. To accomplish this, it made use of an expert Working Group established as a sub-committee of the U.S. National Commission for UNESCO, a Federal Advisory Committee for the U.S. Department of State. The organizations comprising the Working Group (see below) were selected to provide expertise in the full range of subject areas that can be considered for World Heritage; they also included the member agencies of the Federal Interagency Panel on World Heritage, which advises the Assistant Secretary of the Interior for Fish and Wildlife and Parks. The Working Group completed its work in October 2016 and the full U.S. National Commission for UNESCO endorsed its recommendations on October 11, 2016 in an open teleconference. On October 17, 2016, the Department of State transmitted the recommendations to the Department of the Interior.

**Agencies and Organizations on the U.S. World Heritage Tentative List Working Group**

Smithsonian Institution
U.S. National Committee, International Council on Monuments and Sites
U.S. Fish and Wildlife Service
U.S. Bureau of Land Management
The International Committee for the Conservation of Industrial Heritage (TICCIH)
U.S. National Park Service
Advisory Council on Historic Preservation
Society of Architectural Historians
American Historical Association
National Oceanic and Atmospheric Administration
Geological Society of America
National Geographic Society
U.S. Department of State

The current Tentative List includes the following properties:

**Cultural Sites**

*Civil Rights Movement Sites, Alabama*

Dexter Avenue King Memorial Baptist Church, Montgomery
Bethel Baptist Church, Birmingham
16th Street Baptist Church, Birmingham

*Dayton Aviation Sites, Ohio*

Dayton Aviation Heritage National Historical Park

*Hopewell Ceremonial Earthworks, Ohio*

Fort Ancient State Memorial, Warren County
Hopewell Culture National Historical Park, near Chillicothe
Newark Earthworks State Historic Site, Newark and Heath

*Jefferson (Thomas) Buildings, Virginia (Proposed Jointly as an Extension to the World Heritage Listing of Monticello and the University of Virginia Historic District)*

Poplar Forest, Bedford County
Virginia State Capitol, Richmond

*Mount Vernon, Virginia*

*Serpent Mound, Ohio*

*Wright (Frank Lloyd) Buildings [Nominated in 2015; Additional Information has Been Requested by the World Heritage Committee]*

Taliesin West, Scottsdale, Arizona
Hollyhock House, Los Angeles, California
Marin County Civic Center, San Rafael, California
Frederick C. Robie House, Chicago, Illinois
Unity Temple, Oak Park, Illinois
Solomon R. Guggenheim Museum, New York, New York
Price Tower, Bartlesville, Oklahoma
Fallingwater, Mill Run, Pennsylvania
Taliesin, Spring Green, Wisconsin
Herbert and Katherine Jacobs House, Madison, Wisconsin

**Natural Sites**

*National Marine Sanctuary of American Samoa (Formerly Fagatele Bay National*

Marine Sanctuary, American Samoa)

*Okefenokee National Wildlife Refuge, Georgia*

*Petrified Forest National Park, Arizona*

*White Sands National Monument, New Mexico*

**Proposed Additions to U.S. World Heritage Tentative List**

**Cultural Sites**

*Ellis Island, New Jersey and New York*

*Chicago Early Skyscrapers, Illinois, Including: [Other Properties May Be Added in the Course of Developing a Nomination]*

—Rookery
—Auditorium Building
—Monadnock Building
—Ludington Building
—Marquette Building
—Old Colony Building
—Schlesinger & Mayer (Carson, Pirie Scott) Department Store
—Second Leiter Building
—Fisher Building

*Central Park, New York*

*Brooklyn Bridge, New York*

*Moravian Bethlehem District, Pennsylvania*

**Natural Sites**

*Marianas Trench National Monument, U.S. Territory, Commonwealth of the Northern Mariana Islands, Guam*

*Central California Current, California, Including*

—Cordell Bank National Marine Sanctuary
—Monterey Bay National Marine Sanctuary
—Greater Farallones National Marine Sanctuary
—Farallon Islands National Wildlife Refuge
—Point Reyes National Seashore
—Golden Gate National Recreation Area

*Big Bend National Park, Texas*

*Pacific Remote Islands National Monument, U.S. Territorial Waters*

In developing recommendations for additions to the Tentative List, the Working Group considered all the suggestions that had been submitted to the Department of the Interior since the current Tentative List was developed in 2008, during both formal comment periods and through other channels. There were well over 100 of these suggestions, including both specific properties and thematic ideas. The Working Group also considered additional suggestions contained in the January 2016 ''U.S. World Heritage Gap Study Report'' by the U.S. national committee of the International Council on Monuments and Sites (ICOMOS) and a report by an expert from the World Commission on Protected Areas on places in the U.S. identified as priorities for global conservation and which may have potential for World Heritage listing. The ICOMOS international secretariat provided, under contract with the National Park Service, preliminary evaluations of a short list of cultural candidate sites, which also informed the Working Group's recommendations.

The United States Department of the Interior is now considering whether to initiate the preparation of draft nominations for any of the remaining properties on the current Tentative List to the World Heritage List. Brief descriptions of the properties appear on the National Park Service, Office of International Affairs Web site: *https://www.nps.gov/subjects/internationalcooperation/worldheritage.htm*.

All comments will be a matter of public record. Before including an address, phone number, email address, or other personal identifying information in a comment, members of the public should be aware that the entire comment—including personal identifying information—may be made public at any time. While commenters can request that personal identifying information be withheld from public review, it may not be possible to comply with this request.

**Authority:** 54 U.S.C. 307101; 36 CFR part 73.

Dated: November 30, 2016.

**Michael J. Bean,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2016–29528 Filed 12–8–16; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–NERO–PAGR–22339; PX.PR166532I.00.1]**

### Notice of the 2017 Meeting Schedule for the Paterson Great Falls National Historical Park Advisory Commission

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of meetings.

**SUMMARY:** As required by the Federal Advisory Committee Act (5 U.S.C. Appendix 1–16), the National Park Service (NPS) is hereby giving notice for the 2017 meeting schedule for the Paterson Great Falls National Historical Park Advisory Commission. The Commission is authorized by the Omnibus Public Land Management Act, (16 U.S.C. 410lll), ''to advise the Secretary in the development and implementation of the management plan.'' Agendas for these meetings will be provided on the Commission Web site at *http://www.nps.gov/pagr/parkmgmt/federal-advisory-commission.htm*.

**DATES:** The Commission will meet on the following dates in 2017:

Thursday, January 12, 2017, 2:00 p.m.–5:00 p.m. (snow date: Thursday, January 19, 2017, 2:00 p.m.–5:00 p.m.) (EASTERN);
Thursday, April 13, 2017, 2:00 p.m.–5:00 p.m. (EASTERN);
Thursday, July 13, 2017, 2:00 p.m.–5:00 p.m. (EASTERN); and
Thursday, October 12, 2017, 2:00 p.m.–5:00 p.m. (EASTERN).

**ADDRESSES:** The January and July meetings will be held at the Rogers Meeting Center, 32 Spruce Street, Paterson, NJ 07501; and the April and October meetings will be held at The Paterson Museum, 2 Market Street, Paterson, NJ 07501.

**FOR FURTHER INFORMATION CONTACT:** Darren Boch, Superintendent and Designated Federal Officer, Paterson Great Falls National Historical Park, 72 McBride Avenue, Paterson, NJ 07501, (973) 523–2630, or email *darren_boch@nps.gov*.

**SUPPLEMENTARY INFORMATION:** Topics to be discussed include updates on the status of the Paterson Great Falls National Historical Park General Management Plan.

The meetings will be open to the public and time will be reserved during each meeting for public comment. Oral comments will be summarized for the record. If individuals wish to have their comments recorded verbatim, they must submit them in writing. Written comments and requests for agenda items may be sent to: Federal Advisory Commission, Paterson Great Falls National Historical Park, 72 McBride Avenue, Paterson, NJ 07501.

Before including your address, telephone 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 may 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. All comments will be made part of the public record and

will be electronically distributed to all Committee members.

**Alma Ripps,**

*Chief, Office of Policy.*

[FR Doc. 2016–29552 Filed 12–8–16; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–22483; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Intent To Repatriate Cultural Items: Fowler Museum at the University of California Los Angeles, Los Angeles, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Fowler Museum at the University of California Los Angeles (UCLA), in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Fowler Museum at UCLA. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Fowler Museum at UCLA at the address in this notice by January 9, 2017.

**ADDRESSES:** Wendy G. Teeter, Ph.D., Fowler Museum at UCLA, Box 951549, Los Angeles, CA 90095–1549, telephone (310) 825–1864, email *wteeter@arts.ucla.edu.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Fowler Museum at UCLA that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

#### History and Description of the Cultural Items

In 1978, 132 cultural items were removed from Lindero Canyon (CA–VEN–606) in Ventura County, CA. Collections from the site derive from a survey and excavation led by Dr. William Clewlow, Jr., during the North Ranch Inland Chumash research project. A second investigation was conducted in 1979 under the direction of Holly Love and Rheta Resnick. Excavations took place on land privately owned by the Prudential Insurance Company. The collections were curated at UCLA in 1979. The site has been dated to the Late Period, A.D. 1300–1650. During excavations a cemetery was discovered and 13 burials were uncovered and left *in-situ,* but burial objects were removed for study. Funerary objects were identified as being removed from six burials (MM, HH, LL, EE, KK, and 2). The unassociated funerary objects are 126 objects and 6 bags of artifacts, including 12 pieces and 4 bags of shell fragments, 2 shell beads, 62 stone flakes, 1 cobble, 3 quartz crystals, 41 pieces and 2 bags of unmodified animal bone, 4 ochre fragments, and 1 charcoal lump. Since the represented burials were left *in situ* the curated burial items are unassociated funerary objects.

The site detailed in this notice has been identified through consultation to be within the traditional territory of the Chumash. These locations are consistent with ethnographic and historic documentation.

The Chumash territory, anthropologically defined first on the basis of linguistic similarities, and subsequently on broadly shared material and cultural traits, reaches from San Luis Obispo to Malibu on the coast, inland to the western edge of the San Joaquin Valley, to the edge of the San Fernando Valley, and includes the four Northern Channel Islands. The site listed in this notice is located in Ventura County and falls within the geographical area identified as Chumash. Some consultants state that these areas were the responsibility of regional leaders, who were themselves organized into a pan-regional association of both political power and ceremonial knowledge. Further, these indigenous areas are identified by some consultants to be relational with clans, or associations of traditional practitioners of specific kinds of indigenous medicinal and ceremonial practices. Some consultants identified these clans as existing in the pre-contact period, and identified some as also existing in the present day. Other consultants do not recognize present-day geographical divisions to be related to clans of traditional practitioners. Ethnographic evidence suggests that the social and political organizations of the pre-contact Channel Islands were primarily at the village level, with a hereditary chief, in addition to many other specialists who wielded power.

The unassociated funerary objects are consistent with funerary objects placed by groups ancestral to the present-day Chumash people. The material culture of those earlier groups living in the geographical areas mentioned above is characterized by archeologists as having passed through developmental stages over the past 10,000 years. Many local archeologists assert that the changes in the material culture reflect evolving ecological adaptations and related changes in social organization of the same populations, and do not represent population displacements or movements. The same range of artifact types and materials were used from the early pre-contact period until historic times. Native consultants explicitly state that population mixing, which did occur on a small scale, would not alter the continuity of the shared group identities of people associated with specific locales. Based on this evidence, continuity of occupation by the Chumash people can be traced for the site listed in this notice.

#### Determinations Made by the Fowler Museum at UCLA

Officials of the Fowler Museum at UCLA have determined that*:*

- Pursuant to 25 U.S.C. 3001(3)(B), the 132 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

#### Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian

organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Wendy G. Teeter, Ph.D., Fowler Museum at UCLA, Box 951549, Los Angeles, CA 90095–1549, telephone (310) 825–1864, email *wteeter@arts.ucla.edu,* by January 9, 2017. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California may proceed.

The Fowler Museum at UCLA is responsible for notifying the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California that this notice has been published.

Dated: November 28, 2016.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2016–29535 Filed 12–8–16; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–NERO–GATE–22286; PPNEGATEB0, PPMVSCS1Z.Y00000]**

### Meeting Schedule of the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee January Through June 2017

**AGENCY:** National Park Service, Interior.

**ACTION:** Meeting notice.

**SUMMARY:** In accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix 1–16), notice is hereby given of the January through June 2017 meeting schedule of the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee.

Agenda: The Committee will offer expertise and advice regarding the preservation of historic Army buildings at Fort Hancock and Sandy Hook Proving Ground National Historic Landmark into a viable, vibrant community with a variety of uses for visitors, not-for-profit organizations, residents and others. All meetings will begin at 9:00 a.m., with a public comment period at 11:30 a.m. (EASTERN). All meetings are open to the public.

**ADDRESSES:** The meetings will be held in the Beech Room at the Thompson Park Visitor Center, located at 805 Newman Springs Road, Lincroft, NJ. Thompson Park is part of the Monmouth County Park System.

**DATES:** The meetings will take place on the following dates: Friday, February 3, 2017; Friday, April 28, 2017; and Thursday, June 8, 2017.

**FOR FURTHER INFORMATION CONTACT:** John Harlan Warren, External Affairs Officer, Gateway National Recreation Area, Sandy Hook Unit, 26 Hudson Road, Highlands, New Jersey 07732, 732–872–5910, email *John_Warren@nps.gov.*

**SUPPLEMENTARY INFORMATION:** Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix 1–16), the purpose of the Committee is to provide advice to the Secretary of the Interior, through the Director of the National Park Service, on the development of a reuse plan and on matters relating to future uses of certain buildings at the Fort Hancock and Sandy Hook Proving Ground National Historic Landmark which lie within Gateway National Recreation Area.

The Committee Web site, *http://www.forthancock21.org,* includes summaries from all prior meetings. These meetings are open to the public. Interested persons may present, either orally or through written comments, information for the Committee to consider during the public meeting. Written comments will be accepted prior to, during, or after the meeting. Due to time constraints during the meeting, the Committee is not able to read written public comments submitted into the record. Individuals or groups requesting to make oral comments at the public Committee meeting will be limited to no more than five minutes per speaker.

All comments will be made part of the public record and will be electronically distributed to all Committee members. Before including your address, telephone number, email address, or other personal identifying information in your written comments, you should be aware that your entire comment including your personal identifying information will be publicly available. While you may 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.

**Alma Ripps,**

*Chief, Office of Policy.*

[FR Doc. 2016–29549 Filed 12–8–16; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–22473; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Intent To Repatriate Cultural Items: University of Oregon Museum of Natural and Cultural History, Eugene, OR

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The University of Oregon Museum of Natural and Cultural History, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the University of Oregon Museum of Natural and Cultural History. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the University of Oregon Museum of Natural and Cultural History, at the address in this notice by January 9, 2017.

**ADDRESSES:** Dr. Pamela Endzweig, Director of Collections, University of Oregon Museum of Natural and Cultural History, 1224 University of Oregon, Eugene, OR 97403–1224, telephone (541) 346–5120.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the University of Oregon Museum of Natural and Cultural History, Eugene, OR, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal

agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

**History and Description of the Cultural Items**

At an unknown date, a group of beads and other cultural items were removed from a burial site near Coos County, OR. In 1930, a private individual donated the cultural items to the University of Oregon Museum of Natural History (now designated as the Museum of Natural And Cultural History). According to accessions records, the beads were given to the donor by her sister, who ''found them on an old Indian grave near Coquille, Oregon.'' The catalog number assigned to this entry is attached to a string of 28 glass beads, 1 copper button, 2 buttons of undetermined material, and 1 perforated disc of ground shell or bone. A set of 30 small unstrung and unlabeled seed beads are housed with the other items and are considered to be from the same collection.

Based on the donor's information, the 62 unassociated funerary objects described above are determined to be Native American. Based on provenience, the cultural items are reasonably believed to be affiliated with the Coquille people. Historical documents, ethnographic sources, and oral history indicate that Coquille people have occupied the Coquille area of coastal Oregon since pre-contact times. The Coquille people are represented by the Coquille Indian Tribe (previously listed as the Coquille Tribe of Oregon).

**Determinations Made by the University of Oregon Museum of Natural and Cultural History**

Officials of the University of Oregon Museum of Natural and Cultural History have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 62 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Coquille Indian Tribe (previously listed as the Coquille Tribe of Oregon).

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Dr. Pamela Endzweig, Director of Collections, University of Oregon Museum of Natural and Cultural History, 1224 University of Oregon, Eugene, OR 97403–1224, telephone (541) 346–5120, by January 9, 2017. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Coquille Indian Tribe (previously listed as the Coquille Tribe of Oregon) may proceed.

The University of Oregon Museum of Natural and Cultural History is responsible for notifying the Coquille Indian Tribe (previously listed as the Coquille Tribe of Oregon); the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians; the Confederated Tribes of the Grand Ronde Community of Oregon; and the Confederated Tribes of Siletz Indians of Oregon (previously listed as the Confederated Tribes of the Siletz Reservation) that this notice has been published.

Dated: November 22, 2016.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2016–29537 Filed 12–8–16; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–NERO–ACAD–22300; PPNEACADSO, PPMPSPDIZ.YM0000]**

### Notice of the 2017 Meeting Schedule of the Acadia National Park Advisory Commission

**AGENCY:** National Park Service, Interior.

**ACTION:** Meeting notice.

**SUMMARY:** This notice sets the dates of the next three meetings of the Acadia National Park Advisory Commission occurring in 2017. The Commission meeting locations may change based on inclement weather or exceptional circumstances. If a meeting location is changed, the Superintendent will issue a press release and use local newspapers to announce the meeting.

**DATES:** All meetings will begin at 1:00 p.m. (EASTERN). The schedule for the future public meetings of the Commission will be held as follows: Monday, February 6, 2017; Monday, June 5, 2017; and Monday, September 11, 2017.

**ADDRESSES:** For the February 6, 2017, and June 5, 2017, meetings, the Commission will meet at the Acadia National Park headquarters conference room, Acadia National Park, 20 McFarland Hill Drive, Bar Harbor, Maine 04609. For the September 11, 2017, meeting, the Commission will meet at Schoodic Education and Research Center, Winter Harbor, Maine 04693.

**FOR FURTHER INFORMATION CONTACT:** Further information concerning these meetings may be obtained from R. Michael Madell, Deputy Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, telephone (207) 288–8701 or via email *michael_madell@nps.gov*.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting. Before including your address, telephone 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 may 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.

*Agenda:* Commission meetings will consist of the following proposed agenda items:

1. Committee Reports:
   - Land Conservation
   - Park Use
   - Science and Education
   - Historic
2. Old Business
3. Superintendent's Report
4. Chairman's Report
5. Public Comments
6. Adjournment

**Alma Ripps,**

*Chief, Office of Policy.*

[FR Doc. 2016–29550 Filed 12–8–16; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–0016]**

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Application for Registration of Firearms Acquired by Certain Government Entities; ATF F 10 (5320.10)

**AGENCY:** Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

**ACTION:** 60-day notice.

**SUMMARY:** The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until February 7, 2017.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any additional information, please contact Gary Schaible, Office of Enforcement Programs and Services, National Firearms Act Division, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) either by mail at 99 New York Ave. NE., Washington, DC 20226, by email at *nfaombcomments@atf.gov,* or by telephone at 202 648–7165.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

1. *Type of Information Collection (*check justification or form 83–I): Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Application for Registration of Firearms Acquired by Certain Government Entities

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

*Form number* (if applicable): ATF F 10 (5320.10).

*Component:* Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Primary:* State, Local, or Tribal Government.

*Other (if applicable):* None.

*Abstract:* The ATF Form 10 (5320.10) is used to allow State and local government agencies to register otherwise unregistrable National Firearms Act (NFA). The NFA requires the registration of certain firearms under Federal Law. The Form 10 registration, which is for official use only by the agency, allows State and local agencies to retain and use firearms which otherwise would have to be destroyed and comply with the NFA.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 1,507 respondents will utilize the form, and it will take each respondent approximately 30 minutes to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 753.5 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: December 5, 2016.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2016–29481 Filed 12–8–16; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1117—NEW]**

### Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection: Leadership Engagement Survey

**AGENCY:** Drug Enforcement Administration, Department of Justice.

**ACTION:** 30-day notice.

**SUMMARY:** The Department of Justice (DOJ), Drug Enforcement Administration, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 30 days until January 9, 2017.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Donna A. Rodriguez, Ph.D., Unit Chief, Research and Analysis Staff, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@OMB.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

1. *Type of Information Collection:* New collection.

2. *The Title of the Form/Collection:* Leadership Engagement Survey (LES).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Online survey.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public is Drug Enforcement Administration employees and Task Force Officers. The LES is an initiative mandated by the Acting Administrator, DEA, to assess and improve competencies and proficiency of leadership across the DEA.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that approximately 5000 respondents will complete the survey within approximately 45 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 3750 hours. It is estimated that respondents will take 45 minutes to complete the survey. In order to calculate the public burden for the survey, 45 minutes was multiplied by 5000 and divided by 60 (the number of minutes in an hour) which equals 3750 total annual burden hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: December 6, 2016.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2016–29530 Filed 12–8–16; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Workforce Information Advisory Council (WIAC)

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of virtual meeting.

**SUMMARY:** Pursuant to Section 308 of the Workforce Innovation and Opportunity Act of 2014 (WIOA) (Pub. L. 113–128), which amends section 15 of the Wagner-Peyser Act of 1933 (29 U.S.C. 491–2), notice is hereby given that the WIAC will meet January 11, 2017, at 2:00 p.m. Eastern Standard Time (EST). The meeting will take place virtually at *http://coffey.adobeconnect.com/wiac110117/* or call 866–530–3818 and use conference code 2956449540. The WIAC was established in accordance with provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.) and will act in accordance with the applicable provisions of FACA and its implementing regulation at 41 CFR 102–3. The meeting will be open to the public.

**DATES:** The meeting will take place on Wednesday, January 11, 2017 at 2:00 p.m. EST and conclude no later than 5:00 p.m. EST. Public statements and requests for special accommodations or to address the Advisory Council must be received by January 4, 2017.

**ADDRESSES:** The meeting will be held virtually at *http://coffey.adobeconnect.com/wiac110117/* or call 866–530–3818 and use conference code 2956449540. If problems arise accessing the meeting, please call 301–907–0900 ext. 225.

**FOR FURTHER INFORMATION CONTACT:** Steven Rietzke, Chief, Division of National Programs, Tools, and Technical Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–4510, 200 Constitution Ave. NW., Washington, DC 20210; Telephone: 202–693–3912. Mr. Rietzke is the Designated Federal Officer for the WIAC.

**SUPPLEMENTARY INFORMATION:**

*Background:* The WIAC is an important component of the Workforce Innovation and Opportunity Act. The WIAC is a Federal Advisory Committee of workforce and labor market information experts representing a broad range of national, State, and local data and information users and producers. The purpose of the WIAC is to provide recommendations to the Secretary of Labor, working jointly through the Assistant Secretary for Employment and Training and the Commissioner of Labor Statistics, to address: (1) The evaluation and improvement of the nationwide workforce and labor market information (WLMI) system and statewide systems that comprise the nationwide system; and (2) how the Department and the States will cooperate in the management of those systems. These systems include programs to produce employment-related statistics and State and local workforce and labor market information.

The Department of Labor anticipates the WIAC will accomplish its objectives by: (1) Studying workforce and labor market information issues; (2) seeking and sharing information on innovative approaches, new technologies, and data to inform employment, skills training, and workforce and economic development decision making and policy; and (3) advising the Secretary on how the workforce and labor market information system can best support workforce development, planning, and program development. Additional information is available at *www.doleta.gov/wioa/wiac/.*

*Purpose:* The WIAC is currently in the process of identifying and reviewing issues and aspects of the WLMI system and statewide systems that comprise the nationwide system and how the Department and the States will cooperate in the management of those systems. As part of this process, the Advisory Council meets to gather information and to engage in deliberative and planning activities to facilitate the development and provision of its recommendations to the Secretary in a timely manner.

*Agenda:* Beginning at 2:00 p.m. on January 11, 2017, the Advisory Council will briefly review the minutes of the previous meeting held November 16 and 17, 2016. The Advisory Council will then discuss the informational report it is creating to document the current status of the WLMI systems from a national and state perspective for the Secretary of Labor.

The Advisory Council will open the floor for public comment once the discussion of the informational report is completed, which is expected to be 3:00 p.m. EST; however, that time may change at the WIAC chair's discretion. Once the informational report discussion, the public comment period, and discussion of next steps and new business has concluded, the meeting will adjourn. The WIAC does not anticipate the meeting lasting past 5:00 p.m. EST.

The full agenda for the meeting, and changes or updates to the agenda, will

be posted on the WIAC's Web page, *www.doleta.gov/wioa/wiac/.*

*Attending the meeting:* Members of the public who require reasonable accommodations to attend the meeting may submit requests for accommodations by mailing them to the person and address indicated in the **FOR FURTHER INFORMATION CONTACT** section by the date indicated in the **DATES** section or transmitting them as email attachments in PDF format to the email address indicated in the **FOR FURTHER INFORMATION CONTACT** section with the subject line ''January 2017 WIAC Meeting Accommodations'' by the date indicated in the **DATES** section. Please include a specific description of the accommodations requested and phone number or email address where you may be contacted if additional information is needed to meet your request.

*Public statements:* Organizations or members of the public wishing to submit written statements may do so by mailing them to the person and address indicated in the **FOR FURTHER INFORMATION CONTACT** section by the date indicated in the **DATES** section or transmitting them as email attachments in PDF format to the email address indicated in the **FOR FURTHER INFORMATION CONTACT** section with the subject line ''January 2017 WIAC Meeting Public Statements'' by the date indicated in the **DATES** section. Submitters may include their name and contact information in a cover letter for mailed statements or in the body of the email for statements transmitted electronically. Relevant statements received before the date indicated in the **DATES** section will be included in the record of the meeting. No deletions, modifications, or redactions will be made to statements received, as they are public records. Please do not include personally identifiable information (PII) in your public statement.

*Requests to Address the Advisory Council:* Members of the public or representatives of organizations wishing to address the Advisory Council should forward their requests to the contact indicated in the **FOR FURTHER INFORMATION CONTACT** section, or contact the same by phone, by the date indicated in the **DATES** section. Oral presentations will be limited to 10 minutes, time permitting, and shall proceed at the discretion of the Council chair. Individuals with disabilities, or others, who need special accommodations, should indicate their needs along with their request.

**Portia Wu,**

*Assistant Secretary for Employment and Training Administration.*

[FR Doc. 2016–29525 Filed 12–8–16; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Agency Information Collection Activities; Comment Request; Job Corps Health Questionnaire

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL), Employment Training Administration is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Job Corps Health Questionnaire''. This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*

**DATES:** Consideration will be given to all written comments received by February 7, 2017.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Johnetta Davis by telephone at 202–693–8010, TTY 877–889–5627 (these are not toll-free numbers) or by email at *davis.johnetta@dol.gov*.

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Job Corps, 200 Constitution Avenue NW., Room N4507, Washington, DC 20210; by email: *davis.johnetta@dol.gov* or by Fax 202–693–2767.

**FOR FURTHER INFORMATION CONTACT:** Johnetta Davis by telephone at 202–693–8010 (this is not a toll free number) or by email at *davis.johnetta@dol.gov*.

**Authority:** 44 U.S.C. 3506(c)(2)(A).

**SUPPLEMENTARY INFORMATION:** The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Job Corps is the nation's largest residential, educational, and career technical training program for young Americans. The Economic Opportunity Act established Job Corps in 1964 and it currently operates under the authority of the Workforce Innovation and Opportunity Act (WIOA) of 2014. For over 51 years, Job Corps has helped prepare nearly 3 million at-risk young people between the ages of 16 and 24 for success in our nation's workforce. With 126 centers in 50 states, Puerto Rico, and the District of Columbia, Job Corps assists students across the nation in attaining academic credentials, including High School Diplomas (HSD) and/or High School Equivalency (HSD), and career technical training credentials, including industry-recognized certifications, state licensures, and pre-apprenticeship credentials.

Job Corps is a national program administered by the U.S. Department of Labor (DOL) through the Office of Job Corps and six Regional Offices. DOL awards and administers contracts for the recruiting and screening of new students, center operations, and the placement and transitional support of graduates and former enrollees. Large and small corporations and nonprofit organizations manage and operate 99 Job Corps centers under contractual agreements with DOL. These contract Center Operators are selected through a competitive procurement process that evaluates potential operators' technical expertise, proposed costs, past performance, and other factors, in accordance with the Competition in Contracting Act and the Federal Acquisition Regulations. The remaining 27 Job Corps centers, called Civilian Conservation Centers, are operated by the U.S. Department of Agriculture Forest Service, via an interagency agreement. The DOL has a direct role in the operation of Job Corps, and does not serve as a pass-through agency for this program.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB

Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention Job Corps health Questionnaire, OMB control number 1205–0033.

Submitted comments will also be a matter of public record for this ICR and posted on the Internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL–ETA.

*Type of Review:* Extension without change.

*Title of Collection:* Job Corps Health Questionnaire.

*Form(s):* ETA Form 653.

*OMB Control Number:* 1205–0033.

*Affected Public:* Individuals and Households.

*Estimated Number of Respondents:* 69,700.

*Frequency:* Once.

*Total Estimated Annual Responses:* 86,581.

*Estimated Average Time per Response:* Varies.

*Estimated Total Annual Burden Hours:* 10,722 hours.

*Total Estimated Annual Other Cost Burden:* $0.

**Portia Wu,**

*Assistant Secretary for Employment and Training, Labor.*

[FR Doc. 2016–29522 Filed 12–8–16; 8:45 am]

**BILLING CODE 4510–FT–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Agency Information Collection Activities; Comment Request; Job Corps Placement and Assistance Record

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL), Employment and Training Administration is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Job Corps Placement and Assistance Record''. This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*

**DATES:** Consideration will be given to all written comments received by February 7, 2017.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Andrea Kyle by telephone at 202–693–3008, TTY 877–889–5627, (these are not toll-free numbers) or by email at *Kyle.Andrea@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Job Corps, 200 Constitution Avenue NW., Room N4507, Washington, DC 20210; by email: *Kyle.Andrea@dol.gov*; or by Fax 202–693–2767.

**FOR FURTHER INFORMATION CONTACT:** Andrea Kyle by telephone at 202–693–3008 (this is not a toll-free number) or by email at *Kyle.Andrea@dol.gov*.

**Authority:** 44 U.S.C. 3506(c)(2)(A).

**SUPPLEMENTARY INFORMATION:** The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Job Corps is the nation's largest residential, educational, and career technical training program for young Americans. The Economic Opportunity Act established Job Corps in 1964 and it currently operates under the authority of the Workforce Innovation and Opportunity Act (WIOA) of 2014. For over 51 years, Job Corps has helped prepare nearly 3 million at-risk young people between the ages of 16 and 24 for success in our nation's workforce. With 126 centers in 50 states, Puerto Rico, and the District of Columbia, Job Corps assists students across the nation in attaining academic credentials, including High School Diplomas (HSD) and/or High School Equivalency (HSD), and career technical training credentials, including industry-recognized certifications, state licensures, and pre-apprenticeship credentials.

Job Corps is a national program administered by the U.S. Department of Labor (DOL) through the Office of Job Corps and six Regional Offices. DOL awards and administers contracts for the recruiting and screening of new students, center operations, and the placement and transitional support of graduates and former enrollees. Large and small corporations and nonprofit organizations manage and operate 99 Job Corps centers under contractual agreements with DOL. These contract Center Operators are selected through a competitive procurement process that evaluates potential operators' technical expertise, proposed costs, past performance, and other factors, in accordance with the Competition in Contracting Act and the Federal Acquisition Regulations. The remaining 27 Job Corps centers, called Civilian Conservation Centers, are operated by the U.S. Department of Agriculture Forest Service, via an interagency agreement. The DOL has a direct role in the operation of Job Corps, and does not serve as a pass-through agency for this program.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an

information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention Job Corps, OMB control number 1205–0035.

Submitted comments will also be a matter of public record for this ICR and posted on the Internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the proposed collection burden of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the collection burden on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL–ETA.

*Type of Review:* Extension without change.

*Title of Collection:* Job Corps Placement and Assistance Record.

*Form(s):* ETA Form 678.

*OMB Control Number:* 1205–0035.

*Affected Public:* Job Corps records staff and career transition specialists.

*Estimated Number of Respondents:* 34,000.

*Frequency:* Once placements occur.

*Total Estimated Annual Responses:* 34,000.

*Estimated Average Time per Response:* Varies.

*Estimated Total Annual Burden Hours:* 4,210 hours.

*Total Estimated Annual Other Cost Burden:* $117,880.

**Portia Wu,**

*Assistant Secretary for Employment and Training, Labor.*

[FR Doc. 2016–29521 Filed 12–8–16; 8:45 am]

**BILLING CODE 4510–FT–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Agency Information Collection Activities; Comment Request; Job Corps Enrollee Allotment Determination

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL), Employment Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Job Corps Enrollee Allotment Determination.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*

**DATES:** Consideration will be given to all written comments received by February 7, 2017.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Linda Estep by telephone at 888–886–1303 ext. 7212 (this is a toll-free number). TTY 877–889–5627, (this is not a toll-free number) or by email at *estep.linda@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Job Corps, 200 Constitution Avenue NW., Room N4507, Washington, DC 20210; by email: *estep.linda@dol.gov* or by Fax 202–693–2767.

**FOR FURTHER INFORMATION CONTACT:** Linda Estep by telephone at 888–886–1303 ext. 7212, (this is a toll-free number) or by email at *estep.linda@dol.gov.*

**Authority:** 44 U.S.C. 3506(c)(2)(A).

**SUPPLEMENTARY INFORMATION:** The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Job Corps is the nation's largest residential, educational, and career technical training program for young Americans. The Economic Opportunity Act established Job Corps in 1964 and it currently operates under the authority of the Workforce Innovation and Opportunity Act (WIOA) of 2014. For over 51 years, Job Corps has helped prepare nearly 3 million at-risk young people between the ages of 16 and 24 for success in our nation's workforce. With 126 centers in 50 states, Puerto Rico, and the District of Columbia, Job Corps assists students across the nation in attaining academic credentials, including High School Diplomas (HSD) and/or High School Equivalency (HSD), and career technical training credentials, including industry-recognized certifications, state licensures, and pre-apprenticeship credentials.

Job Corps is a national program administered by the U.S. Department of Labor (DOL) through the Office of Job Corps and six Regional Offices. DOL awards and administers contracts for the recruiting and screening of new students, center operations, and the placement and transitional support of graduates and former enrollees. Large and small corporations and nonprofit organizations manage and operate 99 Job Corps centers under contractual agreements with DOL. These contract Center Operators are selected through a competitive procurement process that evaluates potential operators' technical expertise, proposed costs, past performance, and other factors, in accordance with the Competition in Contracting Act and the Federal Acquisition Regulations. The remaining 27 Job Corps centers, called Civilian Conservation Centers, are operated by the U.S. Department of Agriculture Forest Service, via an interagency agreement. The DOL has a direct role in the operation of Job Corps, and does not serve as a pass-through agency for this program.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection

of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention Job Corps Application Data, OMB control number 1205–0025.

Submitted comments will also be a matter of public record for this ICR and posted on the Internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL–ETA.

*Type of Review:* Extension without change.

*Title of Collection:* Job Corps Enrollee Allotment Determination.

*Form(s):* ETA Form 658.

*OMB Control Number:* 1205–0030.

*Affected Public:* Individuals and Households.

*Estimated Number of Respondents:* 1,749.

*Frequency:* Once.

*Total Estimated Annual Responses:* 1,749.

*Estimated Average Time per Response:* Varies.

*Estimated Total Annual Burden Hours:* 87.5.

*Total Estimated Annual Other Cost Burden:* $0.

**Portia Wu,**

*Assistant Secretary for Employment and Training, Labor.*

[FR Doc. 2016–29524 Filed 12–8–16; 8:45 am]

**BILLING CODE 4510–FT–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Eligibility Data Form: Uniformed Services Employment and Reemployment Rights Act and Veterans' Preference

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Veterans' Employment and Training Services (VETS) sponsored information collection request (ICR) titled, ''Eligibility Data Form: Uniformed Services Employment and Reemployment Rights Act and Veterans' Preference,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before January 9, 2017.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201607-1293-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–VETS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the Eligibility Data Form: Uniformed Services Employment and Reemployment Rights Act and Veterans' Preference, Form VETS–1010, information collection. The information is used to determine eligibility of veterans' complaints to reemployment rights they are seeking as well as to state alleged violations by employers of the pertinent statutes and request assistance in obtaining appropriate reemployment benefits. Uniformed Services Employment and Reemployment Rights Act section 2(a) authorizes this information collection. *See* 38 U.S.C. 4322.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1293–0002.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on December 31, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For

additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 19, 2016 (81 FR 64204).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1293–0002.

The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL–VETS.

*Title of Collection:* Eligibility Data Form: Uniformed Services Employment and Reemployment Rights Act and Veterans' Preference.

*OMB Control Number:* 1293–0002.

*Affected Public:* Individuals or Households.

*Total Estimated Number of Respondents:* 2,250.

*Total Estimated Number of Responses:* 2,250.

*Total Estimated Annual Time Burden:* 1,125 hours.

*Total Estimated Annual Other Costs Burden:* $0.

Dated: December 5, 2016.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2016–29498 Filed 12–8–16; 8:45 am]

**BILLING CODE 4510–79–P**

## DEPARTMENT OF LABOR

### Office of Workers' Compensation Programs

### Advisory Board on Toxic Substances and Worker Health: Subcommittee on the Site Exposure Matrices (SEM)

**AGENCY:** Office of Workers' Compensation Programs, Labor.

**ACTION:** Announcement of meeting of the Subcommittee on the Site Exposure Matrices of the Advisory Board on Toxic Substances and Worker Health (Advisory Board) for the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

**SUMMARY:** The subcommittee will meet via teleconference on January 6, 2017, from 1:00 p.m. to 3:00 p.m. Eastern Time.

**FOR PRESS INQUIRIES CONTACT:** For press inquiries: Ms. Amanda McClure, Office of Public Affairs, U.S. Department of Labor, Room S–1028, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–4672; email *mcclure.amanda.c@dol.gov*.

**SUPPLEMENTARY INFORMATION:** The Advisory Board is mandated by Section 3687 of EEOICPA. The Secretary of Labor established the Board under this authority and Executive Order 13699 (June 26, 2015). The purpose of the Advisory Board is to advise the Secretary with respect to: (1) The Site Exposure Matrices (SEM) of the Department of Labor; (2) medical guidance for claims examiners for claims with the EEOICPA program, with respect to the weighing of the medical evidence of claimants; (3) evidentiary requirements for claims under Part B of EEOICPA related to lung disease; and (4) the work of industrial hygienists and staff physicians and consulting physicians of the Department of Labor and reports of such hygienists and physicians to ensure quality, objectivity, and consistency. The Advisory Board sunsets on December 19, 2019. This subcommittee is being assembled to gather and analyze data and continue working on advice under Area #1, the Site Exposure Matrices.

The Advisory Board operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and its implementing regulations (41 CFR part 102–3).

*Agenda:* The tentative agenda for the Subcommittee on the Site Exposure Matrices meeting includes: Discussion on follow up to October Advisory Board meeting in Oak Ridge, Tennessee; discuss the use of SEM in adjudication; discuss exposure assessment at sites without SEM; discuss the role of presumptions; any new business as proposed by subcommittee members.

OWCP transcribes Advisory Board subcommittee meetings. OWCP posts the transcripts on the Advisory Board Web page, *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm,* along with written comments and other materials submitted to the subcommittee or presented at subcommittee meetings.

**Public Participation, Submissions, and Access to the Public Record**

*Subcommittee meeting:* The subcommittee will meet via teleconference on Friday, January 6, 2017, from 1:00 p.m. to 3:00 p.m. Eastern Time. Advisory Board subcommittee meetings are open to the public. The teleconference number and other details for listening to the meeting will be posted on the Advisory Board's Web site no later than 72 hours prior to the meeting. This information will be posted at *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm*.

*Requests for special accommodations:* Please submit requests for special accommodations to participate in the subcommittee meeting by email, telephone, or hard copy to Ms. Carrie Rhoads, OWCP, Room S–3524, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 343–5580; email *EnergyAdvisoryBoard@dol.gov*.

*Submission of written comments for the record:* You may submit written comments, identified by the subcommittee name and the meeting date of January 6, 2017, by any of the following methods:

- *Electronically:* Send to: *EnergyAdvisoryBoard@dol.gov* (specify in the email subject line, ''Subcommittee on the Site Exposure Matrices'').
- *Mail, express delivery, hand delivery, messenger, or courier service:* Submit one copy to the following address: U.S. Department of Labor, Office of Workers' Compensation Programs, Advisory Board on Toxic Substances and Worker Health, Room S–3522, 200 Constitution Ave. NW., Washington, DC 20210. Due to security-related procedures, receipt of submissions by regular mail may experience significant delays.

Comments must be received by December 30, 2016. OWCP will make available publically, without change, any written comments, including any personal information that you provide. Therefore, OWCP cautions interested parties against submitting personal

information such as Social Security numbers and birthdates.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov*. This notice, as well as news releases and other relevant information, are also available on the Advisory Board's Web page at *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm*.

**FOR FURTHER INFORMATION CONTACT:** You may contact Antonio Rios, Designated Federal Officer, at *rios.antonio@dol.gov,* or Carrie Rhoads, Alternate Designated Federal Officer, at *rhoads.carrie@dol.gov,* U.S. Department of Labor, 200 Constitution Avenue NW., Suite S–3524, Washington, DC 20210, telephone (202) 343–5580.

This is not a toll-free number.

Signed at Washington, DC, this 6th day of December, 2016.

**Leonard J. Howie III,**

*Director, Office of Workers' Compensation Programs.*

[FR Doc. 2016–29608 Filed 12–8–16; 8:45 am]

**BILLING CODE 4510–24–P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts

### Arts Advisory Panel Meetings

**AGENCY:** National Endowment for the Arts, National Foundation on the Arts and Humanities.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 13 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference unless otherwise noted.

**DATES:** All meetings are Eastern time and ending times are approximate:

*Design* (review of applications): This meeting will be closed.

*Date and time:* January 9, 2017—11:00 a.m. to 1:00 p.m.

*Design* (review of applications): This meeting will be closed.

*Date and time:* January 9, 2017—2:00 p.m. to 4:00 p.m.

*Design* (review of applications): This meeting will be closed.

*Date and time:* January 10, 2017—11:00 a.m. to 1:00 p.m.

*Design* (review of applications): This meeting will be closed.

*Date and time:* January 10, 2017—2:00 p.m. to 4:00 p.m.

*State and Regional* (review of state partnership agreements): This meeting will be by videoconference and will be open.

*Date and time:* January 10, 2017—3:00 p.m. to 5:00 p.m., January 11, 2017—3:00 p.m. to 5:00 p.m., and January 12, 2017—3:00 p.m. to 5:00 p.m.

*Folk and Traditional Arts* (review of nominations): This meeting will be closed.

*Date and time:* January 11, 2017—1:00 p.m. to 4:00 p.m., and January 13, 2017—1:00 p.m. to 4:00 p.m.

*Design* (review of applications): This meeting will be closed.

*Date and time:* January 17, 2017—11:00 a.m. to 1:00 p.m.

*Design* (review of applications): This meeting will be closed.

*Date and time:* January 17, 2017—2:00 p.m. to 4:00 p.m.

*Design* (review of applications): This meeting will be closed.

*Date and time:* January 18, 2017—11:00 a.m. to 1:00 p.m.

*Research* (review of applications): This meeting will be closed.

*Date and time:* January 25, 2017—2:30 p.m. to 5:00 p.m.

*Research* (review of applications): This meeting will be closed.

*Date and time:* January 26, 2017—2:30 p.m. to 5:00 p.m.

*Folk and Traditional Arts* (review of applications): This meeting will be closed.

*Date and time:* January 26, 2017—12:00 p.m. to 2:00 p.m.

*Folk and Traditional Arts* (review of applications): This meeting will be closed.

*Date and time:* January 26, 2017—3:00 p.m. to 5:00 p.m.

**ADDRESSES:** National Endowment for the Arts, Constitution Center, 400 7th St. SW., Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506—*plowitzk@arts.gov,* or call 202–682–5691.

**SUPPLEMENTARY INFORMATION:** The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of July 5, 2016, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

Dated: December 6, 2016.

**Kathy Plowitz-Worden,**

*Panel Coordinator, National Endowment for the Arts.*

[FR Doc. 2016–29517 Filed 12–8–16; 8:45 am]

**BILLING CODE 7537–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Renewal

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Notice of renewal of the charter of the Advisory Committee on Reactor Safeguards (ACRS).

**SUMMARY:** The Advisory Committee on Reactor Safeguards was established by Section 29 of the Atomic Energy Act (AEA) of 1954, as amended. Its purpose is to provide advice to the Commission with regard to the hazards of proposed or existing reactor facilities, to review each application for a construction permit or operating license for certain facilities specified in the AEA, and such other duties as the Commission may request. The AEA as amended by Public Law 100–456 also specifies that the Defense Nuclear Safety Board may obtain the advice and recommendations of the ACRS.

Membership on the Committee includes individuals experienced in reactor operations, management; probabilistic risk assessment; analysis of reactor accident phenomena; design of nuclear power plant structures, systems and components; materials science; and mechanical, civil, and electrical engineering.

The Nuclear Regulatory Commission has determined that renewal of the charter for the ACRS until December 1, 2018 is in the public interest in connection with the statutory responsibilities assigned to the ACRS. This action is being taken in accordance with the Federal Advisory Committee Act.

**FOR FURTHER INFORMATION CONTACT:** Andrew L. Bates, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–1963; email: *ALB@nrc.gov.*

Dated at Rockville, Maryland, this 5th day of December 2016.

For the Nuclear Regulatory Commission.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 2016–29527 Filed 12–8–16; 8:45 am]

**BILLING CODE 7590–01–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* December 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 2, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 259 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–26, CP2017–51.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2016–29475 Filed 12–8–16; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—First-Class Package Service Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* December 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 2, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 67 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–34, CP2017–59.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2016–29477 Filed 12–8–16; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* December 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 2, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 265 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–32, CP2017–57.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2016–29474 Filed 12–8–16; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* December 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 2, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 262 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–29, CP2017–54.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2016–29470 Filed 12–8–16; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Privacy Act of 1974; System of Records

**AGENCY:** Postal Service®.

**ACTION:** Notice of establishment of new system of records; response to comments; establishment of new implementation date.

**SUMMARY:** The United States Postal Service® (Postal Service) is responding to public comments regarding the establishment of a new Customer Privacy Act System of Records (SOR) to support the Informed Delivery™ service. After its review and evaluation of such comments, the Postal Service has found that no substantive changes to the proposed system were necessary, and determined that implementation of the system should proceed.

**DATES:** Originally scheduled for September 26, 2016, the implementation of this SOR was delayed in its entirety until further notice to allow for the consideration of public comments pursuant to a notice published on October 3, 2016. After a review these comments, the Postal Service has determined that no substantive changes to the SOR are required, and that the implementation of the system should proceed, effective December 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Janine Castorina, Chief Privacy Officer, Privacy and Records Office, United States Postal Service, 475 L'Enfant Plaza SW., Room 1P830, Washington, DC 20260–0004, telephone 202–268–3069, or *privacy@usps.gov.*

**SUPPLEMENTARY INFORMATION:** On August 25, 2016, the Postal Service published notice of its intent to establish a new system of records to support an expansion of its Informed Delivery™ service (81 FR 58542). (Informed Delivery is a digital service that allows enrolled users to receive an email notification that contains grayscale images of the outside of their letter-sized mailpieces processed by USPS automation equipment prior to delivery. This service is offered at no cost to the consumer.)

In response to this notice, we received comments that generally supported the concept of the new SOR, but expressed desire for more specific information regarding the types of data to be collected by the system, and the potential uses (or abuses) of that information. On October 3, 2016, the Postal Service published a further notice suspending the implementation date of the new SOR to allow consideration of these matters (81 FR 68067).

The Postal Service has now completed its review of the comments received, and has concluded that the SOR, as proposed, would not permit the improper disclosure of records identifying a particular individual in violation of the Privacy Act. Accordingly, we believe it is appropriate to proceed with the implementation of the SOR.

Our responses to the comments received, as grouped and categorized for convenience, are as follows.

*Question 1: Does the Informed Delivery Service constitute a surveillance mechanism that allows tracking at granular detail?*

*Answer:* No. Informed Delivery is intended solely as a value-added service for USPS customers, making physical mail more convenient and accessible to consumers in a digital age. Informed Delivery gives residential consumers the ability to see a daily preview of the letter-sized mailpieces that will be arriving in their mailbox soon. Informed Delivery is not a surveillance system. It does provide senders of mail with insight into mail recipient interaction with digital pieces. When a digital mailpiece is opened or clicked, an event is collected by the Postal Service. Those event-rates are aggregated and sent to the sender of the mailpiece so that the mailer can provide more relevant mail to customers. Individual event-rates are not shared.

*Question 2: Who are the third parties who will receive data from the Informed Delivery service?*

*Answer:* The mailer that sent the mailpiece will receive aggregated information as to whether the Informed Delivery customer opened the email containing that particular mail item. The mail image is not a part of the aggregated information provided. A customer's individual use of the Informed Delivery service will not be shared with mailers. Aggregated data assists the Postal Service to provide better service and content to its customers, along with assisting mailers to provide better products for customers.

*Question 3: What data will be collected?*

*Answer:* The Postal Service collects eight categories of records.

1. Customer information: Name; customer ID; physical mailing address and corresponding 11-digit delivery point ZIP Code; phone number; email address; text message number and carrier.

2. Customer account preferences: Individual customer preferences related to email and online communication participation level for USPS and marketing information.

3. Customer feedback: Information submitted by customers related to Informed Delivery notification service or any other Postal product or service.

4. Subscription information: Date of customer sign-up for services through an opt-in process; date customer opts-out of services; nature of service provided.

5. Data on mailpieces: Destination address of mailpiece; Intelligent Mail barcode (IMb); 11-digit delivery point ZIP Code; delivery status; and identification number assigned to equipment used to process mailpiece.

6. Mail Images: Electronic files containing images of mail pieces captured during normal mail processing operations.

7. User Data associated with 11-digit ZIP Codes: Information related to the user's interaction with Informed Delivery email messages, including, but not limited to email open and click-through rates, dates, times, and open rates appended to mailpiece images (user data is not associated with personally identifiable information).

8. Data on Mailings: Intelligent Mail barcode (IMb) and its components including the Mailer Identifier (Mailer ID or MID), Service Type Identifier (STID) and Serial Number.

*Question 4: How long are data maintained?*

*Answer:* There are eight categories of records, as described in response to Question No. 3. The Postal Service has three retention periods, associated with the eight record categories. The three retention periods are associated with the mailpiece images, records within the subscription database and user data and are addressed as follows:

1. The images of mailpieces (data category 6 listed in response to Question No. 3) are maintained within customers' accounts for seven days.

2. The Postal Service maintains records within the subscription database (data categories 1, 2, 3, 4, 5, and 8 listed in response to Question No. 3) the individual's email addresses, customer ID, and 11-digit ZIP Code, for customers who have signed up for Informed Delivery until cancellation or opting-out of the Informed Delivery service, when the data is deleted.

3. The user data (data category 7 listed in response to Question No. 3) is maintained for two years and eleven months.

*Question 5: Will there be a link that takes the mail customer to a third-party Web site?*

*Answer:* There will not be a link or Quick Response (QR) code that takes the recipient directly from the image of their mail to a third-party Web site, but notifications could include ride-along images, or interactive content might be included in a hyperlink that takes a user to a third-party Web site.

*Question 6: Explain the tracking that is associated with the Informed Delivery service.*

*Answer:* USPS monitors if and when a user opens an Informed Delivery email and click-through rates on interactive content, as well as dates, times and open rates appended to mailpiece images. Data is aggregated from the 11-digit ZIP Code down to the 5-digit ZIP Code. USPS provides this aggregated data to the sender of the mailpiece. Neither personal nor personally identifiable data are transmitted to the mailers. Moreover, the aggregated data are shared only with the sender of the particular mailpiece and not with other mailers.

*Question 7: Will other marketing information be contained within the emails provided by the Informed Delivery service?*

*Answer:* Informed Delivery email notifications could include interactive or clickable content, which could include ride-along images or a hyperlink related to the mailpiece from the sender of the mailpiece. The email notification could also include a USPS banner advertisement. No other marketing will be contained within the email provided by the Informed Delivery service.

*Question 8: Will the Postal Service's privacy policy be available in conjunction with the Informed Delivery service and will it disclose associated tracking and sharing?*

*Answer:* The Postal Service terms and conditions for the Informed Delivery service are included on the My USPS app. A link to the Postal Service's privacy policy is provided on the Postal Service's Web site. Moreover, a Privacy Act Notice will be provided before customers sign up for the Informed Delivery service. This Privacy Act Notice will disclose all tracking and sharing associated with the Informed Delivery service.

*Question 9: Can users be allowed to opt-out of the tracking and sharing associated with the Informed Delivery service, while still receiving the benefit of the service?*

*Answer:* No. The Informed Delivery service is a voluntary, value-added service provided to Postal Service customers. By agreeing to sign up for Informed Delivery, a customer is agreeing to the terms and conditions of Informed Delivery, which includes the provision that the Postal Service will provide the sender of a mail item with

aggregated user data. If a customer is not comfortable with the terms and conditions of Informed Delivery, he or she may choose not to subscribe or may unsubscribe at any time.

*Question 10: Will the Informed Delivery service create phishing opportunities?*

*Answer:* All emails originate from a Postal Service address and are branded with official USPS graphics, images, logos, etc. All legitimate USPS Informed Delivery emails will include an unsubscribe option. While there is always the possibility—as there is with any email from any source—that some phishers may attempt to take advantage, the Postal Service protects its brand and unbranded items should be recognizable as spam. Moreover, the Postal Service takes cybersecurity seriously and will safeguard all of its products to the best of its ability.

*Question 11: Is the Informed Delivery service available for businesses, corporations and other government agencies that do not have 11-digit Zip Codes?*

*Answer:* The Informed Delivery service is available only for residential customers with unique 11-digit ZIP Codes.

*Question 12: Who can sign up for the Informed Delivery service?*

*Answer:* Each customer in a household over the age of 18 may enroll in the Informed Delivery service. The Postal Service uses various methods to verify identities including internal data and data provided by third parties, such as the requirement of opening a *usps.com* account, to eliminate those under the age of 18 from enrolling in the Informed Delivery service. Because all interested consumers must successfully complete online or in person address verification to confirm that they live at the address to be enrolled in the Informed Delivery service, the Postal Service is confident that it has measures in place to protect customers interested in the Informed Delivery service. The Informed Delivery service allows recipients to get an advanced view of the outside of a mailpiece. In that respect, it is no different than household members viewing that same mailpiece in the household mailbox.

*Question 13: Is the 11-Digit ZIP Code or a Mail Image Personally Identifiable Information?*

*Answer:* The Privacy Act does not permit the disclosure of a record, within a system of records, except pursuant to certain exceptions. Under the Privacy Act, records include information that contains a name, identifying number, symbol or something else that identifies a particular individual. Neither the mail image nor the 11-digit ZIP Code classify as records under the Privacy Act.

The mail image is not a record under the Privacy Act because the mail images are just images. The printed information on the mailpiece is not stored with the image. Only the image is stored and as such, it is not associated with any other information that would cause it to be personally identifiable. The Postal Service does not examine, or allow others to examine, mailpiece images unless a customer specifically requests an investigation into something related to the delivery of that mailpiece.

The 11-digit ZIP Code is not a record under the Privacy Act because it includes address information for a physical location,[1] without personal identifiers or recipient information, and is not associated with any particular individual. This is evidenced by the 37 million mail forwarding and change-of-address requests the Postal Service receives yearly. Address locations change and are not unique identifiers in and of themselves.

*Question 14: Application of Routine Use 10.*

*Answer:* The Informed Delivery service System of Records aligns with the System of Records used for Customer Registration because Customer Registration is the vehicle under which customers enroll in the Informed Delivery service. As a result, the Routine Uses must align in order for the systems to operate transparently.

*Question 15: Application of Routine Use 11.*

*Answer:* The Informed Delivery service System of Records aligns with the System of Records used for Customer Registration because Customer Registration is the vehicle under which customers enroll in the Informed Delivery service. As a result, the Routine Uses must align in order for the systems to operate transparently.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2016–29476 Filed 12–8–16; 8:45 am]

**BILLING CODE 7710–12–P**

[1] The 11-digit ZIP Code contains the ZIP+4 Code, which is a nine-digit number, the first five of which represent the 5-digit ZIP Code or postal district/zone; the sixth and seventh digits identify a sector; the eighth and ninth digits identify a smaller area known as a segment. Together, the final four digits identify geographic units such as a side of a street between intersections, both sides of a street between intersections, a building, a floor or group of floors in a building, a firm within a building, a span of boxes on a rural route, or a group of Post Office boxes to which a single Postal Service employee makes delivery. The last two digits of an 11-digit ZIP Code are the Delivery Point Code that allows ordering of mail in preparation for delivery.

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, & First-Class Package Service Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* December 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 2, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express, Priority Mail, & First-Class Package Service Contract 14 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–33, CP2017–58.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2016–29478 Filed 12–8–16; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* December 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 2, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 261 to Competitive Product List.* Documents are available at

*www.prc.gov,* Docket Nos. MC2017–28, CP2017–53.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2016–29472 Filed 12–8–16; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* December 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 2, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 263 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–30, CP2017–55.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2016–29469 Filed 12–8–16; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* December 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 2, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 260 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–27, CP2017–52.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2016–29473 Filed 12–8–16; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* December 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 2, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 264 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–31, CP2017–56.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2016–29471 Filed 12–8–16; 8:45 am]

**BILLING CODE 7710–12–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–79468; File No. SR–NYSEMKT–2016–110]**

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule To Expand the Risk Limitation Mechanism to All Orders, Including Complex Orders

December 5, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on December 1, 2016, NYSE MKT LLC (''NYSE MKT'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 928NY (Risk Limitation Mechanism) to expand the risk limitation mechanism to all orders, including Complex Orders. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 928NY (Risk Limitation Mechanism) to expand the risk limitation mechanism to all orders, including Complex Orders.[4]

Existing Risk Limitation Mechanism

Rule 928NY sets forth the risk-limitation system, which is designed to help Market Makers, as well as ATP Holders, better manage risk related to quoting and submitting orders, respectively, during periods of increased and significant trading

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Rule 900.3NY(e) defines a Complex Order as any order involving the simultaneous purchase and/or sale of two or more different option series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing particular investment strategy.

activity.[5] The Exchange requires Market Makers to utilize its risk limitation mechanism, which automatically removes a Market Maker's quotes in all series of an options class when certain parameter settings are breached.[6] The Exchange permits, but does not require, ATP Holders to utilize its risk limitation mechanism for certain orders, which automatically cancels such orders when certain parameter settings are breached.[7]

Pursuant to Rule 928NY, the Exchange establishes a time period during which the System calculates for quotes and orders, respectively: (1) The number of trades executed by the Market Maker or ATP Holder in a particular options class; (2) the volume of contracts traded by the Market Maker or ATP Holder in a particular options class; or (3) the aggregate percentage of the Market Maker's quoted size or ATP Holder's order size(s) executed in a particular options class (collectively, the ''risk settings'').[8] When a Market Maker or ATP Holder has breached its risk settings (*i.e.,* has traded more than the contract or volume limit or cumulative percentage limit of a class during the specified measurement interval), the System will cancel all of the Market Maker's quotes or the ATP Holder's open orders in that class until the Market Maker or ATP Holder notifies the Exchange it will resume submitting quotes or orders.[9] The temporary suspension of quotes or orders from the market that results when the risk settings are triggered is meant to operate as a safety valve that enables Market Makers and/or ATP Holders to re-evaluate their positions before requesting to re-enter the market.

Proposed Expansion of Risk Limitation Mechanism to All Orders

Currently, ATP Holders may voluntarily utilize risk settings for PNP Orders and PNP-Blind Orders submitted via ArcaDirect, which are defined as ''Applicable Orders''.[10] Given the importance of risk settings in today's trading environment, the Exchange proposes to expand the availability of the risk settings to all orders traded on the Exc [sic]

The Exchange believes that expanding the availability of the risk settings to all orders would reduce the likelihood of unintended trades and would enable ATP Holders to re-evaluate their positions before requesting to re-enter the market if a risk setting is triggered. The proposed expansion would, for example, prevent the execution of a large set of orders that are improperly priced for any number of reasons (*i.e.,* because of a malfunctioning algorithm, the orders are left over from the prior day, etc.). By preventing the execution of such trades, the Exchange may help parties (including clearing members) avoid large trading losses. Thus, the Exchange believes the proposed expansion of the risk settings to all orders would allow ATP Holders to better manage the potential risks of multiple executions against an ATP Holder's trading interest that, in today's highly automated and electronic trading environment, can occur simultaneously across multiple series and multiple option classes. Consistent with the ability to better manage risk, the Exchange anticipates that the proposed changes would enhance the Exchange's overall market quality as a result of narrowed quote widths and increased liquidity for series traded on the Exchange. This proposed expansion is also being made, in part, to be responsive to requests from ATP Holders that engage in high-volume trading in a multitude of series and classes. The Exchange believes that the proposal to make the risk settings available for all orders would assist ATP Holders in providing a means to calibrate and monitor their risk exposure on all orders. As is the case today, the proposed availability of risk settings for all of an ATP Holder's orders would not be mandated, but risk settings would continue to be mandated for all Market Maker quotes.[11]

To effect this change, the Exchange proposes to amend Rule 928NY(a)(1) to provide that the Exchange would maintain separate ''trade counters'' for each of the following scenarios: (i) When any order, including a single-leg order or any leg of a Complex Order submitted by an ATP Holder is executed in any series in a specified class; and (ii) when a Market Maker quote is executed in any series in an appointed class.[12] The Exchange proposes this rule text to replace the current rule text that covers the Applicable Orders of non-Market Makers and Market Makers, respectively.[13] Because Market Makers are also ATP Holders, and because the operation of the risk settings for orders are identical for all ATP Holders, the Exchange proposes to streamline the rule text—in Rule 928NY(a)(1) and throughout the Rule—by removing reference to ''non-Market Makers'' as superfluous and potentially confusing.[14] Instead of separately addressing risk settings for orders that are available to Market Makers and non-Market Makers, the proposed rule would simply address the option as being available to all ATP Holders. Proposed Rule 928NY(a)(1) would further provide that for each of these scenarios, the trade counters would be incremented every time a trade is executed, in accordance with Commentary .07 to Rule 928NY.

The Exchange proposes to amend paragraphs (b), (c), (d), (e), and (f) to make similar changes so that each of these paragraphs would have two sub-paragraphs that would be parallel to the proposed changes to Rule 928NY(a)(1):

• The first sub-paragraph of each paragraph would address how the specific risk setting would be applied to an ATP Holder's orders, which would

[5] Market Makers are included in the definition of ATP Holders and therefore, unless the Exchange is discussing the quoting activity of Market Makers, the Exchange does not distinguish Market Markers from ATP Holders when discussing the risk limitation mechanisms. *See* Rule 900.2NY(5) (defining ATP Holder as ''a natural person, sole proprietorship, partnership, corporation, limited liability company or other organization, in good standing, that has been issued an ATP,'' and requires that ''[a]n ATP Holder must be a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934.'' *See also* Rule 900.2NY(38) (providing that a Market Maker is ''an ATP Holder that acts as a Market Maker pursuant to Rule 920NY'').

[6] *See* Rule 928NY(b)(3), (c)(3), (d)(3) and (e)(3). *See also* Commentary .04 to Rule 928NY (providing that Market Makers are required to utilize one of the three risk settings for their quotes).

[7] *See* Rule 928NY(b)(1), (2), (c)(1), (c)(2), (d)(1), (d)(2) and Commentary .01 to Rule 928NY (regarding the cancellation of orders once the risk settings have been breached). *See also* Commentary .04 to Rule 928NY (providing that ATP Holders may avail themselves of one of the three risk limitation mechanisms for certain of their orders).

[8] *See* Rule 928NY(a)–(e) (settings forth the three risk limitation mechanisms available: Transaction-Based, Volume-Based and Percentage-Based). A Market Maker may activate one Risk Limitation Mechanism for its quotes (which is required) and a different Risk Limitation Mechanism for its orders (which is optional), even if both are activated for the same class. *See also* Commentary .04 to Rule 928NY.

[9] *See* Commentaries .01 and .02 to Rule 928NY (requiring that a Market Maker or ATP Holder request that it be re-enabled after a breach of its risk settings). In the event that a Market Maker or ATP Holder experiences multiple, successive triggers of its risk settings, the Exchange would cancel all of the quotes or Applicable Orders—as opposed to cancelling only those in the option class (underlying symbol) in which the risk settings were triggered. *See* Rule 928NY(f) and Commentary .02 to Rule 928NY.

[10] *See* Commentary .07 to Rule 928NY. For purposes of risk settings relating to orders, the Exchange does not distinguish Market Maker from ATP Holders.

[11] *See* proposed Commentary .04(a) and (b) to Rule 928NY.

[12] *See* proposed Rule 928NY(a)(1)(i)–(ii).

[13] The Exchange also proposes the non-substantive modification to replace uses of the term ''shall'' with the term ''will'' throughout the rule text. *See generally* proposed Rule 928NY.

[14] *See supra* note 5. *See also* proposed Rule 928NY(a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1) (collapsing into one paragraph the separate paragraphs in the current Rule relating to risk settings for orders sent by Market Maker and non-Market Makers and updating cross-references to condensed rule text).

be the substantive change, as further described below. These proposed sub-paragraphs would replace current rule text in each paragraph governing how the specific risk setting would apply to a non-Market Maker's or Market Maker's Applicable Orders. Accordingly, current sub-paragraph (2) to each of paragraphs (b), (c), (d), (e), and (f) would be deleted.

• The proposed second sub-paragraph of each paragraph would address how the specific risk setting would be applied to a Market Marker's quotes, as further described below. Accordingly, current sub-paragraph (3) to each of paragraphs (b), (c), (d), (e), and (f) would be re-numbered as sub-paragraph (2).

In addition to the substantive change to expand risk settings to all orders, the Exchange further proposes to make non-substantive amendments to each of the proposed sub-paragraphs to paragraphs (b), (c), and (d). The Exchange believes that the proposed rule text would simplify and streamline the rule by describing a risk setting being triggered when an ATP Holder's orders or Market Marker's quotes ''have traded'' rather than using the more cumbersome text that an order or quote has been traded ''against.'' When addressing an ATP Holder's orders, the proposed rules would provide that the risk setting would be applicable to all orders in a specific class. When addressing a Market Maker's quotes, the proposed rules would provide that the risk setting would be applicable to all of the Market Maker's quotes in an appointed class. For each risk setting, the proposed new text would provide as follows.

• The Transaction-Based Risk Limitation Mechanism, described in Rule 928NY(b), would be triggered under the following conditions:

○ When a trade counter indicates that within a time period specified by the Exchange, ''n'' executions of an ATP Holder's open orders have traded in a specific class (proposed Rule 928NY(b)(1)); or

○ when a trade counter indicates that within a time period specified by the Exchange, ''n'' executions of a Market Marker's quotes have traded in an appointed class (proposed Rule 928NY(b)(2)).

• The Volume-Based Risk Limitation Mechanism, described in Rule 928NY(c), would be triggered under the following conditions:

○ When a trade counter indicates that within a time period specified by the Exchange, ''k'' contracts of an ATP Holder's open orders have traded in a specific class (proposed Rule 928NY(c)(1)); or

○ when a trade counter indicates that within a time period specified by the Exchange, ''k'' contracts of a Market Maker's quotes have traded in an appointed class (proposed Rule 928NY(c)(2)).

• The Percentage-Based Risk Limitation Mechanism, described in Rule 928NY(d), would be triggered under the following conditions:

○ When a trade counter has calculated that within a time period specified by the Exchange, ''p'' percentage of an ATP Holder's open orders have traded in a specific class (proposed Rule 928NY(d)(1)); or

○ when a trade counter has calculated that within a time period specified by the Exchange, ''p'' percentage of a Market Maker's quotes have traded in an appointed class (proposed Rule 928NY(d)(2)).

The Exchange also proposes clarifying changes to how the Percentage-Based Risk Limitation Mechanism operates. The Exchange proposes to modify Rule 928NY(d)(2)(i)–(ii) to make clear that the trade counter would first calculate, for each series of an option class, ''the percentage(s) of an ATP Holder's order size(s) or a Market Maker's quote size that is executed on each side of the market, including both displayed and non-displayed size,'' and would then ''sum the overall percentages of the size(s) for the entire option class to calculate the 'p' percentage.'' The proposed changes are designed to account for the fact that ATP Holders may submit multiple orders on each side of the market that may be counted by the risk settings (whereas Market Makers have only one quote on each side of the market) and to reduce excess verbiage to streamline and condense the rule text, which the Exchange believes adds clarity and transparency to the Rule.

Proposed Changes Regarding Routable Orders

Because the proposed expansion of risk settings for orders would include routable orders, the Exchange proposes to amend Rule 928NY to address the counting and cancellation of such orders (or unexecuted portions thereof). First, the Exchange proposes to add rule text to Commentary .07 to Rule 928NY to provide that executions of routable orders on away markets would be considered by a trade counter once the execution report is received by the Exchange.[15] The Exchange also proposes to amend Commentary .07 to Rule 928NY to provide that executions of each leg of a Complex Order would be considered by a trade counter as an individual transaction.

Regarding cancellations, the Exchange proposes to amend Commentary .01 to Rule 928NY to provide that once the risk settings have been triggered, pursuant to paragraphs (e) and (f) of the Rule, the System would automatically generate a ''bulk cancel'' message to cancel Market Maker quotes and electronic orders, or portions thereof, that have not been routed to away markets, excluding intraday and prior day Good-Till-Cancel (''GTC''), All-or-None (''AON''), Customer Best Execution (''CUBE'') orders, and orders entered in response to an electronic auction that are valid only for the duration of the auction (''GTX'').[16] The Exchange has determined that it would not cancel GTC, AON, CUBE, or GTX orders because these order types are typically retail orders which, if automatically cancelled by the Exchange, could cause an operational issue for any firm that entered the order(s) (*i.e.,* exposing a firm to the risk of a missed execution on an order that has come due).[17] Given these potential operational issues, and for the protection of investors and the investing public, the Exchange has determined to exempt these order types from automatic cancellation when the risk settings are triggered.[18] The Exchange also proposes to amend Commentary .01 to Rule 928NY to provide that ''[o]rders and quotes residing in the Consolidated Book received prior to processing of the

[15] The Exchange also proposes to delete as inapplicable the rule text in Commentary .07 to Rule 928NY providing that ''[o]nly executions against order types specified by the Exchange via Trader Update and against quotes of Market Makers shall be considered by a trade counter.'' The Exchange likewise proposes to delete the rule text from Commentary .07 to Rule 928NY that defines ''Applicable Orders,'' given that this limitation no longer applies. In this regard, the Exchange proposes to delete reference to ''Applicable Orders'' throughout the rule text and, where pertinent, and [sic] to replace uses of the term ''Applicable Orders'' with ''orders.''

[16] In light of this change, the Exchange proposes to delete the following rule text in Commentary .01 to Rule 928NY as no longer applicable: ''The bulk cancel message shall be processed by the System in time priority with any other quote or order message received by the System. Any Applicable Orders or quotes that matched with a Market Maker's quote or a Market Maker's or non-Market Maker's Applicable Order and were received by the System prior to the receipt of the bulk cancel message shall be automatically executed.'' *See id.*

[17] *See, e.g.,* Rule 900.3NY(n) (defining GTC as buy or sell orders that remain in force until the order is filled, cancelled or the option contract expires); (d)(4) (defining AON orders as a Market or Limit Order that is to be executed in its entirety or not at all); 971.1NY (defining initiating CUBE orders as limit orders guaranteed by an ATP Holder, as agent, submitted to the CUBE for possible price improvement, which may not be cancelled or modified).

[18] The Exchange notes that the trade counters would be incremented every time a GTC, AON, CUBE or GTX order is executed, subject to proposed Commentary .07. *See* proposed Rule 928NY(a)(1).

bulk cancel message may trade. Any unexecuted portion of an order subject to a 'bulk cancel' message that had routed away, but returned unexecuted, will be immediately cancelled.'' [19]

In addition to the foregoing changes to paragraphs (e) and (f) of Rule 928NY, the Exchange also proposes to amend these paragraphs to address the action (*i.e.,* cancellations) that the System would effect upon the triggering of the risk settings to account for the proposed amendments to Commentary .01 to the Rule. Specifically, the Exchange proposes to modify sub-paragraph (1) to both paragraphs (e) and (f) to provide that if a risk setting is triggered, the System would automatically cancel an ATP Holder's orders, ''except as provided in Commentary .01 to this Rule.'' Finally, the Exchange proposes to make additional conforming changes to Commentary .02 to Rule 928NY to specify that once the risk settings have been breached, any new orders (or quotes) would not be accepted until the ATP Holder or Market Maker contacts the Exchange and requests to be re-enabled.

Proposed Changes to Persistence of Risk Settings for Orders

The Exchange also proposes to amend Commentary .04 to Rule 928NY to specify the persistence of the risk settings, once activated, by an ATP Holder for orders to conform this Commentary to the changes described above to delineate risk settings between an ATP Holder's orders and a Market Maker's quotes. Specifically, the Exchange proposes to divide Commentary .04 into two paragraphs to make it easier to navigate—paragraph (a) would address the persistence of risk settings for quotes, and paragraph (b) would address the persistence of risk settings for orders.

Current Commentary .04 to Rule 928NY provides that an ATP Holder must activate its risk settings for orders on a daily basis. The Exchange proposes to amend this Commentary .04 to specify that ''[o]nce an ATP Holder activates a Risk Limitation Mechanism for its orders in a specified class, the mechanism and the settings established will remain active unless, and until, the ATP Holder deactivates the Risk Limitation Mechanism or changes the settings.'' [20] While the risk settings for orders remain an optional feature, the Exchange believes this change would enable each ATP Holder to calibrate its settings as needed, as opposed to re-establishing the settings on a daily basis.

Proposed Modifications to Parameters for Each Risk Limitation Mechanism

The Exchange proposes to adjust the minimum and maximum parameters for the Risk Limitation Mechanism as set forth in Commentary .03 to the Rule. The current Rule provides that the Exchange would not exceed the following minimum and maximum parameters, applicable to quotes and orders:

- Minimum of 1 and maximum of 100 for transaction-based risk setting;
- Minimum of 20 and a maximum of 5,000 for volume-based risk setting; and
- Minimum of 100 and a maximum of 2,000 for percentage-based risk setting.[21]

The existing parameters have been in place since 2012 and the Exchange has not modified or increased these parameters in the past four years.[22] Since 2012, the markets have experienced more volatility and fragmentation. To account for these changes, as well as the ever-increasing automation, speed and volume transacted in today's electronic trading environment, the Exchange proposes to modify the minimum and maximum parameters, applicable to quotes and orders, as follows:

- Minimum of 3 and maximum of 2,000 for the transaction-based setting;
- Minimum of 20 and a maximum of 500,000 for volume-based setting; and
- Minimum of 100 and a maximum of 200,000 for percentage-based setting.[23]

Although this proposal establishes the outside parameters of allowable settings, Rule 928NY would still obligate the Exchange to announce via Trader Update ''any applicable minimum, maximum and/or default settings for the Risk Limitation Mechanisms,'' which would afford Market Makers and ATP Holders the opportunity to adjust their own risk settings within the announced parameters.[24] The Exchange further believes the proposed adjustments to the minimum/maximum parameters would enable the Exchange to strike the appropriate balance to ensure that risk settings may be established at a level that is consistent with existing market conditions, which would enable the risk settings to operate in the manner intended. The Exchange believes that setting the parameters within this broad range would provide ATP Holders with ample flexibility in setting their tolerance for risk. For example, ATP Holders with a lower risk tolerance may opt to select a lower threshold within the range established by the Exchange, thereby optimizing the protection afforded by this proposed rule change, whereas ATP Holders with a higher risk tolerance may select the maximum allowable parameter afforded by the proposed rule change. Moreover, while the Exchange retains discretion with respect to the levels at which it could adjust these settings, the Exchange would not be permitted to adjust the settings below the minimum or above the maximum proposed, which, the Exchange believes would ensure that the settings are at all times within a reasonable range. Finally, given that the risk settings would now be available for all order types, the Exchange believes it would be prudent to provide ample flexibility for setting the maximum thresholds.

Implementation

The Exchange will announce by Trader Update the implementation date of the proposed rule change to expand the availability of the Risk Limitation Mechanism to all orders, which implementation will be no later than 90 days after the effectiveness of this rule change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[25] in general, and furthers the objectives of Section 6(b)(5) of the Act,[26] 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

[19] Relatedly, the Exchange proposes to delete the following rule text in Commentary .01 to Rule 928NY: ''Applicable Orders or quotes received by the System after receipt of the bulk cancel message shall not be executed.'' The Exchange also proposes to delete as obsolete the following rule text in Commentary .01 to Rule 928NY, as the Exchange no longer charges a Cancellation Fee: ''Public Customer orders cancelled pursuant to a Risk Limitation Mechanism bulk cancel message shall not be counted for purposes of calculating the Exchange's Cancellation Fee''). *See* Securities Exchange Act Release No. 70799 (November 1, 2013), 78 FR 66980 (November 7, 2013) (SR–NYSEMKT–2013–87) (eliminating the Cancellation Fee from the Exchange's fee schedule).

[20] *See* proposed Commentary .04(b) to Rule 928NY (specifying that, ''[t]o be effective, an ATP Holder must activate a Risk Limitation Mechanism, and corresponding settings, for orders in a specified class''). Regarding the risk settings for quotes, the Exchange proposes to delete as inapplicable rule text that indicates that a Market Maker may deactivate its risk settings for quotes, as this functionality is mandated by the Exchange. *See* proposed Commentary .04(a) to Rule 928NY. The Exchange believes removing this language would add clarity and consistency to the Rule.

[21] *See* Commentary .03 to Rule 928NY.

[22] *See* Securities Exchange Act Release No. 67713 (August 22, 2012), 77 FR 52090 (August 28, 2012) (SR–NYSEMKT–2012–39).

[23] *See* proposed Commentary .03 to Rule 928NY.

[24] *See supra* notes 21 and 23 (rule text remains unchanged in current and proposed Commentary .03 to Rule 928NY).

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

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.

ATP Holders are vulnerable to the risk from a 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 proposed expanded risk settings for orders, ATP Holders may opt to reduce the amount of order flow and liquidity that they provide to the market, which could undermine the quality of the markets available to market participants. Thus, the Exchange believes that the proposed rule change to expand the availability of the risk settings to all orders removes impediments to and perfects the mechanism of a free and open market by providing ATP Holders with greater control and flexibility over setting their risk tolerance and more protection over risk exposure, if the market moves in an unexpected direction. The proposed expansion of the risk settings to all orders would promote just and equitable principles of trade because it would help ATP Holders not only avoid transacting against their interests but would also reduce the potential for executions at erroneous prices, which should encourage OTPs [sic] to submit additional order flow and liquidity to the Exchange.

This proposed expansion, which was specifically requested by some ATP Holders, would foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities as it will be available to all ATP Holders for all orders entered on the Exchange. In addition, the expanded risk settings may prevent the execution of erroneously priced trades, which would help parties (including clearing members) avoid large trading losses, thereby fostering cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities.

The Exchange believes the proposed adjustments to the minimum/maximum parameters for each risk limitation mechanism, which have not been increased since 2012, are consistent with the Act because they would allow the Exchange to strike the appropriate balance to ensure that risk settings could be established at a level that is consistent with existing market conditions, which would enable the risk settings to operate in the manner intended. The Exchange believes that setting the parameters within the broad range, as proposed, would provide OTPs [sic] with ample flexibility in setting their tolerance for risk. For example, OTPs [sic] with a lower risk tolerance may opt to select a lower threshold within the range established by the Exchange, thereby optimizing the protection afforded by this proposed rule change, whereas OTPs [sic] with a higher risk tolerance may select the maximum allowable parameter afforded by the proposed rule change. Moreover, because the Exchange would not be permitted to adjust the settings below the minimum or above the maximum proposed, the settings should remain at all times within a reasonable range. Finally, given that the risk settings would now be available for all order types, the Exchange believes it would be prudent to provide ample flexibility for setting the maximum thresholds.

Consistent with the ability to better manage risk, the Exchange anticipates that the proposed enhancement to the existing Risk Limitation Mechanism would likewise enhance the Exchange's overall market quality as a result of narrowed quote widths and increased liquidity for series traded on the Exchange, which would benefit investors and the public interest because they receive better prices and because it lowers volatility in the options market. Moreover, the Exchange believes that the proposal is consistent with the protection of investors and the public interests because it would permit ATP Holders to better manage the potential risks of multiple executions against an ATP Holder's proprietary interest that, in today's highly automated and electronic trading environment, can occur simultaneously across multiple series and multiple option classes.

Finally, the Exchange believes that the proposed changes to streamline and clarify the rule text, including updated cross references that conform rule text to proposed changes, promotes just and equitable principles of trade, fosters cooperation and coordination among persons engaged in facilitating securities transactions, and removes impediments to and perfects the mechanism of a free and open market by ensuring that members, regulators and the public can more easily navigate the Exchange's rulebook and better understand the defined terms used by the Exchange.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is proposing a market enhancement that would provide ATP Holders with greater control and flexibility over setting their risk tolerance and more protection over risk exposure, if the market moves in an unexpected direction. The Exchange believes the proposal would provide market participants with additional protection from unintended executions. The proposal is structured to offer the same enhancement to all ATP Holders, regardless of size, and would not impose a competitive burden on any participant. The Exchange does not believe that the proposed enhancement to the existing risk limitation mechanism would impose a burden on competing options exchanges. Rather, the availability of this mechanism may foster more competition. Specifically, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. When an exchange offers enhanced functionality that distinguishes it from the competition and participants find it useful, it has been the Exchange's experience that competing exchanges will move to adopt similar functionality. Thus, the Exchange believes that this type of competition amongst exchanges is beneficial to the market place as a whole as it can result in enhanced processes, functionality, and technologies.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[27] and Rule 19b–4(f)(6) thereunder.[28] Because the

[27] 15 U.S.C. 78s(b)(3)(A)(iii).

[28] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [29] of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2016–110 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–NYSEMKT–2016–110. 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–NYSEMKT–2016–110, and should be submitted on or before December 30, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

**Eduardo A. Aleman,**

*Assistant Secretary.*

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[29] 15 U.S.C. 78s(b)(2)(B).

[30] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

*Extension:*

Regulation 14N and Schedule 14N, SEC File No. 270–598, OMB Control No. 3235–0655

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Schedule 14N (17 CFR 240.14n–101) requires the filing of certain information with the Commission by shareholders who submit a nominee or nominees for director pursuant to applicable state law, or a company's governing documents. Schedule 14N provides notice to the company of the shareholder's intent to have the company include the shareholder's or shareholder groups' nominee or nominees for director in the company's proxy materials. This information is intended to assist shareholders in making an informed voting decision with regards to any nominee or nominees put forth by a nominating shareholder or group, by allowing shareholders to gauge the nominating shareholder's interest in the company, longevity of ownership, and intent with regard to continued ownership in the company. We estimate that Schedule 14N takes approximately 40 hours per response and will be filed by approximately 42 issuers annually. In addition, we estimate that 75% of the 40 hours per response (30 hours per response) is prepared by the issuer for an annual reporting burden of 1,260 hours (30 hours per response × 42 responses).

Written comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send and an email to: *PRA_Mailbox@sec.gov.*

Dated: December 1, 2016.

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016–29493 Filed 12–8–16; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–79466; File No. SR–NYSEArca–2016–154]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Rules Governing Business Continuity and Disaster Recovery Planning

December 5, 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 22, 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 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 its rules governing business continuity and disaster recovery planning to delete Rule 2.100 (Emergency Powers) as obsolete. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its rules governing business continuity and disaster recovery planning to delete Rule 2.100 (Emergency Powers) (''Rule 2.100'') as obsolete.

Rule 2.100 provides that if a qualified officer of an Affiliated Exchange declares an emergency condition under the rules of that Affiliated Exchange, a qualified Exchange officer may authorize the Exchange to perform the functions specified in the rule. Specifically, on the next trading day following the declaration of the Emergency Condition, the Exchange will, on behalf of and at the direction of the Affiliated Exchange, disseminate: (i) The official opening, re-opening, and closing trades of Affiliated Exchange-listed securities as messages of the Affiliated Exchange; and (ii) any notification for Affiliated Exchange-listed securities to the Consolidated Quotation System of a regulatory halt and resumption of trading thereafter, trading pause and resumption of trading thereafter, and Short Sale Price Test trigger and lifting thereafter, as messages of the Affiliated Exchange.

On September 29, 2016, the Commission approved amendments to the Affiliated Exchanges' business continuity and disaster recovery plans, as described in NYSE Rule 49 and NYSE MKT Rule 49—Equities.[4] On November 5 and 19, 2016, the Affiliated Exchanges held the mandatory testing sessions for the operation of New Rule 49.[5] NYSE and NYSE MKT have determined that those tests were successful and are simultaneously filing proposed rule changes to delete the versions of NYSE Rule 49 and NYSE MKT Rule 49—Equities that reference Rule 2.100.[6] The Exchange therefore proposes to delete Rule 2.100 as obsolete, operative for November 23, 2016, the same day that NYSE and NYSE MKT propose as the operative date for New Rule 49.

In addition to this proposed rule change, the Exchange proposes to announce the operative date of November 23, 2016 via Trader Update.

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 amending its rules to remove an obsolete rule that is no longer operative after the Affiliated Exchanges have implemented New Rule 49 would promote the protection of investors and the public interest because it would promote clarity and transparency on the Exchange rules governing the Exchange's and the Affiliated Exchanges' business continuity and disaster recovery planning. The Exchange further believes that deleting the obsolete rule would remove impediments to and perfect the mechanism of a national market system because these proposed changes would add greater clarity to the Exchange's rules and promote market transparency and efficiency.

*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 competitive issues but rather is designed to delete a rule that is obsolete now that the Affiliated Exchanges have implemented New Rule 49.

*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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 78916 (September 23, 2016), 81 FR 67029 (September 29, 2016) (SR–NYSE–2016–48) *and* No. 78917 (September 23, 2016), 81 FR 67036 (September 29, 2016) (SR–NYSEMKT–2016–68) (approval orders).

[5] The Affiliated Exchanges announced by Trader Update that industry tests would be held on November 5, 2016 and November 19, 2016. *See* NYSE Trader Updates, dated September 9 and 16, 2016, available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_and_NYSE_MKT_DR_Trader_Update_Final.pdf* and *https://www.nyse.com/publicdocs/nyse/markets/nyse/DR_Testing.pdf.*

[6] The Affiliated Exchanges have submitted proposed rule changes to amend their rules governing business continuity and disaster recovery. *See* SR–NYSE–2016–81 and SR–NYSEMKT–2016–109.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to the Exchange, the proposal would delete an obsolete rule that corresponded to rules that have been deleted by the Affiliated Exchanges. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.[12]

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–2016–154 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–2016–154. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–154 and should be submitted on or before December 30, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2016–29464 Filed 12–8–16; 8:45 am]

**BILLING CODE 8011–01–P**

[9] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with 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 of filing of the proposed rule change, or such shorter time as designated by the Commission.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–79465; File No. SR–BX–2016–063]**

## Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing of Proposed Rule Change To Amend the PRISM Price Improvement Auction in BX Chapter VI, Section 9 and To Make Pilot Program Permanent

December 5, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 21, 2016, NASDAQ BX, Inc. (''BX'' 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 BX rules at Chapter VI, Section 9, concerning a price-improvement mechanism known as ''PRISM.'' Parts of PRISM are currently operating on a pilot basis (''Pilot''), which was approved by the Commission in 2015,[3] and which is set to expire on January 18, 2017.[4] In this proposal, the Exchange proposes to make the Pilot permanent, and also proposes to change the requirements for providing price improvement for PRISM Orders of less than 50 option contracts.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqbx.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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Release No. 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR–BX–2015–032) (''PRISM Approval Order'').

[4] *See* Securities Exchange Act Release No. 78249 (July 7, 2016), 81 FR 45334 (July 13, 2016) (SR–BX–2016–038).

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 this proposed rule change is to make permanent certain pilots within Chapter VI, Section 9, entitled ''Price Improvement Auction (''PRISM''). In addition, BX proposes to modify the requirements for PRISM auctions involving less than 50 contracts where the National Best Bid and Offer (''NBBO'') is only $0.01 wide.

Background

The Exchange adopted PRISM in November 2015 as a price-improvement mechanism on the Exchange.[5] This mechanism permits a Participant (an ''Initiating Participant'') to electronically submit for execution an order it represents as agent on behalf of a Public Customer,[6] Professional customer, broker dealer, or any other entity (''PRISM Order'') against principal interest or against any other order it represents as agent (an ''Initiating Order''), provided it submits the PRISM Order for electronic execution into the PRISM Auction (''Auction'') pursuant to the Chapter VI, Section 9.[7] All options traded on the Exchange are eligible for PRISM.

Pilot Program

Three components of PRISM were approved by the Commission on a pilot basis: (1) The early conclusion of the PRISM Auction; [8] (2) the provision that an unrelated market or marketable limit order (against the BX BBO) on the opposite side of the market from the PRISM Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction; [9] and (3) no minimum size requirement of orders. The provisions were approved for a pilot period that currently expires on January 18, 2017 (''Pilot'').[10] The Exchange now seeks to have the Pilot approved on a permanent basis. In addition, the Exchange proposes to modify the scope of PRISM so that PRISM Orders for less than 50 option contracts will be required to receive price improvement of at least one minimum price improvement increment over the NBBO if the NBBO is only $0.01 wide. For orders of 50 contracts or more, or if the difference in the NBBO is greater than $0.01, the requirements for price improvement remain the same.

During the pilot period the Exchange has been required to submit, and has been submitting, certain data periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders, there is significant price improvement available through PRISM, and that there is an active and liquid market functioning on the Exchange outside of the Auction mechanism. Specifically, the Exchange has submitted the following data as specified in its approval order: [11]

(1) The number of contracts (of orders of 50 contracts or greater) entered into the PRISM;

(2) The number of contracts (of orders of fewer than 50 contracts) entered into the PRISM;

(3) The number of orders of 50 contracts or greater entered into the PRISM; and

(4) The number of orders of fewer than 50 contracts entered into the PRISM.

Price Improvement for Orders Under 50 Contracts

Currently, a PRISM Auction may be initiated if one of the following conditions are met. If the PRISM Order is for the account of a Public Customer, the Initiating Participant must stop the entire PRISM Order at a price that is equal to or better than the National Best Bid/Offer (''NBBO'') on the opposite side of the market from the PRISM Order, provided that such price must be at least one minimum trading increment specified in Chapter VI, Section 5 better than any limit order on the limit order book on the same side of the market as the PRISM Order.[12] If the PRISM Order is for the account of a broker dealer or any other person or entity that is not a Public Customer, the Initiating Participant must stop the entire PRISM Order at a price that is the better of: (i) the BX BBO price improved by at least the Minimum Increment on the same side of the market as the PRISM Order, or (ii) the PRISM Order's limit price (if the order is a limit order), provided in either case that such price is at or better than the NBBO.[13]

BX proposes to amend the PRISM auction to require at least $0.01 price improvement for a PRISM Order if that order is for less than 50 contracts and if the difference between the NBBO is $0.01. Accordingly, BX is proposing to amend the Auction Eligibility Requirements to require that, if the PRISM Order is for less than 50 option contracts, and if the difference between the NBBO is $0.01, the Initiating Participant must stop the entire PRISM Order at one minimum price improvement increment better than the NBBO on the opposite side of the market from the PRISM Order, and better than any limit order on the limit order book on the same side of the market as the PRISM Order. This requirement will apply regardless of whether the PRISM Order is for the account of a Public Customer, or where the PRISM Order is for the account of a broker dealer or any other person or entity that is not a Public Customer.

The Exchange will retain the current requirements for auction eligibility where the PRISM Order is for the account of a Public Customer and such order is for 50 option contracts or more, or if the difference between the NBBO is greater than $0.01. The Exchange will also retain the current requirements for auction eligibility where the PRISM Order is for the account of a broker dealer or any other person or entity that is not a Public Customer and such order is for 50 option contracts or more, or if the difference between the NBBO is greater than $0.01. Accordingly, the Exchange is amending the Auction Eligibility Requirements to state that, if the PRISM Order is for the account of a Public Customer and such order is for 50 option contracts or more or if the difference between the NBBO is greater than $0.01, the Initiating Participant must stop the entire PRISM Order at a price that is equal to or better than the National Best Bid/Offer (''NBBO'') on the opposite side of the market from the PRISM Order, provided that such price

[5] *See* PRISM Approval Order, *supra* note 3.

[6] A Public Customer order does not include a Professional order, and therefore a Professional would not be entitled to Public Customer priority as described herein. A Public Customer means a person that is not a broker or dealer in securities. *See* BX Options Rules at Chapter I, Section 1(a)(50). A Public Customer order does not include a Professional order for purposes of BX Rule at Chapter VI, Section 10(1)(C)(1)(a), which governs allocation priority. A ''Professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A Participant or a Public Customer may, without limitation, be a Professional. All Professional orders shall be appropriately marked by Participants. *See* BX Rules at Chapter I, Section 1(a)(49).

[7] BX will only conduct an auction for Simple Orders.

[8] *See* Chapter VI, Section 9(ii)(B)(4).

[9] *See* Chapter VI, Section 9(ii)(D).

[10] *See* PRISM Approval Order, *supra* note 3.

[11] *Id.*

[12] *See* Chapter VI, Section 9(i)(A).

[13] *See* Chapter VI, Section 9(i)(B).

must be at least one minimum trading increment specified in Chapter VI, Section 5 (''Minimum Increment'') better than any limit order on the limit order book on the same side of the market as the PRISM Order.

Similarly, the Exchange is amending the Auction Eligibility Requirements to state that, if the PRISM Order is for the account of a broker dealer or any other person or entity that is not a Public Customer and such order is for 50 option contracts or more, or if the difference between the NBBO is greater than $0.01, the Initiating Participant must stop the entire PRISM Order at a price that is the better of: (i) The BX BBO price improved by at least the Minimum Increment on the same side of the market as the PRISM Order, or (ii) the PRISM Order's limit price (if the order is a limit order), provided in either case that such price is at or better than the NBBO.[14]

The Exchange also proposes to add language to Chapter VI, Section 9(i) to clarify that, if any of the auction eligibility criteria are not met, the PRISM Order will be rejected. The Exchange will also add language to Chapter VI, Section 9(i) to clarify the treatment of paired Public Customer-to-Public Customer orders pursuant to subparagraph (vi) as a result of these proposed changes. Specifically, Exchange will allow a PRISM Order to trade on either the bid or offer, pursuant to subparagraph (vi), if the NBBO is $0.01 wide, provided (1) the execution price is equal to or within the NBBO, (2) there is no resting customer at the execution price, and (3) $0.01 is the Minimum Price Variation (MPV) of the option. The Exchange also proposes to add language that it will continue to reject a PRISM Order to buy (sell) if the NBBO is only $0.01 wide and the Agency order is stopped on the bid (offer) if there is a resting order on the bid (offer). These requirements are unchanged from the Exchange's current handling practices of paired Public Customer-to-Public Customer PRISM Orders per subparagraph (vi), and the Exchange's current practice of rejecting PRISM Orders to buy (sell) if the NBBO is only $0.01 wide and the Agency order is stopped on the bid (offer) if there is a resting order on the bid (offer).

The Exchange believes that these changes to PRISM may provide additional opportunities for PRISM Orders of under 50 option contracts to receive price improvement over the NBBO where the difference in the NBBO is $0.01 and therefore encourage the increased submission of orders of under 50 option contracts. The Exchange notes that the statistics for the current pilot, which include, among other things, price improvement for orders of less than 50 option contracts under the current auction eligibility requirements, show relatively small amounts of price improvement for such orders. BX believes that the proposed requirements will therefore increase the price improvement that orders of under 50 option contracts may receive in PRISM. The Exchange also notes that NASDAQ PHLX LLC operates a similar price improvement mechanism, Price Improvement XL, also known as PIXL, which has been operating for a longer period of time and has therefore generated more pilot data.[15] Given the similarly between the two mechanisms, the Exchange expects that PRISM, if operated on a pilot basis over a longer period of time, would generate data that is comparable to PIXL.

No Minimum Size Requirement

Chapter VI, Section 9(vii) provides that, as part of the current Pilot, there will be no minimum size requirement for orders to be eligible for the Auction.[16] The Exchange proposed the no-minimum size requirement for PRISM auctions because it believed that there is meaningful competition in PRISM auctions for all size orders, there are opportunities for significant price improvement for orders executed through PRISM, and that there is an active and liquid market functioning on the Exchange outside of PRISM. The Exchange proposed to gather data over the course of the Pilot to support this position. Specifically, the Exchange proposed to gather data relating to (1) the number of contracts (of orders of 50 contracts or greater) entered into the PRISM; (2) the number of contracts (of orders of fewer than 50 contracts) entered into the PRISM; (3) the number of orders of 50 contracts or greater entered into the PRISM; and (4) the number of orders of fewer than 50 contracts entered into the PRISM.[17]

The Exchange believes that the data gathered since the approval of the Pilot establishes that there is liquidity and competition both within PRISM and outside of PRISM, and that there are opportunities for significant price improvement within PRISM. In the period between January and June 2016, PRISM auctions executed 1.39 million contracts, which represents 8.3% of total BX contract volume. The average daily number of contracts traded on PRISM increased from 9,045 contracts per day in January 2016 to 9,070 contracts per day in June 2016. The percent of BX volume traded in PRISM auctions increased from 6.4% in January 2016 to 7.2% in June 2016. The percent of consolidated volume traded in PRISM remained approximately 10 basis points. The mean number of unique participants in PRISM auctions was 4.8 and median was 4.0. The distribution of auctions and contracts traded by number of unique participants were similar, with a single participant in about 19% of auctions and 26% of volume.

The Exchange has also gathered information about activity in orders for less than 50 and 50 contracts or greater for PRISM auctions between January and June 2016. For auctions occurring during that period, 87.8% of auctions were for orders for less than 50 contracts, a percentage that remained stable over that time period. Auctions for orders of less than 50 contracts accounted for 30.0% of the contract volume traded in PRISM. Auctions of 50 contracts or more made up 12.2% of all PRISM auctions and accounted for 70.0% of contracts traded in PRISM.

With respect to price improvement, 60.5% of PRISM auctions between January and June 2016 executed at a price that was better than the NBBO at the time the auction began.[18] The equal-

[14] In implementing this change, the system will reject a simple PRISM Order to buy if the NBBO is only $0.01 wide and the Agency order is stopped on the offer provided the order is not customer to customer. The system will reject a simple PRISM Order to sell if the NBBO is only $0.01 wide and the Agency order is stopped on the bid provided the order is not customer to customer. The system will still allow a customer to customer PRISM Order to trade on either the bid or offer, if the NBBO is $0.01 wide, provided (1) the execution price is equal to or within the NBBO; (2) there is no resting customer at the execution price, and (3) $0.01 is the Minimum Price Variation (MPV) of the option. The system will continue to reject a simple PRISM Order to buy if the NBBO is only $0.01 wide and the Agency order is stopped on the bid if there is a resting order on the bid. The system will continue to reject a simple PRISM Order to sell if the NBBO is only $0.01 wide and the Agency order is stopped on the offer if there is a resting order on the offer. The system will provide an explicit reject reason if the system rejects a PRISM Order because the NBBO is only $0.01 wide and the PRISM order did not improve the contra side NBBO.

[15] *See* Securities Exchange Act Release No. 63027 (October 1, 2010), 75 FR 62160 (October 7, 2010) (SR–Phlx–2010–108).

[16] The Rule also requires the Exchange to submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the Auction mechanism. Any raw data which is submitted to the Commission will be provided on a confidential basis.

[17] *See* Securities Exchange Act Release No. 75827 (September 3, 2015), 80 FR 54607 (September 10, 2015) (SR–BX–2015–032).

[18] 29.6% of PRISM auction began when BX best bid or offer was at the NBBO. 74.5% of auctions that began when the BX BBO was at the NBBO

Continued

weighted average amount of price improvement per contract for PRISM auctions was 3.5%, with the monthly average amount of price improvement ranging from 1.9% and 5.2% between January and June 2016. For auctions of less than 50 contracts, 64.7% received price improvement, while 30.5% of auctions for 50 contracts or more received price improvement.[19] The equal-weighted average price improvement was 3.7% for auctions of less than 50 contracts and 1.9% for auctions of 50 contracts or more. Average price improvement was 4.4% when BX BBO was at the NBBO and 3.1% when BX BBO was not at the NBBO.

BX believes that the data gathered during the Pilot period indicates that there is meaningful competition in PRISM auctions for all size orders, there is an active and liquid market functioning on the Exchange outside of the auction mechanism, and that there are opportunities for price improvement for orders executed through PRISM. The Exchange therefore believes that it appropriate to approve the no minimum size requirement on a permanent basis.

Early Conclusion of the PRISM Auction

Chapter VI, Section 9(ii)(B)(4) provides that the PRISM Auction shall conclude at the earlier of (1) the end of the Auction period; (2) any time the BX BBO crosses the PRISM Order stop price on the same side of the market as the PRISM Order; or (3) any time there is a trading halt on the Exchange in the affected series.[20] The latter two conditions are operating as part of the current Pilot.

As with the no minimum size requirement, the Exchange has gathered data on these latter two conditions. Between January and June 2016, one auction terminated early because the BX BBO crossed the PRISM Order stop price. No auctions terminated early because of halts. The number of auctions that terminated early was less than 1/100th of 1% of all PRISM auctions over the period. The auctions that terminated early were less than 1/100th of 1% of contracts traded in PRISM auctions.

The Exchange believes that it is appropriate to terminate an auction when either of these conditions occur.[21] Based on the data gathered during the pilot, the Exchange does not anticipate that either of these conditions will occur with significant frequency, or will otherwise disrupt the functioning of PRISM auctions. The Exchange therefore believes it is appropriate to approve this aspect of the Pilot on a permanent basis.

Unrelated Market or Marketable Limit Order

Chapter VI, Section 9(ii)(D) provides that an unrelated market or marketable limit order (against the BX BBO) on the opposite side of the market from the PRISM Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction. If contracts remain from such unrelated order at the time the auction ends, they will be considered for participation in the order allocation process described elsewhere in the Rule.

This provision is based on a similar provision in the Price Improvement XL (''PIXL'') mechanism on NASDAQ PHLX LLC (''Phlx'').[22] In approving this feature on PIXL, also on a pilot basis, the Commission found that ''allowing the PIXL auction to continue for the full auction period despite receipt of unrelated orders outside the Auction would allow the auction to run its full course and, in so doing, will provide a full opportunity for price improvement to the PIXL Order. Further, the unrelated order would be available to participate in the PIXL order allocation.'' [23] Given that this provision is based on the corresponding PIXL provision, the Exchange believes that a similar rationale applies here. The Exchange also does not believe that this provision has had a significant impact on either the unrelated order or the PRISM auction process. The Exchange therefore believes it is appropriate to approve this aspect of the Pilot on a permanent basis.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[24] in general and with Section 6(b)(5) of the Act,[25] in that it is designed 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the Exchange.

The Exchange believes that the proposed rule change is also consistent with Section 6(b)(8) of the Act [26] in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the Exchange believes that PRISM, including the rules to which the Pilot applies, results in increased liquidity available at improved prices, with competitive final pricing out of the Initiating Participant's complete control. The Exchange believes that PRISM promotes and fosters competition and affords the opportunity for price improvement to more options contracts. The Exchange believes that the changes to the PRISM Auction requiring price improvement of at least one minimum price improvement increment over the NBBO for PRISM Orders of less than 50 option contracts where the difference in the NBBO is $0.01 will provide further price improvement for those PRISM Orders. The Exchange notes that statistics for the current pilot, which include, among other things, price improvement for orders of less than 50 option contracts under the current auction eligibility requirements, show relatively small amounts of price improvement for such orders. The Exchange believes that the proposed requirements will therefore increase the price improvement that orders of under

received price improvement. 54.6% of auctions that began when the BX BBO was not at the NBBO received price improvement.

[19] 56.5% of contracts in auctions for less than 50 contracts received price improvement, while 25.8% of contracts in auctions of for 50 contracts or more received price improvement.

[20] If the situations described in either of the two latter conditions occur, the entire PRISM Order will be executed at: (1) In the case of the BX BBO crossing the PRISM Order stop price, the best response price(s) or, if the stop price is the best price in the Auction, at the stop price, unless the best response price is equal to or better than the price of a limit order resting on the Order Book on the same side of the market as the PRISM Order, in which case the PRISM Order will be executed against that response, but at a price that is at least the Minimum Increment better than the price of such limit order at the time of the conclusion of the Auction; or (2) in the case of a trading halt on the Exchange in the affected series, the stop price, in which case the PRISM Order will be executed solely against the Initiating Order. Any unexecuted PAN responses will be cancelled.

[21] The Exchange notes that trading on the Exchange in any option contract will be halted whenever trading in the underlying security has been paused or halted by the primary listing market. *See* BX Rules at Chapter V, Section 3.

[22] *See* Phlx Rule 1080(n)(ii)(D).

[23] *See* Securities Exchange Act Release No. 63027 (October 1, 2010), 75 FR 62160 (October 7, 2010) (SR–PHLX–2010–108).

[24] 15 U.S.C. 78f.

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78f(b)(8).

50 option contracts may receive in PRISM.

The Exchange believes that approving the Pilot on a permanent basis is also consistent with the Act. With respect to the no minimum size requirement, the Exchange believes that the data gathered during the Pilot period indicates that there is meaningful competition in PRISM auctions for all size orders, there is an active and liquid market functioning on the Exchange outside of the auction mechanism, and that there are opportunities for significant price improvement for orders executed through PRISM.

With respect to the early termination of a PRISM Auction, the Exchange believes that it is appropriate to terminate an auction any time the BX BBO crosses the PRISM Order stop price on the same side of the market as the PRISM Order, or any time there is a trading halt on the Exchange in the affected series. Based on the data gathered during the pilot, the Exchange does not anticipate that either of these conditions will occur with significant frequency, or will otherwise disrupt the functioning of PRISM auctions.

With respect to the requirement that an unrelated market or marketable limit order (against the BX BBO) on the opposite side of the market from the PRISM Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction, the Exchange does not believe that this provision has had a significant impact on either the unrelated order or the PRISM auction process. The Exchange also believes that allowing the PRISM Auction to continue in this scenario will allow the auction to run its full course and, in so doing, will provide a full opportunity for price improvement to the PRISM Order. The Exchange also notes that the unrelated order would be available to participate in the PRISM order allocation.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposal will apply to all Exchange members, and participation in the PRISM Auction process is completely voluntary. Based on the data collected by the Exchange during the Pilot, the Exchange believes that there is meaningful competition in PRISM auctions for all size orders, there are opportunities for significant price improvement for orders executed through PRISM, and that there is an active and liquid market functioning on the Exchange outside of PRISM. The Exchange believes that requiring increased price improvement for PRISM Orders may encourage competition by attracting additional orders to participate in PRISM. The Exchange believes that approving the Pilot on a permanent basis will not significantly impact competition, as the Exchange is proposing no other change to the Pilot beyond implementing it on a permanent basis.

*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**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2016–063 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–BX–2016–063. 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 Numbe SR–BX–2016–063 and should be submitted on or before December 30, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2016–29463 Filed 12–8–16; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–79469; File No. SR–NYSEArca–2016–155]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 6.40 To Expand the Risk Limitation Mechanism to All Orders, Including Complex Orders

December 5, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 25, 2016, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 Rule 6.40 (Risk Limitation Mechanism) to expand the risk limitation mechanism to all orders, including Complex Orders. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 6.40 (Risk Limitation Mechanism) to expand the risk limitation mechanism to all orders, including Complex Orders.[4]

Existing Risk Limitation Mechanism

Rule 6.40 sets forth the risk-limitation system, which is designed to help Market Makers, as well as OTP Firms and OTP Holders (collectively, ''OTPs''), better manage risk related to quoting and submitting orders, respectively, during periods of increased and significant trading activity.[5] The Exchange requires Market Makers to utilize its risk limitation mechanism, which automatically removes a Market Maker's quotes in all series of an options class when certain parameter settings are breached.[6] The Exchange permits, but does not require, OTPs to utilize its risk limitation mechanism for certain orders, which automatically cancels such orders when certain parameter settings are breached.[7]

Pursuant to Rule 6.40, the Exchange establishes a time period during which the NYSE Arca System (''System'')[8] calculates for quotes and orders, respectively: (1) The number of trades executed by the Market Maker or OTP in a particular options class; (2) the volume of contracts traded by the Market Maker or OTP in a particular options class; or (3) the aggregate percentage of the Market Maker's quoted size or OTP's order size(s) executed in a particular options class (collectively, the ''risk settings'').[9] When a Market Maker or OTP has breached its risk settings (*i.e.,* has traded more than the contract or volume limit or cumulative percentage limit of a class during the specified measurement interval), the System will cancel all of the Market Maker's quotes or the OTP's open orders in that class until the Market Maker or OTP notifies the Exchange it will resume submitting quotes or orders.[10] The temporary suspension of quotes or orders from the market that results when the risk settings are triggered is meant to operate as a safety valve that enables Market Makers and/or OTPs to re-evaluate their positions before requesting to re-enter the market.

Proposed Expansion of Risk Limitation Mechanism to All Orders

Currently, OTPs may voluntarily utilize risk settings for PNP Orders, PNP-Blind Orders, PNP-Light Orders and Liquidity Adding Orders (''ALO'') submitted via ArcaDirect, which are defined as ''Applicable Orders''.[11] Given the importance of risk settings in today's trading environment, the Exchange proposes to expand the availability of the risk settings to all orders traded on the Exchange.

The Exchange believes that expanding the availability of the risk settings to all orders would reduce the likelihood of unintended trades and would enable OTPs to re-evaluate their positions before requesting to re-enter the market if a risk setting is triggered. The proposed expansion would, for example, prevent the execution of a large set of orders that are improperly priced for any number of reasons (*i.e.,* because of a malfunctioning algorithm, the orders are left over from the prior day, etc.). By preventing the execution of such trades, the Exchange may help parties (including clearing members) avoid large trading losses. Thus, the Exchange believes the proposed expansion of the risk settings to all orders would allow OTPs to better manage the potential risks of multiple executions against an OTP's trading interest that, in today's highly automated and electronic trading environment, can occur simultaneously across multiple series and multiple option classes. Consistent with the ability to better manage risk, the Exchange anticipates that the proposed changes would enhance the Exchange's overall market quality as a result of narrowed quote widths and increased liquidity for series traded on the Exchange. This proposed expansion is also being made, in part, to be responsive to requests from OTPs that engage in high-volume trading in a

[4] Rule 6.62(e) defines a Complex Order as any order involving the simultaneous purchase and/or sale of two or more different option series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy.

[5] Market Makers are included in the definition of OTPs and therefore, unless the Exchange is discussing the quoting activity of Market Makers, the Exchange does not distinguish Market Markers from OTPs when discussing the risk limitation mechanisms. *See* Rule 1.1(q) (defining OTP Holder as ''a natural person, in good standing, who has been issued an OTP, or has been named as a Nominee'' that is ''a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934, or a nominee or an associated person of a registered broker or dealer that has been approved by the Exchange to conduct business on the Exchange's Trading Facilities''). *See also* Rule 6.32(a) (defining a Market Maker as an individual ''registered with the Exchange for the purpose of making transactions as a dealer-specialist on the Floor of the Exchange or for the purpose of submitting quotes electronically and making transactions as a dealer-specialist through the NYSE Arca OX electronic trading system'').

[6] *See* Rule 6.40(b)(3), (c)(3), (d)(3) and (e)(3). *See also* Commentary .04 to Rule 6.40 (providing that Market Makers are required to utilize one of the three risk settings for their quotes).

[7] *See* Rule 6.40(b)(1), (2); (c)(1), (c)(2), (d)(1), (d)(2) and Commentary .01 to Rule 6.40 (regarding the cancellation of orders once the risk settings have been breached). *See also* Commentary .04 to Rule 6.40 (providing that OTPs may avail themselves of one of the three risk limitation mechanisms for certain of their orders).

[8] The Exchange proposes to define ''System'' as a shorthand reference to the term ''NYSE Arca System'' and replace uses of the term ''NYSE Arca System'' with the term ''System'' throughout the rule text. *See* proposed Rule 6.40(a),(e), (f), and Commentaries .01, .02, .05 and .06 to the Rule.

[9] *See* Rule 6.40(a)–(e) (settings forth the three risk limitation mechanisms available: Transaction-Based, Volume-Based and Percentage-Based). A Market Maker may activate one Risk Limitation Mechanism for its quotes (which is required) and a different Risk Limitation Mechanism for its orders (which is optional), even if both are activated for the same class. *See also* Commentary .04 to Rule 6.40.

[10] *See* Commentaries .01 and .02 to Rule 6.40 (requiring that a Market Maker or OTP request that it be re-enabled after a breach of its risk settings). In the event that a Market Maker or OTP experiences multiple, successive triggers of its risk settings, the Exchange would cancel all of the quotes or Applicable Orders—as opposed to cancelling only those in the option class (underlying symbol) in which the risk settings were triggered. *See* Rule 6.40(f) and Commentary .02 to Rule 6.40.

[11] *See* Commentary .07 to Rule 6.40. For purposes of risk settings relating to orders, the Exchange does not distinguish Market Maker from OTPs.

multitude of series and classes. The Exchange believes that the proposal to make the risk settings available for all orders would assist OTPs in providing a means to calibrate and monitor their risk exposure on all orders. As is the case today, the proposed availability of risk settings for all of an OTP's orders would not be mandated, but risk settings would continue to be mandated for all Market Maker quotes.[12]

To effect this change, the Exchange proposes to amend Rule 6.40(a)(1) to provide that the Exchange would maintain separate ''trade counters'' for each of the following scenarios: (i) When any order, including a single-leg order or any leg of a Complex Order submitted by an OTP is executed in any series in a specified class; and (ii) when a Market Maker quote is executed in any series in an appointed class.[13] The Exchange proposes this rule text to replace the current rule text that covers the Applicable Orders of non-Market Makers and Market Makers, respectively.[14] Because Market Makers are also OTPs, and because the operation of the risk settings for orders are identical for all OTPs, the Exchange proposes to streamline the rule text—in Rule 6.40(a)(1) and throughout the Rule—by removing reference to ''non-Market Makers'' as superfluous and potentially confusing.[15] Instead of separately addressing risk settings for orders that are available to Market Makers and non-Market Makers, the proposed rule would simply address the option as being available to all OTPs. Proposed Rule 6.40(a)(1) would further provide that for each of these scenarios, the trade counters would be incremented every time a trade is executed, in accordance with Commentary .07 to Rule 6.40.

The Exchange proposes to amend paragraphs (b), (c), (d), (e), and (f) to make similar changes so that each of these paragraphs would have two sub-paragraphs that would be parallel to the proposed changes to Rule 6.40(a)(1):

- The first sub-paragraph of each paragraph would address how the specific risk setting would be applied to an OTP's orders, which would be the substantive change, as further described below. These proposed sub-paragraphs would replace current rule text in each paragraph governing how the specific risk setting would apply to a non-Market Maker's or Market Maker's Applicable Orders. Accordingly, current sub-paragraph (2) to each of paragraphs (b), (c), (d), (e), and (f) would be deleted.

The proposed second sub-paragraph of each paragraph would address how the specific risk setting would be applied to a Market Marker's quotes, as further described below. Accordingly, current sub-paragraph (3) to each of paragraphs (b), (c), (d), (e), and (f) would be re-numbered as sub-paragraph (2).

In addition to the substantive change to expand risk settings to all orders, the Exchange further proposes to make non-substantive amendments to each of the proposed sub-paragraphs to paragraphs (b), (c), and (d). The Exchange believes that the proposed rule text would simplify and streamline the rule by describing a risk setting being triggered when an OTP's orders or Market Marker's quotes ''have traded'' rather than using the more cumbersome text that an order or quote has been traded ''against.'' When addressing an OTP's orders, the proposed rules would provide that the risk setting would be applicable to all orders in a specific class. When addressing a Market Maker's quotes, the proposed rules would provide that the risk setting would be applicable to all of the Market Maker's quotes in an appointed class. For each risk setting, the proposed new text would provide as follows.

- The Transaction-Based Risk Limitation Mechanism, described in Rule 6.40(b), would be triggered under the following conditions:
  - When a trade counter indicates that within a time period specified by the Exchange, ''n'' executions of an OTP's open orders have traded in a specific class (proposed Rule 6.40(b)(1)); or
  - when a trade counter indicates that within a time period specified by the Exchange, ''n'' executions of a Market Marker's quotes have traded in an appointed class (proposed Rule 6.40(b)(2)).
- The Volume-Based Risk Limitation Mechanism, described in Rule 6.40(c), would be triggered under the following conditions:
  - When a trade counter indicates that within a time period specified by the Exchange, ''k'' contracts of an OTP's open orders have traded in a specific class (proposed Rule 6.40(c)(1)); or
  - when a trade counter indicates that within a time period specified by the Exchange, ''k'' contracts of a Market Maker's quotes have traded in an appointed class (proposed Rule 6.40(c)(2)).
- The Percentage-Based Risk Limitation Mechanism, described in Rule 6.40(d), would be triggered under the following conditions:
  - When a trade counter has calculated that within a time period specified by the Exchange, ''p'' percentage of an OTP's open orders have traded in a specific class (proposed Rule 6.40(d)(1)); or
  - when a trade counter has calculated that within a time period specified by the Exchange, ''p'' percentage of a Market Maker's quotes have traded in an appointed class (proposed Rule 6.40(d)(2)).

The Exchange also proposes clarifying changes to how the Percentage-Based Risk Limitation Mechanism operates. The Exchange proposes to modify Rule 6.40(d)(2)(i)–(ii) to make clear that the trade counter would first calculate, for each series of an option class, ''the percentage(s) of an OTP's order size(s) or a Market Maker's quote size that is executed on each side of the market, including both displayed and non-displayed size,'' and would then ''sum the overall percentages of the size(s) for the entire option class to calculate the 'p' percentage.'' The proposed changes are designed to account for the fact that OTPs may submit multiple orders on each side of the market that may be counted by the risk settings (whereas Market Makers have only one quote on each side of the market) and to reduce excess verbiage to streamline and condense the rule text, which the Exchange believes adds clarity and transparency to the Rule.

Proposed Changes Regarding Routable Orders

Because the proposed expansion of risk settings for orders would include routable orders, the Exchange proposes to amend Rule 6.40 to address the counting and cancellation of such orders (or unexecuted portions thereof). First, the Exchange proposes to add rule text to Commentary .07 to Rule 6.40 to provide that executions of routable orders on away markets would be considered by a trade counter once the execution report is received by the Exchange.[16] The Exchange also

[12] *See* proposed Commentary .04 (a) and (b) to Rule 6.40.

[13] *See* proposed Rule 6.40(a)(1)(i)–(ii).

[14] The Exchange also proposes the non-substantive modification to replace uses of the term ''shall'' with the term ''will'' throughout the rule text. *See generally* proposed Rule 6.40.

[15] *See supra* note 5. *See also* proposed Rule 6.40(a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1) (collapsing into one paragraph the separate paragraphs in the current Rule relating to risk settings for orders sent by Market Maker and non-Market Makers and updating cross-references to condensed rule text).

[16] The Exchange also proposes to delete as inapplicable the rule text in Commentary .07 to Rule 6.40 providing that ''[o]nly executions against order types specified by the Exchange via Trader Update and against quotes of Market Makers shall be considered by a trade counter.'' The Exchange likewise proposes to delete the rule text from Commentary .07 to Rule 6.40 that defines ''Applicable Orders,'' given that this limitation no longer applies. In this regard, the Exchange

Continued

proposes to amend Commentary .07 to Rule 6.40 to provide that executions of each leg of a Complex Order would be considered by a trade counter as an individual transaction.

Regarding cancellations, the Exchange proposes to amend Commentary .01 to Rule 6.40 to provide that once the risk settings have been triggered, pursuant to paragraphs (e) and (f) of the Rule, the System would automatically generate a ''bulk cancel'' message to cancel Market Maker quotes and electronic orders, or portions thereof, that have not been routed to away markets, excluding intraday and prior day Good-Till-Cancel (''GTC''), All-or-None (''AON''), and orders entered in response to an electronic auction that are valid only for the duration of the auction (''GTX'').[17] The Exchange has determined that it would not cancel GTC, AON, or GTX orders because these order types are typically retail orders which, if automatically cancelled by the Exchange, could cause an operational issue for any firm that entered the order(s) (*i.e.,* exposing a firm to the risk of a missed execution on an order that has come due).[18] Given these potential operational issues, and for the protection of investors and the investing public, the Exchange has determined to exempt these order types from automatic cancellation when the risk settings are triggered.[19] The Exchange also proposes to amend Commentary .01 to Rule 6.40 to provide that ''[o]rders and quotes residing in the Consolidated Book received prior to processing of the bulk cancel message may trade. Any unexecuted portion of an order subject to a 'bulk cancel' message that had routed away, but returned unexecuted, will be immediately cancelled.'' [20]

In addition to the foregoing changes to paragraphs (e) and (f) of Rule 6.40, the Exchange also proposes to amend these paragraphs to address the action (*i.e.,* cancellations) that the System would effect upon the triggering of the risk settings to account for the proposed amendments to Commentary .01 to the Rule. Specifically, the Exchange proposes to modify sub-paragraph (1) to both paragraphs (e) and (f) to provide that if a risk setting is triggered, the System would automatically cancel an OTP's orders, ''except as provided in Commentary .01 to this Rule.'' Finally, the Exchange proposes to make additional conforming changes to Commentary .02 to Rule 6.40 to specify that once the risk settings have been breached, any new orders (or quotes) would not be accepted until the OTP or Market Maker contacts the Exchange and requests to be re-enabled.

Proposed Changes to Persistence of Risk Settings for Orders

The Exchange also proposes to amend Commentary .04 to Rule 6.40 to specify the persistence of the risk settings, once activated, by an OTP for orders to conform this Commentary to the changes described above to delineate risk settings between an OTP's orders and a Market Maker's quotes. Specifically, the Exchange proposes to divide Commentary .04 into two paragraphs to make it easier to navigate—paragraph (a) would address the persistence of risk settings for quotes, and paragraph (b) would address the persistence of risk settings for orders.

Current Commentary .04 to Rule 6.40 provides that an OTP must activate its risk settings for orders on a daily basis. The Exchange proposes to amend this Commentary .04 to specify that ''[o]nce an OTP activates a Risk Limitation Mechanism for its orders in a specified class, the mechanism and the settings established will remain active unless, and until, the OTP deactivates the Risk Limitation Mechanism or changes the settings.'' [21] While the risk settings for orders remain an optional feature, the Exchange believes this change would enable each OTP to calibrate its settings as needed, as opposed to re-establishing the settings on a daily basis.

Proposed Modifications to Parameters for Each Risk Limitation Mechanism

The Exchange proposes to adjust the minimum and maximum parameters for the Risk Limitation Mechanism as set forth in Commentary .03 to the Rule. The current Rule provides that the Exchange would not exceed the following minimum and maximum parameters, applicable to quotes and orders:

- Minimum of 1 and maximum of 100 for transaction-based risk setting;
- Minimum of 20 and a maximum of 5,000 for volume-based risk setting; and
- Minimum of 100 and a maximum of 2,000 for percentage-based risk setting.[22]

The existing parameters have been in place since 2012 and the Exchange has not modified or increased these parameters in the past four years.[23] Since 2012, the markets have experienced more volatility and fragmentation. To account for these changes, as well as the ever-increasing automation, speed and volume transacted in today's electronic trading environment, the Exchange proposes to modify the minimum and maximum parameters, applicable to quotes and orders, as follows:

- Minimum of 3 and maximum of 2,000 for the transaction-based setting;
- Minimum of 20 and a maximum of 500,000 for volume-based setting: And
- Minimum of 100 and a maximum of 200,000 for percentage-based setting.[24]

Although this proposal establishes the outside parameters of allowable settings, Rule 6.40 would still obligate the Exchange to announce via Trader Update ''any applicable minimum, maximum and/or default settings for the Risk Limitation Mechanisms,'' which would afford Market Makers and OTPs the opportunity to adjust their own risk settings within the announced parameters.[25] The Exchange further believes the proposed adjustments to the minimum/maximum parameters would enable the Exchange to strike the appropriate balance to ensure that risk settings may be established at a level that is consistent with existing market conditions, which would enable the risk settings to operate in the manner

proposes to delete reference to ''Applicable Orders'' throughout the rule text and, where pertinent, and [sic] to replace uses of the term ''Applicable Orders'' with ''orders.''

[17] In light of this change, the Exchange proposes to delete the following rule text in Commentary .01 to Rule 6.40 as no longer applicable: ''The bulk cancel message shall be processed by the NYSE Arca System in time priority with any other quote or order message received by the NYSE Arca System. Any Applicable Orders or quotes that matched with a Market Maker's quote or a Market Maker's or non-Market Maker's Applicable Order and were received by the NYSE Arca System prior to the receipt of the bulk cancel message shall be automatically executed.'' *See id.*

[18] *See, e.g.,* Rule 6.62(n) (defining GTC as buy or sell orders that remain in force until the order is filled, cancelled or the option contract expires); (d)(4) (defining AON orders as a Market or Limit Order that is to be executed in its entirety or not at all).

[19] The Exchange notes that the trade counters would be incremented every time a GTC, AON or GTX order is executed, subject to proposed Commentary .07. *See* proposed Rule 6.40(a)(1).

[20] Relatedly, the Exchange proposes to delete the following rule text in Commentary .01 to Rule 6.40: ''Applicable Orders or quotes received by the NYSE Arca System after receipt of the bulk cancel message shall not be executed.''

[21] *See* proposed Commentary .04(b) to Rule 6.40 (specifying that, ''[t]o be effective, an OTP must activate a Risk Limitation Mechanism, and corresponding settings, for orders in a specified class''). Regarding the risk settings for quotes, the Exchange proposes to delete as inapplicable rule text that indicates that a Market Maker may deactivate its risk settings for quotes, as this functionality is mandated by the Exchange. *See* proposed Commentary .04(a) to Rule 6.40. The Exchange believes removing this language would add clarity and consistency to the Rule.

[22] *See* Commentary .03 to Rule 6.40.

[23] See Securities Exchange Act Release No. 67714 (August 22, 2012), 77 FR 52098 (August 28, 2012) (SR–NYSEArca–2012–87).

[24] *See* proposed Commentary .03 to Rule 6.40.

[25] *See supra* notes 22 and 24 (rule text remains unchanged in current and proposed Commentary .03 to Rule 6.40).

intended. The Exchange believes that setting the parameters within this broad range would provide OTPs with ample flexibility in setting their tolerance for risk. For example, OTPs with a lower risk tolerance may opt to select a lower threshold within the range established by the Exchange, thereby optimizing the protection afforded by this proposed rule change, whereas OTPs with a higher risk tolerance may select the maximum allowable parameter afforded by the proposed rule change. Moreover, while the Exchange retains discretion with respect to the levels at which it could adjust these settings, the Exchange would not be permitted to adjust the settings below the minimum or above the maximum proposed, which, the Exchange believes would ensure that the settings are at all times within a reasonable range. Finally, given that the risk settings would now be available for all order types, the Exchange believes it would be prudent to provide ample flexibility for setting the maximum thresholds.

Implementation

The Exchange will announce by Trader Update the implementation date of the proposed rule change to expand the availability of the Risk Limitation Mechanism to all orders, which implementation will be no later than 90 days after the effectiveness of this rule change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[26] in general, and furthers the objectives of Section 6(b)(5) of the Act,[27] 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 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.

OTPs are vulnerable to the risk from a 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 proposed expanded risk settings for orders, OTPs may opt to reduce the amount of order flow and liquidity that they provide to the market, which could undermine the quality of the markets available to market participants. Thus, the Exchange believes that the proposed rule change to expand the availability of the risk settings to all orders removes impediments to and perfects the mechanism of a free and open market by providing OTPs with greater control and flexibility over setting their risk tolerance and more protection over risk exposure, if the market moves in an unexpected direction. The proposed expansion of the risk settings to all orders would promote just and equitable principles of trade because it would help OTPs not only avoid transacting against their interests but would also reduce the potential for executions at erroneous prices, which should encourage OTPs to submit additional order flow and liquidity to the Exchange.

This proposed expansion, which was specifically requested by some OTPs, would foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities as it will be available to all OTPs for all orders entered on the Exchange. In addition, the expanded risk settings may prevent the execution of erroneously priced trades, which would help parties (including clearing members) avoid large trading losses, thereby fostering cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities.

The Exchange believes the proposed adjustments to the minimum/maximum parameters for each risk limitation mechanism, which have not been increased since 2012, are consistent with the Act because they would allow the Exchange to strike the appropriate balance to ensure that risk settings could be established at a level that is consistent with existing market conditions, which would enable the risk settings to operate in the manner intended. The Exchange believes that setting the parameters within the broad range, as proposed, would provide OTPs with ample flexibility in setting their tolerance for risk. For example, OTPs with a lower risk tolerance may opt to select a lower threshold within the range established by the Exchange, thereby optimizing the protection afforded by this proposed rule change, whereas OTPs with a higher risk tolerance may select the maximum allowable parameter afforded by the proposed rule change. Moreover, because the Exchange would not be permitted to adjust the settings below the minimum or above the maximum proposed, the settings should remain at all times within a reasonable range. Finally, given that the risk settings would now be available for all order types, the Exchange believes it would be prudent to provide ample flexibility for setting the maximum thresholds.

Consistent with the ability to better manage risk, the Exchange anticipates that the proposed enhancement to the existing Risk Limitation Mechanism would likewise enhance the Exchange's overall market quality as a result of narrowed quote widths and increased liquidity for series traded on the Exchange, which would benefit investors and the public interest because they receive better prices and because it lowers volatility in the options market. Moreover, the Exchange believes that the proposal is consistent with the protection of investors and the public interests because it would permit OTPs to better manage the potential risks of multiple executions against an OTP's proprietary interest that, in today's highly automated and electronic trading environment, can occur simultaneously across multiple series and multiple option classes.

Finally, the Exchange believes that the proposed changes to streamline and clarify the rule text, including updated cross references that conform rule text to proposed changes, promotes just and equitable principles of trade, fosters cooperation and coordination among persons engaged in facilitating securities transactions, and removes impediments to and perfects the mechanism of a free and open market by ensuring that members, regulators and the public can more easily navigate the Exchange's rulebook and better understand the defined terms used by the Exchange.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is proposing a market enhancement that would provide OTPs with greater control and flexibility over setting their risk tolerance and more protection over risk exposure, if the market moves in an unexpected direction. The Exchange believes the proposal would provide market participants with additional protection from unintended executions. The proposal is structured to offer the same

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

enhancement to all OTPs, regardless of size, and would not impose a competitive burden on any participant. The Exchange does not believe that the proposed enhancement to the existing risk limitation mechanism would impose a burden on competing options exchanges. Rather, the availability of this mechanism may foster more competition. Specifically, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. When an exchange offers enhanced functionality that distinguishes it from the competition and participants find it useful, it has been the Exchange's experience that competing exchanges will move to adopt similar functionality. Thus, the Exchange believes that this type of competition amongst exchanges is beneficial to the market place as a whole as it can result in enhanced processes, functionality, and technologies.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [28] and Rule 19b–4(f)(6) thereunder.[29] 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [30] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2016–155 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–2016–155. 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–NYSEArca–2016–155, and should be submitted on or before December 30, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2016–29467 Filed 12–8–16; 8:45 am]

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[28] 15 U.S.C. 78s(b)(3)(A)(iii).

[29] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[30] 15 U.S.C. 78s(b)(2)(B).

[31] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–79467; File No. SR–BatsBZX–2016–81]**

## Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to BZX Rule 11.23, Auctions, To Amend How the Official Auction Prices Are Calculated and Add Additional Specificity Regarding the Handling of RHO Orders During an Opening Auction for a BZX Listed Security

December 5, 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 30, 2016, Bats BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange filed a proposal to amend Exchange Rule 11.23, Auctions, to: (i) Amend how the official auction prices are calculated and make related changes to the definitions of Indicative Price and Auction Only Price; and (ii)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

add additional specificity regarding the handling of Regular Hours Only (''RHO'') Orders [5] during an Opening Auction for a BZX listed security [6] by describing situations in which RHO limit orders may be modified prior to the auction and cancelled after an auction.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.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 parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Exchange Rule 11.23, Auctions, to: (i) Amend how the official auction prices are calculated and make related changes to the definitions of Indicative Price and Auction Only Price; and (ii) add additional specificity regarding the handling of RHO Orders during an Opening Auction for a BZX listed security by describing situations in which RHO limit orders may be modified prior to the auction and cancelled after an auction.

Official Auction Prices, Indicative Price, and Auction Only Price

In general, the price for the Opening, Closing, IPO, Halt, and Volatility Closing auctions is established by determining the price level that maximizes the number of shares executed.[7] In determining the auction price, the Exchange takes into account all buy and sell interest at each price level on the Auction Book [8] and the Continuous Book.[9] Today, in the event of a volume based tie at multiple price levels, the price of the Opening and Closing auctions will be the price closest to the Volume Based Tie Breaker.[10] In the event of a volume based tie at multiple price levels for an IPO, Halt, and Volatility Closing auctions, the price closest to the issuing price will be used for IPO Auctions and the price level closest to the final last sale eligible trade will be used for Halt and the Volatility Closing Auctions.

The Exchange proposes to amend Exchange Rules 11.23(b)(2)(B), (c)(2)(B), (d)(2)(D), and (e)(2)(D) to state that the prices of the Opening Auction, Closing Auction, IPO Auction, Halt Auction, and Volatility Closing Auction, respectively, will also occur at a price that not only maximizes the number of shares executed, but also minimizes the total imbalance. In all auctions, the auction price will first be established by determining the price level within the Collar Price Range [11] that maximizes the number of shares executed. In the event of a volume based tie at multiple price levels, the auction price will be the price level that results in the minimum total imbalance. Lastly, should there be both a volume based tie and a tie in minimum total imbalance at multiple price levels, the auction price of the: (i) Opening and Closing auctions will be the price closest to the Volume Based Tie Breaker; (ii) Halt and Volatility Closing auctions will be the price closest to the final last sale eligible trade; and (iii) IPO auction will be the price closest to the issuing price.

The below examples illustrate how the auction price, Auction Only Price and Indicative Price is selected today and how these prices will be selected under the proposed rule change. This first example illustrates current behavior. Assume that the NBBO is $24.90 × $25.10, which means that the Volume Based Tie Breaker is $25.00.

| Total buy shares | Buy shares | Price | Sell shares | Total sell shares | Paired shares | Imbalance |
|---|---|---|---|---|---|---|
| 0 | | 25.05 | | 300 | 0 | −300 |
| 500 | 500 | 25.01 | | 300 | 300 | 200 |
| 700 | 200 | 25.00 | 100 | 300 | 300 | 400 |
| 1,200 | 500 | 24.95 | 200 | 200 | 200 | 1,000 |

In this example, current behavior would dictate that $25.00 would be selected as the auction price, Auction Only Price, and the Indicative Price, as applicable, because at $25.00 the maximum number of shares would be executed (300 shares, in a tie with $25.01) and of the two price levels at which 300 shares would be executed, $25.00 is closest to the Volume Based Tie Breaker.

Under the same scenario described above, but using the price level that minimizes the total imbalance where there is a tie for the maximum number of shares executed in the auction at multiple price levels instead of the Volume Based Tie Breaker, the price chosen as the auction price, Auction Only Price, and Indicative Price would be $25.01. $25.01 would be used because, as noted above, 300 shares would be executed at both $25.00 and $25.01, but the imbalance at $25.01 is 200 shares while the imbalance at $25.00 is 400 shares. Stated another way, less executable interest would

[5] An RHO Order is ''[a] limit or market order that is designated for execution only during Regular Trading Hours, which includes the Opening Auction, the Closing Auction, and IPO/Halt Auctions for BZX listed securities and the Opening Process for non-BZX-listed securities (as such terms are defined in Rule 11.23 and 11.24). Any portion of a market RHO order will be cancelled immediately following any auction in which it is not executed.'' *See* Exchange Rule 11.9(b)(7).

[6] A BZX listed security is a security listed on the Exchange pursuant to Chapter 14 of the Exchange's Rules and includes both corporate listed securities and Exchange Traded Products (''ETPs'').

[7] *See* Exchange Rules 11.23(b)(2)(B), (c)(2)(B), (d)(2)(D), and (e)(2)(D).

[8] *See* Exchange Rule 11.23(a)(1).

[9] *See* Exchange Rule 11.23(a)(7).

[10] ''Volume Based Tie Breaker'' is defined as ''the midpoint of the NBBO for a particular security where the NBBO is a Valid NBBO. A NBBO is a Valid NBBO where: (i) There is both a NBB and NBO for the security; (ii) the NBBO is not crossed; and (iii) the midpoint of the NBBO is less than the Maximum Percentage away from both the NBB and the NBO. The Maximum Percentage will be determined by the Exchange and will be published in a circular distributed to Members with reasonable advance notice prior to initial implementation and any change thereto. Where the NBBO is not a Valid NBBO, the price of the Final Last Sale Eligible Trade will be used.'' *See* Exchange Rule 11.23(a)(23).

[11] *See* Exchange Rule 11.23(a)(6).

remain unexecuted at $25.01 (200 shares) than at $25.00 (400 shares).

| Total buy shares | Buy shares | Price | Sell shares | Total sell shares | Paired shares | Imbalance |
|---|---|---|---|---|---|---|
| 0 | | 25.05 | | 300 | 0 | −300 |
| 500 | 500 | 25.01 | | 300 | 300 | 200 |
| 700 | 200 | 25.00 | 100 | 300 | 300 | 400 |
| 1,200 | 500 | 24.95 | 200 | 200 | 200 | 1,000 |

This third example illustrates the proposed behavior when there is a tie for the maximum number of shares executed in the auction at multiple price levels and a tie in minimum total imbalance within those price levels. In such a situation, the price level closest to the Volume Based Tie Breaker will be used. Under this example, assume that the NBBO is $24.94 × $25.16, which means that the Volume Based Tie Breaker is $25.05.

| Total buy shares | Buy shares | Price | Sell shares | Total sell shares | Paired shares | Imbalance |
|---|---|---|---|---|---|---|
| 500 | 500 | 25.08 | | 200 | 200 | 300 |
| 500 | | 25.07 | | 200 | 200 | 300 |
| 500 | | 25.06 | | 200 | 200 | 300 |
| 1,000 | 500 | 25.05 | | 200 | 200 | 800 |
| 1,200 | 200 | 25.00 | | 200 | 200 | 1,000 |
| 1,700 | 500 | 24.95 | 200 | 200 | 200 | 1,500 |

In this example, there is a tie for the maximum number of shares executed in the auction at 200 shares for every price level from $24.95 to $25.08. Looking at the imbalance, there is also a tie at 300 shares at each of $25.06, $25.07, and $25.08. As such, the proposed behavior would look to the Volume Based Tie Breaker to determine the auction price, Auction Only Price, and Indicative Price. Because the Volume Based Tie Breaker is $25.05, $25.06 is selected because it is the closest of $25.06, $25.07, and $25.08 to the Volume Based Tie Breaker.

The Exchange believes the proposed amendments are necessary to ensure that the price selected for the auction is reasonably based on all buying and selling interest for that security and is the price at which the most orders may be matched resulting in the minimal imbalance. Selecting a price that would minimize the imbalance best reflects the value of the security based on the auction's price discovery process because it is the price level where the amount of buy and sell interest is closest to equal. As noted above, minimizing the imbalance at the price levels at which the most shares will execute in the auction will result in the price closest to equilibrium because that price level has the least amount of executable interest that remains unexecuted. As a result, the proposed rule changes should also enhance the Exchange's auction processes resulting in improved price discovery of BZX listed securities.

As a result of the above changes to the determination of the official auction price, the Exchange also proposes to make a related change to the definition of Indicative Price under paragraph (a)(10) of Rule 11.23. Indicative Price is currently defined as the price at which the most shares from the Auction Book and the Continuous Book would match.[12] The Indicative Price is disseminated publicly beginning at 8:00 a.m. Eastern Time for an Opening[13] and IPO Auction,[14] 3:00 p.m. Eastern Time for a Closing Auction,[15] five (5) minutes prior to the commencement of a Halt Auction,[16] and at the time a security is halted after 3:50 p.m. Eastern Time for a Volatility Closing Auction.[17] The Indicative Price is designed to facilitate price discovery and transparency while helping resolve order imbalances in the time leading up to an auction and the determination of the auction price.

Today, the Exchange will publish the price at which the most shares may be executed as the Indicative Price by taking into account all buy and sell interest at each price level. Like the determination of each of the auction prices discussed above, the Indicative Price reflects the price at which the maximum number of shares may be executed, but may not reflect the price which would result in the minimum total imbalance where there are multiple price levels at which the most shares may be executed. Therefore, like the amendments to the determination of auction prices above, the Exchange proposes to amend the definition of Indicative Price to ensure that the maximum number of shares will ultimately be executed in the auction resulting in the minimum total imbalance. Indicative Price will continue to be defined as ''the price at which the most shares from the Auction Book and the Continuous Book would match.'' However, the definition of Indicative Price would be expanded to state that in the event of a volume based tie at multiple price levels, the Indicative Price will be the price which results in the minimum total imbalance. In the event of a volume based tie and a tie in minimum total imbalance at multiple price levels, the Indicative Price will be the price closest to the Volume Based Tie Breaker.

Lastly, the Exchange also publishes an Auction Only Price, which is the price at which the most shares from the Auction Book would match. Currently, in the event of a volume based tie at multiple price levels, the Auction Only Price will be the price closest to the Volume Based Tie Breaker. Auction Only Price will continue to be defined under Exchange Rule 11.23(a)(2) to state that the Auction Only Price will be the price at which the most shares from the Auction Book would match. However, the definition will be expanded to harmonize the calculation of the Auction Only Price with the above changes. As amended, in the event of a volume based tie at multiple price levels, the Auction Only Price will be the price which results in the minimum

[12] *See* Exchange Rule 11.23(a)(10).
[13] *See* Exchange Rule 11.23(b)(2)(A).
[14] *See* Exchange Rule 11.23(d)(2)(A).
[15] *See* Exchange Rule 11.23(c)(2)(A).
[16] *See* Exchange Rule 11.23(d)(2)(A).
[17] *See* Exchange Rule 11.23(e)(2)(A).

total imbalance. In the event of a volume based tie and a tie in minimum total imbalance at multiple price levels, the Auction Only Price will be the price closest to the Volume Based Tie Breaker.

RHO Orders

An RHO Order is ''[a] limit or market order that is designated for execution only during Regular Trading Hours, which includes the Opening Auction, the Closing Auction, and IPO/Halt Auctions for BZX listed securities and the Opening Process for non-BZX-listed securities (as such terms are defined in Rule 11.23 and 11.24). RHO orders are also Eligible Auction Orders [18] and may participate in the Opening Auction.[19] Any Eligible Auction Orders designated for the Opening Auction will be queued until 9:30 a.m. at which time they will be eligible to be executed in the Opening Auction. Any portion of a RHO market order will be cancelled immediately following any auction in which it is not executed.'' [20] However, any portion of an RHO limit order that is not executed in the auction will be placed on the Continuous Book at the conclusion of the auction and commencement of Regular Trading Hours (subject to the cancelling of certain RHO limit orders are described below).

In general, Eligible Auction Orders designated for the Opening Auction may not be cancelled or modified between 9:28 a.m. and 9:30 a.m.[21] The Exchange now proposes to add additional specificity to Rule 11.23(b)(1) regarding how RHO limit orders are handled in the Opening Auction. Specifically, the Exchange proposes to amend Rule 11.23(b)(1)(B) to describe current behavior that allows Members to modify, but not cancel, RHO limit orders designated for the Opening Auction between 9:28 a.m. and 9:30 a.m.[22]

The rule text currently provides that RHO limit orders submitted between 9:28 a.m. and 9:30 a.m. are treated as Late-Limit-On-Open (''LLOO'') [23] orders until the Opening Auction has concluded. The Exchange proposes to amend Rule 11.23(b)(1)(B) to state that RHO limit orders that are modified between 9:28 a.m. and 9:30 a.m. will also be treated as LLOO orders until the Opening Auction is concluded. During the Opening Auction, RHO limit orders will be priced in accordance with the operation of LLOO orders as described in Rule 11.23(a)(12),[24] subject to the order's limit price. At the conclusion of the Opening Auction, any unexecuted portion of a RHO limit order will be placed on the Continuous Book at its limit price (subject to the cancelling of certain RHO limit orders are described below). The Exchange believes that such treatment is consistent with the existing treatment of RHO limit orders submitted between 9:28 a.m. and 9:30 a.m. which are subject to the pricing restrictions applicable to LLOO orders. However, because, unlike LLOO orders, RHO limit orders will be added to the Continuous Book at the conclusion of the Opening Auction at their limit price, Members should be able to modify such orders between 9:28 a.m. and 9:30 a.m. Such functionality provides Members the price protections necessary to incentivize early entry of orders for participation in the Opening Auction while simultaneously allowing a Member to control an order that will be entered onto the Continuous Book if it is not executed in the Opening Auction.

The Exchange also proposes to describe within Exchange Rule 11.23(b)(1) how RHO orders with a limit price outside of the Collar Price Range are handled. Where the Opening Auction would have occurred at a price level but for such price level being greater than (less than) the high (low) range of the Collar Price Range (*i.e.,* outside the Collar Price Range), all buy (sell) limit RHO orders with a limit price more aggressive than the BZX Official Opening Price that are not executed in the Opening Auction will be cancelled.

The Collar Price Range is utilized to help limit volatility during the auction process and to reduce the possibility that an auction would occur at a price that would qualify as clearly erroneous under Exchange Rule 11.17(c)(1) and that may result in cancelled executions.[25] The process to select the price of an Opening Auction as described above could lead to a price that is outside of the Collar Price Range. In that case, the Exchange will then look to find a price to execute the auction within the Collar Price Range and in accordance with the price selection process set forth above. The Exchange selecting a less aggressive price for the auction within the Collar Price Range can result in the unexecuted RHO limit orders priced more aggressively than the auction price being placed on the Continuous Book upon conclusion of the Opening Auction.

The Exchange believes that it is necessary and appropriate to cancel RHO orders with a limit price that is more aggressive than the auction price in such circumstances. Other than RHO limit orders, all Eligible Auction Orders will simply be cancelled if they do not execute in the Opening Auction. RHO limit orders, however, are unique in that they rest on the Auction Book until the conclusion of the Opening Auction, at which point any unexecuted portion is added to the Continuous Book. This could result in unexecuted RHO limit orders priced more aggressively than the auction price to be added to the Continuous Book, immediately applying price pressure in the direction of the price that the Opening Auction would have initially occurred but for the Exchange selecting a price within the Collar Price Range, thereby controverting the purpose of the Collar Price Range. Further, such a set of circumstances would also undermine the value of the price discovery process of the Opening Auction and could result in executions eligible for review as

[18] *See* Exchange Rule 11.23(a)(8).

[19] *See id.*

[20] *See* Exchange Rule 11.9(b)(7).

[21] *See* Exchange Rule 11.23(b)(1)(B).

[22] Currently, RHO market orders submitted between 9:28 a.m. and 9:30 a.m. are rejected. *See* Exchange Rule 11.23(b)(1)(A). Modifications to RHO limit orders between 9:28 a.m. and 9:30 a.m. would not be limited by Exchange Rule 11.9(e)(3) as such orders are not active until the Opening Auction occurs at 9:30 a.m.

[23] *See* Exchange Rule 11.23(a)(12).

[24] Under Exchange Rule 11.23(a)(12), LLOO orders are priced as follows: to the extent a LLOO bid or offer received by the Exchange has a limit price that is more aggressive than the NBB or NBO, the price of such bid or offer is adjusted to be equal to the NBB or NBO, respectively, at the time of receipt by the Exchange. Where the NBB or NBO becomes more aggressive, the limit price of the LLOO bid or offer will be adjusted to the more aggressive price, only to the extent that the more aggressive price is not more aggressive than the original User entered limit price. The limit price will never be adjusted to a less aggressive price. If there is no NBB or NBO, the LLOO bid or offer, respectively, will assume its entered limit price. Notwithstanding the foregoing, a LLOO order entered during the Quote-Only Period of an IPO will be converted to a limit order with a limit price equal to the original User entered limit price and any LLOO orders not executed in their entirety during the IPO Auction will be cancelled upon completion of the IPO Auction.

[25] As set forth under Exchange Rule 11.23(a)(6), the ''Collar Price Range'' is the range from a set percentage below the Collar Midpoint (as defined below) to above the Collar Midpoint, such set percentage being dependent on the value of the Collar Midpoint at the time of the auction, as described below. The Collar Midpoint will be the Volume Based Tie Breaker for all applicable auctions, except for IPO Auctions in ETPs (as defined in Rule 11.8, Interpretation and Policy .02(d)(2)), for which the Collar Midpoint will be the issue price. Specifically, the Collar Price Range will be determined as follows: Where the Collar Midpoint is $25.00 or less, the Collar Price Range shall be the range from 10% below the Collar Midpoint to 10% above the Collar Midpoint; where the Collar Midpoint is greater than $25.00 but less than or equal to $50.00, the Collar Price Range shall be the range from 5% below the Collar Midpoint to 5% above the Collar Midpoint; and where the Collar Midpoint is greater than $50.00, the Collar Price Range shall be the range from 3% below the Collar Midpoint to 3% above the Collar Midpoint.

clearly erroneous under Exchange Rule 11.17. The Exchange notes that Members whose RHO limit orders are cancelled because the price of the order is more aggressive than the Collar Price Range may always resubmit such orders at less aggressive prices or after regular trading begins.

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(b) of the Act.[26] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[27] because it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change will enhance the Exchange's auction processes resulting in improved price discovery of BZX listed securities. Specifically, the Exchange believes amending the calculations of auction prices and the definitions of Indicative Price and Auction Only Price promotes just and equitable principles of trade by ensuring that the maximum number of shares will ultimately be executed in the auction resulting in the minimum total imbalance generally because selecting a price that would minimize the imbalance best reflects the value of the security based on the auction's price discovery process because it is the price level where the amount of buy and sell interest is closest to equal. Further, minimizing the imbalance at the price levels at which the most shares will execute in the auction will result in the price closest to equilibrium because that price level has the least amount of executable interest that remains unexecuted. These proposed amendments are similar to auction price selection process of other exchanges [28] and would enhance the price discovery and transparency while helping resolve order imbalances in the time leading up to an auction and the determination of the ultimate auction price.

The Exchange believes allowing Members to modify RHO limit orders between 9:28 a.m. and 9:30 a.m. promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of, a free and open market and a national market system. Such functionality provides Members the price protections necessary to incentivize early entry of orders for participation in the Opening Auction while simultaneously allowing a Member to control an order that will be entered onto the Continuous Book if it is not executed in the Opening Auction. In addition, the modification of a RHO limit order between 9:28 a.m. and 9:30 a.m. would have no impact on the pricing of the Opening Auction as such order are priced in accordance with the operation of LLOO orders as described in Rule 11.23(a)(12),[29] subject to the order's limit price, on the Continuous Book.

The proposal also supports the objectives of perfecting the mechanism of a free and open market and the national market system because not cancelling RHO orders with limit prices more aggressive than the Collar Price Range would result in executions vastly different from the auction price shortly after the regular trading commences. As such, the proposal also protects investors because it would prevent the executions of orders at prices not related to the current market for the security and possibly not in line with the investor's intent at the time they entered the orders prior to the commencement of the auction process. The Exchange believes this undermines the price discovery process of the auction and could result in executions eligible for review as clearly erroneous under Exchange Rule 11.17. The Exchange notes that Members whose RHO limit orders are cancelled because the price of the order is more aggressive than the Collar Price Range may always resubmit such orders at less aggressive prices or after regular trading begins. Therefore, the Exchange believes the proposed rule change promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of, a free and open market and a national market system.

*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. To the contrary, the proposal will promote competition because the Exchange believes the proposal improves and enhances the Exchange's auction processes, thereby attracting additional order flow to the Exchange. The proposed rule change is, in effect, pro-competition as it promotes fair and orderly markets and protects investors through enhanced auction processes.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on 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 Act [30] and Rule 19b–4(f)(6) thereunder.[31]

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 No. SR–BatsBZX–2016–81 on the subject line.

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

[28] *See e.g.,* Nasdaq Stock Market LLC (''Nasdaq'') Rules 4752(a)(2)(A) and 4752(d)(2) (outlining the selection of the Nasdaq Current Reference Price and auction price).

[29] *See supra* note 24.

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with 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 of filing of the proposed rule change, or such shorter time as designated by the Commission.

*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 No. SR–BatsBZX–2016–81. 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 No. SR–BatsBZX–2016–81, and should be submitted on or before December 30, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2016–29465 Filed 12–8–16; 8:45 am]

**BILLING CODE 8011–01–P**

[32] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice: 9796]**

## 60-Day Notice of Proposed Information Collection: Birth Affidavit

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 60 days for public comment preceding submission of the collection to OMB.

**DATES:** The Department will accept comments from the public up to February 7, 2017.

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

• *Web:* Persons with access to the Internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2016–0076'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.

• *Email: PPTFormsOfficer@state.gov.*

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, by mail to PPT Forms Officer, U.S. Department of State, CA/PPT/S/L 44132 Mercure Cir, P.O. Box 1227 , Sterling, VA 20166–1227, or *PPTFormsOfficer@state.gov.*

**SUPPLEMENTARY INFORMATION:**

• *Title of Information Collection:* Birth Affidavit.

• *OMB Control Number:* 1405–0132.

• *Type of Request:* Revision of a Currently Approved Collection.

• *Originating Office:* Department of State, Bureau of Consular Affairs, Passport Services, Office of Legal Affairs and Law Enforcement Liaison (CA/PPT/S/L/LA).

• *Form Number:* DS–10.

• *Respondents:* Individuals.

• *Estimated Number of Respondents:* 22,056.

• *Estimated Number of Responses:* 22,056.

• *Average Time Per Response:* 40 minutes.

• *Total Estimated Burden Time:* 14,711 hours.

• *Frequency:* On Occasion.

• *Obligation to Respond:* Required to Obtain a Benefit.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

*Abstract of proposed collection:* The Birth Affidavit is submitted in conjunction with an application for a U.S. passport, and is used by Passport Services to collect information for the purpose of establishing the U.S. nationality of a passport applicant who has not submitted an acceptable United States birth certificate with his/her passport application. The Secretary of State is authorized to issue U.S. passports under 22 U.S.C. 211a *et seq.*, 8 U.S.C. 1104, and Executive Order 11295 (August 5, 1966). Pursuant to 22 U.S.C. 212 and 22 CFR 51.2, only U.S. nationals may be issued a U.S. passport. Most passport applicants show U.S. nationality by providing a birth certificate showing the applicant was born in the United States. Some applicants, however, may have been born in the United States (and subject to its jurisdiction), but were never issued a birth certificate. Form DS–10 is a form affidavit for completion by a witness to the birth of such an applicant; it collects information relevant to establishing the identity of the affiant, and the birth circumstances of the passport applicant. If credible, the affidavit may permit the applicant to show U.S. nationality based on the applicant's birth in the United States, despite never having been issued a U.S. birth certificate. We use the information collected on the person completing the affidavit to confirm that individual's identity, which is relevant to confirming his or her relationship to the applicant and the likelihood that the affiant has actual knowledge of the circumstances of the applicant's birth.

*Methodology:* When needed, a Birth Affidavit is completed at the time a person applies for a U.S. passport.

**Brenda S. Sprague,**

*Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.*

[FR Doc. 2016–29533 Filed 12–8–16; 8:45 am]

**BILLING CODE 4710–06–P**

## DEPARTMENT OF STATE

**[Public Notice: 9815]; [No. FMA–2016–04]**

### Designation and Determination Under the Foreign Missions Act

Pursuant to the authority vested in the Secretary of State by the laws of the United States, including the Foreign Missions Act, codified at 22 U.S.C. 4301–4316 (the ''Act''), and delegated by the Secretary to me as the Under Secretary of State for Management in Delegation of Authority No. 198, dated September 16, 1992, and after due consideration of the benefits, privileges, and immunities provided to missions of the United States abroad, as well as matters related to the protection of the interests of the United States, I hereby under section 202(a)(1) of the Act (22 U.S.C. 4302(a)(1)) designate employment authorization for dependents of foreign mission members in the United States as a benefit for purposes of section 204 of the Act (22 U.S.C. 4304).

I determine that employment authorization for dependents of foreign mission members shall be provided on such terms and conditions as the Office of Foreign Missions (OFM) may approve. Specifically, on the basis of reciprocity, and following notification to the foreign mission, OFM may require payment of a surcharge, or may impose processing delays, require additional documentation, or impose other restrictions or burdens on the foreign mission and/or applicant.

This action is reasonably necessary on the basis of reciprocity to protect the interests of the United States, adjust for costs and procedures of obtaining benefits for missions of the United States abroad, and carry out the policy set forth in section 201(b) of the Act (22 U.S.C. 4301(b)).

Dated: October 25, 2016.

**Patrick F. Kennedy,**

*Under Secretary for Management, Department of State.*

[FR Doc. 2016–29599 Filed 12–8–16; 8:45 am]

**BILLING CODE 4710–43–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

**[FTA Docket No. 2016–0046]**

### Notice of Request for Revisions of an Information Collection

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve the revisions of the following information collection:

49 U.S.C. Section 5339—Alternatives Analysis Program

**DATES:** Comments must be submitted before February 7, 2017.

**ADDRESSES:** To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Web site: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (Note: The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202–366–7951.

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

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

*Instructions:* You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to *www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov.* Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dwayne Weeks, Office of Planning & Environment, (202) 493–0396, or email at *Dwayne.Weeks@dot.gov.*

**SUPPLEMENTARY INFORMATION:** Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

**Title: 49 U.S.C. Section 5339—Alternatives Analysis Program**

(OMB Number: 2132–0571)

*Background:* Under Section 3037 of the Safe, Accountable, Flexible, Efficient Transportation Act—A Legacy for Users (SAFETEA–LU), the Alternatives Analysis Program (49 U.S.C. 5339) provided grants to States, authorities of the States, metropolitan planning organizations, and local government authorities to develop studies as part of the transportation planning process. The purpose of the Alternatives Analysis Program was to assist in financing the evaluation of all reasonable modal and multimodal alternatives and general alignment options for identified transportation needs in a particular, a broadly defined travel corridor. The transportation planning process of Alternatives Analysis included an assessment of a wide range of public transportation or multimodal alternatives, which addressed transportation problems within a corridor or subarea; provided ample information that enabled the Secretary to make the findings of project justification and local financial commitment; supported the selection of a locally preferred alternative; and enabled the local Metropolitan Planning Organization to adopt the locally preferred alternative as part of the long-range transportation plan. The Alternative Analysis Program was repealed by Congress under the Moving Ahead for Progress in the 21st Century Act (MAP–21). However, funds previously authorized for programs repealed by MAP–21 remain available for their originally authorized purposes

until the period of availability expires, the funds are fully expended, the funds are rescinded by Congress, or the funds are otherwise reallocated. To meet program oversight responsibilities, FTA must continue to collect information until the period of availability expires, the funds are fully expended, the funds are rescinded by Congress, or the funds are otherwise reallocated.

*Respondents:* States, Metropolitan Planning Organizations, and Local Governmental Authorities.

*Estimated Annual Burden on Respondents:* 15 hours for each of the respondents.

*Estimated Total Annual Burden:* 303 hours.

*Frequency:* Annual.

**William Hyre,**

*Deputy Associate Administrator for Administration.*

[FR Doc. 2016–29505 Filed 12–8–16; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–2016–0137)**

### Pipeline Safety: Safeguarding and Securing Pipelines From Unauthorized Access

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

**ACTION:** Notice; issuance of Advisory Bulletin.

**SUMMARY:** PHMSA is issuing this Advisory Bulletin in coordination with the Department of Homeland Security's (DHS), Transportation Security Administration (TSA), to remind all pipeline owners and operators of the importance of safeguarding and securing their pipeline facilities and monitoring their Supervisory Control and Data Acquisition (SCADA) systems for abnormal operations and/or indications of unauthorized access or interference with safe pipeline operations. Additionally, this Advisory Bulletin is to remind the public of the dangers associated with tampering with pipeline system facilities.

This Advisory Bulletin follows recent incidents in the United States that highlight threats to oil and gas infrastructure. On October 11, 2016, several unauthorized persons accessed and interfered with pipeline operations in four states, creating the potential for serious infrastructure damage and significant economic and environmental harm, as well as endangering public safety. While the incidents did not result in any damage or injuries, the potential impacts emphasize the need for increased awareness and vigilance.

**FOR FURTHER INFORMATION CONTACT:** Operators of pipelines subject to regulation by DOT, PHMSA, should contact Nathan A. Schoenkin by phone at 202–366–4774 or by email at *Nathan.Schoenkin@dot.gov.* Information about PHMSA may be found at *http://phmsa.dot.gov.* Pipeline operators with questions on TSA's Pipeline Security Guidelines should contact Steven Froehlich by phone at 571–227–1240 or by email at *Steven.Froehlich@tsa.dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

*Incident Details*

On Tuesday October 11, 2016, individuals contacted four pipeline operators informing them they would shut down the pipelines used to transport crude oil from Canada to the United States. The operators (Enbridge, Kinder Morgan, Spectra Energy, and TransCanada) took steps to prevent damage to the pipelines and contacted local and federal law enforcement. The individuals cut the chains and padlocks at valve sites near Leonard, Minnesota; Burlington, Washington; Eagle Butte, Montana; and Wahalla, North Dakota. The individuals then closed valves on Enbridge's Lines 4 and 67, Spectra Energy's Express Pipeline, and TransCanada's Keystone Pipeline. The Kinder Morgan Trans Mountain's Puget Sound Pipeline was not operating at the time. Several individuals were arrested by local law enforcement.

Had the pipeline operators not shut down their lines in response to the threats, a pipeline rupture could have occurred. A pipeline rupture due to tampering with valves can have significant consequences such as death, injury, and economic and environmental harm.

*Pipeline Safety and Security*

PHMSA and TSA have a mutual interest in ensuring coordinated, consistent, and effective activities that improve interagency cooperation on transportation security and safety matters. PHMSA focuses on the safety of the Nation's pipelines and administers the pipeline safety regulatory program (49 CFR part 190–199). TSA focuses on the security of the Nation's pipelines and has authored Pipeline Security Guidelines for operators available online at *https://www.tsa.gov/sites/default/files/tsapipelinesecurityguidelines-2011.pdf.*

## II. Advisory Bulletin (ADB–2016–06)

*To:* Owners and Operators of Hazardous Liquid, Carbon Dioxide and Gas Pipelines

*Subject:* Safeguarding and Securing Pipelines from Unauthorized Access

*Advisory:* PHMSA is issuing this Advisory Bulletin in coordination with TSA to remind all pipeline owners and operators of the importance of safeguarding and securing their pipeline facilities and monitoring their SCADA systems for abnormal operations and/or indications of unauthorized access or interference with safe pipeline operations. Additionally, this Advisory Bulletin is to remind the public of the dangers associated with tampering with pipeline system facilities.

*If You See Something, Say Something*™

Tampering with pipeline facilities can have deleterious effects on the safety of the Nation's pipeline system. Tampering or acts of sabotage can also lead to the loss of life, injury, and significant harm to the economy and environment. At 49 CFR 190.291, any person that willingly and knowingly injures or destroys, or attempts to injure or destroy a pipeline facility is subject to a fine in Title 18 of the United States Code and imprisonment for a term not to exceed 20 years for each offense. Individuals are reminded that ''If you See Something, Say Something''™ applies to the safety and security of our national pipeline infrastructure. Individuals that see something suspicious should reach out to their local law enforcement. Informed, alert communities play a vital role in keeping our Nation's energy infrastructure safe. Emphasizing that ''Homeland Security Starts with Hometown Security,'' DHS encourages businesses to ''Connect, Plan for, Train, and Report''. Tools and resources to help businesses plan, prepare, and protect themselves from suspicious activities or attacks are located online at *https://www.dhs.gov/hometown-security.*

*Relationships With Local Law Enforcement*

PHMSA reminds pipeline operators that a strong relationship with local law enforcement is extremely beneficial for safe pipeline operations. Two-way communications between operators and law enforcement can help to stop threats before they occur. Relationships should be cultivated well in advance of an incident to facilitate mutually dependable communication during an incident.

*Increased Security Patrols*

Pipeline operators should consider increasing the frequency of security patrols along their right of ways. Operators may want to consider the use of new technologies to aid in pipeline security patrols, such as unmanned aerial systems if authorized in the areas of operation. Frequent patrols may help inform pipeline companies of individuals who regularly congregate near a pipeline, or of potentially unsafe conditions at a valve or pump station. Information regarding suspicious individuals should be promptly forwarded to federal, state, and local law enforcement.

*Protection of Facilities*

PHMSA's Office of Pipeline Safety requires pipeline operators to provide protection for valves on hazardous liquid pipelines at 49 CFR 195.420(c). Additionally, at 49 CFR 195.436, hazardous liquid pipeline operators are required to provide protection for each pumping station, breakout tank area, and other exposed facility from vandalism and unauthorized entry. Furthermore, at 49 CFR 192.179(b)(1), natural and other gas pipeline operators must ensure that the valve and operating device to open or close the valve must be protected from tampering and damage. PHMSA recommends that pipeline operators review their valve and facility protection measures and consider taking additional steps to secure them.

Operators should evaluate what type of locks and security fences are being used at valve stations and if they are capable of preventing unauthorized personnel from gaining access to pipeline valve facilities. Pipeline operators may choose to make mechanical operation of valves more difficult without proper equipment.

The use of deterrent text and signage at pipeline facilities may be beneficial to decrease acts of sabotage against a pipeline facility. The text should include the potential consequences if a valve is closed improperly and a rupture was to occur. Additionally the deterrent text should include reference to the PHMSA regulation found at 49 CFR 190.291 discussing the criminal penalties for tampering with pipeline facilities. Remote facilities should consider equipping the facilities with motion sensing cameras and/or motion detectors to alert control centers of tampering.

*SCADA System Monitoring*

Due to the criticality of SCADA systems in the safe operations of a pipeline, operators should have strong protocols in place to ensure the systems will not be tampered with. SCADA systems can be tampered with or disabled by a physical or cyber vector. PHMSA is aware of prior intrusion attempts on pipeline infrastructure. An operator should harden physical and software borders around SCADA systems to limit the risk to the safe operation of pipelines. The following methods can be used to harden the software and physical borders around the SCADA system: (1) Segregating the control system network from the corporate network; (2) Limiting remote connection ports to the control system, and if necessary requiring token-based authentication to gain access; (3) Adding physical protection around remote sites with SCADA network access; (4) Enhancing user access control on SCADA system networks and devices and limiting access to critical system to individuals with a safety/business need; and [5] Employing application whitelisting and strict policies on peripheral devices (to include removable media, printers, scanners, etc.) connected to the SCADA network.

Furthermore, DHS's Industrial Control System Cyber Emergency Response Team (ICS–CERT) developed a guidance document titled: ''Recommended Practice: Improving Industrial Control System Cybersecurity with Defense-in-Depth Strategies.'' The document provides guidance for developing mitigation strategies for specific cyber threats and direction on how to create a Defense-in-Depth security program for control system environments, and is available online at *https://ics-cert.us-cert.gov/sites/default/files/recommended_practices/NCCIC_ICS-CERT_Defense_in_Depth_2016_S508C.pdf.*

*Incident and Accident Reporting*

Operators are reminded that incidents and accidents must be promptly reported to the appropriate federal, state, and local agency. Requirements for immediate notification of certain incident and accident reporting requirements are found at 49 CFR 191.5 and 195.52. Furthermore, since tampering with a pipeline can lead to a release, PHMSA recommends that operators should contact the National Response Center by telephone to 800–424–8802 (in Washington, DC, 202–267–2675) following any physical security event that may interfere with the safe operation of a pipeline. Please note only ''*unclassified*'' incident details should be reported by phone to the National Response Center.

TSA recommends in its Pipeline Security Guidelines that pipeline operators notify the Transportation Security Operations Center via phone at 866–615–5150 or email at *TSOC.ST@dhs.gov* as soon as possible to report security concerns or suspicious activity. Furthermore it is recommended that pipeline operators notify DHS's ICS–CERT if the operator has an Industrial Control System concern with a cyber security nexus. Operators can report to ICS–CERT by emailing *ics-cert@hq.dhs.gov* or by calling 877–776–7585.

PHMSA has coordinated with several components within DHS and the Department of Energy on this Advisory Bulletin.

Issued in Washington, DC, on December 5, 2016, under authority delegated in 49 CFR 1.97.

**Alan K. Mayberry,**

*Acting Associate Administrator for Pipeline Safety.*

[FR Doc. 2016–29500 Filed 12–8–16; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF VETERANS AFFAIRS

### MyVA Federal Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2., that the MyVA Advisory Committee (MVAC) will meet January 10–11, 2017, at the Department of Veterans Affairs, Georgetown University Lohrfink Auditorium—Ground Floor, Georgetown McDonough School of Business, Rafik B. Hariri Building, 37th and O Street NW., Washington, DC 20057. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary, through the Executive Director, MyVA Task Force Office, regarding the MyVA initiative and VA's ability to rebuild trust with Veterans and other stakeholders, improve service delivery with a focus on Veteran outcomes, and set the course for longer-term excellence and reform of VA.

On January 10, from 8:00 a.m. to 6:00 p.m., the Committee will convene an open session to discuss the progress on and the integration of the work in the five key MyVA work streams—Veteran Experience (explaining the efforts conducted to improve the Veteran's experience), Employees Experience, Support Services Excellence (such as information technology, human resources, and finance), Performance Improvement (projects undertaken to

date and those upcoming), and VA Strategic Partnerships.

On January 11, from 8:00 a.m. to 1:00 p.m., the Committee will meet to discuss and recommend areas for improvement on VA's work to date, plans for the future, and integration of the MyVA efforts. This session is open to the public. No time will be allocated at this meeting for receiving oral presentations from the public. However, the public may submit written statements for the Committee's review to Debra Walker, Designated Federal Officer, MyVA Program Management Office, Department of Veterans Affairs, 1800 G Street NW., Room 880–40, Washington, DC 20420, or email at *Debra.Walker3@va.gov*. Any member of the public wishing to attend the meeting or seeking additional information should contact Ms. Walker.

Dated: December 6, 2016.

**Jelessa M. Burney,**

*Federal Advisory Committee Management Officer.*

[FR Doc. 2016–29546 Filed 12–8–16; 8:45 am]

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Part II

## Environmental Protection Agency

40 CFR Part 98
2015 Revisions and Confidentiality Determinations for Data Elements Under the Greenhouse Gas Reporting Rule; Final Rule

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 98

**[EPA–HQ–OAR–2015–0526; FRL–9954–42–OAR]**

**RIN 2060–AS60**

## 2015 Revisions and Confidentiality Determinations for Data Elements Under the Greenhouse Gas Reporting Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; notice of final action on reconsideration.

**SUMMARY:** The Environmental Protection Agency (EPA) is amending specific provisions in the Greenhouse Gas Reporting Rule to streamline and improve implementation of the rule, to improve the quality and consistency of the data collected under the rule, and to clarify or provide minor updates to certain provisions that have been the subject of questions from reporting entities. This action also finalizes confidentiality determinations for certain data elements. In addition, this is the final action on reconsideration in response to a Petition for Reconsideration regarding specific aspects of the Greenhouse Gas Reporting Rule.

**DATES:** This rule is effective on January 1, 2017, except for amendatory instructions 3, 5, 6, 8, 10 through 25, 31 through 34, 36, 38 through 44, 46 through 50, 55 through 61, 63, 64, and 69 through 92, which are effective on January 1, 2018; and amendatory instructions 35, 37, 45, 51 through 54, which are effective on January 1, 2019.

The incorporation by reference of certain publications listed in 40 CFR 98.7(l) and 40 CFR 98.324 is approved by the Director of the Federal Register as of January 1, 2017. The incorporation by reference of certain publications listed in 40 CFR 98.7(e), 40 CFR 98.34, and 40 CFR 98.36 is approved by the Director of the Federal Register as of January 1, 2018.

**ADDRESSES:** The EPA has established a docket for this action under Docket Id. No. EPA–HQ–OAR–2015–0526. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, William Jefferson Clinton Building (WJC) West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. This Docket Facility 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 Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9334; fax number: (202) 343–2342; email address: *GHGReporting@epa.gov.*

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of this final rule will also be available through the WWW at *www.regulations.gov.* Following the Administrator's signature, a copy of this action will be posted on the EPA's Greenhouse Gas Reporting Program Web site at *http://www.epa.gov/ghgreporting.*

**SUPPLEMENTARY INFORMATION:**

*Regulated entities.* These final revisions affect entities that must submit annual greenhouse gas (GHG) reports under the Greenhouse Gas Reporting Program (GHGRP) (40 CFR part 98). This final rule will impose on entities across the U.S. a degree of reporting consistency for Greenhouse Gas Emissions from most sectors of the economy and therefore is ''nationally applicable'' within the meaning of section 307(b)(1) of the Clean Air Act (CAA). Further, the Administrator has determined that rules codified in 40 CFR part 98 are subject to the provisions of CAA section 307(d). See CAA section 307(d)(1)(V) (the provisions of section 307(d) apply to ''such other actions as the Administrator may determine''). These are amendments to existing regulations and will affect owners or operators of certain suppliers and direct emitters of GHGs. Regulated categories and entities include, but are not limited to, those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

| Category | NAICS | Examples of affected facilities |
|---|---|---|
| General Stationary Fuel Combustion Sources | ..... | Facilities operating boilers, process heaters, incinerators, turbines, and internal combustion engines. |
| | 211 | Extractors of crude petroleum and natural gas. |
| | 321 | Manufacturers of lumber and wood products. |
| | 322 | Pulp and paper mills. |
| | 325 | Chemical manufacturers. |
| | 324 | Petroleum refineries, and manufacturers of coal products. |
| | 316, 326, 339 | Manufacturers of rubber and miscellaneous plastic products. |
| | 331 | Steel works, blast furnaces. |
| | 332 | Electroplating, plating, polishing, anodizing, and coloring. |
| | 336 | Manufacturers of motor vehicle parts and accessories. |
| | 221 | Electric, gas, and sanitary services. |
| | 622 | Health services. |
| | 611 | Educational services. |
| Acid Gas Injection Projects | 211111 or 211112 | Projects that inject acid gas containing $CO_2$ underground. |
| Adipic Acid Production | 325199 | Adipic acid manufacturing facilities. |
| Aluminum Production | 331312 | Primary aluminum production facilities. |
| Ammonia Manufacturing | 325311 | Anhydrous and aqueous ammonia manufacturing facilities. |
| $CO_2$ Enhanced Oil and Gas Recovery Projects | 211 | Oil and gas extraction projects using $CO_2$ enhanced oil and gas recovery. |
| Electrical Equipment Use | 221121 | Electric bulk power transmission and control facilities. |
| Electronics Manufacturing | 334111 | Microcomputers manufacturing facilities. |

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY—Continued

| Category | NAICS | Examples of affected facilities |
|---|---|---|
| | 334413 | Semiconductor, photovoltaic (solid-state) device manufacturing facilities. |
| | 334419 | LCD unit screens manufacturing facilities. MEMS manufacturing facilities. |
| Glass Production | 327211 | Flat glass manufacturing facilities. |
| | 327213 | Glass container manufacturing facilities. |
| | 327212 | Other pressed and blown glass and glassware manufacturing facilities. |
| HCFC–22 Production and HFC–23 Destruction | 325120 | Chlorodifluoromethane manufacturing facilities |
| Hydrogen Production | 325120 | Hydrogen manufacturing facilities. |
| Iron and Steel Production | 331111 | Integrated iron and steel mills, steel companies, sinter plants, blast furnaces, basic oxygen process furnace shops. |
| Lime Production | 327410 | Calcium oxide, calcium hydroxide, dolomitic hydrates manufacturing facilities. |
| Nitric Acid Production | 325311 | Nitric acid manufacturing facilities. |
| Petrochemical Production | 32511 | Ethylene dichloride manufacturing facilities. |
| | 325199 | Acrylonitrile, ethylene oxide, methanol manufacturing facilities. |
| | 325110 | Ethylene manufacturing facilities. |
| | 325182 | Carbon black manufacturing facilities. |
| Phosphoric Acid Production | 325312 | Phosphoric acid manufacturing facilities. |
| Petroleum Refineries | 324110 | Petroleum refineries. |
| Pulp and Paper Manufacturing | 322110 | Pulp mills. |
| | 322121 | Paper mills. |
| | 322130 | Paperboard mills. |
| Municipal Solid Waste Landfills | 562212 | Solid waste landfills. |
| | 221320 | Sewage treatment facilities. |
| Soda Ash Manufacturing | 325181 | Alkalies and chlorine manufacturing facilities. |
| | 212391 | Soda ash, natural, mining and/or beneficiation. |
| Suppliers of Coal Based Liquids Fuels | 211111 | Coal liquefaction at mine sites. |
| Suppliers of Petroleum Products | 324110 | Petroleum refineries. |
| Suppliers of Natural Gas and NGLs | 221210 | Natural gas distribution facilities. |
| | 211112 | Natural gas liquid extraction facilities. |
| Suppliers of Industrial Greenhouse Gases | 325120 | Industrial gas manufacturing facilities. |
| Suppliers of Carbon Dioxide | 325120 | Industrial gas manufacturing facilities. |
| Underground Coal Mines | 212113 | Underground anthracite coal mining operations. |
| | 212112 | Underground bituminous coal mining operations. |
| Industrial Wastewater Treatment | 322110 | Pulp mills. |
| | 322121 | Paper mills. |
| | 322122 | Newsprint mills. |
| | 322130 | Paperboard mills. |
| | 311611 | Meat processing facilities. |
| | 311411 | Frozen fruit, juice, and vegetable manufacturing facilities. |
| | 311421 | Fruit and vegetable canning facilities. |
| | 325193 | Ethanol manufacturing facilities. |
| | 324110 | Petroleum refineries. |
| Industrial Waste Landfills | 562212 | Solid waste landfills. |
| | 221320 | Sewage treatment facilities. |
| | 322110 | Pulp mills. |
| | 322121 | Paper mills. |
| | 322122 | Newsprint mills. |
| | 322130 | Paperboard mills. |
| | 311611 | Meat processing facilities. |
| | 311411 | Frozen fruit, juice and vegetable manufacturing facilities. |
| | 311421 | Fruit and vegetable canning facilities. |

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be affected by this action. Other types of facilities than those listed in the table could also be subject to reporting requirements. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A or the relevant criteria in the sections related to industrial gas suppliers and direct emitters of GHGs. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. Many facilities that are affected by 40 CFR part 98 have GHG emissions from multiple source categories listed in Table 1 of this preamble.

*What is the effective date?* As proposed, the EPA will phase in the final amendments over the 2016, 2017, and 2018 reports in order to stagger the implementation of these revisions over several years. The effective dates listed in the **DATES** section of this preamble reflect when the amendments will be published in the CFR. The first set of amendments in this final rule is effective on January 1, 2017. These amendments include several amendments to subpart A (General Provisions), all amendments to subpart

I (Electronics Manufacturing), all amendments to subpart HH (Municipal Solid Waste Landfills), and one amendment to subpart FF (Underground Coal Mines). Further explanation of these amendments and their effective date is in sections I.E, III.A, III.F, III.R, and III.S of this preamble. Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. The EPA is issuing this final rule under section 307(d)(1) of the Clean Air Act, which states: ''The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies.'' Thus, section 553(d) of the APA does not apply to this rule. The EPA is nevertheless acting consistently with the purposes underlying APA section 553(d) in making the first set of amendments to this rule effective on January 1, 2017. Section 553(d) allows an effective date less than 30 days after publication for a rule that ''grants or recognizes an exemption or relieves a restriction'' or ''as otherwise provided by the agency for good cause found and published with the rule.'' As explained below, the EPA finds that there is good cause for the first set of amendments to this rule to become effective on January 1, 2017, even though this may result in an effective date fewer than 30 days from date of publication in the **Federal Register**.

*Judicial Review.* Under CAA section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit (the Court) by February 7, 2017. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Section 307(d)(7)(B) of the CAA also provides a mechanism for the EPA to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20004. Note that under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

*Acronyms and Abbreviations.* The following acronyms and abbreviations are used in this document.

ASTM American Society for Testing and Materials
BAMM Best Available Monitoring Methods
CAA Clean Air Act
CAS Chemical Abstracts Service
CBI Confidential business information
CEMS Continuous emission monitoring system
CFR Code of Federal Regulations
$CH_4$ Methane
$CO_2$ Carbon dioxide
$CO_2e$ Carbon dioxide equivalent
CP Common Pipe
DCU Delayed coking unit
DE Destruction efficiency
DRE Destruction or removal efficiency
EDC Ethylene dichloride
e-GGRT Electronic Greenhouse Gas Reporting Tool
EF Emission factor
EIA Energy Information Administration
EO Executive Order
ER Enhanced oil and gas recovery
EPA U.S. Environmental Protection Agency
F–GHG Fluorinated greenhouse gas
FR Federal Register
GHG Greenhouse gas
GHGRP Greenhouse Gas Reporting Program
GP Aggregation of units
GWP Global warming potential
Hg Mercury
HHV High heat value
HTF Heat transfer fluid
ICR Information Collection Request
IPCC Intergovernmental Panel on Climate Change
ISBN International Standard Book Number
IVT Inputs Verification Tool
kg Kilograms
LDC Local distribution company
mmBtu/hr Million British thermal units per hour
mmcfd Million cubic feet per day
MDRS Mine Data Retrieval System
MSHA Mine Safety and Health Administration
MSW Municipal solid waste
$mtCO_2e$ Metric tons of $CO_2$ equivalents
$N_2O$ Nitrous oxide
NGL Natural gas liquid
NAICS North American Industry Classification System
OAQPS Office of Air Quality Planning and Standards
ODS Ozone-depleting substances
OMB Office of Management and Budget
PRA Paperwork Reduction Act
PFC Perfluorocarbon
psig Pounds per square inch gauge
QA/QC Quality assurance/quality control
RFA Regulatory Flexibility Act
RY Reporting year
$SF_6$ Sulfur hexafluoride
U.S. United States
UMRA Unfunded Mandates Reform Act of 1995
VCM Vinyl chloride monomer

**Table of Contents**

## I. Background

### *A. How is this preamble organized?*

The first section of this preamble contains background information regarding the origin of the final amendments. This section also discusses the EPA's legal authority under the CAA to promulgate (including subsequent amendments to) the Greenhouse Gas Reporting Rule, codified at 40 CFR part 98 (hereinafter referred to as ''Part 98'') and the EPA's legal authority to make confidentiality determinations for new or revised data elements required by this amendment or for existing data elements for which a confidentiality determination has not previously been proposed. Section I of this preamble also discusses when the final amendments will apply and provides additional information regarding materials referenced in this rulemaking. Section II of this preamble describes the types of final amendments included in this rulemaking. Section III of this preamble is organized by Part 98 subpart and contains detailed information on the final revisions to each subpart. It also describes the major changes made to each source category since proposal and provides a brief summary of significant public comments and the EPA's responses on issues specific to each source category. Section IV of this preamble discusses the final confidentiality determinations for new or substantially revised (*i.e.,* requiring additional or different data to be reported) data reporting elements, as well as for certain existing data elements in subparts I, Z, MM, and NN. Section V of this preamble discusses the impacts of the final amendments. Finally, section VI of this preamble describes the statutory and executive order requirements applicable to this action.

### *B. Executive Summary*

The EPA is finalizing the proposed revisions to Part 98, with some changes made in response to public comments. The final revisions include amendments to the calculation, monitoring, reporting, and recordkeeping requirements of Part 98 as follows:

- Revisions to streamline implementation and reduce burden. Such revisions include revising requirements to focus EPA and reporter resources on relevant data, removing reporting requirements for specific facilities that report little to no

emissions, or removing reported data elements that are no longer necessary.

• Amendments to improve quality of data. These amendments ensure that accurate data are being collected under the rule and expand monitoring or reporting requirements that are necessary to improve verification and improve the accuracy of data used to inform the Inventory of U.S. Greenhouse Gas Emissions and Sinks (hereafter referred to as the ''U.S. GHG Inventory''). In some cases, the EPA is changing the proposed amendments in this final rule to reduce the burden to reporters (*e.g.,* not finalizing certain proposed revisions to reporting or monitoring requirements).

• Minor amendments to better reflect industry processes and emissions, including amendments to calculation, monitoring, or measurement methods that address prior petitioner or commenter concerns (*e.g.,* amendments that provide additional flexibility for facilities or that more accurately reflect industry processes and emissions).

• Minor clarifications and corrections to improve understanding of the rule, including corrections to errors in terms and definitions in certain equations; clarifications that provide additional information for reporters to better or more fully understand compliance obligations; changes to correct cross references within and between subparts; and other editorial or harmonizing changes.

This action also finalizes confidentiality determinations for the reporting of certain data elements added or substantially revised in these final amendments, and for certain existing data elements for which no confidentiality determination has been made previously.[1] Finally, section III.S of this preamble describes final amendments in response to a Petition for Reconsideration of specific aspects of subpart HH, which applies to municipal solid waste landfills.[2]

These final amendments are anticipated to increase burden for Part 98 reporters in cases where the amendments expand current applicability, monitoring, or reporting, and are anticipated to decrease burden for reporters in cases where they streamline Part 98 to remove notification or reporting requirements or simplify the data that must be reported. The estimated incremental change in burden from these amendments to Part 98 includes burden associated with: (1) Changes to the reporting requirements by adding, revising, or removing existing reporting requirements; and (2) revisions to the applicability of subparts such that additional facilities will be required to report. The EPA is not finalizing proposed revisions to the monitoring requirements for underground coal mines that would have significantly increased the burden for these reporters. The EPA has also adjusted the burden for the collection of certain data from subpart C (General Stationary Combustion) reporters to better reflect the activities performed in the collection of the data. The remaining amendments that the EPA is finalizing in this action are not anticipated to have a significant impact on burden.

As discussed in section I.E of this preamble, we are implementing these changes in stages for the 2016, 2017, and 2018 reports in order to stagger the implementation of these changes over time. The burden has been determined based on which revisions will be implemented for a given set of reports (*e.g.,* the burden for reporting year (RY) 2016 reports only reflects changes to subparts I (Electronics Manufacturing) and HH (Municipal Solid Waste Landfills), some of the changes to subpart A (General Provisions), and one of the changes to subpart FF (Underground Coal Mines)). The EPA determined that one-time implementation costs will be incurred for certain revisions to applicability and monitoring requirements that will first apply to RY2017 and RY2018; therefore, we have estimated costs through RY2019 to reflect the subsequent annual costs incurred by industry. As more fully explained in section V of this preamble, the EPA has determined that the total estimated incremental burden associated with all revisions in this final rulemaking will be $636,124 over the three years covered by this final rule, with an estimated annual burden of $189,150 per year once all changes have been implemented. The incremental implementation costs for each reporting year are summarized in Table 2 of this preamble.

TABLE 2—INCREMENTAL BURDEN FOR REPORTING YEARS 2016–2019

[$/year]

| Reporting year | 2016 | 2017 | 2018 | 2019 |
|---|---|---|---|---|
| Total Annual Cost (all subparts) | $5K | $407K | $224K | $190K |

*C. Background on This Final Rule*

The GHG Reporting Rule was published in the **Federal Register** on October 30, 2009 (74 FR 56260). The final rule became effective on December 29, 2009 and requires reporting of GHGs from various facilities and suppliers, consistent with the 2008 Consolidated Appropriations Act.[3] The EPA issued additional rules in 2010 finalizing the requirements for subpart T—Magnesium Production, subpart FF—Underground Coal Mines, subpart II—Industrial Wastewater Treatment, and subpart TT—Industrial Waste Landfills (75 FR 39736, July 12, 2010); subpart I—Electronics Manufacturing, subpart L—Fluorinated Gas Production, subpart DD—Electrical Transmission and Distribution Equipment Use, subpart QQ—Importers and Exporters of Fluorinated GHGs Contained in Pre-Charged Equipment or Closed-Cell Foams, and subpart SS—Electrical Equipment Manufacture or Refurbishment (75 FR 74774, December 1, 2010); and subpart RR—Geologic Sequestration of Carbon Dioxide and subpart UU—Injection of Carbon Dioxide (75 FR 75060, December 1, 2010). Following the promulgation of these subparts, the EPA finalized several technical and clarifying amendments to these and other subparts under the GHGRP. A number of subparts have been revised since promulgation (75 FR

[1] During the development of Part 98, the EPA received a number of comments from stakeholders regarding their concern that some of the data reported consisted of confidential business information that, if released to the public, would likely harm their competitive position. The EPA has subsequently published a series of notices to establish determinations for the confidentiality status of data required to be reported under the GHGRP (*i.e.,* ''confidentiality determinations''). See section IV.A of this preamble for additional information.

[2] Waste Management Petition for Reconsideration of 2013 Revisions to Greenhouse Gas Reporting Rule and Final Confidentiality Determinations for New or Substantially Revised Data Elements. Available in Docket Id. No. EPA–HQ–OAR–2012–0934.

[3] Consolidated Appropriations Act, 2008, Public Law 110–161, 121 Stat. 1844, 2128.

79092, December 17, 2010; 76 FR 73866, November 29, 2011; 77 FR 10373, February 22, 2012; 77 FR 29935, May 21, 2012; 77 FR 51477, August 24, 2012; 78 FR 68162, November 13, 2013; 78 FR 71904, November 29, 2013; 79 FR 63750, October 24, 2014; and 79 FR 73750, December 11, 2014). The amendments generally did not change the basic requirements of Part 98, but were intended to improve clarity and ensure consistency across the calculation, monitoring, and data reporting requirements.

On January 15, 2016, the EPA proposed amendments to provisions in Part 98 in the ''2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' (hereafter ''Proposed 2015 Revisions'') (81 FR 2536). The EPA is finalizing those amendments and confidentiality determinations in this action, with certain changes since proposal following consideration of comments submitted. Responses to significant comments submitted on the proposed amendments can be found in sections III, IV, and V of this preamble.

*D. Legal Authority*

The EPA is finalizing these rule amendments under its existing CAA authority provided in CAA section 114. As stated in the preamble to the 2009 final GHG reporting rule (74 FR 56260), CAA section 114(a)(1) provides the EPA broad authority to require the information gathered by this rule because such data will inform and are relevant to the EPA's carrying out a wide variety of CAA provisions. See the preambles to the proposed and final GHG reporting rule for further information.

In addition, the EPA is finalizing confidentiality determinations for new, revised, and existing data elements in Part 98 under its authorities provided in sections 114, 301, and 307 of the CAA. Section 114(c) of the CAA requires that the EPA make publicly available information obtained under CAA section 114, except for information (excluding emission data) that qualifies for confidential treatment. The Administrator has determined that this final rule is subject to the provisions of section 307(d) of the CAA. Section 307(d) contains a set of procedures relating to the issuance and review of certain CAA rules.

*E. When will the final amendments become effective?*

As proposed, the EPA will phase in the final amendments over the 2016, 2017, and 2018 reports in order to stagger the implementation of these revisions over several years. The effective dates listed in the **DATES** section of this preamble reflect when the amendments will be published in the CFR. What these dates mean for practical purposes, that is, what reporters will need to do year-by-year, is detailed in sections I.E.1 through I.E.3 below and in the corresponding subpart-specific sections in section III of this preamble. The amendments can be thought of in two categories. In general, amendments in the first category add applicability (*i.e.* more facilities must report) or impact monitoring or calibration of meters such that a facility must change what they do to comply with the rule during the reporting year (January 1 through December 31 of each year); these amendments will become effective starting on January 1 of that reporting year. Amendments in the second category change or clarify calculations, clarify provisions, amend reporting requirements, or correct mistakes to improve understanding of the rule, but do not result in any changes to monitoring, calibration, or applicability; these amendments will become effective on the January 1 immediately following the relevant reporting year. Amendments in the second category affect what must be done to prepare the reports during the year of the report submission but do not affect any actions the facilities needed to have taken during the reporting year.

1. Amendments That Are Effective on January 1, 2017

Table 3 of this preamble lists the affected subparts, the final revisions that are effective on January 1, 2017, and the RY report in which those changes will first be reflected. January 1, 2017, is the effective date, which is the date that the CFR regulatory text is revised to reflect those changes. However, the report in which that amendment will first be reflected is either RY2016 or RY2017, depending upon the substance of that change, as in what that change requires the reporter to do to comply with it.

Changes with effective date January 1, 2017, that will be reflected starting with the RY2016 report are those that require no changes to be made by reporters during the reporting year, but rather are clarifications, corrections, or changes to reporting requirements, *i.e.,* changes the reporter must comply with in preparation of the report. These changes with effective date January 1, 2017, will therefore apply to and will be reflected in RY2016 reports that are submitted in 2017. These changes do not impact applicability, monitoring, or calibration of meters.

More specifically, regarding the reasoning behind this timing, we are finalizing as proposed that all changes to subparts I and HH, and a minor revision to subpart A (the revised definition of ''Gas collection system or landfill gas collection system''), will apply to reports for RY2016, which must be submitted in 2017. We have determined that it is feasible for existing reporters to implement these changes to subparts A, I, and HH for RY2016 because these changes are consistent with the data collection and calculation methodologies in the current rule. The final revisions to these subparts do not add new monitoring requirements, and do not substantially affect the type of information that must be collected. No comments were received on the proposed effective date for revisions to these subparts.

We are also finalizing that the amendments to 40 CFR 98.2(i)(3) and (5) and 40 CFR 98.3(h) are effective on January 1, 2017, and will apply starting with RY2016 reports. These amendments serve to reduce burden on reporters and are feasible to make effective as soon as possible, therefore they will be reflected starting with the RY2016 reports submitted in 2017. See section III.A.3 of this preamble for more detail on the timing of these final revisions.

Changes with effective date January 1, 2017 that will be reflected starting with the RY2017 reports affect monitoring. Both the subpart A revision to 40 CFR 98.7(l)(1) and the subpart FF revision to 40 CFR 98.324(b)(1) require use of the most recent Mine Safety and Health Administration (MSHA) Handbook entitled Coal Mine Safety and Health General Inspection Procedures Handbook Number: PH116–V–1, June 2016 (MSHA Handbook). Under this final rule, reporters must use this MSHA Handbook for monitoring from January 1, 2017, through December 31, 2017, and the resulting data must be used in the RY2017 report submitted in 2018. See section III.R.3 of this preamble for more detail on the timing of these revisions.

TABLE 3—PART 98 AMENDMENTS EFFECTIVE JANUARY 1, 2017

| Subpart affected [a] | Revisions reflected starting with RY2016 reports [b] | Revisions reflected starting with RY2017 reports [c] |
|---|---|---|
| A—General Provisions | § 98.2(i)(3) and (5); § 98.3(h); § 98.6 (definition of "Gas collection system or landfill gas collection system" only). | § 98.7(l)(1). |
| I—Electronics Manufacturing | All changes in subpart | N/A. |
| FF—Underground Coal Mines | N/A | § 98.324(b)(1). |
| HH—Municipal Solid Waste Landfills | All changes in subpart | N/A. |

[a] Subpart names may also be found in the Table of Contents for this preamble.
[b] RY2016 reports will be submitted to the EPA by March 31, 2017.
[c] RY2017 reports will be submitted to the EPA by April 2, 2018.

2. Amendments That Are Effective January 1, 2018

Table 4 of this preamble lists the affected subparts and final amendments that are effective January 1, 2018 and the RY report in which those changes will first be reflected. January 1, 2018, is the date on which these amendments will appear in the CFR. However, the report for which that amendment will first be reflected is either RY2017 or RY2018, depending upon the substance of that change, as in what that change requires the reporter to do to comply with it. Changes that will be reflected starting with the RY2017 report are feasible for reporters to implement for RY2017 because these changes are consistent with the monitoring and data collection in the current rule. In most cases, the final revisions include minor revisions such as editorial corrections, corrections to cross-references, and technical clarifications regarding the existing regulatory requirements. Where calculation equations are proposed to be modified, the changes generally clarify terms in the emission calculation equations and do not materially affect monitoring requirements. In some cases, we are adding flexibility by providing alternative monitoring methods or missing data procedures that will reduce burden on reporters. Although some of the revisions included in Table 4 of this preamble will include reporting additional data, the EPA has determined that the data collected will be readily available to reporters.

For a number of subparts all revisions are being finalized as proposed in this action. This is the case with the following subparts: E, F, N, O, P, Q, U, Z, AA, II, LL, MM, and UU.

The changes in Table 4 of this preamble, that will be reflected starting in RY2018 reports submitted in 2019 are those that require new facilities to report to the GHGRP (40 CFR 98.220 in subpart V, all revisions to subpart OO, and related revisions to Table A–5) or that require calibration of meters (40 CFR 98.164(b)(1) in subpart P). We are making these revisions effective January 1, 2018, so that the new reporters for subparts V and OO, and subpart P reporters that have not already calibrated their meters according to these requirements, will take the necessary action to begin monitoring or calibrate meters to be in full compliance with these revisions throughout RY2018.

In past rulemakings, the EPA has typically required monitoring to begin a few months after finalization of revised rules, and has offered Best Available Monitoring Methods (BAMM) to be used temporarily to provide sufficient time for facilities to come into full compliance with the newly finalized monitoring methods. In this action, to avoid the need to offer the use of BAMM and to stagger the burden associated with making revisions to the EPA's electronic Greenhouse Gas Reporting Tool (e-GGRT), we are finalizing the revisions to these subparts to be effective January 1, 2018, and apply to RY2018 reports. Subparts P, V, and OO reporters, including new reporters, will begin following the revised rule requirements on January 1, 2018, and submit the first annual reports using the revised monitoring and data collection methods on March 31, 2019. This schedule allows at least one year for subpart P, V, and OO reporters to acquire, install, and calibrate any new monitoring equipment, as well as implement any changes to existing monitoring methods, for RY2018.

TABLE 4—PART 98 AMENDMENTS EFFECTIVE JANUARY 1, 2018

| Subpart affected [a] | Revisions reflected starting with RY2017 Reports [b] | Revisions reflected starting with RY2018 reports [b] |
|---|---|---|
| A—General Provisions | § 98.2 (except § 98.2(i)(3)); § 98.3 (except § 98.3(h)); § 98.4; § 98.6 (except definition of "Gas collection system or landfill gas collection system"); § 98.7(e)(33); and Tables A–3 and A–4. | Table A–5. |
| C—General Stationary Fuel Combustion Sources | All changes in subpart | N/A. |
| E—Adipic Acid Production | All changes in subpart | N/A. |
| F—Aluminum Production | All changes in subpart | N/A. |
| G—Ammonia Manufacturing | All changes in subpart | N/A. |
| N—Glass Production | All changes in subpart | N/A. |
| O—HCFC–22 Production and HFC–23 Destruction | All changes in subpart | N/A. |
| Q—Iron and Steel Production | All changes in subpart | N/A. |
| P—Hydrogen Production | N/A | § 98.164(b)(1). |
| S—Lime Manufacturing | All changes in subpart | N/A. |
| U—Miscellaneous Uses of Carbonate | All changes in subpart | N/A. |
| V—Nitric Acid Production | N/A | § 98.220 and § 98.223(a)(2). |
| X—Petrochemical Production | All changes in subpart | N/A. |
| Z—Phosphoric Acid Production | All changes in subpart | N/A. |
| AA—Pulp and Paper Manufacturing | All changes in subpart | N/A. |

TABLE 4—PART 98 AMENDMENTS EFFECTIVE JANUARY 1, 2018—Continued

| Subpart affected [a] | Revisions reflected starting with RY2017 Reports [b] | Revisions reflected starting with RY2018 reports [b] |
|---|---|---|
| CC—Soda Ash Manufacturing | All changes in subpart | N/A. |
| DD—Use of Electric Transmission and Distribution Equipment. | All changes in subpart | N/A. |
| FF—Underground Coal Mines | All changes in subpart (except § 98.324(b)(1)) | N/A. |
| II—Industrial Wastewater Treatment | All changes in subpart | N/A. |
| LL—Suppliers of Coal-based Liquid Fuels | All changes in subpart | N/A. |
| MM—Suppliers of Petroleum Products | All changes in subpart | N/A. |
| NN—Suppliers of Natural Gas and Natural Gas Liquids | All changes in subpart | N/A. |
| OO—Suppliers of Industrial Greenhouse Gases | N/A | All changes in subpart. |
| PP—Suppliers of Carbon Dioxide | All changes in subpart | N/A. |
| TT—Industrial Waste landfills | All changes in subpart | N/A. |
| UU—Injection of Carbon Dioxide | All changes in subpart | N/A. |

[a] Subpart names may also be found in the Table of Contents for this preamble.
[b] RY2017 reports will be submitted to the EPA by April 2, 2018.
[c] RY2018 reports will be submitted to the EPA by April 1, 2019.

3. Amendments That Are Effective January 1, 2019

The revisions listed in Table 5 of this preamble will be effective January 1, 2019, and will be reflected starting with RY2018 reports, which must be submitted in 2019. January 1, 2019, is the date on which these amendments will appear in the CFR. All changes in Table 5 of this preamble are consistent with the data collection and monitoring in the current rule; therefore, the reporter does not need to take action during the reporting year. In most cases, the final revisions include minor revisions such as editorial corrections, corrections to cross-references, and technical clarifications regarding the existing regulatory requirements. Where calculation equations are modified, the changes generally clarify terms in the emission calculation equations and do not materially affect monitoring requirements or how emissions are calculated. Although some of the revisions included in Table 5 of this preamble will include reporting additional data, the EPA has determined that the data collected will be readily available to reporters.

In the case of subparts P and V, the amendments listed in Table 5 of this preamble are effective January 1, 2019, whereas other amendments to these subparts, ones that affect applicability or calibration of meters, are effective one year earlier so that reporters can take action starting January 1, 2018, and the changes will be reflected in the RY2018 report (see Table 4 of this preamble). In the case of subpart Y, while no changes are being made to applicability or monitoring methods, the final amendments represent substantive changes to the calculation of emissions. These amendments will be effective January 1, 2019, and, as proposed, the changes will be reflected in the RY2018 report, in order to give reporters adequate time to become familiar with the new calculations and give the Agency time to make the necessary changes to e-GGRT for this subpart.

TABLE 5—PART 98 AMENDMENTS EFFECTIVE JANUARY 1, 2019

| Subpart affected [a] | Revisions reflected starting with RY2018 reports [b] |
|---|---|
| P—Hydrogen Production | § 98.163(b)(3) and all changes to § 98.166. |
| V—Nitric Acid Production | § 98.226(h). |
| Y—Petroleum Refineries | All changes in subpart. |

[a] Subpart names may also be found in the Table of Contents for this preamble.
[b] RY2018 reports will be submitted to the EPA by April 1, 2019.

*F. Where can I get a copy of information related to the final rule?*

This preamble references several documents developed to support the final rulemaking. These documents provide additional information regarding the final changes to Part 98, and supplementary information that the EPA considered in the development of the final revisions. These documents are referenced in sections II through V of this preamble and are available in the docket to this rulemaking or other rulemaking dockets, as follows:

- ''Final Table of 2015 Revisions to the Greenhouse Gas Reporting Rule.'' EPA memorandum summarizing the less substantive minor corrections, clarifications, and harmonizing revisions, as discussed in section II of this preamble. Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2015–0526.
- ''Revised Emission Methodology for Delayed Coking Units.'' From Jeff Coburn, RTI to Brian Cook, EPA, dated June 4, 2015. Memorandum supporting final revisions to subpart Y (Petroleum Refineries) as discussed in section III.M of this preamble. Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2015–0526.
- ''Emission Estimation Protocol for Petroleum Refineries. Version 3.'' Prepared for U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC. August 2015. Available at: *https://www3.epa.gov/ttn/chief/efpac/protocol/ProtocolReport2015.pdf.*
- ''U.S. Underground Coal Mine Ventilation Air Methane Exhaust Characterization'' (July 2010). Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2015–0526.
- ''Identifying Opportunities for Methane Recovery at U.S. Coal Mines: Profiles of Selected Gassy Underground Coal Mines 2002–2006.'' Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2015–0526.

• Waste Management Petition for Reconsideration of 2013 Revisions to Greenhouse Gas Reporting Rule and Final Confidentiality Determinations for New or Substantially Revised Data Elements. Available in Docket Id. No. EPA–HQ–OAR–2012–0934.

• ''Review of Oxidation Studies and Associated Cover Depth in the Peer-Reviewed Literature.'' From Kate Bronstein, Meaghan McGrath, and Jeff Coburn, RTI to Rachel Schmeltz, EPA, dated June 17, 2015, Memorandum supporting proposed revisions to subpart HH (Municipal Solid Waste Landfills) as discussed in section III.S of this preamble. Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2015–0526.

• Refinery Demonstration of Optical Technologies for Measurement of Fugitive Emissions and for Leak Detection (Roy McArthur, Environment Canada, and Allan Chambers and Mel Strosher, Carbon and Energy Management, March 31, 2006). Available in Docket Id. No. EPA–HQ–OAR–2015–0526.

• ''Measurement and Analysis of Benzene and VOC Emissions in the Houston Ship Channel Area and Selected Surrounding Major Stationary Sources Using DIAL (Differential Absorption Light Detection and Ranging) Technology to Support Ambient HAP Concentrations Reductions in the Community.'' Loren Raun & Dan W. Hoyt, Bur. Pollution Control & Prevention, City of Houston, 2011. Available in Docket Id. No. EPA–HQ–OAR–2015–0526.

• Heath, L.S. et al. 2010. Greenhouse Gas and Carbon Profile of the U.S. Forest Products Industry Value Chain. Environmental Science and Technology 44(2010) 3999–4005. Available in Docket Id. No. EPA–HQ–OAR–2015–0526.

• Letter to Leif Hockstad, U.S. EPA, from William C. Herz, National Lime Association re: Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990–2012. Available in Docket Id. No. EPA–HQ–OAR–2015–0526.

• National Lime Association comments on Inventory of U.S. Greenhouse Gas Emissions and Sinks (78 FR 12013, February 22, 2013), Arline M. Seeger. Available in Docket Id. No. EPA–HQ–OAR–2015–0526.

• ''Final Data Category Assignments and Confidentiality Determinations for Data Elements in the Proposed 2015 Revisions.'' Memorandum listing all final new, substantially revised, and existing data elements with final category assignments and confidentiality determinations, as described in section IV of this preamble. Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2015–0526.

• ''Summary of Evaluation of Greenhouse Gas Reporting Program (GHGRP) Part 98 'Inputs to Emission Equations' Data Elements Deferred Until 2013.'' Memorandum, December 17, 2012. Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2015–0526.

• ''Assessment of Burden Impacts of Final 2015 Revisions to the Greenhouse Gas Reporting Rule.'' Memorandum describing the costs of the final revisions to Part 98, as discussed in section V of this preamble. Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2015–0526.

*G. Material Incorporated by Reference*

In this final rulemaking, the EPA is including regulatory text for 40 CFR 98.7 that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is incorporating by reference the following:

• Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples using Radiocarbon Analysis (ASTM D6866–16), which will apply to subpart C reporters (see section III.B.2 of this preamble). These standards are test methods that provide how to experimentally measure biobased carbon content of solids, liquids, and gaseous samples using radiocarbon analysis. These standards distinguish carbon resulting from contemporary biomass-based inputs from those derived from fossil-based inputs. These standards utilize accelerator mass spectrometry, isotope ratio mass spectrometry, and liquid scintillation counter techniques to quantify the biobased content of a product. Anyone may access the standards on the ASTM Web site (*www.astm.org/*) for additional information. These standards are available to everyone at a cost determined by the ASTM ($50). The ASTM also offers memberships or subscriptions that allow unlimited access to their methods. The cost of obtaining these methods is not a significant financial burden, making the methods reasonably available for reporters. The EPA will also make a copy of these documents available in hard copy at the appropriate EPA office (see the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information) for review purposes only.

• Inspection and sampling standards from the Coal Mine Safety and Health General Inspection Procedures Handbook Number: PH16–V–1 (June 2016) as published by the Mine Safety and Health Administration (MSHA), which will apply to subpart FF reporters (see section III.R.2 of this preamble). This handbook provides general procedures for gathering samples of methane concentration from coal mines and making quarterly measurements of flow rate, temperature, pressure, and moisture content. The handbook is available free of charge through the MSHA Web site (*www.msha.gov*). The EPA has also made, and will continue to make, these documents available electronically through *www.regulations.gov.*

Because these standards do not present a significant financial burden to reporters, the EPA has determined that these methods are reasonably available. The EPA has also made, and will continue to make, these documents generally available in hard copy at the appropriate EPA office (see the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## II. Overview of Final Revisions to Part 98

In the proposed rule, the EPA identified four categories of revisions that we are finalizing in this rulemaking, which include the following:

• Revisions to streamline implementation of the rule by reducing or simplifying requirements that ease burden on reporters and the EPA, such as revising requirements to focus GHGRP and reporter resources on relevant data, removing reporting requirements for specific facilities that report little to no emissions, or removing reported data elements that are no longer necessary.

• Amendments that expand monitoring, applicability, or reporting requirements that are necessary to enhance the quality of the data collected, improve verification of collected data under the GHGRP, and improve the accuracy of data included in the U.S. GHG Inventory.

• Other amendments, such as amendments to calculation, monitoring, or measurement methods that address prior petitioner or commenter concerns (*e.g.,* amendments that provide additional flexibility for facilities or that more accurately reflect industry processes and emissions).

• Minor clarifications and corrections, including corrections to terms and definitions in certain equations; clarifications that provide additional information for reporters to better or more fully understand compliance obligations; changes to

correct cross references within and between subparts; and other editorial or harmonizing changes that improve the public's understanding of the rule.

The final revisions in this action advance the EPA's goal of maximizing rule effectiveness. For example, these revisions clarify existing rule provisions, thus enabling government, regulated entities, and the public to easily identify and understand rule requirements. In addition, specific changes such as increasing the flexibility given to reporting entities related to requesting extensions for revising annual reports will make compliance easier than non-compliance. The changes also serve to clarify whether and when reporting requirements apply to a facility, and more specifically when a facility may discontinue reporting, therefore allowing a regulated entity to regularly assess their compliance and prevent non-compliance.

The changes will also improve EPA's ability to assess compliance by adding reporting elements that allow the EPA to more thoroughly verify GHG data and understand trends in emissions. For example, the new requirement to report the date of installation of any abatement equipment at adipic acid and nitric acid production facilities will increase the EPA's and the public's understanding of the use of and trends in emissions reduction technologies. Lastly, the changes will further advance the ability of the GHGRP to provide access to quality data on greenhouse gas emissions by adding key data elements to improve the usefulness of the data. One example is the addition of the reporting of emissions by state for suppliers of natural gas (subpart NN reporters). These data will allow users of the GHGRP data to more easily identify the state within which the reporter operated, which will be useful for determining state-level GHG totals associated with natural gas supply and increase transparency and usefulness of the data reported.

Section III of this preamble describes the specific changes in each of the above categories that we are finalizing for each subpart in more detail. Additional details for the specific final amendments for each subpart are summarized in the memorandum, ''Final Table of 2015 Revisions to the Greenhouse Gas Reporting Rule'' (hereafter referred to as the ''Final Table of Revisions'') available in the docket for this rulemaking (EPA–HQ–OAR–2015–0526). The Final Table of Revisions describes each final change within a subpart and includes minor revisions that were proposed but are not discussed in detail in this preamble (*e.g.,* straightforward clarifications of requirements to better reflect the EPA's intent; harmonizing changes within subparts (such as changes in terminology); corrections to calculation terms and cross-references; editorial and minor error corrections; and removal of redundant text). The Final Table of Revisions provides the existing rule text, the finalized changes, and indications of which amendments are being finalized as proposed and which amendments differ from the proposal.

## III. Final Revisions to Each Subpart and Responses to Public Comment

This section summarizes the final substantive amendments for each Part 98 subpart, as generally described in section II of this preamble. The amendments to each subpart are followed by a summary of the major comments on those amendments, the EPA's responses to those comments, and a description of when the amendments become effective. Sections III.A through III.AA of this preamble also identify where additional minor corrections to a subpart are included in the Final Table of Revisions. A complete listing of all comments and the EPA's responses is located in the comment response document in Docket Id. No EPA–HQ–OAR–2015–0526. Additional rationale for these amendments is available in the preamble to the proposed rule (81 FR 2536).

### *A. Subpart A—General Provisions*

In this action, we are finalizing several amendments, clarifications, and corrections to subpart A of Part 98. This section discusses the substantive changes to subpart A. We are finalizing as proposed all of the minor corrections and clarifications to subpart A presented in the Final Table of Revisions (see Docket Id. No. EPA–HQ–OAR–2015–0526). We are also finalizing confidentiality determinations for new data elements resulting from these revisions to subpart A; see section IV of this preamble and the memorandum ''Final Data Category Assignments and Confidentiality Determinations for Data Elements in the Proposed 2015 Revisions'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for additional information on the final category assignments and confidentiality determinations for these data elements.

The EPA received several comments for subpart A. Substantive comments are addressed in section III.A.2 of this preamble; see the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart A.

#### 1. Summary of Final Amendments to Subpart A

##### a. Revisions to Subpart A To Streamline Implementation

The EPA is finalizing several amendments intended to simplify and streamline the requirements of subpart A, with minor revisions. First, we are revising 40 CFR 98.2(i) to clarify the EPA's policies allowing reporters to cease reporting under Part 98. As proposed, we are retaining the current language in 40 CFR 98.2(i)(1) and (2) (*i.e.,* ''reported emissions'') to continue to refer to direct emitters and are adding new paragraph 40 CFR 98.2(i)(4) to clarify that the provisions of 40 CFR 98.2(i)(1) and (2) apply to suppliers (*i.e.,* by specifying in 40 CFR 98.2(i)(4) that 40 CFR 98.2(i)(1) and (2) apply to suppliers by substituting the term ''quantity of GHG supplied'' for ''emissions'' in 40 CFR 98.2(i)(1) and (2)). Further, as proposed, we have clarified that, for suppliers, these off-ramp provisions apply individually to each importer, exporter, petroleum refinery, fractionator of natural gas liquids, local natural gas distribution company, and producer of carbon dioxide ($CO_2$), nitrous oxide ($N_2O$), or fluorinated greenhouse gases. The off-ramp requirements for suppliers in the final rule will be applied separately from those for direct emitters. This will occur whether the supplier and direct emitter report as two separate entities in e-GGRT or, for simplicity, as one entity in e-GGRT. See the preamble to the proposed rule (81 FR 2547) for additional information.

The EPA is also finalizing revisions to 40 CFR 98.2(i)(3) to specify that reporting is not required for a subpart after all processes covered by that subpart cease to operate, provided the owner or operator submits a notification to the Administrator on the cessation of operation. The EPA is finalizing this revision with one minor change. We proposed that the notification must be submitted by March 31 of the year following the cessation of operation. As discussed in section III.A.2 of this preamble, we received comments requesting that a reporter be offered more flexibility in the notification deadline. Therefore, in the final rule, the EPA is adding one additional year to the notification deadline than was proposed. As such, a facility that ceased

to operate all hydrogen producing processes on July 1, 2015, for example, will be required to report subpart P data covering the first half of 2015 by March 31, 2016, as usual, but will be now allowed to remove subpart P from the 2016 reporting form it submits by March 31, 2017, as long as it notified EPA of the operation cessation by March 31, 2017, as well. This revision provides ample time for reporters to submit the notification and makes it possible for the EPA to rely on the existing design of e-GGRT to implement the notification of cessation (see section III.A.2 of this preamble for additional information). Note that 40 CFR 98.2(i)(3) does not apply to seasonal or other temporary cessation of operations, and that reporting must resume for any future calendar year during which any of the GHG-emitting processes or operations resume operation.

We are finalizing a revision to 40 CFR 98.2(i)(3) to streamline reporting for operators of underground coal mines subject to 40 CFR part 98, subpart FF, with changes from proposal. Specifically, we are allowing owners and operators of underground mines the opportunity to cease reporting under the GHGRP if the underground mine(s) are abandoned and sealed. This revision is discussed in detail in section III.R of this preamble.

The EPA is adding a new provision in 40 CFR 98.2(i)(5), as proposed, to clarify that if the operations of a facility or supplier are changed such that a process or operation no longer meets the ''Definition of Source Category'' as specified in an applicable subpart, then the owner or operator is exempt from reporting under any such subpart for the reporting years following the year in which the change occurs, provided that the owner or operator submits a notification to the Administrator that announces the cessation of reporting for the process or operation. The EPA is finalizing this revision with one minor change. For consistency with the final revisions to 40 CFR 98.2(i)(3), we are revising 40 CFR 98.2(i)(5) to clarify that the notification is due no later than March 31 following the first reporting year in which the subpart processes or operations no longer meet the ''Definition of Source Category'' for an entire reporting year. This will be the due date for the first annual GHG report from the facility that omits a subpart from a prior year; therefore, EPA will need to be notified no later than this date to understand the reason for the missing subpart. For any future calendar year during which the process or operation meets the ''Definition of Source Category'' as specified in an applicable subpart, the owner or operator will be required to resume reporting for the process or operation. See section III.A.2 of this preamble for additional information on this change.

Lastly, the EPA is finalizing a provision, on which comment was sought, to discontinue maintaining annual reporting forms once five years have passed. As a result of comments received, the EPA is memorializing that change in practice in subpart A at 40 CFR 98.3(h). The EPA initially outlined a plan to discontinue maintaining annual reporting forms that are more than five years old, thereby limiting a facility's ability to resubmit those prior year reports. The EPA chose five years in part to keep with the recordkeeping requirements for reporters who are required to use the EPA's Inputs Verification Tool (IVT). As discussed in section III.A.2 below, the EPA received comments requesting that facilities that are not required to use IVT and that are only required to maintain records for three years per 40 CFR 98.3(g) should only be required to resubmit a report for three years. The EPA understands from those comments that some reporters would be unable to resubmit reports if they no longer have the facility records to review. Therefore, though we will maintain annual reporting forms for five years, we are revising 40 CFR 98.3(h) so that the annual report resubmission requirements only apply to the years for which a facility must retain records according to 40 CFR 98.3(g). As noted below, however, there could be circumstances where even though the facility was not required to maintain records or resubmit a report, the Agency would request any data still available to supplement previously reported data (*e.g.,* EPA-issued section 114 letter to determine compliance or request data for regulatory development).

b. Revisions to Subpart A To Improve the Quality of Data Collected Under Part 98

The EPA is finalizing several amendments to subpart A that will improve the quality of the data collected under the GHGRP, with only minor revisions from proposal. We are revising 40 CFR 98.3(c) as proposed to revise the content of the annual report to include the chemical name, CAS registry number, and the linear chemical formula for individually reported fluorinated GHGs and fluorinated heat transfer fluids (HTF).

We are finalizing revisions to 40 CFR 98.3(c)(8) as proposed to clarify the missing data provisions. The EPA received one substantive comment on these proposed revisions, as discussed in section III.A.2 of this preamble, but has determined that the revisions can be finalized as proposed.

We are finalizing revisions to 40 CFR 98.4(i) to update the content of the certificate of representation (COR) to include a list of all the 40 CFR part 98 subparts under which the facility or supplier intends to report, with one minor change. We adding a clarification that the list of anticipated subparts does not need to be revised with revisions to the COR or if the actual applicable subparts change.

Finally, we are adding 40 CFR 98.2(i)(6) as proposed to include a requirement that a facility must inform the EPA whenever the facility (or supplier) stops reporting under one e-GGRT identification number because the emissions (or quantity supplied) are being reported under another e-GGRT identification number. The date by which the reporter must notify the EPA of this change is the March 31 following the reporting year in which the change occurred, as proposed. On that date, the EPA will be expecting, but will not receive, a report from the subsumed facility. Therefore, the EPA will need to be notified of this change by that date to understand the reason for the missing report from the subsumed facility.

c. Other Amendments to Subpart A

As proposed, we are finalizing revisions to 40 CFR 98.3(h)(4) to remove the requirement that the request for an extension of the 45-day period for submission of a revised report beyond the automatic 30 days must be submitted at least five days prior to the expiration of the automatic 30-day extension. These revisions simplify the process for requesting an extension for the reporter to respond to EPA questions on a submitted report or submit a revised report to correct a reporting error identified by the EPA during report verification.

We are also amending the definitions of ''gas collection system'' and ''ventilation hole or shaft'' in 40 CFR 98.6 as proposed in section III.A.3 of the preamble to the proposed rule (81 FR 2550). These amendments serve to clarify the definitions of these terms for reporters. The EPA received no comments objecting to the proposed revisions.

2. Summary of Comments and Responses on Subpart A

This section summarizes the significant comments and responses related to the proposed amendments to subpart A. See the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015

Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart A.

*Comment:* One commenter questioned the EPA's proposed revisions to 40 CFR 98.2(i) to clarify when reporters may cease reporting. The commenter expressed concern that if a reporter does not notify EPA by the March 31st deadline following the cessation of applicable processes or operations, that they would then be required to report zero emissions indefinitely. The commenter provided an example of a circumstance where a process or operation is ceased temporarily, but after the March 31st notification deadline it is determined that the cessation is permanent. The commenter requested clarification that the reporter would still be able to notify the EPA of the change before March 31st of the next year and not be subject to reporting for the reporting year following notification.

*Response:* It was not the EPA's intent to establish a one-time only notification deadline after which a facility will not be allowed to cease reporting for a closed process. The reason for proposing a notification deadline was to minimize unnecessary follow-up verification activities. If a reporter has failed to inform the EPA of a process closure and the report is missing data for a previously reported process or contains significant emissions differences from the prior year's report, then error flags are generated for the report in e-GGRT. This results in unnecessary time spent by both the EPA and the facility to resolve the error flags. Therefore, once a facility reports under a particular subpart, reporting must continue each year until after all processes under that subpart either are permanently closed (40 CFR 98.2(i)(3)) or no longer meet the definition of source category as specified in the applicable subpart (40 CFR 98.2(i)(5)).

It was always the EPA's intention to implement this revision in a streamlined, sensible way that uses the existing features of e-GGRT as much as possible, with minimal or no changes from year to year. As such, the EPA is editing the proposed text for 40 CFR 98.2(i)(3) and (5) so that under this final action the notification will be due no later than March 31 following the first reporting year in which the subpart processes or operations have ceased (or no longer meet the definition of the applicable subpart) for an entire reporting year. Thus, a facility that permanently ceases operations of a process in July of 2016 will report the part-year 2016 emissions of that process as usual by March 31, 2017, and will notify the EPA of the cessation of that process no later than March 31, 2018. The EPA recognizes that the reporting of 2016 data for this closed process that occurs on March 31, 2017, will not look or feel any different than in prior years, so a facility may unintentionally neglect to take the extra notification step. This edit to the proposed language provides such facilities and suppliers with some additional flexibility in the notification deadline. This edit also makes it possible for the EPA to rely on the existing design of e-GGRT as the cessation notification mechanism by allowing the reporter to clear the subpart check box on the Facility Overview screen in e-GGRT when completing the reporting forms for the first full year after which the subpart processes or operations ceased. Reporters will not be required to enter further process data or emissions information once the subpart check box is cleared.

Reporters who desire to notify the EPA in advance of the deadline in the final rule will be able to submit a notification to the EPA informing them of the process closure using the Help Desk or another equally streamlined and simple procedure in e-GGRT. In the example above, a facility that permanently ceases operations of a process in July of 2016 will report the part-year 2016 emissions of that process by March 31, 2017 and could, at that time, submit a notification to the EPA to indicate the permanent closure of the process prior to the next reporting year. The EPA has retained this option to provide flexibility for reporters who wish to notify earlier. The EPA may consider minor changes to e-GGRT in the future to provide reporters with an alternative means to provide this notification.

Regarding the commenter's concerns related to temporary closures at the time of the reporting deadline, the ability to cease reporting for a subpart after a permanent closure and the process for doing so are not affected by any temporary closure that precedes the permanent closure. In the context of the GHGRP, the process or operation is permanently closed whenever the owner or operator determines that the process or operation will never resume again. For example, consider a facility for which all subpart S processes and operations cease to operate in July. At the time of cessation (in July) the owner or operator assumes the cessation will be temporary. However, one month later (in August) the owner determines that the cessation is in fact permanent and the operations will never resume. In this example, the permanent cessation of operation occurred in August. If the determination later proves to be incorrect, and the process or operation resumes, then the owner or operator must resume reporting for the relevant process or operation, as specified in 40 CFR 98.2(h)(3).

Emissions must be reported for the process or operation for any periods of temporary closure. This includes reporting subpart emissions of zero metric tons if, on the date that reporting occurs, the reporter determines that the cessation during the entire prior reporting year was only temporary and expects operations to resume at some time in the future. It is logical in this case for the facility to submit zero subpart emissions rather than remove the subpart entirely because it is in the facility's best interest to retain the subpart reporting form so that e-GGRT can pre-populate certain data fields in future reporting years and the facility does not have to re-enter as much data.

In reviewing this comment, the EPA has made additional minor technical changes reflected in subpart A. The phrase ''this paragraph (i)(3) does not apply to facilities with municipal solid waste landfills or industrial waste landfills. . . .'' has been revised to ''this paragraph (i)(3) does not apply to the municipal solid waste landfill source category (subpart HH) or the industrial waste landfill source category (subpart TT).'' This change clarifies that a municipal solid waste landfill or industrial waste landfill can cease reporting for a subpart other than subpart HH or TT following its cessation of operation.

*Comment:* The EPA received several comments on our proposal to discontinue maintaining annual reporting forms older than the prior five years, thereby limiting a facility's ability to resubmit those prior year reports. Four commenters agreed that limiting the resubmittal of prior year reports to five years was appropriate and reasonable. One of those commenters requested that the five-year period be included as an amendment to Part 98. The commenter asserted that the EPA cannot currently prohibit a reporter from resubmitting a report to comply with the existing rule if an error is discovered (see 40 CFR 98.3(h)(1)). The commenter noted that without an amendment to the rule, the EPA would still be obligated to maintain the forms necessary for reporters to comply with the resubmission requirement should it be triggered. The commenter also urged

that an amendment to the rule is necessary to clarify whether a reporter could be required to respond to an EPA notification of potential error after the five-year period has passed.

Other commenters insisted that the five-year period was unreasonable for some reporters. The commenters noted that the five-year recordkeeping requirement only applies to facilities using the IVT when reporting. The commenters stated that some reporters are only subject to a three-year recordkeeping requirement, as noted in a footnote to the preamble of the proposed rule (81 FR 2548). The commenters recommended that EPA establish the resubmittal period based on the recordkeeping requirements applicable to a particular reporter (either three years or five years), to ensure that the report resubmission requirements are consistent with the recordkeeping provisions promulgated in 40 CFR 98.3(g).

*Response:* After consideration of the comments received, the EPA is finalizing, with some changes, our proposal to discontinue maintaining annual reporting forms that are more than five years old, thereby limiting a facility's ability to resubmit those prior year reports. The EPA is making corresponding revisions to 40 CFR 98.3(h).

The EPA agrees that a limitation on the resubmittal of prior year reports should be implemented as an amendment to Part 98. Section 98.3(h)(1) and (2) specifies that reporters are required to resubmit an annual report if either they or the EPA identify one or more substantive errors in the report. A reporter cannot resubmit a report to comply with those requirements, however, if the reporting form is no longer available. We also agree with the comment that a facility may be unable to resubmit a report once its mandatory recordkeeping period has passed. The EPA proposed to discontinue the maintenance of reporting forms after five years, thereby limiting the resubmission requirements for all facilities to five years. The EPA initially selected a five-year time period in part because of the recordkeeping requirements for facilities required to use the EPA's verification software (*i.e.,* the IVT). Per 40 CFR 98.3(g), facilities who are required to use the IVT are required to maintain all records at the facility for five years, including records for those subparts for which the IVT is not required. The EPA previously finalized the 5-year record retention time for facilities using the IVT in the ''Revisions to Reporting and Recordkeeping Requirements, and Confidentiality Determinations Under the Greenhouse Gas Reporting Program'' (79 FR 63750, October 24, 2014). However, per 40 CFR 98.3(g), facilities that are not required to use the IVT for any subparts under which they are reporting are only required to maintain records for three years.

After considering these comments, the EPA is amending 40 CFR 98.3(h) to specify that the paragraphs in that section only apply to the recordkeeping requirement time period specified in 40 CFR 98.3(g). The EPA does not intend to request a report resubmission for a reporting year beyond that time period; however, there may be circumstances where the Agency may request additional data to supplement previously reported data (*e.g.,* EPA-issued section 114 letter to determine compliance or request data for regulatory development).

Although reporters will not be required by regulation to resubmit reports for any year beyond which they must maintain records, the revisions to 40 CFR 98.3(h) will not prevent facilities from voluntarily resubmitting reports for up to five years. The EPA recognizes that, in addition to resubmitting reports when required, reporters sometimes voluntarily resubmit annual reports to better reflect facility emissions. The EPA's primary reason for discontinuing the maintenance of annual reporting forms after five years is to minimize the burden on the EPA. Although some subparts do not use the verification software (*e.g.,* subpart HH—Municipal Solid Waste Landfills) and do not trigger the 5-year recordkeeping provision on their own, the EPA will continue to maintain and make available reporting forms for all subparts for the prior five years. Therefore, we are not limiting voluntary resubmittal of reports based on the three-year recordkeeping retention requirements. As such, reporters who have maintained records for five years will still be able to acquire the prior year reporting forms for any applicable subpart for up to five years and resubmit the reporting forms during this time frame.

The EPA has determined that by making these additional revisions, the Agency will continue to streamline the requirements of Part 98 by reducing the burden on regulated entities to resubmit reports, as well as reducing the burden on the EPA to maintain forms beyond five reporting years, while allowing for correction of the data set where data records exist to support it. Further, the EPA has determined that these additional changes will have minimal impact on the quality of the data provided to the Agency. As noted in the preamble to the proposed rule (81 FR 2548), to date, resubmissions for past years have not impacted overall sector or total emission trends. Therefore, the EPA does not anticipate that applying the requirements to resubmit reports to only the recordkeeping period (three years for facilities not required to use the IVT or five years for facilities required to use the IVT) will significantly impact the quality of the data collected.

*Comment:* The EPA received several comments on the proposal to clarify the missing data provisions in 40 CFR 98.3(c)(8). Commenters asserted that the proposed revisions would expand the data reporting requirements and increase the burden on reporters and the EPA. The commenters stated that there is no reason to revise the current rule requirements (*i.e.,* the combination of the existing subpart A requirements and, where necessary, additional subpart-specific recordkeeping provisions). The commenters believed that the proposed revisions to 40 CFR 98.3(c)(8) would have significant impacts on the e-GGRT and the IVT systems, requiring additional time to set up the entry fields in the systems and to apply confidentiality determinations to the types of data elements that they believed would be required to be collected under the proposed change.

*Response:* The EPA is finalizing this revision as proposed. The EPA disagrees with the commenters that the revisions to 40 CFR 98.3(c)(8) will significantly expand the data reporting requirements. The commenters have misconstrued the nature of the revision. Each individual subpart of Part 98 has always specified both the subpart-specific parameters for which substitute data value calculations are allowed and the allowable substitute data value calculations. 40 CFR 98.3(c)(8) was included in Part 98 merely to authorize the EPA to collect information on the frequency of use of the substitute data value calculations that are specified in the individual subparts. This final revision to subpart A does not change the subpart-specific parameters for which substitute data value calculations are already specified and does not enhance the EPA's ability to collect information on substitute data value calculations beyond those calculations contained in each individual subpart. Rather the revision harmonizes the language of 40 CFR 98.3(c)(8) with the language used in individual subparts in order to fully realize the original intended purpose of 40 CFR 98.3(c)(8).

The revision clarifies the type of data that is already required to be collected

by substituting the term ''parameter'' for ''data element,'' consistent with the terminology in the ''Procedures for estimating missing data'' sections in most subparts. This clarification recognizes that the missing data provisions provided in each subpart apply to measured parameters that are monitored or used in calculating emissions. Due to rule changes adopted since the GHGRP was initially published, some data that are used to calculate emissions are not reported. Specifically, Part 98 allows for an alternative verification method where some parameters that are inputs to calculation methodologies are not reported but instead are used by the EPA's IVT to verify the reported emissions. Accordingly, it was unclear whether the term ''data element'' in the version of 40 CFR 98.3(c)(8) pre-dating this clarification referred only to those data elements that are required to be reported in the ''Data reporting requirements'' section of each subpart. However, even if a specific parameter is not collected by the EPA, it was always the EPA's intention to require reporters to account for use of missing data procedures if missing data procedures are specified in the applicable subpart.

The EPA identified at least one instance of this conflict in 40 CFR part 98 that precipitated the proposal of this clarification. In the ''Procedures for estimating missing data'' section of subpart O (HCFC–22 Production and HFC–23 Destruction) (40 CFR 98.155), the regulation specifies missing data calculations for chemical concentration in a product and for product mass. The reporter is required to use these two parameters to calculate chemical mass. However, as specified in the subpart O ''Data reporting requirements'' section (40 CFR 98.156), only the chemical mass is collected by the EPA—not the chemical concentration in the product or the product mass. Under subpart A, it was unclear whether missing data information would need to include information on the frequency of use of missing data procedures for chemical concentration and product mass, or only for chemical mass. Information on the frequency of use of missing data procedures for chemical mass by itself did not explain whether the flow rate or concentration data were missing (or both). This was a problem because it impeded the EPA's understanding of data quality if the flow rate was relatively constant but the concentration was not. In addition, this aggregate reporting of missing data led to bizarre results, where the number of hours of missing data for chemical mass exceeded the total number of hours in a year because missing data methods were used for both of the parameters that fed into that data element. With the revision to 40 CFR 98.3(c)(8) being finalized in this action, the EPA is clarifying that subpart A requires reporting of use of missing data procedures for all the parameters for which the applicable subpart specifies missing data procedures. For subpart O, this means that subpart A requires reporting of information on the use of missing data procedures for each of the input parameters. The EPA will update e-GGRT to collect this information for subpart O.

The EPA has not to date identified any other instances of this conflict in 40 CFR part 98, but we recognize that some additional cases may become apparent in the future. If and when they do, the EPA will update e-GGRT to collect information on the use of missing data procedures for those parameters. The EPA fully expects the update to e-GGRT in subpart O and any other necessary e-GGRT update in the future to present a very minimal increase in burden on reporters. For those subparts that are affected, a simple and flexible system for entering this information can be implemented. If the applicable subpart does not specify use of missing data procedures for a parameter, then reporters will not need to report use of missing data procedures for that parameter unless and until the EPA changes the applicable subpart to require use of such procedures. Where the applicable subpart does specify use of missing data procedures for a parameter but the parameter is not included in e-GGRT, reporters will need to submit information on use of missing data procedures for that parameter only when e-GGRT is updated to collect such information for the relevant subpart.

Section 98.3(c)(8) requires only identification of the parameters for which missing data procedures were used and the duration for which the missing data procedures were used for each parameter. The revision does not require that the reporter provide the value of the parameter, but only identify the parameter. For example, a reporter might indicate that the missing data procedures were used for ''monthly production data'' for two months of the reporting year, but would not report the monthly production data values used.

3. When the Final Revisions to Subpart A Become Effective

As shown in Tables 3 and 4 of this preamble, final revisions to subpart A become effective on either January 1, 2017 or January 1, 2018 and will be reflected starting either with RY2016 reports submitted in 2017 or with RY2017 reports submitted in 2018.

We are finalizing that the amendments to 40 CFR 98.2(i)(3) and (5) and 40 CFR 98.3(h) are effective on January 1, 2017, and will apply starting with RY2016 reports. These amendments serve to reduce burden on reporters and can be implemented with minimal lead time, therefore they will be reflected starting with the RY2016 reports submitted in 2017. At proposal these amendments were to be effective with all other amendments to 40 CFR 98.2 and apply to RY2017 reports. However, for 40 CFR 98.2(i)(3), because this amendment serves to allow coal mines that have ceased operations and are abandoned and sealed to stop reporting to the program, thereby serving to reduce burden on these coal mines for the reasons discussed in section III.R below, and is can be implemented with minimal lead time, this revision will be reflected starting with the RY2016 reports. Similarly, the amendment to 40 CFR 98.2(i)(5) allows facilities that have an operation that no longer meets the ''Definition of Source Category,'' as specified in an applicable subpart, to discontinue complying with that subpart for the reporting year following the year in which the change occurs, as described in section III.A.1.a of this preamble. This revision also serves to reduce burden on facilities that meet this new provision and is feasible to make effective as soon as possible, therefore, this revision will be reflected starting with the RY2016 reports.

We are also finalizing that the amendment to 40 CFR 98.3(h) is effective on January 1, 2017, and will apply starting with the RY2016 reports. As described in section III.A.1.a of this preamble, the amendment to 40 CFR 98.3(h) will apply the report resubmission requirements to the reporting years for which a facility is required to retain records. At proposal, we requested comment on discontinuing the maintenance of annual reporting forms for the prior five years but did not propose a change to subpart A. Upon consideration of comments received, as described in section III.A.2 of this preamble, we are finalizing an amendment to the rule that applies the existing report resubmission requirements to a facility's recordkeeping requirements period. Because this amendment reduces burden on reporters by limiting the reporting years to which the resubmission requirements apply and reduces burden on the Agency by capping the electronic reporting forms that must be maintained, and because it

can be implemented with minimal lead time, this revision will be effective on January 1, 2017 and reflected in RY2016 reports.

We are finalizing that the amendment to 40 CFR 98.7(l)(1) is effective January 1, 2017 and will apply starting with the RY2017 report submitted in 2018. This amendment updates the reference to the MSHA Handbook to the most recent 2016 edition. More explanation of this revision and its timing can be found in section III.R.3 of this preamble.

The remaining amendments to subpart A are shown in Table 4 of this preamble and are consistent with the description in section I.E.2 of this preamble. All remaining amendments are effective January 1, 2018 and will be reflected in RY2017 reports submitted in 2018, with the exception of the revision to Table A–5. The revisions to Table A–5 are effective on January 1, 2018 and will be reflected in RY2018 reports submitted in 2019. These revisions are related to applicability of facilities in subpart OO. See section III.W.3 for more detail on the revisions to Table A–5.

*B. Subpart C—General Stationary Fuel Combustion Sources*

We are finalizing several amendments to subpart C of Part 98 (General Stationary Fuel Combustion Sources). This section discusses the substantive changes to subpart C; additional minor corrections and clarifications are summarized in the Final Table of Revisions available in the docket for this rulemaking (Docket Id. No. EPA–HQ–OAR–2015–0526). We are also finalizing confidentiality determinations for new data elements resulting from these revisions to subpart C as proposed; see section IV of this preamble and the memorandum ''Final Data Category Assignments and Confidentiality Determinations for Data Elements in the Proposed 2015 Revisions'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for additional information on the final category assignments and confidentiality determinations for these data elements.

The EPA received several comments on subpart C. Substantive comments are addressed in section III.B.2 of this preamble; see the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart C.

1. Summary of Final Amendments to Subpart C

a. Revisions to Subpart C To Improve Quality of Data Collected in Part 98

We are finalizing revisions that improve the EPA's ability to verify data under Part 98, while generally resulting in only a slight increase in burden for reporters. First, as proposed, the EPA is requiring reporting of the moisture content used to correct the default HHV for wood and wood residuals (dry basis) in Table C–1 to subpart C, in accordance with the procedures of footnote 5 in Table C–1. The EPA is finalizing as proposed the addition of the moisture correction calculation as a reporting element, as well as a data element that will be entered into IVT. As proposed, we are allowing reporters to elect under 40 CFR 98.3(d)(3)(v) and 40 CFR 98.36(a) (for subpart C sources that do not meet the criteria specified in 40 CFR 98.36(f)) to either enter the moisture content into IVT or, if potential disclosure is not a concern to the reporter, report the data.[4] If a reporter elects to enter the data into IVT, the reporter will also be required to keep a record of the data as specified in 40 CFR 98.37(b)(37). The EPA is finalizing that, for sources that meet the criteria in 40 CFR 98.36(f), there are no disclosure concerns and the moisture content of the wood and wood residuals must be reported in e-GGRT.

For emissions reported using the aggregation of units (GP) and common pipe (CP) configurations, the EPA is finalizing as proposed a requirement to report the cumulative maximum rated heat input capacity for all units (within the configuration) that have a maximum rated heat input capacity greater than or equal to 10 (mmBtu/hr). The EPA received several significant comments regarding this requirement as discussed in section III.B.2 of this preamble.

When reporting the cumulative maximum rated heat input capacity, reporters will not be required to account for units less than 10 mmBtu/hr. For GP configurations, this means that the cumulative maximum rated heat input capacity will be determined as the sum of the maximum rated heat input capacities for all units in the group that are greater than or equal to 10 mmBtu/hr and less than or equal to 250 mmBtu/hr. Units with a maximum rated heat input capacity greater than 250 mmBtu/hr are not allowed to use the GP configuration. For CP configurations, the cumulative maximum rated heat input capacity will be determined as the sum of the maximum rated heat input capacities for all units served by the pipe that are greater than or equal to 10 (mmBtu/hr). Note that fuel use and corresponding emissions are still required to be reported for units with a maximum rated heat input capacity less than 10 (mmBtu/hr). Emissions reporting of GHGs for GP and CP configurations will remain unchanged.

b. Other Amendments to Subpart C

We are finalizing other revisions to the requirements of 40 CFR part 98, subpart C to: (1) Clarify the reporting requirements when the results of HHV sampling are received less frequently than monthly for certain sources; (2) streamline the conversion factors used to convert short tons to metric tons; and (3) revise Tables C–1 and C–2 to more clearly define emission factors for certain petroleum products.

First, as proposed, we are amending 40 CFR 98.33(a)(2)(ii)(A) to clarify the definition of terms for Equation C–2b in cases where the results of HHV sampling are received less frequently than monthly. This finalized revision replaces the term ''month'' in the equation inputs ''$(HHV)_I$,'' ''$(Fuel)_I$,'' and ''n'' with the term ''samples.''

We are finalizing changes to Tables C–1 and C–2 to remove duplication and to further classify several fuels to provide clarity. We are removing duplication of default HHV and $CO_2$ emission factors for petroleum coke in Table C–1 and including the fuel under a new category entitled ''Petroleum products—solid.''

Next, we are finalizing changes to Table C–1 to move the fuel propane gas from the ''Other fuels—gaseous'' category into a new category entitled ''Petroleum products—gaseous.'' As proposed, we are also retaining propane under the ''Petroleum products'' category, which we are renaming to ''Petroleum products—liquid'' to clarify that all fuels in this category are liquid fuels. In conjunction with the changes to Table C–1, we are also finalizing, as proposed, a change to Table C–2 to revise the ''Petroleum (All fuel types in Table C–1)'' category to ''Petroleum Products (All fuel types in Table C–1),'' which will encompass all liquid, solid, and gaseous petroleum products and clarify that the methane ($CH_4$) and nitrous oxide ($N_2O$) emissions for these fuels should be calculated and reported accordingly. We are also finalizing a change to Table C–2 to streamline the $CH_4$ and $N_2O$ emission factors for fuels in the ''Other fuels—solid'' category. As

[4] If a reporter elects to report the moisture content of wood and wood residuals for a source that does not meet the criteria specified in 40 CFR 98.36(f), e-GGRT will require the reporter to waive the right to make confidentiality claims before reporting the moisture content via e-GGRT.

proposed, we are combining the MSW and tire line items into an ''Other fuels—solid'' category, which will encompass all three solid fuels (*i.e.,* MSW, tires and plastics).

Finally, we are updating the Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples using Radiocarbon Analysis (ASTM D6866–08) to the most current standard. We initially proposed to update ASTM D6866–08 to the current standard at the time of proposal, Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples using Radiocarbon Analysis (ASTM D6866–12). As discussed in section III.B.2 of this preamble, we received several comments expressing the concern that the proposed version of the standards (ASTM D6866–12) was in the process of being revised, and an updated version of these standards (ASTM D6866–16) was published on June 1, 2016. We are updating the final rule to revise references to the method in 40 CFR 98.34(d) and (e), 40 CFR 98.36(e)(2), and 40 CFR 98.7(e)(33) to refer to the current June 2016 standards.

2. Summary of Comments and Responses on Subpart C

This section summarizes the significant comments and responses related to the proposed amendments to subpart C. See the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart C.

*Comment:* Several significant comments were received regarding the new requirement to report cumulative maximum rated heat input capacity for GP and CP configurations. Commenters stated that the intended use of this new data element was unclear. Commenters also stated that the new data element would not provide any meaningful data to the program. Multiple commenters stated that the cumulative maximum rated heat input capacity could be determined from existing data. Commenters questioned the EPA's decision to exclude units that are less than 10 mmBtu/hr, with one commenter suggesting that the EPA should consider lowering the threshold to 2.5 mmBtu/hr. Commenters also disagreed with the EPA's proposed assessment that the burden associated with collecting this data element would be minimal.

*Response:* The EPA appreciates the comments received regarding this new data reporting requirement for GP and CP configurations, but disagrees with many of the commenters' positions. The EPA intends to use the cumulative maximum rated heat input capacity to verify that emissions reported under the GP and CP configurations are not over reported. This is in the interest of the GHGRP and to reporters as well, because this information will assist in ensuring that reported emissions have not been over stated. Five years of report verification have demonstrated that over-reporting in GP and CP configurations does occur and that it is often difficult to detect for the approximately 7,000 configurations under subpart C. The EPA currently is able to identify when gross over-reporting has occurred only at one of these configurations (*e.g.,* a single GP configuration reports more than several hundred billion metric tons of $CO_2$). Because the EPA has no information regarding the cumulative maximum rated heat input capacity or the total number of units in a GP or CP configuration, it is very difficult to identify when over-reporting has occurred. With this new information, the EPA will be able to identify significant over-reporting in these configurations, as described below.

The cumulative maximum rated heat input capacity can be used to approximate the maximum potential to emit for all units in the group. The EPA will then apply a multiplier to the potential emissions to account for margin of error. Because many units often operate under design capacity, exceeding the design capacity potential to emit times a margin of error multiplier is a clear indication that emissions have been overstated or that the cumulative maximum rated heat input capacity has been understated.

Regarding the commenter's statement that this data element can be approximated with existing reported data, the EPA notes that back calculating the average maximum rated heat input capacity is not practical for two reasons. First, if emissions are over reported for a GP or CP configuration, back calculating from a possible over reported value simply propagates the potential error. Because the main reason for collecting these new data elements is to verify that emissions from these configurations are not over reported, back calculating will not provide any meaningful verification. Secondly, reporters commonly use the Tier 3 calculation methodologies. In many instances, the equation inputs for these calculations are claimed as confidential and in this case, back calculating is infeasible.

Regarding the EPA's exemption for units that are less than 10 mmBtu/hr maximum rated heat input capacity, as per the data from reporting year 2014, the EPA concluded that the emissions contribution of units less than 10 mmBtu/hr is small compared to the total emissions in aggregations with units greater than 10 mmBtu/hr. The EPA believes that meaningful data verification can be achieved by only collecting cumulative maximum rated heat input capacity for units greater than 10 mmBtu/hr. This is due to the fact the bulk of emissions reported under these configurations appears to originate from emissions units that are greater than 10 mmBtu/hr maximum rated heat input capacity.

If the highest maximum rated heat input capacity of all units in a configuration is below 10 mmBtu/hr, the EPA has determined that reporting the cumulative maximum rated heat input capacity is not necessary. Configurations under this threshold are still required to report the highest maximum rated heat input capacity of any unit in the group and the emissions associated with the GP or CP configuration, per existing requirements under 40 CFR 98.3(c)(1) and (3), but will not be required to report the cumulative maximum rated heat input capacity for all units in the configuration. As described in the preamble to the proposed rule, the EPA maintains that the 10 mmBtu/hr threshold value will provide meaningful data for the purposes of verification while simultaneously easing the burden of tracking small sources.

As noted, units less than 10 mmBtu/hr typically contribute minor emissions to the overall subpart C emissions profile. As discussed in the preamble to the proposal, there were approximately 7,000 GP and CP configurations reported in 2014, out of the total 18,000 configurations reported in subpart C. Of the 7,000, approximately 2,250 reported that the highest maximum rated heat input capacity of any unit in the configuration was less than 10 mmBtu/hr. The total non-biogenic $CO_2$ reported from these 2,250 configurations was approximately 2 percent of the total non-biogenic $CO_2$ reported for all 7,000 GP and CP configurations. The remaining 98 percent of non-biogenic $CO_2$ reported came from the 4,750 GP and CP configurations that identified the highest maximum rated heat input capacity of any unit as greater than or equal to 10 mmBtu/hr. These data provide evidence that using the heat input capacity information from units

greater than or equal to 10 mmBtu/hr will allow for meaningful data validation without mandating overly burdensome requirements for reporters.

Regarding the comment that the EPA should consider lowering the threshold to 2.5 mmBtu/hr, the EPA believes that lowering the proposed threshold to 2.5 mmBtu/hr, as opposed to 10 mmBtu/hr, would increase burden without significantly increasing the EPA's ability to verify emissions data, as the difference would represent less than 2 percent of the non-biogenic $CO_2$ emissions. The EPA acknowledges that the burden under subpart C will increase as a result of the requirement to report these new data elements. The EPA also acknowledges that the burden estimate provided in the preamble to the proposal was understated for subpart C. The burden estimate provided at the time of proposal did not account for the fact that in order to report these two new data elements, reporters would need to collect and sum the cumulative maximum rated heat input capacity for multiple units in each aggregated CP or GP configuration. The EPA has revised the burden estimate to reflect this need. Based on our revised burden estimate (see the memorandum, ''Assessment of Burden Impacts of Final 2015 Revisions to the Greenhouse Gas Reporting Rule'' available in Docket Id. No. EPA–HQ–OAR–2015–0526), the EPA still finds that the overall burden increase for subpart C is justified given the magnitude and uncertainty of emissions represented in GP and CP configurations under subpart C.

When the EPA reviewed the existing subpart C data set as described in the preamble to the proposed rule (81 FR 2551), we determined that over 50 percent of the non-biogenic $CO_2$ reported under subpart C is reported using GP or CP configurations. Because this represents a significant portion of the subpart C emissions profile, the EPA has determined that further information is needed to ensure that these data are not being over reported.

The EPA also notes that the maximum rated heat input capacity for all units contained in a GP configuration should have been determined at some point in prior year reporting. The GP configuration is allowed only for units that are less than 250 mmBtu/hr. As such, facilities utilizing this configuration should have already determined the maximum rated heat input capacity of the units in these aggregations in order to confirm that they are less than 250 mmBtu/hr. As for the CP configurations, the EPA maintains that existing air permits and compliance records for other federal and state regulations likely contain the heat input capacity data required to be reported.

Finally, the EPA acknowledges that existing state and federal requirements likely already require facilities to report this data element. Commenters have stated that the EPA should use this data element to perform verification in lieu of requiring facilities to report it under the GHGRP. Although operating permits and other compliance records likely contain this information, these documents are not readily available to the EPA. Even if this information were readily available to the Agency, the EPA has no means by which to determine what permitted units are included in a GP or CP configuration. The EPA maintains that facilities have the best information available and are the only entities capable of determining the cumulative maximum rated heat input capacity of their chosen GP and CP configurations.

*Comment:* The EPA received several comments indicating that the proposed update of the Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples using Radiocarbon Analysis from ASTM D6866–08 to ASTM D6866–12 should not be finalized as the proposed standards were in the process of being updated by ASTM, and that the proposed version would soon be out of date. Commenters requested that the updated version of the standards would be more appropriate to incorporate in the rule, as they would include a more accurate variable that could affect the calculation of the biogenic $CO_2$ fraction.

*Response:* The EPA agrees with commenters that incorporating the most recent version of the test methods is appropriate to ensure that accurate biogenic $CO_2$ fractions are reported. Following the public comment period, an updated version of ASTM D6866 was published on June 1, 2016 (ASTM D6866–16). The EPA reviewed the updated standards and determined that these test methods remain appropriate and can continue to be used under the GHGRP, and would result in improved data quality. Therefore, we are updating the final rule to revise references to these methods to refer to the revised June 2016 standards.

3. When the Final Amendments to Subpart C Become Effective

As shown in Table 4 of this preamble and consistent with the description of amendments in section I.E.2 of this preamble, all amendments to subpart C will be effective on January 1, 2018 as proposed and will be reflected starting with RY2017 reports that are submitted in 2018. No comments were received on the timing of revisions to subpart C.

*C. Subpart E—Adipic Acid Production*

In this action, we are finalizing amendments to subpart E of Part 98 (Adipic Acid Production), as proposed. This section discusses the amendments to subpart E. We are also finalizing as proposed confidentiality determinations for new data elements resulting from the revisions to subpart E; see the memorandum ''Final Data Category Assignments and Confidentiality Determinations for Data Elements in the Proposed 2015 Revisions'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for additional information on the final category assignments and confidentiality determinations for this data element. The EPA received no comments objecting to the proposed revisions to subpart E.

1. Revisions to Subpart E To Streamline Implementation

We are finalizing one amendment that is intended to simplify and streamline the requirements of subpart E and increase the efficiency of the report submittal process. Subpart E provides the option of requesting the Administrator to approve an alternative method for determining $N_2O$ emissions from adipic acid production. Previously, reporters were required to request such approval annually in all circumstances. As proposed, the EPA is revising 40 CFR 98.53(a)(2) to state conditions under which annual approval will not be required. The reporter must continue to request approval annually where there have been changes in the reporter's requested methodology. If a reporter receives approval to use an alternative method in the previous reporting year and the methodology has not changed, the EPA is allowing use of the alternative method to be automatically approved for subsequent reporting years. Reporters will only need to notify the EPA that they are using a previously approved alternative method and will not require further approval from the Agency. This notification will be included in the annual report submission. If, however, a reporter makes any changes to the previously-approved alternative method, then the reporter must request permission to use the revised method as stated in 40 CFR 98.53(a)(2). These revisions are being finalized as proposed.

2. Revisions to Subpart E To Improve the Quality of Data Collected Under Part 98 and Improve the U.S. GHG Inventory

We are finalizing one amendment that is intended to improve the quality of

data collected under subpart E while generally resulting in only a slight increase in burden for reporters. As proposed, we are revising 40 CFR 98.56(f) to require reporting of the date of installation of any $N_2O$ abatement technology (if applicable). This data element may be carried over from one reporting year to the next. The reporter will not be required to make changes unless additional abatement technology is installed at a later date.

3. When the Final Amendments to Subpart E Become Effective

As shown in Table 4 of this preamble and consistent with the description of amendments in section I.E.2 of this preamble, all amendments to subpart E will be effective on January 1, 2018 as proposed and will be reflected starting with RY2017 reports that are submitted in 2018. No comments were received on the timing of revisions to subpart E.

*D. Subpart F—Aluminum Production*

In this action, we are finalizing several amendments to 40 CFR part 98, subpart F (Aluminum Production), as proposed. This section discusses the substantive changes to subpart F; additional minor corrections and clarifications are summarized in the Final Table of Revisions available in the docket for this rulemaking (Docket Id. No. EPA–HQ–OAR–2015–0526). The EPA received no comments objecting to the proposed changes to subpart F.

We are finalizing amendments to 40 CFR part 98, subpart F, to improve the quality of the data collected under Part 98 and improve the U.S. GHG Inventory. As proposed, we are requiring reporting of two data elements that influence perfluorocarbon (PFC) emissions from aluminum production: annual average anode effect minutes per cell-day and annual smelter-specific slope coefficients. We are also finalizing our determination that the annual average of the anode effect minutes per cell day is CBI. See the memorandum ''Final Data Category Assignments and Confidentiality Determinations for Data Elements in the Proposed 2015 Revisions'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for additional information. In conjunction with our determination that the annual average of the anode effect minutes is CBI, we are revising, as proposed, our previous finding that the annual smelter-specific slope coefficients, which are inputs to emission equations, present disclosure concerns associated with this input to equation, and are finalizing our proposal to collect these data. Note that we will continue to use IVT to verify the results of Equation F–2. See the preamble to the proposed rule (81 FR 2553) for additional information on this change.

As shown in Table 4 of this preamble and consistent with the description of amendments in section I.E.2 of this preamble, all amendments to subpart F will be effective on January 1, 2018 as proposed and will be reflected starting with RY2017 reports that are submitted in 2018. No comments were received on the timing of revisions to subpart F.

*E. Subpart G—Ammonia Manufacturing*

In this action, we are finalizing several amendments to subpart G of Part 98 (Ammonia Manufacturing). This section discusses all of the final revisions to subpart G. We are also finalizing as proposed confidentiality determinations for new data elements resulting from the revisions to subpart G; see section IV of this preamble and the memorandum ''Final Data Category Assignments and Confidentiality Determinations for Data Elements in the Proposed 2015 Revisions'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for additional information on the final category assignments and confidentiality determinations for this data element.

The EPA received several comments for subpart G. Substantive comments are addressed in section III.E.2 of this preamble; see the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart G.

1. Summary of Final Amendments to Subpart G

a. Revisions to Subpart G To Improve Quality of Data Collected in Part 98 and Improve the U.S. GHG Inventory

We are finalizing revisions that will allow the EPA to collect data that will improve the EPA's understanding of GHG emissions from ammonia manufacturing while generally resulting in only a slight increase in burden for reporters. As proposed, we are amending 40 CFR 98.76(a) to require reporting of annual ammonia production for facilities where a continuous emissions monitoring system (CEMS) is used to measure $CO_2$ emissions; 40 CFR 98.76(b)(2) to require reporting of annual feedstock consumption; and 40 CFR 98.76(b)(7) to require reporting of annual average carbon content.

b. Other Amendments to Subpart G

We are finalizing multiple amendments to subpart G to clarify the EPA's intentions related to the reporting of annual ammonia production and annual methanol production and making one change from proposal.

The change from proposal is with regard to the proposed revisions to 40 CFR 98.76(b)(15) to indicate that facilities must report the annual methanol production for each process unit in 40 CFR 98.76(b)(15) regardless of whether the methanol is subsequently destroyed, vented, or sold as product. As discussed in section III.E.2 of this preamble, the EPA received comments objecting to the proposed revisions, and for the reasons discussed below is instead clarifying that while intentionally produced methanol must be reported, it is not necessary to report the unintended generation of methanol as a by-product. The final rule revises 40 CFR 98.76(b)(15) to ''Annual quantity of methanol intentionally produced as a desired product, for each process unit (metric tons).''

2. Summary of Comments and Responses on Subpart G

This section summarizes the significant comments and responses related to the proposed amendments to subpart G. See the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart G.

*Comment:* One commenter opposed the EPA's proposal to clarify 40 CFR 98.76(b)(15) to add that annual methanol production must be reported ''regardless of whether the methanol is subsequently destroyed, vented, or sold as product.'' The commenter opposed reporting of methanol that is vented or destroyed as part of the annual methanol production. The commenter stated that the amount of methanol produced does not contribute to the GHG emission calculations, which are based on fuel and feedstock. The commenter also asserted that the EPA should not attempt to capture the generation of by-products in the ammonia production process, due to the complexity of determining the amount of methanol vented or destroyed. The commenter noted that methanol is generated in the low temperature shift reaction portion of the ammonia manufacturing unit, and, in much

smaller quantities, in the high temperature shift reaction portion of the ammonia manufacturing unit. The commenter stated that methanol can leave the process in either a gaseous stream or as a process condensate. The commenter noted that some facilities use a low methanol catalyst in the low temperature shift reactor to control the amount of methanol produced. The commenter stated that process condensate is normally routed back into the condensate stripper where methanol is stripped and routed to the ammonia reformer for combustion. The commenter argued that this portion should not be accounted for in the amount of methanol destroyed.

*Response:* The EPA agrees with the commenter that reporting of unintentional methanol production by subpart G reporters is not necessary. The current requirement is to report ''Annual methanol production for each process unit (metric tons),'' without limitation. As demonstrated by reports in RY2014 and RY2015, the amount of methanol from most subpart G reporters, which are thought to be reporting unintentional production, is very small relative to the total quantity of intentional methanol production being reported across the GHGRP (subparts G, P, and X). Reporters that have intentional methanol production are more likely to have existing mechanisms in place for measuring the quantity than reporters that have unintentional methanol production. Therefore, the burden for quantifying the small amounts of unintentional methanol production is expected to be higher than the burden required to report intentional methanol production. In striking a balance between the burden required to quantify the small amount of unintentional methanol production and the EPA's potential uses for the methanol data being requested, the EPA has decided not to finalize the proposed language for 40 CFR 98.76(b)(15), which was ''Annual methanol production for each process unit (metric tons), regardless of whether the methanol is subsequently destroyed, vented, or sold as product.'' Instead, the EPA is revising this requirement to read: ''Annual quantity of methanol intentionally produced as a desired product, for each process unit (metric tons).'' These final revisions are included in the Final Table of Revisions to this rulemaking (see Docket Id. No. EPA–HQ–OAR–2015–0526).

3. When the Final Amendments to Subpart G Become Effective

As shown in Table 4 of this preamble and consistent with the description of amendments in section I.E.2 of this preamble, all amendments to subpart G will be effective on January 1, 2018 as proposed and will be reflected starting with RY2017 reports that are submitted in 2018.

We received comment on our proposed implementation schedule for subpart G requesting an additional year before implementation of the new reporting requirements (*i.e.,* annual ammonia production for facilities using a continuous emission monitoring system (CEMS), annual consumption, and annual average carbon content data) to align the implementation schedule with the schedule for implementing the new reporting requirements for subpart V—Nitric Acid Production (*i.e.,* RY2018). The commenter requested this change because some facilities are subject to both subparts. The EPA does not agree that an additional year is needed for implementation of the new reporting requirements for subpart G or that the reporting schedules for these amendments for subparts G and V need to be aligned. First, all existing ammonia production plants are already required to report ammonia production under 40 CFR 98.76(b)(14) (*i.e.,* these data have been reported for RY2014 and RY2015), and according to the GHG reports for subpart G received to date, no existing ammonia production plants subject to subpart G use CEMS. Therefore, while the new requirement for reporters using CEMS to report annual ammonia production introduces no additional burden to plants currently reporting to the GHGRP, should any plants choose to use CEMS in the future, the requirement will be in place. Second, the new requirement for reporters to calculate and report annual consumption and annual average carbon content (using monthly data) introduces only a minor burden because these facilities are already required to use monthly consumption and carbon content data to calculate emissions, including entering these data into IVT. Third, the requirements of subparts G and V have no common input parameters, therefore, there is no need for facilities to coordinate reporting of the data reported under subparts G and V. As such, the EPA sees no compelling reason to delay the implementation schedule for subpart G. Therefore, the final amendments to subpart G will be effective January 1, 2018, and will be reflected starting with RY2017 reports, as proposed.

*F. Subpart I—Electronics Manufacturing*

In this action, we are finalizing several amendments to subpart I of Part 98 (Electronics Manufacturing). This section discusses the substantive revisions to subpart I; additional minor amendments, corrections, and clarifications are summarized in the Final Table of Revisions available in the docket for this rulemaking (Docket Id. No. EPA–HQ–OAR–2015–0526). We are also finalizing confidentiality determinations for new data elements resulting from these revisions to subpart I; see section IV of this preamble and the memorandum ''Final Data Category Assignments and Confidentiality Determinations for Data Elements in the Proposed 2015 Revisions'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for additional information on the final category assignments and confidentiality determinations for these data elements.

The EPA received several comments for subpart I. Substantive comments are addressed in section III.F.2 of this preamble; see the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart I.

1. Summary of Final Amendments to Subpart I

This section discusses the substantive revisions to subpart I to improve the quality of data collected under Part 98. We are finalizing the proposed revisions to Equation I–24 with some modifications as described in section III.F.2 of this preamble. We are also finalizing clarifications to one provision of the Triennial Report requirement at 40 CFR 98.96(y) with some modifications from the proposal as described in section III.F.2 of this preamble. We are finalizing all of the proposed minor corrections presented in the Table of 2015 Revisions (see Docket Id. No. EPA–HQ–OAR–2015–0526), with one additional change to Table I–4 as discussed in this section.

As part of the stack testing methodology in 40 CFR 98.93(i), Equation I–24 calculates the weighted-average destruction or removal efficiency for individual F–GHGs across process types. The equation is intended to account for the fact that emissions from different process types are destroyed with different efficiencies. Previously, Equation I–24 weighted the fraction of the fluorinated GHG destroyed by the quantity of gas consumed by each process type. However, the quantity and type of gas flowing into destruction devices are also

affected by (1) The quantity of each input gas dissociated by the process (which varies across process types and sub-types) and (2) the quantity of by-product gas generated by the process (which also varies across process types and sub-types). The revision (and renaming) of Equation I–24A, for input gases, and the addition of Equation I–24B, for by-product gases, enable facilities to properly account for these effects. The addition of Equation I–24B also defines a term, $d_{kf}$, which is used in several other equations but has not previously been defined.

For the triennial technology report required of certain facilities as specified in 40 CFR 98.96(y), we are revising paragraph (y)(2)(iv) to require that any utilization and by-product formation rate data include the input gases used and measured, the utilization rates measured, the by-product formation rates measured, the process type, the process sub-type for chamber clean processes, the wafer size, and the method used for the measurements. We are requiring that any destruction or removal efficiency (DRE) data include the input gases used and measured, the destruction and removal efficiency measured, the process type, and the method used for the measurements.

The data elements specified in the final amendments to 40 CFR 98.96(y)(2)(iv) differ in several respects from the data elements specified in the proposed amendments. First, the final rule limits the required data elements to the parameters used to categorize the current sets of default emission factors and DREs or, in the case of the measurement method, to assure data quality. We are not finalizing the proposed requirements for facilities to provide the film type, the substrate type, and the linewidth or technology node. Second, the final rule includes two slightly different sets of requirements for reporting utilization and byproduct formation rate data and for reporting destruction or removal efficiency data; these different requirements reflect the different criteria used to classify the corresponding default factors in subpart I. Finally, we have removed the qualification ''where available'' from the list of required data elements. These modifications to the proposed requirements arose from public comments and from our review of the purpose of the requirements, as discussed in section III.F.2 of this preamble.

In this final rule, we are finalizing revisions that we proposed to five default factors in Table I–3 for 150 and 200 mm fabs. This is to correct typographical and calculation errors. One of the corrected default factors, the 1-Ui value for $NF_3$ used in the remote plasma clean process subtype, is intended to be the same as the corresponding value for 300 mm fabs in Table I–4. (This is because a single dataset was used to develop the 1-Ui value for $NF_3$ used in remote plasma clean across both sets of wafer sizes.) However, we did not propose to correct the value in Table I–4. Because the correction is applicable to Table I–4 as well as to Table I–3, and we received no negative comments on the Table I–3 correction, we are making the correction to Table I–4 in this final rule. The correction revises the default I-Ui value for $NF_3$ used in the remote plasma clean subtype from 0.018 to 0.017.

2. Summary of Comments and Responses on Subpart I

This section summarizes the significant comments and responses related to the proposed amendments to subpart I. See the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart I.

*Comment:* One commenter expressed concern that the revisions to Equation I–24, including revision of Equation I–24 and the addition of Equation I–24B for stack testing at semiconductor fabs, would require reporters to essentially employ both the default emission factor method and the stack testing method, because the revised equations would require that facilities perform calculations using the default emission factor method to make adjustments for variations in the usage and performance of abatement. The commenter noted that any revisions to the default emissions factors would therefore change the emissions of a facility that performs stack testing. The commenter argued that the proposed revisions would discourage the use of the stack testing method, especially for facilities with abatement systems installed.

Finally, the commenter argued that the EPA has not demonstrated that the added complexity and cost will result in a more accurate emissions estimate.

*Response:* We demonstrated that the added accuracy of the revised equations justifies their added complexity in the preamble to the proposed rule and are providing further explanation here. As we explained in the preamble to the proposed rule (81 FR 2555, January 15, 2016), we proposed these revisions to Equation I–24 because the original equation relied on GHG gas *consumption* by process type, rather than GHG *emissions* by process type, to determine the weighted average DRE. As explained in the proposal preamble, the original equation introduced several sources of error because it did not account for either input gas utilization or by-product formation, both of which can make the distribution of emissions of an F–GHG between process types very different from the distribution of consumption of that F–GHG between process types. These sources of error are eliminated in the revised Equations I–24 A and I–24B.

We disagree with the commenter that the added complexity of the revised equations is excessive and will discourage use of the stack-test method. The original Equation I–24 required users to apportion gas usage by process type (*i.e.,* to either etching/wafer cleaning or chamber cleaning). The revised equations require reporters to additionally apportion gases used in chamber cleaning to the appropriate sub-type, but the added burden of this step is expected to be low. We analyzed gas usage patterns in RY2014 and found that, on average, between 56 and 80 percent of the time that a fab used an F–GHG in chamber cleaning, the fab used that F–GHG in only one chamber cleaning subtype.[5] Only five to eight percent of the time was an F–GHG used in all three chamber cleaning subtypes. Once they have apportioned gas usage, reporters will simply apply the default utilization rates and byproduct formation rates from Tables I–3 and I–4 to the apportioned gases, and this step can be simplified with the use of a spreadsheet.

The commenter does not address how the term $d_{kf}$, which is used in several equations in the stack test method (*e.g.,* Equations I–20 and I–22), would be defined without the addition of Equation I–24B. We note that equating $d_{kf}$ to the previous definition of $d_{if}$ (that is, weighting process types by input gas consumption rather than by by-product

[5] The 56-percent figure was based on the assumptions that (1) Every combination of wafer size and chamber cleaning process subtype for which $CF_4$ or $C_2F_6$ emissions were reported used $CF_4$ or $C_2F_6$ as an input gas and (2) emissions of particular F–GHGs that were reported as zero represent very small emissions rather than no emissions of that F–GHG. The 80-percent figure was based on the assumptions that (1) For combinations of wafer size and chamber cleaning process subtype that have no input gas emission factors for $CF_4$ or $C_2F_6$, but that do have by-product generation factors for these gases, $CF_4$ or $C_2F_6$ are emitted as by-product gases rather than input gases, and (2) emissions of particular F–GHGs that were reported as zero are truly zero.

emissions) would lead to large errors in the weighted DRE for by-products because the shares of F–GHGs consumed by the two process types can be very different from the shares of F–GHGs emitted as by-products from the two process types (particularly for $CF_4$ and $C_2F_6$). For example, based on the 2009 and 2010 F–GHG consumption data that were provided by the semiconductor industry to EPA, the weighted average DRE for by-product $C_2F_6$ would be 0.6 based on consumption but 0.97 based on by-product emissions, using the Table I–16 default DREs for both process types.

In response to the commenter's assertion that the revision effectively requires users of the stack method to employ the emission factor method as well as stack testing procedures, we reiterate that the incremental effort associated with implementing the revision is expected to be modest, as discussed above. We also note that facilities using the stack method are already required to use a modified version of the emission factor method to perform preliminary estimates of emissions and to estimate emissions from stack systems that are not tested. (See 40 CFR 98.93(i)(1) and (4)).

Finally, regarding the impact of changes in default emission factors on the calculated emissions of facilities that use stack testing, we anticipate that this impact will be considerably smaller than the initial impact of weighting process-type and sub-type DREs by F–GHG emissions rather than by consumption, particularly where most emissions are by-product emissions from a process type other than the process type that consumes the F–GHG. In this case, the process that emits the F–GHG by-product but does not consume it is given a weight of almost zero when consumption is used as the weighting factor; but it is given a weight of nearly one when by-product emissions are used as the weighting factor. In contrast, all subsequent changes to emission factors, with the exception of the very largest ones, are likely to have relatively limited impact on this weighting, and consequently on calculated emissions.

*Comment:* One commenter expressed concern that the proposed list of the data elements to be submitted with emission factor and DRE data in the Triennial Report would increase burden on reporters, was inconsistent with the terms of the final rule negotiated between the EPA and industry members, and would result in the collection of data that were not relevant to setting accurate emission factors. This commenter argued that the EPA should wait until after the submission of the first Triennial Report in 2017 before finalizing any revisions to the requirements for the report. The commenter stated that some of the data elements went beyond the original goals for the Triennial Report and would require facilities submitting reports to collect additional data that are not typically collected during testing and that were found not to be relevant to emissions during the development of the current subpart I requirements. Specifically, the commenter argued that input gas, wafer size, and process type were sufficient to characterize emissions considering precision, accuracy, and technical feasibility, and that several other data elements, such as film type and technology node, were not statistically relevant to calculating emission factors.

The commenter also asserted that several of the proposed data requirements were irrelevant to characterizing DRE data, including film type, substrate type, linewidth or technology node, process type, and utilization rates measured.

Finally, the commenter claimed that the information being sought raised confidentiality issues because the industry considers the requested product and technology information to be CBI. The commenter argued that, although linewidth estimates were available in publicly available databases such as the World Fab Forecast, those data were only estimates and their accuracy was questionable. Thus, disclosing linewidth or technology node threatens the disclosure of intellectual property. The commenter concluded by stating that several of the proposed data elements, such as film type and technology node, were the same types of data that were required in the recipe-specific emission factor reporting that was removed from the rule in the amendments that were finalized on November 13, 2013 (78 FR 68162) as a result of the industry's petition for reconsideration and EPA's grant of the petition.

*Response:* As noted above, the EPA is finalizing a list of data elements that must be submitted as part of emission factor and DRE measurements included in the Triennial Report. After considering this comment, we have limited this list to those parameters that are absolutely necessary for relating the new data to the existing data and to the corresponding default emissions factors and DRE factors. Rather than specifying additional parameters that may affect emission and DRE factors, the EPA is relying on the existing requirements of 40 CFR 98.96(y)(2), which state in part that the Triennial Report must describe (1) ''How the gases and technologies used in semiconductor manufacturing using 200 mm and 300 mm wafers in the United States have changed in the past three years and whether any of the identified changes are likely to have affected the emissions characteristics of semiconductor manufacturing processes in such a way that the default utilization and by-product formation rates or default destruction or removal efficiency factors of this subpart may need to be updated'' and (2) ''the effect on emissions of the implementation of new process technologies and/or finer line width processes in 200 mm and 300 mm technologies, the introduction of new tool platforms, and the introduction of new processes on previously tested platforms.'' We have concluded that these requirements, in combination with the introductory sentence of 40 CFR 98.96(y)(2)(iv), which requires reporters to ''provide any utilization and by-product formation rates and/or destruction or removal efficiency data that have been collected in the previous three years that support the changes in semiconductor manufacturing processes described in the report,'' already require reporters to explain how each measurement illustrates one or more of the changes in semiconductor manufacturing processes described in the report. As discussed below, this in turn requires reporters to discuss the parameters whose changes are (or are not) affecting emission factors and emissions.

As noted in the proposed rule, the EPA's intent in specifying the list of data requirements is to allow us to better understand the data being submitted and its implications for the current subpart I default utilization rates, by-product formation rates, and DREs. To achieve this goal, the submitted data must include information on two relationships: The relationship between the new data and the existing emission factors and DREs, and the relationship between the new data and the technological developments in semiconductor manufacturing. The relatively limited list of parameters in the final revision to 40 CFR 98.96(y)(2)(iv) illuminates the first relationship, while the explanation of the link between the data and the changes in semiconductor manufacturing illuminates the second.

The proposed amendment to 40 CFR 98.96(y)(2)(iv) would have required the submission of the specified data elements only ''where available.'' Thus, it would not have required facilities submitting the Triennial Report to

collect any new data, but only to submit data that were already in their possession (and, as specified in the November 13, 2013 amendments to subpart I, that supported the description of the technological changes in the Triennial Report). Nevertheless, we agree with the commenter that some of the proposed data elements, specifically, film type, linewidth, and substrate type, would not necessarily be helpful to illuminating how the processes or DRE equipment for which the submitted measurements were made are different from the processes and equipment that are represented by the current default factors. First, these particular parameters may not be the key drivers that result in a new set of processes having different emission factors from the old set of processes. Second, by itself, information on linewidth and substrate type would be difficult to relate to the data on which the current factors are based because this information was not included in the earlier data.

We believe that the existing text of 40 CFR 98.96(y)(2) requires reporters to explain how the measurements illustrate the impacts of the changes in semiconductor manufacturing described in the report. This allows reporters to focus on the relevant parameters and to explain how and how much they are influencing emission factors and emissions, which is more informative than simply providing the value of a parameter by itself. For example, where a new tool platform has been introduced, *e.g.,* because a tool manufacturer is now supplying a market that it did not supply previously, the Triennial Report should describe this development and note that the new data have expanded the set of represented tool manufacturers for a particular gas and process type relative to the old data. (It would not be necessary for the reporter to specify the ''new'' manufacturer.)[6] Similarly, where emission factors have changed because a new film type that includes less (or more) carbon is being manufactured, the Triennial Report should note that the decrease (or increase) in carbon has resulted in a lower (or higher) $CF_4$ emission factor from $NF_3$ chamber cleaning processes. This type of qualitative description allows Triennial Report submitters to avoid identifying exact values or entities that may pose disclosure concerns. (While the data elements included in 40 CFR 98.96(y)(2)(i), (ii), (iii), and (v) have been determined to be CBI, semiconductor manufacturers have historically been reluctant to submit certain sensitive data despite this determination.)

The EPA is aware of multiple parameters that may affect emission factors and DREs. For emission factors, these include radio frequency power, pressure, flow rate, film type, feature type, and tool platform in addition to process type and wafer size, and this list is probably not exhaustive. For DREs, these include equipment make and model and age as well as input gas and process type. The reason that only some of these parameters were used to establish the categories for the default emission factors in Tables I–3 and I–4 and for the default DREs in Table I–16 was not because the other parameters did not influence emissions.[7] Rather, it was because adding one or more other parameters would have increased the burden and complexity of the calculations under subpart I and would have introduced another source of error from the additional F–GHG apportioning required, offsetting the decrease in model error associated with including the additional parameter (see 77 FR 63551). Thus, if one or more of the parameters listed above is a driver behind a change in emission factors for certain sets of processes in the field, facilities should note this in their reports. Acknowledging the relevance of a parameter does not compel the EPA to expand the number of categories of default factors in Tables I–3, I–4, or I–16 to reflect the influence of that parameter, but helps us to understand how and why the new data are different from the old data, and therefore whether and how the current default emission factors and DREs may need to be updated. Again, this is the goal of the revision to 40 CFR 98.96(y)(2)(iv). We anticipate that, except in extraordinary circumstances, updates would consist of revisions to emission factors and DREs in the current set of categories, not an increase in the number of categories.

The EPA agrees that some of the proposed data requirements are not relevant to DREs, and the EPA has therefore distinguished in the final rule between the data required for DREs and the data required for emission factors in the Triennial Report. However, the EPA disagrees with the commenter's assertion that process type is not relevant to DREs, which is contradicted by the fact that the current rule includes different sets of default DREs for etch processes and chamber clean processes.[8] Thus, the EPA has retained ''process type'' in the list of data elements that must be submitted with DRE data.

Because the limited sets of data elements required by this final rule should always be available and are necessary for the measurements to be meaningful, we have removed the qualification ''where available'' from the lists of required data elements for emission factor and DRE measurements.

3. When the Final Amendments to Subpart I Become Effective

As shown in Table 4 of this preamble and consistent with the description of amendments in section I.E.1 of this preamble, all amendments to subpart I will be effective on January 1, 2017 as proposed and will be reflected starting with RY2016 reports that are submitted in 2017. No comments were received on the timing of revisions to subpart I.

*G. Subpart N—Glass Production*

In this action, we are finalizing amendments to subpart N of Part 98 (Glass Production) as proposed. This section discusses the substantive revisions to subpart N; additional minor corrections are summarized in the Final Table of Revisions available in the docket for this rulemaking (Docket Id. No. EPA–HQ–OAR–2015–0526).

The EPA received only supportive comments for subpart N; therefore, there are no changes from proposal to the final rule based on these comments. See the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart N.

[6] A similar approach was used by the Semiconductor Industry Association (SIA) to describe the representativeness of emission factor measurements with respect to tool manufacturers during the development of the November 13, 2013 final amendments to subpart I. (See, *e.g.,* SIA's ''Report to EPA on Etch Factor Proposal for Fab GHG Emissions Reporting,'' page 18, EPA–HQ–OAR–2011–0028–0074.)

[7] For example, the report cited by the contractor (''Report to EPA on Etch Factor Proposal for Fab GHG Emissions Reporting,'' Docket item number EPA–HQ–OAR–2011–0028–0074) showed that radio frequency power had the second-highest R squared value of any single-variable model.

[8] During the development of the current subpart I requirements, SIA supported using process type to organize and apply default DREs. In the document titled, ''Briefing Paper on Abatement Issues: Destruction Removal Efficiency (DRE), SIA stated, ''SIA is proposing an alternative method to group abatement systems and apply the DREs to F-gas emissions. This alternative is based on a combination of the process types [emphasis added] as defined in the MRR and the gas or gas groups being treated by the abatement units'' (SIA. Briefing Paper on Abatement Issues: Destruction Removal Efficiency (DRE), January 10, 2012, EPA–HQ–OAR–2011–0028–0045).

We are finalizing amendments that are intended to clarify the rule requirements in subpart N, while resulting in no impact on burden for reporters. Specifically, the revisions clarify that a default value of 1.0 can be used for the fraction of calcination and the carbonate mass fraction for each carbonate type contained in the raw materials charged to the furnace. As proposed, we are revising 40 CFR 98.144(b), 40 CFR 98.144(c), 40 CFR 98.144(d), 40 CFR 98.146(b)(5), and 40 CFR 98.146(b)(7) to clarify that no further chemical analysis is required if the default value of 1.0 is selected. These amendments will clarify the original intent of the requirements and address multiple Help Desk questions. Additional minor editorial corrections may be found in the Final Table of Revisions in the docket for this rulemaking (Docket Id. No. EPA–HQ–OAR–2015–0526).

As shown in Table 4 of this preamble and consistent with the description of amendments in section I.E.2 of this preamble, all amendments to subpart N will be effective on January 1, 2018 as proposed and will be reflected starting with RY2017 reports that are submitted in 2018. No comments were received on the timing of revisions to subpart N.

*H. Subpart O—HCFC–22 Production and HFC–23 Destruction*

1. Summary of Final Amendments to Subpart O

We are finalizing all amendments to subpart O of Part 98 (HCFC–22 Production and HFC–23 Destruction) as proposed. This section discusses all of the revisions to subpart O. We are also finalizing as proposed confidentiality determinations for new data elements resulting from the revisions to subpart O; see section IV of this preamble and the memorandum ''Final Data Category Assignments and Confidentiality Determinations for Data Elements in the Proposed 2015 Revisions'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for additional information on the final category assignments and confidentiality determinations for these data elements.

The EPA received several comments for subpart O. Substantive comments are addressed in section III.H.2 of this preamble; see the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart O.

a. Revisions to Subpart O To Streamline Implementation

This section discusses the amendments to subpart O to simplify and streamline GHGRP requirements and increase the efficiency of the report submittal process. We are finalizing these revisions to subpart O as proposed. Specifically, we are removing the reporting requirements at 40 CFR 98.156(d)(2), (3), and (4), which include, respectively, the concentration (mass fraction) of HFC–23 at the outlet of the destruction device, the flow rate at the outlet of the destruction device in kilograms per hour, and the emission rate calculated from these two parameters. As discussed in the proposed rule, reporting of these data elements is no longer needed due to previous revisions to subpart O (81 FR 2556).

b. Revisions to Subpart O To Improve the Quality of Data Collected Under Part 98

This section discusses the amendments to subpart O to improve the quality of data collected under Part 98. We are finalizing these revisions to subpart O as proposed. Specifically, we are (1) Reinstating in 40 CFR 98.156(d) reporting of the method used to calculate the revised destruction efficiency and (2) requiring facilities to report HCFC–22 production and HFC–23 emissions for each HCFC–22 production process rather than for the facility as a whole. As described in the preamble to proposed rule (81 FR2556), these amendments will allow the EPA to collect data that will improve the EPA's understanding of GHG emissions from HCFC–22 production and HFC–23 destruction while generally resulting in only a slight increase in burden to reporters.

2. Summary of Comments and Responses on Subpart O

This section summarizes the significant comments and responses related to the proposed amendments to subpart O. See the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart O.

*Comment:* One commenter disagreed with the EPA's proposed reinstatement of the requirement to report the method used to calculate the revised destruction efficiency. In the preamble to the proposed rule, the EPA stated that this data element was inadvertently removed by the Final Inputs Rule and was important for understanding data quality. The commenter argued that this rationale did not justify reinstatement of the data element, especially given that the previous change was made just 18 months ago. The commenter noted that the EPA was also proposing to reinstate previously removed data elements for other subparts, and expressed the opinion that the number of regulatory revisions in the GHGRP, which has been effect for six years, should be decreasing, not increasing. The commenter concluded that the EPA should avoid removing and reinstating data elements as such changes ''place an undue burden on reporters and undermine confidence in the GHGRP.''

*Response:* While we agree with the commenter that it is important to minimize instances where the EPA inadvertently removes a data element and then reinstates it, we disagree that avoiding such reversals is more important than correcting an error that hinders our understanding of data quality. As noted in the preamble to the proposed rule (81 FR 2556), reporting of the method used to calculate the revised destruction efficiency helps us to understand the rigor of the method and the reliability of the resulting revised destruction efficiency. We do not believe that the reinstatement of this data element, which will be implemented through a revision to the e-GGRT data reporting system, places an undue burden on reporters. Similarly, we do not believe that the reinstatement represents an acceleration of the rate of amendment of Part 98 or undermines confidence in the GHGRP. The Final Inputs Rule removed 378 data elements from Part 98 (79 FR 63752); only three of these are being reinstated by this final rule.

3. When the Final Amendments to Subpart O Become Effective

As shown in Table 4 of this preamble and consistent with the description of amendments in section I.E.2 of this preamble, all amendments to subpart O will be effective on January 1, 2018 as proposed and will be reflected starting with RY2017 reports that are submitted in 2018. No comments were received on the timing of revisions to subpart O.

*I. Subpart Q—Iron and Steel Production*

In this action we are finalizing amendments to subpart Q of Part 98 (Iron and Steel Production). This section discusses one substantive revision to

subpart Q; additional minor amendments, corrections, and clarifications are summarized in the Final Table of Revisions available in the docket for this rulemaking (Docket Id. No. EPA–HQ–OAR–2015–0526). The EPA received no comments objecting to the proposed revisions to subpart Q.

We are finalizing a revision to subpart Q to align with final revisions to subpart Y (Petroleum Refineries). Under 40 CFR 98.172(b), facilities that report under subpart Q are referred to provisions in 40 CFR part 98, subpart Y, for reporting $CO_2$ emissions from flares that burn blast furnace gas or coke oven gas. The final revisions clarify that subpart Q facilities should exclude pilot gas from the flare gas GHG emissions. Additional information regarding these final revisions may be found in section III.M.1 of this preamble.

As shown in Table 4 of this preamble and consistent with the description of amendments in section I.E.2 of this preamble, all amendments to subpart Q will be effective on January 1, 2018 as proposed and will be reflected starting with RY2017 reports that are submitted in 2018. No comments were received on the timing of revisions to subpart Q.

*J. Subpart S—Lime Manufacturing*

In this action we are finalizing several amendments to subpart S of Part 98 (Lime Manufacturing). This section discusses all final amendments to subpart S. We are also finalizing as proposed confidentiality determinations for new data elements resulting from the revisions to subpart S; see section IV of this preamble and the memorandum ''Final Data Category Assignments and Confidentiality Determinations for Data Elements in the Proposed 2015 Revisions'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for additional information on the final category assignments and confidentiality determinations for these data elements.

The EPA received several comments for subpart S. Substantive comments are addressed in section III.J.2 of this preamble; see the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart S.

1. Summary of Final Amendments to Subpart S

a. Revisions to Subpart S To Improve the Quality of Data Collected in Part 98

The EPA is requiring as proposed reporting of three data elements that influence $CO_2$ emissions from lime manufacturing: Annual emission factors for each lime product type produced, annual emission factors for each calcined byproduct/waste by lime type that is sold, and annual average results of chemical composition analysis of each type of lime product produced and calcined byproduct/waste sold.

After consideration of comments received requesting clarity on how a reporter is to calculate annual emission factors, as described in section III.J.2 below, the EPA is finalizing 40 CFR 98.193(b)(2)(vi), (vii) and (viii), which contain new Equations S–5 to S–10 to calculate the 12-month average based on monthly emission factors for lime product type produced and calcined byproduct/waste by lime type that is sold, in addition to the associated monthly results of the chemical composition analysis of each type of lime product produced and calcined byproduct/waste that is sold. As described in the preamble to the proposed rule (81 FR 2557), collecting these data will allow us to understand why emissions have increased or decreased in a particular year or over longer periods. Thus they are important for informing the development of future GHG policies and programs. In addition, they are important for explaining U.S. emission trends through the U.S. GHG Inventory.

2. Summary of Comments and Response on Subpart S

This section summarizes the significant comments and responses related to the proposed amendments to subpart S. See the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart S.

*Comment:* Two commenters stated that the EPA should refrain from collecting and retaining highly confidential business information unless there is a compelling reason to do so. In this case, the commenters assert that an assessment or evaluation of emission factors over long periods of time will not be a reliable indicator of why overall GHG emissions may have increased or decreased. The commenters explain that calcination-related emissions make up approximately 54 percent of total $CO_2$ emissions in the lime industry, with minimal variability in emission factors month to month or year to year for the various product or calcined byproduct/waste type produced. Further, the commenters state that changes and variability in emissions are far more likely to be influenced by changes in production which are driven by market conditions, and to a lesser extent from variability in fuel combustion emissions which are already reported under the GHG Reporting Rule, subpart C. The commenters conclude that the proposed new data points will be of negligible value and at the same time will increase the potential for sensitive information to inadvertently be made public.

*Response:* The EPA disagrees with the commenter that reporting new data points will be of negligible value. Emission factors in combination with production data do inform trends and represent an emission intensity or emission rate associated with the lime production process (*e.g.,* GHG emission per unit of production by lime type). The collection of these data (annual average emissions factors for each lime product produced by type, annual emissions factors or calcined byproduct/waste by lime type that is sold, in addition to their associated annual average results from chemical composition analysis) will enhance the ability for EPA to understand emission trends, in particular emission rates at facilities to understand why emissions are decreasing or increasing, in conjunction with other existing data collected under GHGRP. In addition, collection of this information will also advance integration of GHGRP information into the U.S. GHG Inventory, and hence improve those estimates to better reflect industry conditions and related annual trends from lime production than the current use of IPCC default factors. The EPA adds that separate from this rulemaking the National Lime Association has provided comments to the EPA during the public review of the U.S. GHG Inventory (comments dated February 22, 2013, March 14, 2014) [9] to discontinue use of IPCC default emissions factors, specifically for calcined byproducts

[9] See ''Letter to Leif Hockstad, U.S. EPA, from William C. Herz, National Lime Association re: Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990–2012'' and ''National Lime Association comments on Inventory of U.S. Greenhouse Gas Emissions and Sinks (78 FR 12013, February 22, 2013), Arline M. Seeger''. Available in Docket Id. No. EPA–HQ–OAR–2015–0526.

such as lime kiln dust. Further, as noted in these comments by National Lime Association on the U.S. GHG Inventory, this information required in this final rule will complement production data the EPA is currently collecting on lime produced that is sold under 40 CFR 98.196(a)(6) and (b)(18). Finally, this information will enhance EPA's ability to compare and verify emissions across subpart S, but also the EPA's ability to integrate GHGRP information is also enhanced by the ability to present a transparent and consistent basis for estimating emissions with underlying activity parameters within the inventory report.

The EPA acknowledges commenter's concerns about the potentially confidential nature of the new data elements. As noted in the section III.J of the preamble to the proposed rule, the EPA determined these elements will be eligible for confidential treatment and will only publish information (*e.g.,* national averages based on GHGRP facility-level data) that meet criteria for aggregation and publication of CBI information in **Federal Register** Notification–9911–98–OAR.[10]

*Comment:* One commenter requested that the EPA add clear and unambiguous language that defines ''Annual emission factor.'' The commenter stated that the proposed rule does not adequately explain how these elements are to be calculated. The commenter suggested that the most sensible and least burdensome method is a straight 12-month average of the monthly emission factors. According to the commenter, this calculation method should be explicitly prescribed in the final rule if the data points are required.

*Response:* The EPA agrees that clear language, in particular prescribing the calculation method in the rule, will facilitate reporting of these new data points. Per the commenter's specific recommendation, the EPA has added 40 CFR 98.193(b)(2)(vi), (vii) and (viii), which contain new Equations S–5 to S–10 to specify calculation of the 12-month average based on monthly emission factors for lime product type produced and calcined byproduct/waste by lime type that is sold, in addition to the associated monthly results of the chemical composition analysis of each type of lime product produced and calcined byproduct/waste that is sold.

[10] *See https://www.epa.gov/ghgreporting/confidential-business-information-ghg-reporting#CBI__Data__Aggregation.*

3. When the Final Amendments to Subpart S Become Effective

As shown in Table 4 of this preamble and consistent with the description of amendments in section I.E.2 of this preamble, all amendments to subpart S will be effective on January 1, 2018 as proposed and will be reflected starting with RY2017 reports that are submitted in 2018. No comments were received on the timing of revisions to subpart S.

*K. Subpart V—Nitric Acid Production*

In this action, we are finalizing three amendments to subpart V of Part 98 (Nitric Acid Production). This section discusses the revisions to subpart V; additional minor clarifications, including a change to the final rule, are summarized in the Final Table of Revisions available in the docket for this rulemaking (Docket Id. No. EPA–HQ–OAR–2015–0526). We are also finalizing as proposed confidentiality determinations for new data elements resulting from the revisions to subpart V; see section IV of this preamble and the memorandum ''Final Data Category Assignments and Confidentiality Determinations for Data Elements in the Proposed 2015 Revisions'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for additional information on the final category assignments and confidentiality determinations for these data elements.

The EPA received only supportive comments for subpart V; therefore, there are no changes from proposal to the final rule based on these comments. See the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart V.

1. Revisions to Subpart V To Streamline Implementation

We are finalizing one amendment that is intended to simplify and streamline the requirements of subpart V and increase the efficiency of the report submittal process. Subpart V provides the option of requesting the Administrator to approve an alternative method of determining $N_2O$ emissions from adipic acid production. Previously, reporters were required to request such approval annually in all circumstances. As proposed, we are revising 40 CFR 98.223(a)(2) to state conditions under which annual approval will not be required. As further discussed in section III.C of this preamble for subpart E, the EPA is allowing for use of the alternative method to be automatically approved for the next reporting year if the reporter received approval to use an alternative method in the previous reporting year and the method has not changed. Reporters who do not wish to change their method from the one approved for the prior year will only need to notify the EPA in the annual report submission that they are using an already approved alternative method. If, however, a reporter makes any changes to the previously-approved alternative method, then the reporter must request permission to use the revised method as stated in 40 CFR 98.223(a)(2). These revisions are being finalized as proposed.

2. Revisions to Subpart V To Improve the Quality of Data Collected Under Part 98

We are finalizing two amendments that are intended to improve the quality of data collected under subpart V. First, as proposed, we are revising 40 CFR 98.220 to revise the definition of the source category to require reporting from all reporters that produce nitric acid, regardless of the nitric acid strength. We are finalizing an updated definition of nitric acid to apply to all nitric acid strengths, to ensure that subpart V reporting captures all $N_2O$ emissions related to the production of nitric acid. These final changes are summarized in the Final Table of Revisions available in the docket for this rulemaking (Docket Id. No. EPA–HQ–OAR–2015–0526).

As proposed, we are also revising 40 CFR 98.226(h) to require reporting of the date of installation of any $N_2O$ abatement technology (if applicable). This date is readily available or already collected by reporters, and would not require additional data collection or monitoring. This data element can be carried over from one reporting year to the next. The reporter will not be required to make changes unless additional abatement technology is installed at a later date.

3. When the Revisions to Subpart V Become Effective

Two of the three amendments to subpart V are effective on January 1, 2018 as shown in Table 4 of this preamble and are consistent with the description of amendments effective on that date in section I.E.2 of this preamble. The remaining amendment to subpart V is effective on January 1, 2019 as shown in Table 5 of this preamble. Although some amendments to subpart V are effective January 1, 2018 and some

are effective January 1, 2019, all amendments to subpart V will be reflected in RY2018 reports that are submitted in 2019 as shown in Tables 4 and 5 of this preamble. No comments were received on the timing of revisions to subpart V.

The amendments to 40 CFR 98.220 of subpart V require new facilities to report to the GHGRP. We are making these revisions effective January 1, 2018 so that the new reporters will take the necessary action to begin monitoring to be in full compliance with these revisions throughout 2018.

The amendment to 40 CFR 98.223(a)(2) serves to simplify and streamline reporting for subpart V facilities by allowing for the use of an alternative method for determining $N_2O$ emissions if the reporter received approval to use an alternative method in a prior reporting year and the method has not changed. Reporters who do not wish to change their method from the one approved for the prior year will only need to notify the EPA in the annual report submission that they are using an already approved alternative method. If, however, a reporter makes any changes to the previously-approved alternative method, then the reporter must request permission to use the revised method as stated in 40 CFR 98.223(a)(2). Subpart V specifies that notification, if needed, of the use of alternative monitoring must be submitted within the first 30 days of the reporting year, which equates to January 30. Because the notification, if needed, must take place within the reporting year, we are making this amendment effective January 1, 2018, so that reporters will not have to notify the Agency if they are using the same alternative method as in the previous reporting year.

The amendment to 40 CFR 98.226(h) adds one new reporting requirement to subpart V, the date of installation of any $N_2O$ abatement technology. This date is readily available to the reporters and is consistent with the data collection and monitoring in the current rule; because the reporter does not need to take action during the reporting year, this revision will be effective January 1, 2019 and reflected in RY2018 reports that are submitted in 2019.

### *L. Subpart X—Petrochemical Production*

In this action we are finalizing several amendments, clarifications, and corrections to subpart X of Part 98 (Petrochemical Production). This section discusses the substantive revisions to subpart X. We are finalizing as proposed all of the minor amendments, corrections, and clarifications presented in the Final Table of Revisions (see Docket Id. No. EPA–HQ–OAR–2015–0526). We are also finalizing as proposed confidentiality determinations for new data elements resulting from the revisions to subpart X; see section IV of this preamble and the memorandum ''Final Data Category Assignments and Confidentiality Determinations for Data Elements in the Proposed 2015 Revisions'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for additional information on the final category assignments and confidentiality determinations for these data elements.

The EPA received several comments for subpart X. Substantive comments are addressed in section III.L.2 of this preamble; see the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart X.

#### 1. Summary of Final Amendments to Subpart X

##### a. Revisions to Subpart X To Streamline Implementation

We are finalizing a revision to subpart X to align with the final revisions to subpart Y. Under 40 CFR 98.243(c), facilities that report to subpart X are referred to provisions in subpart Y for reporting $CO_2$, $CH_4$, and $N_2O$ emissions from flares. The final revisions clarify that facilities should exclude pilot gas from the flare gas GHG emissions. Additional information regarding these final revisions may be found in section III.M.1 of this preamble.

We are also finalizing, with minor clarification to what was proposed (see section III.L.2 of this preamble), amendments to 40 CFR 98.246(a)(5) to allow operators of an integrated ethylene dichloride (EDC) and vinyl chloride monomer (VCM) process to report the measured quantity of VCM and an estimate of the amount of EDC produced as an intermediate in the process. We are also finalizing as proposed a modification of 40 CFR 98.240(a) to indicate that a reporter may elect to consider the entire integrated process (rather than just the EDC operations) to be the petrochemical process for the purposes of complying with the mass balance method.

##### b. Revisions to Subpart X Improve the Quality of Data Collected in Part 98

We are finalizing as proposed the addition of reporting requirements for facilities that use the mass balance approach to determine emissions under 40 CFR 98.243(c) to report the annual average of the measurements of the carbon content and molecular weight of each feedstock and product reported under subpart X. Collection of the carbon content of each feedstock and product will enhance the quality and accuracy of the data collected under the GHGRP by providing additional information that will be used to verify the accuracy of reported emissions. Once this data element and the molecular weight of the feedstock or product are aggregated to the national level, they will be used to improve national emission estimates in the U.S. GHG Inventory, while resulting in only a slight increase in burden for reporters.

#### 2. Summary of Comments and Responses on Subpart X

This section summarizes the significant comments and responses related to the proposed amendments to subpart X. See the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart X.

*Comment:* One commenter expressed confusion with the revision of 40 CFR 98.246(a)(5). According to the commenter, in the preamble, the EPA seems to require facilities using the optional method to report both the measured amount of VCM produced and an estimate of EDC produced as an intermediate (81 FR 2588). The commenter stated that the regulatory text does not appear to require this approach. The commenter provided suggested revisions to clarify the reporting requirements.

*Response:* The final amendments to 40 CFR 98.246(a)(5) retain the proposed requirement to report either a measured or estimated amount of intermediate EDC produced in an integrated EDC/VCM process unit. We are retaining both options for this reporting requirement to provide reporters additional flexibility. Additionally, the final amendments to 40 CFR 98.246(a)(5) clarify our intentions by making two changes to the proposed language. First, we have made a minor change to the proposed language under 40 CFR 98.246(a)(5) to

remove any reference to VCM produced being required to be reported under this specific paragraph of the rule. This revision does not change the fact that the amount of VCM produced in an integrated EDC/VCM process unit must still be reported, regardless of whether the reported amount of intermediate EDC produced is estimated or measured, as reporting of the amount of VCM produced is already required under the reporting requirement for all products in 40 CFR 98.246(a)(13) and we neither proposed nor intended for this revision to make any changes to 40 CFR 98.246(a)(13). This minor change from proposal is intended to clarify the revision and eliminate the proposed duplicative requirement for reporting of VCM production. Second, we have made a change to the proposed language in subpart X to require that the estimated quantity of EDC is to be based on process knowledge and best available data.

The commenter recommended removing the proposed option for reporting the measured quantity of EDC for an integrated EDC/VCM process. Although we expect that a reporter that elects to consider an integrated EDC/VCM process to be the petrochemical process unit is unlikely to measure the amount of intermediate EDC produced, we do not want to preclude that possibility. Thus, we have retained both proposed reporting options for the amount of intermediate EDC produced in the final rule. After further consideration of the comment, we realized that the commenter also may have been confused because the proposed option to report a measured quantity of EDC did not mention reporting the amount of VCM. Although the proposed revision to 40 CFR 98.246(a)(5) did not indicate that the amount of VCM must be reported for such processes when the reported amount of intermediate EDC is based on measurements, the amount of VCM is currently, and would still have been, required to be reported under 40 CFR 98.246(a)(13); this requirement is unchanged in the final rule. To further clarify this point, we removed any mention of VCM from 40 CFR 98.246(a)(5) in the final rule to specify that only intermediate EDC production for any integrated EDC/VCM process unit that a reporter elects to consider as the petrochemical process unit would be reported under 40 CFR 98.246(a)(5). VCM production for any integrated EDC/VCM process unit that a reporter elects to consider as the petrochemical process unit will continue to be reported under 40 CFR 98.246(a)(13). This change is intended to reduce confusion and remove duplicative reporting requirements for VCM production from these process units. Additionally, we have clarified subpart X to specify that if the reporter elects to report an estimated value, the estimated value is to be based on process knowledge and best available data. This additional language should provide guidance to reporters with regard to how the estimate of intermediate EDC production is to be determined, which will help to further reduce confusion over the revised requirements in 98.246(a)(5). This language is consistent with EPA's intentions in the proposal for how reporters should determine the estimated value. Identical modifications have also been made to the proposed revisions in 40 CFR 98.246(b)(8). These final revisions are included in the Final Table of Revisions to this rulemaking (see Docket Id. No. EPA–HQ–OAR–2015–0526).

3. When the Final Amendments to Subpart X Become Effective

As shown in Table 4 of this preamble and consistent with the description of amendments in section I.E.2 of this preamble, all amendments to subpart X will be effective on January 1, 2018 as proposed and will be reflected starting with RY2017 reports that are submitted in 2018. No comments were received on the timing of revisions to subpart X.

*M. Subpart Y—Petroleum Refineries*

In this action we are finalizing several amendments to 40 CFR part 98, subpart Y (Petroleum Refineries), to reduce burden for reporters, improve data quality, and provide corrections and clarifications. This section discusses the substantive revisions to subpart Y. We are finalizing as proposed the minor corrections and clarifications to subpart Y of Part 98. These minor revisions are summarized in the Final Table of Revisions available in the docket for this rulemaking (Docket Id. No. EPA–HQ–OAR–2015–0526). We are also finalizing as proposed confidentiality determinations for new and revised data elements resulting from the revisions to subpart Y; see section IV of this preamble and the memorandum ''Final Data Category Assignments and Confidentiality Determinations for Data Elements in the Proposed 2015 Revisions'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for additional information on the final category assignments and confidentiality determinations for these data elements.

The EPA received several comments for subpart Y. Substantive comments are addressed in section III.M.2 of this preamble; see the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart Y.

1. Summary of Final Amendments to Subpart Y

a. Revisions to Subpart Y To Streamline Implementation

We are finalizing as proposed the amendment to paragraph 40 CFR 98.253(b) to clarify that pilot gas, which is the gas used to maintain a pilot flame at the flare tip, may be, but is not required to be, excluded from the quantity of flare gas used to perform GHG emissions calculations. As we described in the proposed rule, such emissions are relatively small and may be difficult to determine without installation of a meter, a burden we did not intend to require. We are making a minor change to the proposed revision, as reflected in the Final Table of Revisions available in the docket for this rulemaking (Docket Id. No. EPA–HQ–OAR–2015–0526). The final revision to subpart Y more clearly states that all gas discharges must be included in the flare GHG emission calculation with the exception noted above. This minor change from proposal does not alter the intent of this revision.

After consideration of comments received, as discussed in section III.M.2 of this preamble, we are finalizing as proposed the amendment to 40 CFR 98.256(e) to require that facilities provide a yes/no indication as to whether a flare has a flare gas recovery system. As discussed in the proposed rule, this requirement will provide critical information for characterizing flare emissions, assessing trends, and informing policy decisions, while adding only a slight burden to reporters. These two revisions affect subpart Y as well as subparts Q and X, as described in the preamble to the proposed rule (81 FR 2560).

b. Revisions to Subpart Y To Improve the Quality of the Data Collected Under Part 98

We are finalizing as proposed all of the amendments to the delayed coking unit (DCU) GHG emission calculation methodology to require facilities to use the steam generation model. As further described in the proposed rule preamble, these amendments provide a more accurate means of estimating

methane emissions from DCUs and also align the GHGRP methodology with the methodology recently incorporated into the Emission Estimation Protocol for Petroleum Refineries, Version 3, by EPA's Office of Air Quality Standards and Planning (OAQPS) (the Refinery Protocol [11]).

In particular, the proposed amendments for determining the mass of coke in the coke drum, the mass of water in the coke drum, and the average temperature of the coke bed contents are being finalizing as proposed. For the mass of coke in the coke drum, the amendments require reporters to determine this quantity based on either (1) Company records, or (2) drum dimensions, drum outage (parameters already required to be recorded under the current rule) and a new equation provided in the rule (Equation Y–18a). For the mass of water in the coke drum, the amendments require reporters to determine this quantity based on the height of water in the coke drum and the mass of coke in the coke drum. For determining the average temperature of the coke bed contents, the amendments require reporters to comply with one of two methods, either: (1) A method based on the measured overhead temperature of the drum, or (2) a method based on the overhead pressure using a temperature pressure correlation equation provided in the rule. The use of the temperature-pressure correlation will allow reporters to use current pressure monitoring and recordkeeping practices to obtain the information needed to implement the new methodology. As such, the new methodology will not require the installation or use of new monitoring systems.

Additionally, we are finalizing as proposed to allow facilities that have DCU vent gas measurements to use these measurements to develop a unit-specific methane emissions factor for the DCU. This allows both reporters that have previously used the combined Equation Y–18/Y–19 method, as well as other reporters, to use the measurement data available to provide an improved, site specific emissions estimate. If a unit specific methane emissions factor is not available, we are finalizing as proposed that reporters must use the default methane emissions factor for DCU of 7.9 kg methane per metric ton of steam generated.

[11] Emission Estimation Protocol for Petroleum Refineries. Version 3. Prepared for U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC. August 2015. See *https://www3.epa.gov/ttn/chief/efpac/protocol/ProtocolReport2015.pdf.*

With regard to reporting requirements for emissions from DCUs, we are finalizing as proposed the amendment that the new methodology be used to estimate the emissions for each DCU and that all DCU data elements be reported at the unit level. As further discussed in the preamble to the proposed rule, this revision provides information necessary for us to verify reported data, and streamlines reporting requirements for reporters.

In related revisions, we are finalizing as proposed the revisions to 40 CFR 98.253(j) to delete ''$CH_4$ emissions if you elected to use the method in paragraph (i)(1) of this section,'' because the DCU methodology no longer includes an option to use a combination of techniques to determine the $CH_4$ emissions from DCU decoking operations. We are also finalizing as proposed the inclusion of ''coke produced per cycle'' in the list of quantities of petroleum process streams that are determined using company records in 40 CFR 98.254(j), and the addition of a requirement that temperature and pressure measurements associated with the DCU are to be determined ''using process instrumentation operated, maintained, and calibrated according to manufacturer's instructions.'' These revisions are included to clarify monitoring requirements associated with the new DCU methodology. Additionally, we are finalizing as proposed the revisions to the recordkeeping requirements in 40 CFR 98.257 associated with the DCU to harmonize the recordkeeping requirements with the new DCU methodology equations.

We are finalizing as proposed amendments to revise 40 CFR 98.253(h)(1) to clarify that reporters with ''asphalt blowing operations controlled either by vapor scrubbing or by another non-combustion control device'' must use Equations Y–14 and Y–15 to calculate their GHG emissions. Lastly, we are also finalizing as proposed revisions to 40 CFR 98.253(h)(2) to clarify that reporters with ''asphalt blowing operations controlled by either a thermal oxidizer, a flare, or other vapor combustion control device'' must use Equations Y–16a/Y–16b and Y–17 to calculate their GHG emissions. These amendments will yield more accurate emissions values as reporters will now be required to use the most appropriate equations for ''other'' control systems used for asphalt blowing operations.

2. Summary of Comments and Responses

This section summarizes the significant comments and responses related to the proposed amendments to subpart Y. See the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart Y.

*Comment:* One commenter objected to the amendments to 40 CFR 98.256(e)(3) and (6), stating that the proposed amendments are redundant and duplicative. The commenter stated that the EPA already has this information under 40 CFR part 60, subpart Ja—Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007 (henceforth referred to as NSPS Ja) and that they do not support reporting this information under the GHGRP. The commenter also noted that, due to the special modification provisions set forth in 40 CFR 60.100a(c), nearly all refinery flares with few exceptions fall under NSPS Ja. The commenter stated that the NSPS Ja requirements at 40 CFR 60.103a(a) require carbon content, molecular weight and annual mass of flare gas combusted, and an indication of whether or not each flare is serviced by a flare gas recovery system to be documented in the flare management plan and submitted to the EPA. The commenter stated that the EPA does not need to have the same information submitted to it under two separate rules because such duplicative reporting is wasteful and unnecessary.

*Response:* The proposed revisions in 40 CFR 98.256(e)(6) are modifications to existing reporting requirements to provide more direct reporting requirements for reporters using mass flow meters, so that those reporters would no longer need to separately determine the molecular weight of the gas and volumetric flow rate and instead must report only the measured mass flow rate. This amendment reduces GHGRP reporting burden for reporters that use mass flow meters. This information, which is needed for verification of the reported emissions, is not available in the NSPS Ja flare management plans so reporting this information is not duplicative. We are therefore finalizing the amendments to 40 CFR 98.256(e)(6) related to reporting the carbon content of flare gas, and

either the volume and molecular weight of that gas or the mass of that gas, as proposed.

Regarding the proposed revision to 40 CFR 98.256(e)(3), while the presence of a flare gas recovery system could be gleaned from flare management plans for flares subject to the NSPS Ja requirements, not every flare required to report under the GHGRP is subject to the NSPS Ja requirements. We have received approximately 170 flare management plans covering approximately 340 flares under NSPS Ja; however, there were 495 flares at refineries included in facilities' GHGRP reports in 2014. Therefore, adding the proposed reporting requirement to the GHGRP will cover many additional flares where it is unknown to us whether a flare gas recovery system is in place. Additionally, the proposed revision will allow EPA to gather information on flare gas recovery systems at petrochemical production and iron and steel production facilities. Part 98 requires facilities in these industries to use the methodology specified in subpart Y for flares. Facilities in these industries are not subject to NSPS Ja.

For the subset of flares subject to NSPS Ja, it would be time consuming for us to compile the information regarding the presence of a flare gas recovery system from submitted flare management plans and update this information annually. The amount of time required by the GHGRP reporter to make this indication would be very low. For most flares, the presence of a flare gas recovery system would not change annually (exceptions include cases where a flare gas recovery system was newly installed). Potentially, once this data element is initially reported in RY2018, the EPA may be able to develop a way to ''carry over'' the reported information from a facility's RY2018 report and pre-populate this information in each facility's subsequent reports. If the carry-over process is implemented, the reporter would only need to enter the information once (for RY2018) and make changes to this data element in future reporting years only when the presence of the flare gas recovery system changed. This potential future reporting process should reduce burden even further, if implemented. Additionally, having this information reported within the GHGRP data system will allow the EPA to publish and review the information alongside the rest of the reported data related to flares, which greatly improves the usability of the information by allowing for streamlined comparison of the GHGRP reported emissions for flares with and without flare gas recovery systems to better gauge the effectiveness of these systems.

For the reasons outlined above, after full consideration of this comment we are finalizing revisions to 40 CFR 98.256(e)(3) and (6) as proposed.

*Comment:* Several commenters provided comments opposing the proposed steam generation model method for calculating methane emissions from DCUs on several grounds. One commenter stated that the proposed method will significantly overstate the amount of steam that is generated upon opening the coke drum to the atmosphere and thus overstate the methane emissions because of the following incorrect assumptions: (1) There is a uniform temperature throughout the entire coke bed and the quench water at the time the vent is started; (2) the amount of heat evolved is derived from cooling the entire mass of coke and quench water from that initial uniform temperature to 212 °F; (3) 10 percent of the heat removed from the coke bed and quench water is dissipated through the coke drum and overhead metal and the balance of the heat removed from the coke bed (90 percent) goes into steam generation; and (4) 100 percent of the water in the coke drum at the time of venting is at its bubble point (*i.e.,* all the heat evolved goes toward affecting evaporation and none of it is used in heating the water to the boiling point).

The commenter further stated that these assumptions are not supported by the experience of the commenters or the available data. Commenters note that coker process experts report significant temperature gradients through the coke mass and the quench water throughout the drum. The commenters assert that at the time a coke drum is opened to the atmosphere the water and coke in the bottom of the drum is at approximately the temperature of the incoming quench water (much less than 212 °F). Therefore, the commenter states, the required assumption that the entire mass of coke and quench water is at 212 °F, regardless of the actual temperature readings, overstates the heat in the drum and thus the heat generated significantly. Commenters provided data showing that, for the five DCUs presented, the bottom of the drums, as reflected in the initial drain water temperature, was at temperatures below 150 °F. Furthermore, commenters noted that the vast majority of quench water drained from these units was below 212 °F, demonstrating that most of the quench water in the drums when they were opened to the atmosphere was not at its bubble (boiling) point. Commenters assert that this is typical for DCUs in general.

Commenters further described the cooling process noting that the quench water (100 to 130 °F) continuously enters from the bottom of the coke drum and, as the coke in the drum cools, the quench water accumulates in the lower coke bed, being of higher density than the water above, some of which is at its bubble point. According to the commenters, the amount of sub-cooled water in the coke drum and its temperature prior to atmospheric venting is dependent on a number of factors, but some cokers completely cool their bed, such that 99 percent of the water is sub-cooled. According to the commenter, the typical range is from 50 percent to 99 percent subcooling. Thus, the commenters state that at best (the 50 percent case) the proposed equations will overstate steam and methane generation by 100 percent and in most cases will overstate it by even more.

*Response:* After consideration of this comment, for the reasons stated in this preamble, the proposed rule preamble, and in this docket, we are finalizing the steam generation model method for calculating methane emissions from DCUs as proposed.

First, with respect to the comment that we have assumed that there is a uniform temperature throughout the entire coke bed when first opening the coke bed to the atmosphere, we do not agree that the commenter's statement is fully accurate, as our position is that the methodology acknowledges and accounts for the existence of a temperature gradient. While the proposed method does calculate an average bed temperature for the methane emissions calculation, this calculation acknowledges that there is a temperature gradient by using both the temperature at the top of the coke bed (or overhead line temperature) and at the bottom of the coke bed to determine the average temperature of the coke bed.

Second, regarding the commenter's questioning of the methodology's assumption that the entire mass of coke and quench water is above 212 °F at the time a coke drum is opened to the atmosphere, we note that the methodology is designed to account for emissions from the entire decoking process (which includes venting, water draining, drum deheading, and coke cutting) while reducing burden on reporters. To reduce burden, rather than requiring reporters to use separate equations to calculate emissions from each part of the process listed above, the methodology estimates total emissions from these processes based on steam generation at the time of venting to the

atmosphere. The methodology relies on certain assumptions in order to calculate total emissions that are reasonable estimates. We do acknowledge that it is physically possible for the average temperature of the coke bed to be at or below 212 °F when opened to the atmosphere, but even if the average temperature of the coke bed were beneath 212 °F and minimal amounts of steam were generated, methane emissions still occur for multiple reasons, which the methodology is designed to also account for. To name a couple of examples, pockets of gas trapped within the coke bed may not be released until the coke is cut from the drum, or emissions may still occur from the drain water. Using a temperature at or below 212 °F within this methodology would not account for these emissions accurately. If the methodology were changed to allow for temperatures at or below 212 °F to be used, this methodology could not accurately represent emissions from the entire intended process, requiring that additional equations would need to be added to the rule to account for emissions that occur during other parts of the decoking process. While we have considered this alternative, we have determined that this methodology provides a reasonable estimation of emissions from the process and is less burdensome. Therefore, in order to properly account for all decoking process emissions using the methodology being finalized, $T_{initial}$ in equation Y–18e must be greater than 212 °F, regardless of the venting temperature or pressure, to account for methane emissions that are not directly associated with steam formation.

Third, we maintain that a 10 percent convective heat loss is an appropriate assumption (for more detailed reasoning, please see the Refinery Protocol's Response to Comments document available in that action's docket). The commenter provided no evidence to suggest otherwise. Due to the large size of the vessel, the volume of the vessel is much larger than the surface area and the convective heat loss is expected to be only a small portion of the evaporative heat loss over the duration of the venting and draining process.

Fourth, with respect to the assumption that 100 percent of the water in the coke drum at the time of venting is at its bubble point (*i.e.,* all the heat evolved goes toward affecting evaporation and none of it is used in heating the water to the boiling point), we maintain the reasoning behind these assumptions for the key reasons we discussed above. Specifically, the model is designed to estimate emissions from the entire decoking process, so a minimum average bed temperature of greater than 212 °F is necessary and appropriate to account for any emissions from the coke cutting process and drain water. We also note that the heat capacity of the coke and water (per degree temperature change) is about 100 times the heat of vaporization for a given mass of water. As such, if some of the water had to be raised to the bubble point first, this ''heat sink'' typically has only a small impact on the quantity of steam generated and hence the calculated emissions.

The commenter offered limited data on drum water temperatures from one company to suggest that the assumptions cited are inaccurate. First, these data do not appear to be representative of DCU operations nationwide. Forty percent of the DCU included in this company's data use water overflow technique. Based on information collected during the development of the December 1, 2015, amendments to 40 CFR part 63, subpart CC (80 FR 75178), which included new standards for DCU at petroleum refineries, this water overflow technique is estimated to be used at about 4 percent of operating DCU (see Docket Id. No. EPA–HQ–OAR–2010–0682, Item Numbers –0061 through –0069, –0085, –0188, –0202, –0203, –0216, –0219, –0719, and –0747). This method allows the operator to use an unlimited amount of water and continually overflow the coke drum with water to reach a target cooling temperature. Thus, these units are expected to be more effectively cooled than units commonly used in the industry. To calculate methane emissions with the proposed method, these DCU would generally use the minimum default temperatures. Therefore, the emissions calculated with the proposed method would appropriately be lower for DCU with water overflow than the industry average, but would still account for methane emissions that occur from the overflow water and the coke cutting phase.

Second, the drain water temperature, particularly at the start of draining, is not necessarily representative of the average coke bed temperature. Cooling water is added at the base of the DCU, below the bottom of the coke bed. Thus, the initial temperature of the drain water may represent water that has never contacted the coke bed. Additionally, the primary flow of water at the base of the coke bed will be through specific channels in the coke bed. In fact, even within the coke bed, the water will generally flow through specific channels. As such, there can be pockets of hot coke within the coke bed even though the water in the channels and the coke immediately surrounding these channels are at a much lower temperature. Therefore, the drain water temperature may not provide an accurate assessment of the average coke bed temperature.

Finally, the drain water temperature observed will be dependent on the lag time between when venting begins and draining begins. Certainly, if the pressure of the system is 12 pounds per square inch gauge (psig) at the start of the venting cycle, there must be significant steam generation (which is what causes the elevated pressure) and therefore, a portion of the coke bed must be well over 212 °F. If the water is drained very soon after initiation of atmospheric venting, the drain water profile is expected to rise well above 212 °F. However, if draining is delayed for an hour or so, the continued generation of steam at the top of the coke bed would help to cool the top of the coke bed. Thus, if one waits to drain long enough the evaporative heat loss effect would cool the bed (as predicted by the heat balance model) and the drain water temperature would not exceed 212 °F.

We maintain that the proposed model with the assumptions described above is the most accurate available for estimating methane emissions from the DCU considering the releases that can occur during all phases of the decoking operations. Table 1 in the technical memorandum ''Revised Emission Methodology for Delayed Coking Units'' (Docket Id. No. EPA–HQ–OAR–2015–0526–006), shows that the emissions predicted using the proposed steam generation model compares well with measured emissions from the DCU steam vent (which does not consider other emissions from draining, deheading, or coke cutting), particularly for DCU that did not begin draining soon after initiating venting. After consideration of this comment, for the reasons stated in this preamble, the proposed rule preamble, and in this docket, we are finalizing as proposed.

*Comment:* One commenter opposed the revision to the emissions calculations for DCUs for the following reasons: (1) Poor accuracy; and (2) that EPA cannot ''align'' Part 98 with the Refinery Protocol unless the change in methodology is voluntary. With regard to poor accuracy, the commenter described how the EPA ranks calculation methods in the order of accuracy, ''Method 1'' through ''Method 5,'' with Method 1 being the most preferred/accurate. The commenter

states that the methodology EPA is proposing is ranked as ''Method ¾,'' indicating a poor level of accuracy. Consequently, the proposal does not appear to improve or further the accuracy of the inventory. The commenter asserts that the EPA has failed to adequately explain the relative accuracy between the existing and proposed methods in quantitative terms, leading to the conclusion that one poor method is being replaced for another. The commenter further states that given that most methane emissions are controlled from DCUs in combustion devices meeting 98 percent Destruction and Removal Efficiency (DRE), this change in methodology will not result in a meaningful improvement in the overall accuracy of the inventory.

With regard to the need to make this change voluntary, the commenter describes that during the development of Version 3 of the Refinery Protocol it was made clear that the use of the factors and methods therein were voluntary, not mandatory. According to the commenter, the EPA Technology Transfer Network Web page clearly states, ''We are not requiring the use of the Refinery Protocol, just as we do not require the use of AP–42. It is simply another tool for use in estimating emissions when site-specific test data do not exist or are not available'' and this was understood between both OAQPS and the refining sector. Therefore, the commenter considers the proposed revisions to the federal GHG inventory rule that would require the use of these calculation methodologies, as a circumvention of the function and purpose of the Refinery Protocol. The commenter finds that it is inappropriate to develop calculation methods with the understanding that their use is optional, only to then make their use mandatory in rulemaking under the guises of ''alignment'' between the two. The commenter states that, should EPA make the use of the Refinery Protocol methodology in Part 98 an option, this would be considered true alignment between inventory and Refinery Protocol and an acceptable solution to the commenter.

*Response:* The Refinery Protocol ranks different types of methodologies that can be used to quantify emissions in terms of their relative accuracy to provide an order of preference for which inventory emission estimates should be developed based on the information available to the emissions inventory compilers. Methodology Rank 1 (highest rank) is reserved for direct continuous emission monitoring of the emissions. Methodology Rank 2 is similar, but allows, for example, direct concentration measurements and flow rates estimated by F-factors. As noted in the Refinery Protocol, Methodology Ranks 1 and 2 are not applicable for DCU decoking operation emissions because of the nature of the vent (high steam content) and varied locations that emissions can be released. Thus, for DCU, Methodology Rank ¾ is the best, most accurate method available.

During development of the Refinery Protocol, we determined that the newer methodology is a more accurate way to determine the total emissions from DCU than the existing methodology in the rule based on comparisons between the emissions calculated using each methodology and DCU source test measurement of the decoking venting step. Table 1 in the technical memorandum ''Revised Emission Methodology for Delayed Coking Units'' (Docket Id. No. EPA–HQ–OAR–2015–0526–006) clearly compares the emissions predicted using the old ''depressuring model'' (Equation Y–18) with emissions predicted using the proposed steam generation model, as well as emissions measured from the DCU steam vent. We expect most refineries will use the pressure correlation alternative provided in the rule we are finalizing as proposed, and this method provided an estimate of within a factor of 1.4 of the measured emissions and would yield a result even closer to the measured emissions if other decoking operation emissions were included. The depressuring model, on the other hand, resulted in emissions that were a factor of 10 lower than the measured emissions and would underestimate emissions by an even larger amount if other decoking operation emissions were included in the measurements. The data we have provided in the docket record clearly demonstrate that the proposed steam generation model is more accurate than the old depressuring model.

We agree that prior to the decoking process, there is an initial depressurization, steaming, and cooling phase where the emissions are required to be routed to a closed vent system and either recovered as product or controlled via a flare or similar device. During this phase, there are no emissions when the vapors are recovered as product and flared emissions are accounted for by the flare methodology in 40 CFR 98.253(b). While the emissions from the initial cooling cycle may be controlled, they are not accounted for in the DCU methodology, which only considers emissions that occur in the decoking steps after this initial, controlled cooling phase. As such, the commenter's suggestion that most methane emissions are controlled from DCUs in combustion devices meeting 98 percent DRE, is incomplete.

After this initial cooling period, the coke drum gases are no longer routed to the closed vent system and are instead diverted to the atmosphere. This uncontrolled, atmospheric venting is the start of the decoking operations and the DCU emissions estimated for the GHGRP in accordance with 40 CFR 98.253(i) include only these direct atmospheric emissions. Therefore, we disagree with commenter's statement that the proposed methodology's emission estimates are overstated, since emissions that occur from the DCU while the emissions are being vented to controls (*i.e.,* during the initial cooling cycle) are not included at all in the DCU emissions methodology in 40 CFR 98.253(i).

We disagree with the commenter that the new DCU calculation methodology must be voluntary. Generally, we want facilities to use the most accurate method possible, rather than providing several methodologies of varying accuracies that facilities can voluntarily choose between, and we desire consistent methods be used where practical to allow for reported emissions to be compared on a level playing field across facilities. In certain cases where it may appear that we provide alternative methodologies for facilities to voluntarily select from (such as the alternatives provided for flares), these methodologies provide options on the basis of the monitoring equipment available, and so are not truly optional but rather prescribed based upon the existing monitoring equipment. In the example of methodologies for flares, if carbon content is measured, the reporter must use Equation Y–1A or Y–1B in 40 CFR 98.253(b)(1)(ii)(A); they cannot elect to use Equation Y–2 in 40 CFR 98.253(b)(1)(ii)(B) or Y–3 in 40 CFR 98.253(b)(1)(ii)(C). Where we do allow methods to be selected voluntarily, as in the case of Equations Y–1A and Y–1B, we do so because the methods yield very consistent results (within 0.1 percent for typical range of $CO_2$ concentrations in flare gas).

This is not the case when comparing the old DCU methodology with the new DCU methodology. The old DCU methodology was found to underestimate actual $CH_4$ emissions from the DCU by a factor of 10, which is much less accurate than the new methodology, meaning that we do not find that the emissions calculated by the two methods are consistent enough for us to allow the methods to be used interchangeably (as we did in the case

of Equation Y–1A and Y–1B in 40 CFR98.253(b)(1)(ii)(A)). Furthermore, in the finalized methodology for DCU, we have provided reporters with options to use either pressure monitoring data or overhead temperature data to determine the average initial bed temperature. We specifically provided the pressure monitoring alternative because the pressure of the vessel prior to venting was already a monitoring requirement. Since no new monitoring requirements are necessary to begin use of the methodology being finalized, to ensure methods are employed consistently across all reporters, and based on the method's proven ability to better predict the emissions measured from these sources, we are finalizing this method as mandatory for all reporters, as proposed.

*Comment:* One commenter noted that DCU emissions are highly dependent on coker operating parameters, and EPA should allow the use of site-specific coking unit emissions models and estimation methods. The commenter describes that some DCU have new designs and operational procedures that are intended to lower emissions, and the generic calculation methodology may substantially overestimate emissions. The commenter further states that in some jurisdictions, emission measurements on delayed coker vents are required on a three-year basis. The commenter asserts that facilities that have such measurements should have the option of using them for calculating methane emissions as part of subpart Y reporting, and that if a facility is using site-specific calculations and measurement data for reporting of coker vent emissions, it may need to estimate emissions from draining if the drain water temperature is above 212 °F for some portion of the draining period. The commenter offered a proposed methodology (outlined below) and asserted that emissions from draining when drain water temperatures are below 212 °F are negligible, as are emissions from coke cutting, because methane has a very low solubility in water. The commenter stated that one company indicated that approximately 0.2 percent of methane would be expected to partition into the aqueous phase. As a result, the commenter says the potential methane emissions in DCU drain water would be expected to be low compared to those from the venting part of the unit operational cycle.

The commenter suggested that emissions from steam flashing during draining could be estimated based on evaluation of coke drum drain temperature during the entire drain period. According to the commenter, if drain water temperatures are never above 212 °F, there would be no attendant methane emissions added to those from the vent, since there should be negligible methane dissolved in water that has already flashed and cooled. The commenter further states that if drain temperatures rise above 212 °F, the mass of steam would be calculated based on the following modified version of Equation Y–18e:

$$Msteam = fHotDrain \times \left[ \frac{Mwater \times Cp,water + Mcoke \times Cp,coke \times (THotDrain - 212}{\Delta Hvap} \right] \quad \text{(Eq. Y-18e)}$$

Where:

fHotDrain = Fraction of time during drain that drain water is >212 °F (for example, if drain time was 60 minutes and temperature was above 212 °F during the last 15 minutes of draining, then fHotDrain = 15/60 = 0.25).

THotDrain = The minute-averaged temperature of the water when it is >2 12 °F (for example, if drain temperatures were above 212 °F during the last 15 minutes of draining, then THotDrain = (213 + 216 + 220 + 222 + 224 + 230 + 232 + 234 + 236 + 238 + 240 + 240 + 240 + 240 + 240)/15 = 229 °F).

Per the commenter, methane emissions from draining would then be determined by using the conservative assumption that the methane concentration in the drain steam is the same as the vent steam.

The commenter also asserted that the drilling process should have negligible emissions unless there is ongoing chemical reaction, formation of coke, or tail gas and liquid hydrocarbons due to uncompleted reaction when feeding the coke drum. According to the commenter, drilling emissions cannot be directly measured but can be correlated to hot spots, coke drum blowbacks, coke dust incidents, and odors. Further the commenter states that because these conditions are so undesirable from a safety and community perspective, these occurrences have been minimized and thus it is reasonable to assume the coke cutting contribution to overall coker emissions is quite small. The commenter then asserts that isolated hot spots in the coke bed, as indicated by steam generation during coke cutting, if they occur at all, are less than 0.1 percent of the coke bed volume. According to the commenter, the amount of methane released is well within the accuracy of the proposed calculations and the associated large assumptions, and can be ignored.

*Response:* After careful consideration of this comment, we are finalizing the methodology as proposed. We agree that the DCU decoking emissions are unit-specific and the new methodology includes a variety of unit-specific inputs including the mass of water in the drum, the mass of coke in the drum, and the drum overhead temperature or pressure. New unit designs that allow for more effectively cooling of the coke bed will operate with lower overhead temperatures and will show lower emissions than units that cannot achieve these overhead temperatures.

As noted in the response to comment above, the methodology we are finalizing is intended to estimate releases from all phases of the decoking process. We agree the methane emissions from the coke-cutting process will not necessarily be related to steam generation, so, in order to account for these emissions in our methodology, we intentionally do not allow temperature inputs that would estimate no (or negative) emissions from the DCU even if the overhead temperature is below 212 °F.

In our methodology, we allow facilities that have vent measurement data to develop their own site-specific emissions factor for methane emissions (in kg $CH_4$ per metric ton of steam emitted in the vent line). As such, facilities can use measurement data when available to further refine their DCU emissions.

We compared the commenter's suggested methodology to our methodology, which includes the use of a site-specific emission factor along with the proposed steam generation quantity. We found our method to be a more appropriate means by which to incorporate site-specific measurement data for the following reasons. First, the vent emissions measured are highly dependent on the time period between initiation of venting and draining. A facility can drain immediately when measuring emissions from the vent to minimize the emissions released via the vent. However, it may be more common practice to delay draining for a longer

period after venting during routine operations. In this event, using the measured venting emissions from the source test and then estimating the drain emissions as suggested by the commenter could significantly underestimate the DCU emissions from these steps. Second, the commenter's suggested methodology does not consider releases that can occur during drum deheading and coke cutting, but rather assumes these to be negligible. DIAL measurement studies of DCU emissions [12] measured elevated emissions from the drainage area during the coke cutting process. While emissions during the coke cutting step may not be proportional to steam generation, we disagree that these emissions should be assumed to be zero, and instead maintain that a robust methodology must account for these emissions. Thus, the commenter's suggested methodology could misrepresent measured emissions based on the timing of draining, and is too limited in scope for our intended purposes.

3. When the Final Amendments to Subpart Y Become Effective

As shown in Table 5 of this preamble and consistent with the description of amendments in section I.E.3 of this preamble, all amendments to subpart Y will be effective on January 1, 2019 as proposed and will be reflected starting with RY2018 reports that are submitted in 2019. No comments were received on the timing of revisions to subpart Y.

*N. Subpart Z—Phosphoric Acid Production*

In this action, we are finalizing amendments to subpart Z of Part 98 (Phosphoric Acid Production). This section discusses all the amendments to subpart Z. We are also finalizing as proposed confidentiality determinations for new data elements resulting from the revisions to subpart Z; see section IV of this preamble and the memorandum ''Final Data Category Assignments and Confidentiality Determinations for Data Elements in the Proposed 2015 Revisions'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for additional information on the final category assignments and confidentiality determinations for these data elements.

The EPA received only supportive comments for subpart Z; therefore, there are no changes from proposal to the final rule based on these comments. See the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart Z.

As proposed, we are revising 40 CFR 98.266(f)(3) to require that the annual report must include the annual phosphoric acid production capacity (tons) for each wet-process phosphoric acid line, rather than the annual permitted phosphoric acid production capacity, for the reasons discussed in the proposed rule (81 FR 2561). We are removing the word ''permitted'' from the requirement to report the process-level production capacity, noting that not all facilities have a permitted production capacity at the process level or produce to the permitted capacity. We are also clarifying, as proposed, the units of measurement for this reporting requirement. The pre-existing text for 40 CFR 98.266(f)(3) requires the reporting of ''annual phosphoric acid permitted production capacity (tons) for each wet-process phosphoric acid process line (metric tons).'' In this action, we are removing the phrase ''(metric tons)'' from this text to clarify that the unit of measurement is ''tons'' and not ''metric tons.''

As shown in Table 4 of this preamble and consistent with the description of amendments in section I.E.2 of this preamble, all amendments to subpart Z will be effective on January 1, 2018 as proposed and will be reflected starting with RY2017 reports that are submitted in 2018. No comments were received on the timing of revisions to subpart Z.

*O. Subpart AA—Pulp and Paper Manufacturing*

In this action, we are finalizing three amendments and clarifications to subpart AA of Part 98 (Pulp and Paper Manufacturing) as proposed. This section discusses all of the final revisions to subpart AA. The EPA received only minor comments for subpart AA and there are no changes from proposal to the final rule based on these comments. See the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart AA.

We are finalizing as proposed all amendments to subpart AA for the reasons described in the preamble to the proposed rule (81 FR 2562). First, we are finalizing as proposed amendments to 40 CFR 98.273(a)(1), (b)(1), and (c)(1), which refer to the subpart C calculation methodologies for $CO_2$ emissions from combustion of fossil fuel, to clarify that Tier 4 CEMS are not used to report emissions under subpart AA. Second, we are finalizing as proposed the revision of 40 CFR 98.275(b) to allow use of the daily mass of spent liquor solids fired reported under 40 CFR 63.866(c)(1) as an alternative to using maximum values for missing spent liquor solids measurements. Lastly, we are finalizing as proposed the clarifications in Table AA–2 to subpart AA to more clearly distinguish between kraft rotary lime kilns and calciners.

As shown in Table 4 of this preamble and consistent with the description of amendments in section I.E.2 of this preamble, all amendments to subpart AA will be effective on January 1, 2018 as proposed and will be reflected starting with RY2017 reports that are submitted in 2018. No comments were received on the timing of revisions to subpart AA.

*P. Subpart CC—Soda Ash Manufacturing*

In this action, we are finalizing one minor correction to subpart CC of Part 98 (Soda Ash Manufacturing). This section discusses the substantive revisions that were proposed for subpart CC, but that the EPA is not finalizing. The minor correction that the EPA is finalizing is summarized in the Final Table of Revisions available in the docket for this rulemaking (Docket Id. No. EPA–HQ–OAR–2015–0526).

The EPA received several comments for subpart CC. Substantive comments are addressed in section III.P.2 of this preamble; see the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart CC.

[12] *See* Refinery Demonstration of Optical Technologies for Measurement of Fugitive Emissions and for Leak Detection (Roy McArthur, Environment Canada, and Allan Chambers and Mel Strosher, Carbon and Energy Management, March 31, 2006); and Measurement and Analysis of Benzene and VOC Emissions in the Houston Ship Channel Area and Selected Surrounding Major Stationary Sources Using DIAL (Differential Absorption Light Detection and Ranging) Technology to Support Ambient HAP Concentrations Reductions in the Community (Loren Raun & Dan W. Hoyt, Bur. Pollution Control & Prevention, City of Houston, 2011), available in Docket Id. No. EPA–HQ–OAR–2015–0526.

1. Summary of Final Amendments to Subpart CC

No substantive amendments to subpart CC are being finalized for this rulemaking. In response to comments and based on updated analysis as described in section III.P.2 of this preamble, the EPA is not finalizing the two proposed amendments to revise 40 CFR 98.296(a) and (b) that would have required reporting of the facility-level annual consumption of trona or liquid alkaline feedstock.

2. Summary of Comments and Responses on Subpart CC

This section summarizes the significant comments and responses related to the proposed amendments to subpart CC. See the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart CC.

*Comment:* Several commenters do not support the EPA's proposed revision related to facility-level feedstock reporting under subpart CC, stating that the EPA did not provide sufficient justification for the proposed revisions. The commenters cite the preamble to the proposed rule, saying that the EPA asserts that these data elements are already required for facilities that use CEMS. However, the commenters state there are a very limited number of soda ash manufacturers and that very few of the manufacturing lines monitor emissions using CEMS. Therefore, the commenters object to the significant additional recordkeeping and reporting efforts that would be posed by these amendments, particularly because the rule already requires reporting of outputs of both soda ash produced and GHG emitted, in their view wholly fulfilling the statutory requirements for the program. The commenters cite the EPA's own U.S. GHG Inventory report to question the justification that the reporting of trona inputs and outputs would ''improve the quality of the US GHG Inventory,'' stating that the EPA refers to the relatively low uncertainty levels in the emission estimates for soda ash manufacturing. The commenters further cite the EPA's report, which says that the primary source of uncertainty in this sector occurs downstream from the manufacturing sites that would be affected by this rulemaking. The commenters conclude that the proposed revisions would therefore not improve the inventory estimates in any material way and do not warrant the additional regulatory burden.

*Response:* At this time, the EPA is not finalizing the proposal to require reporting of annual consumption of trona or liquid alkaline feedstock at the facility level, but may do so in the future. The EPA recognizes that a similar data element was removed in the Final Inputs rule and is currently reported only by facilities monitoring emissions via CEMS (79 FR 63750, October 24, 2014).[13] The proposed new data element is similar, but not identical to the one removed from 40 CFR 98.296(b)(5) in the Final Inputs rule. The proposed new data element would have required reporting of annual consumption of trona or liquid alkaline feedstock at the facility level, whereas the data element removed in the Final Inputs rule required reporting of monthly consumption. As proposed, this new data element would have been treated as CBI. In preparing to finalize this rulemaking, the EPA has conducted an updated assessment on use of this proposed information and determined that the information very likely will not meet the EPA's criteria for aggregation and publication of CBI information contained in **Federal Register** Notification–9911–98–OAR.[14] Inability to aggregate and publish this information presents a significant barrier to its use for publishing analyses to inform future GHG policies and programs, such as emission intensities for this industry, and for integration into the U.S. GHG Inventory.

Although the EPA is not finalizing these proposed data elements at this time, the Agency disagrees with commenters on the value of these data to enhance estimates for the U.S. GHG Inventory. As commenters note, the current method applied in the U.S. GHG Inventory overestimates emissions from Soda Ash Production, so it does not accurately reflect annual national emissions from this industry. The EPA currently estimates $CO_2$ process emissions from soda ash production using a tier 1 approach, based on application of default emission factors provided in the 2006 IPCC Guidelines to estimated national trona consumption. National consumption of trona is approximated in the U.S. GHG Inventory based on national trona production presented in voluntary surveys conducted by USGS. As noted in the Overview Chapter of the 2006 IPCC Guidelines for National GHG Inventories, ''accuracy and precision should, in general, improve from tier 1 to tier 3'' (p.8). The tier 3 methods in the 2006 IPCC Guidelines recommend estimating emissions by aggregating plant-level information per Volume 3, Chapter 3.3: Natural Soda Ash Production as noted in the preamble to this proposed rule. Further, inclusion of the emission factors derived from emissions and trona ore consumption would account for fractional purity of trona ore and reflect an improvement from IPCC defaults. Facilities subject to subpart CC must measure the inorganic carbon contents of trona inputs and/or soda ash outputs on a monthly basis and apply this factor to estimate their emissions. Requiring reporting of trona consumption, in addition to the inorganic carbon contents of trona inputs and/or soda ash outputs, would allow tier 3 methods aggregating plant-level data to be used in preparing the U.S. GHG Inventory emissions estimates. However, as noted above, use of GHGRP information in the U.S. GHG Inventory also necessitates transparent presentation of underlying activity data (*e.g.,* national production based on facility level data), emission factors (*e.g.,* derived from production and emissions), in addition to aggregated emissions, which would not be feasible if the information was determined to be CBI.

3. When the Final Amendments to Subpart CC Become Effective

As shown in Table 4 of this preamble and consistent with the description of amendments in section I.E.2 of this preamble, the one remaining minor amendment to subpart CC will be effective on January 1, 2018 as proposed and will be reflected starting with RY2017 reports that are submitted in 2018. No comments were received on the timing of revisions to subpart CC.

*Q. Subpart DD—Use of Electric Transmission and Distribution Equipment*

In this action, the EPA is finalizing several amendments to 40 CFR part 98, subpart DD (Use of Electric Transmission and Distribution Equipment), to improve the quality and usefulness of the data received by the GHGRP. This section discusses all of the final revisions to subpart DD. We are also finalizing confidentiality determinations for new data elements resulting from these revisions to subpart DD; see section IV of this preamble and

[13] Refer to Table 1 in the memorandum ''Data Elements Deferred to March 31, 2015: Final List of 'Inputs to Equations' Data Elements Not To Be Reported,'' September 2014 (see Docket Id. No. EPA–HQ–OAR–2010–0929).

[14] *See https://www.epa.gov/ghgreporting/confidential-business-information-ghg-reporting#CBI Data Aggregation.*

the memorandum ''Final Data Category Assignments and Confidentiality Determinations for Data Elements in the Final 2015 Revisions'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for additional information on the final category assignments and confidentiality determinations for these data elements.

The EPA received several comments for subpart DD. Substantive comments are addressed in section III.Q.2 of this preamble; see the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart DD.

1. Summary of Final Amendments to Subpart DD

We are finalizing, as proposed, the addition of a data element to require the reporter to provide the name of the U.S. state, states, or territory in which the electric power system lies. We are not finalizing the proposed requirement to report the total miles of transmission and distribution lines that lie in each state. The EPA received several comments regarding this proposed amendment, which are discussed in section III.Q.2 of this preamble.

We are finalizing as proposed the addition of reporting elements to subpart DD that are related to the nameplate capacities and numbers of pieces of new and retired equipment. Specifically, we are finalizing as proposed amendments to add reporting of the nameplate capacities of new hermetically sealed-pressure switchgear at 40 CFR 98.306(a)(2), new $SF_6$- or PFC-insulated equipment other than hermetically sealed-pressure switchgear at 40 CFR 98.306(a)(3), retired hermetically sealed-pressure switchgear at 40 CFR 98.306(a)(4), and retired $SF_6$- or PFC-insulated equipment other than hermetically sealed-pressure switchgear at 40 CFR 98.306(a)(5). We are also finalizing as proposed new reporting requirements for the numbers of pieces of new hermetically sealed-pressure switchgear during the year (40 CFR 98.306(n)(1)); new $SF_6$- or PFC-insulated equipment other than hermetically sealed-pressure switchgear during the year (40 CFR 98.306(n)(2)); retired hermetically sealed-pressure switchgear during the year (40 CFR 98.306(n)(3)); and retired $SF_6$- or PFC-insulated equipment other than hermetically sealed-pressure switchgear during the year (40 CFR 98.306(n)(4)). See section III.Q.2 of this preamble for the summary of comments and response received on the addition of these reporting requirements.

2. Summary of Comments and Responses on Subpart DD

This section summarizes the significant comments and responses related to the proposed amendments to subpart DD. See the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart DD.

*Comment:* The EPA proposed adding new reporting requirements at 40 CFR 98.306(m) to make data collected under subpart DD more useful to the public. The new data elements would require the electric power system to provide the name of the U.S. state, states, or territory in which the electric power system lies and the total miles of transmission and distribution lines that lie in each state or territory. These data elements would allow users of GHGRP data to more easily identify the state, states, or territory within which the electric power system lies. This would also be useful for determining state- and territory-level GHG emissions associated with particular electric power systems. Several commenters objected to the proposal that electric power systems report information on the miles of transmission and distribution lines within each state(s) or territory in which the facility lies. Commenters argued that this additional reporting requirement would be burdensome on facilities that cross state boundaries, as these facilities may not record this information.

*Response:* In this final rule, the EPA is adding the requirement to report the state(s) or territory in which the electric power system lies. This information is readily available to electric power systems and the EPA did not receive any comments on this aspect of the proposed requirement. The EPA had assumed that facilities would likewise know the miles of transmission and distribution miles within each state, but commenters stated this was not the case and that the new requirement would increase burden. Because the EPA did not intend to require submission of information that was not already within the facilities' possession, the EPA is only adding the reporting requirement that facilities report the state(s) or territory in which they lie. This will allow the EPA to provide some information on the location of these electric power systems to the users of GHGRP data. Many facilities may not cross state or territory borders, and, in these cases, the EPA can clearly include the emissions from these facilities in the relevant state or territory's emissions totals.

*Comment:* Several commenters objected to the proposal that electric power systems report detailed information on two categories of equipment, $SF_6$- or PFC-insulated hermetically sealed-pressure equipment and $SF_6$- or PFC-insulated equipment other than hermetically sealed-pressure equipment. For each of these equipment categories, this information includes the number of pieces of new equipment, the number of pieces of retired equipment, the total nameplate capacity of new equipment, and the total nameplate capacity of retired equipment. Commenters stated that electric power systems do not currently record whether or not a particular piece of equipment is hermetically sealed when the equipment is purchased and retired. Commenters further stated that electric power systems would therefore need to reconfigure tracking systems, which would significantly increase burden. One of these commenters asserted that the EPA had not demonstrated that this increased burden on reporters is necessary in light of the limited value of the information it would provide the EPA. One commenter stated that equipment manufacturers and suppliers do not provide the nameplate capacity of hermetically sealed equipment that are components of a larger system, only the nameplate capacity of the larger equipment (including all components). Further, some commenters stated that the EPA had not adequately defined ''hermetically sealed.''

*Response:* The EPA is finalizing its proposal to require electric power systems to report detailed information on both $SF_6$- or PFC-insulated hermetically sealed-pressure equipment and $SF_6$- or PFC-insulated equipment other than hermetically sealed-pressure equipment. Regarding the comment that electric power systems do not currently record whether equipment is hermetically sealed when the equipment is purchased or retired and that tracking systems would need to be updated to include these data, the EPA notes that electric power system must already distinguish between these two equipment types to satisfy the existing reporting requirements in 40 CFR 98.306. Under the current reporting framework, electric power systems must report the nameplate capacity of all equipment in the facility at the

beginning of each year, *excluding* hermetically sealed-pressure switchgear. Electric power systems must then report the nameplate capacity of new equipment and equipment retired during the year, *including* hermetically sealed-pressure switchgear.

When these reporting requirements were initially promulgated, the EPA agreed with public comments that it would be too burdensome for electric power systems to survey and report the nameplate capacity of all hermetically sealed-pressure equipment across the facility at the beginning of the year, given that electric power systems could contain thousands of pieces of this type of equipment. Thus, the EPA excluded hermetically sealed-pressure equipment from the total nameplate capacity of equipment at the beginning of the year that must be reported by facilities under 40 CFR 98.306(a)(1). However, as discussed in the preamble to the final rule (75 FR 74803; December 1, 2010), the EPA included hermetically sealed pressure equipment in the nameplate capacities of new equipment added to the facility or retired during the year under 40 CFR 98.306(a)(2) and (3). Electric power systems have subsequently reported these data, including the distinction between these equipment types, to the EPA for five years. The EPA does not have access to tracking systems used by electric power systems. However, the EPA concludes that these systems must distinguish between these equipment types in order to meet the existing requirements. It is not clear from the comment how the additional level of reporting would require an expansion of those tracking systems.

We are interested in the numbers of pieces of and $SF_6$ nameplate capacities of electrical equipment (including hermetically sealed-pressure equipment) for a number of reasons. As stated in the preamble to the proposed rule, this information will provide insight into the average $SF_6$ charge sizes of hermetically sealed-pressure equipment and other $SF_6$-insulated electrical equipment, as well as the relative importance of hermetically sealed pressure equipment and other $SF_6$-insulated electrical equipment as emission sources. Both of these factors affect the choice of emission-reducing policies and programs to consider for these two types of equipment. For example, hermetically sealed-pressure equipment typically leaks very little during its lifetime and is often not designed to be serviced. Emissions are generally delayed until the equipment is retired. However, at that point, emissions can consist of the full charge unless equipment users are aware of the presence of $SF_6$ inside the equipment and of the methods for recovering it. Discussions with $SF_6$ recycling experts indicate that users of hermetically sealed-pressure equipment are sometimes not aware that it contains $SF_6$, which is generally not an issue for other $SF_6$-insulated equipment. Even when users are aware that the hermetically sealed-pressure equipment contains $SF_6$, the procedures for effectively and efficiently recovering the $SF_6$ from that equipment differ from those for recovering the $SF_6$ from other $SF_6$-insulated equipment. Because hermetically sealed-pressure equipment generally lacks adequate access ports, special piercing devices are often required to recover the charge. Similarly, because individual pieces of sealed-pressure equipment have relatively small charge sizes, it is often most economical to recover the charge from several pieces of equipment at one time rather than to recover the charge as each piece is decommissioned.[15] Therefore, if the quantities of $SF_6$ contained in hermetically sealed-pressure equipment are significant, it is important to consider policies and programs that will appropriately address these potential end-of-life emissions.

We are also interested in the quantities of $SF_6$ in hermetically sealed-pressure equipment for purposes of improving the U.S. GHG Inventory. As indicated in the proposed rule, we currently estimate $SF_6$ emissions for electrical transmission and distribution facilities that do not report to the GHGRP by developing and applying an emission factor based on miles of transmission lines. This approach was developed based on the understanding that $SF_6$ in U.S. electrical equipment is contained primarily in transmission equipment rated above 34.5 kilovolts. However, if a significant share of $SF_6$ in U.S. electrical equipment is actually contained in hermetically-sealed-pressure equipment, which is generally used in lower-voltage distribution applications, then it may be appropriate to use miles of distribution lines in addition to miles of transmission lines to estimate the emissions of non-reporting facilities. We believe that this potential improvement to the inventory, as well as the increased insight into the appropriate range of policies and programs to reduce emissions from electrical equipment, justify the modest additional burden associated with separately reporting the nameplate capacities and numbers of pieces of hermetically sealed-pressure equipment.

Regarding the comment that equipment manufacturers and suppliers do not provide the nameplate capacity of hermetically sealed-pressure equipment that is a component of a larger piece of equipment, the EPA does not agree that this as a novel issue that would prevent facilities from satisfying the new reporting requirements. As discussed above, electric power systems have already been required to report the total nameplate capacities of new equipment and retired equipment, *including* hermetically sealed-pressure equipment, under 40 CFR 98.306(a). Electric power systems have also been required to update the total nameplate capacity of all equipment across the facility, *excluding* hermetically sealed-pressure equipment. Thus, in cases where a larger piece of equipment includes both hermetically sealed and other than hermetically sealed components, electric power systems have already faced the question of how to report these components under the existing regulation. In the case where a larger piece of equipment includes both hermetically sealed-pressure and other than hermetically sealed-pressure components, where the hermetically sealed-pressure components are an inherent part of the larger equipment, and where the equipment manufacturer has included only one nameplate capacity that encompasses all components, the electric power system may treat the entirety of the larger piece of equipment as other than hermetically sealed-pressure for purposes of reporting under subpart DD.

Regarding the comment that the EPA has not defined ''hermetically sealed,'' the EPA again notes that electric power systems have been reporting information to EPA for several years, distinguishing between hermetically sealed-pressure equipment and other equipment. Several references provide definitions for ''sealed pressure systems'' and ''sealed-for-life equipment,'' including, *e.g.,* the 2006 IPCC Guidelines for National Greenhouse Gas Inventories and the International Electrotechnical Commission Standard 60694. The 2006 IPCC Guidelines define ''sealed pressure systems'' and ''sealed-for-life equipment'' as ''equipment that does not require any refilling (topping up) with gas during its lifetime and which generally contains less than 5 kg of gas per functional unit.'' The EPA's interpretation of ''hermetically sealed-pressure equipment'' has been and continues to be consistent with that of

[15] Telephone call between Deborah Ottinger, EPA, and Lukas Rothlisberger, Dilo Company, July 29, 2016.

these references. In the preamble to the April 10, 2010 proposed rule (75 FR 18652) that included subpart DD, the EPA noted that sealed-pressure equipment, unlike closed-pressure equipment, generally does not require periodic refilling (topping up) with gas during its lifetime; and in the December 10, 2010 Response to Comments Document (available in Docket Id. No EPA–HQ–OAR–2009–0927), the EPA observed that sealed-pressure equipment generally contains anywhere from a few ounces to 15 pounds of $SF_6$. The EPA has not proposed to alter the existing conventions in any way. The EPA is expanding the reporting requirements to include more details on activities that electric power systems are already required to track and report. Electric power systems have been able to satisfy these requirements, and therefore the EPA does not agree that ''hermetically sealed'' must be defined for the purposes of these additional reporting requirements.

3. When the Final Amendments to Subpart DD Become Effective

As shown in Table 4 of this preamble and consistent with the description of amendments in section I.E.2 of this preamble, all amendments to subpart DD will be effective on January 1, 2018 as proposed and will be reflected starting with RY2017 reports that are submitted in 2018.

We received comment on our proposed schedule for subpart DD amendments, requesting an additional year before implementation of the new reporting requirements (*i.e.,* reporting separately the nameplate capacities and numbers of pieces of hermetically sealed-pressure equipment and other equipment installed and retired during the year). We proposed that the amendments to subpart DD apply to RY2017 reports. The commenter contended that some reporters will need more time to update their asset management tracking systems to segregate reporting of hermetically sealed-pressure equipment from other types of $SF_6$-containing equipment. The commenter provided an example facility that will need to revise their Environmental Management Information System program, which currently is set up to automatically generate their report in XML format. We do not agree that facilities subject to subpart DD will need an additional year to revise their asset management systems in order to comply with the revised reporting requirements. We note that electric power systems must already distinguish between the two equipment types to satisfy the existing reporting requirements and conclude that asset management systems must already distinguish between these equipment types (see section III.Q.2 of this preamble for additional information). The revised reporting requirements for subpart DD do not require electric power systems to change what they do to comply with the rule during RY2017. Therefore, the final amendments to subpart DD will become effective January 1, 2018, and be reflected starting with RY2017 reports as proposed, meaning that several additional data elements will be submitted for the first time in the RY2017 report submitted in 2018.

*R. Subpart FF—Underground Coal Mines*

In this action, we are finalizing several amendments, clarifications, and corrections to subpart FF of Part 98 (Underground Coal Mines). This section discusses the substantive revisions to subpart FF; additional minor amendments, corrections, and clarifications are summarized in the Final Table of Revisions available in the docket for this rulemaking (Docket Id. No. EPA–HQ–OAR–2015–0526). We are also finalizing confidentiality determinations for new data elements resulting from these revisions to subpart FF; see section IV of this preamble and the memorandum ''Final Data Category Assignments and Confidentiality Determinations for Data Elements in the Final 2015 Revisions'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for additional information on the final category assignments and confidentiality determinations for these data elements.

The EPA received several comments for subpart FF. Substantive comments are addressed in section III.R.2 of this preamble; see the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart FF.

1. Summary of Final Amendments to Subpart FF

a. Revisions to Subpart FF To Streamline Implementation

This section describes revisions to Part 98 that will streamline implementation of the rule requirements under subpart FF.

First, the EPA is finalizing, with a change from proposal, an amendment to 40 CFR 98.2(i)(3) to give owners and operators of underground mines the opportunity to cease reporting under the GHGRP if the underground mine(s) are abandoned and sealed. Specifically, we are amending paragraph (i)(3) to make clear that for underground coal mines cessation of operations also includes that the facility is abandoned and sealed, and are deleting ''underground coal mines'' from the list of exceptions under paragraph (i)(3). This amendment differs from what was included in the proposal for this rule, in which we proposed to amend paragraph (i)(3) to state that the paragraph (i)(3) would not apply to underground coal mines, except those whose status is determined to be ''abandoned'' by MSHA. The final revision to (i)(3) more precisely meets the intended purpose of the proposed revision to (i)(3), to give owners and operators of abandoned and sealed mines at the time they produce quantities of GHG emissions far below the reporting threshold the opportunity to cease reporting under the GHGRP. See section III.R.2 of this preamble for further discussion of the rationale for this change.

Second, in 40 CFR 98.6, the EPA is finalizing as proposed a revision to the definition of ''ventilation hole or shaft.'' The definition is being further clarified to include mine portal and adit to the definition. Portal and adit are terms sometimes used to describe mine entries and shafts. The intent of the rule is to capture all points in the ventilation system where methane emissions may exhaust to the atmosphere. Adding these terms will provide clarity for reporters. The EPA received no comments on the proposed amendment.

Third, the EPA is finalizing, as proposed, several amendments to clarify when moisture content is to be reported. The first several amendments apply to 40 CFR 98.326, which lists the data reporting requirements for subpart FF. The EPA is amending 40 CFR 98.326(o) to require reporting of moisture content only in those cases where the volumetric flow rate and $CH_4$ concentration from a specific mine ventilation or degasification monitoring point are not measured on the same dry or wet basis, and in the case that flow rate is measured with a flow meter that does not automatically correct for moisture content. For example, if the volumetric flow rate at a specified monitoring point is measured on a dry basis but $CH_4$ concentration at that monitoring point is measured on a wet basis, then the reporter must report moisture content for the monitoring point unless they are using a flow meter that automatically corrects for moisture

content. The EPA is amending 40 CFR 98.326(f) through (i) to require reporters to specify whether volumetric flow rate and $CH_4$ concentration measurements for ventilation and degasification systems are determined on a wet or dry basis. The EPA is also amending 40 CFR 98.326(f) and (h) to specify that, where a flow meter is used, the reporter must indicate whether the flow meter automatically corrects for moisture content. This information will provide the necessary information for the reporter and for the EPA to determine if moisture content should be reported for an individual facility. The EPA received no comments on these proposed amendments.

Last, the EPA is finalizing as proposed several amendments related to moisture content in 40 CFR 98.323 and 40 CFR 98.324, which lists the requirements for calculating GHG emissions. The EPA is amending 40 CFR 98.323(a)(2) to read, ''Values of V, C, T, P, and, if applicable, ($f_{H2O}$), . . .'' so that ''if applicable'' more explicitly applies to the moisture content term, ($f_{H2O}$). The EPA is making the same amendment to 40 CFR 98.323(b)(1) and 40 CFR 98.324(b)(1). The revisions to 40 CFR 98.323 and 40 CFR 98.324 are being made to ensure consistency with the revision to 40 CFR 98.326(o). These revisions will provide clarity for reporters. The EPA received no comments on these proposed amendments.

b. Revisions to Subpart FF To Improve the Quality of Data Collected Under Part 98

The EPA proposed three revisions to subpart FF to improve the quality of data received by the GHGRP: (1) An amendment to 40 CFR 98.324(b) to no longer allow MSHA quarterly inspection reports to be used as a source of data for monitoring methane liberated from ventilation systems; (2) the addition of annual coal production to the list of data reporting requirements outlined in 40 CFR 98.326; and (3) a revision to 40 CFR 98.324(b)(1) to require use of the most recent edition of the MSHA Handbook for inspections and sampling procedures entitled, Coal Mine Safety and Health General Inspection Procedures Handbook Number: PH13–V–1, February 2013.

The EPA received no comments on the proposal to require the use of the most recent edition of the MSHA Handbook. However, in June 2016, MSHA published an updated version of the handbook (see Coal Mine Safety and Health General Inspection Procedures Handbook Number: PH16–V–1, June 2016 in Docket Id. No. EPA–HQOAR–2015–0526). Following review of this update, we have determined that the inspection and sampling procedures contained in the June 2016 edition of the MSHA Handbook are not significantly different from the procedures contained in the February 2013 edition of the Handbook, which was the most recent edition at the time of the proposal. We are finalizing in 40 CFR 98.324(b)(1) a requirement to use the procedures in the June 2016 MSHA Handbook as they are the most current and appropriate for use under the GHGRP, and will improve the quality of the data collected under the GHGRP as intended in the proposed rule.

Based on consideration of public comment and as discussed in section II.R.2 of this preamble, the EPA is not finalizing the requirement to report coal production data or the revision to eliminate the use of MSHA quarterly inspection reports to be used as a source of data for monitoring methane liberated from ventilation systems. Rather, the EPA is finalizing a more limited amendment to the subpart FF reporting requirements, amending 40 CFR 98.326(a) to require each mine relying on data obtained from MSHA to report methane liberated from ventilation systems to the GHGRP to include, as attachments to its GHGRP report, the MSHA reports it relied upon to complete the GHGRP report. This amendment will help the EPA assist reporters in interpreting the MSHA data correctly during verification, thus resulting in an improvement in the quality of the data reported to the GHGRP, as intended in the proposal, by mines that choose to rely on MSHA data. This assistance will build upon the guidance the EPA provided in 2015 in the document ''Technical Guidance on Using Mine Ventilation Data from the Mine Safety and Health Administration (MSHA) to report Quarterly Methane Emissions from Mine Ventilation Systems.'' [16]

c. Other Amendments to Subpart FF

This section describes final amendments being made to Part 98 in response to issues raised by reporters and to more closely align rule requirements with the processes conducted at specific facilities. The following revisions to subpart FF are in response to comments and questions we have received since reporting under subpart FF began in 2011. The EPA did not receive comment on any of these proposed revisions and is therefore finalizing these amendments as proposed.

First, in 40 CFR 98.323(a) and (b), we are clarifying, for Equations FF–1 and FF–3, the method for determining the number of days in a month or week (n) where active ventilation and degasification are taking place. In both equations, the definition of Number of Days (n) is being clarified to note that (n) is determined by taking the number of hours in the monitoring period and dividing by 24 hours per day.

Second, in 40 CFR 98.323(b)(2), the text is being amended to state that the quarterly sum of $CH_4$ liberated from ventilation and degasification systems, respectively, ''must be'' rather than ''should be'' determined as the sum of the $CH_4$ liberated at each monitoring point during that quarter. This revision is being made because calculating the quarterly sum of $CH_4$ liberated is required rather than being optional.

Third, in 40 CFR 98.326(r)(2), we are clarifying the start date and end date for a well, shaft, or vent hole. The start date of a well, shaft, or vent hole is the date of actual initiation of operations and may begin in a year prior to the reporting year. For purposes of reporting, we are amending paragraph (r)(2) to state that the end date of a well, shaft, or vent hole is the last day of the reporting year if the well, shaft, or vent hole is operating on that date.

Fourth, in 40 CFR 98.326(r)(3), we are adding language clarifying the method for determining and reporting the number of days a well, shaft, or vent hole was in operation during the reporting year. The number of days is determined by dividing the total operating hours in the reporting year by 24 hours per day. This revision is consistent with similar revisions to the method for determining number of days in Equations FF–1 and FF–3, discussed earlier in this section.

Last, the EPA is finalizing the amendment to remove ''if applicable'' in 40 CFR 98.324(h) to clarify that the provision requiring the owner or operator to document the procedures used to ensure the accuracy of gas flow rate, gas composition, temperature, pressure, and moisture content measurements is a requirement for all reporters.

2. Summary of Comments and Responses on Subpart FF

This section summarizes the significant comments and responses related to the proposed amendments to subpart FF. See the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and

[16] See *https://www.epa.gov/sites/production/files/2015-08/documents/tech_guidance_mine_vent_data.pdf.*

Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart FF.

*Comment:* In the proposed rule the EPA included a requirement that subpart FF reporters would be able, under provision 40 CFR 98.2(i)(3), to discontinue reporting the GHGRP once their status is determined to be ''abandoned'' by MSHA. Commenters responded to this proposal by noting that there is often a significant time lag between when a mine is abandoned and sealed and when MSHA makes publicly available in its Mine Data Retrieval System (MDRS) that a mine has been abandoned and sealed. Therefore, according to the commenters, if EPA were to finalize the amendment as proposed, some abandoned and sealed mines would be required to report while awaiting an update to their abandonment status in the MDRS database.

*Response:* The EPA agrees with this observation, and in addition has determined that, because reports submitted by abandoned and sealed mines during the first four years of the GHGRP show that such mines produce quantities of GHG emissions far below the reporting threshold, these data are of limited value for the GHGRP and result in additional reporting burden for facilities. Therefore, the EPA has determined that it is appropriate to enable underground coal mines that have ceased operations and have been abandoned and sealed to cease reporting to the GHGRP per the provisions of 40 CFR 98.2(i)(3). We are therefore revising the text in this paragraph to delete ''underground coal mines'' from the list of exceptions and adding the following sentence: ''Cessation of operations, in the context of underground coal mines, includes, but is not limited to, abandoning and sealing the facility.'' Rather than stating that paragraph (i)(3) would not apply to underground coal mines, as was proposed, the change from proposal that we are finalizing more precisely meets the proposed revisions' intended purpose of enabling abandoned and sealed mines to cease reporting when they are no longer operating, and are producing GHG emissions far below the threshold, consistent with the provisions for other facility types covered by the GHGRP that are allowed to cease reporting after cessation of operations under this provision. We have removed the proposed requirement that we rely on the MSHA determination of the mine's operational status as ''abandoned'' as, while that was one mechanism to provide confidence that the closed mines are sealed and therefore not emitting methane, by explicitly describing in 40 CFR 98.2(i)(3) that cessation of operations for underground coal mines includes that the facility is abandoned and sealed, we are providing a similar level of confidence an MSHA determination would. Allowing underground coal mines that have ceased operations and are abandoned and sealed to stop reporting to the GHGRP will streamline reporting under subpart FF by limiting reporting to facilities actively emitting measurable volumes of $CH_4$.

Furthermore, the EPA believes that the amendment to 40 CFR 98.2(i)(3) has the added benefit of removing a perceived conflict with 40 CFR 98.320(c), ''Definition of the source category'', in subpart FF. This provision exempts abandoned and closed underground coal mines as source categories required to report to the GHGRP. The EPA believes the amendment to 40 CFR 98.2(i)(3) will remove any ambiguity and uncertainty, clarifying when underground coal mines may cease reporting to the GHGRP and streamlining implementation of the GHGRP.

*Comment:* In the proposed rule the EPA included an amendment to 40 CFR 98.324(b) to no longer allow MSHA quarterly inspection reports to be used as a source of data for monitoring methane liberated from ventilation systems. Several commenters disagreed with the removal of the MSHA method, and one commenter stated that the EPA should ''[allow] reporters to demonstrate the validity of the MSHA data for their mines'' and recommended that the EPA ''allow reporters to propose, for EPA approval, mechanisms by which their site specific data can be demonstrated to meet a baseline quality criterion for 40 CFR part 98 reporting purposes.''

*Response:* The EPA proposed to disallow the use of MSHA data because we determined that, through several reporting cycles and a review of MSHA quarterly inspection reports for 30 of the highest emitting mines, the quarterly flow rate data gathered by MSHA, standing alone, cannot reliably be used for GHGRP reporting purposes. The EPA's concerns with respect to reliability and consistency in MSHA sampling have not been with MSHA's procedure for taking samples in shaft approaches. The EPA is not questioning or discounting the veracity of MSHA monitoring. On the contrary, as evidenced by the continued reference to MSHA's Inspection Handbook, the EPA supports the sampling method used by MSHA. Instead, as stated in the preamble to the proposed rule, our concerns have centered on the data gaps created by changes in reported sampling locations, by the inconsistent naming of approaches where samples are taken from quarter-to-quarter, and with the errors made by reporters when interpreting the data contained in the MSHA report for use in their GHGRP reports.

In the preamble to the proposed rule, the EPA expressed concern with data gaps where MSHA quarterly reports did not include $CH_4$ concentration and volumetric air flow data from a mine shaft approach in a reporting quarter. A mine ventilation shaft aggregates ventilation flow from one or more approaches that are, in effect, horizontal tunnels carrying ventilation air to an upcast shaft. To calculate the methane liberation for the shaft, the MSHA inspector takes volumetric air flow measurements and air samples for $CH_4$ concentration measurements in each approach. Total methane flow in each approach is calculated from these measurements. MSHA then adds the methane flows for each approach to calculate total $CH_4$ liberation for the shaft. There are occasions when an MSHA inspector does not take air samples and volumetric flow measurements in a particular approach for safety or other reasons, even though samples were taken in the previous quarter. For example, the ventilation shaft may aggregate flow from three approaches and in quarter 3 of the reporting year, MSHA measures $CH_4$ concentration and volumetric air flow in only two of the approaches. This can result in a significant change in reported methane liberation at the subject ventilation shaft in quarter 3 if the reporter only adds two approaches' values together, rather than accounting for three approaches.

The GHGRP specifies required procedures to use when data are missing (40 CFR 98.325). Additionally, as outlined in the guidance document ''Technical Guidance on Using Mine Ventilation Data from the Mine Safety and Health Administration (MSHA) to report Quarterly Methane Emissions from Mine Ventilation Systems'' (hereafter referred to as the ''Mine Ventilation Data Guidance Document''),[17] we recommend that the reporter use Missing Data procedures to estimate methane flow in the third approach for quarter 3 for scenarios

[17] *See https://www.epa.gov/sites/production/files/2015-08/documents/tech_guidance_mine_vent_data.pdf.*

such as when the third approach is still active and samples are taken in the following quarter. The reported methane liberation at the ventilation monitoring point for quarter 3 in the subpart FF report would then include actual measurements from two approaches and estimated measurements using missing data procedures for one approach. We originally proposed removing MSHA reports as a monitoring method, in part, because it is very difficult for the EPA to confirm the reported methane liberation value in a given quarter without some type of supporting data. This concern will be addressed by submission of the MSHA quarterly reports because EPA access to the MSHA quarterly reports will allow the Agency to verify whether this process has been followed, identify where the data gaps occur, advise the reporter how to address the data gaps, and verify the report when corrected.

The second concern the EPA identified in the preamble to the proposed rule with MSHA data was the use of different names for the same approaches. Approaches to mine shafts are assigned a name by the MSHA inspector in the quarterly MSHA inspection reports. There are instances where an MSHA inspector assigns a name to an approach that is different from the name given previously. First, it is important to understand that this is likely to impact a subpart FF report only when the Agent or Designated Representative of the subpart FF report is unfamiliar with the mine plan. The EPA believes that most reporters understand their operations well and misreporting is likely only in a limited number of cases. Additionally, the EPA believes that even when different names are used for the same approach, they are often similar enough to conclude that they are referring to the same approach. And again, the EPA believes that reporters are knowledgeable enough of their operations to correctly align the same shaft approach even where the name is different. Still, without further information, such as the submission of MSHA quarterly reports, the EPA lacks critical information necessary for verifying subpart FF reports where this data gap potentially exists. The MSHA report provides the EPA with a quick set of reference data to compare to the subpart FF report and allow the EPA to accurately advise the reporter during the verification process on the potential error and the solution; thus, facilitating more accurate and timely reporting under subpart FF.

The final concern EPA identified was incorrect interpretation of MSHA data by reporters when translating information from the MSHA reports into their subpart FF reporting. Similar to what was described above, without further information, such as the submission of MSHA quarterly reports, the EPA lacks critical information necessary for verifying subpart FF reports where these errors potentially occur. Again, submission of the MSHA report will address this concern by providing the EPA with a quick set of reference data to compare to the subpart FF report, which the EPA can then utilize to correct errors during the verification process.

Although the EPA expressed concerns with the use of MSHA data in the preamble to the proposed rule, we also noted that ''if complete, MSHA data may provide a reasonable estimate of methane emissions from underground coal mines.'' We also sought comment on whether there are other alternatives that would achieve the same objectives for improved data quality from mine ventilation systems and encouraged commenters to submit studies, data, and background information that could support additional analysis (81 FR2566). No comments were received that discussed other alternatives or provided supporting information.

After careful consideration, the EPA is convinced that implementation of a sound quality assurance process entailing the submission of the MSHA reports on which the subpart FF data are based, combined with our ability to correct errors through the verification process, will sufficiently address the EPA's stated concerns regarding the potential for gaps in MSHA data. The MSHA quarterly reports will allow a direct comparison with the subpart FF report so that the EPA may follow up with the reporter during the verification process if there are inconsistencies. We also continue to encourage use of the Mine Ventilation Data Guidance Document to streamline the quality assurance process. The Mine Ventilation Data Guidance Document not only presents examples of MSHA quarterly reports and how to interpret them, but discusses procedures to use when data are missing as required by the rule (40 CFR 98.325). The EPA believes that these measures will encourage greater consistency in identifying shafts and approaches by common reference names and clarify the number of approaches to each upcast shaft.

Therefore, the EPA is retaining the ability for mines to use MSHA data, and is including in this final rule an amendment to 40 CFR 98.324(b) requiring each facility using MSHA data to attach to its annual GHGRP report the quarterly MSHA reports it relied upon to prepare its annual GHGRP report. This will enable the EPA to verify the MSHA data against that reported to the GHGRP while limiting additional burden to the reporter. Reporters using MSHA data as the monitoring method are in possession of the MSHA quarterly reports, since they relied upon these reports to complete the subpart FF annual report. Moreover, use of MSHA data is one of three monitoring method options currently available to reporters. Reporters remain free to choose either of two other alternatives that exist in the rule: Grab samples (40 CFR 98.324(b)(1)) or a continuous emissions monitoring system or CEMS (40 CFR 98.324(b)(3)).

*Comment:* Commenters objected to the new proposed requirement to report coal production information to the EPA in order to facilitate the verification process, stating that methane liberated may have little relationship to coal production.

*Response:* The requirement to report coal production was proposed because such data would enable the EPA to directly evaluate, in a facility's GHGRP report itself, whether a mine's emission trend and its coal production trend appear reasonably aligned. Such an evaluation would reduce burden on reporters by reducing the number of verification messages these reporters would receive when EPA reviewed changes in emissions. While the EPA recognizes that many factors impact methane liberation, including the rate of coal production, mine development, geologic conditions, changes in the mine plan, changes in the ventilation plan, and other factors, the EPA also observes that coal production and methane emissions are often closely aligned. Therefore, the EPA believes that coal production data facilitates a more accurate and effective verification process for the GHGRP.

However, the EPA recognizes that information on each mine's coal production is publicly available through the MSHA database by April 1 of each year, in time for the EPA to begin verification activities on submitted GHGRP reports. Therefore, rather than requiring mines to report coal production information to the EPA in their subpart FF reports as proposed, the EPA is not including this requirement in this final rule, and will instead continue to rely on the publicly available data published by MSHA to compare trends in each mine's coal production with its reported methane emissions. However, the EPA notes that, if MSHA changes the publication date for this information to a later date, mines may anticipate an increase in the number of data verification messages from the EPA

enquiring about emissions changes from year to year.

3. When the Final Amendments to Subpart FF Become Effective

As shown in Table 3 of this preamble and consistent with the description of amendments in sections I.E.1 of this preamble, one amendment to subpart FF will be effective on January 1, 2017 and will be reflected starting with RY2017 reports that are submitted in 2018. All other amendments to subpart FF are effective on January 1, 2018 as shown in Table 4 of this preamble and are consistent with the description of amendments effective on that date in section I.E.2 of this preamble. Although one amendment to subpart FF is effective January 1, 2017 and others are effective January 1, 2018, all amendments to subpart FF will be reflected in RY2017 reports that are submitted in 2018 as shown in Tables 3 and 4 of this preamble. These effective dates are different from what was proposed for subpart FF. Although no comments were received related specifically to the timing of revisions to subpart FF, several of the final amendments to subpart FF are significantly different from what was proposed, due to consideration of comments that were received. As a result, we are also finalizing effective dates that are different from what was proposed.

We are finalizing that the subpart FF revision to 40 CFR 98.324(b)(1), and the corresponding amendment to 40 CFR 98.7(l)(1), which update the references to the MSHA Handbook to reflect the most recent 2016 version, are effective on January 1, 2017, and will be implemented starting in RY2017. At proposal these amendments were to be implemented starting in RY2018 along with all other changes to subpart FF. As discussed in the preamble to the proposed amendments (81 FR 2543, January 15, 2016), we had selected RY2018 as the proposed date for all revisions related to FF to be implemented (except revisions to 40 CFR 98.2(i) streamlining the reporting requirements for closed coal mines, which we proposed to be implemented starting with RY2017) because those proposed revisions included removal of the option in 40 CFR 98.324(b)(2) to use MSHA quarterly inspection reports as a source of data for monitoring methane liberated from ventilation systems. We had determined that it would not have been feasible for facilities to acquire, install, and calibrate new monitoring equipment or to perform more frequent monitoring, and would not have been feasible for the EPA to integrate all associated revisions to reporting requirements into e-GGRT and verification activities, in time for RY2017. However, in our final rule amendments for subpart FF, we are not finalizing our proposed removal of the option to use MSHA quarterly inspection reports as a source of data for monitoring methane liberated from ventilation systems. Refer to section III.R.2 of this preamble for a discussion of the comments received on the EPA's proposed removal of the option to use MSHA quarterly reports and the EPA's rationale for not finalizing its proposal. The update to the MSHA Handbook reflected in the subpart FF revision to 40 CFR 98.324(b)(1), and the corresponding amendments to 40 CFR 98.7(l)(1) are feasible for reporters to implement in RY2017, as they will not result in wholesale monitoring changes and will not require any changes to the e-GGRT system or verification activities. As a result, we are finalizing the effective date for these provisions as January 1, 2017.

With the exception of 40 CFR 98.324(b)(1), as described above, we are making the amendments to subpart FF effective January 1, 2018; they will be reflected in RY2017 reports. As discussed in the preamble to the proposed amendments (81 FR 2543; January 15, 2016) and in section I.E.2 of this preamble, while we had stated that these revisions would apply beginning January 1, 2018, we had also made clear that our intention with this proposal was that this corresponded to these revisions first being reflected in RY2018 reports for all revisions related to subpart FF (except revisions in 40 CFR 98.2(i) of subpart A, streamlining the reporting requirements for closed coal mines, which we proposed to be implemented starting with RY2017). However, since we are not finalizing our proposed removal of the option to use MSHA quarterly inspection reports as a source of data for monitoring methane liberated from ventilation systems, the amendments to subpart FF can now be reflected in the RY2017 reports that are submitted in 2018. The final revisions do not substantially revise the monitoring requirements and are consistent with the data collection and calculation methodologies in the current rule. Where the EPA is requiring reporting of additional information or data, such as requiring each facility using MSHA data to attach to its annual GHGRP report the quarterly MSHA reports it relied upon to prepare its annual GHGRP report, the data collected are readily available to reporters. Where calculation equations are modified, the changes clarify terms in the emission calculation equations and do not materially affect monitoring requirements or how emissions are calculated. Furthermore, at proposal, we requested comment on whether underground coal mine facilities would be able to meet ''these revised requirements'' by RY2017 (81 FR 2543, January 15, 2016). We received no comments indicating that these revisions could not be implemented and reflected started with RY2017 reports. For these reasons, we have determined that January 1, 2018, is an appropriate effective date and provides sufficient time for reporters to adjust to these amendments for RY2017 reports submitted in 2018.

*S. Subpart HH—Municipal Solid Waste Landfills*

In this action, we are finalizing several amendments to subpart HH of Part 98 (Municipal Solid Waste Landfills) to reduce burden for reporters, improve data quality, clarify terms, and take final action on our reconsideration of all issues in a Petition for Reconsideration.[18] We are completing our response to the Petition for Reconsideration through this rulemaking. This section discusses the substantive revisions to subpart HH. We are finalizing as proposed the minor corrections and clarifications to subpart HH of Part 98, including editorial changes and clarifications to reporting requirements. These minor revisions are summarized in the Final Table of Revisions available in the docket for this rulemaking (Docket Id. No. EPA–HQ–OAR–2015–0526). We are also finalizing confidentiality determinations for new and revised data elements resulting from the revisions to subpart HH; see section IV of this preamble and the memorandum ''Final Data Category Assignments and Confidentiality Determinations for Data Elements in the Proposed 2015 Revisions'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for additional information on the final category assignments and confidentiality determinations for these data elements.

The EPA received several comments for subpart HH. Substantive comments are addressed in section III.S.2 of this preamble; see the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality

[18] Waste Management Petition for Reconsideration of 2013 Revisions to Greenhouse Gas Reporting Rule and Final Confidentiality Determinations for New or Substantially Revised Data Elements. Available in Docket Id. No. EPA–HQ–OAR–2012–0934.

Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart HH.

1. Summary of Final Amendments to Subpart HH

a. Revisions to Subpart HH To Streamline Implementation

We are finalizing as proposed the revision to 40 CFR 98.346(f) to remove the requirement to report the surface area for each type of cover material used at the facility to reduce burden for reporters. As we stated in the proposed rule (81 FR 2567), the final amendment will still require the reporting of the total surface area of the landfill containing waste (in square meters) and an identification of the type(s) of cover material used, as this information is used during verification to check the consistency of the collection efficiency reported by the landfill. No comments were received on this proposed revision. This revision will reduce burden to reporters, and that the surface area for each cover material used has not been useful in assessing or verifying reported emissions.

b. Revisions to Subpart HH To Improve the Quality of Data Collected Under Part 98

We are finalizing as proposed revisions to 40 CFR 98.346(i)(5) to require reporting of the annual operating hours of the gas collection system associated with the measurement location, and to require reporting of the destruction efficiency and annual operating hours active gas flow was sent to the destruction device associated with the measurement location. We are also finalizing as proposed the removal of the requirement to report the annual operating hours for each destruction device associated with a given measurement location. In addition, we are finalizing as proposed the revision to move the requirement to report the annual operating hours of the gas collection system for each measurement location from 40 CFR 98.346(i)(7) to 40 CFR 98.346(i)(5) to consolidate all reporting requirements that are associated with each measurement location to the same paragraph, consistent with reporting organization used in e-GGRT. No comments were received on these proposed revisions. These revisions will allow the EPA to collect data that will improve the EPA's understanding of sector GHG emissions, allow for more accurate calculation of emissions by e-GGRT, and facilitate verification of the data reported, while generally resulting in only a slight burden for reporters.

We are not finalizing the proposed revisions to the method to calculate the gas collection efficiency, thus reporters continue to be required to use the current area-based approach as defined in Table HH–3 to subpart HH. The EPA did not receive comments in support of the volume-based approach, or in support of allowing facilities to use either approach. We did receive comments in support of maintaining the area-based approach, and after consideration of such comments, we are not amending the approach to calculate the gas collection efficiency. See section III.S.2 of this preamble for further explanation of the comments received and the EPA's responses.

After consideration of comments received, we are finalizing with changes our proposed revisions regarding the description of area type A5 in Table HH–3 and the proposed definition of alternative final covers. In the description of area type A5 in Table HH–3 in this final rule, we are removing ''alternative'' from the portion of the proposed description ''. . . alternative final cover (as approved by the relevant agency) . . .'' We are also finalizing a definition of final cover in 40 CFR 98.348 to mean ''materials used at a landfill to meet final closure regulations of the relevant federal, state, or local authority'' instead of the proposed definition of ''alternative final cover.'' These changes from proposal will still achieve the intended purpose, as described in the proposed rule (81 FR 2568), of broadening the description of area type A5 to include alternative final covers so that facilities with landfill gas collection and alternative final covers, that had been approved by the state, local, or other agency responsible for permitting the landfill, can use the 95 percent collection efficiency in their emissions calculations. See section III.S.2 for a summary of the comments received and the EPA's responses.

We are finalizing as proposed the addition of the ''methane emissions for the landfill'' as a reporting element in 40 CFR 98.346(i)(13). This new paragraph directs reporters to ''Choose the methane emissions from either Equation HH–6 of this subpart or Equation HH–8 of this subpart that best represents the emissions from the landfill. If the quantity of recovered $CH_4$ from Equation HH–4 of this subpart is used as the value of $G_{CH4}$ in Equation HH–6 of this subpart, use the methane emissions calculated using Equation HH–8 of this subpart as the methane emissions for the landfill.'' No comments were received on this proposed revision. We reference our review and conclusions described in the proposed rule (81 FR 2568). These revisions are necessary to prevent inaccurate values from being reported as the final subpart HH methane emissions.

c. Other Amendments to Subpart HH and Grant of Petition for Reconsideration

On January 28, 2014, the EPA received an administrative petition for reconsideration from Waste Management, Inc. (hereafter referred to as ''Petitioner''), regarding the inclusion of minimum soil cover requirements in order to use the flux-dependent soil oxidation fractions, titled ''Waste Management's Petition for Reconsideration of 2013 Revisions to Greenhouse Gas Reporting Rule and Final Confidentiality Determinations for New or Substantially Revised Data Elements Docket Id. EPA–HQ–OAR–2012–0934'' (hereafter referred to as the ''Petition for Reconsideration,'' available in the docket for this rulemaking). See the proposal for this final rule (81 FR 2569) for a detailed discussion of the specific issue raised in the Petition for Reconsideration, the review and analysis that was undertaken since the Petition for Reconsideration was received, and the revisions the EPA proposed in response to the petition.

Consistent with our previous review and analysis, we are finalizing the amendments to revise and clarify the soil cover requirements in Table HH–4 to subpart HH as follows. First, we are finalizing as proposed the amendment to revise the requirement for ''. . . a soil cover of at least 24 inches . . .'' to read ''. . . final cover or intermediate or interim soil cover . . .'' Second, we are finalizing as proposed the definition of intermediate or interim soil cover in 40 CFR 98.348 to mean ''the placement of material over waste in a landfill for a period of time prior to disposal of additional waste and/or final closure as defined by state regulation, permit, guidance or written plan, or state accepted best management practice.'' Third, we are finalizing as proposed the addition of a footnote to Table HH–4 stating that the landfill must have a soil cover of 12 inches or greater to use an oxidation fraction of 0.25 or 0.35, to address the case where a landfill is located in a state that does not have an intermediate or interim soil cover requirement as defined. We are addressing in this final action the Petition for Reconsideration through these specific revisions to Table HH–4,

directly addressing the concerns raised by the Petitioner as we deem appropriate after full evaluation of the information presented by Petitioners, further review and analysis as described in the proposed rule, and consideration of comments received on the proposed revisions. The EPA is completing its response to the Petition for Reconsideration through this rulemaking. See section III.S.2 of this preamble for further explanation of the comments received and our responses.

In addition, with regard to Table HH–4, which contains descriptions of the conditions under which certain oxidation fractions may be used in the emissions calculations, we are finalizing as proposed the revision to the phrase ''. . . for a majority of the landfill area containing waste . . .'' to read ''. . . for at least 50 percent of the landfill area containing waste . . .'' to clarify that we intend the majority of the landfill to mean 50 percent or more by area. After consideration of public comments received, which contained suggested revisions to Table HH–4, we are additionally revising conditions C4, C5, C6, and C7 to begin with the phrase ''For landfills that do not meet the conditions in C2 or C3 above . . .'', and revising condition C2 to remove ''. . . an alternative final cover (approved by the relevant agency) . . .'' and add ''. . . or other non-soil barrier meeting the definition of final cover. . . .'' We are finalizing these related additional changes to Table HH–4 so that Table HH–4 more clearly states which oxidation fraction may be used in calculating emissions depending upon conditions in place at the landfill. We agree that the text provided by commenters, in addition to what was proposed, provides even further clarity so that a landfill owner or operator can be certain as to which oxidation fraction is appropriate to use. These changes will also allow the descriptions in Table HH–4 to be consistent with the revisions to Table HH–3 and the addition of the definition for final cover instead of alternative final cover, as described in section II.S.1.b of this preamble.

Lastly, after consideration of comments, we are not finalizing revisions to Table HH–4 to require landfills that have passive or active vent systems that service greater than 50-percent of the landfill area containing waste or landfills that have only passive or active vent systems to use the default 10 percent oxidation fraction in their emission calculations because we think there is currently a lack of rigorous, scientifically based measurement data on methane oxidation for landfills meeting the criteria at issue. Although we are not finalizing the proposed revisions to Table HH–4 that used the term ''passive vent,'' we are finalizing the proposed definition of this term in 40 CFR 98.348 since it is still included in 40 CFR 98.346(h) and (i)(7), and such definition is useful for reporters. We are not finalizing the proposed definition of ''active venting'' since, with the final subpart HH revisions described above, this term will not be used in this subpart. See section III.S.2 for the comments received and the EPA's responses.

2. Summary of Comments and Responses

This section summarizes the significant comments and responses related to the proposed amendments to subpart HH. See the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart HH.

*Comment:* Several commenters provided feedback on the EPA's proposal and request for comment on whether revisions should be made to Table HH–3 to allow reporters to be given the option to calculate collection efficiency using the existing area weighted average approach or a proposed volume weighted average approach, whether reporters should be required to use one approach over another depending on landfill specific characteristics, and what those characteristics should be. The commenters were firmly supportive of maintaining the current area weighted average approach stating that reporters have used this approach since the beginning of the program and have become familiar with collecting data and performing the calculations as required. Commenters further questioned why the EPA would propose a method such as the volume weighted average that is not supported in peer-reviewed scientific literature, stating that waste depth and refuse volume were not parameters considered in peer-reviewed studies, so their effect on collection efficiency is undetermined. In contrast, commenters state that the area weighted method is grounded in peer-reviewed scientific literature. The commenters expressed concern that the EPA would set site specific conditions under which one or the other calculation method would be required to be used. Lastly, the commenters state that the EPA has not provided any analysis showing that a change in approach will improve emission estimates and may instead introduce further uncertainty to the calculations. No comments were received providing support for a volume weighted average approach or the option to use such a method. Additionally, no comments were received on site specific conditions when one approach might be more appropriate or accurate than the other.

*Response:* The area-based approach for calculating the collection efficiency for the entire facility relies on the surface area while the volume-based approach relies on both the surface area and the depth of each area type in Table HH–3. These parameters are included in the current reporting requirements for subpart HH. During both the reporting period and while verifying the data submitted in GHG reports, we received questions and suggestions from reporters via the GHGRP Help Desk to improve the methodology for calculating the collection efficiency specifically for older landfills with large surface areas without active gas collection (area type A2 in Table HH–3). The reporters stated that the current area-based calculation overestimates emissions results and that a volume-based calculation may be more accurate for these scenarios. For these reasons the EPA proposed the option of a volume-weighted approach to calculate collection efficiency. The EPA did a cursory examination of reported data in 2013, but we were not able to find a definitive set of criteria that would support requiring facilities to use the volume-based approach over the area-based approach, which is why we requested feedback on this option and when it could be used. After consideration of comments and based on our current inability to determine when it would be appropriate for a facility to use the proposed alternative approach, we will maintain the ability for reporters to use the area-based approach to calculate the collection efficiency and are not finalizing the additional option to calculate the collection efficiency at this time.

As described in the EPA Peer Review Handbook,[19] the EPA considers peer-reviewed material to have undergone a documented in-depth assessment of the assumptions, calculations, extrapolations, alternate interpretations, methodology, acceptance criteria, and conclusions pertaining to the scientific or technical work product and the documents that support them. This

[19] U.S. Environmental Protection Agency. October 2015. Peer Review Handbook 4th Edition.

assessment must be conducted by qualified individuals or organizations who are independent of those who performed the work and who are collectively equivalent in technical expertise to those who performed the original work. The commenters state that their primary concern is that the volume-based approach to calculating collection efficiency has no basis in the peer-reviewed scientific literature, whereas the area-weighted approach does; however, no citations were provided by the commenter documenting peer review of the area-weighted approach. Both the area-weighted and volume-based approaches were developed using technical knowledge and engineering concepts. The EPA is not aware that these approaches to estimate landfill gas collection efficiency have been published in peer-reviewed journal articles, reports, or other peer-reviewed materials.

*Comment:* Several commenters provided feedback on the EPA's proposal to broaden the description of area type A5 in Table HH–3 to include alterative final covers and provide a definition of alternative final covers in 40 CFR 98.348. Some commenters generally supported the concept of these changes but they requested clarifying the language to avoid ambiguity. These commenters stated that the Resource Conservation and Recovery Act (RCRA) subtitle D authorizes states to approve final covers with designs or materials that differ from federal performance requirements as long as the state determines that they are equally protective. These covers are simply called ''final covers'' and commenters felt the GHG reporting rule should refer to them using the same terminology. Commenters suggested a definition for use in 40 CFR 98.348 as follows: Final cover means materials used at a landfill that meets final closure regulations of the competent federal, state, or local authority. Commenters also suggested corresponding edits to Tables HH–3 and HH–4 where the term is used.

*Response:* We agree with the commenters that adding the term final cover versus alternative final cover best meets the intent of our proposed revision, and are therefore finalizing with several changes from proposal. The state, local, or other agency responsible for permitting the landfill determines whether a final cover meets the applicable regulatory requirements and has been shown to adequately protect human health and the environment. As such, we are providing a definition for final cover to reflect the appropriate terminology used by those entities and consistent with RCRA subtitle D, to mean materials used at a landfill to meet final closure regulations of the relevant federal, state, or local authority. This definition is inclusive of both traditional and alternative final covers. Because the term 'final cover,' as defined, better captures the intent of the proposal, we are not including the term 'alternative final cover' in this final rule. We also proposed to revise area type A5 in Table HH–3 with the intention of broadening the description of area type A5 to include alternative final covers, so that facilities with landfill gas collection and alternative final covers, that had been approved by the state, local, or other agency responsible for permitting the landfill, can use the 95 percent collection efficiency in their emissions calculations. We similarly proposed to revise condition C2 in Table HH–4 to account for landfills with final covers that consist of material other than geomembranes by adding the term alternative final cover. After consideration of the comments and the corresponding changes made regarding the related revisions, we are finalizing these amendments with changes from proposal so that Tables HH–3 and HH–4 are consistent with the finalized definition of final cover. We are not adding the term alternative final covers in area type A5 of Table HH–3 or in condition C2 of Table HH–4. The final revisions allow facilities with gas collection and approved final covers, whether traditional or alternative, to use the 95 percent collection efficiency in their emissions calculations.

*Comment:* Waste Management Inc., the Petitioner for the Petition for Reconsideration (hereafter the ''Petitioner''), supported the EPA's proposed revisions to Table HH–4 in response to their petition. The Petitioner further acknowledged that this revision to Table HH–4 is meant ''to complete [the EPA's] response to'' the Petition for Reconsideration. In their comments, the Petitioner reiterated extensive explanation for the basis for these revisions and further requested that the EPA confirm in the preamble to the final rule ''that depth of cover is not the sole, or master variable for determining methane flux.'' The Petitioner also stated that ''the EPA should consider bolstering its decision to replace the 24-inch soil cover requirement with intermediate or interim soil cover, by more comprehensively describing the underlying literature when it finalizes the 2015 Revisions.'' The Petitioner further stated that the ''EPA should more clearly state that the scientific record does not support 24 inches of soil cover as a reasonable and scientifically-sound prerequisite for use of the binned approach'' for oxidation fractions. Lastly, the Petitioner cited several perceived shortcomings in the memorandum prepared by RTI International (RTI Memo), in particular that only 27 of the 90 peer-reviewed studies were reviewed in response to the Petition for Reconsideration. The Petitioner stated that ''[t]herefore, the Agency should request that RTI revise its analysis to acknowledge that the scientific literature does not support cover depth as a primary factor influencing methane oxidation, and that two-thirds of the relevant measurements do not reference soil cover depths.''

Other commenters similarly supported the revisions the EPA proposed to remove the 24-inch soil cover requirement and instead reference intermediate or interim cover requirements. However, the Agency also received comments stating that we should retain the minimum depth requirement of 24 inches of soil cover for the use of soil oxidation factors in excess of 10 percent. These commenters questioned the rationale for the EPA effectively ignoring the uncertainty of assuming that oxidation rates in 12 inches of soil cover will be equivalent to those reported in the studies where cover soils were at least 24 inches thick.

*Response:* The EPA appreciates the comment submitted by the Petitioner in support of the proposed revisions to address their Petition for Reconsideration. As stated in section III.S.1.c, the EPA is completing its response to the Petition for Reconsideration through this final rulemaking. As stated in the preamble to the proposed rule (81 FR 2569), after reviewing the scientific literature on the methane oxidation, we determined that while the literature is not conclusive regarding the minimum soil cover necessary for oxidation to occur, it does show that oxidation generally occurs with at least 12 inches of soil cover. As described in the Findings section of the memorandum (81 FR 2569, EPA Docket Id. No. EPA–HQ–OAR–2015–0526–0008) documenting the literature review that led to the proposed revisions (hereafter referred to as the RTI Memorandum) in 11 of the studies reviewed, most of the methane oxidation appears to occur in the top 12 to 15 inches of cover soil. Our review of state permitting requirements also found that most states require at least 12 inches of intermediate or interim soil cover. Therefore, if an active landfill is receiving waste, the landfill should be applying a minimum 12-inch soil cover as intermediate or interim cover. As

such, in the final amendments to Table HH–4 we are replacing the 24-inch soil cover requirement with the requirement for interim or intermediate cover, and further provide that if the landfill is located in a state without requirements for interim or intermediate cover, the landfill must have a soil cover of 12 inches or greater in order to use one of the higher oxidation fraction values.

We agree with the Petitioner's comment that the depth of soil cover is not the sole or ''master'' variable for determining methane flux and that not all studies reported the soil cover depth, but note that all studies included some amount of soil cover and maintain that some amount of soil cover is important for methane oxidation to occur. As noted in the RTI Memorandum, methane oxidation rates are influenced by a number of variables, including the flow velocity of the landfill gas, or methane flux, through the soil surface; the porosity of the soil layer; the number and types of microorganisms in the soil layer; and the soil surface temperature or moisture content. Upon receiving the Petition for Reconsideration, which challenged the cover depth requirement, we reviewed the peer-reviewed literature on landfill methane oxidation. As stated in the RTI Memorandum, all of the ninety studies included soil characteristic data, meaning that there was some soil cover in place at the landfills or simulated environments in these studies, and after reviewing these studies we concluded that some amount of soil cover is necessary for oxidation to occur. Having made that conclusion, we focused our review on those studies that reported a methane oxidation value and a soil cover depth, as not all studies included this granularity of detail, to attempt to inform the determination of the soil cover depth at which methane oxidation occurs. As stated above, the review did yield data to support that most of the methane oxidation appears to occur in the top 12 to 15 inches of cover soil, which also reaffirms our conclusion that soil cover is a necessary factor for methane oxidation to occur. For all the reasons discussed in this section, these revisions, which are our final action on the Petition, are intended to address the Petitioner's concerns and are based on the scientific literature and landfill practice as required by state permitting. We do not agree that the further revisions to the language or the supporting documents suggested by the Petitioner is warranted, or necessary to support our final amendments.

With regard to the comments received stating that we should retain the minimum depth requirement of 24 inches of soil cover for the use of soil oxidation factors in excess of 10 percent, based on our review of the literature, and as stated above, the review of the scientific literature did not support a conclusion on the optimum depth of 24 inches of soil cover for methane oxidation. The review did identify several studies describing that most of the methane oxidation appears to occur in the top 12 to 15 inches of cover soil, which corresponds to most state requirements for intermediate or interim cover. We therefore incorporated intermediate or interim soil cover to reference state requirements, and specify that, in the absence of state requirements regarding intermediate or interim soil cover, that there must be at least 12 inches of soil cover, as a way to ensure that adequate soil cover is present in order for the facility to use the higher oxidation values.

*Comment:* Several commenters objected to the proposed revisions to Table HH–4 that would require landfills that have passive or active vents that service greater than 50 percent of the landfill area containing waste or that only have passive or active vents to use the default 10 percent oxidation fraction in their emissions calculations. Commenters described the situations in which passive and active vents are used in areas that are unable to produce enough gas to support an active gas collection and control system or an active flare. These vents help prevent gas build up that may cause cracks and fissures in the landfill cover. Commenters stated that the EPA's ''overly conservative'' methodology already accounts for any methane loss through vents. Commenters further stated that the studies EPA cited to support the proposed revision, Liptay et al. 1998 [20] and Chanton et al. 2000,[21] do not in fact ''measure emissions from vents, nor did they attempt to estimate the proportional impact of emissions from vents, relative to emissions moving through the surface of the landfill, and subject to oxidation in the cover.'' Commenters presented alternative measured findings from another study, Green et al 2012,[22] which they claimed contradicted the rationale for EPA's proposal. Commenters also provided suggested language for Table HH–4 that address their concerns and provide clarity.

*Response:* We agree with the commenters that the two studies identified in the memo entitled ''Review of Oxidation Studies and Associated Cover Depths in the Peer-Reviewed Literature,'' Docket Id. No. EPA–HQ–OAR–2015–0526–0008, do not sufficiently support the proposed revision to restrict the oxidation fractions that may be used by landfills that have only passive or active vents or for landfills with passive vents/passive flares that service greater than 50 percent of the landfill area containing waste. We also agree with the importance of the type of field studies noted by the commenters. However, we have not been able to identify additional studies in the peer-reviewed body of evidence supporting methane oxidation fractions higher than 10 percent for landfills without gas collection and control systems that primarily vent their gases. We had hoped that with proposing this revision and soliciting comment on restricting the oxidation fractions for these landfills, we would receive information about studies that definitely support or refute such a proposal. Given the current lack of rigorous, scientifically based measurement data on methane oxidation for landfills meeting the criteria in C2 of Table HH–4, we are not finalizing the proposed revision to criteria C3 of Table HH–4: ''or for landfills with passive vents/passive flares that service greater than 50 percent of the landfill area containing waste, or for landfills with only passive vents/passive flares or active venting.'' Should we identify studies that more clearly support restricting the oxidation fractions that may be used by landfills with only passive or active vents or with these vents over a majority of the landfill surface, we may consider proposing such a revision again in the future.

In this final rule, we are also clarifying the descriptions in Table HH–4 for conditions C4, C5, C6, and C7 to state that ''For landfills that do not meet the conditions in C2 or C3 above . . .'' to make clear that if the landfill does not meet the final conditions of C2 or C3 (*i.e.,* C2: Having a geomembrane cover of other non-soil barrier meeting the definition of final cover with less than 12 inches of soil cover for greater than 50 percent of the landfill area containing waste, and C3: Electing not to determine methane flux) then that landfill may use the oxidation fractions listed assuming the remainder of the

[20] Liptay et al. 1998. ''Use of stable isotopes to determine methane oxidation in landfill cover soils. Journal of Geophysical Research, 103:8243–8250.

[21] Chanton et al. 2000. Seasonal variation in methane oxidation in landfill cover soils as determined by an in situ stable isotope technique. Global Biogeochemical Cycles, 14:51–60.

[22] Green, R. et al. 2012. ''Measured and Modeled Methane Emissions at Closed MSW Landfills without Gas Collection,'' Proceedings of the Global Waste Management Symposium, San Antonio, Texas.

condition is met (*i.e.,* the methane flux rate is of the amount specified in Table HH–4). These clarifying edits were suggested by the commenters, and after consideration, we agree that these related additional changes to Table HH–4 more clearly state which oxidation fraction may be used in calculating emissions depending upon conditions in place at the landfill. We agree that the text provided by commenters, in addition to what was proposed, provides even further clarity so that a landfill owner or operator can be certain as to which oxidation fraction is appropriate to use.

3. When the Final Amendments to Subpart HH Become Effective

As shown in Table 3 of this preamble and consistent with the description of amendments in section I.E.1 of this preamble, all amendments to subpart HH will be effective on January 1, 2017, as proposed and will be reflected starting with RY2016 reports that are submitted in 2017. No comments were received on the timing of revisions to subpart HH.

*T. Subpart II—Industrial Wastewater Treatment*

We are finalizing amendments to subpart II of Part 98 (Industrial Wastewater) as proposed. This section discusses the substantive revisions to subpart II; additional minor amendments, corrections, and clarifications, including a change to the final rule, are summarized in the Final Table of Revisions available in the docket for this rulemaking (Docket Id. No. EPA–HQ–OAR–2015–0526). We are also finalizing as proposed confidentiality determinations for new and revised data elements resulting from the revisions to subpart II; see section IV of this preamble and the memorandum ''Final Data Category Assignments and Confidentiality Determinations for Data Elements in the Proposed 2015 Revisions'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for additional information on the final category assignments and confidentiality determinations for these data elements. The EPA received no comments objecting to the proposed revisions to subpart II.

1. Revisions to Subpart II To Improve the Quality of Data Collected Under Part 98 and Improve the U.S. GHG Inventory

The EPA is finalizing amendments to subpart II reporting requirements that will enhance the quality and accuracy of the data collected under the GHGRP, improve verification of collected data, and provide additional data to support estimates included in the U.S. GHG Inventory, while generally resulting in only a slight increase in burden for reporters. We are finalizing an amendment to 40 CFR 98.356 to require facilities that perform ethanol production to indicate whether their facility uses a wet milling process or a dry milling process. To clarify this requirement, we are finalizing amendments to 40 CFR 98.358 to add definitions of ''wet milling'' and ''dry milling.'' The EPA intends to use the data on the numbers of facilities with wet versus dry milling processes and their respective wastewater characteristics to improve the understanding of the data collected under the GHGRP, better understand trends in industrial wastewater technology for use in future policies and programs, update assumptions used in the U.S. GHG Inventory, and thereby improve the estimates of U.S. emissions from wastewater treatment at ethanol production facilities. In addition, the EPA intends to update the U.S. GHG Inventory using data on the level of biogas recovery in use at wet milling facilities and at dry milling facilities.

2. Other Amendments to Subpart II

The EPA is also finalizing as proposed an amendment to 40 CFR 98.358 to add a definition of the term ''weekly average.'' This amendment will serve to resolve uncertainties in the reporting requirements in 40 CFR 98.356(b)(1) and 40 CFR 98.356(d)(3) through (6) regarding how to calculate weekly averages for chemical oxygen demand (COD) and 5-day biochemical oxygen demand ($BOD_5$) concentration, $CH_4$ concentration, biogas temperature, biogas moisture content, and biogas pressure. This amendment will have no impact on burden for reporters.

3. When the Final Amendments to Subpart II Become Effective

As shown in Table 4 of this preamble and consistent with the description of amendments in section I.E.2 of this preamble, all amendments to subpart II will be effective on January 1, 2018 as proposed and will be reflected starting with RY2017 reports that are submitted in 2018. No comments were received on the timing of revisions to subpart II.

*U. Subpart LL—Suppliers of Coal-Based Liquid Fuels*

In this action, we are finalizing several amendments to subpart LL of Part 98 (Suppliers of Coal-based Liquid Fuels). This section discusses the substantive revisions to subpart LL; additional minor amendments, corrections, and clarifications are summarized in the Final Table of Revisions available in the docket for this rulemaking (Docket Id. No. EPA–HQ–OAR–2015–0526). The EPA received no comments objecting to the proposed revisions to subpart LL.

We are finalizing several revisions to 40 CFR part 98, subpart LL (Suppliers of Coal-based Liquid Fuels) to clarify requirements and amend data reporting requirements, resulting in a decrease in burden for reporters.

As proposed, we are removing the requirements of 40 CFR 98.386(a)(4), (8), and (15), (b)(4), and (c)(4) for each facility, importer, and exporter to report the annual quantity of each coal-based liquid fuel on the basis of the measurement method used. Reporters will continue to report the annual quantities of each coal-based liquid fuel in metric tons or barrels at 40 CFR 98.386(a)(2), (6), and (14), (b)(2), and (c)(2). We are also clarifying, as proposed, that the quantity of bulk natural gas liquids (NGLs) reported under 40 CFR 98.386(a)(20) should not include NGLs already reported as individual products under 40 CFR 98.386(a)(2). These revisions not only clarify the reporting requirements, but also harmonize subpart LL requirements with those of subpart MM.

As shown in Table 4 of this preamble and consistent with the description of amendments in section I.E.2 of this preamble, all amendments to subpart LL will be effective on January 1, 2018 as proposed and will be reflected starting with RY2017 reports that are submitted in 2018. No comments were received on the timing of revisions to subpart LL.

*V. Subpart NN—Suppliers of Natural Gas and Natural Gas Liquids*

We are finalizing several amendments to subpart NN of Part 98 (Suppliers of Natural Gas and Natural Gas Liquids). This section discusses the substantive revisions to subpart NN. Additional minor corrections, including corrections made for the first time in the final rule, are presented in the Table of 2015 Revisions (see Docket Id. No. EPA–HQ–OAR–2015–0526). We are also finalizing as proposed confidentiality determinations for new data elements resulting from the revisions to subpart NN; see section IV of this preamble and the memorandum ''Final Data Category Assignments and Confidentiality Determinations for Data Elements in the Proposed 2015 Revisions'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for additional information on the final category assignments and confidentiality determinations for these data elements.

The EPA received one comment requesting clarification on the proposed revisions to subpart NN in the Table of 2015 Revisions; this comment has been addressed by implementing the change suggested by the commenter, along with other harmonizing changes. See the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart NN.

We are finalizing one amendment to subpart NN that will improve the quality of the data collected under Part 98. We are adding a new reporting requirement at 40 CFR 98.406(b)(14), as proposed, to require local distribution companies (LDCs) to provide the name of the U.S. state or territory covered in the report. The EPA received no comments on this proposed revision.

As shown in Table 4 of this preamble and consistent with the description of amendments in section I.E.2 of this preamble, all amendments to subpart NN will be effective on January 1, 2018 as proposed and will be reflected starting with RY2017 reports that are submitted in 2018. No comments were received on the timing of revisions to subpart NN.

*W. Subpart OO—Suppliers of Industrial Greenhouse Gases*

We are finalizing all amendments to subpart OO of Part 98 (Suppliers of Industrial Greenhouse Gases) as proposed. This section discusses all the revisions to subpart OO; additional minor clarifications, including minimal changes to the final rule, are summarized in the Final Table of Revisions available in the docket for this rulemaking (Docket Id. No. EPA–HQ–OAR–2015–0526). The EPA received several comments for subpart OO. We are also finalizing as proposed confidentiality determinations for new data elements resulting from the revisions to subpart OO; see section IV of this preamble and the memorandum ''Final Data Category Assignments and Confidentiality Determinations for Data Elements in the Proposed 2015 Revisions'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for additional information on the final category assignments and confidentiality determinations for these data elements. Substantive comments are addressed in section III.W.2 of this preamble; see the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart OO.

1. Summary of Final Amendments to Subpart OO

This section discusses the substantive revisions to subpart OO to improve the quality of data collected under Part 98. We are finalizing all revisions to subpart OO as proposed. These revisions include two revisions to the definition of the source category to include (1) Facilities that destroy 25,000 $mtCO_2e$ or more of industrial GHGs and/or fluorinated heat transfer fluids annually, and (2) entities that produce, import, or export fluorinated heat transfer fluids that are not also fluorinated greenhouse gases. They also include an expansion of the scope of reporting to include production, transformation, destruction, imports and exports of heat transfer fluids that are not also fluorinated GHGs.

2. Summary of Comments and Responses on Subpart OO

This section summarizes the significant comments and responses related to the proposed amendments to subpart OO. See the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart OO.

*Comment:* One commenter disagreed with the EPA's proposed expansion of the definition of the source category and the scope of reporting. Regarding the proposed expansion of the scope of reporting to cover fluorinated heat transfer fluids that are not also fluorinated GHGs, the commenter asserted that the burden required to implement these changes was not ''modest,'' as had been stated by the EPA in the preamble to the proposed rule. The commenter agreed with the EPA that all suppliers of fluorinated HTFs that are not also fluorinated GHGs are believed to report under subpart OO already, and that these suppliers would need to report one to 12 additional compounds. However, the commenter argued that this would require ''significant additional activities,'' including additional monitoring, QA/QC, and recordkeeping.

The commenter stated that the costs associated with the proposed subpart OO requirements account for 23 percent of the first year costs and 21 percent of the subsequent year costs for all subparts, other than subpart FF, affected by the proposed revisions. The commenter went on to argue that ''the minor impact of fluorinated HTFs, as compared to other fluorinated GHGs for which EPA currently requires reporting . . . does not justify the cost.'' The commenter urged the EPA to reconsider the proposed revision, but stated that if the EPA decided to require reporting of fluorinated HTFs, the EPA should apply these only to facilities with fluorinated HTF emissions above the 25,000-ton-$CO_2$-equivalent threshold.

Regarding the proposed expansion of the definition of the source category to include facilities that destroy fluorinated GHGs or fluorinated HTFs, the commenter argued that the EPA should have a more rigorous rationale, supported by data, before undertaking this expansion. The commenter claimed that the EPA's justification for requiring destruction facilities to report their destruction relied on conjecture, quoting the proposed rule as saying that lack of information from destruction facilities ''*may* [commenter's emphasis] result in an underestimate'' of the quantities destroyed. The commenter recommended that the EPA undertake additional research to identify the potential number of destruction facilities and to estimate the potential quantity of industrial GHGs destroyed annually.

*Response:* As explained in the preamble to the proposed rule, the EPA's goal in expanding the definition of the source category and scope of reporting under subpart OO is to ensure that the EPA has a more accurate understanding of the U.S. supplies of both fluorinated GHGs and fluorinated HTFs.

Specifically, as stated in the preamble to the proposed rule, collecting information on the U.S. supply of fluorinated HTFs will enable us to compare reported supplies to the demand for fluorinated HTFs that we calculate based on the emissions (1) Reported under subpart I, and (2) estimated for electronics facilities that do not report under subpart I (*e.g.,* because they fall below the threshold). Also as stated in the proposed rule, similar comparisons for other fluorinated compounds (*e.g.,* $SF_6$) have alerted the EPA to potential underestimates of emissions. Such potential errors are of particular concern for fluorinated heat transfer fluids, many of which are fully fluorinated

compounds with atmospheric lifetimes of thousands of years and GWPs near 10,000.

The commenter claimed that the impact of fluorinated HTFs that are not fluorinated GHGs does not justify the cost of reporting them under subpart OO, which the commenter asserted was ''not modest.'' The commenter argued that the estimated costs of the revisions to subpart OO comprised a significant percentage of the total costs of the entire revisions rule, excluding the costs of the revisions to subpart FF. However, as detailed in the economic analysis for the proposed rule,[23] only a small fraction of the costs of the revisions to subpart OO cited by the commenter consist of the costs associated with requiring reporting of fluorinated heat transfer fluids that are not also fluorinated GHGs. Specifically, for facilities reporting their production, imports, exports, transformation, and destruction of fluorinated HTFs that are not also fluorinated GHGs, the EPA estimated per-facility costs to be $132 in $2011 ($146 in $2014) for the first and subsequent years. The EPA estimated that a total of three facilities would incur these costs, leading to total annual costs of $397 in $2011 ($438 in $2014) from the reporting of fluorinated HTFs that are not also fluorinated GHGs.[24] We consider these costs to be well justified by the insight gained into supplies and emissions of potent and long-lived fluorinated HTFs.

The commenter did not offer any justification for establishing a separate threshold for reporting supplies of fluorinated HTFs that are not also fluorinated GHGs, and we are not establishing a separate threshold in this final rule. As noted in the preamble to the proposed rule, the thresholds for industrial GHG suppliers consist of no threshold for producers, and thresholds for importers and exporters of 25,000 $mtCO_2e$, summed across $CO_2$, $N_2O$, and all fluorinated GHGs. Importers and exporters who exceed the threshold have been required to report their imports and exports of all of these GHGs, as applicable. (Note that $CO_2$ supplies are reported under subpart PP.) Including fluorinated HTFs that are not also fluorinated GHGs in this total, and in the corresponding reporting requirements, is consistent with the GHGRP's long-established approach to reporting of industrial GHG supplies as well as other GHG-related supplies.

Regarding the expansion of the definition of the industrial gas suppliers source category to include facilities that destroy fluorinated GHGs and fluorinated HTFs, we believe that the rationale provided in the preamble to the proposed rule is sufficient to support the revision. As explained there, because the previous definition of the source category excluded entities that destroyed but did not produce, import, or export fluorinated GHGs, significant amounts of destruction of fluorinated GHGs may not have been reported, resulting in an overestimate of the fluorinated GHG supply. We noted that the fluorinated GHG market includes participants who neither produce nor import industrial GHGs but who may destroy them or send them off site for destruction. For example, these participants include free-standing destruction facilities and refrigerant reclaimers who clean used HFCs for reuse. We also cited the destruction market for ozone-depleting substances (ODS), which are chemically similar to fluorinated GHGs, are manufactured and imported by many of the same facilities and companies that manufacture and import fluorinated GHGs, and are used in many of the same applications as fluorinated GHGs. Based on reporting by ODS destruction facilities to the EPA under the Stratospheric Protection Program, we observed that this market includes multiple hazardous waste treatment facilities that use a variety of different destruction technologies to destroy significant quantities of ODS. We concluded that five to 10 of these facilities (or similar facilities) would be required to report their destruction of fluorinated GHGs and HTFs given the expansion of the definition of the industrial gas supplier source category and the application of the 25,000-$mtCO_2e$ threshold for facilities that do not also produce fluorinated GHGs. Based on this analysis, we believe that the cost of reporting by fluorinated GHG destruction facilities will be justified by its benefits.

Finally, we note that because the purpose of the expanded definition of the source category is to gather information on the quantities of fluorinated GHGs destroyed, it is not reasonable to expect a precise estimate of these quantities before the expanded definition goes into effect.

3. When the Final Amendments to Subpart OO Become Effective

As shown in Table 4 of this preamble and consistent with the description of amendments in section I.E.2 of this preamble, all amendments to subpart OO will be effective on January 1, 2018 as proposed and will be reflected starting with RY2018 reports that are submitted in 2019. The amendments to subpart OO require new facilities to report to the GHGRP. We are making these revisions effective January 1, 2018 so that the new reporters will take the necessary action to begin monitoring to be in full compliance with these revisions throughout 2018. The corresponding revisions to Table A–5 of subpart A, which serve to add these new facilities under subpart OO, will also be effective on January 1, 2018 and will be reflected in RY2018 reports. No comments were received on the timing of revisions to subpart OO or the corresponding revision to Table A–5.

*X. Subpart PP—Suppliers of Carbon Dioxide*

We are finalizing as proposed one minor correction to subpart PP of Part 98 (Suppliers of Carbon Dioxide). This minor revision is summarized in the Final Table of Revisions available in the docket for this rulemaking (Docket Id. No. EPA–HQ–OAR–2015–0526).

The EPA received three comments on subpart PP. These include substantive comments regarding the proposed confidentiality determinations for certain data reporting elements of subpart PP for which no determination had been previously established, which are addressed in section IV.C of this preamble. See the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart PP.

As shown in Table 4 of this preamble and consistent with the description of amendments in section I.E.2 of this preamble, the amendments to subpart PP will be effective on January 1, 2018 as proposed and will be reflected starting with RY2017 reports that are submitted in 2018. No comments were received on the timing of revisions to subpart PP.

*Y. Subpart RR—Geologic Sequestration of Carbon Dioxide*

No substantive amendments to subpart RR of Part 98 (Geologic

[23] ''Assessment of Burden Impacts of 2015 Revisions to the Greenhouse Gas Reporting Rule'', Docket Number EPA–HQ–OAR–2015–0526–0015.

[24] EPA estimated the total cost of the revisions to subpart OO, across all subpart OO reporters, to be $36,787 in $2011 in the first year ($38,502 in $2014) and $27,194 in $2011 in subsequent years ($29,138 in $2014). Most of this total is accounted for by the eight facilities that EPA estimated would be reporting destruction of F–GHGs and F–HTFs for the first time. For these facilities, the per-facility costs were estimated to be $4,527 and $3,327 in $2011 ($4,813 and $3,642 in $2014) for the first and subsequent years respectively.

Sequestration of Carbon Dioxide) are being finalized for this rulemaking. The EPA had proposed to add a data reporting element to 40 CFR 98.446 to require reporters to indicate whether the facility is injecting a $CO_2$ stream in subsurface geologic formations to enhance the recovery of oil or natural gas. The purpose of this proposed data element was linked to our proposed development of categorical confidentiality determinations for subpart RR data elements for which confidentiality is currently evaluated on a case-by-case basis (77 FR 48072, 48081 through 48083; August 13, 2012). The EPA is not finalizing the proposed subpart RR confidentiality determinations at this time; see section IV of this preamble for additional information. Therefore, the EPA is not finalizing the proposed data reporting element. See the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart RR.

*Z. Subpart TT—Industrial Waste Landfills*

In this action, we are finalizing several amendments to Table TT–1 to subpart TT of Part 98 (Industrial Waste Landfills). This section discusses the substantive revisions to Table TT–1; one minor correction is summarized in the Final Table of Revisions available in the Docket for this rulemaking (Docket Id. No. EPA–HQ–OAR–2015–0526).

The EPA received several comments for subpart TT. Substantive comments are addressed in section III.Z.2 of this preamble; see the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart TT.

1. Revisions to Subpart TT To Improve the Quality of Data Collected Under Part 98

In this action, the EPA is finalizing as proposed amendments to Table TT–1 to subpart TT to create four separate categories of pulp and paper waste types and degradable organic carbon (DOC) values for boiler ash, kraft recovery (causticizing) wastes, wastewater treatment sludges, and other (which includes hydropulper rejects, bark wastes, and digester knots). We are also finalizing as proposed a footnote to Table TT–1 explaining what is meant by kraft recovery waste. These separate categories and corresponding DOC values allow for more accurate methane generation calculations for industrial waste landfills at pulp and paper manufacturing facilities that segregate their waste streams. After consideration of public comments, we are retaining the waste category in Table TT–1 for general pulp and paper manufacturing wastes that we had proposed to remove. However, we are assigning a corresponding DOC value of 0.15 instead of the previous value of 0.20 for this waste type. As described in further detail below at section III.Z.2., this additional category to the four proposed and finalized categories provides an appropriate DOC value for use by industrial waste landfills at pulp and paper facilities that do not segregate their waste into separate streams, except to account for industrial sludge, and general industrial waste facilities that accept waste from multiple industries that may be unable to report separate pulp and paper manufacturing waste streams. Additionally, reporters that accept waste streams from different industries should be able to track waste streams by industrial source and therefore quantify industrial waste received from different industries. Without retaining this fifth category, these reporters would no longer have been able to accurately calculate methane generation from their facility with the proposed DOC values, which is not what we intended; therefore, the fifth waste category is needed to allow proper calculations to be performed.

Additionally, we explained at proposal that we intended to require the pulp and paper industry to use the industry-specific wastewater sludge default DOC value, and had proposed to revise the ''Industrial Sludge'' category to be ''Industrial Sludge (other than pulp and paper industry sludge).'' Consistent with this proposed revision, we are further clarifying instead in a footnote to the Industrial Sludge portion of Table TT–1 that if a facility can segregate out sludge from the pulp and paper industry from other sludge received, a DOC value of 0.12 must be applied to that portion of the sludge, instead of the general 0.09 industrial sludge value. This specificity is intended to ensure more accurate calculation of methane generation at industrial waste landfills.

2. Summary of Comments and Responses on Subpart TT

This section summarizes the significant comments and responses related to the proposed amendments to subpart TT. See the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subpart TT.

*Comment:* Two commenters were pleased with the EPA's proposal to use default DOC values for the four specific pulp and paper industry waste types and agreed with the proposed values of 0.06 for boiler ash, 0.025 for kraft recovery wastes, 0.12 for pulp and paper wastewater treatment sludge, and 0.20 for ''other pulp and paper wastes.'' These commenters also recommended an additional default DOC category and value for ''pulp and paper manufacturing wastes, general'' in Table TT–1, with an assigned DOC value of 0.10 (wet basis), stating that this category and value could be used by pulp and paper manufacturing facilities that do not segregate their wastes into separate streams. The commenters stated that the value of 0.10 is the weighted average of the waste stream-specific DOC values reported to the GHGRP for subpart TT by pulp and paper facilities in 2013, and is therefore appropriate for estimating industrial landfill methane emissions from general pulp and paper manufacturing wastes. One of the commenters cited a memorandum from RTI International to the EPA in support of modifications to the pulp and paper DOC value for the Waste Chapter of the U.S. GHG Inventory (please see the memorandum titled ''Investigate the potential to update DOC and k values for the Pulp and Paper industry in the US Solid Waste Inventory'' in Docket Id. No. EPA–HQ–OAR–2015–0526) as support for this 0.10 value. The commenters also stated that the EPA should not preclude this general option for pulp and paper mills that, for whatever reason, find it more appropriate to report their waste DOC values in the aggregate.

*Response:* The EPA agrees that a general category and corresponding DOC value should be retained in Table TT–1 for pulp and paper manufacturing wastes so that industrial landfills at pulp and paper manufacturing facilities that do not segregate their waste into separate streams, except to account for industrial sludge, can more accurately

calculate methane generation than what would have been allowed in the proposed rule. While we agree that the value should be lower than the 0.20 in Table TT–1, the analysis in the memo cited by the commenter shows that the value for general waste from pulp and paper manufacturing facilities should be 0.15, accounting for all values reported for all waste streams at pulp and paper facilities, except for industrial sludge, at pulp and paper facilities. A lower DOC value of 0.10 can be calculated when considering only the 21 out of 76 pulp and paper facilities that provided waste-stream-specific DOC values in their 2013 annual reports, but there is still uncertainty behind the types and quantities of waste streams disposed of in dedicated pulp and paper industrial waste landfills and we cannot exclude the reporters that are unable to report waste stream specific data. Therefore, when we calculate a value that is to be used for general pulp and paper waste we need to include the entire universe of available data from reporters at pulp and paper manufacturing facilities (76 in total) including those that use default values. Additionally, the DOC value of 0.15 for general pulp and paper manufacturing waste (other than industrial sludge) also corresponds with the DOC value of 0.16 as presented in Heath et al. (2010) [25] for general pulp and paper manufacturing waste. Therefore, the final DOC value for pulp and paper manufacturing wastes is supported by our analysis of the best available information at this time. We may re-assess waste-stream specific data and how they impact the DOC value assigned for general pulp and paper waste (other than industrial sludge) in future reporting years as additional facilities choose to perform waste stream-specific analyses or choose to report using the pulp and paper waste-type specific DOC values.

3. When the Final Amendments to Subpart TT Become Effective

As shown in Table 4 of this preamble and consistent with the description of amendments in section I.E.2 of this preamble, all amendments to subpart TT will be effective on January 1, 2018, as proposed and will be reflected starting with RY2017 reports that are submitted in 2018. No comments were received on the timing of revisions to subpart TT.

[25] Heath, L.S. et al. 2010. Greenhouse Gas and Carbon Profile of the U.S. Forest Products Industry Value Chain. Environmental Science and Technology 44(2010) 3999–4005.

*AA. Other Minor Revisions, Clarifications, and Corrections*

In addition to the substantive amendments in sections III.A through III.Z of this preamble, we are finalizing minor revisions, clarifications, and corrections to subparts P, U, MM, and UU of Part 98 as proposed. The EPA received no comments objecting to the proposed revisions to subparts P (Hydrogen Production), U (Miscellaneous Use of Carbonate), MM (Suppliers of Petroleum Products), and UU (Injection of Carbon Dioxide).

The final revisions to these subparts are provided in the Final Table of Revisions for this rulemaking, available in Docket Id. No. EPA–HQ–OAR–2015–0526, and include clarifying requirements to better reflect the EPA's intent, corrections to calculation terms or cross-references that do not revise the output of calculations, harmonizing changes within a subpart (such as changes to terminology), corrections to simple typographical errors, and other minor corrections (*e.g.,* removal of redundant text).

As shown in Table 4 of this preamble and consistent with the description of amendments in section I.E.2 of this preamble, all amendments to subparts U, MM, and UU will be effective on January 1, 2018 as proposed and will be reflected starting with RY2017 reports that are submitted in 2018. No comments were received on the timing of revisions to these subparts.

The EPA received one comment on our proposed implementation schedule for subpart P (Hydrogen Production). We had proposed that amendments to subpart P would be effective for RY2017. The commenter requested an additional year before implementation of the proposed ''additional requirements'' in 40 CFR 98.164 for calibration of fuel flow meters, based on the premise that additional time would be needed because facilities would need to shut down operations to implement these new requirements (see Docket Id. No. EPA–HQ–OAR–2015–0526–0044). The proposed revisions were intended to be a clarification of the existing calibration requirements for fuel flow meters. The EPA originally intended that feedstock flow measurements be made with the same accuracy as the fuel flow measurements, and we have never intended for reporters to conclude that there were no monitoring or quality assurance requirements for the fuel flow. The pre-existing calculation methodology in subpart P clearly indicates that flow rate measurements for both fuels and feedstocks are required, and the calibration requirement in 40 CFR 98.164(b)(1) indicates that feedstock flow meters must meet the same requirements as fuel flow meters used under the Tier 3 methodology in 40 CFR part 60, subpart C. However, it is apparent from the comment received that some reporters under subpart P have interpreted subpart P as not requiring monitoring or QA for the fuel flow. Though we expect all facilities currently have a flow meter on the fuel line, we understand from this comment that it is possible that a few reporters will need to upgrade their flow monitoring system to meet the requirements as clarified in this action. As such, we are postponing until January 1, 2018, the effective date for this amendment to subpart P to allow these revisions to be coordinated with facilities' planned downtime schedules.

All other amendments to subpart P are effective on January 1, 2019 as shown in Table 5 of this preamble and are consistent with the description of amendments effective on that date in section I.E.3 of this preamble. Although some amendments to subpart P are effective January 1, 2018 and some are effective January 1, 2019, all amendments to subpart P will be reflected in RY2018 reports that are submitted in 2019 as shown in Tables 4 and 5 of this preamble.

See the document ''Summary of Public Comments and Responses for Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a complete listing of all comments and responses related to subparts P, U, MM, and UU.

## IV. Final Confidentiality Determinations for New or Substantially Revised Data Reporting Elements or Other Part 98 Reporting Elements for Which No Determination Has Been Previously Established

This section provides a summary of the EPA's final confidentiality determinations for new and substantially revised data elements, certain existing Part 98 data elements for which no determination has been previously established, and the significant comments and responses related to the proposed confidentiality determinations for these data elements. Section IV.A of this preamble addresses commenters' concerns with the EPA's format for proposing and finalizing categorical confidentiality determinations for new or substantially revised data reporting elements assigned to data categories with categorical confidentiality determinations. Section

IV.B of this preamble addresses the EPA's final confidentiality determinations for all new or substantially revised data reporting elements. Section IV.C of this preamble addresses the EPA's final confidentiality determinations for certain existing Part 98 data reporting elements for which no determination has been previously established.

The EPA also proposed to revise the confidentiality determinations for two existing data elements in subpart NN for which the confidentiality determinations had previously been established. The EPA received no comments on the proposed revised confidentiality determinations for subpart NN, and is finalizing the confidentiality determinations as proposed. For additional information and rationale for the confidentiality determinations for these data elements, see the preamble to the proposed rule (81 FR 2593, January 15, 2016).

The EPA's comment response document in Docket Id. No. EPA–HQ–OAR–2015–0526 provides a complete listing of all comments related to these topics and the EPA's responses.

*A. EPA's Format for Proposing and Finalizing Categorical Confidentiality Determinations for New or Substantially Revised Data Reporting Elements Assigned to Data Categories With Categorical Confidentiality Determinations*

This section addresses the format used by the EPA for proposing categorical confidentiality determinations for new or substantially revised data reporting elements assigned to data categories with categorical confidentiality determinations. In the preamble to the proposed rule, we referenced the memorandum titled ''Proposed Data Category Assignments and Confidentiality Determinations for Data Elements in the Proposed 2015 Revisions'' in Docket Id. No. EPA–HQ–OAR–2015–0526 for a list of the proposed new, substantially revised, and existing data elements, their proposed category assignments, and their proposed confidentiality determinations. This memorandum included proposed confidentiality determinations for all data elements, including data elements assigned to data categories with categorical confidentiality determinations that were not further discussed in the preamble.

Three commenters questioned this format for proposing confidentiality determinations for certain new and substantially revised data reporting elements included in the proposed rule, and expressed confusion over whether the EPA had adequately proposed confidentiality determinations for these data elements, which were assigned to data categories with categorical confidentiality determinations. Specifically, commenters argued that the EPA failed to propose confidentiality determinations for the new and substantially revised data elements assigned to data categories with categorical confidentiality determinations, because the proposed determinations were not located in the preamble. One commenter contended that the EPA must re-propose these confidentiality determinations in order to provide an opportunity for public comment, as required under the Administrative Procedure Act. The commenters were concerned that the EPA would not be able to afford CBI protection for proposed new reporting elements in subpart CC (40 CFR 98.296(a)(1) and (b)(5)) and subpart O, even though the EPA had indicated in the supporting memorandum that we had determined that these data should be handled as CBI.

We disagree with the comment that the EPA failed to propose confidentiality determinations for the new and substantially revised data elements assigned to data categories with categorical confidentiality determinations. In the proposed rule, the EPA stated that it was applying the same approach as previously used for making confidentiality determinations for data elements reported under the GHGRP, which consisted of assigning data elements to an appropriate data category and then either assigning the previously determined category-based confidentiality determination or making an individual determination if the data element is assigned to a category for which no category-based determination was previously made (see 81 FR 2574, January 15, 2016). Refer to section IV.B of the preamble to the proposed rule for further discussion of this approach, which was finalized in a previous rulemaking (76 FR 30782, May 26, 2011). The EPA clarified that ''[t]he data categories used were those finalized in the 2012 CBI Rule,'' which included final confidentiality determinations on a categorical basis for a number of these data categories. *Id.* Using this approach, we stated in section IV.C of the preamble to the proposed amendments ''the EPA is proposing to assign each of the 117 new or substantially revised data reporting requirements to the appropriate direct emitter or supplier data category'' (see 81 FR 2575). For new and substantially revised reporting elements assigned to data categories without a categorical determination, we proposed confidentiality determinations. However, for data elements proposed to be assigned to a data category with a ''previously determined category-based confidentiality determination,'' we referred the reader to the supporting memorandum for the proposed confidentiality determinations: ''Proposed Data Category Assignments and Confidentiality Determinations for Data Elements in the Proposed 2015 Revisions, available in Docket Id. No. EPA–HQ–OAR–2015–0526.'' (81 FR 2575). In that memorandum, the EPA identified the data categories and their established category-based confidentiality determinations. The memorandum shows the proposed categorical assignment for each of the data elements at issue. Using this format, the EPA proposed confidentiality determinations for those data elements proposed to be assigned to a data category with a categorical determination. The EPA has previously used this format (*i.e.,* locating in a memorandum EPA's proposed confidentiality determinations for data elements assigned to data categories with categorical confidentiality determinations) to propose confidentiality determinations in prior rulemakings, as in the November 29, 2013 revisions proposal (78 FR 71904). As in previous rulemakings that used the same format, the EPA specifically requested comment on the proposed category assignments and confidentiality determinations. In light of the detailed information that the EPA provided in the proposed rule regarding its approach for making confidentiality determinations and the resulting determinations, the EPA disagrees with the comment that the EPA failed to propose confidentiality determinations for the new and substantially revised data elements assigned to data categories with categorical confidentiality determinations. With respect to the Administrative Procedure Act, the notice and opportunity for comment described above are consistent with the rulemaking requirements of that statute. This rule is promulgated pursuant to section 307(d) of the Clean Air Act. The actions described above and the inclusion in the docket of the supporting memorandum are consistent with the requirements for proposed rules in section 307(d)(3) of the Clean Air Act.

Regarding the commenters' concern specifically about the EPA's handling of new data elements in subpart O that the EPA proposed to be CBI, the EPA is

finalizing the determinations as proposed, as the EPA did not receive adverse comment on the proposed determinations. Regarding commenters' concerns about the specific data elements in subpart CC (40 CFR 98.296(a)(1) and (b)(5)), the EPA is not finalizing the addition of these data elements, as discussed in section III.P of this preamble.

*B. Final Confidentiality Determinations for New or Substantially Revised Data Reporting Elements*

1. Summary of Final Confidentiality Determinations

The EPA is finalizing the confidentiality determinations for new or substantially revised data reporting elements as they were proposed for all subparts except subparts A (General Provisions), I (Electronics Manufacturing), S (Lime Manufacturing), X (Petrochemical Production), CC (Soda Ash Manufacturing), DD (Electrical Transmission and Distribution Equipment Use), FF (Underground Coal Mines), HH (Municipal Solid Waste Landfills), and RR (Geologic Sequestration of Carbon Dioxide). For all subparts except subparts A, I, S, X, CC, DD, FF, HH, and RR, please refer to the preamble to the proposed rule (81 FR 2574; January 15, 2016) for additional information regarding the proposed confidentiality determinations.

For subparts I, CC, DD, FF, HH, and RR, the EPA is not finalizing the proposed confidentiality determinations for certain data elements because the EPA is not finalizing the requirement to report these data elements (see sections III.F, III.P, III.Q, III.R, III.S, and III.Y of this preamble for additional information.) These data elements are:

- Three data elements under subpart I (proposed 40 CFR 98.96(y)(2)(iv): The film type being manufactured, substrate type, and linewidth or technology node for any utilization, by-product formation rate, and/or destruction or removal efficiency data submitted).
- Two data elements under subpart CC (proposed 98.296(a)(1) and (b)(5): Annual consumption of trona or liquid alkaline feedstock).
- One data element under subpart DD (proposed 40 CFR 98.306(m): Total miles of transmission and distribution lines located within each state or territory).
- One data element under subpart FF (proposed 40 CFR 98.326(u): Annual coal production).
- One data element under subpart HH (proposed 40 CFR 98.346(i)(7): An indication of whether the gas collection efficiency was determined on an area-weighted average basis or a volume-weighted average basis).
- One data element under RR (proposed 40 CFR 98.446(g): Whether the $CO_2$ stream is being injected in subsurface geologic formations to enhance the recovery of oil or natural gas).

The EPA is finalizing a confidentiality determination for one new data element for subpart FF resulting from changes from the proposed rule to this final rule. As discussed in section III.R of this preamble, which describes revisions to subpart FF, in lieu of eliminating the use of MSHA quarterly inspection reports as a source for data for monitoring methane liberated from ventilation systems, we are finalizing an amendment to 40 CFR 98.326(a) to require each mine relying on data obtained from MSHA to include, as attachments to its GHGRP report, the MSHA reports it relied upon to complete the GHGRP report. Given that the MSHA reports are the basis of a calculation method and will be used to determine whether a reporter selected the correct inputs for a GHG emission calculation, we consider these reports to be ''emissions data'' under 40 CFR 2.301(a)(2) because they contain ''information necessary to determine * * * the amount'' of an emission emitted by the source. We are therefore assigning this data element to the Calculation Methodology and Methodological Tier Category and apply the categorical determination of emissions data (not CBI) for that data category to this final data element. As emission data, these reports do not qualify for confidential treatment under section 114 of the CAA. In any event, although MSHA does not publish these reports directly, they have previously indicated that they do not consider the reports to be sensitive and would likely release them in response to a Freedom of Information Act (FOIA) request.[26] Data from these reports are also provided to the EPA for the U.S. Greenhouse Gas Inventory, and are also published in part through reports produced by EPA's Coalbed Methane Outreach Program.[27] Further, the EPA has previously concluded that there is no potential disclosure concern with respect to certain data referenced in these reports.[28] Those data are being reported under 40 CFR 98.326(a), (f), and (g).

In addition to this new data element, there are 13 data elements in subparts A, I, S, X, and DD that have been clarified or minimally revised since proposal, although the same information will be collected. These data elements and how they have been clarified in the final rule are listed in the following table. Because the information to be collected has not changed since proposal, we are finalizing the proposed confidentiality determinations for these data elements as proposed (see Table 6 of this preamble). For additional information on the rationale for the confidentiality determinations for these data elements, see the preamble to the proposed rule (81 FR 2574; January 15, 2016) and the memorandum ''Proposed Data Category Assignments and Confidentiality Determinations for Data Elements in the Proposed 2015 Revisions'' in Docket Id. No. EPA–HQ–OAR–2015–0526. As discussed in section IV.A of this preamble, the EPA applied the same approach previously used for making confidentiality determinations for data elements reported under the GHGRP by assigning data elements to an appropriate data category and then assigning the previously determined categorical confidentiality determination or making an individual case-by-case determination if the data element was assigned to a category for which no category-based determination was previously made.

[26] See ''Summary of Evaluation of Greenhouse Gas Reporting Program (GHGRP) Part 98 ''Inputs to Emission Equations'' Data Elements Deferred Until 2013'' Memorandum, December 17, 2012. Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2015–0526.

[27] See, *e.g.,* ''U.S. Underground Coal Mine Ventilation Air Methane Exhaust Characterization'' (July 2010) and ''Identifying Opportunities for Methane Recovery at U.S. Coal Mines: Profiles of Selected Gassy Underground Coal Mines 2002–2006,'' available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2015–0526.

[28] See ''Summary of Evaluation of Greenhouse Gas Reporting Program (GHGRP) Part 98 ''Inputs to Emission Equations'' Data Elements Deferred Until 2013'' Memorandum, December 17, 2012. Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2015–0526.

TABLE 6—DATA ELEMENTS (WITH TECHNICAL OR CLARIFYING REVISIONS SINCE PROPOSAL, BUT NO CHANGE IN DATA TO BE REPORTED) AND THEIR FINAL CATEGORY ASSIGNMENT AND CONFIDENTIALITY DETERMINATION

| Subpart and citation (40 CFR) | Final data category assignment and confidentiality determination | Data element description, as proposed | Data element description, as finalized |
|---|---|---|---|
| Subpart A (General Provisions): 98.2(i)(3) (proposed); 98.2(i)(3) (finalized). | Facility and Unit Identifier Information (categorical determination as established in 2011: Emission data). | If one or more processes or operations at a facility or supplier cease to operate, but not all applicable processes or operations cease to operate, a notification to the Administrator that announces the cessation of reporting for the process or operation no later than March 31 of the year following such changes. | If one or more processes or operations at a facility or supplier cease to operate, but not all applicable processes or operations cease to operate, a notification to the Administrator that announces the cessation of reporting for the process or operation no later than March 31 following the first reporting year in which the process or operation has ceased for an entire reporting year. |
| Subpart A (General Provisions): 98.2(i)(5) (proposed); 98.2(i)(5) (finalized). | Facility and Unit Identifier Information (categorical determination as established in 2011: Emission data). | If the operations of a facility or supplier are changed such that a process or operation no longer meets the ''Definition of Source Category'' as specified in an applicable subpart, a notification to the Administrator that announces the cessation of reporting no later than March 31 of the year following such changes. | If the operations of a facility or supplier are changed such that a process or operation no longer meets the ''Definition of Source Category'' as specified in an applicable subpart and the owner or operator discontinues complying with any such subpart for the reporting years following the year in which change occurs, a notification to the Administrator that announces the cessation of reporting for the process or operation no later than March 31 following the first reporting year in which such changes persist for an entire reporting year. |
| Subpart I (Electronics Manufacturing): 98.96(y)(2)(iv) (proposed); 98.96(y)(2)(iv) (finalized). | Emissions Data (categorical determination as established in 2011: Emission data). | The report must include the information described in paragraphs (y)(2)(i) through (v) of this section. (iv) . . . For any utilization, by-product formation rate, and/or destruction or removal efficiency data submitted, the report must describe, where available, the: Methods used for the measurements. | The report must include the information described in paragraphs (y)(2)(i) through (v) of this section. (iv) . . . For any utilization, by-product formation rate, and/or destruction or removal efficiency data submitted, the report must include: The methods used for the measurements. |
| Subpart I (Electronics Manufacturing): 98.96(y)(2)(iv) (proposed); 98.96(y)(2)(iv) (finalized). | Unit/Process Static Characteristics That are Not Inputs to Emission Equations; (categorical determination as established in 2011: Not emission data; case-by-case determination: Not CBI). | The report must include the information described in paragraphs (y)(2)(i) through (v) of this section. (iv) . . . For any utilization, by-product formation rate, and/or destruction or removal efficiency data submitted, the report must describe, where available: The wafer size. | The report must include the information described in paragraphs (y)(2)(i) through (v) of this section. (iv) . . . For any utilization or by-product formation rate data submitted, the report must include: The wafer size. |
| Subpart I (Electronics Manufacturing): 98.96(y)(2)(iv) (proposed); 98.96(y)(2)(iv) (finalized). | Emissions Data (categorical determination as established in 2011: Emission data). | The report must include the information described in paragraphs (y)(2)(i) through (v) of this section. (iv) . . . For any utilization, by-product formation rate, and/or destruction or removal efficiency data submitted, the report must describe, where available: The process type, process subtype for chamber clean processes. | The report must include the information described in paragraphs (y)(2)(i) through (v) of this section. (iv) . . . For any utilization or by-product formation rate data submitted, the report must include: The process type, process subtype for chamber clean processes.<br>The report must include the information described in paragraphs (y)(2)(i) through (v) of this section. (iv) . . . For any destruction or removal efficiency data submitted, the report must describe: The process type. |
| Subpart I (Electronics Manufacturing): 98.96(y)(2)(iv) (proposed); 98.96(y)(2)(iv) (finalized). | Emissions Data (categorical determination as established in 2011: Emission data). | The report must include the information described in paragraphs (y)(2)(i) through (v) of this section. (iv) . . . For any utilization, by-product formation rate, and/or destruction or removal efficiency data submitted, the report must describe, where available: The input gases used and measured. | The report must include the information described in paragraphs (y)(2)(i) through (v) of this section. (iv) . . . For any utilization or by-product formation rate, and/or destruction or removal efficiency data submitted, the report must include: The input gases used and measured. |
| Subpart S (Lime Manufacturing): 98.196(b)(19). | Production/Throughput Data That are Not Inputs to Emission Equations (categorical determination as established in 2011: Not emission data but CBI). | Annual emission factors for each lime product type produced. | Annual average emission factors for each lime product type produced. |
| Subpart S (Lime Manufacturing): 98.196(b)(20). | Production/Throughput Data That are Not Inputs to Emission Equations (categorical determination as established in 2011: Not emission data but CBI). | Annual emission factors for each calcined byproduct/waste by lime type that is sold. | Annual average emission factors for each calcined byproduct/waste by lime type that is sold. |
| Subpart X (Petrochemical Production): 98.246(a)(5) (proposed); 98.246(a)(5) (finalized). | Production/Throughput Data That are Not Inputs to Emission Equations (categorical determination as established in 2011: Not emission data but CBI). | If your petrochemical process is an integrated ethylene dichloride and vinyl chloride monomer process, report either the measured ethylene dichloride production (metric tons) or both the measured quantity of vinyl chloride monomer production (metric tons) and an estimate of the ethylene dichloride production (metric tons). | If you are electing to consider the petrochemical process unit to be the entire integrated ethylene dichloride/vinyl chloride monomer process, report the amount of intermediate ethylene dichloride produced (metric tons). The reported amount of intermediate EDC produced may be a measured quantity or an estimate that is based on process knowledge and best available data. |
| Subpart X (Petrochemical Production): 98.246(a)(14) (proposed); 98.246(a)(14) (finalized). | Unit/Process Operating Characteristics That are Not Inputs to Emission Equations (categorical determination as established in 2011: Not emission data; case-by-case determination: CBI). | Annual average of the measurements of the carbon content of each feedstock and product. (i) For feedstocks and products that are gaseous or solid, report this quantity in kg carbon per kg of feedstock or product. (ii) For liquid feedstocks and products, report this quantity either in units of kg carbon per kg of feedstock or production, or kg C per gallon of feedstock or product. | Annual average of the measurements or determinations of the carbon content of each feedstock and product conducted according to § 98.243(c)(3) or (c)(4). (i) For feedstocks and products that are gaseous or solid, report this quantity in kg C per kg of feedstock or product. (ii) For liquid feedstocks and products, report this quantity either in units of kg C per kg of feedstock or product, or kg C per gallon of feedstock or product. |

TABLE 6—DATA ELEMENTS (WITH TECHNICAL OR CLARIFYING REVISIONS SINCE PROPOSAL, BUT NO CHANGE IN DATA TO BE REPORTED) AND THEIR FINAL CATEGORY ASSIGNMENT AND CONFIDENTIALITY DETERMINATION—Continued

| Subpart and citation (40 CFR) | Final data category assignment and confidentiality determination | Data element description, as proposed | Data element description, as finalized |
|---|---|---|---|
| Subpart X (Petrochemical Production): 98.246(a)(15) (proposed); 98.246(a)(15) (finalized). | Unit/Process Operating Characteristics That are Not Inputs to Emission Equations; (categorical determination as established in 2011: Not emission data; case-by-case determination: CBI). | For each gaseous feedstock and product, the annual average of the measurements of molecular weight in units of kg per kg mole. | For each gaseous feedstock and product, the annual average of the measurements or determinations of the molecular weight in units of kg per kg mole, conducted according to §98.243(c)(3) or (c)(4). |
| Subpart X (Petrochemical Production): 98.246(b)(8) (proposed); 98.246(b)(8) (finalized). | Production/Throughput Data That are Not Inputs to Emission Equations (categorical determination: Not emission data but CBI). | If your petrochemical process is an integrated ethylene dichloride and vinyl chloride monomer process, report either the measured ethylene dichloride production (metric tons) or both the measured quantity of vinyl chloride monomer production (metric tons) and an estimate of the ethylene dichloride product (metric tons). | If you are electing to consider the petrochemical process unit to be the entire integrated ethylene dichloride/vinyl chloride monomer process, report the amount of ethylene dichloride produced (metric tons). The reported amount of intermediate EDC produced may be a measured quantity or an estimate that is based on process knowledge and best available data. |
| Subpart DD (Electrical Transmission and Distribution Equipment Use): 98.306(n) (proposed); 98.306(n) (finalized). | ''Unit/Process 'Static' Characteristics that Are Not Inputs to Emission Equations'' Direct Emitter Data Category (categorical determination as established in 2011: Not emission data; case-by-case determination: Not CBI). | The following numbers of pieces of equipment: (1) New hermetically sealed-pressure switchgear during the year. (2) New SF6- or PFC-insulated equipment other than hermetically sealed-pressure switchgear during the year. (3) Retired hermetically sealed-pressure switchgear during the year. (4) Retired SF6- or PFC-insulated equipment other than hermetically sealed-pressure switchgear during the year. | The number of $SF_6$- or PFC-containing pieces of equipment in each of the following equipment categories: (1) New hermetically sealed-pressure switchgear during the year. (2) New equipment other than hermetically sealed-pressure switchgear during the year. (3) Retired hermetically sealed-pressure switchgear during the year. (4) Retired equipment other than hermetically sealed-pressure switchgear during the year. |

For all other confidentially determinations for the new or substantially revised data reporting elements for these subparts, the EPA is finalizing the confidentiality determinations as they were proposed. Please refer to the preamble to the proposed rule (81 FR 2574; January 15, 2016) for additional information regarding these confidentiality determinations.

2. Response to Public Comments on Proposed Confidentiality Determinations

The EPA received several comments related to the proposed confidentiality determinations for new or substantially revised data elements. The EPA received only supportive comments on the proposed confidentiality determinations for all data elements except certain data elements in subparts I, V, and DD as described in this section. These supportive comments may be found in the EPA's comment response document in Docket Id. No. EPA–HQ–OAR–2015–0526.

For subparts I, V, and DD, we received comments questioning the proposed confidentiality determination of certain new and substantially revised data elements in subparts I, V, and DD, including requests that the data elements be treated as confidential. For the reasons described in section III.F of this preamble, we are not finalizing three data elements proposed to be included in the Triennial Report under subpart I (40 CFR 98.96(y)(2)(iv): Film type being manufactured, substrate type, and linewidth or technology node) where commenters questioned the proposed confidentiality determination. As such, we are not finalizing category assignments or confidentiality determinations for these data elements.

For subparts V and DD, summaries of the commenters' concerns and the EPA's responses thereto are provided below. Additional comments and the EPA's responses may be found in the comment response document noted above.

*Comment:* One commenter opposed the proposed confidentiality determination of ''Not CBI'' for the date of abatement technology installation in 40 CFR 98.226(h) and requested that this data element be considered CBI.

*Response:* The EPA disagrees that the reported date of abatement technology installation should be treated as CBI. The commenter failed to provide any justification for their contention that this data element should be treated as CBI. As discussed in the preamble to the proposed amendments (81 FR 2594; January 15, 2016), the EPA requested that commenters disagreeing with EPA's ''Not CBI'' determination indicate why the data element is entitled to confidential treatment under the provisions in 40 CFR 2.208. Specifically, the EPA requested that commenters specify how the public release of the data element would or would not cause a competitive disadvantage to a reporter and how this data element may be different from or similar to data that are already publicly available. If the commenter was making the argument that competitors could use the particular data element to discern sensitive information, the EPA requested that the commenter describe the pathway by which this could occur and explain how the discerned information would negatively affect a reporter's competitive position, as well as describe any unique process or aspect of a facility that would be revealed if the new or revised data element were made publicly available. If the commenter was making the argument that the data element would cause harm only when used in combination with other publicly available data, the EPA requested that the commenter describe the other data, identify the public source(s) of these data, explain how the combination of data could be used to cause competitive harm, and describe the measures currently taken to keep the data confidential. As noted above, the commenter failed to provide any such rationale. Based on our evaluation of this new data element, we see no reason why the date of installation would be considered proprietary information. The GHGRP Web site already publicly releases the number and type of abatement technologies used by reporters under 40 CFR part 98, subpart V (see *https://ghgdata.epa.gov/ghgp/service/facilityDetail/2014?id=1002830&ds=E&et=undefined&popup=true*). As stated in the preamble to the proposed rule (81 FR 2577; January 15, 2016), the date of installation does not

provide insight into current production rates, raw material consumption, or other information that competitors could use to discern market share and other sensitive information. Further, information regarding the date of installation of abatement devices constitutes general information that is already available to the public through other sources (*e.g.,* construction permits). For the reasons stated above, the EPA is finalizing its confidentiality determinations for 40 CFR 98.226(h) as proposed.

*Comment:* One commenter contended that EPA should change its proposed confidentiality determination for the proposed subpart DD reporting requirements because detailed equipment counts, equipment types, and linked geographical data will relay company-specific information that may jeopardize competitive advantage in the industry. The commenter requested that the requirements for reporters to distinguish between hermetically sealed-pressure equipment and other $SF_6$-containing equipment be considered CBI.

*Response:* We are finalizing as proposed our determination of ''Not CBI'' for the new subpart DD reporting elements. Among these new elements are the numbers of $SF_6$- or PFC-containing pieces of equipment in each of the following categories: (i) New hermetically sealed-pressure switchgear during the year; (ii) new equipment other than hermetically sealed-pressure switchgear during the year; (iii) retired hermetically sealed-pressure switchgear during the year; and (iv) retired equipment other than hermetically sealed-pressure switchgear during the year. While the commenter asserts that publishing these data elements ''will relay company-specific information that may jeopardize competitive advantage in the industry,'' the commenter does not provide any explanation of or support for this assertion. Thus, we conclude, as stated in the preamble to the proposed rule (81 FR 2578), that DD reporters are ''are public or publicly-regulated utilities that are not affected by competitive market conditions that may apply to other industries'' and that ''these [required] data elements do not disclose any information about a manufacturing process or operating conditions that would be proprietary.'' Moreover, even if ''detailed equipment counts [and] equipment types'' posed disclosure concerns, we note that these new requirements are only for facilities to report the numbers of pieces of equipment that are new or retired during the year by one of two broad equipment types, not for facilities to report detailed inventories of the numbers of pieces and types of equipment in use. Regarding the commenter's statement that the equipment counts would be linked to geographical data, we did not propose that facilities report the counts of new and retiring equipment by state, but that facilities report their miles of transmission and distribution lines by state. As discussed in section III.Q of this preamble, we are requiring in the final rule that facilities report only the states in which they lie.

### *C. Final Confidentiality Determinations for Other Part 98 Data Reporting Elements for Which No Determination Has Been Previously Established*

#### 1. Summary of Final CBI Determinations

The EPA is finalizing all confidentiality determinations for other Part 98 data reporting elements for which no determination has been previously established as they were proposed, except confidentiality determinations that were proposed for subpart PP (40 CFR 98.426(h)(1) through (3)) and subpart RR (40 CFR 98.446(a)(1), 40 CFR 98.446(a)(2)(i) through (iii), 40 CFR 98.446(a)(3)(i) through (iii), 40 CFR 98.446(b)(1) through (4), 40 CFR 98.446(c), and 40 CFR 98.446(f)(4)(i) through (iv)). Please refer to the preamble to the proposed rule (81 FR 2574, January 15, 2016) for additional information regarding the proposed confidentiality determinations.

The EPA is not finalizing confidentiality determinations that were proposed for subpart PP or subpart RR because we do not have sufficient information at this time to make categorical determinations. Currently, these subpart PP requirements potentially affect few facilities; however, there is the potential for growth in the number of affected facilities in the future. The EPA is therefore not finalizing categorical confidentiality determinations at this time for these subpart PP data elements in order to allow the agency to consider the potentially broader group of affected facilities likely to exist in the future. Further, because these subpart PP data elements are related to the subpart RR data elements, the EPA is also not finalizing confidentiality determinations for these subpart RR data elements at this time.

#### 2. Response to Comments on Proposed Confidentiality Determinations

The EPA received several comments related to the proposed confidentiality determinations for the other Part 98 data reporting elements for which no determination has been previously established. The EPA received only supportive or minor comments on the proposed confidentiality determinations for all data elements except 40 CFR 98.426(h)(3), and is finalizing the confidentiality determinations as proposed. These comments may be found in the EPA's comment response document in Docket Id. No. EPA–HQ–OAR–2015–0526.

For 40 CFR 98.426(h)(3), a summary of this comment and EPA's response thereto is provided below.

*Comment:* The EPA received comments both supporting and opposing the ''Not CBI'' determination for the subpart PP data element that requires reporting of the amount of $CO_2$ captured from an electric generating unit and delivered to a facility reporting under subpart RR. The commenters opposing the ''Not CBI'' determination asserted that the quantity of $CO_2$ transferred by the EGU and the quantity of $CO_2$ received at the ER facility are essentially the same, and that publication of the quantity of $CO_2$ transferred by the EGU would likely cause significant competitive harm, resulting in unwillingness on the part of the ER industry to purchase such $CO_2$. They recommended that, analogous to subpart RR, EPA add a data element to subpart PP that distinguishes between ER and non-ER sites and treat that data element consistently with ER facility CBI determinations in subparts RR and UU. One commenter supported the proposed ''Not CBI'' determination for the amount of $CO_2$ transferred to a subpart RR facility, but recommended that the EPA balance the needs of industry and the need for public confidence in the ability of ER to sequester $CO_2$.

*Response:* After careful consideration of public comment, the EPA is not finalizing categorical confidentiality determinations for this subpart PP data element. We do not have sufficient information at this time to make categorical determinations. Currently, these requirements potentially affect few facilities; however, there is the potential for growth in the number of affected facilities in the future. The EPA is therefore not finalizing categorical confidentiality determinations at this time in order to allow the Agency to consider the potentially broader group of affected facilities likely to exist in the future.

The commenters requested that EPA add a data reporting element to subpart PP that distinguishes between $CO_2$ being sent to ER and non-ER subpart RR facilities. The purpose of the

commenter's request was linked to the development of a categorical confidentiality determination for 40 CFR 98.426(h)(3). Because the EPA is not finalizing categorical confidentiality determinations at this time for 40 CFR 98.426(h)(3), the EPA is not finalizing the commenters' request to add a data reporting element to subpart PP.

## V. Impacts of the Final Amendments

This section of the preamble examines the costs and economic impacts of the final rule and the estimated economic impacts of the rule on affected entities.

The revisions in this final rule are anticipated to increase burden in cases where the amendments expand the applicability or reporting requirements of Part 98, and are anticipated to decrease burden in cases where the amendments streamline Part 98 to remove notification or reporting requirements or simplify the data that must be reported. Most subparts include revisions that will result in some increase in burden, as well as revisions that will result in some decrease in burden. As discussed in the preamble to the proposed rule, in several cases the final rule amendments are anticipated to result in a decrease in burden, but we were unable to quantify this decrease. Therefore, the impacts for the final rule generally reflect an increase in burden for most subparts.

The EPA received several comments on the proposed revisions and the impacts of the proposed rule. As a result of these comments, the EPA has, in some cases, revised the final rule requirements and updated the impacts analysis to reflect these changes. For some subparts, we are not finalizing revisions to monitoring or reporting requirements that would have required reporters to collect or submit additional data. For example, for subpart I (Electronics Manufacturing) reporters, as discussed in section III.F of this preamble, we are revising the information required to be collected as part of the triennial report in this final rule and not finalizing the collection of certain proposed data. Similarly, the EPA is not finalizing certain data elements that were proposed to be added to subparts CC (Soda Ash Manufacturing), DD (Electrical Transmission and Distribution Equipment Use), HH (Municipal Solid Waste Landfills), and RR (Geologic Sequestration of Carbon Dioxide). For subpart FF (Underground Coal Mines) reporters, we are not finalizing revisions that would have eliminated the use of MSHA quarterly inspection reports to be used as a source of data for monitoring methane liberated from ventilation systems, and we are not finalizing revisions that would have required reporters to report coal production data. Therefore, the final burden for these subparts has been revised to reflect only those requirements that are being finalized, and is significantly lower than proposed.

In other cases, the EPA has adjusted the burden of the final rule to better reflect the costs associated with the final revisions. For example, for subpart C (General Stationary Combustion), we have revised the burden estimate for the reporting of the cumulative maximum rated heat input capacity for all units within the GP or CP configuration that have a maximum rated heat input capacity greater than or equal to 10 (mmBtu/hr). As discussed in section III.B of this preamble, the EPA agrees with commenters that the burden provided in the proposed rule for these data elements was understated. The revised burden estimate reflects additional time and labor that may be required to collect the maximum rated heat input capacity for multiple units and to aggregate these capacities, and therefore reflects an overall increase in burden for subpart C reporters. Additional information on these estimates may be found in section V.A of this preamble.

As discussed in section I.E of this preamble, we are implementing the final revisions in stages for the 2016, 2017, and 2018 RY reports in order to stagger the implementation of these changes over time and provide time for needed software revisions. The burden has been determined based on when the revisions would be implemented. One-time implementation costs will accrue for certain revisions to applicability and reporting provisions that will apply in RY2017 and RY2018; therefore, we have estimated costs through RY2019 to reflect the subsequent year costs incurred by industry. The incremental implementation costs for all subparts for each reporting year are summarized in Table 7 of this preamble. The estimated incremental burden is $636,124 ($2014) for all proposed revisions affecting RY2016 through RY2018, including $5,268 from revisions that apply to RY2016 reports, $407,268 from revisions that apply to RY2017 reports, and $223,588 from revisions that apply to RY2018 reports. The estimated annual burden is $189,150 ($2014) per year following implementation of all changes. The incremental burden by subpart is shown in Table 8 of this preamble. One-time implementation costs are incorporated into first year costs, while subsequent year costs represent the annual burden that will be incurred in total by all affected reporters.

TABLE 7—INCREMENTAL BURDEN FOR REPORTING YEARS 2016–2019

[$2014/year]

| Cost summary | RY2016 | RY2017 | RY2018 | RY2019 |
|---|---|---|---|---|
| First Year Costs | [a] $5,268 | $402,789 | [b] $129,397 | |
| Subsequent Year Annual Costs for Revisions Implemented in: | | | | |
| 2016 | | 4,479 | 4,479 | [a] 5,268 |
| 2017 | | | 89,712 | 89,712 |
| 2018 | | | | 94,959 |
| Total Costs by Year (all subparts) | 5,268 | 407,268 | 223,588 | [a] 189,939 |

[a] Includes additional labor costs of $789 for reporting data elements for subpart I for a triennial report submitted once every three years. Total Costs by Year for RY2019 are based on all subsequent year costs ($189,150) plus these additional labor costs for subpart I.

[b] Includes one-time implementation costs for new reporters under subparts V and OO.

TABLE 8—INCREMENTAL BURDEN BY SUBPART

[$2014]

| Subpart | Costs for additional reporters | | Costs for revisions to reporting | | Total cost | |
|---|---|---|---|---|---|---|
| | First-Year | Subsequent-Year | First-Year | Subsequent-Year | First-Year | Subsequent-Year |
| **Revisions Reflected Starting in RY2016** | | | | | | |
| A[a] | $0 | $0 | $606 | $606 | $606 | $606 |
| I[b] | 0 | 0 | 789 | 0 | 789 | 0 |
| HH | 0 | 0 | 3,872 | 3,872 | 3,872 | 3,872 |
| Total Costs for Revisions Implemented in RY2016 | | | | | 5,268 | 4,479 |
| **Revisions Reflected Starting in RY2017** | | | | | | |
| A[a] | 0 | 0 | 4,179 | 4,179 | 4,179 | 4,179 |
| C | 0 | 0 | 387,587 | 74,511 | 387,587 | 74,511 |
| E | 0 | 0 | 11 | 11 | 11 | 11 |
| F | 0 | 0 | 66 | 66 | 66 | 66 |
| G | 0 | 0 | 252 | 252 | 252 | 252 |
| N[c] | 0 | 0 | 0 | 0 | 0 | 0 |
| O | 0 | 0 | 117 | 117 | 117 | 117 |
| Q[c] | 0 | 0 | 460 | 460 | 460 | 460 |
| S | 0 | 0 | 833 | 833 | 833 | 833 |
| U[c] | 0 | 0 | 0 | 0 | 0 | 0 |
| X | 0 | 0 | 1,403 | 1,403 | 1,403 | 1,403 |
| Z | 0 | 0 | 44 | 44 | 44 | 44 |
| AA[c] | 0 | 0 | 0 | 0 | 0 | 0 |
| CC[c] | 0 | 0 | 0 | 0 | 0 | 0 |
| DD | 0 | 0 | 1,038 | 1,038 | 1,038 | 1,038 |
| FF | 0 | 0 | 2,265 | 2,265 | 2,265 | 2,265 |
| II | 0 | 0 | 2,722 | 2,722 | 2,722 | 2,722 |
| LL[d] | 0 | 0 | −18 | −18 | −18 | −18 |
| MM[c] | 0 | 0 | 0 | 0 | 0 | 0 |
| NN | 0 | 0 | 1,830 | 1,830 | 1,830 | 1,830 |
| PP[c] | 0 | 0 | 0 | 0 | 0 | 0 |
| TT[c] | 0 | 0 | 0 | 0 | 0 | 0 |
| UU[c] | 0 | 0 | 0 | 0 | 0 | 0 |
| Total Costs for Revisions Implemented in RY2017 | | | | | 402,789 | 89,712 |
| **Revisions Reflected Starting in RY2018** | | | | | | |
| P[c] | 0 | 0 | 0 | 0 | 0 | 0 |
| V | 88,583 | 63,509 | 135 | 135 | 88,718 | 63,644 |
| Y | 0 | 0 | 1,534 | 1,534 | 1,534 | 1,534 |
| OO | 38,502 | 29,138 | 643 | 643 | 39,145 | 29,781 |
| Total Costs for Revisions Implemented in RY2018 | | | | | 129,397 | 94,959 |
| Total | 127,085 | 92,646 | 410,369 | 96,503 | 537,454 | 189,150 |

[a] Costs for subpart A for RY2016 reflect revisions to 40 CFR 98.2(i)(3) and (5) related to notifying the Administrator the facility or supplier will cease reporting. All other costs for subpart A are reflected in revisions starting in RY2017.

[b] Costs for subpart I include new data elements related to the triennial technology report required by 40 CFR 98.96(y). The first report must be submitted with RY2016 reports on March 31, 2017 and every three years thereafter. Subpart I reporters will subsequently incur these costs ($789) every three years. For the purposes of estimating burden, the annual costs associated with the data elements were included in the total incremental estimates for RY2016 and RY2019 (see Table 7 of this preamble) and not for RY2017 or RY2018, and are not reflected in the total subsequent year costs.

[c] The final changes to this subpart include only minor revisions, clarifications, and corrections that have no impact on the burden to reporters.

[d] This entry is a negative value because certain reporting requirements were removed from subpart LL and no new reporting requirements were added for the subpart, resulting in a net cost savings for this source category.

A full discussion of the impacts may be found in the memorandum, ''Assessment of Burden Impacts of Final 2015 Revisions to the Greenhouse Gas Reporting Rule,'' available in Docket Id. No. EPA–HQ–OAR–2015–0526.

*A. How was the incremental burden of the final rule estimated?*

The estimated incremental change in burden from the final amendments to Part 98 include burden associated with: (1) Revisions to the reporting requirements by adding, revising, or removing existing reporting requirements (20 subparts); and (2) revisions to the applicability of subparts such that additional facilities would be required to report under Part 98 (subparts V and OO).

1. Burden Associated With the Revision of Reporting Requirements

The final rule includes amendments that add reporting requirements or revise existing reporting requirements to

collect more detailed facility data. The final amendments collectively add or revise data elements in 20 subparts of part 98, including 92 data elements that were not previously required to be collected. The collection of these new and revised data elements does not add new monitoring requirements, and does not substantially affect the type of information that must be collected. For all of these additional data elements, the EPA has estimated a nominal additional cost to report the data element and fulfill the recordkeeping requirements. The final amendments will also remove 18 data elements in subparts O, Y, DD, HH, and LL. For these data elements, the EPA has estimated a nominal reduction in cost, since reporters would no longer be required to report the data element.

All costs to the regulated industry resulting from revisions to the reporting requirements for the GHGRP are annual labor costs (*i.e.,* the cost of labor by facility staff to meet the rule's information collection requirements). For each subpart, the EPA determined the incremental change in annual hourly labor estimates by multiplying the number of data elements that were added, revised, or removed in each subpart by the number of hours required to review each data element and the number of affected reporters for each subpart. Where data elements were removed in subparts O, Y, DD, HH, and LL, a reduction in the annual hourly labor estimate was assumed. Labor costs were applied to the total annual hour estimates for each labor category to obtain the total costs for each subpart.

The EPA is revising the burden associated with the reporting of one new data element for subpart C reporters in this final rule. As discussed in section III.B of this preamble, for emissions reported using the aggregation of units (GP) and common pipe (CP) configurations, the EPA is finalizing as proposed requirements under 40 CFR 98.36(c)(1)(iii) and 40 CFR 98.36(c)(3)(ii) to report the cumulative maximum rated heat input capacity for all units (within each configuration) that have a maximum rated heat input capacity greater than or equal to 10 (mmBtu/hr). However, several commenters disagreed with our assessment that the burden associated with this data element was minimal. Commenters urged that collection of this data element could be burdensome to reporters from a time, resources, and cost perspective given the number of units, noting that this data element would need to be reassessed and updated annually for accuracy. After further consideration, we have adjusted the annual hourly labor estimate associated with the reporting of this data element to include the additional time needed to determine the units included under each configuration and to aggregate the maximum rated heat input capacities for all units greater than 10 (mmBtu/hr). To adjust the burden, the EPA multiplied the revised annual hourly labor estimate by the number of affected reporters anticipated. The EPA determined that an increase in the estimated associated burden is reasonable because the reporting of this data element requires the collection and aggregation of data from multiple units included in the configuration. After the first year of reporting, a reporter would only be anticipated to update the data element to adjust the units included under a GP or CP configuration to reflect facility changes. Therefore, the annual hourly labor estimates for this data element reflect first- and subsequent-year costs.

In this final rule, the anticipated incremental cost associated with the addition, revision, and removal of reporting requirements from all subparts is $5,268 for RY2016, $402,789 for RY2017, and $2,313 for RY2018. The estimated annual burden from these reporting revisions is $96,503 per year following implementation of all revisions. The total annual burden for each subpart is assumed to be equal for the first and subsequent years, with the exception of subparts C and I. For subpart C, the estimated incremental cost associated with reporting the new, revised, and removed data elements includes additional burden and costs ($313,077) for certain subpart C reporters for the initial collection and aggregation of data for the reporting of the cumulative maximum rated heat input capacity for units included in a GP or CP configuration (40 CFR 98.36(c)(1)(iii) or 40 CFR 98.36(c)(3)(ii)), which is anticipated to affect 3,597 reporters. This additional burden applies to RY2017 only; for all subsequent years, the burden for these data elements is anticipated at $74,511. For subpart I, the new data elements in the final rule pertain to the triennial technology report required under 40 CFR 98.96(y), which must first be submitted with RY2016 reports on or before March 31, 2017 and every three years thereafter. For the purposes of estimating burden, the annual costs associated with these data elements ($789) were applied to RY2016 only.

2. Burden Associated With Revisions That Affect Applicability

The EPA is finalizing revisions that affect the applicability of two subparts of part 98: Subpart V (Nitric Acid Production) and subpart OO (Suppliers of Industrial Greenhouse Gases). These final revisions, which will apply beginning in RY2018, are anticipated to require reporting for four additional reporters under subpart V, and five to ten additional reporters under subpart OO. (For the purposes of estimating burden, an average of eight additional reporters were assumed to be required to report under subpart OO of part 98). The majority of facilities within these industries already report under part 98; specifically, all four of the affected reporters under subpart V already submit annual reports. The total incremental burden from revisions to applicability is $127,085 in the first year and $92,646 in subsequent years ($2014). The incremental burden for the additional reporters for subpart V includes first-year costs of $88,583 ($22,146 per facility) and subsequent year costs of $63,509 ($15,877 per facility). The incremental burden for the additional reporters for subpart OO includes first-year costs of $38,502 ($4,813 per facility) and subsequent year costs of $29,138 ($3,642 per facility).

To estimate the cost impacts for additional reporters, the recent information collection requests for the GHG reporting program [29] were used to obtain the first year average cost per facility that is incurred from reporting under subparts V and OO (updated to $2014) and the subsequent year burden. These average costs per facility include labor costs, capital costs, and operation and maintenance costs. We determined total reporting costs for each subpart by assigning these costs to model facilities that are representative of each industry sector. The total cost for each subpart was determined by multiplying the model facilities cost by the number of affected facilities.

*B. Additional Impacts of the Proposed Revisions to Part 98*

In addition to amendments that revise the existing applicability or reporting requirements of part 98, the EPA is finalizing additional revisions and other clarifications to several subparts in part 98 that are not anticipated to have a significant impact on burden. These include revisions discussed in section III of this preamble that are intended to streamline the rule requirements, including revisions to clarify and revise

[29] See Supporting Statement Part A: Information Collection Request for the Greenhouse Gas Reporting Program. OMB Control No. 2060–0629. EPA ICR No. 2300.10. (U.S. EPA, 2013) and Supporting Statement Part A: Information Collection Request for the Greenhouse Gas Reporting Program. OMB Control No. 2060–0629. EPA ICR No. 2300.17. (U.S. EPA, 2016)

the requirements of part 98 in order to focus GHGRP and reporter resources on relevant data, to expand and clarify the conditions under which a facility can cease reporting, or to clarify requirements for facilities that report very little or no emissions, and revisions that would improve the efficiency of the reporting and verification process. These revisions are anticipated to minimally reduce burden for reporters.

The EPA is also finalizing revisions that are intended to improve the quality of the rule but that do not impact burden, such as amending calculation methods to improve the accuracy of the emissions estimate (*e.g.,* subparts I and Y); these amendments increase the accuracy of reported emissions, but do not require additional monitoring or data collection by reporters, and have no additional impact on burden.

We are finalizing, for certain subparts, revised monitoring or measurement methods that more closely align rule requirements with different operating scenarios in the industry. Other amendments provide flexibility for reporters and clarify reporting requirements. These amendments are anticipated to have no impact or minimally decrease burden for reporters.

The final revisions also include minor amendments, corrections, and clarifications, including simple revisions of requirements such as clarifying changes to definitions, calculation methodologies, monitoring and quality assurance requirements, missing data procedures, and reporting requirements. These revisions clarify part 98 to better reflect the EPA's intent, and do not present any additional burden on reporters.

A full discussion of the burden associated with the final revisions for each subpart may be found in the memorandum, ''Assessment of Burden Impacts of Final 2015 Revisions to the Greenhouse Gas Reporting Rule'' available in Docket Id. No. EPA–HQ–OAR–2015–0526.

## VI. 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 the amendments raise novel legal or policy issues. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an analysis of the burden associated with this action. A copy of the analysis is available in Docket Id. No. EPA–HQ–OAR–2015–0526 and is briefly summarized in section V of this preamble.

### *B. Paperwork Reduction Act (PRA)*

The information collection activities in this rule have been submitted for approval to the OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2300.18. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

This action amends specific provisions in the Greenhouse Gas Reporting Rule to streamline and improve implementation of the rule, improve the quality and consistency of the data collected under the rule, and to clarify or make minor updates to certain provisions that have been the subject of questions from reporting entities. These amendments will improve the quality and consistency of the data collected, as well as improve the efficiency of the reporting process for both the EPA and reporters. The amendments are anticipated to increase burden in cases where they expand current applicability, monitoring, or reporting, and are anticipated to decrease burden in cases where they streamline part 98 to remove notification or reporting requirements or simplify the data that must be reported.

Specifically, this action amends the reporting requirements to add or revise 112 data elements in 20 subparts of part 98. These revisions are necessary to improve the quality of the data collected under the GHGRP. The EPA is also removing 18 data elements in five subparts, which streamlines rule requirements. This action also amends the applicability of two subparts of part 98: Subparts V (Nitric Acid Production) and OO (Suppliers of Industrial Greenhouse Gases). These amendments could increase the number of facilities required to report under part 98. Impacts associated with the revisions to the applicability and reporting requirements are detailed in the memorandum ''Assessment of Burden Impacts of Final 2015 Revisions to the Greenhouse Gas Reporting Rule'' (see Docket Id. No. EPA–HQ–OAR–2015–0526). Burden is defined at 5 CFR 1320.3(b).

The total estimated incremental burden and costs associated with the revisions is 9,196 hours and $636,124 ($2014) over the three years covered by the information collection. These costs include $5,268 in RY2016, $407,268 in RY2017, and $223,588 in RY2018, averaging $212,041 over the three years. The total estimated reporters affected by the amendments is 7,971. The frequency of response for these revisions is once annually, with the exception of certain data elements for subpart I that will be submitted once every three years.

The estimated incremental costs and hour burden associated with the addition and revision of 112 data elements and the removal of 18 data elements in 20 subparts include $5,268 ($2014) in RY2016, $402,789 in RY2017, and $2,313 for RY2018. The estimated burden from these revisions is $96,503 ($2014) per year following implementation of all revisions. The total annual burden for each subpart is assumed to be equal for the first and subsequent years, with the exception of subparts C and I. For subpart C, the estimated incremental cost associated with reporting the new, revised, and removed data elements includes additional burden and costs ($313,077) for certain subpart C reporters for the initial collection and aggregation of data for the reporting of the cumulative maximum rated heat input capacity for units included in a GP or CP configuration (40 CFR 98.36(c)(1)(iii) or 40 CFR 98.36(c)(3)(ii)). This additional burden applies to RY2017 only. For subpart I, the new data elements pertain to the triennial technology report required under 40 CFR 98.96(y), which must first be submitted with RY2016 reports on or before March 31, 2017 and every three years thereafter. For the purposes of estimating burden for the three years covered by the information collection, the annual costs associated with these data elements ($789) will apply for RY2016 only.

The estimated incremental cost burden associated with additional reporters to subparts V and OO is $127,085 in the first year (RY2018) and $92,646 in subsequent years. The incremental burden for the additional reporters for subpart V includes first-year costs of $88,583 and subsequent year costs of $63,509. The incremental burden for the additional reporters for subpart OO includes first-year costs of $38,502 and subsequent year costs of $29,138. The estimated number of likely new respondents that will result from these amendments is 12, including four additional reporters under subpart V, and an average of eight additional reporters for subpart OO. The annual hourly burden for these additional reporters is based on the annual average hourly burden for existing reporters

under subparts V and OO, which is 186 hours and 56 hours per reporter, respectively.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. 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 impact to small entities due to the revisions was evaluated for each subpart. The EPA conducted a screening assessment comparing compliance costs for revisions to reporting requirements, applicability to new reporters, and monitoring revisions under subparts V and OO to specific receipts data for establishments owned by small businesses in each industry. This ratio constitutes a ''sales'' test that computes the annualized compliance costs of this rule as a percentage of sales and determines whether the ratio exceeds 1 percent. The cost-to-sales ratios were constructed at the establishment level (average reporting program costs per establishment/average establishment receipts) for several business size ranges. We determined that the cost-to-sales ratios are less than 1 percent for all establishments in all business size ranges for subparts V and OO. Therefore, we have determined that there will not be a significant economic impact to small entities for these subparts. Refer to the memorandum ''Assessment of Burden Impacts of Final 2015 Revisions to the Greenhouse Gas Reporting Rule'' (see Docket Id. No. EPA–HQ–OAR–2015–0526) for further discussion of this analysis. For all other subparts, which are only affected by revisions for adding, revising, or removing reporting requirements, we determined that these facilities will experience average annual impacts of approximately $16 per facility in the first year and $11 per facility in subsequent years. Subpart C reporters would be anticipated to experience the highest facility burden of $111 per facility in the first year and $24 in subsequent years. For subpart C reporters, this burden represents less than 3 percent of the total annual facility costs. Because these costs are minimal, no small entity impacts are anticipated for the remaining subparts. Refer to the memorandum ''Assessment of Burden Impacts of Final 2015 Revisions to the Greenhouse Gas Reporting Rule'' (see Docket Id. No. EPA–HQ–OAR–2015–0526) for further discussion of this analysis.

Although there are no significant small entity impacts associated with this action, the EPA took several steps to reduce the impact on small entities. These final rule amendments include multiple revisions intended to streamline implementation and reduce the monitoring, recordkeeping, and reporting burden for all entities, including small entities. Other rule amendments are minor corrections, clarifying, and other amendments that will not impose any new requirement on small entities that are not currently regulated by part 98. In addition, the EPA conducted several meetings with industry associations to discuss regulatory options and the corresponding burden on industry. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities. The EPA continues to conduct significant outreach on the GHGRP and maintains an ''open door'' policy for stakeholders to help inform the EPA's understanding of key issues for the industries.

*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. See section V of this preamble for an explanation of costs for this action. This final rule is also not subject to the requirements of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. None of the facilities currently known to undertake these activities are owned by small governments.

*E. Executive Order 13132: Federalism*

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

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

This action does not have tribal implications as specified in Executive Order 13175. The rule amendments will not result in any significant changes to the monitoring, recordkeeping, and reporting currently required for entities subject to 40 CFR part 98. Thus, Executive Order 13175 does not apply to this action. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA consulted with tribal officials during the development of the rules for part 98. A summary of that consultation is provided in sections VIII.E and VIII.F of the preamble to the October 30, 2009 final GHG reporting rule.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

*H. Executive Order 13211: Actions 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. Part 98 relates to monitoring, reporting, and recordkeeping and does not impact energy supply, distribution, or use. This final rule amends calculation and reporting requirements for the GHGRP. In addition, the EPA is finalizing confidentiality determinations for new and revised data elements and for certain existing data elements for which a confidentiality determination has not previously been proposed, or where the EPA has determined that the previous determination was no longer appropriate. These amendments and confidentiality determinations do not make any changes to the existing monitoring, calculation, and reporting requirements under part 98 that affect the supply, distribution, or use of energy.

*I. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards.

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

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This regulatory action includes amendments to a previously promulgated rule addressing information collection and reporting procedures and does not affect the level of protection provided to human health or the environment.

*K. Congressional Review Act*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 98**

Environmental protection, Administrative practice and procedure, Greenhouse gases, Incorporation by reference, Reporting and recordkeeping requirements, Suppliers.

Dated: November 17, 2016.

**Gina McCarthy,**

*Administrator.*

For the reasons stated in the preamble, the Environmental Protection Agency amends title 40, chapter I, of the Code of Federal Regulations as follows:

## PART 98—MANDATORY GREENHOUSE GAS REPORTING

■ 1. The authority citation for part 98 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

## Subpart A—General Provision

■ 2. Amend § 98.2 by revising paragraph (i)(3) and adding a reserved paragraph (i)(4) and paragraph (i)(5) to read as follows:

**§ 98.2 Who must report?**

(i) * * *

(3) If the operations of a facility or supplier are changed such that all applicable processes and operations subject to paragraphs (a)(1) through (4) of this section cease to operate, then the owner or operator may discontinue complying with this part for the reporting years following the year in which cessation of such operations occurs, provided that the owner or operator submits a notification to the Administrator that announces the cessation of reporting and certifies to the closure of all applicable processes and operations no later than March 31 of the year following such changes. If one or more processes or operations subject to paragraphs (a)(1) through (4) of this section at a facility or supplier cease to operate, but not all applicable processes or operations cease to operate, then the owner or operator is exempt from reporting for any such processes or operations in the reporting years following the reporting year in which cessation of the process or operation occurs, provided that the owner or operator submits a notification to the Administrator that announces the cessation of reporting for the process or operation no later than March 31 following the first reporting year in which the process or operation has ceased for an entire reporting year. Cessation of operations in the context of underground coal mines includes, but is not limited to, abandoning and sealing the facility. This paragraph (i)(3) does not apply to seasonal or other temporary cessation of operations. This paragraph (i)(3) does not apply to the municipal solid waste landfills source category (subpart HH of this subpart), or the industrial waste landfills source category (subpart TT of this part). The owner or operator must resume reporting for any future calendar year during which any of the GHG-emitting processes or operations resume operation.

(4) [Reserved]

(5) If the operations of a facility or supplier are changed such that a process or operation no longer meets the ''Definition of Source Category'' as specified in an applicable subpart, then the owner or operator may discontinue complying with any such subpart for the reporting years following the year in which change occurs, provided that the owner or operator submits a notification to the Administrator that announces the cessation of reporting for the process or operation no later than March 31 following the first reporting year in which such changes persist for an entire reporting year. The owner or operator must resume complying with this part for the process or operation starting in any future calendar year during which the process or operation meets the ''Definition of Source Category'' as specified in an applicable subpart.

* * * * *

■ 3. Effective January 1, 2018, amend § 98.2 by revising paragraphs (a)(1) and (i)(1) and (2) and adding paragraphs (i)(4) and (6) to read as follows:

**§ 98.2 Who must report?**

(a) * * *

(1) *A facility that contains any source category that is listed in Table A–3 of this subpart.* For these facilities, the annual GHG report must cover stationary fuel combustion sources (subpart C of this part), miscellaneous use of carbonates (subpart U of this part), and all applicable source categories listed in Tables A–3 and A–4 of this subpart.

* * * * *

(i) * * *

(1) If reported emissions are less than 25,000 metric tons $CO_2e$ per year for five consecutive years, then the owner or operator may discontinue complying with this part provided that the owner or operator submits a notification to the Administrator that announces the cessation of reporting and explains the reasons for the reduction in emissions. The notification shall be submitted no later than March 31 of the year immediately following the fifth consecutive year of emissions less than 25,000 tons $CO_2e$ per year. The owner or operator must maintain the corresponding records required under § 98.3(g) for each of the five consecutive years prior to notification of discontinuation of reporting and retain such records for three years following the year that reporting was discontinued. The owner or operator must resume reporting if annual emissions in any future calendar year increase to 25,000 metric tons $CO_2e$ per year or more.

(2) If reported emissions are less than 15,000 metric tons $CO_2e$ per year for three consecutive years, then the owner or operator may discontinue complying with this part provided that the owner or operator submits a notification to the Administrator that announces the cessation of reporting and explains the reasons for the reduction in emissions. The notification shall be submitted no later than March 31 of the year immediately following the third consecutive year of emissions less than 15,000 tons $CO_2e$ per year. The owner or operator must maintain the corresponding records required under § 98.3(g) for each of the three consecutive years and retain such records for three years prior to notification of discontinuation of reporting following the year that reporting was discontinued. The owner or operator must resume reporting if annual emissions in any future calendar

year increase to 25,000 metric tons $CO_2e$ per year or more.

* * * * *

(4) The provisions of paragraphs (i)(1) and (2) of this section apply to suppliers subject to subparts LL through QQ of this part by substituting the term ''quantity of GHG supplied'' for ''emissions.'' For suppliers, the provisions of paragraphs (i)(1) and (2) apply individually to each importer and exporter and individually to each petroleum refinery, fractionator of natural gas liquids, local natural gas distribution company, and producer of $CO_2$, $N_2O$, or fluorinated greenhouse gases (*e.g.,* a supplier of industrial greenhouse gases might qualify to discontinue reporting as an exporter of industrial greenhouse gases but still be required to report as an importer; or a company might qualify to discontinue reporting as a supplier of industrial greenhouse gases under subpart OO of this part but still be required to report as a supplier of carbon dioxide under subpart PP of this part).

* * * * *

(6) If an entire facility or supplier is merged into another facility or supplier that is already reporting GHG data under this part, then the owner or operator may discontinue complying with this part for the facility or supplier, provided that the owner or operator submits a notification to the Administrator that announces the discontinuation of reporting and the e-GGRT identification number of the reconstituted facility no later than March 31 of the year following such changes.

* * * * *

■ 4. Amend § 98.3 by revising paragraph (h) introductory text and paragraph (h)(4) to read as follows:

**§ 98.3 What are the general monitoring, reporting, recordkeeping and verification requirements of this part?**

* * * * *

(h) *Annual GHG report revisions.* This paragraph applies to the reporting years for which the owner or operator is required to maintain records for a facility or supplier according to the time periods specified in paragraph (g) of this section.

* * * * *

(4) Notwithstanding paragraphs (h)(1) and (2) of this section, upon request by the owner or operator, the Administrator may provide reasonable extensions of the 45-day period for submission of the revised report or information under paragraphs (h)(1) and (2). If the Administrator receives a request for extension of the 45-day period, by email to an address prescribed by the Administrator prior to the expiration of the 45-day period, the extension request is deemed to be automatically granted for 30 days. The Administrator may grant an additional extension beyond the automatic 30-day extension if the owner or operator submits a request for an additional extension and the request is received by the Administrator prior to the expiration of the automatic 30-day extension, provided the request demonstrates that it is not practicable to submit a revised report or information under paragraphs (h)(1) and (2) within 75 days. The Administrator will approve the extension request if the request demonstrates to the Administrator's satisfaction that it is not practicable to collect and process the data needed to resolve potential reporting errors identified pursuant to paragraph (h)(1) or (2) within 75 days.

* * * * *

■ 5. Effective January 1, 2018, amend § 98.3 by:

■ a. Revising paragraph (c)(4)(iii) introductory text;

■ b. Adding paragraph (c)(4)(iii)(G); and

■ c. Revising paragraphs (c)(5)(ii), (c)(8), and (d)(1)(i).

The revisions and addition read as follows:

**§ 98.3 What are the general monitoring, reporting, recordkeeping and verification requirements of this part?**

* * * * *

(c) * * *

(4) * * *

(iii) Annual emissions from each applicable source category, expressed in metric tons of each applicable GHG listed in paragraphs (c)(4)(iii)(A) through (F) of this section.

* * * * *

(G) For each reported fluorinated GHG and fluorinated heat transfer fluid, report the following identifying information:

(*1*) Chemical name. If the chemical is not listed in Table A–1 of this subpart, then use the method of naming organic chemical compounds as recommended by the International Union of Pure and Applied Chemistry (IUPAC).

(*2*) The CAS registry number assigned by the Chemical Abstracts Registry Service. If a CAS registry number is not assigned or is not associated with a single fluorinated GHG or fluorinated heat transfer fluid, then report an identification number assigned by EPA's Substance Registry Services.

(*3*) Linear chemical formula.

* * * * *

(5) * * *

(ii) Quantity of each GHG from each applicable supply category in Table A–5 to this subpart, expressed in metric tons of each GHG. For each reported fluorinated GHG, report the following identifying information:

(A) Chemical name. If the chemical is not listed in Table A–1 of this subpart, then use the method of naming organic chemical compounds as recommended by the International Union of Pure and Applied Chemistry (IUPAC).

(B) The CAS registry number assigned by the Chemical Abstracts Registry Service. If a CAS registry number is not assigned or is not associated with a single fluorinated GHG, then report an identification number assigned by EPA's Substance Registry Services.

(C) Linear chemical formula.

* * * * *

(8) Each parameter for which a missing data procedure was used according to the procedures of an applicable subpart and the total number of hours in the year that a missing data procedure was used for each parameter. Parameters include not only reported data elements, but any data element required for monitoring and calculating emissions.

* * * * *

(d) * * *

(1) * * *

(i) Monitoring methods currently used by the facility that do not meet the specifications of a relevant subpart.

* * * * *

■ 6. Effective January 1, 2018, amend § 98.4 by adding paragraph (i)(6) to read as follows:

**§ 98.4 Authorization and responsibilities of the designated representative.**

* * * * *

(i) * * *

(6) A list of the subparts that the owners and operators anticipate will be included in the annual GHG report. The list of potentially applicable subparts is required only for an initial certificate of representation that is submitted after January 1, 2018 (*i.e.,* for a facility or supplier that previously was not registered under this part). The list of potentially applicable subparts does not need to be revised with revisions to the COR or if the actual applicable subparts change.

* * * * *

■ 7. Amend § 98.6 by revising the definition for ''Gas collection system or landfill gas collection system'' to read as follows:

**§ 98.6 Definitions.**

* * * * *

*Gas collection system or landfill gas collection system* means a system of

pipes used to collect landfill gas from different locations in the landfill by means of a fan or similar mechanical draft equipment (forced convection) to a single location for treatment (thermal destruction) or use. Landfill gas collection systems may also include knock-out or separator drums and/or a compressor. A single landfill may have multiple gas collection systems. Landfill gas collection systems do not include ''passive'' systems, whereby landfill gas flows naturally (without forced convection) to the surface of the landfill where an opening or pipe (vent) is installed to allow for the flow of landfill gas to the atmosphere or to a remote flare installed to combust landfill gas that is passively emitted from the vent. Landfill gas collection systems also do not include ''active venting'' systems, whereby landfill gas is conveyed to the surface of the landfill using forced convection, but the landfill gas is never recovered or thermally destroyed prior to release to the atmosphere.

* * * * *

■ 8. Effective January 1, 2018, amend § 98.6 by adding a definition for ''Reporting year'' in alphabetical order and revising the definition for ''Ventilation hole or shaft'' to read as follows:

**§ 98.6 Definitions.**

* * * * *

*Reporting year* means the calendar year during which the GHG data are required to be collected for purposes of the annual GHG report. For example, reporting year 2014 is January 1, 2014 through December 31, 2014, and the annual report for reporting year 2014 is submitted to EPA on March 31, 2015.

* * * * *

*Ventilation hole or shaft* means a vent hole, shaft, mine portal, adit or other mine entrance or exits employed at an underground coal mine to serve as the outlet or conduit to move air from the ventilation system out of the mine.

* * * * *

■ 9. Amend § 98.7 by revising paragraph (l)(1) to read as follows:

**§ 98.7 What standardized methods are incorporated by reference into this part?**

* * * * *

(l) * * *

(1) PH16–V–1, Coal Mine Safety and Health General Inspection Procedures Handbook, June 2016, IBR approved for § 98.324(b).

* * * * *

■ 10. Effective January 1, 2018, amend § 98.7 by revising paragraph (e)(33) to read as follows:

**§ 98.7 What standardized methods are incorporated by reference into this part?**

* * * * *

(e) * * *

(33) ASTM D6866–16 Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis, approved June 1, 2016, IBR approved for §§ 98.34(d) and (e), and 98.36(e).

* * * * *

■ 11. Effective January 1, 2018, amend Table A–3 to subpart A of part 98 by revising the heading for the entry ''Source Categories Applicable in 2010 and Future Years'' and the entry for ''Additional Source Categories Applicable in 2011 and Future Years'' to read as follows:

TABLE A–3 TO SUBPART A OF PART 98—SOURCE CATEGORY LIST FOR § 98.2(a)(1)

| | | | | | | |
|---|---|---|---|---|---|---|
| Source Categories [a] Applicable in Reporting Year 2010 and Future Years | | | | | | |
| * | * | * | * | * | * | * |
| Additional Source Categories [a] Applicable in Reporting Year 2011 and Future Years | | | | | | |
| * | * | * | * | * | * | * |

[a] Source categories are defined in each applicable subpart.

■ 12. Effective January 1, 2018, amend Table A–4 to subpart A of part 98 by revising the heading for the entry for ''Source Categories Applicable in 2010 and Future Years'' and the entry for ''Additional Source Categories Applicable in 2011 and Future Years'' to read as follows:

TABLE A–4 TO SUBPART A—SOURCE CATEGORY LIST FOR § 98.2(a)(2)

| | | | | | | |
|---|---|---|---|---|---|---|
| Source Categories [a] Applicable in Reporting Year 2010 and Future Years | | | | | | |
| * | * | * | * | * | * | * |
| Additional Source Categories [a] Applicable in Reporting Year 2011 and Future Years | | | | | | |
| * | * | * | * | * | * | * |

[a] Source categories are defined in each applicable subpart.

■ 13. Effective January 1, 2018, amend Table A–5 to subpart A of part 98:

■ a. By revising the heading for the entry for ''Supplier Categories Applicable in 2010 and Future Years'';

■ b. Under the entry for ''Industrial greenhouse gas suppliers (subpart OO)'' by adding entries (D) through (G); and

■ c. By revising the entry ''Additional Supplier Categories Applicable in 2011 and Future Years.''

The revisions read as follows:

TABLE A–5 TO SUBPART A—SUPPLIER CATEGORY LIST FOR § 98.2(a)(4)

| | | | | | | |
|---|---|---|---|---|---|---|
| Supplier Categories [a] Applicable in Reporting Year 2010 and Future Years | | | | | | |
| * | * | * | * | * | * | * |
| Industrial greenhouse gas suppliers (subpart OO): | | | | | | |

TABLE A–5 TO SUBPART A—SUPPLIER CATEGORY LIST FOR § 98.2(a)(4)—Continued

| |
|---|
| * * * * * * * |
| (D) Starting with reporting year 2018, all producers of fluorinated heat transfer fluids. |
| (E) Starting with reporting year 2018, importers of fluorinated heat transfer fluids with annual bulk imports of $N_2O$, fluorinated GHG, fluorinated heat transfer fluids, and $CO_2$ that in combination are equivalent to 25,000 metric tons $CO_2e$ or more. |
| (F) Starting with reporting year 2018, exporters of fluorinated heat transfer fluids with annual bulk exports of $N_2O$, fluorinated GHG, fluorinated heat transfer fluids, and $CO_2$ that in combination are equivalent to 25,000 metric tons $CO_2e$ or more. |
| (G) Starting with reporting year 2018, facilities that destroy 25,000 $mtCO_2e$ or more of fluorinated GHGs or fluorinated heat transfer fluids annually. |
| * * * * * * * |
| Additional Supplier Categories Applicable[a] in Reporting Year 2011 and Future Years |
| * * * * * * * |

[a] Suppliers are defined in each applicable subpart.

## Subpart C—General Stationary Fuel Combustion Sources

■ 14. Effective January 1, 2018, amend § 98.33 in paragraph (a)(2)(ii)(A) by revising parameters ''$(HHV)_I$,'' ''$(Fuel)_I$,'' and ''n'' of Equation C–2b and revising paragraphs (a)(5)(i)(C), (a)(5)(ii)(C), and (a)(5)(iii)(C) to read as follows:

**§ 98.33 Calculating GHG emissions.**

* * * * *

(a) * * *

(2) * * *

(ii) * * *

(A) * * *

* * * * *

$(HHV)_I$ = Measured high heat value of the fuel, for sample period ''i'' (which may be the arithmetic average of multiple determinations), or, if applicable, an appropriate substitute data value (mmBtu per mass or volume).

$(Fuel)_I$ = Mass or volume of the fuel combusted during the sample period ''i,'' (*e.g.,* monthly, quarterly, semi-annually, or by lot) from company records (express mass in short tons for solid fuel, volume in standard cubic feet (*e.g.,* for gaseous fuel, and volume in gallons for liquid fuel).

n = Number of sample periods in the year.

* * * * *

(5) * * *

(i) * * *

(C) Divide the cumulative annual $CO_2$ mass emissions value by 1.1023 to convert it to metric tons.

(ii) * * *

(C) Divide the cumulative annual $CO_2$ mass emissions value by 1.1023 to convert it to metric tons.

(iii) * * *

(C) Divide the cumulative annual $CO_2$ mass emissions value by 1.1023 to convert it to metric tons.

* * * * *

■ 15. Effective January 1, 2018, amend § 98.34 by revising paragraphs (d) and (e) to read as follows:

**§ 98.34 Monitoring and QA/QC requirements.**

* * * * *

(d) Except as otherwise provided in § 98.33(b)(1)(vi) and (vii), when municipal solid waste (MSW) is either the primary fuel combusted in a unit or the only fuel with a biogenic component combusted in the unit, determine the biogenic portion of the $CO_2$ emissions using ASTM D6866–16 Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis) and ASTM D7459–08 Standard Practice for Collection of Integrated Samples for the Speciation of Biomass (Biogenic) and Fossil-Derived Carbon Dioxide Emitted from Stationary Emissions Sources (both incorporated by reference, see § 98.7). Perform the ASTM D7459–08 sampling and the ASTM D6866–16 analysis at least once in every calendar quarter in which MSW is combusted in the unit. Collect each gas sample during normal unit operating conditions for at least 24 total (not necessarily consecutive) hours, or longer if the facility deems it necessary to obtain a representative sample. Notwithstanding this requirement, if the types of fuels combusted and their relative proportions are consistent throughout the year, the minimum required sampling time may be reduced to 8 hours if at least two 8-hour samples and one 24-hour sample are collected under normal operating conditions, and arithmetic average of the biogenic fraction of the flue gas from the 8-hour samples (expressed as a decimal) is within ±5 percent of the biogenic fraction from the 24-hour test. There must be no overlapping of the 8-hour and 24-hour test periods. Document the results of the demonstration in the unit's monitoring plan. If the types of fuels and their relative proportions are not consistent throughout the year, an optional sampling approach that facilities may wish to consider to obtain a more representative sample is to collect an integrated sample by extracting a small amount of flue gas (*e.g.,* 1 to 5 cc) in each unit operating hour during the quarter. Separate the total annual $CO_2$ emissions into the biogenic and non-biogenic fractions using the average proportion of biogenic emissions of all samples analyzed during the reporting year. Express the results as a decimal fraction (*e.g.,* 0.30, if 30 percent of the $CO_2$ is biogenic). When MSW is the primary fuel for multiple units at the facility, and the units are fed from a common fuel source, testing at only one of the units is sufficient.

(e) For other units that combust combinations of biomass fuel(s) (or heterogeneous fuels that have a biomass component, *e.g.,* tires) and fossil (or other non-biogenic) fuel(s), in any proportions, ASTM D6866–16 and ASTM D7459–08 (both incorporated by reference, see § 98.7) may be used to determine the biogenic portion of the $CO_2$ emissions in every calendar quarter in which biomass and non-biogenic fuels are co-fired in the unit. Follow the procedures in paragraph (d) of this section. If the primary fuel for multiple units at the facility consists of tires, and the units are fed from a common fuel source, testing at only one of the units is sufficient.

* * * * *

■ 16. Effective January 1, 2018, amend § 98.36 by adding paragraphs (c)(1)(iii) and (c)(3)(ii) and revising paragraphs (e)(2)(i), (e)(2)(x) introductory text, and (e)(2)(xi) to read as follows:

**§ 98.36 Data reporting requirements.**

* * * * *

(c) * * *

(1) * * *

(iii) Cumulative maximum rated heat input capacity of the group (mmBtu/hr). The cumulative maximum rated heat input capacity shall be determined as the sum of the maximum rated heat

input capacities for all units in the group, excluding units less than 10 (mmBtu/hr).

* * * * *

(3) * * *

(ii) Cumulative maximum rated heat input capacity of the units served by the common pipe (mmBtu/hr). The cumulative maximum rated heat input capacity shall be determined as the sum of the maximum rated heat input capacities for all units served by the common pipe, excluding units less than 10 (mmBtu/hr).

* * * * *

(e) * * *

(2) * * *

(i) For the Tier 1 Calculation Methodology, report:

(A) The total quantity of each type of fuel combusted in the unit or group of aggregated units (as applicable) during the reporting year, in short tons for solid fuels, gallons for liquid fuels and standard cubic feet for gaseous fuels, or, if applicable, therms or mmBtu for natural gas.

(B) If applicable, the moisture content used to calculate the wood and wood residuals wet basis HHV for use in Equations C–1 and C–8 of this subpart, in percent.

* * * * *

(x) When ASTM methods D7459–08 and D6866–16 (both incorporated by reference, see § 98.7) are used to determine the biogenic portion of the annual $CO_2$ emissions from MSW combustion, as described in § 98.34(d), report:

* * * * *

(xi) When ASTM methods D7459–08 and D6866–16 (both incorporated by reference, see § 98.7) are used in accordance with § 98.34(e) to determine the biogenic portion of the annual $CO_2$ emissions from a unit that co-fires biogenic fuels (or partly-biogenic fuels, including tires if you are electing to report biogenic $CO_2$ emissions from tire combustion) and non-biogenic fuels, you shall report the results of each quarterly sample analysis, expressed as a decimal fraction (*e.g.,* if the biogenic fraction of the $CO_2$ emissions is 30 percent, report 0.30).

* * * * *

■ 17. Effective January 1, 2018, amend § 98.37 by revising paragraph (a) and adding paragraph (b)(37) to read as follows:

**§ 98.37 Records that must be retained.**

* * * * *

(a) The applicable records specified in §§ 98.34(f), 98.35(b), and 98.36(e).

(b) * * *

(37) Moisture content used to calculate the wood and wood residuals wet basis HHV (percent), if applicable (Equations C–1 and C–8 of this subpart).

■ 18. Effective January 1, 2018, amend Table C–1 to subpart C of part 98 by:

■ a. Removing the entries ''Petroleum Coke'' under ''Petroleum products'', ''Petroleum Coke'' under ''Other fuels—solid'', and ''Propane Gas'' under ''Other fuels—gaseous'';

■ b. Removing the heading ''Petroleum products'' in the ''Fuel type'' column and adding in its place the heading ''Petroleum products—liquid''; and

■ c. Adding heading ''Petroleum products—solid'' and its entry ''Petroleum Coke'', and heading ''Petroleum products—gaseous'', and its entry ''Propane Gas'' after the entry ''Crude Oil''.

The additions read as follows:

TABLE C–1 TO SUBPART C OF PART 98—DEFAULT $CO_2$ EMISSION FACTORS AND HIGH HEAT VALUES FOR VARIOUS TYPES OF FUEL

[Default $CO_2$ emission factors and high heat values for various types of fuel]

| Fuel type | Default high heat value | Default $CO_2$ emission factor |
|---|---|---|
| * * * | * * * | * |
| Petroleum products—solid | mmBtu/short ton | kg $CO_2$/mmBtu |
| Petroleum Coke | 30.00 | 102.41 |
| Petroleum products—gaseous | mmBtu/scf | kg $CO_2$/mmBtu |
| Petroleum products—liquid | mmBtu/gallon | kg $CO_2$/mmBtu |
| Propane Gas | $2.516 \times 10^{-3}$ | 61.46 |
| * * * | * * * | * |

* * * * *

**Table C–2 to Subpart C of Part 98 [Amended]**

■ 19. Effective January 1, 2018, amend Table C–2 to subpart C of part 98 by:

■ a. Removing from the ''Fuel type'' column, the entry ''Petroleum (All fuel types in Table C–1)'' and adding in its place the entry ''Petroleum Products (All fuel types in Table C–1)'';

■ b. Removing from the ''Fuel type'' column, the entry ''Municipal Solid Waste'' and adding in its place the entry ''Other Fuels—Solid''; and

■ c. Removing the entry ''Tires''.

**Subpart E—Adipic Acid Production**

■ 20. Effective January 1, 2018, amend § 98.53 by revising paragraph (a)(2) to read as follows:

**§ 98.53 Calculating GHG emissions.**

(a) * * *

(2) Request Administrator approval for an alternative method of determining $N_2O$ emissions according to paragraphs (a)(2)(i) through (iv) of this section.

(i) If you received Administrator approval for an alternative method of determining $N_2O$ emissions in the previous reporting year and your methodology is unchanged, your alternative method is automatically approved for the next reporting year.

(ii) You must notify the EPA of your use of a previously approved alternative method in your annual report.

(iii) Otherwise, you must submit the request within 45 days following promulgation of this subpart or within the first 30 days of each subsequent reporting year.

(iv) If the Administrator does not approve your requested alternative method within 150 days of the end of the reporting year, you must determine the $N_2O$ emissions for the current reporting period using the procedures specified in paragraph (a)(1) of this section.

* * * * *

■ 21. Effective January 1, 2018, amend § 98.56 by revising paragraph (f) to read as follows:

**§ 98.56 Data reporting requirements.**

* * * * *

(f) Types of abatement technologies used and date of installation for each (if applicable).

* * * * *

**Subpart F—Aluminum Production**

■ 22. Effective January 1, 2018, amend § 98.65 by revising paragraph (a) introductory text and removing Equation F–8 and adding Equation F–9 in its place to read as follows:

**§ 98.65 Procedures for estimating missing data.**

* * * * *

(a) Where anode or paste consumption data are missing, $CO_2$ emissions can be estimated from aluminum production by using Equation F–9 of this section.

$$ECO_2 = EF_p \times MP_p + EF_s \times MP_s \quad \text{(Eq. F-9)}$$

* * * * *

■ 23. Effective January 1, 2018, amend § 98.66 by adding paragraph (c)(2) and revising paragraph (c)(3) to read as follows:

**§ 98.66 Data reporting requirements.**

* * * * *

(c) * * *

(2) Anode effect minutes per cell-day (AE-mins/cell-day), anode effect frequency (AE/cell-day), anode effect duration (minutes). (Or anode effect overvoltage factor ((kg CF4/metric ton Al)/(mV/cell day)), potline overvoltage (mV/cell day), current efficiency (%)).

(3) Smelter-specific slope coefficients (or overvoltage emission factors) and the last date when the smelter-specific slope coefficients (or overvoltage emission factors) were measured.

* * * * *

**Subpart G—Ammonia Manufacturing**

■ 24. Effective January 1, 2018, amend § 98.74 by adding paragraph (f) to read as follows:

**§ 98.74 Monitoring and QA/QC requirements.**

* * * * *

(f) You may use company records or an engineering estimate to determine the annual ammonia production and the annual methanol production.

* * * * *

■ 25. Effective January 1, 2018, amend § 98.76 by revising paragraph (a) introductory text, adding paragraphs (a)(3) and (b)(2) and (7), and revising paragraph (b)(15) to read as follows:

**§ 98.76 Data reporting requirements.**

* * * * *

(a) If a CEMS is used to measure $CO_2$ emissions, then you must report the relevant information required under § 98.36 for the Tier 4 Calculation Methodology and the information in paragraphs (a)(1) through (3) of this section:

* * * * *

(3) Annual ammonia production (metric tons, sum of all process units reported within subpart G of this part).

(b) * * *

(2) Annual quantity of each type of feedstock consumed for ammonia manufacturing (scf of feedstock or gallons of feedstock or kg of feedstock).

* * * * *

(7) Annual average carbon content of each type of feedstock consumed.

* * * * *

(15) Annual quantity of methanol intentionally produced as a desired product, for each process unit (metric tons).

**Subpart I—Electronics Manufacturing**

■ 26. Amend § 98.93 by:

■ a. Revising paragraph (a)(1) introductory text;

■ b. Revising Equation I–9 in paragraph (a)(1);

■ c. Revising parameters ''$N_{il}$'' and ''$F_{il}$'' of Equation I–12 in paragraph (d);

■ d. Revising paragraphs (i)(1)(ii) and (iv);

■ e. Revising Equation I–17 in paragraph (i)(3)(ii);

■ f. Revising parameter ''$d_{if}$'' of Equation I–19 in paragraph (i)(3)(ii);

■ g. Revising parameter ''$d_{kf}$'' of Equation I–20 in paragraph (i)(3)(iv);

■ h. Revising parameter ''$d_{if}$'' of Equation I–21 in paragraph (i)(3)(v);

■ i. Revising parameter ''$d_{kf}$'' of Equation I–22 in paragraph (i)(3)(vi); and

■ j. Revising paragraph (i)(3)(viii) and paragraph (i)(4) introductory text.

The revisions read as follows:

**§ 98.93 Calculating GHG emissions.**

(a) * * *

(1) If you manufacture semiconductors, you must adhere to the procedures in paragraphs (a)(1)(i) through (iii) of this section. You must calculate annual emissions of each input gas and of each by-product gas using Equations I–6 and I–7 of this subpart, respectively. If your fab uses less than 50 kg of a fluorinated GHG in one reporting year, you may calculate emissions as equal to your fab's annual consumption for that specific gas as calculated in Equation I–11 of this subpart, plus any by-product emissions of that gas calculated under paragraph (a) of this section.

* * * * *

$$BE_{ijk} = B_{ijk} * C_{ij} * \left(1 - \left(a_{ij} * d_{jk} * UT_{ijk}\right)\right) * 0.001 \quad \text{(Eq. I-9)}$$

* * * * *

(d) * * *

* * * * *

$N_{il}$ = Number of containers of size and type l used at the fab and returned to the gas distributor containing the standard heel of input gas i.

$F_{il}$ = Full capacity of containers of size and type l containing input gas i (kg).

* * * * *

(i) * * *

(1) * * *

(ii) You must use representative data from the previous reporting year to estimate the consumption of input gas i as calculated in Equation I–13 of this subpart and the fraction of input gas i and by-product gas k destroyed in abatement systems for each stack system as calculated by Equations I–24A and I–24B of this subpart. If you were not required to submit an annual report under subpart I for the previous reporting year and data from the previous reporting year are not

available, you may estimate the consumption of input gas i and the fraction of input gas i destroyed in abatement systems based on representative operating data from a period of at least 30 days in the current reporting year. When calculating the consumption of input gas i using Equation I–13 of this subpart, the term ''$f_{ij}$'' is replaced with the ratio of the number of tools using input gas i that are vented to the stack system for which you are calculating the preliminary estimate to the total number of tools in the fab using input gas i, expressed as a decimal fraction. You may use this approach to determining $f_{ij}$ only for this preliminary estimate.

* * * * *

(iv) If you anticipate an increase or decrease in annual consumption or emissions of any fluorinated GHG, or the number of tools connected to abatement systems greater than 10 percent for the current reporting year compared to the previous reporting year, you must account for the anticipated change in your preliminary estimate. You may account for such a change using a quantifiable metric (*e.g.,* the ratio of the number of tools that are expected to be vented to the stack system in the current year as compared to the previous reporting year, ratio of the expected number of wafer starts in the current reporting year as compared to the previous reporting year), engineering judgment, or other industry standard practice.

* * * * *

(3) * * *

(ii) * * *

$$E_{is} = MW_i * Q_s * \frac{1}{SV} * \frac{1}{10^3} * \sum_{m=1}^{N} \frac{X_{ism}}{10^9} * \Delta t_m \qquad \text{(Eq. I-17)}$$

* * * * *

(iii) * * *

* * * * *

$d_{if}$ = Fraction of fluorinated GHG input gas i destroyed or removed in abatement systems connected to process tools in fab f, as calculated in Equation I–24A of this subpart (expressed as decimal fraction). If the stack system does not have abatement systems on the tools vented to the stack system, the value of this parameter is zero.

* * * * *

(iv) * * *

* * * * *

$d_{kf}$ = Fraction of fluorinated GHG by-product gas k destroyed or removed in abatement systems connected to process tools in fab f, as calculated in Equation I–24B of this subpart (expressed as decimal fraction).

* * * * *

(v) * * *

* * * * *

$d_{if}$ = Fraction of fluorinated GHG input gas i destroyed or removed in abatement systems connected to process tools in fab f that are included in the stack testing option, as calculated in Equation I–24A of this subpart (expressed as decimal fraction).

* * * * *

(vi) * * *

* * * * *

$dk_f$ = Fraction of fluorinated GHG by-product k destroyed or removed in abatement systems connected to process tools in fab f that are included in the stack testing option, as calculated in Equation I–24B of this subpart (expressed as decimal fraction).

* * * * *

(viii) When using the stack testing option described in paragraph (i) of this section, you must calculate the weighted-average fraction of each fluorinated input gas i and each fluorinated byproduct gas k destroyed or removed in abatement systems for each fab f, as applicable, by using Equation I–24A (for input gases) and Equation I–24B (for by-product gases) of this subpart.

$$d_{if} = \frac{\sum_j [C_{ijf} \times (1 - U_{ij})) \times DRE_{ij}]}{\sum_j [C_{ijf} \times (1 - U_{ij})]} \qquad \text{(Eq. I-24A)}$$

$$d_{kf} = \frac{\sum_j (C_{ijf} \times B_{ijk} \times DRE_{jk})}{\sum_j (C_{ijf} \times B_{ijk})} \qquad \text{(Eq. I-24B)}$$

Where:

$d_{if}$ = The average weighted fraction of fluorinated GHG input gas i destroyed or removed in abatement systems in fab f (expressed as a decimal fraction).

$d_{kf}$ = The average weighted fraction of fluorinated GHG by-product gas k destroyed or removed in abatement systems in fab f (expressed as a decimal fraction).

$C_{ijf}$ = The amount of fluorinated GHG input gas i consumed for process type or sub-type j fed into abatement systems in fab f as calculated using Equation I–13 of this subpart (kg).

$(1 - U_{ij})$ = The default emission factor for input gas i used in process type or sub-type j, from applicable Tables I–3 through I–7 of this subpart.

$B_{ijk}$ = The default byproduct gas formation rate factor for by-product gas k from input gas i used in process type or sub-type j, from applicable Tables I–3 through I–7 of this subpart.

$DRE_{ij}$ = Destruction or removal efficiency for fluorinated GHG input gas i in abatement systems connected to process tools where process type or sub-type j is used (expressed as a decimal fraction) determined according to § 98.94(f).

$DRE_{jk}$ = Destruction or removal efficiency for fluorinated GHG by-product gas k in abatement systems connected to process tools where input gas i is used in process type or sub-type j (expressed as a decimal fraction) determined according to § 98.94(f).

f = fab.

i = Fluorinated GHG input gas.

j = Process type or sub-type.

(4) *Method to calculate emissions from stack systems that are not tested.* You must calculate annual fab-level emissions of each fluorinated GHG input gas and byproduct gas for those fluorinated GHG listed in paragraphs (i)(4)(i) and (ii) of this section using default utilization and by-product formation rates as shown in Table I–11, I–12, I–13, I–14, or I–15 of this subpart, as applicable, and by using Equations I–8, I–9, and I–13 of this subpart. When using Equations I–8, I–9, and I–13 to fulfill the requirements of this paragraph, you must use, in place of the term $C_{ij}$ in each equation, the total consumption of each fluorinated GHG

meeting the criteria in paragraph (i)(4)(i) of this section or that is used in tools vented to the stack systems that meet the criteria in paragraph (i)(4)(ii) of this section. You must use, in place of the term $a_{ij}$, the fraction of fluorinated GHG meeting the criteria in paragraph (i)(4)(i) of this section used in tools with abatement systems or that is used in tools with abatement systems that are vented to the stack systems that meet the criteria in paragraph (i)(4)(ii) of this section. You also must use the results of Equations I–24A and I–24B of this subpart in place of the terms $d_{ij}$ in Equation I–8 and $d_{jk}$ in Equation I–9, respectively, and use the results of Equation I–23 of this subpart in place of the results of Equation I–15 of this subpart for the term $UT_{ij}$.

* * * * *

■ 27. Amend § 98.94 by revising paragraphs (f) introductory text and (j)(5)(ii) introductory text to read as follows:

**§ 98.94 Monitoring and QA/QC requirements.**

* * * * *

(f) If your fab employs abatement systems and you elect to reflect emission reductions due to these systems, or if your fab employs abatement systems designed for fluorinated GHG abatement and you elect to calculate fluorinated GHG emissions using the stack test method under § 98.93(i), you must comply with the requirements of paragraphs (f)(1) through (3) of this section. If you use an average of properly measured destruction or removal efficiencies for a gas and process sub-type or process type combination, as applicable, in your emission calculations under § 98.93(a), (b), and/or (i), you must also adhere to procedures in paragraph (f)(4) of this section.

* * * * *

(j) * * *

(5) * * *

(ii) *Criteria to test less frequently.* After the first 3 years of annual testing, you may calculate the relative standard deviation of the emission factors for each fluorinated GHG included in the test and use that analysis to determine the frequency of any future testing. As an alternative, you may conduct all three tests in less than 3 calendar years for purposes of this paragraph (j)(5)(ii), but this does not relieve you of the obligation to conduct subsequent annual testing if you do not meet the criteria to test less frequently. If the criteria specified in paragraphs (j)(5)(ii)(A) and (B) of this section are met, you may use the arithmetic average of the three emission factors for each fluorinated GHG and fluorinated GHG byproduct for the current year and the next 4 years with no further testing unless your fab operations are changed in a way that triggers the re-test criteria in paragraph (j)(8) of this section. In the fifth year following the last stack test included in the previous average, you must test each of the stack systems for which testing is required and repeat the relative standard deviation analysis using the results of the most recent three tests (*i.e.,* the new test and the two previous tests conducted prior to the 4-year period). If the criteria specified in paragraphs (j)(5)(ii)(A) and (B) of this section are not met, you must use the emission factors developed from the most recent testing and continue annual testing. You may conduct more than one test in the same year, but each set of emissions testing for a stack system must be separated by a period of at least 2 months. You may repeat the relative standard deviation analysis using the most recent three tests, including those tests conducted prior to the 4-year period, to determine if you are exempt from testing for the next 4 years.

* * * * *

■ 28. Amend § 98.96 by:

■ a. Revising paragraphs (c)(2), (d), and (e);

■ b. Revising parameters ''$d_{if}$'' and ''$d_{kf}$'' of Equation I–28 in paragraph (r)(2); and

■ c. Revising paragraph (y)(2)(iv).

The revisions read as follows:

**§ 98.96 Data reporting requirements.**

* * * * *

(c) * * *

(2) When you use the procedures specified in § 98.93(a), each fluorinated GHG emitted from each process type or process sub-type as calculated in Equations I–8 and I–9 of this subpart, as applicable.

* * * * *

(d) The method of emissions calculation used in § 98.93 for each fab.

(e) Annual production in terms of substrate surface area (*e.g.,* silicon, PV-cell, glass) for each fab, including specification of the substrate.

* * * * *

(r) * * *

(2) * * *

* * * * *

$d_{if}$ = Fraction of fluorinated GHG i destroyed or removed in abatement systems connected to process tools in fab f, as calculated from Equation I–24A of this subpart, which you used to calculate total emissions according to the procedures in § 98.93(i)(3) (expressed as a decimal fraction).

* * * * *

$d_{kf}$ = Fraction of fluorinated GHG byproduct k destroyed or removed in abatement systems connected to process tools in fab f, as calculated from Equation I–24B of this subpart, which you used to calculate total emissions according to the procedures in § 98.93(i)(3) (expressed as a decimal fraction).

* * * * *

(y) * * *

(2) * * *

(iv) It must provide any utilization and byproduct formation rates and/or destruction or removal efficiency data that have been collected in the previous 3 years that support the changes in semiconductor manufacturing processes described in the report. For any utilization or byproduct formation rate data submitted, the report must include the input gases used and measured, the utilization rates measured, the byproduct formation rates measured, the process type, the process subtype for chamber clean processes, the wafer size, and the methods used for the measurements. For any destruction or removal efficiency data submitted, the report must include the input gases used and measured, the destruction and removal efficiency measured, the process type, and the methods used for the measurements.

* * * * *

■ 29. Amend § 98.97 by revising paragraphs (d)(5) introductory text and (d)(7) to read as follows:

**§ 98.97 Records that must be retained.**

* * * * *

(d) * * *

(5) In addition to the inventory specified in § 98.96(p), the information in paragraphs (d)(5)(i) through (iii) of this section:

* * * * *

(7) Records of all inputs and results of calculations made to determine the average weighted fraction of each gas destroyed or removed in the abatement systems for each stack system using Equations I–24A and I–24B of this subpart, if applicable. The inputs should include an indication of whether each value for destruction or removal efficiency is a default value or a measured site-specific value.

* * * * *

■ 30. Revise Table I–3 of subpart I to read as follows:

TABLE I–3 TO SUBPART I OF PART 98—DEFAULT EMISSION FACTORS ($1–U_{ij}$) FOR GAS UTILIZATION RATES ($U_{ij}$) AND BY-PRODUCT FORMATION RATES ($B_{ijk}$) FOR SEMICONDUCTOR MANUFACTURING FOR 150 MM AND 200 MM WAFER SIZES

| Process type/sub-type | Process gas i | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | $CF_4$ | $C_2F_6$ | $CHF_3$ | $CH_2F_2$ | $C_2HF_5$ | $CH_3F$ | $C_3F_8$ | $C_4F_8$ | $NF_3$ | $SF_6$ | $C_4F_6$ | $C_5F_8$ | $C_4F_8O$ |
| **Etching/Wafer Cleaning** | | | | | | | | | | | | | |
| $1–U_i$ | 0.81 | 0.72 | 0.51 | 0.13 | 0.064 | 0.70 | NA | 0.14 | 0.19 | 0.55 | 0.17 | 0.072 | NA |
| $BCF_4$ | NA | 0.10 | 0.085 | 0.079 | 0.077 | NA | NA | 0.11 | 0.0040 | 0.13 | 0.13 | NA | NA |
| $BC_2F_6$ | 0.046 | NA | 0.030 | 0.025 | 0.024 | 0.0034 | NA | 0.037 | 0.025 | 0.11 | 0.11 | 0.014 | NA |
| $BC_4F_6$ | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA |
| $BC_4F_8$ | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA |
| $BC_3F_8$ | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA |
| $BC_5F_8$ | 0.0012 | NA | 0.0012 | NA | NA | NA | NA | 0.0086 | NA | NA | NA | NA | NA |
| $BCHF_3$ | 0.10 | 0.047 | NA | 0.049 | NA | NA | NA | 0.040 | NA | 0.0012 | 0.066 | 0.0039 | NA |
| **Chamber Cleaning** | | | | | | | | | | | | | |
| In situ plasma cleaning: | | | | | | | | | | | | | |
| $1–U_i$ | 0.92 | 0.55 | NA | NA | NA | NA | 0.40 | 0.10 | 0.18 | NA | NA | NA | 0.14 |
| $BCF_4$ | NA | 0.21 | NA | NA | NA | NA | 0.20 | 0.11 | 0.050 | NA | NA | NA | 0.13 |
| $BC_2F_6$ | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | 0.045 |
| $BC_3F_8$ | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA |
| Remote plasma cleaning: | | | | | | | | | | | | | |
| $1–U_i$ | NA | NA | NA | NA | NA | NA | NA | NA | 0.017 | NA | NA | NA | NA |
| $BCF_4$ | NA | NA | NA | NA | NA | NA | NA | NA | 0.015 | NA | NA | NA | NA |
| $BC_2F_6$ | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA |
| $BC_3F_8$ | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA |
| In situ thermal cleaning: | | | | | | | | | | | | | |
| $1–U_i$ | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA |
| $BCF_4$ | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA |
| $BC_2F_6$ | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA |
| $BC_3F_8$ | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA |

**Notes:** NA = Not applicable; *i.e.,* there are no applicable default emission factor measurements for this gas. This does not necessarily imply that a particular gas is not used in or emitted from a particular process sub-type or process type.

■ 31. Revise Table I–4 of subpart I to read as follows:

TABLE I–4 TO SUBPART I OF PART 98—DEFAULT EMISSION FACTORS ($1–U_{ij}$) FOR GAS UTILIZATION RATES ($U_{ij}$) AND BY-PRODUCT FORMATION RATES ($B_{ijk}$) FOR SEMICONDUCTOR MANUFACTURING FOR 300 MM AND 450 MM WAFER SIZE

| Process type/ sub-type | Process gas i | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | $CF_4$ | $C_2F_6$ | $CHF_3$ | $CH_2F_2$ | $CH_3F$ | $C_3F_8$ | $C_4F_8$ | $NF_3$ | $SF_6$ | $C_4F_6$ | $C_5F_8$ | $C_4F_8O$ |
| **Etching/Wafer Cleaning** | | | | | | | | | | | | |
| $1–U_i$ | 0.65 | 0.80 | 0.42 | 0.21 | 0.33 | 0.30 | 0.18 | 0.15 | 0.32 | 0.15 | 0.10 | NA |
| $BCF_4$ | NA | 0.21 | 0.095 | 0.049 | 0.045 | 0.21 | 0.045 | 0.046 | 0.040 | 0.059 | 0.11 | NA |
| $BC_2F_6$ | 0.079 | NA | 0.064 | 0.052 | 0.00087 | 0.18 | 0.031 | 0.045 | 0.044 | 0.074 | 0.083 | NA |
| $BC_4F_6$ | NA | NA | 0.00010 | NA | NA | NA | 0.018 | NA | NA | NA | NA | NA |
| $BC_4F_8$ | 0.00063 | NA | 0.00080 | NA | NA | NA | NA | NA | NA | NA | NA | NA |
| $BC_3F_8$ | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | 0.00012 | NA |
| $BCHF_3$ | 0.011 | NA | NA | 0.050 | 0.0057 | 0.012 | 0.027 | 0.025 | 0.0037 | 0.019 | 0.0069 | NA |
| $BCH_2F_2$ | NA | NA | 0.0036 | NA | 0.0023 | NA | 0.0015 | 0.00086 | 0.000029 | 0.000030 | NA | NA |
| $BCH_3F$ | 0.0080 | NA | 0.0080 | 0.0080 | NA | 0.00073 | NA | 0.0080 | NA | NA | NA | NA |
| **Chamber Cleaning** | | | | | | | | | | | | |
| In situ plasma cleaning: | | | | | | | | | | | | |
| $1–U_i$ | NA | NA | NA | NA | NA | NA | NA | 0.23 | NA | NA | NA | NA |
| $BCF_4$ | NA | NA | NA | NA | NA | NA | NA | 0.037 | NA | NA | NA | NA |
| $BC_2F_6$ | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA |
| $BC_3F_8$ | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA |
| Remote Plasma Cleaning: | | | | | | | | | | | | |
| $1–U_i$ | NA | NA | NA | NA | NA | 0.063 | NA | 0.017 | NA | NA | NA | NA |
| $BCF_4$ | NA | NA | NA | NA | NA | NA | NA | 0.075 | NA | NA | NA | NA |
| $BC_2F_6$ | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA |
| $BC_3F_8$ | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA |

TABLE I–4 TO SUBPART I OF PART 98—DEFAULT EMISSION FACTORS ($1–U_{ij}$) FOR GAS UTILIZATION RATES ($U_{ij}$) AND BY-PRODUCT FORMATION RATES ($B_{ijk}$) FOR SEMICONDUCTOR MANUFACTURING FOR 300 MM AND 450 MM WAFER SIZE—Continued

| Process type/ sub-type | Process gas i | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | $CF_4$ | $C_2F_6$ | $CHF_3$ | $CH_2F_2$ | $CH_3F$ | $C_3F_8$ | $C_4F_8$ | $NF_3$ | $SF_6$ | $C_4F_6$ | $C_5F_8$ | $C_4F_8O$ |
| In Situ Thermal Cleaning: | | | | | | | | | | | | |
| $1–U_i$ | NA | NA | NA | NA | NA | NA | NA | 0.28 | NA | NA | NA | NA |
| $BCF_4$ | NA | NA | NA | NA | NA | NA | NA | 0.010 | NA | NA | NA | NA |
| $BC_2F_6$ | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA |
| $BC_3F_8$ | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA | NA |

**Notes:** NA = Not applicable; *i.e.,* there are no applicable default emission factor measurements for this gas. This does not necessarily imply that a particular gas is not used in or emitted from a particular process sub-type or process type.

## Subpart N—Glass Production

■ 32. Effective January 1, 2018, amend § 98.144 by revising paragraphs (b), (c), and (d) to read as follows:

### § 98.144 Monitoring and QA/QC requirements.

* * * * *

(b) Unless you use the default value of 1.0, you must measure carbonate-based mineral mass fractions at least annually to verify the mass fraction data provided by the supplier of the raw material; such measurements shall be based on sampling and chemical analysis using consensus standards that specify X-ray fluorescence. For measurements made in years prior to the emissions reporting year 2014, you may also use ASTM D3682–01 (Reapproved 2006) Standard Test Method for Major and Minor Elements in Combustion Residues from Coal Utilization Processes or ASTM D6349–09 Standard Test Method for Determination of Major and Minor Elements in Coal, Coke, and Solid Residues from Combustion of Coal and Coke by Inductively Coupled Plasma—Atomic Emission Spectrometry (both incorporated by reference, see § 98.7).

(c) Unless you use the default value of 1.0, you must determine the annual average mass fraction for the carbonate-based mineral in each carbonate-based raw material by calculating an arithmetic average of the monthly data obtained from raw material suppliers or sampling and chemical analysis.

(d) Unless you use the default value of 1.0, you must determine on an annual basis the calcination fraction for each carbonate consumed based on sampling and chemical analysis using an industry consensus standard. If performed, this chemical analysis must be conducted using an x-ray fluorescence test or other enhanced testing method published by an industry consensus standards organization (*e.g.,* ASTM, ASME, API, etc.).

■ 33. Effective January 1, 2018, amend § 98.146 by revising paragraphs (b)(5) introductory text and (b)(7) to read as follows:

### § 98.146 Data reporting requirements.

* * * * *

(b) * * *

(5) Results of all tests, if applicable, used to verify the carbonate-based mineral mass fraction for each carbonate-based raw material charged to a continuous glass melting furnace, as specified in paragraphs (b)(5)(i) through (iii) of this section.

* * * * *

(7) Method used to determine decimal fraction of calcination, unless you used the default value of 1.0.

* * * * *

■ 34. Effective January 1, 2018, amend § 98.147 by revising paragraphs (b)(3), (b)(4) introductory text, and (d)(2) and (3) to read as follows:

### § 98.147 Records that must be retained.

* * * * *

(b) * * *

(3) Data on carbonate-based mineral mass fractions provided by the raw material supplier for all raw materials consumed annually and included in calculating process emissions in Equation N–1 of this subpart, if applicable.

(4) Results of all tests, if applicable, used to verify the carbonate-based mineral mass fraction for each carbonate-based raw material charged to a continuous glass melting furnace, including the data specified in paragraphs (b)(4)(i) through (v) of this section.

* * * * *

(d) * * *

(2) Annual amount of each carbonate-based raw material charged to each continuous glass melting furnace (tons) (Equation N–1 of this subpart).

(3) Decimal fraction of calcination achieved for each carbonate-based raw material for each continuous glass melting furnace (specify the default value, if used, or the value determined according to § 98.144) (percentage, expressed as a decimal) (Equation N–1 of this subpart).

## Subpart O—HCFC–22 Production and HFC–23 Destruction

■ 35. Effective January 1, 2018, amend § 98.156 by revising paragraphs (a) introductory text and (d) to read as follows:

### § 98.156 Data reporting requirements.

(a) In addition to the information required by § 98.3(c), the HCFC–22 production facility shall report the following information for each HCFC–22 production process:

* * * * *

(d) If the HFC–23 concentration measured pursuant to § 98.154(l) is greater than that measured during the performance test that is the basis for the destruction efficiency (DE), the facility shall report the method used to calculate the revised destruction efficiency, specifying whether § 98.154(l)(1) or (2) has been used for the calculation.

* * * * *

## Subpart P—Hydrogen Production

■ 36. Effective January 1, 2019, amend § 98.163 by revising parameter ''$CO_2$'' of Equation P–3 in paragraph (b)(3) to read as follows:

### § 98.163 Calculating GHG emissions.

* * * * *

(b) * * *

(3) * * *

* * * * *

$CO_2$ = Annual $CO_2$ emissions from fuel and feedstock consumption (metric tons/yr).

* * * * *

■ 37. Effective January 1, 2018, amend § 98.164 by revising paragraph (b)(1) to read as follows:

### § 98.164 Monitoring and QA/QC requirements.

* * * * *

(b) * * *

(1) Calibrate all oil and gas flow meters that are used to measure liquid and gaseous fuel and feedstock volumes (except for gas billing meters) according to the monitoring and QA/QC requirements for the Tier 3 methodology in § 98.34(b)(1). Perform oil tank drop measurements (if used to quantify liquid fuel or feedstock consumption) according to § 98.34(b)(2). Calibrate all solids weighing equipment according to the procedures in § 98.3(i).

* * * * *

■ 38. Effective January 1, 2019, amend § 98.166 by revising paragraphs (b)(4), (d), and (e) to read as follows:

**§ 98.166 Data reporting requirements.**

* * * * *

(b) * * *

(4) Annual quantity of ammonia intentionally produced as a desired product, if applicable (metric tons).

* * * * *

(d) Annual quantity of carbon other than $CO_2$ collected and transferred off site in either gas, liquid, or solid forms (kg carbon), excluding methanol.

(e) Annual quantity of methanol intentionally produced as a desired product, if applicable, (metric tons) for each process unit.

## Subpart Q—Iron and Steel Production

■ 39. Effective January 1, 2018, amend § 98.173 by revising Equation Q–5 in paragraph (b)(1)(v) to read as follows:

**§ 98.173 Calculating GHG emissions.**

* * * * *

(b) * * *

(1) * * *

(v) * * *

$$CO_2 = \frac{44}{12} * \left[ \frac{(Iron) * (C_{iron}) + (Scrap) * \left(C_{scrap}\right) + (Flux) * (C_{Flux}) + (Electrode) * (C_{Electrode}) + (Carbon)}{* (C_{Carbon}) - (Steel) * (C_{Steel}) + \left(F_g\right) * \left(C_{gf}\right) * \frac{MW}{MVC} * 0.001 - (Slag) * \left(C_{Slag}\right) - (R) * (C_R)} \right] \quad \text{(Eq. Q-5)}$$

* * * * *

■ 40. Effective January 1, 2018, amend § 98.176 by revising Equation Q–10 in paragraph (e)(6)(ii), Equation Q–11 in paragraph (e)(6)(iii), Equation Q–12 in paragraph (e)(6)(iv), and the parameter ''n'' of Equation Q–12 in paragraph (e)(6)(iv) to read as follows:

**§ 98.176 Data reporting requirements.**

* * * * *

(e) * * *

(6) * * *

(ii) * * *

$$NFI = \sum_{i=1}^{n} \begin{pmatrix} O + Iron + Scrap + Flux + Carbon + Coal + Feed \\ + Electrode + Steel_{in} + Ore + Other \end{pmatrix} \quad \text{(Eq. Q-10)}$$

* * * * *

(iii) * * *

$$Products = \sum_{i=1}^{n} (P + R + Steel_{out} + Slag + Coke + Sinter + Iron + NM) \quad \text{(Eq. Q-11)}$$

* * * * *

(iv) * * *

$$CF_{avg} = \frac{\sum_{i=1}^{n} (F_{g,i} * \frac{MW_i}{MVC} * C_{gf,i} * 0.001 + F_{l,i} * C_{lf,i} * 0.001 + F_{s,i} * C_{sf})}{Fuel} \quad \text{(Eq. Q-12)}$$

* * * * *

n = Number of gaseous, liquid, and solid fuel inputs to each process unit as used in Equation Q–9 of this section.

* * * * *

## Subpart S—Lime Manufacturing

■ 41. Effective January 1, 2018, amend § 98.193 by revising paragraph (b)(2) introductory text and adding paragraphs (b)(2)(vi) through (viii) to read as follows:

**§ 98.193 Calculating GHG emissions.**

* * * * *

(b) * * *

(2) Calculate and report process and combustion $CO_2$ emissions from all lime kilns separately using the procedures specified in paragraphs (b)(2)(i) through (viii) of this section.

* * * * *

(vi) You must calculate an annual average emission factor for each type of lime product produced using Equation S–5 of this section.

$$EF_{LIME,i,avg} = \frac{1}{n} \sum_{i=1}^{n} EF_{LIME,i,n} \quad \text{(Eq. S-5)}$$

Where:

$EF_{LIME,i,avg}$ = Annual average emission factor for lime type i, (metric tons $CO_2$/ton lime)

$EF_{LIME,i,n}$ = Emission factor for lime type i, for calendar month n (metric tons $CO_2$/ton lime) from Equation S–1 of this section.

n = Number of calendar months with calculated $EF_{LIME,i,n}$ value used to calculate annual emission factor.

(vii) You must calculate an annual average emission factor for each type of calcined byproduct/waste by lime type that is sold using Equation S–6 of this section.

$$EF_{LKD,i,avg} = \frac{1}{n}\sum_{i=1}^{n} EF_{LKD,i,n} \quad \text{(EQ. S-6)}$$

Where:

$EF_{LKD,i,avg}$ = Annual average emission factor for calcined lime byproduct/waste type i sold (metric tons $CO_2$/ton lime byproduct).

$EF_{LKD,i,n}$ = Emission factor for calcined lime byproduct/waste type i sold, for calendar month n (metric tons $CO_2$/ton lime byproduct) from Equation S–2 of this section.

n = Number of calendar months with calculated $EF_{LKD,i,n}$ value used to calculate annual emission factor.

(viii) You must calculate an annual average result of chemical composition analysis of each type of lime product produced and calcined byproduct/waste sold using Equations S–7 through S–10 of this section.

$$CaO_{i,avg} = \frac{1}{n}\sum_{i=1}^{n} CaO_{i,n} \quad \text{(Eq. S-7)}$$

Where

$CaO_{i,avg}$ = Annual average calcium oxide content for lime type i (metric tons CaO/metric ton lime).

$CaO_{i,n}$ = Calcium oxide content for lime type i, for calendar month n, determined according to § 98.194(c) for Equation S–1 of this section (metric tons CaO/metric ton lime).

n = Number of calendar months with calculated $CaO_{,i,n}$ value used to calculate annual average calcium oxide content.

$$MgO_{i,avg} = \frac{1}{n}\sum_{i=1}^{n} MgO_{i,n} \quad \text{(Eq. S-8)}$$

Where:

$MgO_{i,avg}$ = Annual average magnesium oxide content for lime type i (metric tons MgO/metric ton lime).

$MgO_{i,n}$ = Magnesium oxide content for lime type i, for calendar month n, determined according to § 98.194(c) for Equation S–1 of this section (metric tons MgO/metric ton lime).

n = Number of calendar months with calculated $MgO_{,i,n}$ value used to calculate annual average magnesium oxide content.

$$CaO_{LKD,i,avg} = \frac{1}{n}\sum_{i=1}^{n} CaO_{LKD,i,n} \quad \text{(Eq. S-9)}$$

Where:

$CaO_{LKD,i,avg}$ = Annual average calcium oxide content for calcined lime byproduct/waste type i sold (metric tons CaO/metric ton lime).

$CaO_{LKD,i,n}$ = Calcium oxide content for calcined lime byproduct/waste type i sold, for calendar month n, determined according to § 98.194(c) for Equation S–2 of this section (metric tons CaO/metric ton lime).

n = Number of calendar months with calculated $CaO_{LKD,i,n}$ value used to calculate annual average calcium oxide content.

$$MgO_{LKD,i,avg} = \frac{1}{n}\sum_{i=1}^{n} MgO_{LKD,i,n} \quad \text{(Eq. S-10)}$$

Where:

$MgO_{LKD,i,avg}$ = Annual average magnesium oxide content for calcined lime byproduct/waste type i sold (metric tons MgO/metric ton lime).

$MgO_{LKD,i,n}$ = Magnesium oxide content for calcined lime byproduct/waste type i sold, for calendar month n, determined according to § 98.194(c) for Equation S–2 of this section (metric tons MgO/metric ton lime).

n = Number of calendar months with calculated $MgO_{LKD,i,n}$ value used to calculate annual average magnesium oxide content.

■ 42. Effective January 1, 2018, amend § 98.196 by revising paragraph (b) introductory text and adding paragraphs (b)(19) through (21) to read as follows:

**§ 98.196 Data reporting requirements.**

* * * * *

(b) If a CEMS is not used to measure $CO_2$ emissions, then you must report the information listed in paragraphs (b)(1) through (21) of this section.

* * * * *

(19) Annual average emission factors for each lime product type produced.

(20) Annual average emission factors for each calcined byproduct/waste by lime type that is sold.

(21) Annual average results of chemical composition analysis of each type of lime product produced and calcined byproduct/waste sold.

## Subpart U—Miscellaneous Uses of Carbonate

■ 43. Effective January 1, 2018, amend § 98.216 by revising paragraph (e) introductory text to read as follows:

**§ 98.216 Data reporting requirements.**

* * * * *

(e) If you followed the calculation method of § 98.213(a), you must report the information in paragraphs (e)(1) through (3) of this section.

* * * * *

## Subpart V—Nitric Acid Production

■ 44. Effective January 1, 2018, revise § 98.220 to read as follows:

**§ 98.220 Definition of source category.**

This source category includes a nitric acid production facility using one or more trains to produce weak nitric acid (30 to 70 percent in strength). Starting with reporting year 2018, this source category includes all nitric acid production facilities using one or more trains to produce nitric acid (any

strength). A nitric acid train produces nitric acid through the catalytic oxidation of ammonia.

■ 45. Effective January 1, 2018, amend § 98.223 by revising paragraph (a)(2) to read as follows:

**§ 98.223 Calculating GHG emissions.**

(a) * * *

(2) Request Administrator approval for an alternative method of determining $N_2O$ emissions according to paragraphs (a)(2)(i) through (iv) of this section.

(i) If you received Administrator approval for an alternative method of determining $N_2O$ emissions in the previous reporting year and your methodology is unchanged, your alternative method is automatically approved for the next reporting year.

(ii) You must notify the EPA of your use of a previously approved alternative method in your annual report.

(iii) Otherwise, if you have not received Administrator approval for an alternative method of determining $N_2O$ emissions in a prior reporting year or your methodology has changed, you must submit the request within the first 30 days of each subsequent reporting year.

(iv) If the Administrator does not approve your requested alternative method within 150 days of the end of the reporting year, you must determine the $N_2O$ emissions for the current reporting period using the procedures specified in paragraph (a)(1) of this section.

* * * * *

■ 46. Effective January 1, 2019, amend § 98.226 by revising paragraph (h) to read as follows:

**§ 98.226 Data reporting requirements.**

* * * * *

(h) Abatement technologies used (if applicable) and date of installation of abatement technology.

* * * * *

## Subpart X—Petrochemical Production

■ 47. Effective January 1, 2018, amend § 98.240 by revising paragraph (a) to read as follows:

**§ 98.240 Definition of the source category.**

(a) The petrochemical production source category consists of processes as described in paragraphs (a)(1) and (2) of this section.

(1) The petrochemical production source category consists of all processes that produce acrylonitrile, carbon black, ethylene, ethylene dichloride, ethylene oxide, or methanol, as either an intermediate in the on-site production of other chemicals or as an end product for sale or shipment off site, except as specified in paragraphs (b) through (g) of this section.

(2) When ethylene dichloride and vinyl chloride monomer are produced in an integrated process, you may consider the entire integrated process to be the petrochemical process for the purpose of complying with the mass balance option in § 98.243(c). If you elect to consider the integrated process to be the petrochemical process, then the mass balance must be performed over the entire integrated process.

* * * * *

■ 48. Effective January 1, 2018, amend § 98.243 by revising paragraphs (c)(3), (c)(4) introductory text, and (c)(4)(i) to read as follows:

**§ 98.243 Calculating GHG emissions.**

* * * * *

(c) * * *

(3) Collect a sample of each feedstock and product at least once per month and determine the molecular weight (for gaseous materials when the quantity is measured in scf) and carbon content of each sample according to the procedures of § 98.244(b)(4). If multiple valid molecular weight or carbon content measurements are made during the monthly measurement period, average them arithmetically. However, if a particular liquid or solid feedstock is delivered in lots, and if multiple deliveries of the same feedstock are received from the same supply source in a given calendar month, only one representative sample is required. Alternatively, you may use the results of analyses conducted by a feedstock supplier, or product customer, provided the sampling and analysis is conducted at least once per month using any of the procedures specified in § 98.244(b)(4).

(4) If you determine that the monthly average concentration of a specific compound in a feedstock or product is greater than 99.5 percent by volume or mass, then as an alternative to the sampling and analysis specified in paragraph (c)(3) of this section, you may determine molecular weight and carbon content in accordance with paragraphs (c)(4)(i) through (iii) of this section.

(i) Calculate the molecular weight and carbon content assuming 100 percent of that feedstock or product is the specific compound.

* * * * *

■ 49. Effective January 1, 2018, amend § 98.246 by revising paragraphs (a)(5) and (a)(6)(ii) and (iii), adding paragraphs (a)(14) and (15), and revising paragraphs (b)(2), (3), and (8) to read as follows:

**§ 98.246 Data reporting requirements.**

* * * * *

(a) * * *

(5) Annual quantity of each type of petrochemical produced from each process unit (metric tons). If you are electing to consider the petrochemical process unit to be the entire integrated ethylene dichloride/vinyl chloride monomer process, report the amount of intermediate EDC produced (metric tons). The reported amount of intermediate EDC produced may be a measured quantity or an estimate that is based on process knowledge and best available data.

(6) * * *

(ii) Description of each type of measurement device (*e.g.,* flow meter, weighing device) used to determine volume or mass in accordance with § 98.244(b)(1) through (3).

(iii) Identification of each method (*i.e.,* method number, title, or other description) used to determine volume or mass in accordance with § 98.244(b)(1) through (3).

* * * * *

(14) Annual average of the measurements or determinations of the carbon content of each feedstock and product, conducted according to § 98.243(c)(3) or (4).

(i) For feedstocks and products that are gaseous or solid, report this quantity in kg C per kg of feedstock or product.

(ii) For liquid feedstocks and products, report this quantity either in units of kg C per kg of feedstock or product, or kg C per gallon of feedstock or product.

(15) For each gaseous feedstock and product, the annual average of the measurements or determinations of the molecular weight in units of kg per kg mole, conducted according to § 98.243(c)(3) or (4).

(b) * * *

(2) For CEMS used on stacks that include emissions from stationary combustion units that burn any amount of off-gas from the petrochemical process, report the relevant information required under § 98.36(c)(2) and (e)(2)(vi) for the Tier 4 calculation methodology. Section 98.36(c)(2)(ii), (ix) and (x) do not apply for the purposes of this subpart.

(3) For CEMS used on stacks that do not include emissions from stationary combustion units, report the information required under § 98.36(b)(6) and (7), (b)(9)(i) and (ii) and (e)(2)(vi).

* * * * *

(8) Annual quantity of each type of petrochemical produced from each process unit (metric tons). If you are electing to consider the petrochemical

process unit to be the entire integrated ethylene dichloride/vinyl chloride monomer process, report the amount of intermediate EDC produced (metric tons). The reported amount of intermediate EDC produced may be a measured quantity or an estimate that is based on process knowledge and best available data.

* * * * *

■ 50. Effective January 1, 2018, amend § 98.247 by revising paragraph (a) to read as follows:

**§ 98.247 Records that must be retained.**

* * * * *

(a) If you comply with the CEMS measurement methodology in § 98.243(b), then you must retain under this subpart the records required for the Tier 4 Calculation Methodology in § 98.37, records of the procedures used to develop estimates of the fraction of total emissions attributable to petrochemical processing and combustion of petrochemical process off-gas as required in § 98.246(b), and records of any annual average HHV calculations.

* * * * *

■ 51. Effective January 1, 2018, amend § 98.248 by revising the definition for ''Product'' to read as follows:

**§ 98.248 Definitions.**

* * * * *

*Product* means each of the following carbon-containing outputs from a process: The petrochemical, recovered byproducts, and liquid organic wastes that are not combusted onsite. Product does not include process vent emissions, fugitive emissions, or wastewater.

## Subpart Y—Petroleum Refineries

■ 52. Effective January 1, 2019, amend § 98.253 by:

■ a. Revising paragraphs (b) introductory text, (b)(1)(iii)(B), (h)(1) introductory text, and (h)(2) introductory text;

■ b. Revising parameters ''0.98'' of Equations Y–16a and Y–16b and ''0.02'' of Equation Y–17 in paragraph (h)(2); and

■ c. Revising paragraphs (i) and (j) introductory text.

The revisions read as follows:

**§ 98.253 Calculating GHG emissions.**

* * * * *

(b) For flares, calculate GHG emissions according to the requirements in paragraphs (b)(1) through (3) of this section. All gas discharged through the flare stack must be included in the flare GHG emissions calculations with the exception of gas used for the flare pilots, which may be excluded.

(1) * * *

(iii) * * *

(B) For periods of normal operation, use the average higher heating value measured for the fuel gas used as flare sweep or purge gas for the higher heating value of the flare gas. If higher heating value of the fuel gas is not measured, the higher heating value of the flare gas under normal operations may be estimated from historic data or engineering calculations.

* * * * *

(h) * * *

(1) For uncontrolled asphalt blowing operations or asphalt blowing operations controlled either by vapor scrubbing or by another non-combustion control device, calculate $CO_2$ and $CH_4$ emissions using Equations Y–14 and Y–15 of this section, respectively.

* * * * *

(2) For asphalt blowing operations controlled by either a thermal oxidizer, a flare, or other vapor combustion control device, calculate $CO_2$ using either Equation Y–16a or Y–16b of this section and calculate $CH_4$ emissions using Equation Y–17 of this section, provided these emissions are not already included in the flare emissions calculated in paragraph (b) of this section or in the stationary combustion unit emissions required under subpart C of this part (General Stationary Fuel Combustion Sources).

* * * (Eq. Y–16a)

* * * * *

0.98 = Assumed combustion efficiency of the control device.

* * * * *

* * * (Eq. Y–16b)

* * * * *

0.98 = Assumed combustion efficiency of the control device.

* * * * *

* * * (Eq. Y–17)

* * * * *

0.02 = Fraction of methane uncombusted in the controlled stream based on assumed 98% combustion efficiency.

* * * * *

(i) For each delayed coking unit, calculate the $CH_4$ emissions from delayed decoking operations (venting, draining, deheading, and coke-cutting) according to the requirements in paragraphs (i)(1) through (5) of this section.

(1) Determine the typical dry mass of coke produced per cycle from company records of the mass of coke produced by the delayed coking unit. Alternatively, you may estimate the typical dry mass of coke produced per cycle based on the delayed coking unit vessel (coke drum) dimensions and typical coke drum outage at the end of the coking cycle using Equation Y–18a of this section.

$$M_{coke} = \rho_{bulk} \times \left( \left( H_{drum} - H_{outage} \right) \times \frac{\pi \times D^2}{4} \right) \quad \text{(Eq. Y-18a)}$$

Where:

$M_{coke}$ = Typical dry mass of coke in the delayed coking unit vessel at the end of the coking cycle (metric tons/cycle).

$\rho_{bulk}$ = Bulk coke bed density (metric tons per cubic feet; mt/ft$^3$). Use the default value of 0.0191 mt/ft$^3$.

$H_{drum}$ = Internal height of delayed coking unit vessel (feet).

$H_{outage}$ = Typical distance from the top of the delayed coking unit vessel to the top of the coke bed (*i.e.,* coke drum outage) at the end of the coking cycle (feet) from company records or engineering estimates.

D = Diameter of delayed coking unit vessel (feet).

(2) Determine the typical mass of water in the delayed coking unit vessel at the end of the cooling cycle prior to venting to the atmosphere using Equation Y–18b of this section.

$$M_{water} = \rho_{water} \times \left( \left( H_{water} \right) \times \frac{\pi \times D^2}{4} - \frac{M_{coke}}{\rho_{particle}} \right) \quad \text{(Eq. Y-18b)}$$

Where:

$M_{water}$ = Mass of water in the delayed coking unit vessel at the end of the cooling cycle just prior to atmospheric venting (metric tons/cycle).

$\rho_{water}$ = Density of water at average temperature of the delayed coking unit vessel at the end of the cooling cycle just prior to atmospheric venting (metric tons per cubic feet; mt/ft$^3$). Use the default value of 0.0270 mt/ft$^3$.

$H_{water}$ = Typical distance from the bottom of the coking unit vessel to the top of the water level at the end of the cooling cycle just prior to atmospheric venting (feet) from company records or engineering estimates.

$M_{coke}$ = Typical dry mass of coke in the delayed coking unit vessel at the end of the coking cycle (metric tons/cycle) as determined in paragraph (i)(1) of this section.

$\rho_{particle}$ = Particle density of coke (metric tons per cubic feet; mt/ft$^3$). Use the default value of 0.0382 mt/ft$^3$.

D = Diameter of delayed coking unit vessel (feet).

(3) Determine the average temperature of the delayed coking unit vessel when the drum is first vented to the atmosphere using either Equation Y–18c or Y–18d of this section, as appropriate, based on the measurement system available.

$$T_{initial} = (T_{overhead} + T_{bottom})/2 \qquad \text{(Eq. Y-18c)}$$

Where:

$T_{initial}$ = Average temperature of the delayed coking unit vessel when the drum is first vented to the atmosphere (°F).

$T_{overhead}$ = Temperature of the delayed coking unit vessel overhead line measured as near the coking unit vessel as practical just prior to venting to the atmosphere. If the temperature of the delayed coking unit vessel overhead line is less than 216 °F, use $T_{overhead}$ = 216 °F.

$T_{bottom}$ = Temperature of the delayed coking unit vessel near the bottom of the coke bed. If the temperature at the bottom of the coke bed is less than 212 °F, use $T_{bottom}$ = 212 °F.

$$T_{initial} = -0.039\ P_{overhead}^2 + 3.13\ P_{overhead} + 220 \qquad \text{(Eq. Y-18d)}$$

Where:

$T_{initial}$ = Average temperature of the delayed coking unit vessel when the drum is first vented to the atmosphere (°F).

$P_{overhead}$ = Pressure of the delayed coking unit vessel just prior to opening the atmospheric vent (pounds per square inch gauge, psig).

(4) Determine the typical mass of steam generated and released per decoking cycle using Equation Y–18e of this section.

$$M_{steam} = \frac{\left(1 - f_{ConvLoss}\right) \times \left(M_{water} \times C_{p,water} + M_{coke} \times C_{p,coke}\right) \times \left(T_{initial} - T_{final}\right)}{\Delta H_{vap}} \qquad \text{(Eq. Y-18e)}$$

Where:

$M_{steam}$ = Mass of steam generated and released per decoking cycle (metric tons/cycle).

$f_{ConvLoss}$ = fraction of total heat loss that is due to convective heat loss from the sides of the coke vessel (unitless). Use the default value of 0.10.

$M_{water}$ = Mass of water in the delayed coking unit vessel at the end of the cooling cycle just prior to atmospheric venting (metric tons/cycle).

$C_{p,water}$ = Heat capacity of water (British thermal units per metric ton per degree Fahrenheit; Btu/mt-°F). Use the default value of 2,205 Btu/mt-°F.

$M_{coke}$ = Typical dry mass of coke in the delayed coking unit vessel at the end of the coking cycle (metric tons/cycle) as determined in paragraph (i)(1) of this section.

$C_{p,coke}$ = Heat capacity of petroleum coke (Btu/mt-°F). Use the default value of 584 Btu/mt-°F.

$T_{initial}$ = Average temperature of the delayed coking unit vessel when the drum is first vented to the atmosphere (°F) as determined in paragraph (i)(3) of this section.

$T_{final}$ = Temperature of the delayed coking unit vessel when steam generation stops (°F). Use the default value of 212 °F.

$\Delta H_{vap}$ = Heat of vaporization of water (British thermal units per metric ton; Btu/mt). Use the default value of 2,116,000 Btu/mt.

(5) Calculate the $CH_4$ emissions from decoking operations at each delayed coking unit using Equation Y–18f of this section.

$$CH_4 = M_{steam} \times EmF_{DCU} \times N \times 0.001 \qquad \text{(Eq. Y-18f)}$$

Where:

$CH_4$ = Annual methane emissions from the delayed coking unit decoking operations (metric ton/year).

$M_{steam}$ = Mass of steam generated and released per decoking cycle (metric tons/cycle) as determined in paragraph (i)(3) of this section.

$EmF_{DCU}$ = Methane emission factor for delayed coking unit (kilograms $CH_4$ per metric ton of steam; kg $CH_4$/mt steam) from unit-specific measurement data. If you do not have unit-specific measurement data, use the default value of 7.9 kg $CH_4$/metric ton steam.

N = Cumulative number of decoking cycles (or coke-cutting cycles) for all delayed coking unit vessels associated with the delayed coking unit during the year.

0.001 = Conversion factor (metric ton/kg).

(j) For each process vent not covered in paragraphs (a) through (i) of this section that can reasonably be expected to contain greater than 2 percent by volume $CO_2$ or greater than 0.5 percent by volume of $CH_4$ or greater than 0.01 percent by volume (100 parts per million) of $N_2O$, calculate GHG emissions using Equation Y–19 of this section. You must also use Equation Y–19 of this section to calculate $CH_4$ emissions for catalytic reforming unit depressurization and purge vents when methane is used as the purge gas, and

$CO_2$ and/or $CH_4$ emissions, as applicable, if you elected this method as an alternative to the methods in paragraph (f), (h), or (k) of this section.

* * * * *

■ 53. Effective January 1, 2019, amend § 98.254 by revising paragraph (j), redesignating paragraph (k) as paragraph (l), and adding new paragraph (k) to read as follows:

**§ 98.254 Monitoring and QA/QC requirements.**

* * * * *

(j) Determine the quantity of petroleum process streams using company records. These quantities include the quantity of coke produced per cycle, asphalt blown, quantity of crude oil plus the quantity of intermediate products received from off site, and the quantity of unstabilized crude oil received at the facility.

(k) Determine temperature or pressure of delayed coking unit vessel using process instrumentation operated, maintained, and calibrated according to the manufacturer's instructions.

* * * * *

■ 54. Effective January 1, 2019, amend § 98.256 by revising paragraphs (e)(3) and (6), (h)(5)(ii)(A), and (k) to read as follows:

**§ 98.256 Data reporting requirements.**

* * * * *

(e) * * *

(3) A description of the flare service (general facility flare, unit flare, emergency only or back-up flare) and an indication of whether or not the flare is serviced by a flare gas recovery system.

* * * * *

(6) If you use Equation Y–1a in § 98.253, an indication of whether daily or weekly measurement periods are used, annual average carbon content of the flare gas (in kg carbon per kg flare gas), and, either the annual volume of flare gas combusted (in scf/year) and the annual average molecular weight (in kg/kg-mole), or the annual mass of flare gas combusted (in kg/yr).

* * * * *

(h) * * *

(5) * * *

(ii) * * *

(A) The annual volume of recycled tail gas (in scf/year).

* * * * *

(k) For each delayed coking unit, the owner or operator shall report:

(1) The unit ID number (if applicable).

(2) Maximum rated throughput of the unit, in bbl/stream day.

(3) Annual quantity of coke produced in the unit during the reporting year, in metric tons.

(4) The calculated annual $CH_4$ emissions (in metric tons of $CH_4$) for the delayed coking unit.

(5) The total number of delayed coking vessels (or coke drums) associated with the delayed coking unit.

(6) The basis for the typical dry mass of coke in the delayed coking unit vessel at the end of the coking cycle (mass measurements from company records or calculated using Equation Y–18a of this subpart).

(7) An indication of the method used to estimate the average temperature of the coke bed, $T_{initial}$ (overhead temperature and Equation Y–18c of this subpart or pressure correlation and Equation Y–18d of this subpart).

(8) An indication of whether a unit-specific methane emissions factor or the default methane emission factor was used for the delayed coking unit.

* * * * *

■ 55. Effective January 1, 2019, amend § 98.257 by:

■ a. Revising paragraphs (b) introductory text and (b)(41) through (45);

■ b. Removing paragraph (b)(46);

■ c. Redesignating paragraphs (b)(47) through (67) as paragraphs (b)(53) through (73);

■ d. Adding new paragraph (b)(46) and paragraphs (b)(47) through (52); and

■ e. Revising newly redesignated paragraph (b)(65).

The revisions and additions read as follows:

**§ 98.257 Records that must be retained.**

* * * * *

(b) *Verification software records.* You must keep a record of the file generated by the verification software specified in § 98.5(b) for the applicable data specified in paragraphs (b)(1) through (73) of this section. Retention of this file satisfies the recordkeeping requirement for the data in paragraphs (b)(1) through (73) of this section.

* * * * *

(41) Typical dry mass of coke in the delayed coking unit vessel at the end of the coking cycle (metric tons/cycle) from company records or calculated using Equation Y–18a of this subpart (Equations Y–18a, Y–18b and Y–18e in § 98.253) for each delayed coking unit.

(42) Internal height of delayed coking unit vessel (feet) (Equation Y–18a in § 98.253) for each delayed coking unit.

(43) Typical distance from the top of the delayed coking unit vessel to the top of the coke bed (*i.e.,* coke drum outage) at the end of the coking cycle (feet) from company records or engineering estimates (Equation Y–18a in § 98.253) for each delayed coking unit.

(44) Diameter of delayed coking unit vessel (feet) (Equations Y–18a and Y–18b in § 98.253) for each delayed coking unit.

(45) Mass of water in the delayed coking unit vessel at the end of the cooling cycle prior to atmospheric venting (metric ton/cycle) (Equations Y–18b and Y–18e in § 98.253) for each delayed coking unit.

(46) Typical distance from the bottom of the coking unit vessel to the top of the water level at the end of the cooling cycle just prior to atmospheric venting (feet) from company records or engineering estimates (Equation Y–18b in § 98.253) for each delayed coking unit.

(47) Mass of steam generated and released per decoking cycle (metric tons/cycle) (Equations Y–18e and Y–18f in § 98.253) for each delayed coking unit.

(48) Average temperature of the delayed coking unit vessel when the drum is first vented to the atmosphere (°F) (Equations Y–18c, Y–18d, and Y–18e in § 98.253) for each delayed coking unit.

(49) Temperature of the delayed coking unit vessel overhead line measured as near the coking unit vessel as practical just prior to venting the atmosphere (Equation Y–18c in § 98.253) for each delayed coking unit.

(50) Pressure of the delayed coking unit vessel just prior to opening the atmospheric vent (psig) (Equation Y–18d in § 98.253) for each delayed coking unit.

(51) Methane emission factor for delayed coking unit (kilograms $CH_4$ per metric ton of steam; kg $CH_4$/mt steam) (Equation Y–18f in § 98.253) for each delayed coking unit.

(52) Cumulative number of decoking cycles (or coke-cutting cycles) for all delayed coking unit vessels associated with the delayed coking unit during the year (Equation Y–18f in § 98.253) for each delayed coking unit.

* * * * *

(65) Specify whether the calculated or default loading factor L specified in § 98.253(n) is entered, for each liquid loaded to each vessel (methods specified in § 98.253(n)).

* * * * *

## Subpart Z—Phosphoric Acid Production

■ 56. Effective January 1, 2018, amend § 98.266 by revising paragraph (f)(3) to read as follows:

**§ 98.266 Data reporting requirements.**

* * * * *

(f) * * *

(3) Annual phosphoric acid production capacity (tons) for each wet-process phosphoric acid process line.

* * * * *

### Subpart AA—Pulp and Paper Manufacturing

■ 57. Effective January 1, 2018, amend § 98.273 by revising paragraphs (a)(1), (b)(1), and (c)(1) to read as follows:

**§ 98.273 Calculating GHG emissions.**

(a) * * *

(1) Calculate fossil fuel-based $CO_2$ emissions from direct measurement of fossil fuels consumed and default emissions factors according to the Tier 1 methodology for stationary combustion sources in § 98.33(a)(1). Tiers 2 or 3 from § 98.33(a)(2) or (3) may be used to calculate fossil fuel-based $CO_2$ emissions if the respective monitoring and QA/QC requirements described in § 98.34 are met.

* * * * *

(b) * * *

(1) Calculate fossil $CO_2$ emissions from fossil fuels from direct measurement of fossil fuels consumed and default emissions factors according to the Tier 1 Calculation Methodology for stationary combustion sources in § 98.33(a)(1). Tiers 2 or 3 from § 98.33(a)(2) or (3) may be used to calculate fossil fuel-based $CO_2$ emissions if the respective monitoring and QA/QC requirements described in § 98.34 are met.

* * * * *

(c) * * *

(1) Calculate $CO_2$ emissions from fossil fuel from direct measurement of fossil fuels consumed and default HHV and default emissions factors, according to the Tier 1 Calculation Methodology for stationary combustion sources in § 98.33(a)(1). Tiers 2 or 3 from § 98.33(a)(2) or (3) may be used to calculate fossil fuel-based $CO_2$ emissions if the respective monitoring and QA/QC requirements described in § 98.34 are met.

* * * * *

■ 58. Effective January 1, 2018, amend § 98.275 by revising paragraph (b) to read as follows:

**§ 98.275 Procedures for estimating missing data.**

* * * * *

(b) For missing measurements of the mass of spent liquor solids or spent pulping liquor flow rates, use the lesser value of either the maximum mass or fuel flow rate for the combustion unit, or the maximum mass or flow rate that the fuel meter can measure. Alternatively, records of the daily spent liquor solids firing rate obtained to comply with § 63.866(c)(1) of this chapter may be used, adjusting for the duration of the missing measurements, as appropriate.

* * * * *

■ 59. Effective January 1, 2018, amend Table AA–2 to subpart AA of part 98 by:

■ a. Revising the column headings for ''Kraft lime kilns'' and ''Kraft calciners'';

■ b. Revising the entry for ''Petroleum coke'';

■ c. Revising footnote a; and

■ d. Adding footnote b.

The revisions read as follows:

TABLE AA–2 TO SUBPART AA OF PART 98—KRAFT LIME KILN AND CALCINER EMISSIONS FACTORS FOR $CH_4$ AND $N_2O$

| Fuel | Fossil fuel-based emissions factors (kg/mmBtu HHV) | | | |
|---|---|---|---|---|
| | Kraft rotary lime kilns | | Kraft calciners [a] | |
| | $CH_4$ | $N_2O$ | $CH_4$ | $N_2O$ |
| * * * * | * | | * | * |
| Petroleum coke | 0.0027 | 0 | [b] NA | [b] NA |
| * * * * | * | | * | * |

[a] Includes, for example, fluidized bed calciners at kraft mills.
[b] Emission factors for kraft calciners are not available.

### Subpart CC—Soda Ash Manufacturing

■ 60. Effective January 1, 2018, amend § 98.294 by revising paragraph (a)(2) to read as follows:

**§ 98.294 Monitoring and QA/QC requirements.**

* * * * *

(a) * * *

(2) Measure the mass of trona input to each soda ash manufacturing line on a monthly basis using belt scales or methods used for accounting purposes.

* * * * *

### Subpart DD—Electrical Transmission and Distribution Equipment Use

■ 61. Effective January 1, 2018, amend § 98.306 by:

■ a. Revising paragraphs (a)(2) and (3);

■ b. Adding paragraphs (a)(4) and (5);

■ c. Revising paragraphs (b) and (c); and

■ d. Adding paragraphs (m) and (n).

The revisions and additions read as follows:

**§ 98.306 Data reporting requirements.**

* * * * *

(a) * * *

(2) New hermetically sealed-pressure switchgear during the year.

(3) New equipment other than hermetically sealed-pressure switchgear during the year.

(4) Retired hermetically sealed-pressure switchgear during the year.

(5) Retired equipment other than hermetically sealed-pressure switchgear during the year.

(b) Transmission miles (length of lines carrying voltages above 35 kilovolts).

(c) Distribution miles (length of lines carrying voltages at or below 35 kilovolts).

* * * * *

(m) State(s) or territory in which the facility lies.

(n) The number of $SF_6$- or PFC-containing pieces of equipment in each of the following equipment categories:

(1) New hermetically sealed-pressure switchgear during the year.

(2) New equipment other than hermetically sealed-pressure switchgear during the year.

(3) Retired hermetically sealed-pressure switchgear during the year.

(4) Retired equipment other than hermetically sealed-pressure switchgear during the year.

### Subpart FF—Underground Coal Mines

■ 62. Effective January 1, 2018, amend § 98.323 by:

■ a. Revising parameter ''n'' of Equation FF–1 in paragraph (a);

■ b. Revising paragraphs (a)(1) introductory text and (a)(2);

■ c. Revising parameters ''$CH_{4D}$'' and ''n'' of Equation FF–3 in paragraph (b); and

■ d. Revising paragraphs (b)(1) and (b)(2) introductory text.

The revisions read as follows:

**§ 98.323 Calculating GHG emissions.**

(a) * * *

* * * * *

n = The number of days in the quarter where active ventilation of mining operations is taking place at the monitoring point. To obtain the number of days in the quarter, divide the total number of hours in the quarter where active ventilation is taking place by 24 hours per day.

* * * * *

(1) The quarterly periods are:

* * * * *

(2) Values of V, C, T, P, and, if applicable, ($f_{H2O}$), must be based on measurements taken at least once each quarter with no fewer than 6 weeks between measurements. If measurements are taken more frequently than once per quarter, then use the average value for all measurements taken. If continuous measurements are taken, then use the average value over the time period of continuous monitoring.

* * * * *

(b) * * *

* * * * *

$CH_{4D}$ = Weekly $CH_4$ liberated from the monitoring point (metric tons $CH_4$).

* * * * *

n = The number of days in the week that the system is operational at that measurement point. To obtain the number of days in the week, divide the total number of hours that the system is operational by 24 hours per day.

* * * * *

(1) Values for V, C, T, P, and, if applicable, ($f_{H2O}$), must be based on measurements taken at least once each calendar week with at least 3 days between measurements. If measurements are taken more frequently than once per week, then use the average value for all measurements taken that week. If continuous measurements are taken, then use the average values over the time period of continuous monitoring when the continuous monitoring equipment is properly functioning.

(2) Quarterly total $CH_4$ liberated from degasification systems for the mine must be determined as the sum of $CH_4$ liberated determined at each of the monitoring points in the mine, summed over the number of weeks in the quarter, as follows:

* * * * *

■ 63. Amend § 98.324 by revising paragraph (b)(1) to read as follows:

**§ 98.324 Monitoring and QA/QC requirements.**

* * * * *

(b) * * *

(1) Collect quarterly or more frequent grab samples (with no fewer than 6 weeks between measurements) for methane concentration and make quarterly measurements of flow rate, temperature, pressure, and, if applicable, moisture content. The sampling and measurements must be made at the same locations as Mine Safety and Health Administration (MSHA) inspection samples are taken, and should be taken when the mine is operating under normal conditions. You must follow MSHA sampling procedures as set forth in the MSHA Handbook entitled, Coal Mine Safety and Health General Inspection Procedures Handbook, Handbook Number: PH16–V–1 (incorporated by reference, see § 98.7). You must record the date of sampling, flow, temperature, pressure, and moisture measurements, the methane concentration (percent), the bottle number of samples collected, and the location of the measurement or collection.

* * * * *

■ 64. Effective January 1, 2018, amend § 98.324 by revising paragraph (h) to read as follows:

**§ 98.324 Monitoring and QA/QC requirements.**

* * * * *

(h) The owner or operator shall document the procedures used to ensure the accuracy of gas flow rate, gas composition, temperature, pressure, and moisture content measurements. These procedures include, but are not limited to, calibration of flow meters, and other measurement devices. The estimated accuracy of measurements and the technical basis for the estimated accuracy shall be recorded.

■ 65. Effective January 1, 2018, amend § 98.326 by revising paragraphs (a), (f) through (i), (o), and (r)(2) and (3) to read as follows:

**§ 98.326 Data reporting requirements.**

* * * * *

(a) Quarterly $CH_4$ liberated from each ventilation monitoring point, (metric tons $CH_4$). Where MSHA reports are the monitoring method chosen under § 98.324(b), each annual report must include the MSHA reports used to report quarterly $CH_4$ concentration and volumetric flow rate as attachments.

* * * * *

(f) Quarterly volumetric flow rate for each ventilation monitoring point and units of measure (scfm or acfm), date and location of each measurement, and method of measurement (quarterly sampling or continuous monitoring), used in Equation FF–1 of this subpart. Specify whether the volumetric flow rate measurement at each ventilation monitoring point is on dry basis or wet basis; and, if a flow meter is used, indicate whether or not the flow meter automatically corrects for moisture content.

(g) Quarterly $CH_4$ concentration for each ventilation monitoring point, dates and locations of each measurement, and method of measurement (sampling or continuous monitoring). Specify whether the $CH_4$ concentration measurement at each ventilation monitoring point is on dry basis or wet basis.

(h) Weekly volumetric flow rate used to calculate $CH_4$ liberated from degasification systems and units of measure (acfm or scfm), and method of measurement (sampling or continuous monitoring), used in Equation FF–3 of this subpart. Specify whether the volumetric flow rate measurement at each degasification monitoring point is on dry basis or wet basis; and, if a flow meter is used, indicate whether or not the flow meter automatically corrects for moisture content.

(i) Quarterly $CH_4$ concentration (%) used to calculate $CH_4$ liberated from degasification systems, and if the data is based on CEMS or weekly sampling. Specify whether the $CH_4$ concentration measurement at each degasification monitoring point is on dry basis or wet basis.

* * * * *

(o) Temperature (°R), pressure (atm), moisture content (if applicable), and the moisture correction factor (if applicable) used in Equations FF–1 and FF–3 of this subpart; and the gaseous organic concentration correction factor, if Equation FF–9 of this subpart was required. Moisture content is required to be reported only if $CH_4$ concentration is measured on a wet basis and volumetric flow is measured on a dry basis, if $CH_4$ concentration is measured on a dry basis and volumetric flow is measured on a wet basis; and, if a flow meter is used, the flow meter does not automatically correct for moisture content.

* * * * *

(r) * * *

(2) Start date and close date of each well, shaft, and vent hole. If the well, shaft, or vent hole is operating through the end of the reporting year, December 31st of the reporting year shall be the close date for purposes of reporting.

(3) Number of days the well, shaft, or vent hole was in operation during the

reporting year. To obtain the number of days in the reporting year, divide the total number of hours that the system was in operation by 24 hours per day.

* * * * *

## Subpart HH—Municipal Solid Waste Landfills

■ 66. Amend § 98.346 by revising paragraphs (f) and (i)(5) and (7) and adding paragraph (i)(13) to read as follows:

**§ 98.346 Data reporting requirements.**

* * * * *

(f) The surface area of the landfill containing waste (in square meters), identification of the type(s) of cover material used (as either organic cover, clay cover, sand cover, or other soil mixtures).

* * * * *

(i) * * *

(5) An indication of whether destruction occurs at the landfill facility, off-site, or both. If destruction occurs at the landfill facility, also report for each measurement location:

(i) The number of destruction devices associated with the measurement location.

(ii) The annual operating hours of the gas collection system associated with the measurement location.

(iii) For each destruction device associated with the measurement location, report:

(A) The destruction efficiency (decimal).

(B) The annual operating hours where active gas flow was sent to the destruction device.

* * * * *

(7) A description of the gas collection system (manufacturer, capacity, and number of wells), the surface area (square meters) and estimated waste depth (meters) for each area specified in Table HH–3 to this subpart, the estimated gas collection system efficiency for landfills with this gas collection system and an indication of whether passive vents and/or passive flares (vents or flares that are not considered part of the gas collection system as defined in § 98.6) are present at the landfill.

* * * * *

(13) Methane emissions for the landfill (*i.e.,* the subpart HH total methane emissions). Choose the methane emissions from either Equation HH–6 or Equation HH–8 of this subpart that best represents the emissions from the landfill. If the quantity of recovered $CH_4$ from Equation HH–4 of this subpart is used as the value of $G_{CH4}$ in Equation HH–6, use the methane emissions calculated using Equation HH–8 as the methane emissions for the landfill.

■ 67. Amend § 98.348 by adding definitions for ''Final cover,'' ''Intermediate or interim cover,'' and ''Passive vent'' in alphabetical order to read as follows:

**§ 98.348 Definitions.**

* * * * *

*Final cover* means materials used at a landfill to meet final closure regulations of the competent federal, state, or local authority.

* * * * *

*Intermediate or interim cover* means the placement of material over waste in a landfill for a period of time prior to the disposal of additional waste and/or final closure as defined by state regulation, permit, guidance or written plan, or state accepted best management practice.

* * * * *

*Passive vent* means a pipe or a system of pipes that allows landfill gas to flow naturally, without the use of a fan or similar mechanical draft equipment, to the surface of the landfill where an opening or pipe (vent) allows for the free flow of landfill gas to the atmosphere or to a passive vent flare without diffusion through the top layer of surface soil.

* * * * *

■ 68. Amend Table HH–3 to subpart HH of part 98 by:

■ a. Revising the entry for ''A5''; and

■ b. Adding heading ''Weighted average collection efficiency for landfills:'' after the entry for ''A5.''

The revision and addition read as follows:

TABLE HH–3 TO SUBPART HH OF PART 98—LANDFILL GAS COLLECTION EFFICIENCIES

| Description | Landfill gas collection efficiency |
|---|---|
| * * * * * * * | |
| A5: Area with a final soil cover of 3 feet or thicker of clay or final cover (as approved by the relevant agency) and/or geomembrane cover system and active gas collection CE5: 95%. | |
| Weighted average collection efficiency for landfills: | |
| * * * * * * * | |

■ 69. Amend Table HH–4 to subpart HH of part 98 by:

■ a. Revising the entries ''C2'' through ''C7'';

■ b. Redesignating footnote ''a'' as footnote ''b''; and

■ c. Adding new footnote ''a.''

The revisions and addition read as follows:

TABLE HH–4 TO SUBPART HH OF PART 98—LANDFILL METHANE OXIDATION FRACTIONS

| Under these conditions: | Use this landfill methane oxidation fraction: |
|---|---|
| * * * * * * * | |
| C2: For landfills that have a geomembrane (synthetic) cover or other non-soil barrier meeting the definition of final cover with less than 12 inches of cover soil for greater than 50% of the landfill area containing waste | 0.0 |
| C3: For landfills that do not meet the conditions in C2 above and for which you elect not to determine methane flux | 0.10 |
| C4: For landfills that do not meet the conditions in C2 or C3 above and that do not have final cover, or intermediate or interim cover[a] for greater than 50% of the landfill area containing waste | 0.10 |

TABLE HH–4 TO SUBPART HH OF PART 98—LANDFILL METHANE OXIDATION FRACTIONS—Continued

| Under these conditions: | Use this landfill methane oxidation fraction: |
|---|---|
| C5: For landfills that do not meet the conditions in C2 or C3 above and that have final cover, or intermediate or interim cover[a] for greater than 50% of the landfill area containing waste and for which the methane flux rate[b] is less than 10 grams per square meter per day ($g/m^2/d$) | 0.35 |
| C6: For landfills that do not meet the conditions in C2 or C3 above and that have final cover or intermediate or interim cover[a] for greater than 50% of the landfill area containing waste and for which the methane flux rate[b] is 10 to 70 $g/m^2/d$ | 0.25 |
| C7: For landfills that do not meet the conditions in C2 or C3 above and that have final cover or intermediate or interim cover[a] for greater than 50% of the landfill area containing waste and for which the methane flux rate[b] is greater than 70 $g/m^2/d$ | 0.10 |

[a] Where a landfill is located in a state that does not have an intermediate or interim cover requirement, the landfill must have soil cover of 12 inches or greater in order to use an oxidation fraction of 0.25 or 0.35.

* * * * *

## Subpart II—Industrial Wastewater Treatment

■ 70. Effective January 1, 2018, amend § 98.356 by revising paragraph (a) introductory text and adding paragraph (b)(6) to read as follows:

### § 98.356 Data reporting requirements.

* * * * *

(a) Identify the anaerobic processes used in the industrial wastewater treatment system to treat industrial wastewater and industrial wastewater treatment sludge, provide a unique identifier for each anaerobic process, indicate the average depth in meters of each anaerobic lagoon, and indicate whether biogas generated by each anaerobic process is recovered. Provide a description or diagram of the industrial wastewater treatment system, identifying the processes used, indicating how the processes are related to each other, and providing a unique identifier for each anaerobic process. Each anaerobic process must be identified as one of the following:

* * * * *

(b) * * *

(6) If the facility performs an ethanol production processing operation as defined in § 98.358, you must indicate if the facility uses a wet milling process or a dry milling process.

* * * * *

■ 71. Effective January 1, 2018, amend § 98.358 by adding definitions for ''Dry milling,'' ''Wet milling,'' and ''Weekly average'' in alphabetical order to read as follows:

### § 98.358 Definitions.

* * * * *

*Dry milling* means the process in which shelled corn is milled by dry process, without an initial steeping step.

* * * * *

*Wet milling* means the process in which shelled corn is steeped in a dilute solution of sulfurous acid (sulfur dioxide dissolved in water) prior to further processing.

*Weekly average* means the sum of all values measured in a calendar week divided by the number of measurements.

## Subpart LL—Suppliers of Coal-based Liquid Fuels

■ 72. Effective January 1, 2018, revise § 98.382 to read as follows:

### § 98.382 GHGs to report.

Suppliers of coal-based liquid fuels must report the $CO_2$ emissions that would result from the complete combustion or oxidation of fossil-fuel products (besides coal or crude oil) produced, used as feedstock, imported, or exported during the calendar year. Additionally, producers must report $CO_2$ emissions that would result from the complete combustion or oxidation of any biomass co-processed with fossil fuel-based feedstocks.

■ 73. Effective January 1, 2018, revise § 98.383 to read as follows:

### § 98.383 Calculating GHG emissions.

Suppliers of coal-based liquid fuels must follow the calculation methods of § 98.393 as if they applied to the appropriate coal-to-liquid product supplier (*i.e.,* calculation methods for refiners apply to producers of coal-to-liquid products and calculation methods for importers and exporters of petroleum products apply to importers and exporters of coal-to-liquid products).

(a) In calculation methods in § 98.393 for petroleum products or petroleum-based products, suppliers of coal-to-liquid products shall also include coal-to-liquid products.

(b) In calculation methods in § 98.393 for non-crude feedstocks or non-crude petroleum feedstocks, producers of coal-to-liquid products shall also include coal-to-liquid products that enter the facility to be further processed or otherwise used on site.

(c) In calculation methods in § 98.393 for petroleum feedstocks, suppliers of coal-to-liquid products shall also include coal and coal-to-liquid products that enter the facility to be further processed or otherwise used on site.

■ 74. Effective January 1, 2018, revise § 98.384 to read as follows:

### § 98.384 Monitoring and QA/QC requirements.

Suppliers of coal-based liquid fuels must follow the monitoring and QA/QC requirements in § 98.394 as if they applied to the appropriate coal-to-liquid product supplier. Any monitoring and QA/QC requirement for petroleum products in § 98.394 also applies to coal-to-liquid products.

■ 75. Effective January 1, 2018, revise § 98.385 to read as follows:

### § 98.385 Procedures for estimating missing data.

Suppliers of coal-based liquid fuels must follow the procedures for estimating missing data in § 98.395 as if they applied to the appropriate coal-to-liquid product supplier. Any procedure for estimating missing data for petroleum products in § 98.395 also applies to coal-to-liquid products.

■ 76. Effective January 1, 2018, amend § 98.386 by:

■ a. Removing and reserving paragraphs (a)(4) and (8);

■ b. Revising the introductory text to paragraphs (a)(9) through (11);

■ c. Removing and reserving paragraph (a)(15);

■ d. Revising paragraph (a)(20);

■ e. Removing and reserving paragraph (b)(4);

■ f. Revising the introductory text to paragraphs (b)(5) and (6);

■ g. Removing and reserving paragraph (c)(4); and

■ h. Revising the introductory text to paragraphs (c)(5) and (6).

The revisions read as follows:

**§ 98.386 Data reporting requirements.**

* * * * *

(a) * * *

(9) For every feedstock reported in paragraph (a)(2) of this section for which Calculation Method 2 in § 98.393(f)(2) was used to determine an emissions factor, report:

* * * * *

(10) For every non-solid feedstock reported in paragraph (a)(2) of this section for which Calculation Method 2 in § 98.393(f)(2) was used to determine an emissions factor, report:

* * * * *

(11) For every product reported in paragraph (a)(6) of this section for which Calculation Method 2 in § 98.393(f)(2) was used to determine an emissions factor, report:

* * * * *

(20) Annual quantity of bulk NGLs in metric tons or barrels received for processing during the reporting year. Report only quantities of bulk NGLs not reported in paragraph (a)(2) of this section.

(b) * * *

(5) For each product reported in paragraph (b)(2) of this section for which Calculation Method 2 in § 98.393(f)(2) used was used to determine an emissions factor, report:

* * * * *

(6) For each non-solid product reported in paragraph (b)(2) of this section for which Calculation Method 2 in § 98.393(f)(2) was used to determine an emissions factor, report:

* * * * *

(c) * * *

(5) For each product reported in paragraph (c)(2) of this section for which Calculation Method 2 in § 98.393(f)(2) was used to determine an emissions factor, report:

* * * * *

(6) For each non-solid product reported in paragraph (c)(2) of this section for which Calculation Method 2 in § 98.393(f)(2) used was used to determine an emissions factor, report:

* * * * *

■ 77. Effective January 1, 2018, revise § 98.387 to read as follows:

**§ 98.387 Records that must be retained.**

Suppliers of coal-based liquid fuels must retain records according to the requirements in § 98.397 as if they applied to the appropriate coal-to-liquid product supplier (*e.g.,* retaining copies of all reports submitted to EPA under § 98.386 and records to support information contained in those reports). Any records for petroleum products that are required to be retained in § 98.397 are also required for coal-to-liquid products.

## Subpart MM—Suppliers of Petroleum Products

**§ 98.395 [Amended]**

■ 78. Effective January 1, 2018, amend § 98.395 by removing paragraph (c).

## Subpart NN—Suppliers of Natural Gas and Natural Gas Liquids

■ 79. Effective January 1, 2018, revise § 98.401 to read as follows:

**§ 98.401 Reporting threshold.**

Any supplier of natural gas and natural gas liquids that meets the requirements of § 98.2(a)(4) must report GHG emissions associated with the products they supply.

■ 80. Effective January 1, 2018, amend § 98.403 by:

■ a. Revising paragraph (a)(1) introductory text;

■ b. Removing parameter ''$CO_2$.'' of Equation NN–1 in paragraph (a)(1) and adding in its place a parameter for ''$CO_{2i}$'';

■ c. Revising paragraph (a)(2) introductory text;

■ d. Removing parameter ''$CO_2$.'' of Equation NN–2 in paragraph (a)(2) and adding in its place a parameter for ''$CO_{2i}$'';

■ e. In paragraph (b)(1):

■ i. Removing parameter ''$CO_2$.'' of Equation NN–3 and adding in its place a parameter for ''$CO_{2j}$''; and

■ ii. Revising parameter ''Fuel'' of Equation NN–3;

■ f. Removing parameter ''$CO_2$.'' of Equation NN–4 in paragraph (b)(2)(ii) and adding in its place a parameter for ''$CO_{2k}$'';

■ g. In paragraph (b)(3)(i):

■ i. Removing parameter ''$CO_2$.'' of Equation NN–5a and adding in its place a parameter for ''$CO_{2l}$''; and

■ ii. Revising parameter ''EF'' of Equation NN–5a;

■ h. Removing parameter ''$CO_2$.'' of Equation NN–5b in paragraph (b)(3)(ii) and adding in its place a parameter for ''$CO_{2n}$'';

■ i. Revising the parameters of Equation NN–6 in paragraph (b)(4);

■ j. In paragraph (c)(1)(ii):

■ i. Removing parameter ''$CO_2$.'' of Equation NN–7 and adding in its place a parameter for ''$CO_{2m}$''; and

■ ii. Revising parameter ''$Fuel_g$'' of Equation NN–7; and

■ k. Revising the parameters of Equation NN–8 in paragraph (c)(2).

The revisions read as follows:

**§ 98.403 Calculating GHG emissions.**

(a) * * *

(1) *Calculation Methodology 1.* NGL fractionators shall estimate $CO_2$ emissions that would result from the complete combustion or oxidation of the product(s) supplied using Equation NN–1 of this section. The annual volume of each NGL product supplied ($Fuel_h$) shall include any amount of that NGL supplied in a mixture or blend of two or more products listed in Tables NN–1 and NN–2 of this subpart. The annual volume of each NGL product supplied shall exclude any amount of that NGL contained in bulk NGLs exiting the facility (*e.g.,* y-grade, o-grade, and other bulk NGLs). LDCs shall estimate $CO_2$ emissions that would result from the complete combustion or oxidation of the natural gas received at the city gate (including natural gas that is transported by, but not owned by, the reporter) using Equation NN–1 of this section. For each product, use the default value for higher heating value and $CO_2$ emission factor in Table NN–1 of this subpart. Alternatively, for each product, a reporter-specific higher heating value and $CO_2$ emission factor may be used, in place of one or both defaults provided they are developed using methods outlined in § 98.404. For each product, you must use the same volume unit throughout the equation.

* * * * *

$CO_{2i}$ = Annual $CO_2$ mass emissions that would result from the combustion or oxidation of each product ''h'' for redelivery to all recipients (metric tons).

* * * * *

(2) *Calculation Methodology 2.* NGL fractionators shall estimate $CO_2$ emissions that would result from the complete combustion or oxidation of the product(s) supplied using Equation NN–2 of this section. The annual volume of each NGL product supplied ($Fuel_h$) shall include any amount of that NGL supplied in a mixture or blend of two or more products listed in Tables NN–1 and NN–2 of this subpart. The annual volume of each NGL product supplied shall exclude any amount of that NGL contained in bulk NGLs exiting the facility (*e.g.,* y-grade, o-grade, and other bulk NGLs). LDCs shall estimate $CO_2$ emissions that would result from the complete combustion or oxidation of the natural gas received at the city gate (including natural gas that is transported by, but not owned by, the reporter) using Equation NN–2 of this section. For each product, use the default $CO_2$ emission factor found in Table NN–2 of this subpart. Alternatively, for each product, a reporter-specific $CO_2$ emission factor may be used in place of the default factor, provided it is developed using methods outlined in § 98.404. For each

product, you must use the same volume unit throughout the equation.

* * * * *

$CO_{2i}$ = Annual $CO_2$ mass emissions that would result from the combustion or oxidation of each product ''h'' (metric tons)

* * * * *

(b) * * *

(1) * * *

* * * * *

$CO_{2j}$ = Annual $CO_2$ mass emissions that would result from the combustion or oxidation of natural gas for redelivery to transmission pipelines or other LDCs (metric tons).

Fuel = Total annual volume of natural gas supplied to downstream gas transmission pipelines and other local distribution companies (Mscf per year).

* * * * *

(2) * * *

(ii) * * *

* * * * *

$CO_{2k}$ = Annual $CO_2$ mass emissions that would result from the combustion or oxidation of natural gas delivered to each large end-user k, as defined in paragraph (b)(2)(i) of this section (metric tons).

* * * * *

(3) * * *

(i) * * *

* * * * *

$CO_{2l}$ = Annual $CO_2$ mass emissions that would result from the combustion or oxidation of the net change in natural gas stored on system by the LDC within the reporting year (metric tons).

* * * * *

EF = $CO_2$ emission factor for natural gas placed into/removed from storage (MT $CO_2$/Mscf).

(ii) * * *

* * * * *

$CO_{2n}$ = Annual $CO_2$ mass emissions that would result from the combustion or oxidation of natural gas received that bypassed the city gate and is not otherwise accounted for by Equation NN–1 or NN–2 of this section (metric tons).

* * * * *

(4) * * *

* * * * *

$CO_2$ = Annual $CO_2$ mass emissions that would result from the combustion or oxidation of natural gas delivered to LDC end-users not covered in paragraph (b)(2) of this section (metric tons).

$CO_{2i}$ = Annual $CO_2$ mass emissions that would result from the combustion or oxidation of natural gas received at the city gate as calculated in paragraph (a)(1) or (2) of this section (metric tons).

$CO_{2j}$ = Annual $CO_2$ mass emissions that would result from the combustion or oxidation of natural gas delivered to transmission pipelines or other LDCs as calculated in paragraph (b)(1) of this section (metric tons).

$CO_{2k}$ = Annual $CO_2$ mass emissions that would result from the combustion or oxidation of natural gas delivered to each large end-user as calculated in paragraph (b)(2) of this section (metric tons).

$CO_{2l}$ = Annual $CO_2$ mass emissions that would result from the combustion or oxidation of the net change in natural gas stored by the LDC within the reported year as calculated in paragraph (b)(3)(i) of this section (metric tons).

$CO_{2n}$ = Annual $CO_2$ mass emissions that would result from the combustion or oxidation of natural gas that was received by the LDC directly from sources bypassing the city gate, and is not otherwise accounted for in Equation NN–1 or NN–2 of this section, as calculated in paragraph (b)(3)(ii) of this section (metric tons).

(c) * * *

(1) * * *

(ii) * * *

* * * * *

$CO_{2m}$ = Annual $CO_2$ mass emissions that would result from the combustion or oxidation of each fractionated NGL product ''g'' received from other fractionators (metric tons).

$Fuel_g$ = Total annual volume of each NGL product ''g'' received from other fractionators (bbls).

* * * * *

(2) * * *

* * * * *

$CO_2$ = Annual $CO_2$ mass emissions that would result from the combustion or oxidation of fractionated NGLs delivered to customers or on behalf of customers less the quantity received from other fractionators (metric tons).

$CO_{2i}$ = Annual $CO_2$ mass emissions that would result from the combustion or oxidation of fractionated NGLs delivered to all customers or on behalf of customers as calculated in paragraph (a)(1) or (2) of this section (metric tons).

$CO_{2m}$ = Annual $CO_2$ mass emissions that would result from the combustion or oxidation of fractionated NGLs received from other fractionators and calculated in paragraph (c)(1) of this section (metric tons).

■ 81. Effective January 1, 2018, amend § 98.404 by revising paragraphs (a)(1) introductory text and (a)(3) and (4) to read as follows:

**§ 98.404 Monitoring and QA/QC requirements.**

(a) * * *

(1) NGL fractionators and LDCs shall determine the quantity of NGLs and natural gas using methods in common use in the industry for billing purposes as audited under existing Sarbanes Oxley regulation.

* * * * *

(3) NGL fractionators shall use measurement for NGLs at custody transfer meters or at such meters that are used to determine the NGL product slate delivered from the fractionation facility.

(4) If a NGL fractionator supplies a product that is a mixture or blend of two or more products listed in Tables NN–1 and NN–2 of this subpart, the NGL fractionator shall report the quantities of the constituents of the mixtures or blends separately.

* * * * *

■ 82. Effective January 1, 2018, amend § 98.406 by:

■ a. Revising paragraphs (a)(1) and (2) and (a)(4)(ii);

■ b. Revising paragraphs (b)(1), (6), (12), and (b)(13) introductory text; and

■ c. Adding paragraph (b)(14).

The revisions and addition read as follows:

**§ 98.406 Data reporting requirements.**

(a) * * *

(1) Annual quantity (in barrels) of each NGL product supplied (including fractionated NGL products received from other NGL fractionators) in the following product categories: Ethane, propane, normal butane, isobutane, and pentanes plus ($Fuel_h$ in Equations NN–1 and NN–2 of this subpart).

(2) Annual quantity (in barrels) of each NGL product received from other NGL fractionators in the following product categories: Ethane, propane, normal butane, isobutane, and pentanes plus ($Fuel_g$ in Equation NN–7 of this subpart).

* * * * *

(4) * * *

(ii) Supplied to downstream users.

* * * * *

(b) * * *

(1) Annual volume in Mscf of natural gas received by the LDC at its city gate stations for redelivery on the LDC's distribution system, including for use by the LDC ($Fuel_h$ in Equations NN–1 and NN–2 of this subpart).

* * * * *

(6) Annual volume in Mscf of natural gas delivered to downstream gas transmission pipelines and other local distribution companies (Fuel in Equation NN–3 of this subpart).

* * * * *

(12) For each large end-user reported in paragraph (b)(7) of this section, report:

(i) The customer name, address, and meter number(s).

(ii) Whether the quantity of natural gas reported in paragraph (b)(7) of this section is the total quantity delivered to a large end-user's facility, or the quantity delivered to a specific meter located at the facility.

(iii) If known, report the EIA identification number of each LDC customer.

(13) The annual volume in Mscf of natural gas delivered by the LDC (including natural gas that is not owned

by the LDC) to each of the following end-use categories. For definitions of these categories, refer to EIA Form 176 (Annual Report of Natural Gas and Supplemental Gas Supply & Disposition) and Instructions.

* * * * *

(14) The name of the U.S. state or territory covered in this report submission.

* * * * *

■ 83. Effective January 1, 2018, amend Table NN–2 to subpart NN of part 98 by revising the title to the table and the heading of the third column to read as follows:

TABLE NN–2 TO SUBPART NN OF PART 98—DEFAULT FACTORS FOR CALCULATION METHODOLOGY 2 OF THIS SUBPART

| Fuel | Unit | Default $CO_2$ emission factor (MT $CO_2$/Unit) [1] |
|---|---|---|
| * | * | * |

[1] Conditions for emission value presented in MT $CO_2$/bbl are 60 °F and saturation pressure.

## Subpart OO—Suppliers of Industrial Greenhouse Gases

■ 84. Effective January 1, 2018, amend § 98.410 by revising paragraph (a) and adding paragraphs (d) and (e) to read as follows:

### § 98.410 Definition of the source category.

(a) The industrial gas supplier source category consists of any facility that produces fluorinated GHGs or nitrous oxide; any bulk importer of fluorinated GHGs or nitrous oxide; and any bulk exporter of fluorinated GHGs or nitrous oxide. Starting with reporting year 2018, this source category also consists of any facility that produces fluorinated HTFs; any bulk importer of fluorinated HTFs; any bulk exporter of fluorinated HTFs; and any facility that destroys fluorinated GHGs or fluorinated HTFs.

* * * * *

(d) To produce a fluorinated HTF means to manufacture, from any raw material or feedstock chemical, a fluorinated GHG used for temperature control, device testing, cleaning substrate surfaces and other parts, and soldering in processes including but not limited to certain types of electronics manufacturing production processes. Fluorinated heat transfer fluids do not include fluorinated GHGs used as lubricants or surfactants. For fluorinated heat transfer fluids under this subpart, the lower vapor pressure limit of 1 mm Hg in absolute at 25 °C in the definition of fluorinated greenhouse gas in § 98.6 shall not apply. Fluorinated heat transfer fluids include, but are not limited to, perfluoropolyethers, perfluoroalkanes, perfluoroethers, tertiary perfluoroamines, and perfluorocyclic ethers. Producing a fluorinated HTF does not include the reuse or recycling of a fluorinated HTF, the creation of intermediates, or the creation of fluorinated HTFs that are released or destroyed at the production facility before the production measurement at § 98.414(a).

(e) For purposes of this subpart, to destroy fluorinated GHGs or fluorinated HTFs means to cause the expiration of a previously produced (as defined in paragraphs (b) and (d) of this section) fluorinated GHG or fluorinated HTF to the destruction efficiency actually achieved. Such destruction does not result in a commercially useful end product. For purposes of this subpart, such destruction does not include HFC–23 destruction as defined at § 98.150 or the dissociation of fluorinated GHGs that occurs during electronics manufacturing as defined at § 98.90. For example, such destruction does not include the dissociation of fluorinated GHGs that occurs during etch or chamber cleaning processes or during use of abatement systems that treat the fluorinated GHGs vented from such processes at electronics manufacturing facilities.

■ 85. Effective January 1, 2018, revise § 98.412 to read as follows

### § 98.412 GHGs to report.

You must report the GHG emissions that would result from the release of the nitrous oxide and each fluorinated GHG that you produce, import, export, transform, or destroy during the calendar year. Starting with reporting year 2018, you must also report the emissions that would result from the release of each fluorinated HTF that is not also a fluorinated GHG and that you produce, import, export, transform, or destroy during the calendar year.

■ 86. Effective January 1, 2018, amend § 98.413 by:

■ a. Revising paragraph (a) introductory text;

■ b. Revising the parameters of Equation OO–1 in paragraph (a);

■ c. Revising paragraph (b) introductory text;

■ d. Revising the parameters of Equation OO–2 in paragraph (b);

■ e. Revising paragraph (c) introductory text;

■ f. Revising parameters ''T'' and ''$E_T$'' of Equation OO–3 in paragraph (c);

■ g. Revising paragraph (d) introductory text; and

■ h. Revising parameters ''D'' and ''$F_D$'' of Equation OO–4 in paragraph (d).

The revisions read as follows:

### § 98.413 Calculating GHG emissions.

(a) Calculate the total mass of the nitrous oxide and each fluorinated GHG or fluorinated HTF produced annually, except for amounts that are captured solely to be shipped off site for destruction, by using Equation OO–1 of this section:

* * * * *

P = Mass of fluorinated GHG, fluorinated HTF, or nitrous oxide produced annually.

$P_p$ = Mass of fluorinated GHG, fluorinated HTF, or nitrous oxide produced over the period ''p''.

(b) Calculate the total mass of the nitrous oxide and each fluorinated GHG or fluorinated HTF produced over the period ''p'' by using Equation OO–2 of this section:

* * * * *

$P_p$ = Mass of fluorinated GHG, fluorinated HTF, or nitrous oxide produced over the period ''p'' (metric tons).

$O_p$ = Mass of fluorinated GHG, fluorinated HTF, or nitrous oxide that is measured coming out of the production process over the period p (metric tons).

$U_p$ = Mass of used fluorinated GHG, fluorinated HTF, or nitrous oxide that is added to the production process upstream of the output measurement over the period ''p'' (metric tons).

(c) Calculate the total mass of the nitrous oxide and each fluorinated GHG or fluorinated HTF transformed by using Equation OO–3 of this section:

* * * * *

T = Mass of fluorinated GHG, fluorinated HTF, or nitrous oxide transformed annually (metric tons).

* * * * *

$E_T$ = The fraction of the fluorinated GHG, fluorinated HTF, or nitrous oxide fed into the transformation process that is transformed in the process (metric tons).

(d) Calculate the total mass of each fluorinated GHG or fluorinated HTF destroyed by using Equation OO–4 of this section:

* * * * *

D = Mass of fluorinated GHG or fluorinated HTF destroyed annually (metric tons).

$F_D$ = Mass of fluorinated GHG or fluorinated HTF fed into the destruction device annually (metric tons).

* * * * *

■ 87. Effective January 1, 2018, amend § 98.414 by revising paragraphs (a) through (i), (l), (n) introductory text, (n)(3) through (5), and (o) to read as follows:

**§ 98.414 Monitoring and QA/QC requirements.**

(a) The mass of fluorinated GHGs, fluorinated HTFs, or nitrous oxide coming out of the production process shall be measured using flowmeters, weigh scales, or a combination of volumetric and density measurements with an accuracy and precision of one percent of full scale or better. If the measured mass includes more than one fluorinated GHG or fluorinated HTF, the concentrations of each of the fluorinated GHGs or fluorinated HTFs, other than low-concentration constituents, shall be measured as set forth in paragraph (n) of this section. For each fluorinated GHG or fluorinated HTF, the mean of the concentrations of that fluorinated GHG (mass fraction) measured under paragraph (n) shall be multiplied by the mass measurement to obtain the mass of that fluorinated GHG or fluorinated HTF coming out of the production process.

(b) The mass of any used fluorinated GHGs, fluorinated HTFs, or used nitrous oxide added back into the production process upstream of the output measurement in paragraph (a) of this section shall be measured using flowmeters, weigh scales, or a combination of volumetric and density measurements with an accuracy and precision of one percent of full scale or better. If the mass in paragraph (a) is measured by weighing containers that include returned heels as well as newly produced fluorinated GHGs or fluorinated HTFs, the returned heels shall be considered used fluorinated GHGs or fluorinated HTFs for purposes of this paragraph (b) and § 98.413(b).

(c) The mass of fluorinated GHGs, fluorinated HTFs, or nitrous oxide fed into the transformation process shall be measured using flowmeters, weigh scales, or a combination of volumetric and density measurements with an accuracy and precision of one percent of full scale or better.

(d) The fraction of the fluorinated GHGs, fluorinated HTFs, or nitrous oxide fed into the transformation process that is actually transformed shall be estimated considering yield calculations or quantities of unreacted fluorinated GHGs, fluorinated HTFs, or nitrous oxide permanently removed from the process and recovered, destroyed, or emitted.

(e) The mass of fluorinated GHGs, fluorinated HTFs, or nitrous oxide sent to another facility for transformation shall be measured using flowmeters, weigh scales, or a combination of volumetric and density measurements with an accuracy and precision of one percent of full scale or better.

(f) The mass of fluorinated GHGs or fluorinated HTFs sent to another facility for destruction shall be measured using flowmeters, weigh scales, or a combination of volumetric and density measurements with an accuracy and precision of one percent of full scale or better. If the measured mass includes more than trace concentrations of materials other than the fluorinated GHG or fluorinated HTF, the concentration of the fluorinated GHG or fluorinated HTF shall be estimated considering current or previous representative concentration measurements and other relevant process information. This concentration (mass fraction) shall be multiplied by the mass measurement to obtain the mass of the fluorinated GHG or fluorinated HTF sent to another facility for destruction.

(g) You must estimate the share of the mass of fluorinated GHGs or fluorinated HTFs in paragraph (f) of this section that is comprised of fluorinated GHGs or fluorinated HTFs that are not included in the mass produced in § 98.413(a) because they are removed from the production process as by-products or other wastes.

(h) You must measure the mass of each fluorinated GHG or fluorinated HTF that is fed into the destruction device and that was previously produced as defined at § 98.410(b). Such fluorinated GHGs or fluorinated HTFs include but are not limited to quantities that are shipped to the facility by another facility for destruction and quantities that are returned to the facility for reclamation but are found to be irretrievably contaminated and are therefore destroyed. You must use flowmeters, weigh scales, or a combination of volumetric and density measurements with an accuracy and precision of one percent of full scale or better. If the measured mass includes more than trace concentrations of materials other than the fluorinated GHG or fluorinated HTF being destroyed, you must estimate the concentrations of the fluorinated GHG or fluorinated HTF being destroyed considering current or previous representative concentration measurements and other relevant process information. You must multiply this concentration (mass fraction) by the mass measurement to obtain the mass of the fluorinated GHG or fluorinated HTF fed into the destruction device.

(i) Very small quantities of fluorinated GHGs or fluorinated HTFs that are difficult to measure because they are entrained in other media such as destroyed filters and destroyed sample containers are exempt from paragraphs (f) and (h) of this section.

* * * * *

(l) In their estimates of the mass of fluorinated GHGs or fluorinated HTFs destroyed, facilities that destroy fluorinated GHGs or fluorinated HTFs shall account for any temporary reductions in the destruction efficiency that result from any startups, shutdowns, or malfunctions of the destruction device, including departures from the operating conditions defined in state or local permitting requirements and/or oxidizer manufacturer specifications.

* * * * *

(n) If the mass coming out of the production process includes more than one fluorinated GHG or fluorinated HTF, you shall measure the concentrations of all of the fluorinated GHGs or fluorinated HTFs, other than low-concentration constituents, as follows:

* * * * *

(3) *Frequency of measurement.* Perform the measurements at least once by February 15, 2011 if the fluorinated GHG product is being produced on December 17, 2010. Perform the measurements within 60 days of commencing production of any fluorinated GHG product that was not being produced on December 17, 2010. For fluorinated HTF products that are not also fluorinated GHG products, perform the measurements at least once by February 28, 2018, if the fluorinated HTF product is being produced on January 1, 2018. Perform the measurements within 60 days of commencing production of any fluorinated HTF product that was not being produced on January 1, 2018. Repeat the measurements if an operational or process change occurs that could change the identities or significantly change the concentrations of the fluorinated GHG or fluorinated HTF constituents of the fluorinated GHG or fluorinated HTF product. Complete the repeat measurements within 60 days of the operational or process change.

(4) *Measure all product grades.* Where a fluorinated GHG or fluorinated HTF is produced at more than one purity level (*e.g.,* pharmaceutical grade and refrigerant grade), perform the measurements for each purity level.

(5) *Number of samples.* Analyze a minimum of three samples of the fluorinated GHGs or fluorinated HTF product that have been drawn under conditions that are representative of the process producing the fluorinated GHGs or fluorinated HTF product. If the

relative standard deviation of the measured concentrations of any of the fluorinated GHGs or fluorinated HTF constituents (other than low-concentration constituents) is greater than or equal to 15 percent, draw and analyze enough additional samples to achieve a total of at least six samples of the fluorinated GHG or fluorinated HTF product.

(o) All analytical equipment used to determine the concentration of fluorinated GHGs or fluorinated HTFs, including but not limited to gas chromatographs and associated detectors, IR, FTIR and NMR devices, shall be calibrated at a frequency needed to support the type of analysis specified in the site GHG Monitoring Plan as required under paragraph (n) of this section and § 98.3(g)(5). Quality assurance samples at the concentrations of concern shall be used for the calibration. Such quality assurance samples shall consist of or be prepared from certified standards of the analytes of concern where available; if not available, calibration shall be performed by a method specified in the GHG Monitoring Plan.

* * * * *

■ 88. Effective January 1, 2018, amend § 98.416 by:
■ a. Revising paragraph (a);
■ b. Revising paragraphs (b) introductory text and (b)(3) and (6);
■ c. Adding paragraph (b)(7);
■ d. Revising paragraphs (c) introductory text, (c)(1) through (6), and (c)(8) through (10);
■ e. Revising paragraphs (d) introductory text, (d)(1), and (d)(4) through (6); and
■ f. Adding paragraphs (i) and (j).

The revisions and additions read as follows:

**§ 98.416 Data reporting requirements.**

* * * * *

(a) Each fluorinated GHG, fluorinated HTF, or nitrous oxide production facility shall report the following information:

(1) Mass in metric tons of nitrous oxide and each fluorinated GHG or fluorinated HTF produced at that facility by process, except for amounts that are captured solely to be shipped off site for destruction.

(2) Mass in metric tons of nitrous oxide and each fluorinated GHG or fluorinated HTF transformed at that facility, by process.

(3) Mass in metric tons of each fluorinated GHG or fluorinated HTF that is destroyed at that facility and that was previously produced as defined at § 98.410(b). Quantities to be reported under paragraph (a)(3) of this section include but are not limited to quantities that are shipped to the facility by another facility for destruction and quantities that are returned to the facility for reclamation but are found to be irretrievably contaminated and are therefore destroyed.

(4) [Reserved]

(5) Total mass in metric tons of nitrous oxide and each fluorinated GHG or fluorinated HTF sent to another facility for transformation.

(6) Total mass in metric tons of each fluorinated GHG or fluorinated HTF sent to another facility for destruction, except fluorinated GHGs and fluorinated HTFs that are not included in the mass produced in § 98.413(a) because they are removed from the production process as byproducts or other wastes. Quantities to be reported under paragraph (a)(6) of this section could include, for example, fluorinated GHGs that are returned to the facility for reclamation but are found to be irretrievably contaminated and are therefore sent to another facility for destruction.

(7) Total mass in metric tons of each fluorinated GHG or fluorinated HTF that is sent to another facility for destruction and that is not included in the mass produced in § 98.413(a) because it is removed from the production process as a byproduct or other waste.

(8)–(9) [Reserved]

(10) Mass in metric tons of nitrous oxide and each fluorinated GHG or fluorinated HTF fed into the transformation process, by process.

(11) Mass in metric tons of each fluorinated GHG or fluorinated HTF that is fed into the destruction device and that was previously produced as defined at § 98.410(b). Quantities to be reported under paragraph (a)(11) of this section include but are not limited to quantities that are shipped to the facility by another facility for destruction and quantities that are returned to the facility for reclamation but are found to be irretrievably contaminated and are therefore destroyed.

(12) Mass in metric tons of nitrous oxide and each fluorinated GHG or fluorinated HTF that is measured coming out of the production process, by process.

(13) Mass in metric tons of used nitrous oxide and of each used fluorinated GHG or fluorinated HTF added back into the production process (*e.g.,* for reclamation), including returned heels in containers that are weighed to measure the mass in § 98.414(a), by process.

(14) Names and addresses of facilities to which any nitrous oxide, fluorinated GHGs, or fluorinated HTFs were sent for transformation, and the quantities (metric tons) of nitrous oxide and of each fluorinated GHG or fluorinated HTF that were sent to each for transformation.

(15) Names and addresses of facilities to which any fluorinated GHGs or fluorinated HTFs were sent for destruction, and the quantities (metric tons) of each fluorinated GHG or fluorinated HTF that were sent to each for destruction.

(16) Where missing data have been estimated pursuant to § 98.415, the reason the data were missing, the length of time the data were missing, the method used to estimate the missing data, and the estimates of those data.

(b) Any facility or importer that destroys fluorinated GHGs or fluorinated HTFs shall submit a one-time report containing the information in paragraphs (b)(1) through (6) of this section for each destruction process by the applicable date set forth in paragraph (b)(7) of this section. Facilities and importers that previously submitted one-time reports under this paragraph for all destruction devices used to destroy fluorinated GHGs or fluorinated HTFs are exempt from this requirement unless they meet the conditions in paragraph (b)(6) of this section.

* * * * *

(3) Methods used to record the mass of fluorinated GHG or fluorinated HTF destroyed.

* * * * *

(6) If any process changes (including the acquisition of a new destruction device) affect unit destruction efficiency or the methods used to record the mass of fluorinated GHG or fluorinated HTF destroyed, then a revised report must be submitted to reflect the changes. The revised report must be submitted to EPA within 60 days of the change.

(7)(i) Any fluorinated GHG production facility or importer that destroys fluorinated GHGs must submit the one-time destruction report by March 31, 2011 or within 60 days of commencing fluorinated GHG destruction, whichever is later.

(ii) Any fluorinated GHG production facility or importer that destroys fluorinated HTFs that are not also fluorinated GHGs must submit the one-time destruction report by March 31, 2019 or within 60 days of commencing fluorinated HTF destruction, whichever is later.

(iii) Any facility that destroys fluorinated GHGs or fluorinated HTFs but does not produce or import fluorinated GHGs must submit the one-time destruction report by March 31,

2019 or within 60 days of commencing fluorinated GHG or fluorinated HTF destruction, whichever is later.

(c) Each bulk importer of fluorinated GHGs, fluorinated HTFs, or nitrous oxide shall submit an annual report that summarizes its imports at the corporate level, except for shipments including less than twenty-five kilograms of fluorinated GHGs, fluorinated HTFs, or nitrous oxide, transshipments, and heels that meet the conditions set forth at § 98.417(e). The report shall contain the following information for each import:

(1) Total mass in metric tons of nitrous oxide and each fluorinated GHG or fluorinated HTF imported in bulk, including each fluorinated GHG or fluorinated HTF constituent of the fluorinated GHG or fluorinated HTF product that makes up between 0.5 percent and 100 percent of the product by mass.

(2) Total mass in metric tons of nitrous oxide and each fluorinated GHG or fluorinated HTF imported in bulk and sold or transferred to persons other than the importer for use in processes resulting in the transformation or destruction of the chemical.

(3) Date on which the fluorinated GHGs, fluorinated HTFs, or nitrous oxide were imported.

(4) Port of entry through which the fluorinated GHGs, fluorinated HTFs, or nitrous oxide passed.

(5) Country from which the imported fluorinated GHGs, fluorinated HTFs, or nitrous oxide were imported.

(6) Commodity code of the fluorinated GHGs, fluorinated HTFs, or nitrous oxide shipped.

* * * * *

(8) Total mass in metric tons of each fluorinated GHG or fluorinated HTF destroyed by the importer.

(9) If applicable, the names and addresses of the persons and facilities to which the nitrous oxide, fluorinated GHGs, or fluorinated HTFs were sold or transferred for transformation, and the quantities (metric tons) of nitrous oxide and of each fluorinated GHG or fluorinated HTF that were sold or transferred to each facility for transformation.

(10) If applicable, the names and addresses of the persons and facilities to which the fluorinated GHGs or fluorinated HTFs were sold or transferred for destruction, and the quantities (metric tons) of each fluorinated GHG or fluorinated HTF that were sold or transferred to each facility for destruction.

(d) Each bulk exporter of fluorinated GHGs, fluorinated HTFs, or nitrous oxide shall submit an annual report that summarizes its exports at the corporate level, except for shipments including less than twenty-five kilograms of fluorinated GHGs, fluorinated HTFs, or nitrous oxide, transshipments, and heels. The report shall contain the following information for each export:

(1) Total mass in metric tons of nitrous oxide and each fluorinated GHG or fluorinated HTF exported in bulk.

* * * * *

(4) Commodity code of the fluorinated GHGs, fluorinated HTFs, or nitrous oxide shipped.

(5) Date on which, and the port from which, the fluorinated GHGs, fluorinated HTFs, or nitrous oxide were exported from the United States or its territories.

(6) Country to which the fluorinated GHGs, fluorinated HTFs, or nitrous oxide were exported.

* * * * *

(i) Each facility that destroys fluorinated GHGs or fluorinated HTFs but does not otherwise report under this section shall report the mass in metric tons of each fluorinated GHG or fluorinated HTF that is destroyed at that facility and that was previously produced as defined at § 98.410(b) or (d), as applicable. Quantities to be reported under this paragraph (i) include but are not limited to quantities that are shipped to the facility by another facility for destruction and quantities that are returned to the facility for reclamation but are found to be irretrievably contaminated and are therefore destroyed.

(j) By March 31, 2019, all facilities that produce fluorinated HTFs that are not also fluorinated GHGs shall submit a one-time report that includes the concentration of each fluorinated HTF or fluorinated GHG constituent in each fluorinated HTF product as measured under § 98.414(n). If the facility commences production of a fluorinated HTF product that was not included in the initial report or performs a repeat measurement under § 98.414(n) that shows that the identities or concentrations of the fluorinated HTF or fluorinated GHG constituents of a fluorinated HTF product have changed, then the new or changed concentrations, as well as the date of the change, must be provided in a revised report. The revised report must be submitted to EPA by the March 31st that immediately follows the new or repeat measurement under § 98.414(n).

■ 89. Effective January 1, 2018, amend § 98.417 by revising paragraphs (a) introductory text, (a)(3) and (4), and (b) to read as follows:

**§ 98.417 Records that must be retained.**

(a) In addition to the data required by § 98.3(g), the fluorinated GHG or fluorinated HTF production facility shall retain the following records:

* * * * *

(3) Dated records of the total mass in metric tons of each reactant fed into the fluorinated GHG, fluorinated HTF, or nitrous oxide production process, by process.

(4) Dated records of the total mass in metric tons of the reactants, by-products, and other wastes permanently removed from the fluorinated GHG, fluorinated HTF, or nitrous oxide production process, by process.

(b) In addition to the data required by paragraph (a) of this section, any facility that destroys fluorinated GHGs or fluorinated HTFs shall keep records of test reports and other information documenting the facility's one-time destruction efficiency report in § 98.416(b).

* * * * *

■ 90. Effective January 1, 2018, amend § 98.418 by revising the definition of ''Low-concentration constituent'' to read as follows:

**§ 98.418 Definitions.**

* * * * *

*Low-concentration constituent* means, for purposes of fluorinated GHG or fluorinated HTF production and export, a fluorinated GHG or fluorinated HTF constituent of a fluorinated GHG or fluorinated HTF product that occurs in the product in concentrations below 0.1 percent by mass. For purposes of fluorinated GHG or fluorinated HTF import, low-concentration constituent means a fluorinated GHG or fluorinated HTF constituent of a fluorinated GHG or fluorinated HTF product that occurs in the product in concentrations below 0.5 percent by mass. Low-concentration constituents do not include fluorinated GHGs or fluorinated HTFs that are deliberately combined with the product (*e.g.,* to affect the performance characteristics of the product).

## Subpart PP—Suppliers of Carbon Dioxide

■ 91. Effective January 1, 2018, amend § 98.425 by revising paragraph (b) introductory text to read as follows:

**§ 98.425 Procedures for estimating missing data.**

* * * * *

(b) Whenever the quality assurance procedures in § 98.424(b) cannot be followed to determine concentration of the $CO_2$ stream, the most appropriate of

the following missing data procedures shall be followed:

* * * * *

### Subpart TT—Industrial Waste Landfills

■ 92. Effective January 1, 2018, amend Table TT–1 to subpart TT of part 98 by:

■ a. Removing the entry ''Pulp and Paper (other than industrial sludge)'';

■ b. Adding a heading entry for ''Pulp and Paper Industry:''; subheading ''Pulp and paper wastes segregated into separate streams:''; subordinate entries for ''Boiler Ash'', ''Wastewater Sludge'', ''Kraft Recovery Wastes'', and ''Other Pulp and Paper Wastes (not otherwise listed)''; subheading ''Pulp and paper wastes not segregated into separate streams:''; and subordinate entry for ''Pulp and paper manufacturing wastes, general (other than industrial sludge).''

■ c. Revising the entry ''Industrial Sludge'' and footnote a; and

■ d. Adding footnotes ''b'' and ''c''.

The revisions and additions read as follows:

TABLE TT–1 TO SUBPART TT OF PART 98—DEFAULT DOC AND DECAY RATE VALUES FOR INDUSTRIAL WASTE LANDFILLS

| Industry/waste type | DOC (weight fraction, wet basis) | k [dry climate [a]] ($yr^{-1}$) | k [moderate climate [a]] ($yr^{-1}$) | k [wet climate [a]] ($yr^{-1}$) |
|---|---|---|---|---|
| * * * | * | * | * | * |
| Pulp and Paper Industry: | | | | |
| Pulp and paper wastes segregated into separate streams: | | | | |
| Boiler Ash | 0.06 | 0.02 | 0.03 | 0.04 |
| Wastewater Sludge | 0.12 | 0.02 | 0.04 | 0.06 |
| Kraft Recovery Wastes [b] | 0.025 | 0.02 | 0.03 | 0.04 |
| Other Pulp and Paper Wastes (not otherwise listed) | 0.20 | 0.02 | 0.03 | 0.04 |
| Pulp and paper wastes not segregated into separate streams: | | | | |
| Pulp and paper manufacturing wastes, general (other than industrial sludge) | 0.15 | 0.02 | 0.03 | 0.04 |
| * * * | * | * | * | * |
| Industrial Sludge [c] | 0.09 | 0.02 | 0.04 | 0.06 |
| * * * | * | * | * | * |

[a] The applicable climate classification is determined based on the annual rainfall plus the recirculated leachate application rate. Recirculated leachate application rate (in inches/year) is the total volume of leachate recirculated from company records or engineering estimates and applied to the landfill divided by the area of the portion of the landfill containing waste [with appropriate unit conversions].
Dry climate = precipitation plus recirculated leachate less than 20 inches/year;
Moderate climate = precipitation plus recirculated leachate from 20 to 40 inches/year (inclusive);
Wet climate = precipitation plus recirculated leachate greater than 40 inches/year.
Alternatively, landfills that use leachate recirculation can elect to use the k value for wet climate rather than calculating the recirculated leachate rate.

[b] Kraft Recovery Wastes include green liquor dregs, slaker grits, and lime mud, which may also be referred to collectively as causticizing or recausticizing wastes.

[c] A facility that can segregate out pulp and paper industry wastewater sludge must apply the 0.12 DOC value to that portion of the sludge.

### Subpart UU—Injection of Carbon Dioxide

■ 93. Effective January 1, 2018, amend § 98.474 by revising paragraph (c)(2) to read as follows:

**§ 98.474 Monitoring and QA/QC requirements.**

* * * * *

(c) * * *

(2) You must convert all measured volumes of $CO_2$ to the following standard industry temperature and pressure conditions for use in Equation UU–2 of this subpart: Standard cubic meters at a temperature of 60 degrees Fahrenheit and at an absolute pressure of 1 atmosphere.

* * * * *

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Part III

## Department of Energy

10 CFR Parts 429 and 431
Energy Conservation Program: Test Procedure for Commercial Packaged Boilers; Final Rule

## DEPARTMENT OF ENERGY

### 10 CFR Parts 429 and 431

**[Docket No. EERE–2014–BT–TP–0006]**

**RIN 1904–AD16**

## Energy Conservation Program: Test Procedure for Commercial Packaged Boilers

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

**ACTION:** Final rule.

**SUMMARY:** On March 17, 2016, the U.S. Department of Energy (DOE) issued a notice of proposed rulemaking (NOPR) to amend the test procedure for commercial packaged boilers. That proposed rulemaking serves as the basis for the final rule. DOE incorporates by reference certain sections of the American National Standards Institute (ANSI)/Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Standard 1500, ''2015 Standard for Performance Rating of Commercial Space Heating Boilers.'' In addition, this final rule incorporates amendments that clarify the coverage for field-constructed commercial packaged boilers and the applicability of DOE's test procedure and standards for this category of commercial packaged boilers, provide an optional field test for commercial packaged boilers with rated input greater than 5,000,000 Btu/h, provide a conversion method to calculate thermal efficiency based on combustion efficiency testing for steam commercial packaged boilers with rated input greater than 5,000,000 Btu/h, modify the inlet water temperatures during tests of hot water commercial packaged boilers, establish limits on the ambient temperature during testing, and standardize terminology and provisions for ''rated input'' and ''fuel input rate.'' DOE originally published this final rule in the **Federal Register** on November 10, 2016, however that document contained errors and is being withdrawn on December 7, 2016. This is a republication of the final rule that replaces the version published on November 10, 2016 in its entirety.

**DATES:** The effective date of this rule is January 9, 2017. The final rule changes will be mandatory for representations related to energy efficiency or energy use starting December 4, 2017. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register on January 9, 2017.

**ADDRESSES:** The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov index.* However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at *https://www.regulations.gov/docket?D=EERE-2014-BT-TP-0006.* The docket Web page will contain simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact the Appliance and Equipment Standards Program staff at (202) 586–6636 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–8654. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Peter Cochran, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9496. Email: *Peter.Cochran@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** This final rule incorporates by reference into 10 CFR parts 429 and 431 the testing methods contained in the following commercial standard:

Part 429—ANSI/AHRI Standard 1500–2015, (''ANSI/AHRI Standard 1500–2015''), ''Performance Rating of Commercial Space Heating Boilers,'' ANSI approved November 28, 2014: Figure C9, Suggested Piping Arrangement for Hot Water Boilers.

Part 431—ANSI/AHRI Standard 1500–2015, (''ANSI/AHRI Standard 1500–2015''), ''Performance Rating of Commercial Space Heating Boilers,'' Section 3 ''Definitions,'' Section 5 ''Rating Requirements,'' Appendix C ''Methods of Testing for Rating Commercial Space Heating Boilers—Normative,'' Appendix D ''Properties of Saturated Steam—Normative,'' and Appendix E ''Correction Factors for Heating Values of Fuel Gases—Normative,'' ANSI approved November 28, 2014.

Copies of AHRI standards may be purchased from the Air-Conditioning, Heating, and Refrigeration Institute, 2111 Wilson Blvd., Suite 500, Arlington, VA 22201, or by visiting *http://www.ahrinet.org/site/686/Standards/HVACR-Industry-Standards/Search-Standards.*

See section IV.N for additional information about this standard.

### Table of Contents

## I. Authority and Background

Packaged boilers are included in the list of ''covered equipment'' for which the U.S. Department of Energy (DOE) is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(J)) DOE's energy conservation standards and test procedure for commercial packaged boilers, a subset of packaged boilers, are currently prescribed at 10 CFR 431.87 and 10 CFR 431.86, respectively. The following sections discuss DOE's authority to establish test procedures for commercial packaged boilers and relevant background information regarding DOE's consideration of test procedures for this equipment.

### *A. Authority*

Title III of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291, *et seq.;* ''EPCA'' or, ''the Act'') [1] sets forth a variety of provisions designed to improve energy efficiency. Part C of title III, which for editorial reasons was redesignated as Part A–1 upon incorporation into the U.S. Code (42 U.S.C. 6311–6317, as codified), establishes the ''Energy Conservation Program for Certain Industrial Equipment.'' The covered industrial equipment includes packaged boilers, the subject of this document. (42 U.S.C. 6311(1)(J))

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) making representations about the efficiency of those products. Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA.

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. EPCA provides that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of covered equipment during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

In addition, if DOE determines that a test procedure amendment is warranted, it must publish a proposed test procedure and offer the public an opportunity to present oral and written comments on it. (42 U.S.C. 6314(b)) Finally, in any rulemaking to amend a test procedure, DOE must determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency of the covered equipment as determined under the existing test procedure. (42 U.S.C. 6314(a)(4)(C))

With respect to commercial packaged boilers, EPCA requires DOE to use industry test procedures developed or recognized by the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) or the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE), as referenced in ASHRAE/IES Standard 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings.'' (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry test procedure is amended, DOE is required to amend its test procedure to be consistent with the amended industry test procedure, unless it determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that the amended test procedure would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, and estimated operating costs of that equipment during a representative average use cycle. (42 U.S.C. 6314(a)(4)(B))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered equipment, including commercial packaged boilers, to determine whether amended test procedures would more accurately or fully comply with the requirements for test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1)(A)) DOE last reviewed the test procedures for commercial packaged boilers on July 22, 2009. 74 FR 36312. Therefore, DOE is required to re-evaluate the test procedures no later than July 22, 2016, and this rulemaking has been undertaken in fulfillment of that requirement. As the industry standard for commercial packaged boilers was recently updated, this rulemaking will also fulfill DOE's statutory obligations to make its test procedure consistent with the applicable industry test procedure.

Prior to December 4, 2017, manufacturers must make any representations with respect to the energy use or efficiency of commercial packaged boilers in accordance with the results of testing pursuant to the new appendix A to subpart E of part 431 or the existing test procedure, as it appeared in 10 CFR 431.86, revised as of January 1, 2016. On or after December 4, 2017, manufacturers must make any representations with respect to energy use or efficiency in accordance with the results of testing pursuant to appendix A to subpart E of part 431.

### *B. Background*

On September 3, 2013, DOE initiated a test procedure and energy conservation standards rulemaking for commercial packaged boilers and published a notice of public meeting and availability of the Framework document (September 2013 Framework document). 78 FR 54197. Both in the September 2013 Framework document and during the October 1, 2013 public meeting, DOE solicited public comments, data, and information on all aspects of, and any issues or problems with, the existing DOE test procedure, including whether the test procedure was in need of updates or revisions. DOE also received comments on the test procedure in response to the notice of availability of the preliminary technical support document (TSD) for the standards rulemaking, which was published in the **Federal Register** on November 20, 2014 (November 2014 Preliminary Analysis). 79 FR 69066.

Additionally, on February 20, 2014, DOE published in the **Federal Register** a request for information (February 2014 RFI) seeking comments on the existing DOE test procedure for commercial packaged boilers, which incorporates by reference Hydronics Institute (HI)/AHRI Standard BTS–2000 (Rev 06.07), ''Method to Determine Efficiency of Commercial Space Heating Boilers'' (BTS–2000). 79 FR 9643. BTS–2000 provides test procedures for measuring steady-state combustion and thermal efficiency of a gas-fired or oil-fired commercial packaged boiler capable of producing hot water and/or steam and operating at full load only. In the February 2014 RFI, DOE requested comments, information, and data about

[1] All references to EPCA refer to the statute as amended through the Energy Efficiency Improvement act of 2015, Public Law 114–11 (April 30, 2015).

a number of issues, including (1) part-load testing and part-load efficiency rating, (2) typical inlet and outlet water temperatures for hot water commercial packaged boilers, (3) the steam pressure for steam commercial packaged boilers operating at full load, and (4) design characteristics of commercial packaged boilers that are difficult to test under the existing DOE test procedure.

On April 29, 2015, AHRI, together with the American National Standards Institute (ANSI), published the ''2015 Standard for Performance Rating of Commercial Space Heating Boilers'' (ANSI/AHRI Standard 1500–2015). ANSI/AHRI Standard 1500–2015 states ''this standard supersedes AHRI Hydronics Institute Standard BTS–2000 Rev. 06.07'' in the front matter of the document. On May 29, 2015, AHRI submitted a request directly to DOE to update the incorporation by reference in the DOE test procedure to reference the new ANSI/AHRI Standard 1500–2015. (Docket EERE–2014–BT–TP–0006, AHRI, No. 29 at p. 1) [2]

Subsequently, DOE published a notice of proposed rulemaking (NOPR) on March 17, 2016, in the **Federal Register** (hereafter March 2016 NOPR). 81 FR 14642. DOE proposed to incorporate by reference relevant sections of ANSI/AHRI Standard 1500–2015 as a replacement for BTS–2000 in the DOE test procedure as well as several modifications to its test procedure that are not captured in ANSI/AHRI Standard 1500–2015. The additional proposed amendments included the following:

- Clarifying the coverage of field-constructed commercial packaged boilers under DOE's regulations;
- Incorporating an optional field test for commercial packaged boilers with fuel input rate greater than 5,000,000 Btu/h;
- Incorporating an optional conversion method to calculate thermal efficiency based on the combustion efficiency test for steam commercial packaged boilers with fuel input rate greater than 5,000,000 Btu/h;
- Modifying the inlet and outlet water temperatures required during tests of hot water commercial packaged boilers to be more repeatable and representative of field conditions;
- Modifying setup and instrumentation requirements to remove ambiguity;
- Requiring additional limits on the room ambient temperature and ambient humidity during testing; and
- Standardizing terminology and provisions in regulatory text related to ''fuel input rate.''

In this final rule, DOE is replacing BTS–2000 with the updated industry standard, ANSI/AHRI Standard 1500–2015, as the basis for the DOE test procedure. DOE is also adopting certain proposals from the March 2016 NOPR and has modified some proposals from the March 2016 NOPR in light of comments received. Section III contains a more detailed discussion of the basis for transitioning to the commercial packaged boiler test procedures outlined in ANSI/AHRI Standard 1500–2015 as well as the additional amendments being adopted.

DOE originally published this final rule on November 10, 2016 in the **Federal Register**. 81 FR 79224. However, the published version contained errors, and DOE has therefore withdrawn that notice. This version of the final rule replaces the originally published version in its entirety. DOE notes that the effective date for the original version of the final rule was December 12, 2016. As a result of this republication, the effective date of the final test procedure is now January 9, 2017. In addition, DOE has updated the compliance date for the final test procedure as a result of this republication. As indicated in section I.A, manufacturers will be required to make any representations of energy efficiency using the amended test procedure on or after December 4, 2017.

DOE emphasizes that the original published version of the final rule was not yet effective at the time of this republication, and that DOE has updated the compliance date of the final test procedure as a result of the republication. In addition, following the publication of the March 2016 NOPR, DOE provided a total of 75 days for interested parties to comment on DOE's proposed amendments to the commercial packaged boiler test procedure and held a public meeting on April 4, 2016 to present and seek further comment on the proposal. (In light of the comment period already provided, DOE is not providing an additional comment period at this time.) All manufacturers have the same amount of time to prepare for use of the final test procedure (360 days) under the republication as they had under the original final rule that DOE has withdrawn. To the extent that some manufacturers may have already begun preparations needed for use of the new test procedure, in advance of the original effective date, they are in no worse position given the extension of the compliance date. For these reasons, DOE does not anticipate that the withdrawal and republication of the final rule would impose any additional burden on interested parties. *Contra Utility Solid Waste Activities Group* v. *EPA,* 236 F.3d 749 (2001)(holding that EPA's action did not amount to harmless error).

## II. Synopsis of the Final Rule

In this final rule, DOE amends subpart E of 10 CFR part 431 as follows:

- Clarifies definitions regarding commercial packaged boilers;
- Incorporates by reference certain provisions of the current revision to the applicable industry standard: ANSI/AHRI Standard 1500–2015 ''2015 Standard for Performance Rating of Commercial Space Heating Boilers;''
- Provides an optional field test and an optional conversion calculation from combustion to thermal efficiency for commercial packaged boilers with rated input greater than 5,000,000 Btu/h;
- Modifies the inlet water temperature requirements for commercial packaged boilers;
- Reduces the allowable range for ambient room temperature during testing; and
- Requires digital data acquisition for certain parameters.

The final rule also amends 10 CFR part 429 to clarify certification and enforcement procedures, specifically to provide for the verification of rated input and to accommodate certification based on the optional field test.

## III. Discussion

The following sections address the products within the scope of this rulemaking, the test procedure amendments, other test procedure considerations, test burden, measured energy efficiency, and changes to certification and enforcement provisions.

Table III.1 presents the list of interested parties that submitted written comments in response to the March 2016 NOPR.

[2] A notation in this form provides a reference for information that is in Docket No. EERE–2014–BT–TP–0006, which is maintained at *https://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-TP-0006*. The references are arranged as follows: (commenter name, comment docket ID number, page of that document). This particular notation refers to a comment from AHRI on p. 1 of document number 29 in the docket.

TABLE III.1—INTERESTED PARTIES PROVIDING WRITTEN COMMENT IN RESPONSE TO THE MARCH 2016 NOPR

| Document Docket ID No. | Name | Acronym |
|---|---|---|
| 36, 46 | Air-Conditioning, Heating, & Refrigeration Institute | AHRI. |
| 38 | American Boiler Manufacturers Association | ABMA. |
| 42 | American Gas Association and American Public Gas Association | Gas Associations (AGA and APGA). |
| 45 | Appliance Standards Awareness Project, Alliance to Save Energy, American Council for an Energy-Efficient Economy, and Natural Resources Defense Council. | Efficiency Advocates (ASAP, ASE, ACEEE, and NRDC). |
| 39 | Bradford White Corporation | Bradford White. |
| 40 | Burnham Holdings, Inc | Burnham. |
| 48 | California Investor Owned Utilities | CA IOUs. |
| 35 | Council of Industrial Boiler Owners | CIBO. |
| 43 | Lochinvar, LLC | Lochinvar. |
| 44 | Northwest Energy Efficiency Alliance | NEEA. |
| 47 | Raypak, Inc | Raypak. |
| 31 | Tahir Khan | Khan. |
| 41 | Weil-McLain | Weil-McLain. |
| 33 | Veritatis | Veritatis. |

Interested parties provided comments on a range of issues, including both issues raised by DOE for comment, as well as other issues related to the proposed changes to the test procedure. The issues on which DOE received comments, as well as DOE's responses to those comments and the resulting changes to the test procedure proposals presented in the March 2016 NOPR, are discussed in the subsequent sections. A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.

*A. Scope and Definitions*

In this final rule, DOE adopts several new definitions that help further clarify the scope and applicability of DOE's commercial packaged boiler test procedure. DOE notes that these amendments to DOE's definitions at 10 CFR 431.82 also apply to DOE's energy conservation standards for commercial packaged boilers.

1. Definition of Commercial Packaged Boiler

While EPCA authorizes DOE to establish, subject to certain criteria, test procedures and energy conservation standards for packaged boilers, to date, DOE has only established test procedures and standards for commercial packaged boilers, a subset of packaged boilers. In 2004, DOE published a final rule (October 2004 final rule) establishing definitions, test procedures, and energy conservation standards for commercial packaged boilers. 69 FR 61949 (Oct. 21, 2004). In the October 2004 final rule, DOE defined ''commercial packaged boiler'' as a type of packaged low pressure boiler that is industrial equipment with a capacity (fuel input rate) of 300,000 Btu per hour (Btu/h) or more which, to any significant extent, is distributed in commerce: (1) For heating or space conditioning applications in buildings; or (2) for service water heating in buildings but does not meet the definition of ''hot water supply boiler.'' 69 FR 61949, 61960. DOE also defined ''packaged low pressure boiler'' as a packaged boiler that is: (1) A steam boiler designed to operate at or below a steam pressure of 15 psig; or (2) a hot water commercial packaged boiler designed to operate at or below a water pressure of 160 psig and a temperature of 250 °F; or (3) a boiler that is designed to be capable of supplying either steam or hot water, and designed to operate under the conditions in paragraphs (1) and (2) of this definition. 69 FR 61949, 61960.

DOE notes that, because commercial packaged boilers are currently defined as a subset of packaged low pressure boilers, commercial packaged boilers are also defined by the pressure and temperature criteria established in the definition of a ''packaged low pressure boiler.'' Consequently, DOE proposed in the March 2016 NOPR a definition of ''commercial packaged boiler'' that explicitly includes the pressure and temperature criteria established by the ''packaged low pressure boiler'' definition, and to remove its definitions for ''packaged low pressure boiler'' and ''packaged high pressure boiler'' as those definitions would no longer be necessary. DOE stated that it believed such a modification would clarify the characteristics of the equipment to which DOE's test procedure and energy conservation standards apply.

In response to the March 2016 NOPR, AHRI and Bradford White supported DOE's proposals to modify its commercial packaged boiler definition and to remove the extraneous definitions. (Bradford White, No. 39 at p. 2; AHRI, No. 46 at p. 8) No commenters in response to the March 2016 NOPR raised concerns over the proposal. DOE therefore adopts these proposed changes in this final rule.

DOE's amended definition for commercial packaged boilers also includes exclusionary language for field-constructed equipment (discussed in section III.A.2) as was proposed in the March 2016 NOPR. This exclusion was previously part of DOE's definition for the broader ''packaged boiler'' definition.

Burnham suggested that the scope of regulated commercial boilers should be limited to sizes that can be reasonably tested in a laboratory and that, in spite of backsliding concerns, to do so would acknowledge practical concerns and previous rulemaking error (Burnham, No. 40 at p. 8). In response, DOE notes that the scope of coverage and original energy conservation standards were established by EPCA, not by a DOE rulemaking. 42 U.S.C. 6313(a)(4). Because the scope of coverage has never included a capacity limit, DOE must have a test procedure in place for all commercial packaged boilers for manufacturers to be able to certify their equipment as complying with the energy conservation standards. DOE reiterates that to establish such a rated input limit for covered equipment with existing standards would violate the anti-backsliding provisions of EPCA found at 42 U.S.C. 6313(a)(6)(B)(iii)(I) for those equipment larger than the limit. Additionally, both BTS–2000 (incorporated by reference in the existing DOE test procedure) and ANSI/AHRI Standard 1500–2015 (being incorporated by reference in this final rule) include in their scope any

commercial packaged boiler with rated input of 300,000 Btu/h or greater.

2. Field-Constructed Commercial Packaged Boilers

EPCA establishes the statutory authority by which DOE may regulate ''packaged boilers'' and defines a ''packaged boiler'' as a boiler that is shipped complete with heating equipment, mechanical draft equipment, and automatic controls; usually shipped in one or more sections. (42 U.S.C. 6311(11)(B)) In adopting the EPCA definition for a ''packaged boiler,'' DOE amended the definition to: (1) Include language to address the various ways in which packaged boilers are distributed in commerce; and (2) explicitly exclude custom-designed, field-constructed boilers. 69 FR 61949, 61952. ''Custom-designed, field-constructed'' boilers were excluded because DOE believed the statutory standards for ''packaged boilers'' were not intended to apply to these boiler systems, which generally require alteration, cutting, drilling, threading, welding or similar tasks by the installer. As a result, DOE defined a ''packaged boiler'' as a boiler that is shipped complete with heating equipment, mechanical draft equipment and automatic controls; usually shipped in one or more sections and does not include a boiler that is custom designed and field constructed. If the boiler is shipped in more than one section, the sections may be produced by more than one manufacturer, and may be originated or shipped at different times and from more than one location. 10 CFR 431.82. As noted in section III.A.1, DOE is moving this exclusion from the definition for ''packaged boiler'' to the definition for ''commercial packaged boiler'' in order to clarify the applicability of its regulations.

In order to further clarify the difference between field-constructed commercial packaged boilers (which are excluded from DOE's commercial packaged boiler regulations) and field-assembled commercial packaged boilers (which are subject to DOE's regulations), DOE proposed the following definition for ''field-constructed'' in the March 2016 NOPR:

*Field-constructed* means custom-designed equipment that requires welding of structural components in the field during installation; for the purposes of this definition, welding does not include attachment using mechanical fasteners or brazing; any jackets, shrouds, venting, burner, or burner mounting hardware are not structural components.

DOE noted in the March 2016 NOPR that it considered structural components include heat exchanger sections, flue tube bundles and internal heat exchanger surfaces, external piping to one or more heat exchanger sections or locations, and the mechanical supporting structure the heat exchanger rests upon in the case where a support structure is not provided with the commercial packaged boiler. DOE further noted that welding does not include attachment using mechanical fasteners or brazing; and any jackets, shrouds, venting, burner, or burner mounting hardware are not structural components. Conversely, DOE stated that a field-assembled commercial packaged boiler can be assembled in the field without the welding of structural components, as previously listed.

DOE received several comments pertaining to the proposed definition for ''field-constructed'' in response to the March 2016 NOPR. Bradford White expressed support for the proposed definition. (Bradford White, No. 39 at p. 2) Lochinvar suggested that because DOE is proposing a field test that would be limited to commercial packaged boilers with fuel input rates greater than 5,000,000 Btu/h that the same rated input limit be included in the definition for field-constructed commercial packaged boilers. (Lochinvar, No. 43 at p. 2) NEEA and Lochinvar also suggested that the definition for field-constructed should mean custom designed equipment that requires American Society of Mechanical Engineers (ASME) code stamped with the ''H'' (heating) or ''R'' (repair) designator welding in the field during installation. (NEEA, No. 44 at p.2; Lochinvar, Public Meeting Transcript, No. 34 at p. 21)

DOE notes that the field-constructed exemption for commercial packaged boilers applies to field-constructed equipment of any size; the field test methodology accommodates those commercial packaged boilers that are not field-constructed (and therefore not exempt from DOE regulations) and the size of which makes testing in a laboratory setting exceptionally difficult or cost-prohibitive. Therefore DOE is not adopting a size limitation in its definition for field-constructed as it pertains to commercial packaged boilers. With respect to Lochinvar's suggestion that the ASME code for welding could be used to limit the scope of what is considered ''field-constructed,'' DOE does not believe the ASME stamp requirements are applied equally across all jurisdictions, making it a poor indicator that a unit meets the field-constructed definition. Therefore, DOE will not define field-constructed to include a requirement that the ASME stamps designators for welding be used as a means of delineating field-constructed commercial packaged boilers.

DOE reiterates that field-assembled equipment is covered, is required to be tested using the DOE test procedure, and is required to comply with the existing energy conservation standards and certification requirements.

3. Other Definitions

DOE also received comments regarding other commercial packaged boilers definitions proposed in the March 2016 NOPR. In the March 2016 NOPR, DOE proposed to modify its definition for combustion efficiency. The current definition states that combustion efficiency for a commercial packaged boiler ''is determined using test procedures prescribed under § 431.86 and is equal to 100 percent minus percent flue loss (percent flue loss is based on input fuel energy).'' 10 CFR 431.82. As noted in the March 2016 NOPR, this definition does not sufficiently describe what the metric represents, and therefore DOE proposed to define combustion efficiency for a commercial packaged boiler as ''a measurement of how much of the fuel input energy is converted to useful heat in combustion and is calculated as 100-percent minus flue loss, as determined with the test procedures prescribed under § 431.86.''

CIBO, AERCO, and the Gas Associations suggested that DOE's proposed definition for combustion efficiency conflicted with the definition found in ANSI/AHRI Standard 1500–2015 and that the definition found in ANSI/AHRI Standard 1500–2015 should be retained. (CIBO, No. 35 at p.2; Gas Associations, No. 42 at p. 2; AERCO, Public Meeting Transcript, No. 34 at p. 129–131) AERCO suggested that the DOE's proposed definition does not exclude jacket losses but that the definition in ANSI/AHRI Standard 1500–2015 does. (AERCO, Public Meeting Transcript, No. 34 at p. 129–131) CIBO also suggested that DOE's definition for ''combustion efficiency'' should use the higher heating value of the fuel in the calculation in order to account for water vapor produced during combustion.

In response, DOE notes that its combustion efficiency definition (both current and proposed) defines combustion efficiency as being measured under the DOE test procedure whereas industry definitions for the term do not. DOE believes that specifying in the definition that

combustion efficiency is determined using the test procedures prescribed under § 431.86 makes clear that where DOE uses the term in its regulations it is referring to the metric as determined by DOE's test procedure. The rest of the definition provides description of what combustion efficiency represents and DOE believes this descriptive portion of the proposed definition is consistent with industry definitions. In this final rule, however, DOE has modified the descriptive portion of the definition to be consistent with that found in ANSI/AHRI Standard 1500–2015. Specifically, DOE's definition now describes the combustion efficiency as being 100 percent minus the percent losses due to dry flue gas, incomplete combustion, and moisture formed by combustion of hydrogen. In response to CIBO's comment with respect to using a higher heating value, DOE notes that DOE's test method and calculations for combustion efficiency incorporate by reference the pertinent sections of ANSI/AHRI Standard 1500–2015, specifically sections C7.2 and C7.3, which take into account the higher heating value of the fuel. Section C7.2.16 of ANSI/AHRI Standard 1500–2015 uses the measured value for $Q_{IN}$ which is calculated using the higher heating value of the fuel.

The Efficiency Advocates suggested that DOE clarify the distinction between condensing and non-condensing boilers to ensure that proper test conditions are used for any tested commercial packaged boiler. (Efficiency Advocates, No. 45 at pp. 2–3) In the March 2016 NOPR, DOE proposed to incorporate by reference the definitions for these terms as found in ANSI/AHRI Standard 1500–2015. DOE notes that section 3.2.2 in ANSI/AHRI Standard 1500–2015 (incorporated by reference in this final rule) states that a condensing boiler means a ''[commercial packaged] boiler which will, during the laboratory tests prescribed in this standard, condense part of the water vapor in the flue gases and which is equipped with a means of collecting and draining this condensate from the heat exchange section.'' Section 3.2.5 states that a non-condensing commercial packaged boiler means a ''[commercial packaged] boiler that is not a condensing [commercial packaged] boiler.'' DOE believes that the definition for condensing commercial packaged boiler found in ANSI/AHRI Standard 1500–2015 is sufficient for distinguishing from non-condensing commercial packaged boilers.

To further remove ambiguity, DOE is also not incorporating by reference definitions in ANSI/AHRI Standard 1500–2015 that conflict with DOE definitions, including the terms ''boiler,'' ''heating boiler,'' and ''packaged boiler.'' DOE notes that the scope of coverage for its test procedure is commercial packaged boilers as described in section III.A and these definitions in ANSI/AHRI Standard 1500–2015 would cause ambiguity in DOE regulations. In the March 2016 NOPR and in this final rule, DOE includes language in its test procedure that clarifies that in all sections of ANSI/AHRI Standard 1500–2015 that are incorporated by reference, the term ''boiler'' means a commercial packaged boiler as defined in 10 CFR 431.82. Also in the March 2016 NOPR and in this final rule, DOE includes language in the test procedure that where there is a conflict between DOE definitions and those found in ANSI/AHRI Standard 1500–2015, DOE definitions take precedence. To remove additional cases of conflict, DOE is also not incorporating by reference ANSI/AHRI Standard 1500–2015 definitions for ''combustion efficiency,'' ''thermal efficiency,'' ''gross output,'' ''ratings,'' or ''rating conditions.''

*B. General Comments*

AHRI, Burnham, Raypak, and the Gas Associations suggested that DOE suspend the energy conservation standards rulemaking (Docket EERE–2013–BT–STD–0030) until after the test procedure is finalized. (AHRI, No. 46 at p. 9, Public Meeting Transcript, No. 34 at p. 11; Burnham, No. 39 at p. 1; Raypak, No. 47 at p. 1; Gas Associations, No. 42 at p. 1) The Gas Associations suggested that impacts on ratings originating from the test procedure amendments must be known with certainty prior to submitting comments on the standards NOPR and that stakeholders must know with certainty that the test procedure is technically correct, provides for the repeatability of ratings, and can be performed without any excessive burden on the manufacturer/test facility. (Gas Associations, No. 42 at p. 1) Weil-McLain suggested that DOE violated the process rule at 10 CFR part 430, subpart C, Appendix A, and the EPCA requirement at 42 U.S.C. 6295(o)(3). (Weil-McLain, No. 41 at p. 11) Weil-McLain also suggested that simultaneous standards and test procedure rulemakings for commercial packaged boilers as well as changes to equipment classes could cause serious harm to industry, manufacturers, contractors, and consumers. They further stated that the simultaneous impact of increasing standards and lowering of ratings due to the changing test procedure will render product models unavailable, possibly resulting in building owners/consumers and contractors having to consider more expensive alternatives. (Weil-McLain, No. 41 at p. 9)

In response to the comment from Weil-McClain, 42 U.S.C. 6295(o)(3) is a provision under Part A of EPCA, ''Energy Conservation Program for Consumer Products Other than Automobiles,'' that generally prohibits the Secretary from prescribing a new or amended standard for a covered consumer product if a test procedure has not been prescribed for that consumer product. The test procedure provision is also generally applicable to the ''Energy Conservation Program for Certain Industrial Equipment,'' with several exceptions, including packaged boilers, the subject of this rulemaking. (42 U.S.C. 6311(a)). Nevertheless, DOE already has a test procedure in effect for commercial packaged boilers and this rulemaking would not result in a lapse in effectiveness during which standards would be amended without having a test procedure in place. With regard to the Process Rule, DOE developed the Process Rule to establish procedures, interpretations and policies to guide DOE in the consideration and promulgation of new or revised appliance efficiency standards for *consumer products* under EPCA. 10 CFR part 430, subpart C, Appendix A. However, this approach is considered guidance that DOE generally follows, but from which DOE may deviate as necessary. See paragraph 14 of 10 CFR part 430, subpart C, Appendix A.

In general, DOE does not believe that the timing of the test procedure and standards rulemakings has negatively impacted stakeholders' ability to provide meaningful comment on this test procedure rulemaking. The March 2016 NOPR included an update to the latest industry standard (*i.e.,* ANSI/AHRI Standard 1500–2015), which was developed by a consensus-based AHRI process and was released in April 2015. Further, in May 2015 AHRI petitioned DOE to replace BTS–2000 with ANSI/AHRI Standard 1500–2015 in the DOE test procedure for commercial packaged boilers. (AHRI, No. 29 at p. 1) DOE understands that industry was involved in developing and has experience with the changes adopted in ANSI/AHRI Standard 1500–2015. Further, DOE believes that the proposals in the March 2016 NOPR were largely consistent with the test methodology found in ANSI/AHRI Standard 1500–2015. In response to the March 2016 NOPR, stakeholders provided detailed, insightful comments on all aspects of the proposal, including those proposals not derived from the ANSI/AHRI Standard 1500–2015. This

demonstrates that industry was able to carefully consider DOE's proposed test procedure and how it compared to the current Federal test procedure.

*C. Adoption of Certain Sections of ANSI/AHRI Standard 1500–2015*

The existing DOE test procedure for commercial packaged boilers incorporates by reference BTS–2000 to determine the steady-state efficiency of steam or hot water commercial packaged boilers while operating at full load. As described in section I, on April 29, 2015, AHRI published a new ANSI/AHRI Standard 1500–2015 (ANSI approved November 28, 2014), which supersedes BTS–2000. On May 29, 2015, AHRI submitted a request directly to DOE to update the incorporation by reference in the DOE test procedure to reference the new ANSI/AHRI Standard 1500–2015. (Docket EERE–2014–BT–TP–0006, AHRI, No. 29 at p. 1) DOE noted that several of the changes incorporated into ANSI/AHRI Standard 1500–2015 were also suggested by interested parties in public comments responding to DOE's September 2013 Framework document, November 2014 Preliminary Analysis, and February 2014 RFI. Consistent with the requirement under 42 U.S.C. 6314(4)(B) that DOE amend the commercial packaged boilers test procedure to be consistent with the updated industry test procedure, DOE proposed to adopt certain sections of ANSI/AHRI Standard 1500–2015 in the March 2016 NOPR, as well as certain modifications that DOE determined were necessary to meet the statutory requirements of 42 U.S.C. 6314(a)(2)–(3).

Several parties responding to the March 2016 NOPR expressed support for adopting ANSI/AHRI Standard 1500–2015. (ABMA, No. 38 at p. 1; AHRI, No. 46 at p. 2; Burnham, No. 40 at p. 1–3, 9; Raypak, No. 47 at p. 1–2; Lochinvar, No. 43 at p.1; Gas Associations; No. 42 at p. 2; NEEA, No. 44 at p. 1; Weil-McLain, No. 41 at p. 13; ABMA, Public Meeting Transcript, No. 34 at p. 12; Crown Boiler, Public Meeting Transcript, No. 34 at p. 36) However, multiple parties did not agree with DOE's additional proposals and modifications or suggested that DOE's proposals meant that DOE was not adopting ANSI/AHRI Standard 1500–2015. (AHRI, No. 46 at p. 2; Burnham, No. 40 at p. 1–3, 9; Raypak, No. 47 at p. 1–2; Lochinvar, No. 43 at p.1; Gas Associations; No. 42 at p. 2; Weil-McLain, No. 41 at p. 13) AHRI, Burnham, and Raypak suggested that DOE had not provided clear and convincing evidence pursuant to 42 U.S.C. 6314(a)(4)(B) that its proposed changes in addition to ANSI/AHRI Standard 1500–2015 were necessary. (AHRI, No. 46 at p. 2; Burnham, No. 40 at p. 1–3, 9; Raypak, No. 47 at p. 1–2)

As described in section I.A, with respect to commercial packaged boilers, EPCA directs DOE to use industry test methods as referenced in ASHRAE/IES Standard 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings.'' (42 U.S.C. 6314(a)(4)(A)) If and when such an industry test procedure is amended, EPCA requires that DOE amend its test procedure as necessary to be consistent with the amended industry test method unless it determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that the amended test procedure would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, and estimated operating costs of that equipment during a representative average use cycle. (42 U.S.C. 6314(a)(2), (3) and (4)(B))

DOE does not agree with commenters' interpretations of the relevant statutory provisions at issue. Under 42 U.S.C. 6314(a)(4)(B), when DOE is triggered by the amendment of an industry test method applicable to ASHRAE equipment, the Secretary is directed to undertake an assessment of that industry test method to determine whether amendments to the Federal test procedure are ''necessary'' to be ''consistent'' with the amended industry test method. (There may be cases where the industry standard-setting organization reviews its method and puts out a new version with minimal or no changes, in which case it may not be necessary for DOE to amend its own test procedure.) The term ''consistent'' does not equate to ''identical,'' so Congress envisioned that some differentiation from the industry standard may be necessary. However, in the event DOE determines that a more significant deviation from the industry test method is needed (*i.e.,* a change that would not be ''consistent'' with the industry method), the Secretary must determine by rule published in the **Federal Register** and supported by clear and convincing evidence that a Federal test procedure consistent with the industry test method would not meet the requirements of 42 U.S.C. 6314(a)(2) and (3). It is only in the latter case that the clear and convincing evidence standard would apply.

In DOE's experience, industry standard-setting bodies typically undertake a thorough and professional approach to revising their test procedures. However, DOE must remain cognizant of its statutory duty to ensure that the Federal test method be consistent with the industry test method while meeting other statutory requirements at 42 U.S.C. 6314(a)(2)–(3) (including that the procedure produces test results that reflect the energy efficiency, energy use, and estimated operating costs of that equipment during a representative average use cycle and is not unduly burdensome to conduct). To the extent that DOE identifies provisions of the relevant industry test method that would produce inaccurate, inconsistent, or unrepeatable results, as demonstrated by DOE's testing or analysis, such results would be unlikely to reflect a product's representative average energy efficiency or energy use. Such findings would demonstrate that the industry test procedure would not meet the statutory requirements of 42 U.S.C. 6314(a)(2)-(3) without alteration, thereby justifying DOE's decision to modify the industry test procedure (or in certain instances, even to deviate from the industry test procedure entirely, in which case the clear and convincing evidence standard would apply). That is why DOE usually adopts certain sections of industry test methods rather than adopting industry methods wholesale and adjusts the industry test methods as needed to satisfy the aforementioned statutory requirements. Such is the case here, where DOE is adopting amended test procedures that are largely consistent with the industry test methods (parts of which are incorporated by reference), but that also include several deviations from those industry test methods. The modifications adopted in this final rule are intended to clarify the test method to ensure consistent application, improve repeatability, make the test method more representative of the energy efficiency during a representative average use cycle, and/or ensure that the test procedure is not unduly burdensome to conduct.

Assuming that DOE requires clear and convincing evidence for its amendments to industry standards in this final rule, DOE believes its findings fully satisfy that threshold. To explain that conclusion, DOE articulates how it understands the ''clear and convincing evidence'' concept to operate in the context of DOE's establishing of test procedures. A rulemaking procedure is unlike the context of litigation, where ''clear and convincing'' means that the evidence must ''place in the ultimate factfinder an abiding conviction that the truth'' of its conclusions is ''highly

probable.'' [3] Nonetheless, DOE fully recognizes that whenever it must have ''clear and convincing evidence'' pursuant to 42 U.S.C. 6314(a), it needs a higher degree of confidence in its conclusions than would be required under the ''preponderance'' standard that ordinarily applies in agency rulemaking. In such matters, the administrative record, taken as a whole, must justify DOE in a strong conviction that its conclusions are highly likely to be correct.[4]

For purposes of establishing test procedures under 42 U.S.C. 6314(a), ''clear and convincing evidence'' can include the same sorts of evidence that DOE would use in any other rulemaking. But DOE will conclude it has ''clear and convincing evidence'' only when it is strongly convinced that it is highly likely to have reached appropriate findings. With respect to the findings discussed in this rulemaking, DOE does have that strong conviction.

Consistent with this authority, DOE is adopting a test procedure that is generally consistent with the industry-based test procedure and in some instances contains deviations from the industry test procedure consistent with the requirements of 42 U.S.C. 6314(a)(2)–(3) and in satisfaction of 42 U.S.C. 6314(a)(4)(B). The justification and evidence supporting each provision adopted in this final rule are described in the sections that follow.

*D. Fuel Input Rate Certification and Enforcement*

In the March 2016 NOPR, DOE proposed to standardize its terminology by introducing a definition for ''fuel input rate'' and proposed provisions for measuring and certifying the value for each basic model. Specifically, DOE proposed a procedure for determining the fuel input rate, which would be certified to DOE, by using the mean of measured values rounded to the nearest 1,000 Btu/h. DOE believed it was necessary to make this clarification because the fuel input rate determines the division of equipment classes and therefore the applicable Federal energy conservation standards for commercial packaged boilers.

Bradford White recommended using the term ''rated input'' instead of ''fuel input rate.'' (Bradford White, No. 39 at p. 6) AHRI suggested DOE drop its proposed definition and requirements for fuel input rate. (AHRI, No. 46 at p. 6) Lochinvar indicated that the boiler industry is not confused by the terms used for input rate and would be harmed by the DOE's proposed definition (and more significantly) use of the terms for input rate. (Lochinvar, No. 43 at p. 10)

AHRI, Burnham and Lochinvar stated that the maximum rated input is determined as part of the safety certification process, that this process occurs before efficiency testing, and that the safety certification agency requires that the maximum rated input for which the boiler is certified is used on the nameplate. (AHRI, No. 46 at p. 6; Burnham, No. 40 p. 7; Lochinvar, No. 43 at p. 10) AHRI stated that the manufacturer's first requirement is to design a model that will comply with all the safety standards and codes applicable to that boiler model, and that part of this design phase is establishing the maximum input rate of the boiler. (AHRI, No. 46 at p. 7) They also stated that manufacturers do not conduct efficiency tests until they are certain of the model's compliance with the applicable safety requirements, and that manufacturers therefore cannot wait until their efficiency tests to determine the model's input rating. (AHRI, No. 46 at p. 7) AHRI stated that with respect to efficiency testing the role of the maximum input rating is to assure that the unit is set up to fire at the rate at which the model was designed to operate. (AHRI, No. 46 at p. 6) Lochinvar indicated that the input rate of a commercial packaged boiler is more likely to fall slightly below that found on the nameplate so as not to exceed its safety certification. (Lochinvar, Public Meeting Transcript, No. 34 at p. 117) Raypak also did not support DOE's proposed approach for the fuel input rate because the rated input is first established during safety certification testing, specifically in accordance with ANSI/CSA Z21.13 ''Gas-Fired Low Pressure Steam and Hot Water Boilers.'' Raypak further suggested DOE accept the fuel input rate from this process for its certification reports as is currently done. (Raypak, No. 47 at p. 7)

DOE proposed a certification procedure for fuel input rate in the March 2016 NOPR to standardize and clarify the method by which the fuel input rate for a basic model is determined. However, in light of comments received, DOE recognizes the precedence of the safety certification process during the design and development of commercial packaged boilers, particularly with respect to determining the rated input for a commercial packaged boiler. DOE acknowledges that in general manufacturers subject each model to testing witnessed or performed by safety certification organizations that ensure a commercial packaged boiler model fires on rate over a range of operating conditions and ignitions. DOE also acknowledges that once the safety certification body has verified the fuel input rate of a commercial packaged boiler, the manufacturer is often obligated to use that rate on the nameplate of the commercial packaged boiler and the accompanying product literature, and that rate has been the rate used when certifying compliance to DOE.

Lochinvar stated that since the test method and efficiency metric change with the classification of the boiler, it makes sense that a fixed rating such as ''rated input'' would be used to determine the test that should be run. Lochinvar further commented that the DOE proposal to use the tested input rate to determine the product class creates a paradox where the necessary test is not determined until the test is done. (Lochinvar, No. 43 at p. 10)

AHRI suggested that the proposed definition for input rate would assure that the input rate of a model would change every time the efficiency test is conducted and that it also creates a paradox where the test to be conducted is based on its equipment class but that the equipment class is not determined until the test is conducted. (AHRI, No. 46 at p. 7) AHRI suggested that comparable models that could meet the same design load of a prospective customer would have different fuel input rates under DOE's proposal and that this creates a distinction without a difference. (AHRI, No. 46 at p. 7) Burnham stated that under the proposed rule the manufacturer could be required to claim two slightly different inputs for the boiler—one for safety certification and one for meeting DOE requirements—and that this is burdensome and will create confusion in the field. (Burnham, No. 40 at p. 7) Burnham suggested that a boiler could fall into different standards categories depending on, for example, the higher heating value of the fuel used on the day the unit is tested. (Burnham, No. 40 at p. 7)

In light of the safety certification process, DOE is not adopting its proposed certification provisions for the fuel input rate. Manufacturers must use the rated input for the basic model as determined through the safety certification process, which results in the maximum rated input listed on the

[3] *Colorado* v. *New Mexico,* 467 U.S. 310, 316 (1984).

[4] Because a test procedure rulemaking is not a litigation, the differences warrant some differences in how the ''clear and convincing evidence'' threshold operates. DOE both develops the record and reviews it to make findings. Also, as an agency tasked with setting policy, DOE is ordinarily expected to use its technical judgment.

nameplate and in manufacturer literature for the basic model. Based on the suggestions made by Bradford White, DOE will adopt the term ''rated input'' to mean the maximum rate at which a commercial packaged boiler has been rated to use energy as indicated by the nameplate or in the manual shipped with the commercial packaged boiler, and will adopt ''fuel input rate'' to mean the rate at which any particular commercial packaged boiler uses energy and is determined using test procedures prescribed under § 431.86.

DOE also proposed in the March 2016 NOPR a set of enforcement provisions to confirm that the fuel input rate of a commercial packaged boiler being tested matched the certified value for rated input for the basic model. DOE proposed these provisions to clarify its process for determining compliance, specifically for determining the equipment class and therefore applicable standard for a commercial packaged boiler if it did not fire on rate (within 2-percent of the certified rated input value). In the case that a commercial packaged boiler did not fire on rate, DOE proposed the following steps:

- DOE will attempt to adjust the gas pressure in order to increase or decrease the fuel input rate as necessary;
- If still not on rate, DOE will then attempt to modify the gas inlet orifice (*e.g.,* drill) accordingly;
- If still not on rate, DOE will use the measured fuel input rate when determining equipment class and the associated combustion and/or thermal efficiency standard level for the basic model.

In response, Bradford White recommended that the following steps be taken: the manifold pressure is adjusted; followed by changing the gas pressure, if necessary; and lastly, modify the gas orifice(s). (Bradford White, No. 39 at p. 6) Bradford White also suggested that DOE should consult with the manufacturer on how to achieve desired conditions if adjustments do not allow a model to operate within 2-percent of its rated input. (Bradford White, No. 39 at p. 6) Similarly, AHRI suggested that if, during testing, a unit cannot be put on rate and the input rate that is achieved in that situation would put the model in a different equipment class, DOE should ask the manufacturer for the documentation that confirms that the nameplate input rate is the value certified by the testing agency which certified the model's compliance with the applicable safety standards. (AHRI, No. 46 at p. 7) Raypak opposed the proposal that DOE attempt to modify gas inlet orifices when the fuel input rate of a boiler is not within 2-percent of the certified value because several of its commercial packaged boilers use zero-governor technology that use a nozzle instead of an orifice. The nozzle cannot simply be drilled to gain more gas flow, and drilling would damage the nozzle. Raypak suggested that DOE consult manufacturer's instructions and input before attempting to adjust the input rate. (Raypak, No. 47 at p. 7)

DOE agrees with Bradford White that adjusting the manifold pressure of a commercial packaged boiler could bring the measured fuel input rate of a unit to within 2-percent of the rated input during testing. DOE notes that its proposed regulatory text stated that it would modify ''gas pressure'' without specifying inlet or manifold, though both modifications would be attempted. In this final rule, DOE further specifies that it would attempt to alter both the manifold pressure and inlet pressure in order to bring the measured fuel input rate to within 2-percent of the rated input. In response to Raypak's comments, DOE agrees that manufacturer's instructions should first be consulted and therefore is adopting additional language to clarify that this would occur before any attempts at adjustments to the commercial packaged boiler or test set-up are made. DOE also notes, however, that the proposed language stated that DOE would attempt each modification as specified in the test procedure. That language is being adopted in this final rule and DOE will therefore use its expertise and discretion in attempting each modification as may be required to bring the measured fuel input rate of a gas-fired unit to within 2-percent of rated input. If a commercial packaged boiler uses a nozzle rather than an orifice, DOE would not attempt to drill the nozzle as the provision clearly states that only a gas inlet orifice would be drilled (if the unit is equipped with one). DOE also clarifies that this set of attempts to bring a tested unit on rate apply only to gas-fired commercial packaged boilers, and that DOE would not attempt modifications for oil-fired equipment.

Raypak suggested that rounding fuel input rates to the nearest 1,000 Btu/h will create confusion and uncertainty. (Raypak, No. 47 at p. 7) Bradford White disagreed with the proposal that a model's measured input is to be rounded to the nearest 1,000 Btu/h and does not see a value in rounding the input. The model, if not already, must be adjusted to achieve its rated input ±2-percent. (Bradford White, No. 39 at p. 6) DOE notes that the provision requiring rounding fuel input rates to the nearest 1,000 Btu/h was associated with the proposed certification process for fuel input rate and is not being adopted in this final rule. Raypak's and Bradford White's concerns are therefore now moot.

*E. Testing of Large Commercial Packaged Boilers*

In the March 2016 NOPR, DOE acknowledged that large commercial packaged boilers may not be fully assembled until they are installed at the field site, which may preclude them from being tested in a laboratory setting. DOE also recognized that, as the size of the equipment increases, testing costs incurred to condition the incoming water and air to the test procedure rating conditions, as well as management of the hot water generated during testing, also significantly increases. DOE therefore proposed several provisions for its commercial packaged boiler test procedure that would accommodate the testing of large units.

1. Optional Field Test

DOE proposed a field test option for commercial packaged boilers with fuel input rates greater than 5,000,000 Btu/h. If electing to use this option, a manufacturer would test the combustion efficiency of a commercial packaged boiler once assembled in the field in order to certify compliance with the applicable energy conservation standard. As discussed in the March 2016 NOPR, DOE proposed this option in response to industry concerns that the DOE test procedure was difficult or impossible to conduct for large commercial packaged boilers. DOE recognized that commercial packaged boilers with high rated inputs (*i.e.,* greater than 5,000,000 Btu/h) may not be fully assembled until they are installed at the field location which may preclude them from being tested in a laboratory setting. The proposed field test option would allow for compliance certification based on testing of only one unit, and would include exemptions for certain set-up, ambient condition, and water temperature requirements that would be difficult or impossible to meet in the field.

In response, Farrelly supported the field testing option while several commenters did not. (Khan, No. 31 at p. 1; ABMA, No. 38 at p. 2; Bradford White, No. 39 at p. 3; AHRI, No. 46 at p. 6; Burnham, No. 40 at p. 2; Raypak, No. 47 at p. 3; Lochinvar, No. 43 at p. 4; Weil-McLain, No. 41 at p. 6, 14; Farrelly, Public Meeting Transcript, No. 34 at p. 165) Although Bradford White did not agree with allowing commercial

packaged boilers to be tested in the field, it suggested that it is already common practice to field test boilers with inputs greater than 5,000,000 Btu/h because laboratories are not able to test them. (Bradford White, No. 39 at pp. 2–3) Burnham suggested that the proposed optional field test violates 42 U.S.C. 6314(a)(4)(B). (Burnham, No. 40 at p. 2) AHRI stated that in the field a test cannot be conducted per ANSI/AHRI Standard 1500–2015. (AHRI, Public Meeting Transcript, No. 34 at p. 144)

In response to Burnham's suggestion that the proposed optional field test violates EPCA, as noted in section III.C, where the industry-based test method does not meet the requirements under 42 U.S.C. 6314(a)(2)–(3), DOE may deviate from the industry-based test method as necessary in order to adopt a test procedure that results in energy efficiency or energy use of a representative average use cycle and that is not unduly burdensome to conduct. As discussed in the March 2016 NOPR, DOE received input from multiple stakeholders responding to the September 2013 Framework document and November 2014 Preliminary Analysis (Docket EERE–2013–BT–STD–0030) that indicated the existing DOE test procedure (referencing BTS–2000 [5]) was impractical for large commercial packaged boilers not only because of the size limitation of manufacturer and laboratory facilities, but also because these commercial packaged boilers are often not fully assembled until they are on site for installation. In response to the March 2016 NOPR, Weil-McLain indicated that testing commercial packaged boilers with rated input 10,000,000 Btu/h and higher is cost prohibitive. (Weil-McLain, No. 41 at p. 6, 15) DOE proposed the field test option using the combustion efficiency measurement because such a test would be simpler, shorter in duration, and could be conducted in the field after a commercial packaged boiler has been assembled. Because ANSI/AHRI Standard 1500–2015 does not provide for a method of test that is not unduly burdensome to conduct for certain commercial packaged boilers, DOE's proposal, which provided an optional field test, satisfied both the requirements found at 42 U.S.C. 6314(a)(2) and 42 U.S.C. 6314(a)(4)(B) to adopt a test procedure that is not unduly burdensome to conduct. Moreover, DOE solicited suggestions for alternatives to the field test option by which manufacturers could test large commercial packaged boilers but did not receive any such suggestions. Instead, commenters agreed that the industry standard did not provide a method of test that was feasible and that, for some commercial packaged boilers, to perform the industry standard test would be unduly burdensome. This stakeholder input demonstrates that the industry standard does not provide a test method for certain large commercial packaged boilers that is reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle and that is not unduly burdensome to conduct.

ABMA, Lochinvar, and Crown Boiler stated that meeting the required room temperature and humidity conditions would be difficult or impossible in the proposed field test. (ABMA, No. 38 at p. 2; Lochinvar, No. 43 at p. 4; Crown Boiler, Public Meeting Transcript, No. 34 at p. 10, 151–152) (DOE notes that the proposed field test option in the March 2016 NOPR did not require ambient room temperature and relative humidity requirements to be met.) AHRI, Lochinvar and Raypak expressed concern that the field test would potentially decrease accuracy and repeatability of the test, and AHRI and Lochinvar suggested this is due to the lack of tightly controlled operating conditions. (AHRI, No. 46 at p. 6; Lochinvar, No. 47 at p. 2; Raypak, No. 47 at p. 3) Lochinvar, Weil-McLain, and AERCO suggested that the field test option would not result in comparable ratings between equipment because laboratory tests would need to meet tight operating conditions while field tests would not. (Lochinvar, No. 43 at p. 2, 4, Public Meeting Transcript, No. 34 at p. 149; Weil-McLain, No. 41 at p. 6, 14; AERCO, Public Meeting Transcript, No. 34 at p. 149–151) Weil-McLain also suggested that a commercial packaged boiler tested using the field test option could meet the standard for its equipment class but not meet the standard when tested in a laboratory environment using the proposed test conditions. (Weil-McLain, No. 41 at p. 6)

As was noted in the March 2016 NOPR, DOE agrees that a field test option will inherently be more variable than a test conducted in a laboratory environment. However, as DOE noted in this preamble, the field test option will accommodate testing of commercial packaged boilers that currently are difficult or impossible to test. Manufacturers are obligated to ensure that their equipment meets DOE standards as measured according to the DOE test procedure. While manufacturers have indicated that there are certain commercial packaged boilers that cannot be tested using the current DOE test procedure, they have generally opposed the field test option and have not put forth an alternative method of test that would address this. DOE again notes that, pursuant to 42 U.S.C. 6314(a)(2) and 42 U.S.C. 6314(a)(4)(B), it is required to adopt test procedures that are not unduly burdensome to conduct and DOE is therefore adopting a the field test option to provide such a test procedure for commercial packaged boilers with high fuel input rates (*i.e.,* greater than 5,000,000 Btu/h).

DOE notes that manufacturers will be required to submit certain parameters including water temperatures and ambient conditions as part of the compliance report for comparison to future tests of the same unit or another unit of the same basic model. A manufacturer may continue to use the standard laboratory method if it believes such a test would be more representative of the efficiency of its equipment. Additionally, for enforcement tests, DOE recognizes that a field test could not meet the existing laboratory accreditation requirements found at 10 CFR 429.110(a)(3) and therefore is adopting an exception in this section specifically for field tests of large commercial packaged boilers.

Raypak stated that with respect to the field test, 10 CFR 429.12(a), which requires that certification of equipment occur before distribution in commerce, would not be met if product is allowed to be advertised and sold before ratings are established. (Raypak, No. 47 at p. 3) Raypak stated that DOE must forbid the use of thermal efficiency advertising for models using the field testing method because testing will not have been performed yet to qualify those metrics. (Raypak, No. 47 at p. 3) Lochinvar and AHRI expressed concern that with respect to field testing commercial packaged boilers could potentially be sold into commerce without having a rating beforehand. (Lochinvar, Public Meeting Transcript, No. 34 at p. 148; AHRI, Public Meeting Transcript, No. 34 at p. 161) Weil-McLain suggested that if field testing is allowed, each unit should be required to be tested and the data from a field test unit should not be used to qualify that model for future sales without field testing every installation. (Weil-McLain, No. 41 at p. 15)

[5] ANSI/AHRI Standard 1500–2015 continues to use the same test methodology as BTS–2000 and while some specific changes, such as an increase in allowable steam pressure, make the test procedure more viable for large commercial packaged boilers it does not address the fundamental size, field assembly, and cost issues that commenters raised.

In response to Raypak's concern regarding certification of equipment prior to distribution in commerce, DOE notes that in the March 2016 NOPR, DOE proposed a provision under 10 CFR 429.60 that would allow for certification of equipment not previously certified within 15 days of commissioning. This equipment-specific provision overrides the general provision of 429.12 requiring certification prior to distribution in commerce. In response to Raypak's suggestion that DOE should prohibit representations of thermal efficiency based on field testing because the field testing would not yet have been performed to substantiate the representation, DOE notes that 42 U.S.C. 6314(d)(1) requires that representations of efficiency be based on testing in accordance with the DOE test procedure. If a manufacturer wishes to make representations of efficiency, the commercial packaged boiler basic model must first be tested, which DOE permits through its regulations as either using the normal laboratory test for thermal or combustion efficiency (as applicable pursuant to 10 CFR 431.87) or using an alternative efficiency determination method (AEDM). Such an AEDM could be based on testing for the smallest model in a basic model line and applied to the larger models. Likewise, representations for a commercial packaged boiler model that has been previously field tested (*i.e.,* a subsequently distributed unit of the same basic model) could be made based on that test data.

DOE does not agree with Weil-McLain's suggestion that each installation of a field tested model would always need to be tested. If a commercial packaged boiler basic model is certified using the field test method, the manufacturer is certifying that each unit of that basic model complies with the applicable energy conservation standard as is the case with any basic model that uses the laboratory method (*i.e.,* not field tested) of testing and certification. DOE believes that requiring the testing and certification of each unit of a basic model in the field would be unduly burdensome. If the manufacturer is uncomfortable with its certification due to uncertainty whether subsequent units will comply with the standard, the manufacturer may choose to test each subsequent unit, but DOE does not require it to do so.

ABMA does not support the field test option as proposed because once a boiler leaves a manufacturer's shipping dock, ownership transfers to the purchaser of the equipment and the boiler manufacturer has no further control over it. ABMA suggested that, even if an owner is willing to allow a field test, they are likely only willing to allow testing during summer (non-heating) months; however, the heating load available on the building during the summer is insufficient to perform a test even at night. ABMA further indicated that installation of the necessary equipment and instrumentation is unlikely to be allowed by the owner, particularly stack thermocouple grids and flow meters. (ABMA, No. 38 at p. 2, Public Meeting Transcript, No. 34 at p. 140–141) Similarly, Lochinvar indicated that conducting efficiency tests requires time and, depending on field installations, could involve some risk of damage to equipment. They suggested that building inspectors will not typically have the training to conduct the desired tests or verify proper execution of the test if they are providing oversight. Additionally, Lochinvar stated that a third-party inspector that delivers a non-compliant result might find themselves the subject of a lawsuit questioning their methodology and results. (Lochinvar, No. 43 at p. 4)

To allow for testing in factory fire test areas ABMA suggested modifying the definition of field test to mean a combustion efficiency test that is conducted in a location other than a laboratory setting. ABMA stated that doing so would reduce problems associated with field testing to a mostly manageable level. (ABMA, No. 38 at p. 2) ABMA also stated that certification after distribution in commerce may be a worthwhile course of action provided that its other concerns for the field test provisions are accounted for. (ABMA, No. 38 at p. 3)

DOE agrees with ABMA's suggestion that a test performed in a factory fire test area (*i.e.,* a manufacturer facility or space with fewer test capabilities than a laboratory) could meet the requirements of DOE's proposed field test while alleviating concerns regarding ownership and access to the installed commercial packaged boiler for testing. The regulatory language proposed in the March 2016 NOPR and being adopted in this final rule allows for such testing.

AHRI suggested that DOE consider additional modifications to the AEDM to allow a means to certify that large input models comply with the applicable minimum efficiency standard; however, AHRI did not provide additional detail or suggest how this might be accomplished. (AHRI, No. 46 at p. 6) Lochinvar stated that, if DOE will allow the use of the ANSI/AHRI Standard 1500–2015 test method and AEDMs, there should be no need for field testing of boilers. Lochinvar further stated that it believes that the combination of testing according to ANSI/AHRI Standard 1500–2015, conversion methodology and use of the AEDM should provide manufacturers adequate options to verify their boilers' performance. Lochinvar noted that this may require production of the smallest products in a given family for ''lab'' testing and encouraged DOE to allow some grace period for the production of these units and the accompanying test data to minimize the burden on these manufacturers. (Lochinvar, No. 43 at p. 4, 5) Lochinvar also noted that it understands that the performance of any commercial packaged boiler is to be verified before it is introduced to commerce and encouraged DOE to apply the appropriate rules fairly to all manufacturers. (Lochinvar, No. 43 at p. 4) ACEEE commented that allowing AEDMs for the certification of commercial packaged boilers that are too large for testing in a lab may be preferable to field tests. (ACEEE, Public Meeting Transcript, No. 34 at p. 148) ACEEE and ABMA also raised a concern that the AEDM process may not be feasible for large commercial packaged boilers because AEDMs are based on testing of multiple units of the same model and that commercial packaged boilers models with rated inputs above 5,000,000 Btu/h may only ever have one unit produced. (ACEEE, Public Meeting Transcript, No. 34 at p. 156; ABMA, Public Meeting Transcript, No. 34 at p. 157)

DOE notes that representations based on the amended test procedure are not required until December 4, 2017, which allows manufacturers time to comply with the amended test procedure. Additionally, DOE believes that its provisions for AEDMs as they pertain to commercial packaged boilers adequately address AHRI's and Lochinvar's suggestions and mitigate test burden. An AEDM may be validated based on tests of any individual models in a validation class that meet or exceed the Federal energy conservation standard regardless of size. The tests could therefore be performed on the smallest individual model in a validation class and the AEDM could then be applied to certify the compliance of all other sizes. With respect to ACEEE and ABMA's concern regarding the number of units required for validating the AEDM, DOE notes that only one unit for each selected basic model (minimum two) of a validation class is required to be tested for comparison to the AEDM pursuant to 10 CFR 429.70(c)(2)(i).

However, as noted in the March 2016 NOPR, DOE believes that field tests of

commercial packaged boilers would not be a sufficient basis for AEDMs applied to models below the 5,000,000 Btu/h and therefore proposed that AEDMs validated using field test data could only be applied to commercial packaged boilers with fuel input rates greater than 5,000,000 Btu/h. In response to the concern expressed by ACEEE and ABMA regarding the ability to develop an AEDM applicable to commercial packaged boilers with rated inputs greater than 5,000,000 Btu/h, DOE notes that manufacturers could develop the AEDM based on testing of commercial packaged boilers with rated inputs less than 5,000,000 Btu/h and applying the AEDM to larger models in that validation class, thereby mitigating this concern.

ABMA believes the threshold for allowing the field test and conversion methodology should be reduced to 2,500,000 Btu/h from 5,000,000 Btu/h to match normal capacity breaks in product lines. (ABMA, No. 38 at p. 3) AHRI indicated that it is feasible to conduct the thermal efficiency test on steam commercial packaged boilers with rated inputs greater than 2,500,000 Btu/h and less than or equal to 5,000,000 Btu/h. (AHRI, No. 46 at p. 8) However, Bradford White suggested that requiring laboratory tests for commercial packaged boilers between 2,500,000 Btu/h and 5,000,000 Btu/h would require laboratory upgrades totaling $300,000. (Bradford White, No. 39 at p. 2–3) Lochinvar opposes all ''field testing;'' however, if allowed, Lochinvar suggested the lower limit for field constructed boilers must be no lower than 5,000,000 Btu/h because [commercial] packaged boilers are widely available in this input rate and should not be unequally tested and rated. (Lochinvar, No. 43 at p. 4) Weil-McLain suggested that if the field test option is kept that it only be available to 10,000,000 Btu/h boilers and larger because testing these boilers is cost prohibitive. (Weil-McLain, No. 41 at p. 6, 15) Weil-McLain also indicated that testing water and steam commercial packaged boilers with inputs between 2,500,000 Btu/h and 5,000,000 Btu/h is already done in many facilities. (Weil-McLain, No. 41 at p. 14)

The purpose of the field test option is to alleviate the test burden for large capacity commercial packaged boilers that is largely the result of laboratory facility limitations. As such, DOE believes that a minimum 5,000,000 Btu/h threshold for the field test option is appropriate as indicated in Lochinvar's and AHRI's comments, as well as Weil-McLain's indication that laboratory testing for commercial packaged boilers between 2,500,000 and 5,000,000 Btu/h is already common. In response to Bradford White's indication that incorporating commercial packaged boilers with inputs greater than 2,500,000 Btu/h and 5,000,000 Btu/h would impose costs, DOE does not believe costs associated with testing such units are prohibitive, as other parties have suggested that such testing is already commonly performed. In response to ABMA's comments that the threshold should be lowered to 2,500,000 Btu/h, DOE does not agree that capacity breaks in product lines is sufficient justification for such an allowance. In response to Weil-McLain's suggestion to raise the threshold to 10,000,000 Btu/h, DOE notes that the field test is an option, not a requirement, and that raising the threshold to 10,000,000 Btu/h would likely result in manufacturers and laboratory facilities needing to make major investment in laboratory capabilities in order to be able to perform laboratory tests up to such a capacity.

2. Optional Conversion of Combustion Efficiency to Thermal Efficiency

As an additional provision for accommodating large commercial packaged boilers (rated input greater than 5,000,000 Btu/h) DOE proposed in the March 2016 NOPR a conversion from combustion efficiency to thermal efficiency for steam commercial packaged boilers. While hot water commercial packaged boilers of the same size must meet a Federal energy conservation standard using the combustion efficiency metric, steam commercial packaged boilers must meet a thermal efficiency standard. The thermal efficiency test uses a more complex set-up and instrumentation and would be difficult to conduct in the field. Under the proposal, manufacturers could test a steam commercial packaged boiler for combustion efficiency (in a laboratory or in the field) and convert to thermal efficiency using an equation.

In response to this proposal, ABMA agreed with the concept of the conversion but did not agree that a single number (2-percent difference between combustion and thermal efficiency) is applicable across a broad range of sizes. They suggested that the difference should be capacity dependent and provided the following data for the difference between combustion and thermal efficiency: 4,185,000 Btu/h: 0.56 percent, 10,463,000 Btu/h: 0.41 percent, 31,383,000 Btu/h: 0.24 percent, and 50,220,000 Btu/h: 0.18 percent. Alternatively, ABMA suggested that a manufacturer could use size-specific data on radiation loss. (ABMA, No. 38 at p. 3, Public Meeting Transcript, No. 34 at p. 87) Bradford White stated that the 2-percent difference was not appropriate and suggested reviewing active products in the AHRI directory. (Bradford White, No. 39 at p. 3) Lochinvar stated that the proposed conversion method was appropriate; however, Lochinvar also stated that they did not agree with any attempt to convert between combustion and thermal efficiency. They further suggested that using a fixed conversion factor is not accurate or appropriate. (Lochinvar, No. 43 at p. 4–5)

Weil-McLain stated that the 2-percent difference between combustion and thermal efficiency is arbitrary and will not result in reliable thermal efficiency results. (Weil-McLain, No. 41 at p. 8) Weil-McLain also suggested that manufacturers could take advantage of the conversion by removing insulation which would increase jacket losses and combustion efficiency but not result in higher thermal efficiency. (Weil-McLain, No. 41 at p. 15) They also suggested that if thermal efficiency cannot be directly measured or derived based on jacket loss measurements then it should not be the specified efficiency method for that equipment class. Finally, Weil-McLain stated that the range of values for the difference between combustion and thermal efficiency is much larger than the 0.5 percent to 2.0-percent cited in the March 2016 NOPR. (Weil-McLain, No. 41 at p. 15)

Relatedly, AERCO commented that, if only the combustion efficiency test were required for large commercial packaged boilers, the test burden would be manageable. They indicated that investment in water pump and heat dissipation equipment may be necessary, but that running a test may amount to $30,000 to $40,000 which is considered reasonable when compared to the cost of some large commercial packaged boilers ($100,000 to $200,000). (AERCO, Public Meeting Transcript, No. 34 at p. 154) ABMA indicated that there would still be a limit to the size of commercial packaged boilers that could be tested even if performing only the combustion efficiency test. (ABMA, Public Meeting Transcript, No. 34 at p. 154)

DOE notes that the intent of the optional combustion to thermal efficiency methodology is to reduce test burden for manufacturers that have found it difficult to test the thermal efficiency of commercial packaged boilers with rated inputs greater than 5,000,000 Btu/h. This is supported by

AERCO's comment that performing a combustion test would be achievable for large commercial packaged boilers. Manufacturers have the option of continuing to use the thermal efficiency test if they believe it will result in a more accurate representation of their equipment's efficiency. As described in the March 2016 NOPR, DOE analyzed a subset of the AHRI directory (as of January 2015) [6] in order to determine a value for the conversion; specifically, DOE considered the difference between rated combustion and thermal efficiency for all steam commercial packaged boilers with rated input larger than 5,000,000 Btu/h. DOE found 52 basic models of steam commercial packaged boilers with a rated input larger than 5,000,000 Btu/h and the difference between rated combustion and thermal efficiency ranged between 0.5 percent and 2.0-percent. DOE acknowledges that the range may be wider (and may include values for which the thermal efficiency is greater than the combustion efficiency) for other subsets of commercial packaged boilers or for all commercial packaged boilers as a whole. However, this methodology would only be available to steam commercial packaged boilers with rated input greater than 5,000,000 Btu/h and therefore DOE used only that subset of data.

Additionally, DOE used a single value of 2.0 that represents the maximum difference between combustion and thermal efficiency for those commercial packaged boilers in order to generate conservative ratings for basic models certified using this methodology. If manufacturers believe their equipment is capable of achieving a higher thermal efficiency, they may elect to use the thermal efficiency test rather than the combustion efficiency test and conversion. DOE notes that the thermal efficiency test would be used for DOE enforcement testing; and therefore, DOE does not believe that manufacturers would be likely to manipulate the test to achieve an artificially better result as Weil-McLain suggests.

With respect to Weil-McLain's suggestion to use combustion efficiency as the metric for this equipment class, EPCA directs DOE to consider amending its energy conservation standards for commercial packaged boilers each time ASHRAE amends ASHRAE/IES Standard 90.1. (42 U.S.C. 6313(a)(6)(A)) Pursuant to EPCA, on July 22, 2009, DOE published a final rule adopting the thermal efficiency metric as the energy efficiency descriptor for eight of ten equipment classes of commercial packaged boilers in order to conform to ASHRAE/IES Standard 90.1–2007. 74 FR 36314. DOE is not reconsidering the efficiency metric used for any equipment class of commercial packaged boilers at this time.

*F. Hot Water Temperatures*

In the March 2016 NOPR, DOE proposed modifications to the water temperatures for hot water tests of commercial packaged boilers. In the current DOE test procedure (which incorporates by reference BTS–2000), inlet water temperature for a non-condensing commercial packaged boiler can be between 35 °F and 80 °F and outlet water temperature must be 180 °F ±2 °F. For a condensing commercial packaged boiler, inlet water temperature must be 80 °F ±5 °F and outlet water temperature must be 180 °F ±2 °F (at Point C in). ANSI/AHRI Standard 1500–2015, which replaced BTS–2000 and was proposed for incorporation by reference in the March 2016 NOPR, did not change these temperature requirements. These inlet and outlet temperature requirements result in a temperature rise across the heat exchanger ranging from 98 °F to 147 °F for a non-condensing commercial packaged boiler and from 93 °F to 107 °F for a condensing commercial packaged boiler. Also, BTS–2000 and ANSI/AHRI Standard 1500–2015 permit recirculating loops, allowing heated outlet water to be reintroduced into the incoming water thereby increasing the temperature of the inlet water entering the commercial packaged boiler (see further discussion in section III.F.2). As stated in the March 2016 NOPR, DOE identified several issues with these temperature requirements based on comments received in response to the October 2013 Framework document, February 2014 RFI, and the November 2014 Preliminary Analysis, as well as through manufacturer interviews and a review of the existing DOE test procedure. The issues included:

- The current temperature rise is unrepresentative of actual operating conditions;
- The current temperature rise may induce excessive stresses on some commercial packaged boilers; and
- The presence of recirculating loops during testing leads to significant variability in the actual temperature rise across the commercial packaged boiler.

DOE therefore proposed modifications to the inlet and outlet water temperature requirements that would result in a consistent 40 °F nominal temperature rise for all commercial packaged boilers. For condensing commercial packaged boilers, DOE proposed an inlet temperature of 80 °F and an outlet temperature of 120 °F, and for non-condensing commercial packaged boilers DOE proposed an inlet temperature of 140 °F and an outlet temperature of 180 °F. Additionally, while recirculating loops could still be used, DOE proposed that the inlet temperature would be measured downstream of where the loop would reenter the incoming water stream, immediately prior to the water entering the commercial packaged boiler.

1. General Comments

Burnham, Weil-McLain, and the Efficiency Advocates agreed that the temperatures in the current test procedure (BTS–2000, or equivalently in ANSI/AHRI Standard 1500–2015) were not representative of actual installation/field conditions for commercial packaged boilers. (Burnham, No. 40 at p. 3; Efficiency Advocates, No. 45 at p. 1–2; Weil-McLain, No. 41 at p. 7) Weil-McLain further suggested that BTS–2000 was not intended to simulate actual installation conditions for the boiler and that a 100 °F temperature rise would not have been used in BTS–2000 otherwise. (Weil-McLain, No. 41 at p. 17) Burnham further stated that, even though the water temperatures found in ANSI/AHRI Standard 1500–2015 are not representative of those seen in the field, this does not necessarily mean that resulting efficiency measurements are not representative of what would be found in the field. (Burnham, No. 40 at p. 3)

Bradford White, NEEA, and the Efficiency Advocates stated that DOE's proposed water temperatures would more accurately reflect operating temperatures found in the field. (Bradford White, No. 39 at p. 3; NEEA, No. 44 at p. 2; Efficiency Advocates, No. 45 at p. 1–2) AERCO also stated that continuing to use the 80 °F inlet and 180 °F outlet temperatures is unrealistic and that this should be changed even if ratings are affected. (AERCO, Public Meeting Transcript, No. 34 at p. 12) NEEA stated that, for non-condensing commercial packaged boilers, hot water coils that provide heating are designed to provide a 20 °F temperature drop across the coil with a design supply water temperature of 180 °F on the coldest days and 160 °F on mild days. NEEA stated that the 20 °F temperature drop across the coil prevents the return water from being less than 140 °F (when the supply water temperature is 160 °F), which prevents condensing from occurring, and that the 40 °F rise proposed by DOE is more representative

[6] Available at: *https://www.ahridirectory.org/ahridirectory/pages/home.aspx.*

than the range used in ANSI/AHRI Standard 1500–2015. For condensing commercial packaged boilers, NEEA stated that the 40 °F temperature rise is also more representative of typical conditions in a commercial building, and that water is typically supplied to the building at 120 °F and returned to the commercial packaged boiler at 100 °F. (NEEA, No. 44 at pp. 1–2) The Efficiency Advocates similarly commented that return water for a non-condensing commercial packaged boiler must be at or above 140 °F to prevent condensing and possible corrosion. (Efficiency Advocates, No. 45 at pp. 1–2)

The Efficiency Advocates also suggested that the specificity of DOE's proposed inlet and outlet temperature requirements would improve consistency and repeatability across ratings and tests. (Efficiency Advocates, No. 45 at pp. 1–2) The Efficiency Advocates also supported the proposal to measure the inlet water temperature downstream of where inlet water enters the unit such that the actual temperature of the water entering the commercial packaged boiler would not be obscured. (Efficiency Advocates, No. 45 at p. 1) The CA IOUs supported DOE's proposal for a fixed inlet water temperature as opposed to the 35 °F to 80 °F range currently allowed because consumers could more confidently compare the ratings of commercial packaged boiler models. (CA IOUs, No. 48 at p. 2)

However, several stakeholders including AHRI, Burnham, Raypak, Lochinvar and Weil-McLain, suggested that DOE's proposed water temperatures would impact ratings, and presented test results that showed a range of effects on thermal efficiency from a decrease of up to 1.4-percent to an increase of up to 1.8-percent. (AHRI, No. 46 at p. 3; Burnham, No. 40 at p. 4; Raypak, No. 47 at p. 4; Lochinvar, No. 43 at p. 7; Weil-McLain, No. 41 at p. 4, 8, 10) AHRI stated that the current water temperature conditions specified in BTS–2000 and maintained in ANSI/AHRI Standard 1500–2015 should be retained without change. (AHRI, No. 46 at p. 3) AHRI further stated that the aggregate effect on ratings is irrelevant to a commercial packaged boiler model that just complies with the standard and whose rating is lowered by the proposed test procedure. (AHRI, No. 46 at p. 3) Burnham suggested that the proposed water temperatures would trigger manufacturers to recertify and could result in non-compliance for some models, while Crown Boiler and Raypak suggested that all manufacturers would need to retest all models. (Burnham, No. 40 at p. 4, 5; Crown Boiler, Public Meeting Transcript, No. 34 at p. 10; Raypak, No. 47 at p. 4, 6) Lochinvar questioned why, if the amended test procedure is not expected to change ratings, manufacturers should be burdened with rerating their units. (Lochinvar, Public Meeting Transcript, No. 34 at p. 49) NEEA suggested that DOE create a crosswalk to convert old test data to new test data as a way of reducing testing burden. (NEEA, Public Meeting Transcript, No. 34 at p. 34) Burnham raised the concern that reducing the temperature rise would increase measurement error and therefore the thermal efficiency error by 2.5 times.[7] (Burnham, No. 40 at p. 5).

The Gas Associations suggested that DOE document specific differences in efficiency that result from the water temperature changes as compared to ratings produced by ANSI/AHRI Standard 1500–2015 so that manufacturers could evaluate the impacts the temperature changes would have on their specific models. (Gas Associations, No. 42 at p. 2) The CA IOUs suggested that test data from Pacific Gas and Electric (PGE) showed changes in efficiency resulting from different inlet and outlet water temperatures, but that this testing was done according to a different test protocol and it remains unclear how the changes proposed in the March 2016 NOPR will impact the efficiency of commercial packaged boilers on the market. (CA IOUs, No. 48 at p. 4) More specifically, DOE understands the testing conducted by the CA IOUs was conducted in accordance with the test methodology in ASHRAE Standard 155P (currently in draft form), which is not representative of or comparable to DOE's proposed method of test or the methodology being adopted today. The ASHRAE Standard 155P test procedure has many differences in methodology—namely part loading and inlet water conditions as compared to the DOE methodology. Thus, DOE expects the results to be quite different and that data should not be considered as part of the comparison to the current Federal method and the methodology DOE proposed for an amended test procedure because it is not relevant.

DOE is sensitive to concerns regarding the impact of the test procedure amendments on ratings, particularly for commercial packaged boilers that were not previously able to use a recirculating loop for reducing the temperature rise across the unit, as there was a significant difference in inlet water temperature in the March 2016 NOPR for units not using a recirculating loop as compared to the current test method. (Recirculating loops are considered in section III.F.2.) However, DOE continues to believe that an inlet water temperature range of 35 °F to 80 °F as found in ANSI/AHRI Standard 1500–2015 is an unnecessarily large range based on the capabilities of current test facilities, and that lower temperatures in that range are particularly unrepresentative of water temperatures found in the field. DOE again notes its obligation under 42 U.S.C. 6314(a)(4)(B) to adopt a test procedure consistent with the amended industry standard unless it finds that such a procedure would not meet the statutory requirements of 42 U.S.C. 6314(a)(2)–(3), namely that it may not reflect a product's energy efficiency or use during a representative average use cycle and/or is unduly burdensome to conduct. As discussed, DOE has found that the water temperature provisions of ANSI/AHRI Standard 1500–2015 would not produce results that reflect energy efficiency during a representative average use cycle because a wide range of allowable temperatures may result in an unrepeatable test and, in some cases, those temperatures are far lower than any temperatures that would ever be experienced in the field.

In this final rule, DOE is therefore adopting an inlet temperature requirement of 80 °F ±5 °F for non-condensing commercial packaged boilers that do not utilize a recirculating loop, and the outlet temperature will remain 180 °F ± 2 °F. (Note: this inlet water temperature is consistent with the existing inlet water temperature requirement for condensing commercial packaged boilers. See section III.F.3 for discussion of water temperatures for condensing commercial packaged boilers.) This range aligns with the existing allowable maximum temperature of 80 °F for the inlet water temperature but reduces the total allowable range. DOE agrees with the Efficiency Advocates and CA IOUs that the March 2016 NOPR water temperatures would improve consistency due to their specificity, would remove ambiguity concerning the temperature of water entering a unit, and would provide assurance to consumers that commercial packaged boilers were rated similarly. Although

[7] DOE believes that Burnham arrived at the factor of 2.5 by dividing a 100 °F temperature rise by the proposed 40 °F temperature rise, and that Burnham is suggesting that the measurement error would increase in the same proportion as the decrease in temperature rise. DOE notes that such a scenario would only happen in those instances where recirculating loops are not currently used during testing, *e.g.,* cast iron sectional commercial packaged boilers.

the temperatures being adopted in this final rule are different from those proposed, DOE believes that the final rule will still achieve these results. DOE believes that this final rule results in a test procedure that is more representative of efficiencies found in the field by increasing the allowable inlet water temperature and more repeatable because of the narrower allowable range of inlet water temperatures, while mitigating concerns regarding the impact on ratings. DOE believes that the concerns regarding impacts on ratings due to the proposed 140 °F inlet water temperature are mitigated with the temperature requirements it is adopting in this final rule. Therefore, DOE does not believe it is necessary to produce, as the Gas Associations and NEEA suggested, a conversion methodology between the existing and amended test procedures. Moreover, a manufacturer would only need to recertify a basic model if it determines its test results no longer represent the efficiency of the basic model as tested under the amended test procedure. Such a determination should be possible based on a review of the water temperatures used to generate prior test data and an understanding of the potential effects on the resulting efficiency.

2. Recirculating Loops

DOE noted in the March 2016 NOPR that the presence of recirculating loops during testing obscures the actual temperature rise that the commercial packaged boiler experiences. Section 8.5.1.1.1 of BTS–2000, which is incorporated by reference in the current DOE test procedure, states that such a loop may be used ''for tubular boilers that require a greater flow rate to prevent boiling.'' In such instances, the same section also requires that the temperature rise through the boiler itself not be less than 20 °F. Section 5.3.5.3 of ANSI/AHRI Standard 1500–2015, which replaces BTS–2000, expands the use of recirculating loops by removing the requirement that a boiler be ''tubular'' to use a recirculating loop, such that a recirculating loop may be used ''for [any] boilers that require a greater flow rate to prevent boiling.'' In the March 2016 NOPR, DOE proposed inlet water temperature requirements immediately preceding the commercial packaged boiler, thereby allowing all commercial packaged boiler tests to use the recirculating loop to achieve a 140 °F or 80 °F inlet water temperature for non-condensing and condensing units, respectively. (See section III.F.3 for discussion of water temperatures for condensing commercial packaged boilers.) DOE also sought comment specifically on the prevalence of recirculating loops during testing. DOE received the following feedback:

- ABMA stated that recirculating loops are used for fire-tube type boilers. (ABMA, No. 38 at p. 4)
- Bradford White stated that recirculating loops are used for low mass boilers to prevent boiling. (Bradford White, no. 39 at p. 4)
- AHRI stated that recirculating loops are used for water-tube type boilers that require forced water circulation to operate, and that the AHRI certification program is consistent with this. (AHRI, No. 46 at p. 3)
- Burnham stated that recirculation loops are not used unless absolutely necessary (though they did not indicate what conditions would require the recirculating loop) and indicated that BTS–2000 only explicitly permits recirculating loops for water-tube type boilers. (Burnham, No. 40 at p. 5)
- Raypak stated that they use a recirculating loop on all non-condensing boilers. (Raypak, No. 47 at p. 6)
- Lochinvar stated that recirculation loops are common on tube-type boilers and uncommon on cast sectional boilers but that this is not universally true. They also stated that a recirculating loop is needed for copper fin tube boilers but not stainless steel tube boilers. (Lochinvar, No. 43 at p. 7, Public Meeting Transcript, No. 34 at p. 43)
- Weil-McLain stated that it is not true that most manufacturers use a recirculation loop with sectional cast iron boilers. (Weil-McLain, No. 41 at p. 9)
- Crown Boiler stated that they do not use a recirculating loop in testing most of their boilers except for those that require a higher flow rate, and that they believe this is characteristic of most other manufacturers. (Crown Boiler, Public Meeting Transcript, No. 34 at p. 42–43)
- AERCO stated they do not use a recirculating loop unless it is during the winter and the water entering the building is 40 °F to 50 °F. (AERCO, Public Meeting Transcript, No. 34 at p. 44)

DOE understands that Raypak currently does not manufacture sectional cast iron commercial packaged boilers, and therefore their statement that recirculating loops are only used for their non-condensing models is consistent with the current allowance only for ''tubular'' or tube-type commercial packaged boilers in the DOE test procedure (BTS–2000, section 8.5.1.1.1). Raypak also stated that it specifies minimum and maximum flow rates in its installation and operation manuals to prevent boiling and erosion in the tubes, and that it uses recirculation loops to maintain these flow rates during testing. (Raypak, No. 47 at p. 6) Burnham further suggested that excessive stresses caused by the current temperature rise are not a problem because of the short duration of the test, and that recirculation loops are used only when necessary because they create additional set-up complexity and may negatively impact efficiency. (Burnham, No. 40 at p. 4–5) AHRI suggested that the change in ANSI/AHRI Standard 1500–2015 to make recirculating loops available for all models addresses concerns for damaging the commercial packaged boiler. (AHRI, No. 46 at p. 3) In response to the March 2016 NOPR, the CA IOUs supported the proposed inlet water temperature location because it would remove ambiguity. (CA IOUs, No. 48 at p. 2)

In response to the comments, DOE continues to believe that there is sufficient variation in test set-ups and temperatures so as to warrant adopting additional specifications for water temperatures. DOE believes that the expansion of the use of recirculating loops to any commercial packaged boilers as alluded to by AHRI is further justification for moving the location of the inlet water temperature constraint to immediately preceding the commercial packaged boiler inlet. The allowance for a recirculating loop as written in ANSI/AHRI Standard 1500–2015 could result in inlet water temperatures entering the unit of anywhere from the temperature of the incoming water to the test facility (between 35 °F and 80 °F as described in section III.F.1) to 160 °F (based on the minimum 20 °F temperature rise in ANSI/AHRI Standard 1500–2015). DOE concludes that such provisions would not meet the statutory requirements of 42 U.S.C. 6314(a)(2)–(3) in that they would not reflect a product's energy efficiency or use during a representative average use cycle, as the wide range of allowable temperatures can result in an unrepeatable test; DOE is therefore deviating from the industry standard in this instance to add more specificity that is needed for repeatable testing. DOE is adopting the non-condensing temperatures proposed in the March 2016 NOPR (140 °F inlet as measured immediately preceding the commercial packaged boiler and 180 °F outlet) for those commercial packaged boilers that use a recirculating loop as allowable by ANSI/AHRI Standard 1500–2015 (*i.e.,* to prevent boiling). This will ensure that

all commercial packaged boilers using a recirculating loop during testing use the same boiler temperature rise of 40 °F and will remove ambiguity, increase consistency, and provide for a more representative test of efficiency. DOE notes that a temperature requirement at this location allows manufacturers and laboratories the flexibility of either using a recirculating loop or an external heat source (*e.g.,* another boiler) to maintain the required inlet water temperature.

3. Condensing Commercial Packaged Boilers

Burnham suggested that DOE's proposed water temperatures make the test less representative of actual operating conditions because condensing boilers will experience an increase in efficiency due to the reduction in outlet water temperature. (Burnham, No. 40 at p. 4) Raypak also stated that the proposed condensing temperatures are not representative of typical temperature rises and that these same temperatures are used in ASHRAE Standard 155P only to provide a ''boundary condition test'' as part of the efficiency map that that test procedure will produce. (Raypak, No. 47 at p. 3)

Burnham and Crown Boiler also suggested that non-condensing and condensing commercial packaged boilers are often used at the same water temperatures (Burnham suggested this therefore overstates the relative efficiency of condensing commercial packaged boilers) and Raypak stated that condensing boilers will see water temperatures closer to the proposed non-condensing test temperatures and that the March 2016 NOPR did not address this. (Burnham, No. 40 p. 2, 4; Crown Boiler, Public Meeting Transcript, No. 34 at p. 10, 57; Weil-McLain, No. 41 at p. 4) Burnham suggested this violates 42 U.S.C. 6314(a)(4)(B), which states DOE must amend the test procedure as necessary to be consistent with the amended industry test procedure or rating procedure unless it determines that to do so, supported by clear and convincing evidence, would not meet the requirements for test procedures to be representative of energy efficiency during an average use cycle and to be not unduly burdensome to conduct. (Burnham, No. 40 p. 2, 4) Weil-McLain suggested that, if the proposed water temperatures are adopted, all commercial packaged boilers (non-condensing and condensing) should be tested at the non-condensing temperatures but have the option to test at the condensing temperatures (Weil-McLain, No. 41 at p. 5) Bradford White also suggested that different temperature conditions for condensing and non-condensing boilers would not result in fair comparisons. (Bradford White, No. 39 at p. 3)

Raypak similarly suggested that condensing boilers be tested and certified at both proposed temperature conditions (non-condensing and condensing) to provide engineers, building owners, and architects an understanding of the true efficiency that would be obtained; they also stated that separate temperature ranges for condensing and non-condensing commercial packaged boilers would introduce confusion in the market. (Raypak, No. 47 at pp. 3–4, 8) AERCO suggested rating condensing equipment at the same water temperatures as non-condensing equipment. (AERCO, Public Meeting Transcript, No. 34 at p. 44–45) PGE suggested requiring two separate metrics for condensing commercial packaged boilers, one for condensing and one for non-condensing operation. (PGE, Public Meeting Transcript, No. 34 at pp. 55–57) However, Crown Boiler, Lochinvar, and AHRI opposed this concept. (Crown Boiler, Public Meeting Transcript, No. 34 at p. 58; Lochinvar, Public Meeting Transcript, No. 34 at p. 60–61; AHRI, Public Meeting Transcript, No. 34 at p. 59) Raypak stated that not requiring condensing boilers to be certified at both conditions would give condensing boilers an unfair advantage because they are often installed in non-condensing applications or experience periods of non-condensing operation. (Raypak, No. 47 at p. 4, 8) Finally, Raypak stated that their test results indicated an 8.5-percentage point reduction in thermal efficiency when testing a condensing boiler at the non-condensing temperatures as opposed to the condensing temperatures, and that this difference needs to be addressed in DOE's test procedure. (Raypak, No. 47 at p. 4)

DOE acknowledges concerns that condensing commercial packaged boilers often in application do not experience temperatures that induce condensing operation. DOE's proposed water temperatures for condensing equipment in the March 2016 NOPR preserved the existing nominal inlet water temperature of 80 °F but reduced the outlet water temperature from 180 °F to 120 °F to achieve a more realistic temperature rise of 40 °F, consistent with the temperature rise that was proposed for non-condensing equipment. As noted by Raypak, these temperatures also aligned with the anticipated temperatures in ASHRAE Standard 155P, which several commenters have recommended DOE adopt in the future once it is published. DOE recognizes that these temperatures (80 °F inlet and 120 °F outlet), as Raypak suggested, are intended to provide a boundary condition test for ASHRAE Standard 155P—one in which a condensing commercial packaged boiler is assured to fully condense due to the average temperature between inlet and outlet water (100 °F) being well below the temperature at which condensing begins to occur (approximately 130–140 °F). Condensing commercial packaged boilers could therefore potentially gain higher efficiencies under the proposed water temperatures, and while this would not require manufacturers to rerate existing models, it may result in rated efficiencies that are not achieved in application. DOE is, therefore, maintaining the inlet and outlet water temperatures in the existing test procedure for condensing commercial packaged boilers in this final rule. DOE notes that the existing inlet water temperature requirement for condensing commercial packaged boilers (80 °F ± 5 °F, maintained in ANSI/AHRI Standard 1500–2015) are repeatable because a much smaller temperature range is already specified. Therefore, DOE does not believe that its concerns regarding repeatability apply to the condensing water temperatures and does not find reason to deviate from the industry standard in this instance.

4. Test Facility Water Flow Rate Capabilities

Bradford White, AHRI, Raypak, Lochinvar, and Weil-McLain suggested that the reduction in the temperature rise from 100 °F to 40 °F would reduce the capacity of laboratory facilities or that facility upgrades would be necessary because of a proportional increase in water flow rate. (Bradford White, No. 39 at p. 4; AHRI, No. 46 at p. 3; Raypak, No. 47 at p. 6; Lochinvar, No. 43 at p. 7; Weil-McLain, No. 41 at p. 14) AHRI suggested that this would be most noticeable for cast-iron and oil-fired boilers, which have not been tested with a recirculating loop. (AHRI, No. 46 at p. 4) ABMA suggested that DOE's estimated costs in the March 2016 NOPR for a 10 million Btu/h boiler were inadequate and that it is not abnormal for a boiler to be three times as large. They suggested that without an AEDM the ratio (three times) would be applied to the pump (equaling $9,000) and new weigh tanks and scales in order to accommodate a flow rate of up to 1,500 gallons per minute (gpm), as well as a new cooling tower that could reach $750,000. (ABMA, No. 38 at p. 5) AHRI

stated that DOE incorrectly assumed that a recirculating loop would resolve the issue of higher water flow rates and higher total volume necessary for the proposed water temperatures. (AHRI, No. 46 at p. 3–4)

In response to concerns regarding water flow rates DOE believes that the temperatures adopted in this final rule mitigate the need for higher flow rates (and therefore additional costs, as ABMA suggests). For commercial packaged boilers that cannot utilize a recirculation loop, DOE is adopting a temperature rise that is similar to what is used currently (nominal 100 °F, whereas the current test procedure allows for a temperature rise between 98 °F and 147 °F) and therefore DOE anticipates similar flow rates will be used during testing. For commercial packaged boilers that utilize a recirculating loop to prevent boiling (in keeping with ANSI/AHRI Standard 1500–2015, incorporated by reference in this final rule), the inlet water temperature requirement, measured immediately preceding the commercial packaged boiler inlet, standardizes the temperature for these commercial packaged boilers. Currently, this temperature is not required to meet any specific range. However, DOE anticipates based on product literature that the current use of recirculating loops results in a similar inlet water temperature to the 140 °F temperature requirements adopted in this final rule, and therefore does not result in any substantive change to the water flow requirements. DOE therefore does not anticipate increased water flow rates needed to meet the amended test procedure, and does not believe test laboratories will experience a reduction in capacity.

5. Other Issues Related to Water Temperatures

Several commenters raised other issues associated with water temperatures for commercial packaged boilers. Bradford White stated that some commercial packaged boilers may not be capable of being tested with a 40 °F difference between inlet and outlet water temperatures and that they should instead be tested with a temperature rise as close to 40 °F as possible as allowed by manufacturer instructions. (Bradford White, No. 39 at p. 3) AHRI and Lochinvar stated that DOE already has a process in place by which instructions regarding testing of particular models could be provided. (AHRI, No. 46 at p. 8; Lochinvar, No. 43 at p. 6) Weil-McLain noted that if a boiler could previously be tested with a 100 °F temperature rise then there is no reason that it could not be tested with a 40 °F temperature rise. (Weil-McLain, No. 41 at p. 16) Raypak suggested that the proposed test procedure would allow manufacturers to select the temperature rise that works best for their product because of the proposed allowance for manufacturer instructions to specify a maximum temperature rise that would be used during testing. (Raypak, No. 47 at p. 6) DOE notes that, with the temperature requirements being adopted in this final rule, the concerns presented by these commenters apply only to commercial packaged boilers that use a recirculating loop during testing because only such units would be required to have a 40 °F temperature rise.

Consistent with Weil-McLain's comments and based on its review of product literature, DOE is not aware of any commercial packaged boilers models that could not be tested using the 40 °F temperature rise and is therefore adopting this temperature rise for commercial packaged boilers that cannot be tested using the standard 100 °F temperature rise. Manufacturers may continue to provide supplementary instructions pursuant to 10 CFR part 429; however, these supplementary instructions do not supplant the requirements of the DOE test procedure. Manufacturers may, however, submit a petition for waiver for any commercial packaged boilers model that cannot be tested to the DOE test procedure pursuant to 10 CFR 431.401 on the grounds that that either the basic model contains one or more design characteristics that prevent testing of the basic model according to the prescribed test procedures or cause the prescribed test procedures to evaluate the basic model in a manner so unrepresentative of its true energy or water consumption characteristics as to provide materially inaccurate comparative data.

Multiple stakeholders, including Bradford White, AHRI, Burnham, Lochinvar, Raypak, and Weil-McLain did not support DOE's proposed tolerance of ±1 °F for the inlet and outlet water temperatures. (Bradford White, No. 39 at p. 3; AHRI, No. 46 at p. 4, Public Meeting Transcript, No. 34 at p. 47; Burnham, No. 40 at p. 5; Lochinvar, No. 43 at p. 1; Raypak, No. 47 at p. 3; Weil-McLain, No. 41 at p. 5) Burnham and Raypak suggested that the proposed tolerances would not improve the accuracy of efficiency measurements, and Weil-McLain suggested that using a tolerance of ±2 °F would not impact the accuracy of the measurement compared to ±1 °F because the actual temperature measured during the test is accounted for in the calculations for efficiency. (Burnham, No. 40 at p. 5; Raypak, No. 47 at p. 3; Weil-McLain, No. 41 at p. 5) Lochinvar, Weil-McLain, and Crown Boiler indicated that maintaining the water temperatures over the course of a test to within the proposed ±1 °F band for the necessary water flow rates would be difficult or impossible. (Lochinvar, No. 43 at pp. 1, 7, Public Meeting Transcript, No. 34 at p. 48; Weil-McLain, No. 41 at p. 4; Crown Boiler, Public Meeting Transcript, No. 34 at p. 48) Bradford White suggested that the average of the inlet and outlet water temperatures individually be held to a ±1 °F tolerance through the test duration, while any given reading would have a tolerance of ±2 °F. (Bradford White, No. 39 at p. 3) AERCO suggested allowing the temperature to vary by more than ±1 °F but conducting the test for 2 hours so that variations from the target temperature will not bias the result. (AERCO, Public Meeting Transcript, No. 34 at p. 51)

DOE concurs with Weil-McLain's assessment that the calculations for efficiency use the actual temperature rise measured during the test and therefore maintaining the temperatures within certain tolerances is less important. DOE notes that the tolerances instead provide an additional verification that the system is operating at a steady-state and provide for a repeatable test procedure. DOE also acknowledges that keeping the outlet temperature of a large commercial packaged boiler within ±1 °F may pose technical challenges that are not justified given the use of the measured average temperature in the efficiency calculations. DOE is therefore not adopting the proposed temperature tolerances of ±1 °F and is instead adopting tolerances from ANSI/AHRI Standard 1500–2015.

AERCO stated that multipoint water temperature measurements or mixing before a single point reading is critical because a large source of error in efficiency calculations is the temperature. Measurement error can occur because of stratification of the water temperature. (AERCO, Public Meeting Transcript, No. 34 at pp. 52, 172–173) DOE acknowledges that ANSI/AHRI Standard 1500–2015 incorporated set-up changes to induce mixing at the outlet in order to prevent stratification and therefore reduce measurement error. DOE is therefore adopting similar set-up changes at the inlet of the commercial packaged boilers in order to reduce the error associated with inlet water temperature measurement. Water entering the commercial packaged boiler must first pass through two plugged tees in order to induce mixing, with the

temperature measurement taking place in the plugged end of the second tee.

*G. Ambient Conditions*

In the March 2016 NOPR, DOE proposed new constraints on ambient temperature and relative humidity. DOE's existing test procedure limits the humidity of the room during testing of condensing boilers to 80-percent (10 CFR 431.86(c)(2)(ii)) and establishes ambient room temperature requirements. BTS–2000 (incorporated by reference) and ANSI/AHRI Standard 1500–2015 both require that test air temperature, as measured at the burner inlet, be within ±5 °F of the ambient temperature, where ambient temperature is measured within 6 feet of the front of the unit at mid-height. ANSI/AHRI Standard 1500–2015 prescribes an allowable ambient temperature during the test between 30 °F and 100 °F (section 5.3.8) with the relative humidity not exceeding 80-percent in the test room or chamber (section 5.3.9). DOE proposed to require that ambient relative humidity at all times be 60-percent ±5-percent and ambient room temperature 75 °F ±5 °F during thermal and combustion efficiency testing of commercial packaged boilers.[8] DOE proposed the same ambient conditions for all commercial packaged boilers (non-condensing and condensing).

In response to the March 2016 NOPR, ABMA, AHRI, Burnham, and Lochinvar indicated that current testing typically takes place in uncontrolled environments, spaces that are not sealed and tightly controlled with respect to ambient conditions, or spaces that could not be maintained within the proposed ambient parameters for all sizes of commercial packaged boilers. (ABMA, No. 38 at p. 6, Public Meeting Transcript, No. 34 at p. 75; AHRI, No. 46 at p. 4; Burnham, No. 40 at p. 6; Lochinvar, No. 43 at p. 8) Weil-McLain indicated that combustion air is typically not conditioned; that for direct exhaust systems and direct vent or sealed units, combustion air is provided directly to the unit and therefore the ambient room air is often warmer than the air used for combustion. (Weil-McLain, No. 41 at p. 2) Because the air is brought in from outside and is unconditioned, several manufacturers suggested that the proposed ambient requirements would limit the times of year during which testing could be performed. (Bradford White, No. 39 at p. 4; Burnham, No. 40 at p. 6; Raypak, No. 47 at p. 5; Weil-McLain, No. 41 at p. 2)

Several commenters suggested that the proposed ambient conditions would result in additional test burden by forcing manufacturers to spend significant resources in upgrading facilities and HVAC capabilities. (ABMA, No. 38 at pp. 4, 6; Bradford White, No. 39 at p. 4; Burnham, No. 40 at p. 6; CA IOUs, No. 48 at pp. 3–4; AHRI, No. 46 at p. 4; Raypak, No. 47 at p. 5; Lochinvar, No. 43 at p. 8; Weil-McLain, No. 41 at pp. 2, 14) Weil-McLain suggested that DOE understated the costs associated with laboratory facility upgrades. (Weil-McLain, No. 41 at p. 2) Bradford White estimated that the cost of an environmental chamber would be approximately $120,000; AHRI suggested the cost could be from $100,000 to over $1,000,000; Burnham suggested that the cost would be approximately $125,000 for a 20-ton cooling capacity laboratory HVAC system; and Raypak estimated that a facility capable of conditioning combustion air to support a 4,000,000 Btu/h boiler would be $500,000 to $1,500,000. (Bradford White, No. 39 at p. 4; AHRI, No. 46 at p. 4; Burnham, No. 40 at p. 6; Raypak, No. 47 at p. 6)

Multiple stakeholders suggested that DOE had not provided sufficient evidence that tighter ambient condition restrictions are justified. (Burnham, No. 40 at p. 6; AHRI, No. 46 at p. 4; Weil-McLain, No. 41 at p. 2; Bradford White, No. 39 at p. 5) ABMA acknowledged, however, that ANSI/AHRI Standard 1500–2015 was written primarily based on testing of smaller boilers and that it is possible it does not account for the sensitivity of larger boilers to certain test conditions. (ABMA, Public Meeting Transcript, No. 34 at p. 82) AHRI suggested that ambient requirements were being considered as part of the development of ASHRAE Standard 155P, particularly as they pertain to jacket losses. (AHRI, Public Meeting Transcript, No. 34 at pp. 80–81) Weil-McLain also stated that the premise that ambient temperature limits would improve repeatability is false, while CA IOUs stated that a range of allowable ambient temperatures of 30 to 100 degrees Fahrenheit (found in ANSI/AHRI Standard 1500–2015) can result in efficiency ratings that vary because heat convection from the commercial packaged boiler to the room would increase as the ambient room temperature decreases. (Weil-McLain, No. 41 at p. 2; CA IOUs, No. 48 at p. 1). CA IOUs therefore supported the ambient room temperature requirement to be 75 °F ±5 °F and stated that it should be achievable by most testing facilities. However, CA IOUs also suggested that variations in relative humidity have little effect on efficiency rating and therefore did not justify the added test burden. (CA IOUs, No. 48 at pp. 3–4) Similarly, Crown Boiler questioned whether the limits for relative humidity were justified, but suggested that an allowable range of 0 to 60-percent relative humidity would be more reasonable. (Crown Boiler, Public Meeting Transcript, No. 34 at p. 74–75) Raypak stated that they concur with the conclusion reached in the residential boiler test procedure rulemaking that ambient temperature and relative humidity do not have any impact on efficiency. (Raypak, No. 47 at p. 4) Bradford White also suggested that the changes to the DOE test procedure may in fact have an effect on ratings in light of DOE's consideration that ambient temperature and relative humidity have a noticeable effect on efficiency. (Bradford White, No. 39 at pp. 4–5, 6–7)

In light of comments received DOE is maintaining the current maximum ambient relative humidity of 80-percent consistent with ANSI/AHRI Standard 1500–2015. At this time, DOE does not believe the added test burden of controlling ambient humidity is justified, given the amount of combustion air required for commercial packaged boilers approaching 5,000,000 Btu/h rated input (larger than this size would be eligible for the optional field test for which ambient relative humidity would not be constrained). DOE is adopting tighter restrictions for ambient room temperature as compared to ANSI/AHRI Standard 1500–2015, as it does not believe that the incremental test burden associated with maintaining reasonable room temperatures is excessive. However, in light of the concerns raised about fluctuations in test spaces, DOE is adopting a wider range of allowable ambient room temperatures as compared to those in the March 2016 NOPR. For condensing commercial packaged boilers, room ambient temperature will be required to be between 65 °F and 85 °F and for non-condensing commercial packaged boilers ambient room temperature will be required to be between 65 °F and 100 °F. DOE believes that deviating from the ambient temperature requirements of ANSI/AHRI Standard 1500–2015 is necessary in order to satisfy its obligation under 42 U.S.C. 6314(a)(4)(2) to provide a test procedure that produces results that reflect energy efficiency that is representative of

[8] *Humidity* is the amount of water vapor in the air. *Absolute* humidity is the water content of air. *Relative* humidity, expressed as a percent, measures the current absolute humidity relative to the maximum for that temperature. *Specific* humidity is a ratio of the water vapor content of the mixture to the total air content on a mass basis.

equipment during an average use cycle, as the wide range of allowable ambient temperatures (as permitted by ANSI/AHRI Standard 1500–2015) may affect jacket losses and would result in a less repeatable test. DOE also believes that these temperatures are consistent with ASHRAE Standard 155P,[9] which several commenters have requested DOE adopt once it is published. DOE is also requiring that the average ambient relative humidity and average ambient room temperature be included in certification reports.

Additionally, Burnham and Raypak commented specifically that the ±2 °F tolerance with respect to the mean ambient temperature would be difficult or impossible to maintain given the size of equipment and make-up air requirements. (Burnham, No. 40 at p. 6; Raypak, No.47 at p. 5) In light of these concerns, DOE is widening the allowable tolerance by which the room ambient temperature can vary with respect to the average ambient room temperature during the test from ±2 °F as proposed to ±5 °F. DOE proposed similar requirements (±2 °F variation from average ambient room temperature) in its test procedure NOPR for commercial water heating equipment, published in the **Federal Register** on May 9, 2016. 81 FR 28587. In response, Bradford White, AHRI, and A.O. Smith (owner of Lochinvar) supported an allowable variation of ±5 °F as opposed to ±2 °F, and Bradford White and A.O. Smith suggested that maintaining temperature with such allowable variation would be achievable without additional burden to manufacturers. (Docket EERE–2014–BT–TP–0008: Bradford White, No. 19 at p. 3; AHRI, No. 26 at p. 7; A. O. Smith, No. 27 at p. 18) [10] DOE notes that Bradford White and A.O. Smith (Lochinvar) manufacture both commercial water heating equipment and commercial packaged boilers, and DOE expects that laboratory facilities are comparable for testing both types of equipment. DOE is therefore adopting a tolerance of ±5 °F with respect to the average room ambient temperature for commercial packaged boilers.

AERCO suggested that the altitude of a unit undergoing a field test could impact the test result, and the CA IOUs suggested that barometric pressure variation has a greater impact on test ratings than relative humidity and possibly temperature. (AERCO, Public Meeting Transcript, No. 34 at p. 160; CA IOUs, Public Meeting Transcript, No. 34 at p. 76) DOE was not provided data that indicate to what extent barometric pressure affects efficiency ratings for commercial packaged boilers. DOE has not found it necessary to regulate the ambient barometric pressure of test rooms for any heating products. Accordingly, DOE is not adopting barometric pressure requirements in this final rule.

*H. Set-Up and Instrumentation*

In the March 2016 NOPR, DOE proposed several clarifications to set-up and instrumentation for its commercial packaged boiler test procedure, including steam piping configuration, digital data acquisition, and calibration requirements.

In general, ACEEE suggested that DOE not specify instrumentation to the level of detail being proposed, but rather indicate only how DOE would test for enforcement cases because it is the manufacturer's responsibility to ensure the accuracy of its certifications. (ACEEE, Public Meeting Transcript, No. 34 at pp. 108–109) DOE disagrees, as manufacturers need to have test data to assess whether a product is compliant prior to distribution that is just as reliable as the test data DOE uses when bringing an enforcement case. DOE establishes test provisions that both DOE and manufacturers (as well as other stakeholders) must use when conducting an efficiency test. Although DOE does establish separate enforcement provisions, such provisions typically do not establish an alternative method of test but instead establish a methodology to grant latitude to manufacturers for key metrics such as those used to determine equipment class. Establishing a consistent test methodology, including calibration procedures, is fundamental to EPCA, as it ensures that all parties have a standardized method for assessing compliance with standards and for generating efficiency information for consumers. Therefore, DOE is adopting calibration procedures as part of its test procedure in this final rule that all parties must use when using the DOE test procedure.

1. Steam Piping

In the March 2016 NOPR DOE proposed provisions in order to clarify steam riser and header geometry. The proposed additional specifications were as follows:

- No reduction in diameter shall be made in any horizontal header piping, as a reduction in pipe diameter in the horizontal header prevents entrained water from draining properly and typically leads to non-steady-state operation. In the case of commercial packaged boilers with multiple steam risers, the cross-sectional area of the header must be no less than 80-percent of the summed total cross-sectional area of the risers, and the header pipe must be constant in diameter along its entire length.
- The diameter of the vertical portion of the steam condensate return pipe that is above the manufacturer's recommended water level may be reduced to no less than one half of the header pipe diameter to ensure adequate operation of the return loop and draining of entrained water back into the commercial packaged boiler.

In the event the manufacturer's literature does not specify necessary height and dimension characteristics for steam risers, headers, and return piping, DOE also proposed the following requirements to ensure consistent and repeatable testing:

- The header pipe diameter must be the same size as the commercial packaged boiler's steam riser (steam take-off) pipe diameter. In the case of commercial packaged boilers with multiple steam risers, the cross-sectional area of the header must be no less than 80-percent of the summed total cross-sectional area of the risers, and the header pipe must be constant in diameter along its entire length.
- The height measured from the top of the header to the manufacturer's recommended water level must be no less than the larger of 24 inches or 6 times the header pipe diameter.
- The distance between the vertical steam riser (steam take-off) leading to the water separator and the elbow leading to the condensate return loop must be a minimum of three (3) header pipe diameters to prevent entrained water from entering the separator piping.
- If a water separator is used, piping must pitch downward to the separator at a rate of at least ¼ inch per foot of pipe length in order to assure proper collection of moisture content and steady-state operation during testing.
- A vented water seal is required in steam moisture collection plumbing to prevent steam from escaping through the moisture collection plumbing.

In response, the CA IOUS supported the modified language for steam riser and header geometry, steam condensate return pipe and pipe installation requirements because they would improve test accuracy and quality. (CA IOUs, No. 48 at p. 3) AHRI suggested that the test procedure should refer to manufacturer's installation instructions

[9] An Advisory Public Review Draft of ASHRAE Standard 155P was published in August 2016.

[10] The rulemaking docket for the commercial water heating equipment test procedure can be found at: *https://www.regulations.gov/docket?D=EERE-2014-BT-TP-0008.*

with regard to steam riser, header, and return water loop requirements. (AHRI, No. 46 at p. 8) Weil-McLain suggested that the steam quality requirement (98-percent per BTS–2000 and ANSI/AHRI Standard 1500–2015) is sufficient and that the proposed configuration requirements do not reflect common installation practices. (Weil-McLain, No. 41 at p. 7) Crown Boiler also suggested that the geometry requirements in ANSI/AHRI Standard 1500–2015 are sufficient because pipe sizes can vary by manufacturer and are listed in manufacturer's specifications. They also suggested that the requirement for the steam riser diameter to be half of the diameter of the header is not needed because there is generally no flow in the pipe and that the size of the pipe is sometimes determined experimentally. (Crown Boiler, Public Meeting Transcript, No. 34 at p. 85)

While DOE believes that its proposed requirements could be met in most cases, DOE cannot anticipate all commercial packaged boiler designs and configurations. For commercial packaged boiler designs for which the proposed steam piping configurations would not be feasible, manufacturers would need to seek waiver or, for commercial packaged boilers with rated inputs greater than 5,000,000 Btu/h, may need to use the field test where they otherwise could have performed a laboratory test. DOE agrees with Weil-McLain that the steam quality requirement is sufficient for ensuring steady operation of the commercial packaged boiler, in conjunction with the requirement in ANSI/AHRI Standard 1500–2015 that steam pressure not fluctuate by more than 5-percent. DOE believes that using only the steam quality and pressure measurement requirements are sufficient to ensure a repeatable test, and that the additional burden and reduced flexibility in test set-up are not justified by the additional improvement in repeatability that would result from the proposed steam piping requirements. DOE is therefore withdrawing these proposed steam pipe set-up provisions.

DOE also proposed insulation conductivity and thickness requirements for steam piping. AHRI commented that certifying compliance with an R-value as opposed to thickness and conductivity may be simpler. (AHRI, Public Meeting Transcript, No. 34 at p. 90) DOE notes that the proposed insulation requirements are taken from ASHRAE/IES Standard 90.1 and conversion to R-values would result in fractions which may present confusion. The proposed steam piping insulation provisions are therefore adopted in this final rule for consistency with the industry standard. The March 2016 NOPR included rows for fluid temperatures up to 250 °F; however, this final rule adopts the full table from ASHRAE/IES Standard 90.1, which include fluid temperatures up to 350 °F, in order to account for superheated steam.

2. Digital Data Acquisition

DOE proposed to require digital data acquisition at 30-second intervals in the March 2016 NOPR. Bradford White supported this proposal. (Bradford White, No. 39 at p. 5) However, AHRI, Burnham, Lochinvar, and Weil-McLain suggested that the requirement was not justified. (AHRI, No. 46 at p. 5; Burnham, No. 40 at p. 7; Lochinvar, No. 43 at pp. 6, 9; Weil-McLain, No. 41 at p. 6) ABMA suggested that digital data acquisition may have benefits. (ABMA, No. 38 at p. 5) Multiple stakeholders, including AHRI, ABMA, Lochinvar, Raypak, and Weil-Mclain, also raised concern about the cost burden of this requirement. (AHRI, No. 46 at p. 5; ABMA, No. 38 at p. 5, Public Meeting Transcript, No. 34 at p. 101; Lochinvar, No. 43 at p. 6; Raypak, No. 47 at p. 4; Weil-McLain, No. 41 at pp. 5–6)

Burnham indicated that most laboratories can log temperatures at 30-second intervals although they may not be able to do so with instrumentation having the required accuracy of ± 0.2 °F. (Burnham, No. 40 at p. 7) Weil-McLain noted that DOE did not identify a calibration methodology for the digital data acquisition equipment. (Weil-McLain, No. 41 at p. 5) Raypak suggested that the data acquisition system would require costs for a flow meter, gas meter, flue gas analyzer, gas chromatograph, pressure transducers, barometric pressure and humidity interface controls and would cost four to five times DOE's estimate. (Raypak, No. 47 at p. 8) Lochinvar suggested that water temperature readings should be digitized but that higher heating value, barometric pressure, and relative humidity should not be digitized. (Lochinvar, Public Meeting Transcript, No. 34 at pp. 102–103)

DOE believes digital data acquisition is a valuable tool for ensuring that the various parameters and requirements of the test procedure are met for the duration of the test. Temperatures vary over the course of a test, and DOE does not believe that 15-minute interval data as required by ANSI/AHRI Standard 1500–2015 is sufficient for verifying that the test procedure has been met or that the measured efficiency has not been influenced by variance in certain parameters. DOE considered the cost burden of adding digital data acquisition in the March 2016 NOPR and has revised its estimates in section IV.B, and continues to believe that the costs are not overly burdensome in comparison to the overall cost of testing for a manufacturer's product line. DOE is therefore adopting the requirement for obtaining data digitally for temperatures, specifically ambient room temperature, flue gas temperature, and water temperatures. Because DOE is not, at this time, adopting tighter tolerances on the ambient relative humidity, DOE also will not require digital data acquisition for this parameter and will continue to use 15-minute intervals. DOE does not believe it is necessary to specify calibration in light of the accuracy requirements already part of ANSI/AHRI Standard 1500–2015.

Weil-McLain suggested that DOE provide details on integration and averaging methods for each data type as well as rules on how to treat data points that fall outside of the requirements when the average or integrated values for the test are within requirements. (Weil-McLain, No. 41 at p. 6, Public Meeting Transcript, No. 34 at p. 65) AHRI similarly suggested DOE include a table that lists which measurements are to be averaged and which are to be totaled over the test period. (AHRI, Public Meeting Transcript, No. 34 at pp. 104–105) DOE has modified the tables in the test procedure to clarify that any individual digital reading falling out of its required range per the DOE test procedure constitutes an invalid test. DOE is modifying the original 30-second interval to 1-minute intervals as a means of reducing the burden that the constraint may pose by invalidating a test due to one 30-second interval reading of one parameter not being within tolerance. Each 1-minute interval reading for each of the parameters required to be obtained through digital data acquisition must therefore fall within the specified range per the DOE test procedure. In this final rule, DOE has also added specificity regarding averaging and integration for each measurement, as applicable.

3. Calibration

DOE proposed in the March 2016 NOPR that instrumentation be calibrated at least once per year. Bradford White and Lochinvar expressed support for this proposal, and DOE did not receive any comments objecting. (Bradford White, No. 39 at p. 5; Lochinvar, No. 43 at p. 9) DOE is therefore adopting this requirement in this final rule. Weil-McLain, however, suggested that the proposed calibration procedures did not address whether pre-

test and post-test calibration is required. For example, they suggest that it is unclear what implications, if any, there are if a previously calibrated instrument is used and on the next calibration the instrument fails or is damaged. (Weil-McLain, No. 41 at p. 18) DOE clarifies that it is not adopting provisions by which a test is invalidated because an instrument fails a subsequent calibration.

In the March 2016 NOPR, DOE proposed to require calibration of gas chemistry instrumentation using standard gases with purities of greater than 99.9995 percent for all constituents analyzed. In response, AHRI, Bradford White, Burnham, Raypak, Lochinvar, Weil-McLain, and Crown Boiler suggested that the requirement was too stringent. (AHRI, No. 46 at p. 5; Bradford White, No. 39 at p. 5; Burnham, No. 40 at p. 7; Raypak, No. 47 at pp. 7–8; Lochinvar, No. 43 at p. 9; Weil-McLain, No. 41 at p. 18; Crown Boiler, Public Meeting Transcript, No. 34 at p. 99) Raypak noted that its supplier, Airgas Specialty Gases, uses ultra-high purity gases of 99.99 percent for $CO_2$ and 99.5 percent for CO, and that they indicated that 99.9995 percent purity $CO_2$ is significantly more expensive and the maximum available for CO is 99.99 percent. (Raypak, No. 47 at p. 7) Lochinvar suggested that the excessive purity proposed in the March 2016 NOPR was both prohibitively expensive and posed significant toxicity and flammability risks. They further suggested that calibration references should be 4 to 10 times more accurate than the required accuracy of the equipment being calibrated. (Lochinvar, No. 43 at p. 9) Bradford White suggested that a typical cylinder of calibration gas costs approximately $400 and lasts approximately 8 weeks, assuming the analyzer is calibrated daily; they also provided a sample gas calibration certificate. (Bradford White, No. 39 at p. 5 and Attachment)

After further consideration, DOE acknowledges that gas meeting the proposed ultra-high purity gas calibration standards may be difficult or expensive to obtain. Additionally, DOE recognizes that there are requirements for the accuracy of gas chemistry instrumentation found in ANSI/AHRI Standard 1500–2015 that are being adopted in this final rule. DOE believes that the requirements for gas chemistry instrumentation accuracy (specifically ±0.1 percent for $CO_2$ and $O_2$ testers and the greater of ±10 ppm or ±5-percent of reading for CO testers) are sufficient for the purposes of the commercial packaged boiler test procedure and that requiring a specific calibration gas purity beyond the accuracy of the instrument itself may be duplicative. Accordingly, DOE is not adopting this proposal.

4. Other Set-up and Instrumentation Comments

ABMA requested that straight vent stacks be allowed as an alternative to the double 90-degree elbow configuration in ANSI/AHRI Standard 1500–2015 to accommodate commercial packaged boilers with forced draft burners firing into combustion chambers under positive pressure. They further stated that automated draft control systems are used on installations having tall stacks, thus there is typically no dilution of flue gas in the vent system. (ABMA, No. 38 at p. 2–3) DOE agrees that such commercial packaged boilers should be permitted to test using straight vent stacks and has included a provision in this final rule accordingly.

The CA IOUs suggested that the test procedure should be revised to eliminate ambiguity in how $CO_2$ concentrations are measured during the test. They indicated that during tests of commercial packaged boilers conducted by PGE, the $CO_2$ concentration could change depending on where the $CO_2$ probe was placed in the flue gas stream. (CA IOUs, No. 48 at p. 2) DOE reviewed the submitted data and acknowledges that there appears to be an effect on the $CO_2$ measurement based on horizontal position of the flue gas probe. Additionally, DOE notes that there is ambiguity, as CA IOUs suggest, in the placement of the flue gas probe for vent configurations like the one CA IOUs presented in their comment. Specifically, DOE believes the unit tested by PGE was an outdoor commercial packaged boiler because there was no stack attached to the unit. However, CA IOUs did not suggest which position should be used in the DOE test procedure. DOE notes that section C2.5.2 of ANSI/AHRI Standard 1500–2015 specifies that sampling from a rectangular plane be collected ''using a sampling tube located so as to obtain an average flue gas sample.'' DOE agrees that this is ambiguous. DOE is therefore adopting a requirement that three samples be taken at evenly spaced intervals (¼, ½, and ¾ of the distance from one end) in the longer dimension and along the centerline halfway between the edges in the shorter dimension of the rectangle and that the average be calculated.

Weil-McLain noted that ANSI/AHRI Standard 1500–2015 specifies different fuel oil analysis requirements (fuel oil grade under ASTM D396–14a, heating value under ASTM D240–09, hydrogen and carbon content under ASTM D5291–10, and density and American Petroleum Institute (API) gravity [11] under ASTM D396–14a) for commercial packaged boilers than are required for residential boilers under ASHRAE 103–1993 annual fuel utilization efficiency (AFUE) (*e.g.,* gravity and viscosity uses ASTM D396–90A and fuel oil analysis requirements are different than for commercial). Weil-McLain suggested DOE correct this to allow the same fuel oil analysis for both residential and commercial efficiency testing. (Weil-McLain, No. 41 at p. 13) DOE reviewed the fuel oil specifications of ASTM D396–14a and the requirements found in ASHRAE Standard 103–1993 (incorporated by reference for the DOE test procedure for residential boilers found at 10 CFR part 430, subpart B, appendix N). While they are similar, they are not identical and DOE could not confirm that they would yield similar results. Weil-McLain did not provide any evidence that the two methods were equivalent. Therefore, DOE is not adopting additional provisions for fuel oil analysis at this time.

Weil-McLain noted that ANSI/AHRI Standard 1500–2015 allows for two different water meter calibrating methods, one of which does not meet certain accuracy requirements found in table C1 of ANSI/AHRI Standard 1500–2015, and therefore recommends that DOE require water meters in all cases to meet table C1 in order to avoid inaccurate efficiency results. (Weil-McLain, No. 41 at p. 13) DOE notes that the March 2016 NOPR did not propose to adopt section C2.7.2.2.2, which is the alternative water meter calibration method that Weil-Mclain referred to. This final rule adopts only the instrument accuracy requirements of Table C1 in ANSI/AHRI Standard 1500–2015 and not section C2.7.2.2.2 about which Weil-McLain expressed concern.

*I. Other Issues*

1. Burners for Oil-Fired Commercial Packaged Boilers

In the March 2016 NOPR, DOE proposed a set of provisions for determining the burner to be used in testing an oil-fired commercial packaged boiler. DOE proposed that the unit be tested with the particular make and model of burner certified by the manufacturer. If multiple burners are specified in the installation and

[11] The American Petroleum Institute gravity, or API gravity, is a measure of how heavy or light a petroleum liquid is compared to water: If its API gravity is greater than 10, it is lighter and floats on water; if less than 10, it is heavier and sinks.

operation manual or in one or more certification reports, then DOE proposed that any of the listed burners may be used for testing and all must be certified to the Department.

In response, AHRI requested additional specificity in the test procedure for a situation in which manufacturer's specifications do not prescribe a specific burner or burners, particularly with respect to firing rate and/or spray geometry. (AHRI, Public Meeting Transcript, No. 34 at pp. 93–94) DOE notes that under its proposed regulations in the March 2016 NOPR, manufacturers would be required to certify the make and model of the burner used during certification testing, and that this make and model would be used for testing. DOE believes this is sufficiently clear and is adopting the language it proposed in the March 2016 NOPR.

2. Certification and Enforcement Provisions

DOE proposed a provision in the March 2016 NOPR that it would conduct enforcement testing in both steam mode and hot water mode for those commercial packaged boilers capable of producing both and both results must demonstrate compliance with the applicable energy conservation standards. Lochinvar objected to the proposal, stating that there is already a method in place for determining hot water commercial packaged boiler efficiency based on the rating in steam mode, and that the requirement would add test burden. (Lochinvar, No. 43 at p. 11) In response, DOE notes that this is not a certification requirement for manufacturers, but is a provision that indicates the procedure DOE will follow when conducting its own enforcement testing. Namely, DOE would conduct an enforcement test in each mode (steam and hot water) for those commercial packaged boilers models capable of operating in either mode rather than using the measured efficiency for steam mode to determine compliance in hot water mode. DOE would use the appropriate result to evaluate compliance with the respective standards. DOE notes that this does not add test burden for manufacturers and is adopting this provision as part of this final rule.

3. Part-Load Testing

In the March 2016 NOPR, DOE tentatively concluded that part-load testing was not warranted and therefore did not propose any new test procedure provisions towards that end. In response, Lochinvar supported this conclusion and, along with NEEA, the Efficiency Advocates, and the CA IOUs, suggested using ASHRAE Standard 155P in the future to capture part-load performance. (Lochinvar, No. 43 at p. 11; NEEA, No. 44 at pp.2–3; Efficiency Advocates, No. 45 at p. 3; CA IOUs, No. 48 at p. 5) Weil-McLain suggested that part-load efficiency should not be mandated, but also that it would be prudent to regulate how part-load efficiency is measured in order to ensure comparable part-load ratings. (Weil-McLain, No. 41 at p. 19) DOE does not intend to develop a test procedure at this time for the purpose of measuring part-load efficiency. DOE believes the ratings produced by its test procedure provide a sufficient basis to give the purchaser enough information when choosing between commercial packaged boilers models. DOE may in the future adopt a test procedure that includes part-load measurements.

4. Stack Temperature Adjustment

In the March 2016 NOPR, DOE proposed a calculation to adjust the stack temperature when using steam mode combustion efficiency ratings to represent the combustion efficiency in hot water mode. DOE's existing test procedure allows commercial packaged boilers with fuel input rate greater than 2,500,000 Btu/h capable of producing steam and hot water to use the combustion efficiency as measured in steam mode to represent the combustion efficiency in hot water mode. 10 CFR 431.86(c)(2)(iii)(B). DOE received waiver requests from Cleaver-Brooks, Johnston Boiler, Superior Boiler Works, and York-Shipley (AESYS) that asked to use an adjustment to the stack temperature when using this rating method in order to more accurately reflect the combustion efficiency of a commercial packaged boiler operating in hot water mode. The adjustment is given by Equation 1:

$$T_{F,SS,adjusted} = T_{F,SS} - T_{sat} + 180 \qquad \textbf{Equation 1}$$

where $T_{F,SS,adjusted}$ is the adjusted steady-state flue temperature used for subsequent calculations of combustion efficiency, $T_{F,SS}$ is the measured steady-state flue temperature during combustion efficiency testing in steam mode, $T_{sat}$ is the saturated steam temperature that corresponds to the measured steam pressure, and 180 is the hot water outlet temperature.

In response, Lochinvar agreed with adopting the method and indicated that the theory behind the correction is sound and results should be conservative. (Lochinvar, No. 43 at p. 10) Weil-McLain did not support adopting the method because not all boiler designs are the same and the method may not reflect accurate ratings for water mode. (Weil-McLain, No. 41 at p. 7) Crown Boiler suggested that the adjustment may be unreliable, and ABMA questioned to what extent testing was done to develop the equation. (Crown Boiler, Public Meeting Transcript, No. 34 at p. 133–135; ABMA, Public Meeting Transcript, No. 34 at p. 133–135)

DOE considered data from the AHRI directory [12] (as of May 2015) for commercial packaged boilers with rated inputs greater than 2,500,000 and for which differing combustion and thermal efficiencies were listed for the same model (57 models). DOE found that on average combustion efficiency in hot water mode was approximately 0.8-percent higher than that for steam and would anticipate a similar adjustment from the proposed methodology. However, while several manufacturers requested the adjustment methodology as part of the waiver process, no data were submitted to validate the equation. DOE is therefore not adopting this adjustment methodology. Manufacturers wishing to rate a basic model with a higher combustion efficiency in hot water mode can perform a separate combustion efficiency test in that mode.

5. Oxygen Combustion Analyzer

ANSI/AHRI Standard 1500–2015 includes a methodology for using an $O_2$ combustion analyzer for measurements of combustion efficiency, and DOE proposed adopting this methodology by incorporating by reference this industry standard. AHRI expressed its support for the provision because the the $O_2$ methodology is essentially equivalent to the $CO_2$ methodology (required in BTS–2000 and the current DOE test procedure and included optionally in ANSI/AHRI Standard 1500–2015) and noted that AHRI had completed analysis to verify this equivalency. (AHRI, Public Meeting Transcript, No. 34 at p. 95)

[12] Available at: *https://www.ahridirectory.org/ahridirectory/pages/home.aspx.*

DOE is adopting this provision in the final rule.

6. Rounding Requirements

DOE proposed to clarify its rounding procedures by requiring that the combustion and thermal efficiency results be rounded to the nearest tenth of one percent. In response, ACEEE suggested that reporting to such a level of precision means little to the customer, has little justification when considering the 5-percent tolerance on the final rating, and instead suggested rounding to a whole number. (ACEEE, Public Meeting Transcript, No. 34 at pp. 126–128) Bradford White similarly did not see value in rounding to the nearest tenth of a percent and instead recommended rounding to the nearest percent. (Bradford White, No. 39 at p. 6) Lochinvar, however, supported the DOE proposal to round to the nearest tenth of a percent. (Lochinvar, No. 43 at p. 10)

DOE notes that the AHRI certification program,[13] which uses BTS–2000 for certification testing, expresses thermal and combustion efficiency ratings to the nearest tenth of one percent. Also, the energy conservation standards for commercial packaged boilers at 10 CFR 431.87 are expressed to the tenth of one percent. DOE is therefore adopting a provision in this final rule to clarify that thermal and combustion efficiency ratings are to be rounded to the nearest tenth of one percent as was proposed in the March 2016 NOPR. DOE notes that an AEDM may be up to five percent off from a single verification test result without invalidating the AEDM or the rating, but there is not an absolute five-percent tolerance on ratings.

7. Waiver Requests

As mentioned in section III.I.4, DOE received waiver requests from Cleaver-Brooks, Johnston Boiler, Superior Boiler Works, and York-Shipley (AESYS). In addition to their request to use an adjustment to the stack temperature, the petitioners requested the use of ANSI/AHRI Standard 1500–2015. The petitioners noted that ANSI/AHRI Standard 1500–2015 addressed several deficiencies in BTS–2000, particularly with regard to the inability to test large commercial packaged boilers at steam pressures of 2 psi or below as required in BTS–2000. As described in III.C, DOE is adopting certain sections of ANSI/AHRI Standard 1500–2015 in its test procedure for commercial packaged boilers and therefore DOE believes that this final rule addresses the petitioners' concerns. Because the need for a waiver has been overtaken by DOE's adoption of a method of test for the basic models for which each of the petitioners sought a waiver, DOE is denying these petitions for waiver. Petitioners may begin using this test procedure as of the effective date of the final rule.

With respect to interim waivers that have been granted,[14] DOE notes that this final rule addresses the issues presented in those waivers and as such those interim waivers will terminate on December 4, 2017. 10 CFR 431.401(h)(2). Parties that have received an interim waiver may being using this test procedure as of the effective date of the final rule.

## IV. Procedural Issues and Regulatory Review

### *A. Review Under Executive Order 12866*

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

### *B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that when an agency promulgates a final rule under 5 U.S.C. 553, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis (FRFA), unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003 to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://energy.gov/gc/office-general-counsel.*

This final rule prescribes test procedure amendments that will be used to determine compliance with energy conservation standards for commercial packaged boilers. The amendments (1) clarify the definitions for commercial packaged boilers; (2) incorporate by reference the industry standard ANSI/AHRI Standard 1500–2015; (3) establish provisions for verifying rated input during enforcement testing; (4) adopt an optional field test and an optional metric conversion calculation; (5) modify the inlet water temperature requirements for hot water tests of non-condensing boilers; (6) and establish new ambient temperature limits.

DOE reviewed this rule under the provisions of the Regulatory Flexibility Act and DOE's own procedures and policies published on February 19, 2003. 68 FR 7990. DOE has concluded that this rule will not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows.

The Small Business Administration (SBA) considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. These size standards and codes are established by the North American Industry Classification System (NAICS). The threshold number for NAICS classification code 333414, which applies to ''heating equipment (except warm air furnaces) manufacturing' and includes commercial packaged boilers, is 500 employees.

To estimate the number of companies that could be small business manufacturers of the equipment affected by this rulemaking, DOE conducted a market survey using available public information to identify potential small manufacturers. DOE's research involved reviewing the DOE Compliance Certification Database (CCD), AHRI directory (a product database), individual company Web sites, and marketing research tools (*e.g.,* Hoover's reports) to create a list of all domestic small business manufacturers of equipment affected by this rulemaking. DOE identified 21 [15] manufacturers of commercial packaged boilers as domestic small business manufacturers. DOE was able to discuss the DOE test procedures with 5 of these small businesses prior to publication of the March 2016 NOPR. DOE also obtained information about small businesses and potential impacts on small businesses

[13] For AHRI directory, see: *https://www.ahridirectory.org/ahridirectory/pages/cblr/defaultSearch.aspx.*

[14] See Cleaver-Brooks (81 FR 22252 (April 15, 2016)), Johnston Boiler Company (81 FR 38161 (June 13, 2016)), Superior Boiler Works (81 FR 22249 (April 15, 2016)), York-Shipley Global (81 FR 22255 (April 15, 2016)).

[15] In the March 2016 NOPR, DOE identified 23 small businesses; however, of those 23, one small manufacturer left the market and another is considered large and therefore the count is now 21.

while interviewing manufacturers in the context of the standards rulemaking. However, DOE did not receive any detailed quantifications about the incremental burden small businesses would face as compared to larger businesses in light of the proposed methods.

With respect to potential costs associated with the test procedure amendments, DOE notes that several amendments are clarifications or clerical changes that will not impose costs on small manufacturers. The clarifications made to the definitions relevant for commercial packaged boilers do not modify the scope of the test procedure nor do they impose additional test burden. DOE is not modifying the scope of coverage or substantively modifying its definitions in such a way that would result in the need to certify compliance for equipment for which certification is not already required. As a result, manufacturers that are small businesses are not expected to have to certify commercial packaged boilers for which they are not already certifying compliance.

Also, updating the referenced test procedure to ANSI/AHRI Standard 1500–2015 is not anticipated to impose additional costs on manufacturers. ANSI/AHRI Standard 1500–2015 is an industry standard that replaces BTS–2000, which is currently incorporated by reference in the DOE test procedure. ANSI/AHRI Standard 1500–2015 uses essentially the same test method found in BTS–2000. While ANSI/AHRI Standard 1500–2015 removed outdated instrumentation references from BTS–2000, DOE does not believe manufacturers are using instrumentation that could not meet the requirements found in ANSI/AHRI Standard 1500–2015. ANSI/AHRI Standard 1500–2015 also increases the allowable steam pressure for steam tests as compared to BTS–2000, which accommodates testing of larger commercial packaged boilers but does not impose additional costs on manufacturers, including small manufacturers.

DOE is not adopting its proposed provisions for certification of fuel input rate, which had the potential of requiring manufacturers to re-certify previously certified commercial packaged boilers. The provisions DOE adopts in this final rule regarding rated input pertain only to the process DOE will use when conducting assessment and enforcement testing and are for manufacturer information only. Therefore, these changes will pose no additional burden to small manufacturers of commercial packaged boilers.

DOE is adopting several provisions in this final rule that may reduce the burden associated with certifying compliance for commercial packaged boilers. Currently, laboratory testing for thermal or combustion efficiency, as applicable, is required for the certification of all commercial packaged boilers regardless of size. As described in the March 2016 NOPR and in section III.E, DOE acknowledges that some commercial packaged boilers because of their size may only be fully assembled at their site of installation and therefore the requirement to test for efficiency in a laboratory would require a manufacturer to assemble the unit at the laboratory for testing, tear it down and ship it to the site for installation, and re-build it—a process that may be expensive, if not impracticable. DOE is adopting an optional field test methodology based on the combustion efficiency test for commercial packaged boilers with rated input greater than 5,000,000 Btu/h as part of this final rule. As described in the March 2016 NOPR, the optional field test is intended to reduce test burden as compared to the existing DOE test procedure for thermal efficiency. DOE has previously noted that the combustion efficiency test is less burdensome because of its shorter duration and reduced instrumentation as compared to the thermal efficiency test. Therefore, by providing a simpler, shorter test method that only requires a unit to be assembled once, the optional field test provisions are anticipated to reduce test burden for small manufacturers that manufacturer these large commercial packaged boilers, as compared to the current test procedure.

Similarly, DOE is adopting an optional conversion calculation to obtain a thermal efficiency rating from a combustion efficiency test. The calculation allows small manufacturers to test the combustion efficiency (in a laboratory, manufacturer facility, or in the field) for steam commercial packaged boilers with rated input greater than 5,000,000 Btu/h and convert to a thermal efficiency rating. As described regarding the field test option, this optional calculation is anticipated to reduce test burden by allowing manufacturers of large equipment to use a simpler and shorter test (the combustion efficiency test, either in a laboratory or in the field).

Some test procedure amendments in this final rule may require additional costs for manufacturers, including small manufacturers. DOE is adopting more specific inlet piping provisions based on comments on the March 2016 NOPR that will increase the accuracy of the inlet water temperature measurement. The set-up change will require additional segments of pipe and tee connections, and a temperature sensor, however DOE believes most if not all manufacturers already have these items. The set-up change may result in a longer set-up time which DOE estimates to be one additional hour per test. Based on current wage information from the Bureau of Labor Statistics (BLS) for a mechanical engineering technician,[16] DOE estimates the additional cost per test (hourly labor cost multiplied by number of hours) to be $41.

DOE is also adopting water temperature limits in this final rule that will reduce ambiguity in ratings and provide for a more repeatable test. In the March 2016 NOPR, DOE considered that a reduction in the temperature rise across a commercial packaged boilers would proportionally increase the water flow rate required. Such an increase may have necessitated facility improvements for manufacturer and third-party laboratories, specifically by installing larger pumps to meet the increase water demand, and DOE received several comments suggesting this would be the case in response to the March 2016 NOPR. ABMA suggested that the proposed test procedure could be particularly harmful to small entities. ABMA indicated that the example DOE provided for a 10 million Btu/h was inadequate and that it is not abnormal for a boiler to reach 3 times that size. They suggested that without an AEDM, the ratio would apply to the required larger pump size, weigh tanks, scales etc. and that applying the scaling factor of 3 to the $3,000 pump cost in the March 2016 NOPR would result in a $9,000 pump. Additionally, ABMA stated that scaling the 500 gpm flow rate would yield 1,500 gpm requiring new weigh tanks and scales and possibly a new cooling tower which could reach nearly $750,000. (ABMA, No. 38 at p. 5) However, in this final rule DOE is adopting water temperature limits that are more closely aligned with the current test procedure and reduce the allowable range of inlet water temperature for non-condensing commercial packaged boilers. For non-condensing commercial packaged boilers that already utilize a recirculating loop during testing, the amended test procedure standardizes

[16] Hourly labor cost is estimated by multiplying the hourly wage for a mechanical engineering technician by 1.5 to account for benefits. Based on data from the BLS, the mean hourly wage for a mechanical engineering technician (occupation code 17–3027) is $27.11. See: *http://www.bls.gov/oes/current/oes173027.htm#nat.*

the temperature rise across the commercial packaged boiler which may require slight adjustment of flow rates compared to current tests but does not require any additional set-up. For non-condensing commercial packaged boilers that do not currently use a recirculating loop, manufacturers may choose to use a recirculating loop in order to achieve the 80 °F ± 5 °F inlet water temperature. DOE estimates the additional set-up time required to be one hour per test, and this additional cost per test to be $41 (hourly labor cost for mechanical engineering technician multiplied by number of hours). For condensing commercial packaged boilers, DOE is not modifying the water temperature requirements.

In the March 2016 NOPR DOE proposed that steam tests occur at the lowest steam pressure at which the steam quality requirement of 98-percent is achieved by starting at atmospheric pressure and increasing incrementally. In response ABMA and Weil-McLain commented that the requirement to incrementally increase steam pressure would impose undue test burden. (ABMA, No. 38 at p. 4; Weil-McLain, No. 41 at p. 16) However, in the March 2016 NOPR DOE estimated the cost of the time and fuel consumed for each test to be approximately $253 based on two additional hours of mechanical engineering technician labor and natural gas use for a 10 million Btu/h commercial packaged boiler.[17] DOE continues to believe this amount is modest in comparison to the overall cost of product development and certification.

With respect to ambient conditions, based on comments received regarding the additional burden of tightly constraining ambient temperature and humidity, DOE is not adopting tighter restrictions on the ambient humidity and is adopting a broader range of allowable ambient temperatures as compared with the March 2016 NOPR. Several commenters suggested that the proposed ambient conditions in the March 2016 NOPR would result in additional test burden by forcing manufacturers to spend significant resources in upgrading facilities and HVAC capabilities. (ABMA, No. 38 at pp. 4, 6; Bradford White, No. 39 at p. 4; Burnham, No. 40 at p. 6; CA IOUs, No. 48 at pp. 3–4; AHRI, No. 46 at p. 4; Raypak, No. 47 at p. 5; Lochinvar, No. 43 at p. 8; Weil-McLain, No. 41 at pp. 2, 14) Weil-McLain suggested that DOE understated the costs associated with laboratory facility upgrades. (Weil-McLain, No. 41 at p.2) Bradford White estimated that the cost of an environmental chamber would be approximately $120,000; AHRI suggested the cost could be from $100,000 to over $1,000,000; Burnham suggested that the cost would be approximately $125,000 for a 20-ton cooling capacity laboratory HVAC system; and Raypak estimated that a facility capable of conditioning combustion air to support a 4,000,000 Btu/h boiler would be $500,000 to $1,500,000. (Bradford White, No. 39 at p. 4; AHRI, No. 46 at p. 4; Burnham, No. 40 at p. 6; Raypak, No. 47 at p. 6) Lochinvar indicated that adding the additional water and environmental test limitations beyond those in AHRI 1500 will have a substantial impact on all manufacturers which will be more significant for small manufacturers with less well equipped labs. (Lochinvar, No. 43 at p. 11)

However, DOE is not adopting the ambient condition requirements it proposed in the March 2016 NOPR. For ambient humidity, DOE is maintaining the current 80% maximum relative humidity requirement and is adopting a broader range of allowable ambient temperatures than proposed in the March 2016 NOPR. With regard to the ambient room temperature requirements in this final rule, DOE notes that the ranges of 65 °F to 100 °F for non-condensing commercial packaged boilers and 65 °F to 85 °F for condensing commercial packaged boilers are intended to prevent the test from being conducted in extreme ambient conditions, and that these allowable temperature ranges are typical for building heating, ventilating, and air-conditioning systems in normal operating conditions. Additionally, the temperature ranges being adopted are consistent with those found in DOE's test procedure for residential boilers (10 CFR part 430 subpart B appendix N) and in the draft version of ASHRAE Standard 155P published in August 2016 for public review, which several commenters have requested DOE adopt in the future as the basis for the DOE commercial packaged boiler test procedure. DOE does not believe that the ambient temperature requirements being adopted will require facility or equipment upgrades.

In the March 2016 NOPR, DOE proposed requiring digital data acquisition for certain parameters in the commercial packaged boilers test procedure. DOE acknowledged that the requirement would have some one-time costs for manufacturers that do not currently have the necessary equipment. ABMA stated that digital data acquisition has its benefits, however it may create heavy financial burden for small manufacturers and should therefore be optional. (ABMA, No. 38 at p. 5) Raypak believed that the proposed digital data acquisition was too burdensome, particularly for small business manufacturers who would need to purchase data acquisition equipment at costs substantially higher than DOE estimates in the March 2016 NOPR. (Raypak, No. 47 at p. 4) However, commenters did not present specific cost estimates for necessary equipment. DOE nevertheless reexamined its estimates for digital data acquisition and added instrumentation that may also be necessary to meet the requirements and the revised cost estimates are found in Table IV.1. The data acquisition system could be used by the manufacturer or laboratory to test all commercial packaged boiler models going forward.

TABLE IV.1—ESTIMATED ONE-TIME COSTS ASSOCIATED WITH DIGITAL DATA ACQUISITION

| Description | Cost ($) |
|---|---|
| Laptop | 1,500 |
| Data Acquisition Module | 2,000 |
| Data Acquisition Software | 3,000 |
| Instrumentation (Resistance Temperature Detectors, Thermocouples) | 1,000 |
| Initial Purchase, Installation and Setup (40 hours laboratory technician time × $41/hour) | 1,640 |
| Total | 9,140 |

DOE does not believe that manufacturers are required to re-test and re-certify existing basic models that are already certified as complying with DOE's energy conservation standards as a result of this test procedure final rule. As part of its energy conservation standards rulemaking for commercial packaged boilers, DOE found that there are 595 individual models attributed to 8 small manufacturers in the CCD. While this results in an average of 74 individual models per small manufacturer, DOE estimates that small manufacturers on average certify 10 basic models (approximately 7 individual models per basic model). Based on discussions with third-party test laboratories, DOE estimates that a laboratory test using a third-party laboratory would cost a manufacturer approximately $5,000. If a small manufacturer were to test 7 basic

[17] The price of natural gas is the 5-year average (May 2009 to May 2014) obtained from the ''U.S. Price of Natural Gas Sold to Commercial Consumers'' from U.S. Energy Information Administration (EIA) (Available at: *http://www.eia.gov/dnav/ng/hist/n3020us3m.htm).*

models with a third-party laboratory, DOE estimates that this would cost $35,000 which represents approximately 0.1-percent of revenue. (Note: DOE believes this is a conservative estimate, as most manufacturers would use their own laboratories for testing at a lower cost.)

For small business manufacturers that use their own facilities and conduct tests in-house, as shown in Table IV.1, DOE estimates the one-time costs associated with data acquisition to be $9,140. DOE continues to believe these costs are modest in comparison to small manufacturer revenues and to the overall cost of product development and certification. For water tests, the additional burden due to the inlet piping set-up and recirculating loop total two additional hours of mechanical engineering technician labor or $82. For steam tests, DOE estimated that two additional hours of mechanical engineering technician labor and natural gas use would cost approximately $253. DOE believes that these additional costs for each test attributable to the inlet piping set-up, recirculating loop set-up, and steam pressure adjustment to be modest in comparison to the overall cost of testing.

Further, DOE notes that manufacturers may use the AEDM process for certifying compliance in order to reduce burden. Manufacturers may develop an AEDM based on test data for smaller units in a basic model group and apply the AEDM for larger sizes of commercial packaged boilers. Additionally, the field test option adopted in this final rule provides a test method by which a manufacturer of large equipment (*i.e.* greater than 5,000,000 Btu/h rated input) can test and certify such commercial packaged boilers in the field if they do not have facilities capable of meeting the requirements of the standard laboratory test method.

Additional compliance flexibilities may be available for small manufacturers through other means. Section 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, provides authority for the Secretary to adjust a rule issued under EPCA in order to prevent ''special hardship, inequity, or unfair distribution of burdens'' that may be imposed on that manufacturer as a result of such rule. Manufacturers should refer to 10 CFR part 1003 for additional details.

For the reasons stated previously, DOE concludes that this final rule will not have a significant economic impact on a substantial number of small entities, and as such has not prepared a regulatory flexibility analysis for this rulemaking. DOE has provided its certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

### *C. Review Under the Paperwork Reduction Act of 1995*

Manufacturers of commercial packaged boilers must certify to DOE that their equipment complies with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their equipment according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including commercial packaged boilers. (See generally 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per manufacturer, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

### *D. Review Under the National Environmental Policy Act of 1969*

In this final rule, DOE amends its test procedure for commercial packaged boilers. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without affecting the amount, quality or distribution of energy usage, and, therefore, will not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. 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. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

### *F. Review Under Executive Order 12988*

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct

while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards 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 actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure 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 a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the 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 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 rule that may affect family well-being. This final rule will 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.

*I. Review Under Executive Order 12630*

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

*J. Review Under Treasury and General Government Appropriations Act, 2001*

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

*K. 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 OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

*L. Review Under Section 32 of the Federal Energy Administration Act of 1974*

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The modifications to the test procedure for commercial packaged boilers adopted in this final rule incorporate testing methods contained in certain sections of the commercial standard ANSI/AHRI Standard 1500–2015. DOE has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review). DOE has consulted with both the Attorney General and the Chairwoman of the FTC about the impact on competition of using the methods contained in this standard and has received no comments objecting to their use.

*M. Congressional Notification*

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*N. Description of Materials Incorporated by Reference*

In this final rule, DOE incorporates by reference the following:

Part 429—ANSI/AHRI Standard 1500–2015, (''ANSI/AHRI Standard 1500–2015''), ''2015 Standard for Performance Rating of Commercial Space Heating Boilers,'' ANSI approved November 28, 2014: Figure C9, Suggested Piping Arrangement for Hot Water Boilers.

Part 431—ANSI/AHRI Standard 1500–2015, (''ANSI/AHRI Standard 1500–2015''), ''2015 Standard for Performance Rating of Commercial Space Heating Boilers,'' ANSI approved November 28, 2014: Section 3, ''Definitions,'' Section 5, ''Rating Requirements,'' Appendix C, ''Methods of Testing for Rating Commercial Space Heating Boilers—Normative,'' Appendix D, ''Properties of Saturated Steam—Normative,'' and Appendix E, ''Correction Factors for Heating Values of Fuel Gases—Normative.''

ANSI/AHRI Standard 1500–2015 is an industry-accepted test procedure that provides methods, requirements, and calculations for determining the thermal and/or combustion efficiency of a commercial space heating boiler. ANSI/AHRI Standard 1500–2015 is available at: *http://www.ahrinet.org/App_Content/ahri/files/standards%20pdfs/ANSI%20standards%20pdfs/ANSI.AHRI_Standard_1500-2015.pdf.*

## V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

## List of Subjects

*10 CFR Part 429*

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Incorporation by reference, Reporting and recordkeeping requirements.

*10 CFR Part 431*

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, Reporting and recordkeeping requirements, Test procedures.

Issued in Washington, DC, on November 28, 2016.

**Kathleen B. Hogan,**

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

For the reasons stated in the preamble, DOE amends parts 429 and 431 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

## PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Section 429.4 is amended by adding paragraph (c)(2) to read as follows:

### § 429.4 Materials incorporated by reference.

* * * * *

(c) * * *

(2) AHRI Standard 1500–2015, (''ANSI/AHRI Standard 1500–2015''), ''2015 Standard for Performance Rating of Commercial Space Heating Boilers,'' ANSI approved November 28, 2014: Figure C9, Suggested Piping Arrangement for Hot Water Boilers; IBR approved for § 429.60.

* * * * *

■ 3. Section 429.11 is amended by revising paragraph (b) to read as follows:

### § 429.11 General sampling requirements for selecting units to be tested.

* * * * *

(b) The minimum number of units tested shall be no less than two, except where:

(1) A different minimum limit is specified in §§ 429.14 through 429.65 of this subpart; or

(2) Only one unit of the basic model is produced, in which case, that unit must be tested and the test results must demonstrate that the basic model performs at or better than the applicable standard(s). If one or more units of the basic model are manufactured subsequently, compliance with the default sampling and representations provisions is required.

■ 4. Section 429.60 is amended by:

■ a. Revising paragraphs (a) introductory text and (a)(1)(i);

■ b. Adding paragraphs (a)(3) and (4);

■ c. Revising paragraph (b)(2); and

■ d. Adding paragraphs (b)(3)(iii) and (b)(5).

The revisions and additions read as follows:

### § 429.60 Commercial packaged boilers.

(a) *Determination of represented value.* Manufacturers must determine the represented value, which includes the certified rating, for each basic model of commercial packaged boilers either by testing in accordance with § 431.86 of this chapter, in conjunction with the applicable sampling provisions, or by applying an AEDM.

(1) * * *

(i) If the represented value is determined through testing, the general requirements of § 429.11 are applicable, except that, if the represented value is determined through testing pursuant to § 431.86(c) of this chapter, the number of units selected for testing may be one; and

* * * * *

(3) The rated input for a basic model reported in accordance with paragraph (b)(2) of this section must be the maximum rated input listed on the nameplate and in manufacturer literature for the commercial packaged boiler basic model. In the case where the nameplate and the manufacturer literature are not identical, DOE will use the nameplate on the unit for determining the rated input.

(4) For a model of commercial packaged boiler capable of supplying either steam or hot water, representative values for steam mode must be based on efficiency in steam mode and representative values for hot water mode must be based on either the efficiency in hot water mode or steam mode in accordance with the test procedure in § 431.86 of this chapter and the provisions of this section.

(b) * * *

(2) Pursuant to § 429.12(b)(13), a certification report must include the following public, equipment-specific information:

(i) If oil-fired, the manufacturer (including brand, if applicable) and model number of the burner;

(ii) The rated input in British thermal units per hour (Btu/h);

(iii) The combustion efficiency in percent (%) to the nearest tenth of one percent or thermal efficiency in percent (%) to the nearest one tenth of one percent, as specified in § 431.87 of this chapter; and

(iv) For a basic model of commercial packaged boiler that cannot be tested using the standard inlet temperatures required in appendix A to subpart E of part 431, the average inlet water temperature measured at Point B in Figure C9 of ANSI/AHRI Standard 1500–2015 (incorporated by reference, see § 429.4) at which the model was tested.

(3) * * *

(iii) For basic models of commercial packaged boilers that have a rated input greater than 5,000,000 Btu/h, a declaration about whether the certified efficiency rating is based on testing conducted pursuant to § 431.86(c) of this chapter.

* * * * *

(5) Any field tested pursuant to § 431.86(c) of this chapter basic model of a commercial packaged boiler that has not been previously certified through testing or an AEDM must be certified within 15 days of commissioning.

* * * * *

■ 5. Section 429.70 is amended by adding paragraph (c)(2)(iii)(D) to read as follows:

**§ 429.70 Alternative methods for determining energy efficiency and energy use.**

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(D) An AEDM that is validated based on test results obtained from one or more field tests (pursuant to § 431.86(c)) can only be used to certify the performance of basic models of commercial packaged boilers with a certified rated input greater than 5,000,000 Btu/h.

* * * * *

■ 6. Section 429.110 is amended by revising paragraph (a)(3) and adding paragraph (c)(1)(iii) to read as follows:

**§ 429.110 Enforcement testing.**

(a) * * *

(3) Testing will be conducted at a laboratory accredited to the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC), ''General requirements for the competence of testing and calibration laboratories,'' ISO/IEC 17025:2005(E) (incorporated by reference; see § 429.4). If testing cannot be completed at an independent laboratory, DOE, at its discretion, may allow enforcement testing at a manufacturer's laboratory, so long as the lab is accredited to ISO/IEC 17025:2005(E) and DOE representatives witness the testing. In addition, for commercial packaged boilers with rated input greater than 5,000,000 Btu/h, DOE, at its discretion, may allow enforcement testing of a commissioned commercial packaged boiler in the location in which it was commissioned for use, pursuant to the test provisions at § 431.86(c) of this chapter, for which accreditation to ISO/IEC 17025:2005(E) would not be required.

* * * * *

(c) * * *

(1) * * *

(iii) Previously commissioned commercial packaged boilers with a rated input greater than 5,000,000 Btu/h. DOE may test a sample of at least one unit in the location in which it was commissioned for use.

* * * * *

■ 7. Section 429.134 is amended by adding paragraph (m) to read as follows:

**§ 429.134 Product-specific enforcement provisions.**

* * * * *

(m) *Commercial packaged boilers*—(1) *Verification of fuel input rate.* The fuel input rate of each tested unit will be measured pursuant to the test requirements of § 431.86 of this chapter. The results of the measurement(s) will be compared to the value of rated input certified by the manufacturer. The certified rated input will be considered valid only if the measurement(s) (either the measured fuel input rate for a single unit sample or the average of the measured fuel input rates for a multiple unit sample) is within two percent of the certified rated input.

(i) If the measured fuel input rate is within two-percent of the certified rated input, the certified rated input will serve as the basis for determination of the appropriate equipment class(es) and the mean measured fuel input rate will be used as the basis for calculation of combustion and/or thermal efficiency for the basic model.

(ii) If the measured fuel input rate for a gas-fired commercial packaged boiler is not within two-percent of the certified rated input, DOE will first attempt to increase or decrease the gas manifold pressure within the range specified in manufacturer's installation and operation manual shipped with the commercial packaged boiler being tested (or, if not provided in the manual, in supplemental instructions provided by the manufacturer pursuant to § 429.60(b)(4) of this chapter) to achieve the certified rated input (within two-percent). If the fuel input rate is still not within two-percent of the certified rated input, DOE will attempt to increase or decrease the gas inlet pressure within the range specified in manufacturer's installation and operation manual shipped with the commercial packaged boiler being tested (or, if not provided in the manual, in supplemental instructions provided by the manufacturer pursuant to § 429.60(b)(4)) to achieve the certified rated input (within two-percent). If the fuel input rate is still not within two-percent of the certified rated input, DOE will attempt to modify the gas inlet orifice if the unit is equipped with one. If the fuel input rate still is not within two percent of the certified rated input, the mean measured fuel input rate (either for a single unit sample or the average of the measured fuel input rates for a multiple unit sample) will serve as the basis for determination of the appropriate equipment class(es) and calculation of combustion and/or thermal efficiency for the basic model.

(iii) If the measured fuel input rate for an oil-fired commercial packaged boiler is not within two-percent of the certified rated input, the mean measured fuel input rate (either for a single unit sample or the average of the measured fuel input rates for a multiple unit sample) will serve as the basis for determination of the appropriate equipment class(es) and calculation of combustion and/or thermal efficiency for the basic model.

(2) *Models capable of producing both hot water and steam.* For a model of commercial packaged boiler that is capable of producing both hot water and steam, DOE may measure the thermal or combustion efficiency as applicable (see § 431.87 of this chapter) for steam and/or hot water modes. DOE will evaluate compliance based on the measured thermal or combustion efficiency in steam and hot water modes, independently.

## PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 8. The authority citation for part 431 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 9. Section 431.82 is amended by:

■ a. Revising the definitions for ''Combustion efficiency,'' and ''Commercial packaged boiler;''

■ b. Adding in alphabetical order definitions for ''Field-constructed'' and ''Fuel input rate;''

■ c. Revising the definition for ''Packaged boiler;''

■ d. Removing the definitions for ''Packaged high pressure boiler'' and ''Packaged low pressure boiler;'' and

■ e. Adding in alphabetical order a definition for ''Rated input.''

The revisions and additions read as follows:

**§ 431.82 Definitions concerning commercial packaged boilers.**

* * * * *

*Combustion efficiency* for a commercial packaged boiler is a measurement of how much of the fuel input energy is converted to useful heat in combustion and is calculated as 100-percent minus percent losses due to dry flue gas, incomplete combustion, and moisture formed by combustion of hydrogen, as determined with the test

procedures prescribed under § 431.86 of this chapter.

*Commercial packaged boiler* means a packaged boiler that meets all of the following criteria:

(1) Has rated input of 300,000 Btu/h or greater;

(2) Is, to any significant extent, distributed in commerce for space conditioning and/or service water heating in buildings but does not meet the definition of ''hot water supply boiler'' in this part;

(3) Does not meet the definition of ''field-constructed'' in this section; and

(4) Is designed to:

(i) Operate at a steam pressure at or below 15 psig;

(ii) Operate at or below a water pressure of 160 psig and water temperature of 250 °F; or

(iii) Operate at the conditions specified in both paragraphs (4)(i) and (ii) of this definition.

* * * * *

*Field-constructed* means custom-designed equipment that requires welding of structural components in the field during installation. For the purposes of this definition, welding does not include attachment using mechanical fasteners or brazing; any jackets, shrouds, venting, burner, or burner mounting hardware are not structural components.

* * * * *

*Fuel input rate* for a commercial packaged boiler means the measured rate at which the commercial packaged boiler uses energy and is determined using test procedures prescribed under § 431.86 of this chapter.

* * * * *

*Packaged boiler* means a boiler that is shipped complete with heating equipment, mechanical draft equipment, and automatic controls and is usually shipped in one or more sections. If the boiler is shipped in more than one section, the sections may be produced by more than one manufacturer, and may be originated or shipped at different times and from more than one location.

* * * * *

*Rated input* means the maximum rate at which the commercial packaged boiler has been rated to use energy as indicated by the nameplate and in the manual shipped with the commercial packaged boiler.

* * * * *

■ 10. Section 431.85 is amended by revising paragraph (b) to read as follows:

**§ 431.85 Materials incorporated by reference.**

* * * * *

(b) *AHRI.* Air-Conditioning, Heating, and Refrigeration Institute, 2111 Wilson Blvd., Suite 500, Arlington, VA 22201, (703) 524–8800, or go to: *http://www.ahrinet.org*.

(1) AHRI Standard 1500–2015, (''ANSI/AHRI Standard 1500–2015''), ''2015 Standard for Performance Rating of Commercial Space Heating Boilers,'' ANSI approved November 28, 2014, IBR approved for appendix A to subpart E as follows:

(i) Section 3—Definitions (excluding introductory text to section 3, introductory text to 3.2, 3.2.4, 3.2.7, 3.6, 3.12, 3.13, 3.20, 3.23, 3.24, 3.26, 3.27, and 3.31);

(ii) Section 5—Rating Requirements, 5.3 Standard Rating Conditions: (excluding introductory text to section 5.3, 5.3.5, 5.3.8, and 5.3.9);

(iii) Appendix C—Methods of Testing for Rating Commercial Space Heating Boilers—Normative, excluding C2.1, C2.7.2.2.2, C3.1.3, C3.5–C3.7, C4.1.1.1.2, C4.1.1.2.3, C4.1.2.1.5, C4.1.2.2.2, C4.1.2.2.3, C4.2, C5, C7.1, C7.2.12, C7.2.20;

(iv) Appendix D. Properties of Saturated Steam—Normative.

(v) Appendix E. Correction Factors for Heating Values of Fuel Gases—Normative.

(2) [Reserved].

■ 11. Section 431.86 is revised to read as follows:

**§ 431.86 Uniform test method for the measurement of energy efficiency of commercial packaged boilers.**

(a) *Scope.* This section provides test procedures, pursuant to the Energy Policy and Conservation Act (EPCA), as amended, which must be followed for measuring the combustion efficiency and/or thermal efficiency of a gas- or oil-fired commercial packaged boiler.

(b) *Testing and Calculations.* Determine the thermal efficiency or combustion efficiency of commercial packaged boilers by conducting the appropriate test procedure(s) indicated in Table 1 of this section.

TABLE 1—TEST REQUIREMENTS FOR COMMERCIAL PACKAGED BOILER EQUIPMENT CLASSES

| Equipment category | Subcategory | Certified rated input Btu/h | Standards efficiency metric (§ 431.87) | Test procedure (corresponding to standards efficiency metric required by § 431.87) |
|---|---|---|---|---|
| Hot Water | Gas-fired | ≥300,000 and ≤2,500,000 | Thermal Efficiency | Appendix A, Section 2. |
| Hot Water | Gas-fired | >2,500,000 | Combustion Efficiency | Appendix A, Section 3. |
| Hot Water | Oil-fired | ≥300,000 and ≤2,500,000 | Thermal Efficiency | Appendix A, Section 2. |
| Hot Water | Oil-fired | >2,500,000 | Combustion Efficiency | Appendix A, Section 3. |
| Steam | Gas-fired (all*) | ≥300,000 and ≤2,500,000 | Thermal Efficiency | Appendix A, Section 2. |
| Steam | Gas-fired (all*) | >2,500,000 and ≤5,000,000 | Thermal Efficiency | Appendix A, Section 2. |
| | | >5,000,000 | Thermal Efficiency | Appendix A, Section 2. OR Appendix A, Section 3 with Section 2.4.3.2. |
| Steam | Oil-fired | ≥300,000 and ≤2,500,000 | Thermal Efficiency | Appendix A, Section 2. |
| Steam | Oil-fired | >2,500,000 and ≤5,000,000 | Thermal Efficiency | Appendix A, Section 2. |
| | | >5,000,000 | Thermal Efficiency | Appendix A, Section 2. OR Appendix A, Section 3. with Section 2.4.3.2. |

* Equipment classes for commercial packaged boilers as of July 22, 2009 (74 FR 36355) distinguish between gas-fired natural draft and all other gas-fired (except natural draft).

(c) *Field Tests.* The field test provisions of appendix A may be used only to test a unit of commercial packaged boiler with rated input greater than 5,000,000 Btu/h.

■ 12. Section 431.87 is revised to read as follows:

**§ 431.87 Energy conservation standards and their effective dates.**

(a) Each commercial packaged boiler listed in Table 1 of this section and manufactured on or after the effective date listed must meet the indicated energy conservation standard.

TABLE 1—COMMERCIAL PACKAGED BOILER ENERGY CONSERVATION STANDARDS

| Equipment category | Subcategory | Certified rated input | Efficiency level—effective date: March 2, 2012* |
|---|---|---|---|
| Hot Water Commercial Packaged Boilers | Gas-fired | ≥300,000 Btu/h and ≤2,500,000 Btu/h | 80.0% $E_T$. |
| Hot Water Commercial Packaged Boilers | Gas-fired | >2,500,000 Btu/h | 82.0% $E_C$. |
| Hot Water Commercial Packaged Boilers | Oil-fired | ≥300,000 Btu/h and ≤2,500,000 Btu/h | 82.0% $E_T$. |
| Hot Water Commercial Packaged Boilers | Oil-fired | >2,500,000 Btu/h | 84.0% $E_C$. |
| Steam Commercial Packaged Boilers | Gas-fired—all, except natural draft | ≥300,000 Btu/h and ≤2,500,000 Btu/h | 79.0% $E_T$. |
| Steam Commercial Packaged Boilers | Gas-fired—all, except natural draft | >2,500,000 Btu/h | 79.0% $E_T$. |
| Steam Commercial Packaged Boilers | Gas-fired—natural draft | ≥300,000 Btu/h and ≤2,500,000 Btu/h | 77.0% $E_T$. |
| Steam Commercial Packaged Boilers | Gas-fired—natural draft | >2,500,000 Btu/h | 77.0% $E_T$. |
| Steam Commercial Packaged Boilers | Oil-fired | ≥300,000 Btu/h and ≤2,500,000 Btu/h | 81.0% $E_T$. |
| Steam Commercial Packaged Boilers | Oil-fired | >2,500,000 Btu/h | 81.0% $E_T$. |

* Where $E_C$ is combustion efficiency and $E_T$ is thermal efficiency.

(b) Each commercial packaged boiler listed in Table 2 of this section and manufactured on or after the effective date listed in Table 2 must meet the indicated energy conservation standard.

TABLE 2—COMMERCIAL PACKAGED BOILER ENERGY CONSERVATION STANDARDS

| Equipment category | Subcategory | Certified rated input | Efficiency level—Effective Date: March 2, 2022* |
|---|---|---|---|
| Steam Commercial Packaged Boilers | Gas-fired—natural draft | ≥300,000 Btu/h and ≤2,500,000 Btu/h | 79.0% $E_T$. |
| Steam Commercial Packaged Boilers | Gas-fired—natural draft | >2,500,000 Btu/h | 79.0% $E_T$. |

* Where $E_T$ is thermal efficiency.

■ 13. Add appendix A to subpart E of part 431 to read as follows:

## Appendix A to Subpart E of Part 431—Uniform Test Method for the Measurement of Thermal Efficiency and Combustion Efficiency of Commercial Packaged Boilers

**Note:** Prior to December 4, 2017, manufacturers must make any representations with respect to the energy use or efficiency of commercial packaged boilers in accordance with the results of testing pursuant to this Appendix or the test procedures as they appeared in 10 CFR 431.86 revised as of January 1, 2016. On and after December 4, 2017, manufacturers must make any representations with respect to energy use or efficiency in accordance with the results of testing pursuant to this appendix.

1. *Definitions.*

For purposes of this appendix, the Department of Energy incorporates by reference the definitions established in section 3 of the American National Standards Institute (ANSI) and Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Standard 1500, ''2015 Standard for Performance Rating of Commercial Space Heating Boilers,'' beginning with 3.1 and ending with 3.35 (incorporated by reference, see § 431.85; hereafter ''ANSI/AHRI Standard 1500–2015''), excluding the introductory text to section 3, the introductory text to section 3.2, ''Boiler''; 3.2.4, ''Heating Boiler''; 3.2.7, ''Packaged Boiler''; 3.6, ''Combustion Efficiency''; 3.12, ''Efficiency, Combustion''; 3.13, ''Efficiency, Thermal''; 3.20, ''Gross Output''; 3.23, ''Input Rating''; 3.24, ''Net Rating''; 3.26, ''Published Rating''; 3.26.1, ''Standard Rating''; 3.27, ''Rating Conditions''; 3.27.1, ''Standard Rating Conditions''; and 3.31, ''Thermal Efficiency.'' In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over ANSI/AHRI Standard 1500–2015.

1.1. In all incorporated sections of ANSI/AHRI Standard 1500–2015, references to the manufacturer's ''specifications,'' ''recommendations,'' ''directions,'' or ''requests'' mean the manufacturer's instructions in the installation and operation manual shipped with the commercial packaged boiler being tested or in supplemental instructions provided by the manufacturer pursuant to § 429.60(b)(4) of this chapter. For parameters or considerations not specified in this appendix, refer to the manual shipped with the commercial packaged boiler. Should the manual shipped with the commercial packaged boiler not provide the necessary information, refer to the supplemental instructions for the basic model pursuant to § 429.60(b)(4) of this chapter. The supplemental instructions provided pursuant to § 429.60(b)(4) of this chapter do not replace or alter any requirements in this appendix nor do they override the manual shipped with the commercial packaged boiler. In cases where these supplemental instructions conflict with any instructions or provisions provided in the manual shipped with the commercial packaged boiler, use the manual shipped with the commercial packaged boiler.

1.2. Unless otherwise noted, in all incorporated sections of ANSI/AHRI Standard 1500–2015, the term ''boiler'' means a commercial packaged boiler as defined in § 431.82.

1.3. Unless otherwise noted, in all incorporated sections of ANSI/AHRI Standard 1500–2015, the term ''input rating'' means ''rated input'' as defined in § 431.82.

2. *Thermal Efficiency Test.*

*2.1. Test Setup.*

2.1.1. *Instrumentation.* Use instrumentation meeting the minimum requirements found in Table C1 of Appendix C of ANSI/AHRI Standard 1500–2015 (incorporated by reference, see § 431.85).

2.1.2. *Data collection and sampling.* Record all test data in accordance with Table 2.1 and Table 2.2. Do not use Section C5 and

Table C4 of Appendix C of ANSI/AHRI Standard 1500–2015.

TABLE 2.1—DATA TO BE RECORDED BEFORE TESTING

| Item recorded | Additional instruction |
|---|---|
| Date of Test | None. |
| Manufacturer | None. |
| Commercial Packaged Boiler Model Number. | None. |
| Burner Model Number & Manufacturer. | None. |
| Nozzle description and oil pressure. | None. |
| Oil Analysis—H, C, API Gravity, lb/gal and Btu/lb. | None. |
| Gas Manifold Pressure | Record at start and end of test. |
| Gas line pressure at meter | Measurement may be made manually. |
| Gas temperature | Measurement may be made manually. |
| Barometric Pressure (Steam and Natural Gas Only). | Measurement may be made manually. |
| Gas Heating Value, Btu/ft$^3$* | Record at start and end of test. |

*Multiplied by correction factors, as applicable, in accordance with Appendix E of ANSI/AHRI Standard 1500–2015.

**Table 2.2. Data to be Recorded During Testing**

| Item Recorded | | Digital Acquisition Required? | Required Data Recording | | For Use in Calculations (Section 2.4) As Applicable | |
|---|---|---|---|---|---|---|
| | | | Every 1 Minute | Every 15 Minutes | Average During Test Period | Total During Test Period |
| Time, minutes/seconds | | Yes | X | | | |
| Flue Gas Temperature, °F | | Yes | X | | X | |
| Pressure in Firebox, in $H_2O$ (if required per Section C3.4 of ANSI/AHRI Standard 1500-2015) | | No | | X | X | |
| Flue Gas Smoke Spot Reading (oil) | | No | | X | X | |
| Room Air Temperature | | Yes | X | | X | |
| Fuel Weight or Volume, lb (oil) or $ft^3$ (gas) | | Yes | | X | | X |
| Test Air Temperature, °F | | Yes | X | | X | |
| Draft in Vent, in $H_2O$ (oil and non-atmospheric gas) | | No | | X | X | |
| Flue Gas $CO_2$ or $O_2$, % | | No | | X | X | |
| Flue Gas CO, ppm | | No | | At Least Start and End | X | |
| Relative Humidity, % | | No | | X | X | |
| STEAM | Separator water weight, lb | No | | At Least Start and End | | X |
| | Steam Pressure, in Hg | No | | X | X | |
| | Steam Temperature, °F (if used) | Yes | X | | X | |
| | Condensate collected, or water fed, lb | No | | X | | X |
| WATER | Outlet Water Temperature, °F | Yes | X | | X | |
| | Water fed, lb | No | | X | | X |
| | Inlet Water Temperature at Points A and B of Figure 9 of ANSI/AHRI Standard 1500-2015 as applicable, °F | Yes | X | | X | |

2.1.3. *Instrument Calibration.* Instruments must be calibrated at least once per year and a calibration record, containing at least the date of calibration and the method of calibration, must be kept as part of the data

underlying each basic model certification, pursuant to § 429.71 of this chapter.

2.1.4. *Test Setup and Apparatus.* Set up the commercial packaged boiler for thermal efficiency testing according to the provisions of Section C2 (except section C2.1) of Appendix C of ANSI/AHRI Standard 1500–2015 (incorporated by reference, see § 431.85).

2.1.4.1. For tests of oil-fired commercial packaged boilers, determine the weight of fuel consumed using one of the methods specified in the following sections 2.1.4.1.1. or 2.1.4.1.2. of this appendix:

2.1.4.1.1. If using a scale, determine the weight of fuel consumed as the difference between the weight of the oil vessel before and after each measurement period, as specified in sections 2.1.4.1.3.1. or 2.1.4.1.3.2. of this appendix, determined using a scale meeting the accuracy requirements of Table C1 of Appendix C of ANSI/AHRI Standard 1500–2015.

2.1.4.1.2. If using a flow meter, first determine the volume of fuel consumed as the total volume over the applicable measurement period as specified in 2.1.4.1.3.1. or 2.1.4.1.3.2. of this appendix and as measured by a flow meter meeting the accuracy requirements of Table C1 of Appendix C of ANSI/AHRI Standard 1500–2015 upstream of the oil inlet port of the commercial packaged boiler. Then determine the weight of fuel consumed by multiplying the total volume of fuel over the applicable measurement period by the density of oil as determined pursuant to C3.2.1.1.3. of Appendix C of ANSI/AHRI Standard 1500–2015.

2.1.4.1.3. The applicable measurement period for the purposes of determining fuel input rate must be as specified in section 2.1.4.1.3.1. of this appendix for the ''Warm-Up Period'' or section 2.1.4.1.3.2. of this appendix for the ''Test Period.''

2.1.4.1.3.1. For the purposes of confirming steady-state operation during the ''Warm-Up Period,'' the measurement period must be 15 minutes and $t_T$ in Equation C2 in Section C7.2.3.1 of Appendix C of ANSI/AHRI Standard 1500–2015 must be 0.25 hours to determine fuel input rate.

2.1.4.1.3.2. For the purposes of determining thermal efficiency during the ''Test Period,'' the measurement period and $t_T$ are as specified in sections 2.3.4 and 2.3.5 of this appendix.

2.1.4.2 For tests of gas-fired commercial packaged boilers, install a volumetric gas meter meeting the accuracy requirements of Table C1 of Appendix C of ANSI/AHRI Standard 1500–2015 upstream of the gas inlet port of the commercial packaged boiler. Record the accumulated gas volume consumed for each applicable measurement period. Use Equation C7.2.3.2. of Appendix C of ANSI/AHRI Standard 1500–2015 to calculate fuel input rate.

2.1.4.2.1. The applicable measurement period for the purposes of determining fuel input rate must be as specified in section 2.1.4.2.1.1. of this appendix for the ''Warm-Up Period'' and 2.1.4.2.1.2. of this appendix for the ''Test Period.''

2.1.4.2.1.1. For the purposes of confirming steady-state operation during the ''Warm-Up Period,'' the measurement period must be 15 minutes and $t_T$ in Equation C2 in Section C7.2.3.1 of Appendix C of ANSI/AHRI Standard 1500–2015 must be 0.25 hours to determine fuel input rate.

2.1.4.2.1.2. For the purposes of determining thermal efficiency during the ''Test Period,'' the measurement period and $t_T$ are as specified in sections 2.3.4 and 2.3.5 of this appendix.

2.1.4.3 In addition to the provisions of Section C2.2.1.2 of ANSI/AHRI Standard 1500–2015, vent gases may alternatively be discharged vertically into a straight stack section without elbows. R–7 minimum insulation must extend 6 stack diameters above the flue collar, the thermocouple grid must be located at a vertical distance of 3 stack diameters above the flue collar, and the sampling tubes for flue gases must be installed within 1 stack diameter beyond the thermocouple grid. If dilution air is introduced into the flue gases before the plane of the thermocouple and flue gas sampling points, utilize an alternate plane of thermocouple grid and flue gas sampling point located downstream from the heat exchanger and upstream from the point of dilution air introduction.

2.1.5. *Additional Requirements for Outdoor Commercial Packaged Boilers.* If the manufacturer provides more than one outdoor venting arrangement, the outdoor commercial packaged boiler (as defined in Section 3.2.6 of ANSI/AHRI Standard 1500–2015; incorporated by reference, see § 431.85) must be tested with the shortest total venting arrangement as measured by adding the straight lengths of venting supplied with the equipment. If the manufacturer does not provide an outdoor venting arrangement, install the outdoor commercial packaged boiler venting consistent with the procedure specified in Section C2.2 of Appendix C of ANSI/AHRI Standard 1500–2015.

2.1.6. *Additional Requirements for Steam Tests.* In addition to the provisions of Section C2 of Appendix C of ANSI/AHRI Standard 1500–2015 (incorporated by reference, see § 431.85), the following requirements apply for steam tests.

2.1.6.1. Insulate all steam piping from the commercial packaged boiler to the steam separator, and extend insulation at least one foot (1 ft.) beyond the steam separator, using insulation meeting the requirements specified in Table 2.3 of this appendix.

**Table 2.3. Minimum Piping Insulation Thickness Requirements**

| Fluid Temperature Range °F | Insulation Conductivity | | Nominal Pipe Size inches | | | | |
|---|---|---|---|---|---|---|---|
| | Conductivity BTU×in/(h×ft²×°F) | Mean Rating Temperature °F | <1 | 1 to < 1-1/2 | 1-12 to < 4 | 4 to <8 | ≥ 8 |
| > 350°F | 0.32-0.34 | 250 | 4.5 | 5.0 | 5.0 | 5.0 | 5.0 |
| 251 °F-350 °F | 0.29-0.32 | 200 | 3.0 | 4.0 | 4.5 | 4.5 | 4.5 |
| 201 °F-250 °F | 0.27-0.30 | 150 | 2.5 | 2.5 | 2.5 | 3.0 | 3.0 |
| 141 °F-200 °F | 0.25-0.29 | 125 | 1.5 | 1.5 | 2.0 | 2.0 | 2.0 |
| 105 °F-140 °F | 0.22-0.28 | 100 | 1.0 | 1.0 | 1.5 | 1.5 | 1.5 |

2.1.6.2. A temperature sensing device must be installed in the insulated steam piping prior to the water separator if the commercial packaged boiler produces superheated steam.

2.1.6.3. Water entrained in the steam and water condensing within the steam piping must be collected and used to calculate the quality of steam during the ''Test Period.'' Steam condensate must be collected and measured using either a cumulative (totalizing) flow rate or by measuring the mass of the steam condensate. Instrumentation used to determine the amount of steam condensate must meet the requirements identified in Table C1 in Appendix C of ANSI/AHRI Standard 1500–2015.

2.1.7. *Additional Requirements for Water Tests.* In addition to the provisions of section C2 of Appendix C of ANSI/AHRI Standard 1500–2015 (incorporated by reference, see § 431.85), the following requirements apply for water tests.

2.1.7.1. Insulate all water piping between the commercial packaged boiler and the location of the temperature measuring equipment, including one foot (1 ft.) beyond the sensor, using insulation meeting the requirements specified in Table 2.3 of this appendix.

2.1.7.2. Install a temperature measuring device at Point B of Figure C9 of ANSI/AHRI

Standard 1500–2015 (incorporated by reference, see § 431.85). Water entering the commercial packaged boiler must first enter the run of a tee and exit from the top outlet of the tee. The remaining connection of the tee must be plugged. Measure the inlet water temperature at Point B in the run of a second tee located 12 ± 2 pipe diameters downstream from the first tee and no more than the greater of 12 inches or 6 pipe diameters from the inlet of the commercial packaged boiler. The temperature measuring device shall extend into the water flow at the point of exit from the side outlet of the second tee. All inlet piping between the temperature measuring device and the inlet of the commercial packaged boilers must be wrapped with R–7 insulation.

2.1.7.3. Do not use Section C2.7.2.2.2 or its subsections of ANSI/AHRI Standard 1500–2015 for water meter calibration.

2.1.8. *Flue Gas Sampling.* In section C2.5.2 of Appendix C of ANSI/AHRI Standard 1500–2015, replace the last sentence with the following: When taking flue gas samples from a rectangular plane, collect samples at ¼, ½, and ¾ the distance from one side of the rectangular plane in the longer dimension and along the centerline midway between the edges of the plane in the shorter dimension and use the average of the three samples. The tolerance in each dimension for each measurement location is ± 1 inch.

2.2. *Test Conditions.*

2.2.1. *General.* Use the test conditions from Section 5 and Section C3 of Appendix C of ANSI/AHRI Standard 1500–2015 (incorporated by reference, see § 431.85) for thermal efficiency testing but do not use the following sections:

(1) 5.3 Introductory text
(2) 5.3.5 (and subsections; see sections 2.2.3. and 2.2.4. of this appendix)
(3) 5.3.8 (see section 2.2.5. of this appendix)
(4) 5.3.9 (see section 2.2.6. of this appendix)
(5) C3.1.3 (and subsections)
(6) C3.5 (including Table C2; see section 2.2.7. of this appendix)
(7) C3.6 (see section 2.2.5. of this appendix)
(8) C3.7 (see section 2.2.6. of this appendix)

2.2.2. *Burners for Oil-Fired Commercial Packaged Boilers.* In addition to section C3.3 of Appendix C of ANSI/AHRI Standard 1500–2015, the following applies: For oil-fired commercial packaged boilers, test the unit with the particular make and model of burner as certified (or to be certified) by the manufacturer. If multiple burners are specified in the certification report for that basic model, then use any of the listed burners for testing.

2.2.3. *Water Temperatures.* Maintain the outlet temperature measured at Point C in Figure C9 of Appendix C of ANSI/AHRI Standard 1500–2015 at 180 °F ± 2 °F and maintain the inlet temperature measured at Point B at 80 °F ± 5 °F during the ''Warm-up Period'' and ''Test Period'' as indicated by 1-minute interval data pursuant to Table 2.2 of this appendix. Each reading must meet these temperature requirements. Use the inlet temperature and flow rate measured at Point B in Figure C9 of Appendix C of ANSI/AHRI Standard 1500–2015 for calculation of thermal efficiency.

2.2.4 *Exceptions to Water Temperature Requirements.* For commercial packaged boilers that require a higher flow rate than that resulting from the water temperature requirements of sections 2.2.3 of this appendix to prevent boiling, use a recirculating loop and maintain the inlet temperature at Point B of Figure C9 of Appendix C of ANSI/AHRI Standard 1500–2015 at 140 °F ± 5 °F during the ''Warm-up Period'' and ''Test Period'' as indicated by 1-minute interval data pursuant to Table 2.2 of this appendix. Each reading must meet these temperature requirements. Use the inlet temperature and flow rate measured at Point A in Figure C9 of Appendix C of ANSI/AHRI Standard 1500–2015 for calculation of thermal efficiency.

2.2.5 *Air Temperature.* For tests of non-condensing boilers, maintain ambient room temperature between 65 °F and 100 °F at all times during the ''Warm-up Period'' and ''Test Period'' (as described in Section C4 of Appendix C of ANSI/AHRI Standard 1500–2015) as indicated by 1-minute interval data pursuant to Table 2.2 of this appendix. For tests of condensing boilers, maintain ambient room temperature between 65 °F and 85 °F at all times during the ''Warm-up Period'' and ''Test Period'' (as described in Section C4 of Appendix C of ANSI/AHRI Standard 1500–2015) as indicated by 1-minute interval data pursuant to Table 2.2 of this appendix. The ambient room temperature may not differ by more than ± 5 °F from the average ambient room temperature during the entire ''Test Period'' at any reading. Measure the room ambient temperature within 6 feet of the front of the unit at mid height. The test air temperature, measured at the air inlet of the commercial packaged boiler, must be within ± 5 °F of the room ambient temperature when recorded at the 1-minute interval defined by Table 2.2 of this appendix.

2.2.6. *Ambient Humidity.* For condensing boilers, maintain ambient room relative humidity below 80-percent at all times during both the ''Warm-up Period'' and ''Test Period'' (as described in Section C4 of Appendix C of ANSI/AHRI Standard 1500–2015) pursuant to Table 2.2 of this appendix. Measure the ambient humidity in the same location as ambient air temperature in section 2.2.5 of this appendix.

2.2.7. *Flue Gas Temperature.* The flue gas temperature during the test must not vary from the flue gas temperature measured at the start of the Test Period (as defined in Section C4 of ANSI/AHRI Standard 1500–2015) when recorded at the interval defined in Table 2.2 of this appendix by more than the limits prescribed in Table 2.4 of this appendix.

TABLE 2.4—FLUE GAS TEMPERATURE VARIATION LIMITS DURING TEST PERIOD

| Fuel type | Non-condensing | Condensing |
|---|---|---|
| Gas | ± 2 percent | Greater of ± 3 percent and ± 5 °F |
| Light Oil | ± 2 percent. | |
| Heavy Oil | Greater of ± 3 percent and ± 5 °F. | |

2.3. *Test Method.*

2.3.1. *General.* Conduct the thermal efficiency test as prescribed in Section C4 ''Test Procedure'' of Appendix C of ANSI/AHRI Standard 1500–2015 (incorporated by reference, see § 431.85) excluding sections:

(1) C4.1.1.1.2 (see section 2.3.1.1 of this appendix)
(2) C4.1.1.2.3 (see 2.3.4 of this appendix)
(3) C4.1.2.1.5 (see section 2.3.2. of this appendix)
(4) C4.1.2.2.2
(5) C4.1.2.2.3 (see 2.3.5 of this appendix)
(6) C4.2
(7) C4.2.1
(8) C4.2.2

2.3.1.1. Adjust oil or non-atmospheric gas to produce the required firebox pressure and $CO_2$ or $O_2$ concentration in the flue gas, as described in Section 5.3.1 of ANSI/AHRI Standard 1500–2015. Conduct steam tests with steam pressure at the pressure specified in the manufacturer literature shipped with the commercial packaged boiler or in the manufacturer's supplemental testing instructions pursuant to § 429.60(b)(4) of this chapter, but not exceeding 15 psig. If no pressure is specified in the manufacturer literature shipped with the commercial packaged boiler or in the manufacturer's supplemental testing instructions (pursuant to § 429.60(b)(4) of this chapter), or if a range of operating pressures is specified, conduct testing at a steam pressure equal to atmospheric pressure. If necessary to maintain steam quality as required by Section 5.3.7 of ANSI/AHRI Standard 1500–2015, increase steam pressure in 1 psig increments by throttling with a valve beyond the separator until the test is completed and the steam quality requirements have been satisfied, but do not increase the steam pressure to greater than 15 psig.

2.3.2. *Water Test Steady-State.* Ensure that a steady-state is reached by confirming that three consecutive readings have been recorded at 15-minute intervals pursuant to Table 2.2 of this appendix that indicate that the measured fuel input rate is within ± 2-percent of the rated input. Water temperatures must meet the conditions specified in sections 2.2.3 and 2.2.4 of this appendix as applicable.

2.3.3. *Condensate Collection for Condensing Commercial Packaged Boilers.*

Collect condensate in a covered vessel so as to prevent evaporation.

2.3.4. *Steam Test Duration.* Replace Section C4.1.1.2.3 of ANSI/AHRI Standard 1500–2015 with the following: The test period is one hour in duration if the steam condensate is measured or two hours if feedwater is measured. The test period must end with a 15-minute reading (steam condensate or feedwater and separator weight reading) pursuant to Table 2.2 of this appendix. When feedwater is measured, the water line at the end of the test must be within 0.25 inches of the starting level.

2.3.5. *Water Test Duration.* Replace Section C4.1.2.2.3 of ANSI/AHRI Standard 1500–2015 with the following: The test period is one hour for condensing commercial packaged boilers and 30 minutes for non-condensing commercial packaged boilers, and ends with a 15-minute interval reading pursuant to Table 2.2 of this appendix.

2.4. *Calculations.*

2.4.1. *General.* To determine the thermal efficiency of commercial packaged boilers, use the variables in section C6 of Appendix C of ANSI/AHRI Standard 1500–2015 and calculation procedure for the thermal efficiency test specified in section C7.2 of Appendix C of ANSI/AHRI Standard 1500–2015, excluding sections C7.2.12 and C7.2.20.

2.4.2. *Use of Steam Properties Table.* If the average measured temperature of the steam is higher than the value in Table D1 in Appendix D of ANSI/AHRI Standard 1500–2015 that corresponds to the average measured steam pressure, then use Table 2.5 of this appendix to determine the latent heat of superheated steam in (Btu/lb). Use linear interpolation for determining the latent heat of steam in Btu/lb if the measured steam pressure is between two values listed in Table D1 in Appendix D of ANSI/AHRI Standard 1500–2015 or in Table 2.5 of this appendix.

**Table 2.5. Latent Heat (Btu/lb) of Superheated Steam.**

| Average Measured Steam Pressure psi | Temperature °F | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | 220 | 240 | 260 | 280 | 300 | 320 | 340 | 360 |
| 13 | 1155.1 | 1164.7 | 1174.3 | 1183.8 | 1193.2 | 1202.6 | 1212.0 | 1221.4 |
| 14 | 1154.6 | 1164.4 | 1174.0 | 1183.5 | 1193.0 | 1202.4 | 1211.8 | 1221.2 |
| 14.696 | 1154.4 | 1164.2 | 1173.8 | 1183.3 | 1192.8 | 1202.3 | 1211.7 | 1221.1 |
| 15 | 1154.3 | 1164.1 | 1173.7 | 1183.2 | 1192.8 | 1202.2 | 1211.7 | 1221.1 |
| 16 | 1153.8 | 1163.7 | 1173.4 | 1183.0 | 1192.5 | 1202.0 | 1211.5 | 1220.9 |
| 17 | 1153.4 | 1163.4 | 1173.1 | 1182.7 | 1192.3 | 1201.8 | 1211.3 | 1220.7 |
| 18 | | 1163.0 | 1172.8 | 1182.5 | 1192.1 | 1201.6 | 1211.1 | 1220.6 |
| 19 | | 1162.7 | 1172.5 | 1182.2 | 1191.9 | 1201.4 | 1210.9 | 1220.4 |
| 20 | | 1162.3 | 1172.2 | 1182.0 | 1191.6 | 1201.2 | 1210.8 | 1220.3 |
| 21 | | 1162.0 | 1171.9 | 1181.7 | 1191.4 | 1201.0 | 1210.6 | 1220.1 |
| 22 | | 1161.6 | 1171.6 | 1181.4 | 1191.2 | 1200.8 | 1210.4 | 1219.9 |
| 23 | | 1161.2 | 1171.3 | 1181.2 | 1190.9 | 1200.6 | 1210.2 | 1219.8 |
| 24 | | 1160.9 | 1171.0 | 1180.9 | 1190.7 | 1200.4 | 1210.0 | 1219.6 |
| 25 | | | 1170.7 | 1180.6 | 1190.5 | 1200.2 | 1209.8 | 1219.4 |
| 26 | | | 1170.4 | 1180.4 | 1190.2 | 1200.0 | 1209.7 | 1219.3 |
| 27 | | | 1170.1 | 1180.1 | 1190.0 | 1199.8 | 1209.5 | 1219.1 |
| 28 | | | 1169.7 | 1179.8 | 1189.8 | 1199.6 | 1209.3 | 1218.9 |
| 29 | | | 1169.4 | 1179.6 | 1189.5 | 1199.3 | 1209.1 | 1218.8 |
| 30 | | | 1169.1 | 1179.3 | 1189.3 | 1199.1 | 1208.9 | 1218.6 |
| 31 | | | 1168.8 | 1179.0 | 1189.0 | 1198.9 | 1208.7 | 1218.4 |
| **Absolute Pressure psi** | **Temperature °F** | | | | | | | |
| | **380** | **400** | **420** | **440** | **460** | **480** | **500** | **600** |
| 13 | 1230.8 | 1240.2 | 1249.5 | 1258.9 | 1268.4 | 1277.8 | 1287.3 | 1334.9 |
| 14 | 1230.6 | 1240.0 | 1249.4 | 1258.8 | 1268.3 | 1277.7 | 1287.2 | 1334.8 |
| 14.696 | 1230.5 | 1239.9 | 1249.3 | 1258.8 | 1268.2 | 1277.6 | 1287.1 | 1334.8 |
| 15 | 1230.5 | 1239.9 | 1249.3 | 1258.7 | 1268.2 | 1277.6 | 1287.1 | 1334.8 |
| 16 | 1230.3 | 1239.8 | 1249.2 | 1258.6 | 1268.0 | 1277.5 | 1287.0 | 1334.7 |
| 17 | 1230.2 | 1239.6 | 1249.1 | 1258.5 | 1267.9 | 1277.4 | 1286.9 | 1334.6 |
| 18 | 1230.0 | 1239.5 | 1248.9 | 1258.4 | 1267.8 | 1277.3 | 1286.8 | 1334.6 |
| 19 | 1229.9 | 1239.4 | 1248.8 | 1258.3 | 1267.7 | 1277.2 | 1286.7 | 1334.5 |
| 20 | 1229.7 | 1239.2 | 1248.7 | 1258.2 | 1267.6 | 1277.1 | 1286.6 | 1334.4 |
| 21 | 1229.6 | 1239.1 | 1248.6 | 1258.1 | 1267.5 | 1277.0 | 1286.5 | 1334.4 |
| 22 | 1229.5 | 1239.0 | 1248.4 | 1257.9 | 1267.4 | 1276.9 | 1286.4 | 1334.3 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 23 | 1229.3 | 1238.8 | 1248.3 | 1257.8 | 1267.3 | 1276.8 | 1286.7 | 1334.2 |
| 24 | 1229.2 | 1238.7 | 1248.2 | 1257.7 | 1267.2 | 1276.7 | 1286.3 | 1334.2 |
| 25 | 1229.0 | 1238.5 | 1248.1 | 1257.6 | 1267.1 | 1276.6 | 1286.2 | 1334.1 |
| 26 | 1228.9 | 1238.4 | 1248.0 | 1257.5 | 1267.0 | 1276.5 | 1286.1 | 1334.0 |
| 27 | 1228.7 | 1238.3 | 1247.8 | 1257.4 | 1266.9 | 1276.4 | 1286.0 | 1334.0 |
| 28 | 1228.6 | 1238.1 | 1247.7 | 1257.2 | 1266.8 | 1276.3 | 1285.9 | 1333.9 |
| 29 | 1228.4 | 1238.0 | 1247.6 | 1257.1 | 1266.7 | 1276.2 | 1285.8 | 1333.9 |
| 30 | 1228.3 | 1237.9 | 1247.5 | 1257.0 | 1266.6 | 1276.2 | 1285.7 | 1333.8 |
| 31 | 1228.1 | 1237.7 | 1247.3 | 1256.9 | 1266.5 | 1276.1 | 1285.6 | 1333.7 |

| **Absolute Pressure psi** | **Temperature °F** | | | | | | |
|---|---|---|---|---|---|---|---|
| | **700** | **800** | **900** | **1000** | **1200** | **1400** | **1600** |
| 13 | 1383.2 | 1432.4 | 1482.3 | 1533.2 | 1637.5 | 1745.5 | 1857.3 |
| 14 | 1383.2 | 1432.3 | 1482.3 | 1533.1 | 1637.5 | 1745.5 | 1857.3 |
| 14.696 | 1383.2 | 1432.3 | 1482.3 | 1533.1 | 1637.5 | 1745.5 | 1857.3 |
| 15 | 1383.1 | 1432.3 | 1482.3 | 1533.1 | 1637.5 | 1745.5 | 1857.3 |
| 16 | 1383.1 | 1432.3 | 1482.2 | 1533.1 | 1637.4 | 1745.5 | 1857.3 |
| 17 | 1383.0 | 1432.2 | 1482.2 | 1533.1 | 1637.4 | 1745.5 | 1857.3 |
| 18 | 1383.0 | 1432.2 | 1482.2 | 1533.0 | 1637.4 | 1745.5 | 1857.2 |
| 19 | 1382.9 | 1432.1 | 1482.1 | 1533.0 | 1637.4 | 1745.4 | 1857.2 |
| 20 | 1382.9 | 1432.1 | 1482.1 | 1533.0 | 1637.4 | 1745.4 | 1857.2 |
| 21 | 1382.8 | 1432.0 | 1482.1 | 1532.9 | 1637.3 | 1745.4 | 1857.2 |
| 22 | 1382.8 | 1432.0 | 1482.0 | 1532.9 | 1637.3 | 1745.4 | 1857.2 |
| 23 | 1382.7 | 1432.0 | 1482.0 | 1532.9 | 1637.3 | 1745.4 | 1857.2 |
| 24 | 1382.7 | 1431.9 | 1482.0 | 1532.9 | 1637.3 | 1745.4 | 1857.2 |
| 25 | 1382.6 | 1431.9 | 1481.9 | 1532.8 | 1637.3 | 1745.3 | 1857.2 |
| 26 | 1382.6 | 1431.8 | 1481.9 | 1532.8 | 1637.2 | 1745.3 | 1857.1 |
| 27 | 1382.5 | 1431.8 | 1481.9 | 1532.8 | 1637.2 | 1745.3 | 1857.1 |
| 28 | 1382.5 | 1431.8 | 1481.8 | 1532.8 | 1637.2 | 1745.3 | 1857.1 |
| 29 | 1382.4 | 1431.7 | 1481.8 | 1532.7 | 1637.2 | 1745.3 | 1857.1 |
| 30 | 1382.4 | 1431.7 | 1481.8 | 1532.7 | 1637.2 | 1745.3 | 1857.1 |
| 31 | 1382.3 | 1431.6 | 1481.7 | 1532.7 | 1637.1 | 1745.2 | 1857.1 |

2.4.3. *Alternative Thermal Efficiency Calculation for Large Steam Commercial Packaged Boilers.* To determine the thermal efficiency of commercial packaged boilers with a fuel input rate greater than 5,000,000 Btu/h according to the steam test pursuant to Section C4.1.1 of ANSI/AHRI Standard 1500–2015, either:

2.4.3.1. Calculate the thermal efficiency of commercial packaged boiler models in steam mode in accordance with the provisions of section 2.4.1 of this appendix, or

2.4.3.2. Measure and calculate combustion efficiency $Effy_{ss}$ in steam mode according to Section 3. *Combustion Efficiency Test* of this appendix and convert to thermal efficiency using the following equation:

$$Effy_T = Effy_{ss} - 2.0$$

where $Effy_T$ is the thermal efficiency and $EFFY_{ss}$ is the combustion efficiency as defined in C6 of ANSI/AHRI Standard 1500–2015. The combustion efficiency $Effy_{ss}$ is as calculated in Section C7.2.14 of ANSI/AHRI Standard 1500–2015.

2.4.4. *Rounding.* Round the final thermal efficiency value to nearest one tenth of one percent.

3. *Combustion Efficiency Test.*

3.1. *Test Setup.*

3.1.1. *Instrumentation.* Use instrumentation meeting the minimum requirements found in Table C1 of ANSI/AHRI Standard 1500–2015 (incorporated by reference, see § 431.85).

3.1.2. *Data collection and sampling.* Record all test data in accordance with Table 3.1 and Table 3.2 of this appendix. Do not use Section C5 and Table C4 of Appendix C in ANSI/AHRI Standard 1500–2015.

TABLE 3.1—DATA TO BE RECORDED BEFORE TESTING

| Item recorded | Additional instruction |
|---|---|
| Date of Test ..... | None. |
| Manufacturer ..... | None. |

TABLE 3.1—DATA TO BE RECORDED BEFORE TESTING—Continued

| Item recorded | Additional instruction |
|---|---|
| Commercial Packaged Boiler Model Number. | None. |
| Burner Model Number & Manufacturer. | None. |
| Nozzle description and oil pressure. | None. |
| Oil Analysis—H, C, API Gravity, lb/gal and Btu/lb. | None. |
| Gas Manifold Pressure. | Record at start and end of test. |
| Gas line pressure at meter. | Measurement may be made manually. |
| Gas temperature ..... | Measurement may be made manually. |
| Barometric Pressure (Steam and Natural Gas Only). | Measurement may be made manually. |
| Gas Heating Value, Btu/ft$^3$*. | Record at start and end of test. |

*Multiplied by correction factors, as applicable, in accordance with Appendix E of ANSI/AHRI Standard 1500–2015.

**Table 3.2. Data to be Recorded During Testing**

| Item Recorded | | Digital Acquisition Required? | Required Data Recording | | For Use in Calculations (Section 3.4), As Applicable | |
|---|---|---|---|---|---|---|
| | | | Every 1 Minute | Every 15 Minutes | Average During Test Period | Total During Test Period |
| Time, minutes/seconds | | Yes | X | | | |
| Flue Gas Temperature, °F | | Yes | X | | X | |
| Pressure in Firebox, in $H_2O$ (if required per Section C3.4 of ANSI/AHRI Standard 1500-2015) | | No | | X | X | |
| Flue Gas Smoke Spot Reading (oil) | | No | | X | X | |
| Room Air Temperature | | Yes | X | | X | |
| Fuel Weight or Volume, lb (oil) or $ft^3$ (gas) | | Yes | | X | | X |
| Test Air Temperature, °F | | Yes | X | | X | |
| Draft in Vent, in $H_2O$ (oil and non-atmospheric gas) | | No | | X | X | |
| Flue Gas $CO_2$ or $O_2$, % | | No | | X | X | |
| Flue Gas CO, ppm | | No | | At Least Start and End | X | |
| Relative Humidity, % | | No | | X | X | |
| STEAM | Separator water weight, lb | No | | At Least Start and End | | X |
| | Steam Pressure, in Hg | No | | X | X | |
| | Steam Temperature, °F (if used) | Yes | X | | X | |
| | Condensate collected, or water fed, lb | No | | X | | X |
| WATER | Outlet Water Temperature, °F | Yes | X | | X | |
| | Water fed, lb | No | | X | | X |
| | Inlet Water Temperature at Points A and B of Figure 9 of ANSI/AHRI Standard 1500-2015 as applicable, °F | Yes | X | | X | |

3.1.3. *Instrument Calibration.* Instruments must be calibrated at least once per year and a calibration record, containing at least the date of calibration and the method of calibration, must be kept as part of the data

underlying each basic model certification, pursuant to § 429.71 of this chapter.

3.1.4. *Test Setup and Apparatus.* Set up the commercial packaged boiler for combustion efficiency testing according to the provisions of Section C2 (except section C2.1) of Appendix C of ANSI/AHRI Standard 1500–2015.

3.1.4.1. For tests of oil-fired commercial packaged boilers, determine the weight of fuel consumed using one of the methods specified in sections 3.1.4.1.1. or 3.1.4.1.2. of this appendix:

3.1.4.1.1. If using a scale, determine the weight of fuel consumed as the difference between the weight of the oil vessel before and after each measurement period, as specified in sections 3.1.4.1.3.1. or 3.1.4.1.3.2. of this appendix, determined using a scale meeting the accuracy requirements of Table C1 of ANSI/AHRI Standard 1500–2015.

3.1.4.1.2. If using a flow meter, first determine the volume of fuel consumed as the total volume over the applicable measurement period, as specified in sections 3.1.4.1.3.1. or 3.1.4.1.3.2. of this appendix, and as measured by a flow meter meeting the accuracy requirements of Table C1 of ANSI/AHRI Standard 1500–2015 upstream of the oil inlet port of the commercial packaged boiler. Then determine the weight of fuel consumed by multiplying the total volume of fuel over the applicable measurement period by the density of oil, in pounds per gallon, as determined pursuant to Section C3.2.1.1.3. of ANSI/AHRI Standard 1500–2015.

3.1.4.1.3. The applicable measurement period for the purposes of determining fuel input rate must be as specified in section 3.1.4.1.3.1. of this appendix for the ''Warm-Up Period'' or 3.1.4.1.3.2. of this appendix for the ''Test Period.''

3.1.4.1.3.1. For the purposes of confirming steady-state operation during the ''Warm-Up Period,'' the measurement period must be 15 minutes and $t_T$ in Equation C2 in Section C7.2.3.1 of ANSI/AHRI Standard 1500–2015 must be 0.25 hours to determine fuel input rate.

3.1.4.1.3.2. For the purposes of determining combustion efficiency during the ''Test Period,'' the measurement period and $t_T$ are 0.5 hours pursuant to section 3.3.1.1. of this appendix.

3.1.4.2 For tests of gas-fired commercial packaged boilers, install a volumetric gas meter meeting the accuracy requirements of Table C1 of ANSI/AHRI Standard 1500–2015 upstream of the gas inlet port of the commercial packaged boiler. Record the accumulated gas volume consumed for each applicable measurement period. Use Equation C7.2.3.2. of ANSI/AHRI Standard 1500–2015 to calculate fuel input rate.

3.1.4.2.1. The applicable measurement period for the purposes of determining fuel input rate must be as specified in section 3.1.4.2.1.1. of this appendix for the ''Warm-Up Period'' and 3.1.4.2.1.2. of this appendix for the ''Test Period.''

3.1.4.2.1.1. For the purposes of confirming steady-state operation during the ''Warm-Up Period,'' the measurement period must be 15 minutes and $t_T$ in Equation C2 in Section C7.2.3.1 of ANSI/AHRI Standard 1500–2015 must be 0.25 hour to determine fuel input rate.

3.1.4.2.1.2. For the purposes of determining combustion efficiency during the ''Test Period,'' the measurement period and $t_T$ are 0.5 hour pursuant to section 3.3.1.1. of this appendix.

3.1.4.3. In addition to the provisions of Section C2.2.1.2 of ANSI/AHRI Standard 1500–2015, vent gases may alternatively be discharged vertically into a straight stack section without elbows. R–7 minimum insulation must extend 6 stack diameters above the flue collar, the thermocouple grid must be located at a vertical distance of 3 stack diameters above the flue collar, and the sampling tubes for flue gases must be installed within 1 stack diameter beyond the thermocouple grid. If dilution air is introduced into the flue gases before the plane of the thermocouple and flue gas sampling points, utilize an alternate plane of thermocouple grid and flue gas sampling point located downstream from the heat exchanger and upstream from the point of dilution air introduction.

3.1.5. *Additional Requirements for Outdoor Commercial Packaged Boilers.* If the manufacturer provides more than one outdoor venting arrangement, the outdoor commercial packaged boiler (as defined in section 3.2.6 of ANSI/AHRI Standard 1500–2015 (incorporated by reference, see § 431.85) must be tested with the shortest total venting arrangement as measured by adding the straight lengths of venting supplied with the equipment. If the manufacturer does not provide an outdoor venting arrangement, install the outdoor commercial packaged boiler venting consistent with the procedure specified in Section C2.2 of Appendix C of ANSI/AHRI Standard 1500–2015.

3.1.6. *Additional Requirements for Field Tests.*

3.1.6.1 Field tests are exempt from the requirements of Section C2.2 of Appendix C of ANSI/AHRI Standard 1500–2015. Measure the flue gas temperature according to Section C2.5.1 of Appendix C of ANSI/AHRI Standard 1500–2015 and the thermocouple grids identified in Figure C12 of ANSI/AHRI Standard 1500–2015, with the following modification: the thermocouple grid may be staggered vertically by up to 1.5 inches to allow the use of instrumented rods to be inserted through holes drilled in the venting.

3.1.6.2. Field tests are exempt from the requirements of Section C2.6.3 of Appendix C of ANSI/AHRI Standard 1500–2015.

3.1.7. *Additional Requirements for Water Tests.* In addition to the provisions of Section C2 of Appendix C of ANSI/AHRI Standard 1500–2015 (incorporated by reference, see § 431.85) the following requirements apply for water tests:

3.1.7.1. Insulate all water piping between the commercial packaged boiler and the location of the temperature measuring equipment, including one foot (1 ft.) beyond the sensor, using insulation meeting the requirements specified in Table 2.3 of this appendix.

3.1.7.2. Install a temperature measuring device at Point B of Figure C9 of ANSI/AHRI Standard 1500–2015. Water entering the commercial packaged boiler must first enter the run of a tee and exit from the top outlet of the tee. The remaining connection of the tee must be plugged. Measure the inlet water temperature at Point B in the run of a second tee located 12 ± 2 pipe diameters downstream from the first tee and no more than the greater of 12 inches or 6 pipe diameters from the inlet of the commercial packaged boiler. The temperature measuring device shall extend into the water flow at the point of exit from the side outlet of the second tee. All inlet piping between the temperature measuring device and the inlet of the commercial packaged boilers must be wrapped with R–7 insulation. Field tests must also measure the inlet water temperature at Point B in Figure C9, however they are not required to use the temperature measurement piping described in this section 3.1.7. of this appendix.

3.1.7.3. Do not use Section C2.7.2.2.2 or its subsections of ANSI/AHRI Standard 1500–2015 for water meter calibration.

3.1.8. *Flue Gas Sampling.* In section C2.5.2 of Appendix C of ANSI/AHRI Standard 1500–2015, replace the last sentence with the following: When taking flue gas samples from a rectangular plane, collect samples at ¼, ½, and ¾ the distance from one side of the rectangular plane in the longer dimension and along the centerline midway between the edges of the plane in the shorter dimension and use the average of the three samples. The tolerance in each dimension for each measurement location is ± 1 inch.

3.2. *Test Conditions.*

3.2.1. *General.* Use the test conditions from Sections 5 and C3 of Appendix C of ANSI/AHRI Standard 1500–2015 (incorporated by reference; see § 431.85) for combustion efficiency testing but do not use the following sections:

(1) 5.3 Introductory text
(2) 5.3.5 (and subsections; see sections 3.2.3, 3.2.3.1, and 3.2.3.2 of this appendix)
(3) 5.3.7 (excluded for field tests only)
(4) 5.3.8 (see section 3.2.4 of this appendix)
(5) 5.3.9 (see section 3.2.5 of this appendix)
(6) C3.1.3 (and subsections)
(7) C3.5 (including Table C2; see section 3.2.6 of this appendix)
(8) C3.6 (see section 3.2.4 of this appendix)
(9) C3.7 (see section 3.2.5 of this appendix)

3.2.2. *Burners for Oil-Fired Commercial Packaged Boilers.* In addition to Section C3.3 of Appendix C of ANSI/AHRI Standard 1500–2015, the following applies: for oil-fired commercial packaged boilers, test the unit with the particular make and model of burner as certified (or to be certified) by the manufacturer. If multiple burners are specified in the certification report for that basic model, then use any of the listed burners for testing.

3.2.3. *Water Temperatures.* Maintain the outlet temperature measured at Point C in Figure C9 at 180 °F ± 2 °F and maintain the inlet temperature measured at Point B at 80 °F ± 5 °F during the ''Warm-up Period'' and ''Test Period'' as indicated by 1-minute interval data pursuant to Table 3.2 of this appendix. Each reading must meet these temperature requirements. Field tests are exempt from this requirement and instead must comply with the requirements of section 3.2.3.1 of this appendix.

3.2.3.1. For field tests, the inlet temperature measured at Point A and Point B in Figure C9 and the outlet temperature measured and Point C in Figure C9 of ANSI/AHRI Standard 1500–2015 must be recorded in the data underlying that model's certification pursuant to § 429.71 of this chapter, and the difference between the inlet (measured at Point B) and outlet temperature (measured at Point C) must not be less than 20 °F at any point during the ''Warm-up Period'' and ''Test Period,'' after stabilization has been achieved, as indicated by 1-minute interval data pursuant to Table 3.2 of this appendix.

3.2.3.2 For commercial packaged boilers that require a higher flow rate than that resulting from the water temperature requirements of sections 3.2.3 of this appendix to prevent boiling, use a recirculating loop and maintain the inlet temperature at Point B of Figure C9 of ANSI/AHRI Standard 1500–2015 at 140 °F ± 5 °F during the ''Warm-up Period'' and ''Test Period'' as indicated by 1-minute interval data pursuant to Table 3.2 of this appendix. Each reading must meet these temperature requirements.

3.2.4. *Air Temperature.* For tests of non-condensing boilers (except during field tests), maintain ambient room temperature between 65 °F and 100 °F at all times during the ''Warm-up Period'' and ''Test Period'' (as described in Section C4 of Appendix C of ANSI/AHRI Standard 1500–2015) as indicated by 1-minute interval data pursuant to Table 3.2 of this appendix. For tests of condensing boilers (except during field tests), maintain ambient room temperature between 65 °F and 85 °F at all times during the ''Warm-up Period'' and ''Test Period'' (as described in Section C4 of Appendix C of ANSI/AHRI Standard 1500–2015) as indicated by 1-minute interval data pursuant to Table 3.2 of this appendix. The ambient room temperature may not differ by more than ± 5 °F from the average ambient room temperature during the entire ''Test Period'' at any 1-minute interval reading. Measure the room ambient temperature within 6 feet of the front of the unit at mid height. The test air temperature, measured at the air inlet of the commercial packaged boiler, must be within ± 5 °F of the room ambient temperature when recorded at the 1-minute interval defined by Table 3.2 of this appendix. For field tests, record the ambient room temperature at 1-minute intervals in accordance with Table 3.2 of this appendix.

3.2.5. *Ambient Humidity.* For condensing boilers (except during field tests), maintain ambient room relative humidity below 80-percent relative humidity at all times during both the ''Warm-up Period'' and ''Test Period'' (as described in Section C4 of Appendix C of ANSI/AHRI Standard 1500–2015) pursuant to Table 3.2 of this appendix. Measure the ambient humidity in the same location as ambient air temperature. For field tests of condensing boilers, record the ambient room relative humidity in accordance with Table 3.2 of this appendix.

3.2.6. *Flue Gas Temperature.* The flue gas temperature during the test must not vary from the flue gas temperature measured at the start of the Test Period (as defined in Section C4 of ANSI/AHRI Standard 1500–2015) when recorded at the interval defined in Table 3.2 by more than the limits prescribed in Table 3.3 of this appendix. For field tests, flue gas temperature does not need to be within the limits in Table 3.3 of this appendix but must be recorded at the interval specified in Table 3.2 of this appendix.

TABLE 3.3—FLUE GAS TEMPERATURE VARIATION LIMITS DURING TEST PERIOD

| Fuel type | Non-condensing | Condensing |
|---|---|---|
| Gas | ± 2 percent | Greater of ± 3 percent and ± 5 °F. |
| Light Oil | ± 2 percent. | |
| Heavy Oil | Greater of ± 3 percent and ± 5 °F. | |

3.3. *Test Method.*

3.3.1. *General.* Conduct the combustion efficiency test using the test method prescribed in Section C4 ''Test Procedure'' of Appendix C of ANSI/AHRI Standard 1500–2015 excluding sections:

(1) C4.1.1.1.2 (see section 3.3.1.2 of this appendix)
(2) C4.1.1.2.3
(3) C4.1.2.1.5 (see section 3.3.2 of this appendix)
(4) C4.1.2.2.2
(5) C4.1.2.2.3
(6) C4.2
(7) C4.2.1
(8) C4.2.2

3.3.1.1. The duration of the ''Test Period'' for combustion efficiency outlined in sections C4.1.1.2 of Appendix C of ANSI/AHRI Standard 1500–2015 (incorporated by reference, see § 431.85) and C4.1.2.2 of Appendix C of ANSI/AHRI Standard 1500–2015 is 30 minutes. For condensing commercial packaged boilers, condensate must be collected for the 30 minute Test Period.

3.3.1.2. Adjust oil or non-atmospheric gas to produce the required firebox pressure and $CO_2$ or $O_2$ concentration in the flue gas, as described in section 5.3.1 of ANSI/AHRI Standard 1500–2015. Conduct steam tests with steam pressure at the pressure specified in the manufacturer literature shipped with the commercial packaged boiler or in the manufacturer's supplemental testing instructions pursuant to § 429.60(b)(4) of this chapter, but not exceeding 15 psig. If no pressure is specified in the manufacturer literature shipped with the commercial packaged boiler or in the manufacturer's supplemental testing instructions (pursuant to § 429.60(b)(4)) of this chapter, or if a range of operating pressures is specified, conduct testing at a steam pressure equal to atmospheric pressure. If necessary to maintain steam quality as required by section 5.3.7 of ANSI/AHRI Standard 1500–2015, increase steam pressure in 1 psig increments by throttling with a valve beyond the separator until the test is completed and the steam quality requirements have been satisfied, but do not increase the steam pressure to greater than 15 psig.

3.3.2. *Water Test Steady-State.* Ensure that a steady-state is reached by confirming that three consecutive readings have been recorded at 15-minute intervals that indicate that the measured fuel input rate is within ± 2-percent of the rated input. Water temperatures must meet the conditions specified in sections 3.2.3, 3.2.3.1, and 3.2.3.2 of this appendix as applicable.

3.3.3. *Procedure for the Measurement of Condensate for a Condensing Commercial Packaged Boiler.* Collect flue condensate using a covered vessel so as to prevent evaporation. Measure the condensate from the flue gas during the ''Test Period.'' Flue condensate mass must be measured within 5 minutes after the end of the ''Test Period'' (defined in C4.1.1.2 and C4.1.2.2 of ANSI/AHRI Standard 1500–2015) to prevent evaporation loss from the sample. Determine the mass of flue condensate for the ''Test Period'' by subtracting the tare container weight from the total weight of the container and flue condensate measured at the end of the ''Warm-up Period.''

3.4. *Calculations.*

3.4.1. *General.* To determine the combustion efficiency of commercial packaged boilers, use the variables in Section C6 and calculation procedure for the combustion efficiency test specified in Section C7.3 of Appendix C (including the specified subsections of C7.2) of ANSI/AHRI Standard 1500–2015 (incorporated by reference, see § 431.85).

3.4.2. *Rounding.* Round the final combustion efficiency value to nearest one tenth of a percent.

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Part IV

## Environmental Protection Agency

40 CFR Parts 122
National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System General Permit Remand Rule; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 122**

**[EPA–HQ–OW–2015–0671; FRL–9955–11–OW]**

**RIN 2040–AF57**

## National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System General Permit Remand Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is revising the regulations governing regulated small municipal separate storm sewer system (MS4) permits to respond to a remand from the United States Court of Appeals for the Ninth Circuit in *Environmental Defense Center, et al.* v. *EPA,* 344 F.3d 832 (9th Cir. 2003). In that decision, the court determined that the regulations for providing coverage under small MS4 general permits did not provide for adequate public notice and opportunity to request a hearing. Additionally, the court found that EPA failed to require permitting authority review of the best management practices (BMPs) to be used at a particular MS4 to ensure that the small MS4 permittee reduces pollutants in the discharge from their systems to the ''maximum extent practicable'' (MEP), the standard established by the Clean Water Act (CWA) for such permits. The final rule establishes two alternative approaches a permitting authority can use to issue National Pollutant Discharge Elimination (NPDES) general permits for small MS4s and meet the requirements of the court remand. The first option is to establish all necessary permit terms and conditions to require the MS4 operator to reduce the discharge of pollutants from its MS4 to the MEP, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act (''MS4 permit standard'') upfront in one comprehensive permit. The second option allows the permitting authority to establish the necessary permit terms and conditions in two steps: A first step to issue a base general permit that contains terms and conditions applicable to all small MS4s covered by the permit and a second step to establish necessary permit terms and conditions for individual MS4s that are not in the base general permit. Public notice and comment and opportunity to request a hearing would be necessary for both steps of this two-step general permit. This final rule does not establish any new substantive requirements for small MS4 permits.

**DATES:** This final rule is effective on January 9, 2017.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2015–0671. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Greg Schaner, Office of Wastewater Management, Water Permits Division (4203M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–0721; email address: *schaner.greg@epa.gov.* Refer also to EPA's Web site for further information related to the final rule at *https://www.epa.gov/npdes/stormwater-rules-and-notices#proposed*.

**SUPPLEMENTARY INFORMATION:** The **Federal Register** published EPA's proposed rule on January 6, 2016 (81 FR 415).

### Table of Contents

K. Congressional Review Act

## I. General Information

### A. Does this action apply to me?

Entities regulated [or affected] by this rule include:

| Category | Examples of regulated entities | North American industry classification system (NAICS) code |
|---|---|---|
| Federal and state government | EPA or state NPDES stormwater permitting authorities; operators of small municipal separate storm sewer systems. | 924110 |
| Local governments | Operators of small municipal separate storm sewer systems | 924110 |

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 EPA is now aware could potentially be regulated or otherwise affected by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in 40 CFR 122.32, and the discussion in the preamble. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

### B. What action is the Agency taking?

EPA is issuing a final rule to revise its regulations governing the way in which small municipal separate storm sewer systems (MS4s) obtain coverage under National Pollutant Discharge Elimination System (NPDES) general permits and how required permit conditions are established. The rule results from a decision by the U.S. Court of Appeals for the Ninth Circuit in *Environmental Defense Center, et al.* v. *EPA,* at 344 F.3d 832 (9th Cir. 2003) (''*EDC* decision''), which found that EPA regulations for obtaining coverage under a small MS4 general permit did not provide for adequate public notice, the opportunity to request a hearing, or permitting authority review to determine whether the best management practices (BMPs) selected by each MS4 in its stormwater management program (SWMP) meets the CWA requirements including the requirement to ''reduce pollutants to the maximum extent practicable.'' The **Federal Register** published EPA's proposed rule on January 6, 2016 (81 FR 415). EPA proposed and solicited public comment on three options for addressing the remand. One option (called the ''Traditional General Permit Approach'') would require the permitting authority to establish within the general permit all requirements necessary for the regulated small MS4s to meet the applicable permit standard (to reduce pollutants to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the CWA), which would be subject to public notice and comment and an opportunity to request a hearing. The second proposed option (called the ''Procedural Approach'') would require the permitting authority to incorporate an additional review and public comment step into the existing Phase II regulatory framework for permitting small MS4s through general permits. More specifically, once an MS4 operator submitted its Notice of Intent (NOI) requesting coverage under the general permit, an additional step would take place in which the permitting authority would review, and the public would be given an opportunity to comment and request a hearing on, the merits of the MS4's proposed BMPs and measurable goals for complying with the requirement to reduce discharges to the MEP, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA. A third proposed option (called the ''State Choice Approach'') would enable the permitting authority to choose between the Traditional General Permit and Procedural Approaches, or to implement a combination of these approaches in issuing and authorizing coverage under a general permit. Today, EPA is issuing a rule that promulgates the ''State Choice Approach'' and has renamed it as the ''Permitting Authority Choice Approach.''

### C. What is the Agency's authority for taking this action?

The authority for this rule is the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.,* including sections 402 and 501.

### D. What are the incremental costs of this action?

The Economic Analysis estimates the incremental costs to implement the final rule. EPA assumed that all other costs accrued as a result of the existing small MS4 program, which were accounted for in the Economic Analysis accompanying the 1999 final Phase II MS4 regulations, remain the same and are not germane to the Economic Analysis, unless the rule change would affect the baseline program costs. In this respect, EPA focused only on new costs that may be imposed as a result of implementing the final rule. It is, therefore, unnecessary to reevaluate the total program costs of the Phase II rule, since those costs were part of the original economic analysis conducted for the 1999 Phase II rule (see 64 FR 68722, December 8, 1999). For further information, refer to the Economic Analysis that is included in the rule docket.

EPA estimates the annualized cost of the final rule to be between $558,025 and $604,770, depending on the assumed discount rate. This can be thought of as the annual budgeted amounts each permitting authority would need to make available each year in order to be able to cover the increase in permitting authority efforts that would result every 5 years. The total net present value of the compliance cost ranges from $5.5 million to $8.4 million, depending on the assumed discount rate. These estimates are all below the threshold level established by statute and various executive orders for determining that a rule has an economically significant or substantial impact on affected entities. See further discussion in Section X of this preamble.

The Economic Analysis assumes that permitting authorities are the only entities that are expected to be impacted from this rule because the requirements modified by the rule focus only on the administrative manner in which general

permits are issued and how coverage under those permits is granted. EPA emphasizes that this final rule does not change the stringency of the underlying requirements in the statute or Phase II regulations to which small MS4 permittees are subject, nor does it establish new substantive requirements for MS4 permittees. Therefore, the Economic Analysis does not attribute new costs to regulated small MS4s beyond what they are already subject to under the statute and Phase II regulations. EPA acknowledges that many permitting authorities consider permitting a cost-neutral function, therefore some may increase permit fees to cover the increased costs associated with this rule.

EPA used conservative assumptions about impacts on state workloads, meaning that the actual economic costs of complying with the final rule and implementing any new procedural changes are most likely lower than what is actually presented. EPA considers the cost assumptions to be conservative because as more permitting authorities issue general permits consistent with the new rule, other permitting authorities can use and build on those examples, reducing the amount of time it takes to draft the permit requirements, and permitting authorities will likely learn from experience as they move forward how to work more efficiently to issue and administer their general permits. EPA has issued guidance to permitting authorities on how to write better MS4 permits (*MS4 Permit Improvement Guide* (EPA, 2010); *Compendium of MS4 Permitting Approaches—Part 2: Post Construction Standards* (EPA, 2016); *Compendium of MS4 Permitting Approaches—Part 3: Water Quality-Based Requirements* (EPA, 2016)), and additional examples of permit provisions that are written in a ''clear, specific, and measurable'' manner for the six minimum control measures are included in the preamble to this rule. EPA also anticipates issuing further guidance once the rule is promulgated to assist permitting authorities in implementing the new rule requirements, which will in turn hopefully make permit writing more efficient. These gained efficiencies were not, however, accounted for in the option-specific cost assumptions.

## II. Background

### *A. Statutory and Regulatory Overview*

Stormwater discharges are a significant cause of water quality impairment because they can contain a variety of pollutants such as sediment, nutrients, chlorides, pathogens, metals, and trash that are mobilized and ultimately discharged to storm sewers or directly to water bodies. Furthermore, the increased volume and velocity of stormwater discharges that result from the creation of impervious cover can alter streams and rivers by causing scouring and erosion. These surface water impacts can threaten public health and safety due to the increased risk of flooding and increased level of pollutants; can lead to economic losses to property and fishing industries; can increase drinking water treatment costs; and can decrease opportunities for recreation, swimming, and wildlife uses.

Stormwater discharges are subject to regulation under section 402(p) of the CWA. Under this provision, Congress required the following stormwater discharges initially to be subject to NPDES permitting requirements: Stormwater discharges for which NPDES permits were issued prior to February 4, 1987; discharges ''associated with industrial activity''; discharges from MS4s serving populations of 100,000 or more; and any stormwater discharge determined by EPA or a state to ''contribute . . . to a violation of a water quality standard or to be a significant contributor of pollutants to waters of the United States.'' Congress further directed EPA to study other stormwater discharges and determine which needed additional controls. With respect to MS4s, section 402(p)(3)(B) provides that NPDES permits may be issued on a system-wide or jurisdiction-wide basis, and requires that MS4 NPDES permits ''include a requirement to effectively prohibit non-stormwater discharges into the storm sewers'' and require ''controls to reduce the discharge of pollutants to the maximum extent practicable . . . and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.''

EPA developed the stormwater regulations under section 402(p) of the CWA in two phases, as directed by the statute. In the first phase, under section 402(p)(4) of the CWA, EPA promulgated regulations establishing application and other NPDES permit requirements for stormwater discharges from medium (serving populations of 100,000 to 250,000) and large (serving populations of 250,000 or more) MS4s, and stormwater discharges associated with industrial activity. EPA published the final Phase I rule on November 16, 1990 (55 FR 47990). The Phase I rule, among other things, defined ''municipal separate storm sewer'' as publicly-owned conveyances or systems of conveyances that discharge to waters of the U.S. and are designed or used for collecting or conveying stormwater, are not combined sewers, and are not part of a publicly-owned treatment works at § 122.26(b)(8). EPA included construction sites disturbing five acres or more in the definition of ''stormwater discharges associated with industrial activity'' at § 122.26(b)(14)(x).

In the second phase, section 402(p)(5) and (6) of the CWA required EPA to conduct a study to identify other stormwater discharges that needed further controls ''to protect water quality,'' report to Congress on the results of the study, and to designate for regulation additional categories of stormwater discharges not regulated in Phase I on the basis of the study and in consultation with state and local officials. EPA promulgated the Phase II rule on December 8, 1999, designating discharges from certain small MS4s and from small construction sites (disturbing equal to or greater than one acre and less than five acres) and requiring NPDES permits for these discharges (64 FR 68722, December 8, 1999). A regulated small MS4 is generally defined as any MS4 that is not already covered by the Phase I program and that is located within the urbanized area boundary as determined by the latest U.S. Decennial Census. Separate storm sewer systems such as those serving military bases, universities, large hospitals or prison complexes, and highways are also included in the definition of ''small MS4.'' See § 122.26(b)(16). In addition, the Phase II rule includes authority for EPA (or states authorized to administer the NPDES program) to require NPDES permits for currently unregulated stormwater discharges through a designation process. See § 122.26(a)(9)(i)(C) and (D). Other small MS4s located outside of an urbanized area may be designated as a regulated small MS4 if the NPDES permitting authority determines that its discharges cause, or have the potential to cause, an adverse impact on water quality. See §§ 122.32(a)(2) and 123.35(b)(3).

### *B. MS4 Permitting Requirements*

The Phase I regulations are primarily comprised of requirements that must be addressed in applications for individual permits from large and medium MS4s. The regulations at § 122.26(d)(2)(iv) require these MS4s to develop a proposed stormwater management program (SWMP), which is considered by EPA or the authorized state permitting authority when establishing permit conditions to reduce pollutants to the ''maximum extent practicable'' (MEP).

Like the Phase I rule, the Phase II rule requires regulated small MS4s to develop and implement SWMPs. The regulations at § 122.34(a) requires that SWMPs be designed to reduce pollutants discharged from the MS4 ''to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,'' and requires that the SWMPs include six ''minimum control measures.'' The minimum control measures are: Public education and outreach, public participation and involvement, illicit discharge detection and elimination, construction site runoff control, post construction runoff control, pollution prevention and good housekeeping. See § 122.34(b). Under the Phase II rule, a regulated small MS4 may seek coverage under an available general permit or may apply for an individual permit. To be authorized to discharge under a general permit, the rule requires submission of a Notice of Intent (NOI) to be covered by the general permit containing a description of the best management practices (BMPs) to be implemented and the measurable goals for each of the BMPs, including timing and frequency, as appropriate. See §§ 122.33(a)(1), 122.34(d)(1).

EPA anticipated that under the first two or three permit cycles, whether required in individual permits or in general permits, BMP-based controls implementing the six minimum control measures would, if properly implemented, ''be sufficiently stringent to protect water quality, including water quality standards, so that additional, more stringent and/or more prescriptive water quality based effluent limitations will be unnecessary.'' (64 FR 68753, December 8, 1999). In the final Phase II rule preamble, EPA also stated that it ''has intentionally not provided a precise definition of MEP to allow maximum flexibility in MS4 permitting. MS4s need the flexibility to optimize reductions in storm water pollutants on a location-by-location basis. . . . Therefore, each permittee will determine appropriate BMPs to satisfy each of the six minimum control measures through an evaluative process.'' (64 FR 68754, December 8, 1999).

The agency described the approach to meet the MS4 permit standard in the preamble to the Phase II rule as an ''iterative process'' of developing, implementing, and improving stormwater control measures contained in SWMPs. As EPA further stated in the preamble to the Phase II rule, ''MEP should continually adapt to current conditions and BMP effectiveness and should strive to attain water quality standards. Successive iterations of the mix of BMPs and measurable goals will be driven by the objective of assuring maintenance of water quality standards. . . . If, after implementing the six minimum control measures there is still water quality impairment associated with discharges from the MS4, after successive permit terms the permittee will need to expand or better tailor its BMPs within the scope of the six minimum control measures for each subsequent permit.'' (64 FR 68754, December 8, 1999).

*C. Judicial Review of the Phase II Rule and Partial Remand*

The Phase II rule was challenged in petitions for review filed by environmental groups, municipal organizations, and industry groups, resulting in a partial remand of the rule. *Environmental Defense Center* v. *U.S. Environmental Protection Agency,* 344 F.3d. 832 (9th Cir. 2003) (*EDC*). The court remanded the Phase II rule's provisions for small MS4 general permits because they lacked procedures for permitting authority review and public notice and the opportunity to request a hearing on NOIs submitted under general MS4 permits.

In reviewing how the Phase II rule provided for general permit coverage for small MS4s, the court found that the way in which NOIs function under the rule was not the same as in other NPDES general permits. Other general permits contain within the body of the general permit the specific effluent limitations and conditions applicable to the class of dischargers for which the permit is available. In this situation, authorization to discharge under a general permit is obtained by filing an NOI in which the discharger agrees to comply with the terms of the general permit and in which the operator provides some basic information (*e.g.,* site location, receiving waters) to help determine eligibility. In contrast, the court held that under the Phase II rule, because the NOI submitted by the MS4 contains the information describing what the MS4 will do to reduce pollutants to the MEP, it is the ''functional equivalent'' of an individual permit application. See *EDC,* 344 F.3d. at 857. Because the CWA requires public notice and the opportunity to request a public hearing for all permit applications, the court held that failure to require public notice and the opportunity for a public hearing for NOIs under the Phase II rule is contrary to the Act. See *EDC,* 344 F.3d. at 858.

Similarly, the court found the Phase II rule allows the MS4 to identify the BMPs that it will undertake in its SWMP without any permitting authority review. The court held that the lack of review ''to ensure that the measures that any given operator of a small MS4 has decided to undertake will *in fact* reduce discharges of pollutants to the maximum extent practicable'' also does not comport with CWA requirements. The court stated, ''That the Rule allows a permitting authority to review an NOI is not enough; every permit must comply with the standards articulated by the Clean Water Act, and unless every NOI issued under general permit is reviewed, there is no way to ensure that such compliance has been achieved.'' See *EDC,* 344 F.3d. at 855 n.32. The court therefore vacated and remanded ''those portions of the Phase II Rule that address these procedural issues . . . so that EPA may take appropriate action to comply with Clean Water Act.'' See *EDC,* 344 F.3d. at 858.

**III. Summary of the Proposed Rule and Comments Received**

*A. Scope of the Proposed Rule*

EPA proposed revisions to the Phase II MS4 NPDES permitting requirements on January 6, 2016 (81 FR 415) to respond to the Ninth Circuit's remand in *Environmental Defense Center* v. *U.S. Environmental Protection Agency,* 344 F.3d. 832 (9th Cir. 2003). To address the remand, the regulations must ensure that permitting authorities determine what permit requirements are needed to reduce pollutants from each permitted small MS4 ''to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act'' (referred to hereinafter as the ''MS4 permit standard''). The rule must also require NPDES permitting authorities to provide the public with the opportunity to review, submit comments, and request a public hearing on these permit requirements. EPA did not propose modifications to any of the substantive requirements that were promulgated in the Phase II rule (nor did EPA reopen or seek comment on any aspect of the Phase I rule, which was described in the preamble of the proposed rule for informational purposes only).

In the remand decision, the court established in broad and clear terms what is needed for general permits that cover regulated small MS4s and therefore provided EPA with what minimum attributes should be part of any revisions to the Phase II regulations. The court stated that ''every permit must comply with the standards articulated by the Clean Water Act, and

unless every NOI issued under a general permit is reviewed, there is no way to ensure that such compliance has been achieved.'' See *EDC,* 344 F.3d at 855, n. 32. In the court's view, the NOI served as the document that established how the MEP standard would be met: ''Because a Phase II NOI establishes what the discharger will do to reduce discharges to the 'maximum extent practicable,' the Phase II NOI crosses the threshold from being an item of procedural correspondence to being a substantive component of a regulatory scheme.'' See *EDC,* 344 F.3d at 853. Since review of the NOI by the permitting authority was not specified in the regulation, and § 122.34(a) stated that compliance with the storm water management program developed by the permittee constituted compliance with the MEP standard, the court also expressed concern that the regulation put the MS4 in charge of establishing its own requirements. ''[U]nder the Phase II Rule nothing prevents the operator of a small MS4 from misunderstanding or misrepresenting its own stormwater situation and proposing a set of minimum measures for itself that would reduce discharges by far less than the maximum extent practicable.'' See *EDC,* 344 F.3d at 855. Further, the court found that the failure to require public notice or opportunity to submit comments or request a public hearing for each NOI violated requirements applicable to all CWA permits in accordance with section 402(b)(3). See *EDC,* 344 F.3d at 857.

*B. Description of Options Proposed*

EPA proposed for comment the following three options to address the regulatory shortcomings found in the remand decision.

1. Option 1 (''Traditional General Permit Approach'')

Under the proposed Traditional General Permit Approach, the permitting authority must establish in any small MS4 general permit the full set of requirements that are deemed necessary to meet the MS4 permit standard (''reduce pollutants to the maximum extent practicable, protect water quality and satisfy the appropriate water quality requirements of the Clean Water Act''), and the administrative record would include an explanation of the rationale for its determination. (This approach contrasts with the original regulations, which appeared to the court to provide the permittee with the ability to establish its own requirements.) Once the permit is issued, and the terms and conditions in the permit are fixed for the term of the permit, neither the development of a SWMP document nor the submittal of an NOI for coverage would represent new permit requirements. Thus, because the permit contains all of the requirements that will be used to assess permittee compliance, the permitting authority would no longer need to rely on the MS4's NOI as the mechanism for ascertaining what will occur during the permit term. Under this approach, the function of the NOI would be more similar to that of any other general permit NOI, and more specifically other stormwater general permits, whereby the NOI is used to establish certain minimum facts about the discharger, including the operator's contact details, the discharge location(s), and confirmation that the operator is eligible for permit coverage and has agreed to comply with the terms of the permit. By removing the possibility that effluent limits could be proposed in the NOI (and for that matter in the SWMP) and made part of the permit once permit coverage is provided, the NOI would no longer look and function like an individual permit application, as the court found with respect to MS4 NOIs under the Phase II regulations currently in effect. Therefore, it would not be necessary to carry out the type of additional permitting authority review and public participation procedures contemplated by the Ninth Circuit court in the remand decision. These requirements would be met during the process of issuing the general permit.

2. Option 2 (''Procedural Approach'')

Under the proposed Procedural Approach, the permitting authority would establish applicable permit requirements to meet the MS4 permit standard by going through a second permitting step following the issuance of the general permit (referred to as the ''base general permit''), similar to the procedures used to issue individual NPDES permits. Eligible MS4 operators would be required to submit NOIs with the same information that has always been required under the Phase II regulations, that is, a description of the BMPs to be implemented by the MS4 operator during the permit term, and the measurable goals associated with each BMP. Following the receipt of the NOI, the permitting authority would review the NOI to assess whether the proposed BMPs and measurable goals meet the MS4 permit standard. If not, the permitting authority would request supplemental information or revisions as necessary to ensure that the submission satisfies the regulatory requirements. Once satisfied with the submission, the permitting authority would be required to propose incorporating the BMPs and measurable goals in the NOI as permit requirements and to provide public notice of the NOI and an opportunity to submit comments and to request a hearing in accordance with §§ 124.10 through 124.13. After consideration of comments received and a hearing, if held, the permitting authority would provide notice of its decision to authorize coverage under the general permit, along with any MS4-specific requirements established during this second process. Upon completion of this process, the MS4 would be required to comply with the requirements set forth in the base general permit and the additional terms and conditions established through the second-step process.

3. Option 3 (''State Choice Approach'')

The proposed rule also requested comment on a State Choice Approach, which would allow permitting authorities to choose either the Traditional General Permit Approach or the Procedural Approach, or some combination of the two as would best suit their needs and circumstances. As described in the proposed rule, the permitting authority could, for example, choose to use Option 1 for small MS4s that have fully established programs and uniform core requirements, and Option 2 for MS4s that it finds would benefit from the additional flexibility to address unique circumstances, such as those encountered by non-traditional MS4s *(e.g.,* state departments of transportation, public universities, military bases). Alternatively, a state could apply a hybrid of the two approaches within one permit by defining some elements within the general permit, which, consistent with the Option 1 approach, are deemed to meet the MS4 permit standard, and establishing additional permit requirements through the Option 2 procedural approach for each MS4 seeking coverage under the General Permit. Under a hybrid approach, any requirements established in the general permit that fully articulate what is required to meet the MS4 permit standard would require no further permitting authority review and public notice proceedings; however, for any terms and conditions established for individual MS4s based in part on information submitted with the NOI would need to follow the Option 2 approach for incorporating these requirements into the permit as enforceable requirements.

*C. General Summary of Comments Received*

EPA received about 70 unique comments on the proposed rule from the MS4 community, states, environmental groups, industry associations, and engineering firms. Most commenters favored Option 3—the ''State Choice'' option. While several expressed support for their states using the Traditional General Permit or Procedural Approach, a number of these same commenters acknowledged that these approaches would likely not work in all situations if EPA were to adopt either one as the sole option under the final rule. EPA notes that while most of the environmental organization commenters expressed support for a hybrid option, which technically falls under the State Choice option, they also strongly recommended mandating that the Traditional General Permit Approach be used for permit requirements related to the six minimum control measures and that the Procedural Approach be used for water quality-based requirements, such as requirements for implementing total maximum daily loads (TMDLs).

A common reason given for supporting the State Choice approach included the flexibility it would give authorized states to use different options to address different situations and that it would minimize disruption to existing programs. Several states that now use a traditional general permit approach or a procedural approach stressed the importance of providing choices for other states. EPA notes that no commenter expressly opposed the State Choice approach. EPA discusses these comments in the context of its decision to adopt the State Choice approach in the final rule in Section IV of the preamble below.

EPA received a significant number of comments concerning its proposed changes to the way in which permit terms and conditions must be expressed, particularly with respect to the proposed deletion of the word ''narrative'' in § 122.34(a). These comments focused on the concern that EPA was moving away from support of the use of BMPs to comply with stormwater permits and from the longstanding ''iterative approach'' to meeting MS4 permit requirements. EPA discusses these comments and the changes made in response to these comments in the final rule in Section V of the preamble.

In addition to responding to major comments in the preamble, EPA has prepared a Response to Comment document, which can be found in the docket for this rulemaking.

## IV. Summary of the Final Rule

*A. Selection of the ''Permitting Authority Choice'' Approach*

EPA is selecting proposed Option 3 (the ''State Choice Approach'') for the final rule, described in Section III.B.3. The new name for this option better captures the universe of entities that will implement the rule, *i.e.,* any NPDES permitting authority including EPA Regions and authorized states. Under this approach, the NPDES permitting authority may choose between two alternative means of establishing permit requirements in general permits for small MS4s. The final rule amends § 122.28(d) to require permitting authorities to choose one of these two types of general permits whenever issuing a small MS4 general permit. Permitting authorities are required to select either the ''Comprehensive General Permit'' or ''Two-Step General Permit''. The ''Comprehensive General Permit'' is essentially the ''Traditional General Permit'', or ''Option 1'', from the proposed rule. The ''Two-Step General Permit'' encompasses both the ''Procedural Approach'', or ''Option 2'' and the ''hybrid approach'' that was described as part of ''Option 3'' from the proposed rule. The Two-Step General Permit allows the permitting authority to establish some requirements in the general permit and others applicable to individual MS4s through a second proposal and public comment process.

*B. Description of the Two Permitting Alternatives Under the Permitting Authority Choice Approach*

As described in Section IV.A, the Permitting Authority Choice Approach requires permitting authorities to choose between two alternative approaches to issue general permits for small MS4s. These two types of general permits are described briefly as follows:

- *Comprehensive General Permit*—For this type of general permit, the permitting authority issues a small MS4 general permit that includes the full set of requirements necessary to meet the MS4 permit standard of ''reducing pollutant discharges from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the CWA.'' Under the Comprehensive General Permit, all requirements are contained within the general permit, and no additional requirements are established after permit issuance, as is the case with the ''Two-Step General Permit'' described below. For this reason, to provide coverage to eligible small MS4s, the permitting authority can use a traditional general permit NOI as described in § 122.28(b)(2)(ii), and does not need to require additional information from each operator concerning how they will comply with the permit, for instance the BMPs that will be implemented and the measurable goals for each control measure, as a prerequisite to authorizing the discharge. See further discussion of the role of the NOI in Section IV.E.
- *Two-Step General Permit (combination of the proposed Procedural and Hybrid Approaches)*—For the Two-Step General Permit, after issuing a base general permit, the permitting authority establishes through the completion of a second permitting step additional permit terms and conditions that are necessary to meet the MS4 permit standard for each MS4 seeking authorization to discharge under the general permit. These additional terms and conditions supplement the requirements of the general permit for individual MS4 permittees. It is in the second permitting step where the permitting authority satisfies its obligation to review the NOI for adequacy, determine what additional requirements are needed for the MS4 to meet the MS4 permit standard, and provide public notice and an opportunity for the public to submit comments and to request a hearing. See discussion of the second permitting step in Section V.B. Upon completion of this process, the MS4 permittee is authorized to discharge subject to the terms of the general permit and the additional requirements that apply individually to that MS4.

The Two-Step General Permit encompasses the ''hybrid'' approach described in the proposed rule (see Section VI.C), where the permitting authority includes specific permit terms and conditions within the base general permit, but also establishes additional requirements to meet the MS4 permit standard through a second permitting step. For the final rule, EPA intentionally used rule language that would enable permitting authorities to use a Two-Step General Permit to implement a hybrid approach by referring to both ''required permit terms and conditions in the general permit applicable to all eligible small MS4s'' and ''additional terms and conditions to satisfy one or more of the permit requirements in § 122.34 for individual small MS4 operators.'' See § 122.28(d)(2).

The final rule requires that the permitting authority indicate which

type of general permit it is using for any small MS4 general permit. This statement or explanation may be included in the general permit itself or in the permit fact sheet. EPA notes that the permitting authority may choose to change the permitting approach for subsequent permits. Questions concerning when the final rule change takes effect are discussed in Section VIII.A.

*C. Summary of Regulatory Changes To Adopt the Permitting Authority Choice Approach*

The final rule implements the Permitting Authority Choice option in several different sections of the NPDES regulations. Below is a brief summary of the most significant changes and where they can be found in the final rule:

• Permitting Authority Choice Approach (§ 122.28(d)): The final rule adds a new paragraph (d) to § 122.28 that requires the permitting authority to select between two alternative general permits. This section describes both types of general permits (the ''Comprehensive General Permit'' and the ''Two-Step General Permit'') and the minimum requirements associated with each. EPA chose to include the Permitting Authority Choice in a different section of the regulations than was proposed. EPA determined upon further consideration that rather than including all of the requirements within the application and NOI section of the Phase II regulations now at § 122.33, the two alternatives comprising the Permitting Authority Choice Approach fit better within the general permit regulations as a unique set of requirements affecting general permits for regulated small MS4s.

• Changes to the NOI requirements (§ 122.33): The final rule includes modifications to the requirements for what must be included in NOIs submitted for coverage under small MS4 general permits. The required contents of the NOI vary depending on the type of general permit used. For permitting authorities choosing a Comprehensive General Permit, the final rule enables the permitting authority to reduce the information required in NOIs to the minimum information required for any general permit NOI in § 122.28(b)(2)(ii). See § 122.33(b)(1)(i). For permitting authorities choosing the Two-Step General Permit, the final rule provides the permitting authority with the ability to determine what information it deems necessary to establish individual requirements for MS4 operators that meet the MS4 permit standard. See § 122.33(b)(1)(ii), and additional discussion of these and other changes to § 122.33 in Section V.D.1.

• Clarifications to the requirements for small MS4 permits (§ 122.34): Regardless of the permitting approach chosen by the NPDES authority, the terms and conditions of the resulting general permits must adhere to the requirements of § 122.34. The final rule retains modifications from the proposed rule that clarify that it is the permitting authority's responsibility, and not that of the small MS4 permittee, to establish permit terms and conditions that meet the MS4 regulatory standard and to delineate the requirements for implementing the six minimum control measures, other terms and conditions deemed necessary by the permitting authority to protect water quality, as well as any other requirement. The final rule also emphasizes that permit requirements must be expressed in ''clear, specific, and measurable'' terms. These modifications do not alter the existing, substantive requirements of the six minimum control measures in § 122.34(b). See further discussion of these changes in Section VI.

*D. Commonalities Among the Two Types of General Permits*

The two options available to the permitting authority under the final rule involve different steps and require differing levels of administrative oversight; however, at a basic level, they share the same underlying characteristics. Each type of general permit shares in common that through the permitting process, the permitting authority must determine which requirements a small MS4 must meet in order to satisfy the MS4 permit standard. Both types of general permits also require that the specific actions that comprise what is necessary to meet the MS4 permit standard be established through the permitting process. The key distinction between the two types of permits is that they establish permit terms and conditions at different points in time during the permitting process. For Comprehensive General Permits, the determination as to what requirements are needed to satisfy the MS4 permit standard is made as part of the issuance of the general permit. By contrast, for Two-Step General Permits, the permitting authority makes this determination both in the process of issuing the general permit and in the process of establishing additional permit requirements applicable on an individual basis to each MS4 covered under the general permit, based on information in the NOI.

The final rule also places both types of general permits on a level playing field with respect to the requirements that must be addressed in any general permit issued to a small MS4. Regardless of which type of general permit is used to establish permit terms and conditions, every small MS4 general permit must include requirements that address the minimum control measures (§ 122.34(b)), water quality-based requirements where needed (§ 122.34(c)), and evaluation and assessment requirements (§ 122.34(d)). The final rule clarifies that all such terms and conditions must be expressed in terms that are ''clear, specific, and measurable.'' The important attribute here is that permit requirements must be enforceable, and must provide a set of performance expectations and schedules that are readily understood by the permittee, the public, and the permitting authority alike. For both types of general permits, requirements may be expressed in narrative or numeric form, as long as they are clear, specific, and measurable. This requirement for clear, specific, and measurable requirements applies to any permit term or condition established under § 122.34, including requirements addressing the minimum control measures, any water quality-based requirements, and the evaluation, recordkeeping, and reporting requirements. Section VII of this preamble contains a detailed discussion about establishing permit terms and conditions.

Importantly, the final rule also ensures that the process for issuing both types of general permit addresses the deficiencies found by the Ninth Circuit to exist in the Phase II regulations. While the court's opinion focused on the role of the NOI in the Phase II rule for MS4 general permits, the court made it clear that under the CWA, the permitting authority must determine which MS4 permit requirements are adequate to meet the MS4 permit standard, and that the public must have the opportunity to review and comment on those permit requirements and to request a hearing. All of these core CWA requirements are present in the final rule. For Comprehensive General Permits, once the permit is issued it has gone through permitting authority review, public notice and comment, and the opportunity to request a hearing. Permitting authority review and public comment and opportunity for a hearing occurs in the process of drafting permit conditions and soliciting comment on the draft general permit. Permitting authority determination of what an MS4 must do to meet the MS4 permit standard occurs in the process of issuing

the final permit after consideration of comments. By comparison, for Two-Step General Permits, permitting authority review, public notice and comment, and the opportunity to request a hearing occur first on the draft general permit and again on the additional terms and conditions applicable to each MS4 authorized to discharge under the general permit. Under the Two-Step process, the CWA requirements for permitting authority review and public comment and opportunity for hearing are only fully addressed after the completion of the discharge authorization process for each individual small MS4 operator seeking coverage under the general permit. To ensure that these CWA requirements are met, the final rule supplements the administrative steps necessary to issue the base general permit with procedures that ensure that any decision to authorize an individual MS4 to discharge based on information included in the NOI is subject to review by the permitting authority, and the public has the opportunity to review and submit comments, and to request a hearing on the terms and conditions that will be incorporated as enforceable permit terms.

*E. Role of the NOI Under the Permitting Authority Choice Approach*

The two permitting options available under the final rule include important changes in the relationship between the MS4 operator's NOI and the general permit. Under the 1999 Phase II regulations, any MS4 operator seeking coverage under a small MS4 general permit has been required to submit information in the NOI describing, at a minimum, the BMPs that would be implemented for each minimum control measure during the permit term, and the measurable goals associated with each BMP. These NOIs differ significantly from the typical general permit NOI, which is required to include far less information, and ''represents no more than a formal acceptance of [permit] terms elaborated elsewhere'' in the general permit. See *EDC,* 344 F. 3d. at 852. Under the NPDES regulations at § 122.28(b)(2)(ii), the NOI is a procedural mechanism to document operator eligibility, to certify that the information submitted by the operator is accurate and truthful, and to confirm the operator's intention to be covered by the terms and conditions of the general permit.

The Ninth Circuit court, in its remand decision, likened the NOI under the remanded regulations to being ''functionally equivalent to a detailed application for an individualized permit,'' since the MS4 operator was in essence proposing to the permitting authority what it intended to accomplish to satisfy the MS4 permit standard. The court found it to differ markedly from the NOI utilized for most general permits, that is, limited to ''an item of procedural correspondence.'' 344 F. 3d. at 853. The similarity in the court's view between the NOI under the Phase II regulations and an individual permit application, combined with the failure of the regulations to require permitting authority review or to provide the opportunity for the public to comment and request a hearing on the NOI, were key factors in the Ninth Circuit finding that the regulations had violated the CWA.

The final rule modifies the way in which the NOI functions in important respects so that it addresses the problems found by the Ninth Circuit. For a Comprehensive General Permit, because the permit contains all of the requirements that will be used to assess permittee compliance, the permitting authority no longer needs to rely on the MS4's NOI as the mechanism for ascertaining what will occur during the permit term. In this way, the function of the NOI is the same as that of any other general permit NOI, and more specifically other stormwater general permits, where the NOI is used to establish certain minimum facts about the discharger, including the operator's contact details, the discharge location(s), and confirmation that the operator is eligible for permit coverage and has agreed to comply with the terms of the permit. It is for this reason, therefore, that the final rule establishes no additional requirements for the information required to be included in NOIs beyond what is already required for other general permits in § 122.28(b)(2)(ii). See § 122.33(b)(1) in the final rule. By removing the possibility that permit requirements could be proposed in the NOI (or in the SWMP) and made part of the permit once permit coverage is provided under the Comprehensive General Permit approach, the NOI will no longer look and function like an individual permit application, as the court found with respect to MS4 NOIs under the original Phase II regulations. Similarly, because the NOI no longer bears the similarity of an individual permit application, it is no longer necessary to carry out the type of additional permitting authority review and public participation steps contemplated by the Ninth Circuit.

By contrast, for coverage under a Two-Step General Permit, the NOI needs to include information to assist the permitting authority in developing the additional permit requirements for each permittee. For this NOI, the permitting authority requires more detailed information from the MS4 operator so that it can determine what additional permit terms and conditions are necessary in order to satisfy the MS4 permit standard. The NOI in the Two-Step General Permit is likely to include much of the same information that has been required of MS4 operators under the regulations since they were promulgated in 1999. The major difference now is that the permitting authority reviews the NOI materials to determine what additional permit terms and conditions are necessary for the individual MS4 to meet the MS4 permit standard, and to provide an opportunity for the public to comment and request a hearing on this determination.

The proposed rule would have required the full set of information required for individual permit applications in § 122.33(b)(2)(i), including the proposed BMPs to be implemented for the minimum control measures, measurable goals for each BMP (as required by § 122.34(d) of the original regulations), the persons responsible for implementing the stormwater management program, the square mileage served by the MS4, and any other information deemed necessary. In the final rule, EPA is taking a slightly different approach and giving the permitting authority the flexibility to determine what information it needs to request in its Two-Step General Permit NOI rather than requiring by default that all of the individual permit application information be submitted. This will give the permitting authority the ability to request what information it needs to establish the necessary additional terms and conditions for each individual MS4 to meet the MS4 permit standard. If the permitting authority needs information from all of its MS4s on the BMPs and measurable goals they propose for the permit term in order to establish suitable permit requirements, then it has the discretion to require this information. See §§ 122.28(d)(2)(i) and 122.33(b)(1)(ii), which states that the information requested by the permitting authority ''may include, but is not limited to, the information required under § 122.33(b)(2)(i).''

Alternatively, under the final rule, if the general permit terms and conditions already define what is required to meet the MS4 permit standard for several of the minimum control measures then the permitting authority could decide that it is no longer necessary to require the submittal of information on the BMPs and measurable goals associated with

those minimum control measures. As noted by a commenter, requiring information from MS4s related to permit terms and conditions that have already been established is likely to be redundant and represent an unnecessary burden. At the same time, the permitting authority must be able to obtain sufficient information to establish clear, specific, and measurable permit terms and conditions. Under the final rule, there is no minimum requirement with respect to what information is needed. In short, the permitting authority must request the information it needs to be able to make an informed decision when establishing clear, specific, and measurable permit terms and conditions for the permittee to ensure that it will meet the MS4 permit standard. The final rule enables the permitting authority to determine what the right amount of information is needed to meet this requirement.

*F. Permitting Authority Flexibility To Choose the Most Suitable Approach*

The final rule provides permitting authorities with full discretion to choose which option is best suited for its permitting needs and specific circumstances. While there are significant considerations, advantages, and disadvantages to selecting either of the two permitting approaches, EPA is leaving the decision of which method to adopt for each general permit up to the permitting authority. In providing full discretion to the permitting authority to choose which approach to use, EPA agreed with commenters that recommended against adopting conditions or constraints on the selection of either of the two options. EPA also expects that the decision as to which approach to adopt for any given small MS4 general permit may change from one permit term to the next. Therefore, if the permitting authority elects to issue its next general permit by implementing the ''Comprehensive General Permit Approach'' there is nothing preventing the permitting authority from switching approaches to the ''Two-Step General Permit Approach'' in subsequent permit terms, or vice versa.

EPA requested comment on whether the agency should constrain the permitting authority's discretion under Option 3 by requiring the use of the ''Traditional General Permit Approach'' (now the ''Comprehensive General Permit'') for some types of permit terms and conditions, while allowing the ''Procedural Approach (now the ''Two-Step General Permit'') to be used for other requirements. Several commenters recommended that EPA require permitting authorities to use the proposed ''Traditional General Permit Approach'' to establish permit requirements for the minimum control measures in § 122.34(b) and to allow the use of the proposed ''Procedural Approach'' for the establishment of water quality-based effluent limits, such as those implementing total maximum daily loads (TMDLs). EPA refers to this approach below as a ''fixed hybrid approach.'' Other commenters were opposed to a fixed hybrid approach and urged EPA to provide permitting authorities with maximum discretion to choose which option works best without stipulating which option must be used for specific types of permit requirements.

After consideration of these comments, EPA has determined that it is unnecessary to mandate which permitting approach is used for specific types of requirements. Primarily, EPA does not wish to prejudge what approach permitting authorities use to arrive at clear, specific, and measurable requirements that result in achieving the MS4 permit standard. As an overall matter, EPA views both of the approaches in the final rule as equally valid ways of establishing the required permit terms and conditions and meeting the remand requirements.

Having said this, however, EPA recognizes that some types of requirements are more easily established through the general permit than others. For instance, clear, specific, and measurable permit requirements that address the minimum control measures, due to their broad applicability to all MS4s, may be easier to develop and include within the general permit, than requirements addressing TMDLs. EPA's *MS4 Permit Improvement Guide* (EPA, 2010) and the MS4 permit compendia [1] provide a number of ready examples for how permits may establish clear, specific, and measurable requirements that implement the six minimum control measures. On the other hand, the necessarily site- and watershed-specific nature of TMDLs, combined with the fact that effective implementation of TMDLs is enhanced through involvement of the public at the local level, makes these types of requirements more amenable to being developed through the procedural requirements of the second permitting step within the Two-Step General Permit. To illustrate this point, a number of states have already adopted approaches that enable the MS4s to first develop and propose something like a TMDL implementation plan, followed by a step where the state permitting authority reviews and approves the plan to make it an enforceable part of the permit. See related examples in EPA's *Compendium of MS4 Permitting Approaches—Part 3: Water Quality-Based Requirements* (EPA, 2016).[2] In this situation, under the final rule, the permitting authority would establish the MS4's TMDL implementation requirements as part of the second step of the general permit and follow the procedures applicable to the Two-Step General Permit in § 122.28(d)(2).

EPA anticipates that some permitting authorities may over time appreciate the benefits of not having to go through a second process step for individual review and individualized public notices for each MS4, and may as an alternative choose to establish the required permit terms and conditions necessary to meet the MS4 permit standard in the general permit. Under the Two-Step General Permit, the permitting authority must provide public notice for each MS4's NOI and the proposed additional permit terms and conditions to be applied to the MS4, and review and process comments and any requests for a public hearing before finalizing the permit terms and conditions. By comparison, there is only one public notice for an opportunity to comment and request a hearing for a Comprehensive General Permit. Even if deciding that a Comprehensive General Permit is not the best fit, some permitting authorities may find it easier over time to move more requirements into the base general permit so that the number of permitting provisions subject to the additional individualized review and public notice is reduced.

*G. Why EPA Did Not Choose Proposed Option 1 or 2 as Stand-Alone Options*

By adopting the proposed State Choice Approach (Option 3) (now called the ''Permit Authority Choice Approach'') for the final rule, EPA is making a decision to not adopt Option 1 (the ''Traditional General Permit Approach'') or Option 2 (the ''Procedural Approach'') from the proposal as the sole approach by which permitting authorities issue and administer their small MS4 general permits. As stated in Section V.B., the public comments were heavily in favor of adopting Option 3, although there were also proponents for finalizing

[1] These documents can be found on EPA's Web site at *https://www.epa.gov/npdes/stormwater-discharges-municipal-sources#resources.*

[2] This document will be made available on EPA's Web site at *https://www.epa.gov/npdes/stormwater-discharges-municipal-sources#resources.*

proposed Option 1 and for finalizing an approach that would require use of proposed Option 1 for the minimum control measures and proposed Option 2 for water quality-based requirements. EPA ultimately found most persuasive the comments arguing in favor of choosing Option 3 to give permitting authorities flexibility and discretion to determine how it would develop different permit requirements.

A major theme among comments favoring Option 3 was the emphasis on the flexibility it would provide permitting authorities to choose which approach works best in their state. This flexibility will be important, according to a number of commenters, to continue to be able to administer a program that includes local governments with divergent geography, land resources and uses, and financial and resource capacities. According to a number of commenters, Option 3 would also give permitting authorities a range of options for crafting permit conditions for non-traditional MS4s (*e.g.,* universities, hospitals, military bases, road and highway systems), which in many cases require different types of permit provisions than traditional MS4s due to their lack of regulatory, land use, and/or police powers and more limited audiences. Other comments focused on the significant burden that would be placed on states and regulated MS4s if required to adopt one uniform approach, especially in cases where the permitting authority is already implementing approaches that are similar to either proposed Option 1 or 2. In some cases, the way in which permitting authorities write and administer their small MS4 general permits is a direct result of state case law or concern about the risk of state litigation, and these states argue forcefully in their comments about the importance of retaining their approach in light of this history. According to these comments, those permitting authorities that have chosen one or the other of Option 1 or 2 should be able to continue implementing that approach.

Another related common theme among the comments was an argument against adopting either proposed Option 1 or Option 2 as a national, one size fits all approach. These comments emphasized the difficulties associated with forcing all permit terms and conditions into one general permit for all MS4 types and all water quality considerations using the proposed Option 1 approach, and underscored the resource demands associated with implementing an Option 2 approach. Many of these commenters concluded that Option 3 would be the best way of preserving the permitting authority's flexibility to tailor their approach based on what would work best for each state's circumstances.

Based on these comments, EPA chose Option 3, the Permitting Authority Choice option, because both options are valid ways of addressing the court's remand and there is no reason to compel permitting authorities to adopt one or the other of the approaches in proposed Option 1 or Option 2. EPA also appreciates that those state permitting authorities that are already moving their small MS4 permitting approaches in the direction of either Option 1 or 2 are doing so for a number of legitimate reasons that relate to these states' individual circumstances. By enabling permitting authorities to choose which option works best, EPA is avoiding disrupting already established state preferences. This is not to say that permitting authorities will not have to make changes to conform their procedures to the requirements of the final rule.

EPA also received comments urging the Agency not to adopt Option 2 as the only permitting choice available to permitting authorities because of the resource burdens associated with the Option 2 approach, especially the requirement to individually review and approve terms and conditions for their small MS4s. EPA does not dispute the fact that Option 2, which has been finalized as the ''Two-Step General Permit'', is resource intensive; this approach requires significant administrative oversight by design. The process of conducting an individual review of each MS4 operator's NOI, developing a proposal for comment of unique terms and conditions based on the NOI, and processing any public comments or requests for public hearings will require additional resources of the permitting authority if it is not already implementing this type of approach. Any permitting authority choosing this approach will need to carefully consider whether it has the resource capacity to handle the large amount of administrative oversight and review responsibilities that the Two-Step General Permit requires. EPA expects that the resource requirements alone will provide sufficient enough reason for a number of permitting authorities to choose the Comprehensive General Permit, or to minimize the number of terms and conditions it develops for individual MS4 to lessen the administrative burden associated with the Two-Step General Permit.

EPA understands that a permitting authority's decision to adopt the Two-Step General Permit will mean that members of the public interested in commenting on small MS4 permit conditions may end up needing to review not only the draft general permit but also the public notice that proposes the additional terms and conditions for each MS4 that seeks coverage under the general permit. Some commenters considered this a disadvantage because it would be burdensome for the public as well. EPA does not see this as sufficient reason for EPA to choose Option 1 as the only option and deprive permitting authorities of the flexibility to use a two-step procedure. The Two-Step General Permit closely resembles, after all, the approach suggested in the *EDC* remand decision, which emphasized the need for permitting authority review and public participation procedures prior to the establishment of enforceable permit requirements. EPA appreciates the level of interest and concern there is among the public for ensuring that MS4 discharges are being adequately controlled and are making improvements in water quality. EPA notes that any permitting authority that takes on the Two-Step permitting process will need to be prepared to review and respond to any comments that it receives in response to the individual public notices it publishes, and will need to provide a rationale for any final permit terms and conditions established through the process. While states currently using a two-step type of procedure report that they receive few, if any public comments about requirements for individual MS4s, this will not necessarily hold true for the future. With this in mind, EPA found it important to clarify in the final rule that permitting authorities may switch to a Comprehensive General Permit for the next permit term simply by explaining which option they will use to provide coverage under the general permit.

## V. How the Two General Permit Options Work

### *A. Comprehensive General Permit Approach*

Permitting authorities opting to issue Comprehensive General Permits must establish the full set of requirements that are deemed necessary to meet the MS4 permit standard in § 122.34. (See § 122.28(d)(1), which requires that ''the Director includes all required permit terms and conditions in the general permit.'') The permit must therefore include terms and conditions that define what is required to meet the MS4 permit standard for the minimum control measures (§ 122.34(b)),

additional permit terms and conditions based on an approved total maximum daily load (TMDL) or other appropriate requirements to protect water quality (§ 122.34(c)), and requirements to evaluate and report on compliance with the permit (§ 122.34(d)). As a result, the Comprehensive General Permit is no different than other general permits in that all applicable effluent limitations and other conditions are included within the permit itself, and the NOI is used primarily to determine whether a specific MS4 is eligible and to secure coverage for that MS4 under the permit subject to its limits and conditions.

While a number of comments expressed support for the proposed Option 1 approach (now called the ''Comprehensive General Permit'' in the final rule), there were also comments expressing concern about the difficulty of putting together a permit that would comprehensively establish terms and conditions that would be suitable for and achievable by all eligible MS4s, including both traditional and non-traditional MS4s. Others questioned the ability of permitting authorities to write a single permit that would establish uniform requirements that would contain appropriate requirements for MS4s that have been regulated since the beginning of the Phase II program as well as for MS4s brought into the Phase II program by the latest Census, not to mention a permit that would be able to establish watershed-specific requirements addressing TMDLs. EPA acknowledges the challenge that permitting authorities will face in developing and issuing a Comprehensive General Permit. Synthesizing the collective understanding of MS4 capabilities across an entire state, and translating this into effective and achievable permit requirements, will require a greater effort up front in developing one of these permits. However, as described in further detail below, there are ways of addressing challenges such as these, for example, by subcategorizing MS4s by experience, size, or other factors, and creating different requirements for each subcategory.

To assist permitting authorities in developing permit conditions for a Comprehensive General Permit, EPA has compiled examples of permit provisions from existing permits that implement the minimum control measures, which are written in a ''clear, specific, and measurable'' manner. These examples are included in a document entitled *Compendium of MS4 Permitting Approaches—Part 1: Six Minimum Control Measure Provisions* (EPA, 2016). EPA has also included in a separate compendium examples of permit provisions to consider when addressing approved TMDLs.[3] A number of commenters requested that EPA continue to provide these types of examples to help permitting authorities implement the final rule. EPA agrees with these comments, and plans to regularly update these compendia and provide other similar types of technical assistance.

There are a variety of permitting approaches that should be considered to address the concerns raised about developing a Comprehensive General Permit for the large number and variety of regulated MS4s, and which address the array of localized or watershed-based issues. One approach that may work is to issue two different comprehensive general permits or to subdivide the permitted universe, establish in the main body of the permit requirements that apply to all MS4s, and to provide a separate appendix that establishes MS4-specific terms and conditions, which apply uniquely to different categories of MS4s. For instance, the state of Washington has issued two MS4 general permits, one for the eastern part of the state and the other for the western part of the state. Further, the Western Washington Small MS4 General Permit includes a TMDL appendix, which establishes additional permit requirements for specific MS4s based on the watershed in which they are located and the waterbody to which they discharge. These additional requirements are each translated from the approved TMDL for that watershed and the specific waterbody. Another approach that permitting authorities can consider is to establish different requirements for each minimum control measure for separate sub-categories of MS4s based on type of MS4 or other factors.[4] Permits could also include separate sections for traditional versus non-traditional MS4s,[5] or alternatively separate permits may be issued for these different categories of MS4s, as several states are doing for departments of transportation MS4s. The main benefit of these different approaches is that they provide the permitting authority with a way of dividing up the universe of small MS4s into smaller categories, which are composed of municipalities with a greater degree of similarity among them.

*B. Two-Step General Permit Approach*

Inherent in the Two-Step General Permit approach is the fact that the general permit requirements are not on their own adequate to meet the MS4 permit standard in § 122.34. In order to fill in the gaps, the permitting authority must individually review information submitted with each eligible MS4 operator's NOI, and propose additional permit requirements to apply to the MS4 individually that, together with the base general permit requirements, meet the MS4 permit standard for that MS4. These proposed additional permit requirements and the information on which it is based is then subject to public notice and comment, and the opportunity to request a hearing.

The first step of the Two-Step General Permit is to develop and issue the final small MS4 general permit, or ''base general permit.'' The need for the second step arises because the base general permit does not include all of the terms and conditions necessary to meet the MS4 permit standard, and therefore has left the development of the additional requirements to a second process. NOIs for general permits using this approach must include more information than NOIs for typical general permits.

The proposed rule described the steps that would be involved in the second step of the permitting process in Section VI.B of the preamble (81 FR 427, January 6, 2016). EPA requested comment on modifying the applicable parts of the NPDES regulations to enable permitting authorities to incorporate additional, enforceable elements of the Two-Step General Permit for individual MS4s following a process that would require public notice, the opportunity to request a public hearing, and a final permitting determination. The model that EPA proposed for this procedure was based on several of the key components of the permitting framework adopted for Concentrated Animal Feeding Operations (CAFOs) in § 122.23(h). EPA proposed that the new ''Option 2'' process would be contained in § 122.33(b)(1), where the NOI requirements for small MS4 general permits are located. The proposal described the rule provisions as follows:

- At a minimum, the operator must include in the NOI the BMPs that it proposes to implement to comply with the permit, the measurable goals for each BMP, the person or persons responsible for implementing the SWMP, and any additional information

[3] See EPA's *Compendium of MS4 Permitting Approaches—Part 3: Water Quality-Based Requirements* (EPA, 2016).

[4] For example, Colorado's 2016 Small MS4 General Permit includes a different set of actions and corresponding deadlines for ''new permittees'' and ''renewal permittees.'' See Section H, *https://www.colorado.gov/pacific/sites/default/files/COR090000-PermitCertification.PDF*.

[5] See California's 2013 Small MS4 General Permit, *http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/phsii2012_5th/order_final.pdf*.

required in the NOI by the general permit. The Director must review the NOI to ensure that it includes adequate information to determine if the proposed BMPs, timelines, and any other actions are adequate to reduce the discharge of pollutants from the MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. When the Director finds that additional information is necessary to complete the NOI or clarify, modify, or supplement previously submitted material, the Director may request such additional information from the MS4 operator.

• If the Director makes a preliminary determination that the NOI contains the required information and that the proposed BMPs, schedules, and any other actions necessary to reduce the discharge of pollutants from the MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act, the permitting authority must notify the public of its proposal to authorize the MS4 to discharge under the general permit and, consistent with § 124.10, make available for public review and comment and opportunity for public hearing the NOI, and the specific BMPs, milestones, and schedules from the NOI that the Director proposes to be incorporated into the permit as enforceable requirements. The process for submitting public comments and hearing requests, and the hearing process if a hearing is granted, must follow the procedures applicable to draft permits in §§ 124.11 through 124.13. The permitting authority must respond to significant comments received during the comment period, as provided in § 124.17, and, if necessary revise the proposed BMPs and/or timelines to be included as terms of the permit.

• When the Director authorizes coverage for the MS4 to discharge under the general permit, the specific elements identified in the NOI are incorporated as terms and conditions of the general permit for that MS4. The permitting authority must, consistent with § 124.15, notify the MS4 operator and inform the public that coverage has been authorized and of the elements from the NOI that are incorporated as terms and conditions of the general permit applicable to the MS4 (81 FR at 427–420, January 6, 2016).

The final rule matches closely with what was proposed as the steps necessary to implement Option 2. These steps, which are part of what was finalized as the ''Two-Step General Permit,'' are described as follows in § 122.28(d)(2):

(1) The MS4 operator submits the NOI with the information about its activities as specified in the general permit.

(2) The permitting authority reviews the NOI to determine if the information is complete and to develop proposed additional permit requirements necessary to meet the MS4 permit standard;

(3) If the permitting authority makes a preliminary determination to authorize the small MS4 operator to discharge it must give the public notice of and opportunity to comment and request a public hearing on the proposed additional permit terms and conditions, and the basis for these additional requirements, including the NOI and other relevant information submitted by the MS4. These procedures must be carried out in accordance with 40 CFR part 124.

(4) Upon completion of the procedures in step (3), the permitting authority may authorize the discharge from the MS4 subject to the requirements of the base general permit and the final requirements established in the second step. Using this approach, the permitting authority may choose to rely fully on the completion of this process to establish most of required permit terms and conditions for a particular MS4, or it may rely on a hybrid approach wherein some of the necessary requirements are established within the base general permit at permit issuance while the remaining set of requirements are developed during the process of authorizing individual MS4 discharges in the second step.

Where EPA has modified the Two-Step General Permit from the proposed rule, it is to clarify a point made in the proposed rule. For instance, EPA makes a clarification in the final rule regarding the requirements for NOI review in the Two-Step approach. The proposed rule explained that the purpose of the permitting authority's review is to determine whether the NOI is complete and whether the operator's proposed set of BMPs and measurable goals are adequate to meet the MS4 permit standard. The final rule places emphasis on the fact that the information submitted by the MS4 operator with its NOI is for the purpose of informing the permitting authority's determination as to what ''additional terms and conditions necessary to meet the requirements of § 122.34.'' See § 122.28(d)(2)(ii). What the operator submits in the NOI is determined by the permitting authority when establishing the base general permit. The permitting authority may request descriptions of BMPs to be implemented and measurable goals as the MS4's proposal for what it considers to be adequate to ''reduce pollutants to the maximum extent practicable, protect water quality and satisfy the appropriate water quality requirements of the Clean Water Act.'' Under the Two-Part General Permit in the final rule, the permitting authority reviews this information to craft what it determines are the necessary permit terms and conditions to meet this MS4 permit standard; these terms and conditions are then subject to the permitting procedures for public comment and the opportunity to request a hearing. The specific requirements developed out of this process may bear a substantial similarity to the operator's proposed BMPs and measurable goals, but they also may be modified or further refined based on the permitting authority's own determination as to the specific requirements that it deems necessary to meet the MS4 permit standard. For instance, instead of proposing to adopt all of the BMP details that are submitted by the MS4 operator with the NOI as enforceable permit requirements, the permitting authority may instead develop proposed requirements that focus in on the specific actions and milestones that it believes would represent significant progress during the permit term. This is a clarification from the proposed rule description of the NOI review process, which did not clearly articulate the permitting authority's role in reviewing the operator's BMP and measurable goal information, or other information requested in the base general permit (or fact sheet).

Another clarification made to the proposed Two-Step process relates to the 40 CFR part 124 procedures to follow during the second step. The final rule incorporates by reference several specific sections of part 124. These specific references are consistent with the proposed rule's reference generally to part 124, however, in the final rule EPA focused in on the specific procedural requirements that ensure that the public participation aspects of the Two-Step General Permit are consistent with the NPDES regulations. These part 124 requirements are necessary because the permitting authority is proposing to add additional terms and conditions to the general permit applicable to individual MS4 permittees. EPA likens these additional terms and conditions to the development of a ''draft permit'' under § 124.6, and, as such, these draft requirements must undergo minimum permitting procedures for public notice,

comments, and hearings before they are established in final form. The following procedural requirements are referenced directly:

Public Notice of Permit Actions and Public Comment Period (§ 124.10, Excluding (c)(2))

—By incorporating these provisions of § 124.10 for the Two-Part General Permit, this means that the permitting authority's notice must adhere to the following minimum public notice requirements for the draft permit conditions:

• The notice must provide a minimum of 30 days for the public to provide comment on the draft permit terms and conditions. The permitting authority must provide notice to the public at least 30 days prior to holding a public hearing on these draft requirements. See § 124.10(b).

• The permitting authority must provide public notice to the MS4 operator who submitted the NOI, to any relevant agencies or other entities referenced in § 124.10(c)(1), and members of the public on the permitting authority's mailing list pursuant to § 124.10(c)(1)(ix). The public notice must also be sent in a manner constituting legal notice to the public under state law (if the permit program is administered by an approved state), and by using ''any other method reasonably calculated to give actual notice'' of the draft terms and conditions being added to the permit. See § 124.10(c)(3) and (4).

• *The public notice must consist of:* (1) The name and address of the office processing the NOI and draft terms and conditions for the MS4 operator; (2) name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft terms and conditions, statement of basis or fact sheet, and the NOI; (3) a brief description of the comment procedures required by §§ 124.11 and 124.12 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing, and any other procedures by which the public may participate in the final authorization decision; (4) for EPA-issued permits, the location of the administrative record required by § 124.9, the times when the record will be open for public inspection, and a statement that all data submitted by the operator is available as part of the administrative record; (5) a general description of the location of each discharge point and the name of the receiving water; and (6) any additional information considered ''necessary or proper.'' The public notice of a hearing under § 124.12 must include: (1) Reference to the date of previous public notices relating to the same MS4; (2) date, time, and place of the hearing; and (3) a brief description of the nature and purpose of the hearing, including the applicable rules and procedures. See § 124.10(d).

• In addition to the public notice, the permitting authority must mail a copy of the fact sheet or statement of basis, the NOI, and the draft terms and conditions to the operator and other agencies and entities listed in § 124.10(c)(1)(ii) and (iii). See § 124.10(e).

A cross-reference to § 124.10(c)(2) is not included in the final rule. Although these requirements apply to general permits, EPA distinguishes in the Two-Step General Permit between the base general permit and the terms and conditions that are added through the second permitting step for individual MS4 permittees. The permitting authority is required to comply with § 124.10(c)(2) when issuing the general permit *(i.e.,* the base general permit). However, because the additional MS4-specific terms and conditions are developed in a manner that is similar to the way in which terms in an individual permit would be developed, EPA concluded that the public notice requirements that apply to individual permits are more appropriate for the second step in the process of authorizing an MS4 to discharge under a Two-Step General Permit. For this reason, EPA does not apply the specific requirements of § 124.10(c)(2) to the proposed additional terms and conditions, but does apply the other applicable public notice requirements of § 124.10.

Public Comments and Public Hearings (§§ 124.11 and 124.17)

Consistent with § 124.11, during the public comment period for the draft permit conditions, any member of the public may submit comments and may request a hearing, if none has already been scheduled. The permitting authority is required to consider comments received during the comment period in making the decision to authorize the discharge. When the permitting authority has made a final determination to authorize an individual small MS4 to discharge under the general permit, subject to the additional incorporated requirements, it must also make available to the public its responses to comments received, subject to the applicable requirements of § 124.17.

Public Hearings (§ 124.12)

If the permitting authority holds a public hearing on the draft permit conditions, public notice of the hearing must be provided as specified in § 124.10 and the hearing must be conducted in accordance with the requirements of § 124.12.

Obligation To Raise Issues During the Public Comment Period (§ 124.13)

During the public comment period for the draft permit conditions, commenters are obligated to raise ''all reasonably ascertainable issues and submit all reasonably available arguments supporting their position'' as required in § 124.13.

Upon completion of these procedures, in which permitting authority review, public notice and comment, and any public hearings take place in accordance with the appropriate sections of part 124, the permitting authority may authorize the MS4 to discharge under the terms of the permit. When authorization occurs, the final terms and conditions that were the subject of the public comment and hearing process described above become enforceable permit terms and conditions for that MS4 permittee. No significant changes were made to this step from the proposed rule. EPA clarifies that the permitting authority may choose the method by which the permittee is notified of the final decision to authorize the discharge and the final permit conditions, and by which the public is informed of the same. EPA oversight of state-issued NPDES permits must also be taken into account. Under the Two-Step General Permit, EPA has authority to review all terms and conditions of the permit, whether established in a base general permit or in the second step that establishes terms and conditions for individual MS4s. See § 123.44.

### *C. Permittee Publication of Public Notice*

A question arose during the development of the proposed rule as to whether the MS4 could carry out public notice requirements for the Procedural Approach (now referred to as the ''Two-Step General Permit''). Several states currently require MS4 permittees to provide public notice of individual MS4 NOIs (and their proposed SWMPs in many states), including information on how the public can submit comments to the state and to request a public hearing. EPA requested comment on whether permitting authorities that have relied on the MS4 to place public notices in the past should be able to use this

approach to satisfy their public notice requirements for individual NOIs under the Two-Part General Permit. EPA did not propose this approach to be adopted as part of the rulemaking effort, and is not including in the final rule any specific requirements related to this practice.

EPA received several comments in response to this question. State permitting authorities and one statewide MS4 association voiced their support for allowing permitting authorities to require MS4 permittees to publish public notices, and to establish procedures within the final rule to accommodate this practice. One state suggested that if a permitting authority is allowed to rely on the MS4 to publish the public notice of the NOI, such public notice must follow all of the minimum requirements related to the contents and methods of providing notice, and any public comments received should be acknowledged and considered by the state and documented in the final permit decision. Another commenter recommended that the permitting authority be the only entity authorized to conduct public notice and comment procedures given the differences of opinion that may arise during the process, but suggested that as an alternative EPA could allow states to establish their own process for these procedures as long as they are consistent with the regulations.

Other commenters were opposed to allowing permitting authorities to rely on the MS4 permittee to carry out applicable public participation requirements. These commenters emphasized the clear requirement in the regulations for the permitting authority to conduct these activities, pointing to the fact that the NOI should be treated no differently than any permit application. These comments noted that members of the public wishing to review and potentially submit comments and request a hearing on NOIs should have a centralized place to refer to for reviewing public notices of NOIs, and feared that allowing a decentralized approach where the MS4 handles the public notice would be unlikely to reach the intended audience. Another point made was that in keeping with the permitting authority's responsibility to review and determine the adequacy of each MS4's NOI, the public notice and comment proceedings that are associated with the NOIs should be managed by the same entity. These commenters also questioned whether delegating these responsibilities to the MS4 made sense given the fact that it is the state that is most familiar with how to meet its own administrative rules and protocols, and that is best equipped from a technical and physical capacity standpoint to receive and process comments, many of which will be submitted electronically, and potentially hold hearings. Additionally, some commenters worried about the effect of placing more burden on the municipalities.

The final rule does not address the issue of whether the permitting authority may rely on its MS4 permittees to carry out public notice responsibilities on its behalf in the final rule, but instead incorporates by reference the existing set of requirements that apply to all draft permits in § 124.10. As to whether permitting authorities may rely on the permittee to publish the public notice, it is EPA's view that they may do so as long as the public notice meets all of the applicable requirements in § 124.10. The public notice responsibilities in the NPDES regulations apply to the permitting authority, therefore these are requirements that it must ensure are met. The state must conduct any public hearing, consider the comments received, respond to them, and make decisions as to what changes are necessary as a result of the comments.

## VI. Requirements for Permit Terms and Conditions

EPA proposed several clarifying changes to the regulatory language in § 122.34 regarding the expression of permit limits for small MS4s. First, EPA proposed to clarify that the permitting authority is responsible for establishing permit requirements that meet the MS4 permit standard. Second, proposed changes would address issues of clarity in permit terms and the different ways in which permit requirements can be expressed. Third, the proposal would reinforce the expectation that the MS4 standard must be independently met for each 5-year permit term. Each of these categories of regulatory changes is discussed below. The final rule incorporates these proposed changes, with some modification to the proposed rule language in response to comments and for additional clarity.

### *A. Permitting Authority as the Ultimate Decision-Maker*

To directly address the clear message from the Ninth Circuit remand that the regulations need to preclude the small MS4 from determining on its own what actions are sufficient to meet the MS4 standard ''to reduce pollutants to the maximum extent practicable, protect water quality and satisfy the appropriate water quality requirements of the CWA,'' EPA proposed revisions throughout § 122.34 to make it clear that the permitting authority is responsible for establishing permit requirements that meet the standard. For this reason, EPA proposed to shift the focus of the requirements in § 122.34 to the ''NPDES permitting authority'' rather than the regulated small MS4. Similarly, the proposed rule modified the guidance provisions to focus on permitting authorities as well as MS4s. In most cases, this meant substituting the term ''NPDES permitting authority'' for ''you'' or ''your'' (referring to the regulated small MS4) and referring to the regulated small MS4 as the ''operator.'' A related change tied to the remand was the proposed deletion of the sentence ''Implementation of best management practices consistent with the provisions of the storm water management program required pursuant to this section and the provisions of the permit required pursuant to § 122.33 constitutes compliance with the standard of reducing pollutants to the 'maximum extent practicable.' '' The Ninth Circuit court specifically raised this sentence as a demonstration that ''nothing in the Phase II regulations requires that NPDES permitting authorities review these Minimum Measures to ensure that the measures that any given operator of a small MS4 has decided to undertake will *in fact* reduce discharges to the maximum extent practicable.'' See *EDC,* 344 F.3d at 832, 854. The proposal to remove this sentence, combined with the other changes, would reinforce the fact that the permitting authority is the entity responsible for establishing the terms and conditions of the permit necessary to meet the MS4 permit standard. These changes also would shift the focus of § 122.34 to the development of permit requirements and away from the identification of what the MS4 should include in its SWMP.

EPA received a relatively small number of comments responding to these proposed changes. Some commenters expressed a preference to continue to have the MS4 in charge of defining the MS4 standard for itself or requested that the deleted sentence (''Implementation of best management practices consistent with the provisions of the stormwater management plan. . . .'') be retained. Other commenters pointed out that the proposed changes should apply to all regulated small MS4 permits, regardless of the type of permit (*e.g.,* Traditional General Permit, Procedural General Permit, or individual), and requested that EPA clarify this in the final rule.

The final rule retains the proposed rule changes that emphasize that it is

the permitting authority with the ultimate authority to determine what small MS4s must do to meet the MS4 permit standard. These changes respond to the Ninth Circuit's finding in the *EDC* decision that the Phase II rule did not, contrary to the CWA, require the permitting authority to determine whether the MS4 permittee's proposed program would in fact meet the MS4 permit standard. Indeed, while the *EDC* decision specifically addressed the general permit process, the underlying rationale for the court's rejection of the general permitting process—the failure of the rule to ensure that the permitting authority, not the permittee, determine what is needed to meet the standard applicable to MS4 permits under the CWA—applies whether the MS4 permit is a general permit or an individual permit. Therefore, EPA is amending § 122.34 to apply to any permit issued to regulated small MS4s (except those small MS4s applying for an individual permit under § 122.33(b)(2)(ii)).

These changes, including the deletion of the sentence ''Implementation of best management practices consistent with the provisions of the storm water management program required pursuant to this section and the provisions of the permit required pursuant to § 122.33 constitutes compliance with the standard of reducing pollutants to the maximum extent practicable,'' more clearly establish the permit as the enforceable document, not the stormwater management program or what has been described in the SWMP. (See VI.E of this preamble for a discussion of the function of the ''SWMP'' under EPA's small MS4 regulation.)

*B. ''Clear, Specific, and Measurable'' Permit Requirements*

EPA also proposed rule revisions related to the expression of permit terms. Consistent with current EPA guidance, the proposed rule specified that permit requirements be expressed in ''clear, specific, and measurable'' terms. The preamble to the proposed rule contained a detailed discussion about what ''clear, specific, and measurable'' meant and EPA put in the rulemaking docket a draft compendium of example language from actual permits to further illustrate the meaning of ''clear specific, and measurable.'' See updated permit compendium in the final rule docket, *MS4 Compendium of Permitting Approaches: Part 1: Six Minimum Control Measures* (EPA, 2016). EPA also included in the preamble to the proposed rule, examples of permit language that *do not* appear to have the type of detail that would be needed.

In addition to specifying that permit terms and conditions must be ''clear, specific, and measurable,'' the proposed rule text clarified that effluent limitations may be in the form of BMPs, and provided non-exclusive examples of how these BMP requirements may appear in the permit, such as in the form of specific tasks, BMP design requirements, performance requirements or benchmarks, schedules for implementation and maintenance, and the frequency of actions. This language was proposed to substitute for existing language that states: ''Narrative effluent limitations requiring implementation of best management practices (BMPs) are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements . . . and to protect water quality.''

EPA also proposed to delete a related guidance paragraph in § 123.34(e)(2). As explained in the proposed rule preamble, the guidance no longer reflects current practice.[6] The deletion of this paragraph is also consistent with EPA guidance developed since 1999 regarding the types of requirements that are recommended for MS4 permits.[7]

EPA received numerous comments on these proposed changes. For the most part, commenters from all stakeholder groups expressed approval for the ''clear, specific, and measurable'' language. However, a variety of commenters read the deletion of ''narrative'' to mean that numeric effluent limitations (*e.g.,* end-of-pipe pollutant concentration limitations) would be required in small MS4 permits or that ''narrative'' limits would no longer be acceptable. As stated in the preamble, EPA did not intend to make substantive changes to § 122.34 beyond what would be required to address the court remand. The term ''narrative'' was proposed to be deleted to recognize that other expressions of effluent limitations may be appropriate, not to preclude the use of narrative effluent limitations. To avoid misinterpretation of the regulation, however, the final rule instead describes appropriate requirements as being ''narrative, numeric, or other requirements.'' EPA intends for the final rule text to more broadly encompass the various types of controls for stormwater discharges that could be required of small MS4s.

Regarding the insertion of ''clear, specific, and measurable'' to describe permit requirements, most commenters perceived benefits for permittees, permitting authorities, and the public, particularly because it will be more clearly stated in the permit what is expected for compliance. Some commenters observed that ''clear, specific, and measurable'' terms would enable better enforcement of the MS4 permit requirements, and would provide a more effective path to improved water quality. Some small MS4s themselves pointed out that greater certainty in permit terms could put them into a better position to plan and to garner local political support and critical funding for their programs. Other MS4s, however, voiced uncertainty as to how the terms ''clear, specific, and measurable'' would be implemented and what would actually be required of them by their permits and concern that their flexibility would be unduly restricted. Some commenters also suggested that regulatory provisions associated with the expression of permit limits, while discussed in the preamble to the proposed rule in the context of Option 1, should apply regardless of the option chosen. Several groups requested that ''clear, specific, and measurable'' be changed instead to ''focused, flexible, and effective.'' Other commenters requested that ''enforceable'' be added to this phrase. Some groups representing MS4 permittees and industry expressed concern that ''measurable'' meant that permits would now contain water quality monitoring requirements or that ''measurable,'' together with the deletion of ''narrative'' to describe effluent limitations, meant that EPA was opening the door for small MS4 permits to now be required to contain numeric effluent limitations, *e.g.,* end-of-pipe pollutant concentration limits for each outfall in the system. A concern that ''clear, specific, and measurable'' would preclude or reduce MS4 flexibility to change program elements as a program encountered successes or failures (*i.e.,* adaptations made during the permit term or to meet MS4-specific circumstances) was also stated as a disadvantage associated with this language. In a related vein, several commenters warned against permit terms that were too specific and left very little discretion to the MS4. Some commenters requested that the regulatory text indicate that the expectation that permit requirements be ''clear, specific, and measurable'' apply

[6] See EPA's *Compendium of MS4 Permitting Approaches—Part 3: Water Quality-Based Requirements* (EPA, 2016).

[7] See EPA memorandum entitled *Revisions to the November 22, 2002 Memorandum ''Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs,''* November 26, 2014.

to each BMP and other requirements in the permit, and accompanied by reporting requirements that related to measurable requirements, rather than measureable goals as in the current regulation.

The final rule retains the proposed rule requirement for ''clear, specific, and measurable'' permit terms and conditions. Accompanying the promulgation of this requirement, EPA is also publishing an updated version of its compendium of permit examples from the proposed rule (*i.e., MS4 Compendium of Permitting Approaches: Part 1: Six Minimum Control Measures* (EPA, 2016)), which includes provisions from EPA and state MS4 general permits that provide examples of clear, specific, and measurable requirements. EPA also retains the examples provided in the proposed rule preamble of permit language that would generally not qualify as clear, specific, and measurable, which is included here, with minor edits:

- Permit provisions that simply copy the language of the Phase II regulations verbatim without providing further detail on the level of effort required or that do not include the minimum actions that must be carried out during the permit term. For instance, where a permit includes the language in § 122.34(b)(4)(ii)(B) (*i.e.,* requiring ''. . . construction site operators to implement appropriate erosion and sediment control best management practices'') and does not provide further details on the minimum set of accepted practices, the requirement would not provide clear, specific, and measurable requirements within the intended meaning of the proposed Traditional General Permit Approach. The same would also be true if the permit just copies the language from the other minimum control measure provisions in § 122.34(b) without further detailing the particular actions and schedules that must be achieved during the permit term.
- Permit requirements that include ''caveat'' language, such as ''if feasible,'' ''if practicable,'' ''to the maximum extent practicable,'' and ''as necessary'' or ''as appropriate'' unless defined. Without defining parameters for such terms (for example, ''infeasible'' means ''not technologically possible or not economically practicable and achievable in light of best industry practices''), this type of language creates uncertainty as to what specific actions the permittee is expected to take, and is therefore difficult to comply with and assess compliance.
- Permit provisions that preface the requirement with non-mandatory words, such as ''should'' or ''the permittee is encouraged to . . . .'' This type of permit language makes it difficult to assess compliance since it is ultimately left to the judgment of the permittee as to whether it will comply. EPA notes that the Phase II regulations include ''guidance'' in places (*e.g.,* § 122.34(b)(1)(ii), (b)(2)(ii), and (b)(3)(iv)) that suggest practices for adoption by MS4s and within permits, but does not mandate that they be adopted. This guidance language is intended for permitting authorities to consider in establishing their permit requirements. Permitting authorities may find it helpful to their permittees to include guidance language within their permits in order to provide suggestions to their permittees, and it may be included. However, guidance language phrased as suggested guidelines would not qualify as an enforceable permit requirement under the final rule.
- Permit requirements that lack a measurable component. For instance, permit language implementing the construction minimum control measure that requires inspections ''at a frequency determined by the permittee'' based on a number of factors. This type of provision includes no minimum frequency that can be used to measure adequacy and, therefore, would not constitute a measurable requirement for the purposes of the rule.
- Provisions that require the development of a plan to implement one of the minimum control measures, but does not include details on the minimum contents or requirements for the plan, or the required outcomes, deadlines, and corresponding milestones. For example, permit language requiring the MS4 to develop a plan to implement the public education minimum control measure, which informs the public about steps they can take to reduce stormwater pollution. The requirement leaves all of the decisions on what specific actions will be taken during the permit term to comply with this provision to the MS4 permittee, thus enabling almost any type of activity, no matter how minor or insubstantial, to be considered in compliance with the permit.

Regarding the suggestion to add ''enforceable,'' in EPA's view, clear, specific and measurable terms and conditions together define what makes a permit requirement enforceable. Therefore, adding ''enforceable'' to this list of attributes would not add to the enforceability of permit terms and conditions. With respect to the suggestion to replace ''clear, specific, and measurable'' with ''focused, flexible, and effective,'' EPA clarifies that nothing in the final rule prevents a permitting authority from developing permit requirements that are focused, flexible, and effective, as long as those requirements are articulated in clear, specific, and measurable terms.

The word ''specific'' also generated a number of comments. EPA proposed ''specific'' to indicate what activities an MS4 would be required to undertake to implement the various required elements of the minimum control measures described in § 122.34(b) or to achieve a specified level of performance that would constitute compliance with the permit. Some commenters advocated for more specificity in permits, while others cautioned against too much specificity. Still others simply asked for more guidance about how ''specific'' a general permit would need to be. EPA intends for ''specific'' to mean that a permitting authority describes in enough in detail that an MS4 can determine from permit terms and conditions what activity they need to undertake, when or how often they must undertake it, and whether they must undertake it in a particular way. It must be clear what does and does not constitute compliance. As noted in the preamble to the proposed regulation, a verbatim repetition of the minimum control measures described in § 122.34(b) does not provide a sufficient level of specificity.

At the same time, EPA intends for the permitting authority to retain discretion in determining how much specificity is needed for different permit requirements. The level of specificity may change over time, for example, to reflect a more robust understanding of more effective stormwater management controls or to meet specific state needs. There is a wide range of ways to implement a stormwater management program and the permitting authority will need to determine how to craft permit terms and conditions that establish clear expectations that implement the various requirements in § 122.34 in specific terms, and this can be done while also providing flexibility to MS4s to choose how they will comply with permit terms. For example, a requirement to ''Develop a public education program about the effect of stormwater on water quality'' is not a sufficiently specific permit requirement. To provide greater specificity, some permitting authorities have provided a menu of specific public education activities in the permit, and the MS4 must choose from among them indicating how they will comply with the permit. For a hypothetical example, the permit might require that the MS4

undertake four public education activities each year from a list of activities specified in the permit and include at least one each year that is directed at students in all public schools within the MS4 area, using an existing or new curriculum, to explain ways in which stormwater can harm water quality. In this hypothetical example, the MS4 has the flexibility to choose from a list of activities the permitting authority has determined are acceptable and, for the required activity involving public schools, and to choose a curriculum that already exists or develop a new one that is tailored to specific stormwater problems in the community. The specific (clear and measurable) permit terms are:

(1) To undertake four education activities per year from a specified list of allowable activities; and (2) to ensure that at least one of the activities involves education about stormwater at all public schools. Compliance would be completion of four activities each year. One type of activity is specified in the permit, but the MS4 can choose the audience, the medium, and the specific message for the other three required activities. Even within the more specific requirement related to public schools, the permittee would have discretion in determining the form and content of the curriculum. In this hypothetical example, the permit contained requirements of varying specificity, but the boundaries of what constitutes compliance is readily apparent and it is clear what the MS4 must do and the timeframe for compliance.

What is not specified in a permit implicitly defines the level of discretion the MS4 has to meet the terms and conditions of the permit. EPA recognizes that it can be useful for MS4s to retain the ability to change specific stormwater control activities during the term of the permit without the need to seek a permit modification for every change. In the above hypothetical example, if the MS4 finds that, after the second year of the permit term that the curriculum it chose was not effective, it could develop a different one or choose another curriculum, *e.g.,* one that involves field work rather than just classroom instruction. The change in curriculum would not require a permit modification because the permit did not specify the particular curriculum that must be used. The permit terms in this case also provide the public with sufficient information to offer comments on the activities available, their number and frequency, and the degree of discretion left to the MS4. EPA emphasizes that it is not necessary that every detail be spelled out in a permit as an enforceable requirement under the CWA. See further discussion of the considerations related to permit modifications in Section VI.E.

In the above hypothetical example, the permitting authority could have chosen more specific terms. For example, it could have required that the MS4s undertake activities A and B in the first year, activities C and D in the second year, and so on. It could have specified the medium to be used, *e.g.,* television or social media and each of the audiences that must be addressed in the outreach plan *(e.g.,* businesses, commercial establishments, developers). EPA notes that increased specificity does not necessarily mean that the permit is more stringent. It does, however, decrease the flexibility left to the MS4 to determine how to meet the permit requirement. Conversely, the permitting authority in the above hypothetical example could have been less specific, for instance, by not requiring one activity each year to be carried out in public schools. Permitting authorities need to consider what level of specificity is appropriate based on the particular factors at play in their permit area. The level of specificity may change over time, and should be evaluated in each successive permit. There may be differences of opinion about the degree of specificity needed, but that call would be open for public comment on the general permit or, if the Two-Part General Permit is used, on the public notice for the additional terms and conditions applicable to individual MS4s.

Another example of how the permit can provide greater specificity is to include distinct requirements based on type of MS4. For example, Section 3.2.1.3 of the Arkansas general permit states: ''The stormwater public education and outreach program shall include more than one mechanism and target at least five different stormwater themes or messages over the permit term. At a minimum, at least one theme or message shall be targeted to the land development community. *For non-traditional MS4s, the land development community refers to landscaping and construction contractors working within its boundaries* (emphasis added). The stormwater public education and outreach program shall reach at least 50 percent of the population over the permit term.'' Here, the permitting authority further specifies the target audience as applied to non-traditional MS4s.

Alternatively, specific permit terms could be established uniformly for all eligible small MS4s, which would have the benefit of leveling the playing field among small MS4s. The final rule gives permitting authorities some discretion to decide how much specificity to include in the permit and how much flexibility to leave to the MS4 when working out the details of how it will comply with permit terms. The public would have an opportunity to provide comments on such preliminary decisions about the level of specificity in permit terms and conditions needed during the public comment period on the general permit or on the second step of a Two-Step General Permit, or in some cases on both.

EPA also received comments on the term ''measurable.'' In response to comments, EPA clarifies that ''measurable'' does not necessarily mean that water quality monitoring must be required in every instance to assess compliance. Likewise, it does not mean that numeric, end-of-pipe pollutant concentrations or loadings must be included in permits. While these examples do represent a type of measurable requirement, they are not required to be in every MS4 permit. Rather, the term ''measurable'' means that the permit requirement has been articulated in such a way that compliance with it can be assessed in a straightforward manner. For example, a permit provision that requires inspections at construction sites to be conducted once per week until final stabilization has been verified is a measurable requirement. To help assess compliance, the permit should also contain a way to track whether the requirement has been met, such as requiring the permittee to keep a log of each inspection, including the date and any relevant findings. On the other hand, a requirement that construction sites be inspected ''after storms as needed'' would not be a measurable requirement. For this requirement, the permittee would have to determine whether a ''storm'' occurred and, if so, whether an inspection was called for, both of which are determinations that are left completely up to the permittee to determine. A permitting authority could not easily assess that this requirement was or was not met.

Like the term ''measurable,'' ''numeric'' is another term that is often misunderstood to require numeric end-of-pipe concentration and/or mass pollutant limitations similar to those that commonly appear in permits issued to other types of point source dischargers (*e.g.,* industrial process discharges and discharges from sewage treatment plants). EPA intends numeric to be read more broadly to include an objective, quantifiable value related to the performance of different

requirements for small MS4 programs. For example, ''numeric'' can refer to the number or frequency of required actions to be taken such as a requirement to ''clean 25% of the catch basins in your service area on a yearly basis'' or ''complete 6 of 10 public education events specified in the following table on an annual basis.'' ''Numeric'' can also refer to a specified numeric performance levels, such as a retention standard for post-construction discharges from new development and re-development sites, *e.g.,* ''The first inch of any precipitation must be retained on-site.'' Another example of a numeric performance requirement is exemplified by the following provision from the 2016 Vermont Small MS4 general permit: ''The control measure(s) is designed to treat at a minimum the 80th percentile storm event. The control measure(s) shall be designed to treat stormwater runoff in a manner expected to reduce the event mean concentration of total suspended solids (TSS) to a median value of 30 mg/L or less.'' See Section E.4.a.iv.B.

A commenter requested that EPA require measurable conditions for each BMP. EPA interprets this comment as recommending that permit terms implementing the minimum control measures, which are often articulated as narrative requirements, each be expressed in a measurable manner. EPA agrees that permit terms and conditions that are established to satisfy a minimum control measure need to have measurable (as well as clear and specific) requirements associated with them that assist the MS4 and permitting authority in determining whether required elements of the minimum control measures or other permit terms and conditions have been achieved.

In the final rule, EPA has decided to substitute the term ''terms and conditions'' for ''effluent limitations'' because stakeholders asserted the term effluent limitations connotes end-of-pipe numeric limits even though EPA is not insisting that these types of limitations be used. In sum, EPA intends that terms and conditions are a type of effluent limitations and that they are interchangeable and both mean permit requirements. As defined in the Clean Water Act, ''effluent limitation'' means ''any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.'' See CWA section 502(11). The Clean Water Act also authorizes inclusion of permit conditions. See CWA section 402(a)(1) and (2). Both ''effluent limitations or other limitations'' under section 301 of the Act and ''any permit or condition thereof'' are an enforceable ''effluent standard or limitation'' under the citizen suit provision, section 505(f) of the Clean Water Act, and the general enforcement provisions, section 309 of the Act. EPA uses these terms interchangeably when referring to actions designed to reduce pollutant discharges. For the purposes of this final rule, changing the small MS4 regulations to refer instead to ''terms and conditions'' is intended to be read as consistent with the meaning of ''effluent limitations'' in the regulations and CWA.

*C. Narrative, Numeric, and Other Forms of Permit Requirements*

As explained in the previous section of this preamble, EPA has clarified that permit limits need not be expressed only as ''narrative'' limits but can consist of ''narrative, numeric, and other types'' of permit requirements. The final rule provides a non-exclusive list of the types of narrative, numeric, and other types of terms and conditions that would be appropriate for small MS4 permits by stating that allowable terms and conditions could include, among other things ''implementation of specific tasks or best management practices (BMPs), BMP design requirements, performance requirements, adaptive management requirements, schedules for implementation and maintenance, and frequency of actions.'' These examples are the same as those proposed, with the exception of removing the term ''benchmarks'' and adding in its place, ''adaptive management requirements.'' Several commenters noted that the term ''benchmarks'' is used in EPA's and many states' Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, or ''MSGP,'' to mean numeric pollutant concentration levels that must be measured, and if exceeded, trigger further monitoring or corrective action requirements. To eliminate any confusion, the commenters requested that a different term be used. EPA did not intend ''benchmarks'' to be precisely defined, but instead to generally refer to various types of identified measurements of performance and to undertake different actions or controls if performance is not at the measured level. To avoid confusion, EPA is replacing ''benchmarks'' with the phrase ''adaptive management requirements,'' since adaptive management approaches are used widely in the MS4 communities. Adaptive management enables MS4 permittees to iteratively improve their stormwater control strategies and practices as they implement their programs and learn from experience to better control pollutant discharges.

With respect to establishing permit terms and conditions, use of the term ''BMP'' in § 122.34(a) is intended to take on a broad meaning and could encompass both the enforceable terms and conditions of the permit as well as particular activities and practices selected by the permittee that will be undertaken to meet the permit requirements but that are not themselves enforceable. BMPs are defined in § 122.2. The term is defined to include schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce water pollution. The regulatory definition also includes treatment requirements, operating procedures, and practices to control runoff, spillage or leads, sludge, or waste disposal, or drainage from raw material storages as BMPs. The defined regulatory term was developed to describe requirements to undertake certain activities to reduce the amount of pollutants discharged that are not described as numeric pollutant effluent discharge limitations or represent specific performance levels. See § 122.44(k). EPA intends, in § 122.34(a) of the final rule, to use BMP in its broadest sense to refer to any type of structural or non-structural practice or activity undertaken by the MS4 in the course of implementing its SWMP. Whether a BMP is an enforceable requirement depends on whether the permitting authority has established it as a term and condition of the permit. The term BMP in § 122.34(a) is not intended to be used interchangeably with enforceable requirements necessary to demonstrate compliance with the permit. Instead, it refers to any type of activity that is used to reduce pollutants in the MS4's discharge. This distinction is important because, as discussed elsewhere in the preamble, some BMPs may be changed without first requiring a permit modification, but only if they are not included as enforceable requirements of the permit.

*D. Considerations in Developing Requirements for Successive Permits*

A final change to § 122.34(a) that EPA proposed was to reflect the iterative nature of the MS4 permit standard and require that what is considered adequate to meet the MS4 permit standard, including what constitutes ''maximum

extent practicable,'' needs to be determined for each new permit term. The final rule provision is retained from the proposed rule, which requires that for each successive permit, the permitting authority must include terms and conditions that meet the requirements of § 122.34 based on its evaluation of the current permit requirements, record of permittee compliance and program implementation progress, current water quality conditions, and other relevant information. The preamble to the proposed rule explained: ''A foundational principle of MS4 permits is that from permit term to permit term iterative progress will be made towards meeting water quality objectives, and that adjustments in the form of modified permit requirements will be made where necessary to reflect current water quality conditions, BMP effectiveness, and other current relevant information.'' (81 FR 422, Jan. 6, 2015). The preamble further listed possible sources to inform the evaluation such as past annual reports, current SWMP documents, audit reports, receiving water monitoring results, existing permit requirements, and applicable TMDLs.

EPA received numerous comments on the language regarding the development of each successive permit. One commenter asked EPA to include additional factors in the rule text that would need to be considered when developing a new small MS4 permit, including impairment status of the waterbody and applicable TMDLs, and permits developed by other states. Other factors requested to be included in the text were discussed in the preamble to the proposed rule include: how long the MS4 has been permitted, the degree of progress made by the small MS4 permittees as a whole and by individual MS4s, the reasons for any lack of progress, and the capability of these MS4s to achieve more focused requirements. Another commenter stated that while it is appropriate to re-examine the permit requirements for continued applicability and effectiveness, EPA should not presume that successive permits would always require more stringent requirements. Instead, the commenter continues, the permit could only require adjustments of existing BMPs. EPA also received general comments about the nature of ''maximum extent practicable'' that were reflected in comments concerning the new language about successive permits.

EPA has retained substantially the same text as it proposed. In § 122.34(a)(2), permitting authorities are required to revisit permit terms and conditions during the permit issuance process, and to make any necessary changes in order to ensure that the subsequent permit continues to meet the MS4 permit standard. Thus, in advance of issuing any new small MS4 general permit, the permitting authority will need to review, among other things, available information on the relative progress made by permittees to meet any applicable milestones under the expiring permit, compliance problems that may have arisen, the effectiveness of the required activities and selected BMPs under the existing permit, and any improvements or degradation in water quality. This requirement applies regardless of the type of permit (individual or general) or the specific general permitting approach that is chosen by the permitting authority.

As commenters pointed out, there are other factors that the permitting authority can consider in establishing the permit requirements in successive permits that meet the MS4 permit standard. This provision, however, is intended to state a general requirement to update each permit and therefore uses broader, more general terms rather than trying to name all of the factors and considerations that may bear on the development of specific permit terms and conditions in successive permits. The crux of this requirement is that permitting authorities cannot simply reissue the same permit term after term without considering whether more progress can or should be made to meet water quality objectives or that other changes to the permit are in order. As is the case with NPDES permits generally, the permitting authority considers anew what is appropriate each time it issues a permit. For example, new stormwater management techniques may have arisen or become affordable during the expiring permit term that should be taken into consideration. The factors identified by commenters and discussed in the proposed rule preamble are all relevant considerations. First and foremost, as noted by one commenter, ''the understanding of which pollution control measures and standards are the most effective and practicable can evolve, requiring corresponding changes in permit conditions to meet the 'MEP' standard.'' Likewise, the stressors affecting water quality can change over time. The water quality of the receiving water and any applicable TMDLs are factors that should be considered, but additional rule language is unnecessary since these factors are already encompassed within the final rule's reference to ''current water quality conditions.'' (Also see, § 122.34(c) which requires permit conditions based on applicable TMDLs.) How long an MS4 has been permitted also could point to establishing different or ''tiered'' requirements based on whether the MS4 is on its third or fourth permit with a mature program or is a newly regulated MS4 that must build its program ''from scratch.'' Using broad, general terms to describe considerations that may change over time provides critical flexibility, while ensuring that the assessment of current circumstances and information is done.

Contrary to the assumption that EPA presumes that each successive permit will contain more stringent conditions for each permit requirement, EPA recognizes that this is not the case. It is possible that some permit conditions remain relatively static in a successive permit. If a permit, however, contained a less stringent requirement or less specific language than had been included in the previous permit this would require an explanation, backed by empirical evidence or other objective rationale that the requirement was no longer practicable or that another approach is more effective, and that making this requirement less stringent would not result in greater levels of pollutant discharges. This would be especially true where the MS4 is discharging pollutants to an impaired water due to an excess of those pollutants. How quickly pollutants must be reduced and which elements of a program need greater or less emphasis are certainly considerations that an MS4 (or others) can raise during the comment period. Likewise, an MS4 that is seeking an individual permit or coverage under a Two-Step General Permit, can propose BMPs or other management measures to the permitting authority that reflect its judgment about how and to what extent permit terms and conditions should change or stay the same.

One commenter asserted that EPA should require consideration of other states' permits in determining permit conditions. The commenter reasoned that if one state adopts a requirement that achieves greater pollutant reduction than another state, the other state should have to adopt the more effective permit condition or explain why it is not practicable for MS4s in its state. The commenter also noted that EPA has taken similar positions with respect to technology-based requirements for other types of discharges. Finally, the commenter urged EPA to continue to provide and update examples of permit conditions developed by various states. EPA does not find it necessary to expressly require the rule to compel

permitting authorities to consider the terms and conditions of permits in other jurisdictions in determining the need to modify their own permits. Each permitting authority is required to issue permits that independently meet the MS4 permit standard based on an evaluation of, among other things, how well the past permit conditions worked and what more can be reasonably achieved in the next permit term. This evaluation involves factors that are necessarily unique to the permitting jurisdiction. Furthermore, the factors that led to one state permit's adoption of stricter requirements than another state makes a straightforward analysis between the two difficult, and potentially misleading. While EPA does not agree that permitting authorities should be required to consider other state permits, EPA agrees that much can be learned from other states' permitting approaches and it may be a relevant factor to consider in a particular permitting proceeding.

Commenters suggest that EPA's publication of its MS4 permit compendia (EPA, 2016), as well as EPA's *MS4 Permit Improvement Guide* (EPA, 2010), providing examples of permit provisions that are written in a ''clear, specific, and measurable'' manner, makes it easier for permitting authorities to write better permits. EPA agrees with commenters that sharing examples among states is an effective tool for developing permit conditions and has updated the compendium of state practices to accompany the final rule for this very reason. See *Compendium of MS4 Permitting Approaches—Part 1: Six Minimum Control Measures* (EPA, 2016) in the final rule docket.[8] EPA plans to facilitate information transfer on a continuing basis.

*E. Relationship Between the SWMP and Required Permit Terms and Conditions*

a. Enforceability of SWMP Documents

In the proposed rule, EPA clarified that the SWMP document does not include enforceable effluent limitations or any other term or condition of the permit. EPA also proposed to delete the language in the Phase II regulations stating that implementation of the SWMP would constitute compliance with the MS4 permit standard. This clarification is retained in the final rule. EPA is revising § 122.34(a) to clarify that the permit, not the stormwater management program, contains the requirements, including requirements for each of the six minimum measures, for reducing pollutants to the maximum extent practicable, protecting water quality and satisfying the appropriate water quality requirements of the CWA. See also Section VIII.A for further discussion of the deleted provision in § 122.34(a). The final rule at § 122.34(b) requires each permit to require the permittee to develop a ''written storm water management program document or documents that, at a minimum, describes in detail how the permittee intends to comply with the permit's requirements for each minimum control measure.'' Requiring that portions of the SWMP be in the form of written documentation is not a new requirement, but rather a clarification. The minimum control measure requirements have always required that certain aspects of the permittee's SWMP be documented in writing, *e.g.,* the storm sewer system map, ordinances or other regulatory mechanisms to regulate illicit non-stormwater discharges into the MS4 and to require erosion and sediment controls. The written SWMP provides the permitting authority something concrete to review to understand how the MS4 will comply with permit requirements and implement its stormwater management program. EPA included a specific requirement for written documentation to clarify, as requested by some commenters, the difference between a MS4's stormwater management program itself from the written description of the program.

EPA received several comments regarding the role of the SWMP document under the different permitting options. Among these comments were several focusing on whether the implementation details described in the SWMP document itself, including the BMPs to be implemented and measurable goals to be achieved, would be enforceable as permit requirements. One commenter noted that some states consider a SWMP document to be an integral part of the permit and recommended that EPA do nothing in the rule to limit a permitting authority's ability to enforce against an MS4 for failure to implement any particular aspect of the SWMP and to require an accurate, up-to-date SWMP document that contains the provisions required by the permit. Other commenters, representing the regulated MS4 point of view, emphasized the role of the SWMP document as a planning tool for the permittee, one that is intended to be continually updated to reflect their adaptive management approach to permit compliance. These commenters cautioned against implying directly or indirectly that the SWMP document is an ''effluent limitation'' that is part of the permit, and felt that under Option 1 of the proposed rule, provisions in SWMP documents could be interpreted by the public to be effluent limitations, thereby opening all details described in the SWMP document to enforcement. These commenters recommended that EPA more narrowly define ''effluent limitation'' and clarify that SWMPs are for planning purposes only and not subject to challenge by outside parties.

In response to these comments, EPA clarifies that, under EPA's small MS4 regulations, the details included in the permittee's SWMP document are not directly enforceable as effluent limitations of the permit. The SWMP document is intended to be a tool that describes the means by which the MS4 establishes its stormwater controls and engages in the adaptive management process during the term of the permit. While the requirement to develop a SWMP document is an enforceable condition of the permit (see § 122.34(b) of the final rule), the contents of the SWMP document and the SWMP document itself are not enforceable as effluent limitations of the permit, unless the document or the specific details within the SMWP are specifically incorporated by the permitting authority into the permit. In accordance with the final rule, therefore, if an MS4 permittee fails to develop a SWMP document that meets the requirements of its permit, this failure constitutes a permit violation. By contrast, the details of any part of the permittee's program that are described in the SWMP, unless specifically incorporated into the permit, are not enforceable under the permit, and because they are not terms of the permit, the MS4 may revise those parts of the SWMP if necessary to meet any permit requirements or to make improvements to stormwater controls during the permit term. As discussed in more detail below, the permitting authority has discretion to determine what elements, if any, of the SWMP are to be made enforceable, but in order to do so it must follow the procedural requirements for the second step under § 122.28(d)(2).

The regulations envision that the MS4 permittee will develop a written SWMP document that provides a road map for how the permittee will comply with the permit. The SWMP document(s) can be changed based on adaptations made during the course of the permit, which

[8] This document, and two additional compendia, *Compendium of MS4 Permitting Approaches—Part 2: Post Construction Standards* (EPA, 2016) and *Compendium of MS4 Permitting Approaches—Part 3: Water Quality-Based Requirements* (EPA, 2016), will be available at EPA's Web site at *https://www.epa.gov/npdes/stormwater-discharges-municipal-sources#resources.*

enable the permittee to react to circumstances and experiences on the ground and to make adjustments to its program to better comply with the permit. The fact that the SWMP is an external tool and not required to be part of the permit is intended to enable the MS4 permittee to be able to modify and retool its approach during the course of the permit term in order to continually improve how it complies with the permit and to do this without requiring the permitting authority to review and approve each change as a permit modification. The fact that the regulations do not require the implementation details of the SWMP document to be made enforceable under the permit does not mean that a permitting authority cannot decide to directly incorporate portions of the SWMP or the entire SWMP as enforceable terms and conditions of the permit. However, in order to adopt any part of the SWMP document as an enforceable term or condition it must go through the proper permitting steps to do so. If a permitting authority chooses to directly incorporate elements of the SWMP document as enforceable permit requirements, once completing the minimum permitting steps to propose and finalize NPDES permit conditions, those elements of the SWMP are no longer external to the permit, but instead become enforceable terms and conditions of the permit.

Lastly, EPA understands that some state permitting authorities already incorporate elements of their permittees' SWMP document using a process that is similar to the Two-Step General Permit process in the final rule. EPA emphasizes that under the final rule if a permitting authority chooses to adopt portions of their permittees' SWMPs using the Two-Step General Permit process this would be a valid way to formally incorporate these as permit terms and conditions; this is because in order to make these requirements enforceable under the permit the permitting authority provided the necessary review and public notice and comment procedures. By contrast, EPA generally would not consider general permits that state that the SWMP documents developed by the MS4 are enforceable under the permit, without first formally adopting the details of these documents to the individual permitting authority review and public participation required by the second step of the Two-Step General Permit, to be an adequate way in which to incorporate the details of the SWMP as enforceable requirements of the permit.

b. Permit Modification Considerations

EPA raised the issue in the proposed rule of whether under the Procedural Approach (now in the final rule as the ''Two-Step General Permit'' approach) a permit modification would be necessary during the permit term if BMPs or measurable goals were changed by the permittee from that which was submitted to the permitting authority. EPA specifically sought comment on what criteria should apply for distinguishing between when a change to BMPs is ''substantial'' requiring a full public participation process or ''not substantial'' that would be subject to public notice but not public comment under a permit modification process similar to the process in § 122.42(e)(6).

A number of commenters expressed support for treating some types of changes as non-substantial modifications to the permit. Commenters emphasized the fact that the types of plans, strategies, and practices implemented under MS4 SWMP are subject to considerable change, and that requiring these changes to undergo a review for a permit modification would stifle the process as well as innovation. Some commenters offered suggestions for what types of changes to the SWMP should constitute a substantial modification and should be reviewable by the permitting authority, and which types of changes should be considered non-substantial. Some thought that a complete change to a BMP should be reviewed by the permitting authority for a modification, while others felt that such changes should not be submitted for review if the replacement BMP would be considered to provide equal or better pollutant removal. Another commenter suggested that EPA incorporate applicable requirements from the CAFO regulations whereby the permittee submits proposed changes to the permitting authority and the permitting authority must determine whether such changes comply with applicable, substantive legal requirements, and if the changes are substantial, then the permitting authority must require public notice, and an opportunity to provide comments or request a hearing before the determination is made on the modification.

The Two-Step approach requires the MS4 operator to provide information about what it intends to do during the permit term to satisfy some or even all of the permit requirements for meeting the MS4 permit standard. The rule then requires the permitting authority, through a review and public comment process, to establish MS4-specific permit terms and conditions that the permitting authority deems necessary to meet the MS4 permit standard. Once issued, these additional permit requirements are set for the permit term, and compliance is measured based on the permittee's ability to meet these enforceable terms and conditions. When the final permit terms and conditions are established, changes to those requirements can only be made through a formal modification process, which is subject to the requirements of § 122.62, or § 122.63 if the proposed change constitutes a minor modification.

A distinction between what constitutes a potential change in permit terms and what amounts to merely a change in implementation of the SWMP is important to consider in the context of the Two-Step General Permit. Where a permittee proposes to change a BMP that it is implementing, and the change does not require the enforceable permit conditions to be changed in any way, but rather offers an alternative means of complying with the same permit conditions, EPA would not consider this to be a permit modification. For instance, if the MS4's permit requires that it conduct field tests of 20 percent of its priority outfalls on an annual basis for illicit discharges, and the permittee changes its method of conducting such tests that is described in its SWMP document, even though a revision to the SWMP document maintained by the permittee may be necessary, no permit modification would be necessary because the 20 percent requirement is still in effect. By contrast, where a permittee proposes to substitute one of its BMPs for another one, and that change would alter the compliance expectations defined in the permit, the permittee will need to notify the permitting authority before proceeding to determine if a permit modification is necessary. For example, if the permittee's requirements specify in precise detail the field screening methodology that the MS4 will utilize for its priority outfalls, and the permittee has indicated it no longer intends to use this approach, then this proposed change will need to be evaluated by the permitting authority for whether a formal permit modification is needed. The important test here is to compare the permittee's proposed change with the terms and conditions of the permit.

EPA shares the views of commenters who emphasized the problems that would be created by any permitting scheme that would require permit modifications to be formally reviewed and approved for every SWMP change. Changes and adjustments made to the

SWMP document during its implementation are a fundamental part of the Phase II program, which has always emphasized the need for adaptive management to make iterative progress towards water quality goals. Requiring every adaptive management change to undergo review and approval by the permitting authority would constrain implementation and innovation, as commenters suggested, and could greatly increase the burden on permitting authorities. Having said this, however, EPA recognizes that in some circumstances, as illustrated in the example above, the wording of a permit provision may require that a modification be made before a permittee may proceed with a proposed change to its SWMP document. If the permitting authority wants to minimize the instances when a permit modification would be needed, it could incorporate with specificity only those elements in the SWMP document that it deems essential for meeting the MS4 permit standard. For example, a permitting authority could decide that as an alternative to incorporating all of the details of the permittee's proposed outfall screening plan in its ''illicit discharge detection and elimination'' portion of its SWMP document into the permit, it might instead consider selecting the specific aspects of the screening plan that in its judgment would meet the MS4 permit standard, such as that the permittee will screen all ''high priority'' outfalls by a specific date and that all illicit discharges will be eliminated within a specified amount of time. By not incorporating every aspect of the specific plans and procedures described by the permittee in its SWMP document, the permittee can modify its implementation approach during the permit term without needing to check with the permitting authority before making any such changes and having that change approved under the permit.

Apart from the issue of whether or not proposed SWMP document changes require a permit modification is the need for permitting authorities to specify what procedures it will follow to review and process any permit modifications. EPA agrees with the commenter that suggested that such procedures are needed. Rather than establishing a unique set of procedures, however, it is EPA's view that the existing regulatory procedures in §§ 122.62 and 122.63, which apply to all NPDES permit modifications, are sufficient for modifications to a Two-Step General Permit. EPA advises permitting authorities to include in their permits a clear description of what types of proposed SWMP document changes will need to be reviewed as potential permit modifications, and the procedures for submitting and reviewing these changes.

*F. Explaining How the Permit Terms and Conditions Meet the MS4 Permit Standard*

Several commenters recommended that the final rule clarify, both in the preamble and in the rule language itself, that permitting authorities are required to include an explanation in the permit's administrative record as to why the adopted permit provisions meet the MS4 permit standard. The commenters specified that this requirement should apply regardless of the option EPA chooses to include in the final rule.

EPA agrees that the permitting authority's rationale for adopting specific small MS4 permit requirements should be documented consistent with the requirements for any NPDES permit requirements under § 124.8 and, if EPA is the permitting authority, § 124.9. This rationale should describe the basis for the draft permit terms and conditions, including support for why the permitting authority has determined that the requirements meet the required MS4 permit standard. EPA agrees with the commenters' suggestion that this rationale should be provided under both permitting approaches in the final rule. This position is consistent with the Ninth Circuit's remand decision, which emphasized the need for permitting authorities to determine that requirements satisfy the MS4 permit standard and that the public be given an opportunity to provide comments and to request a hearing on this determination.

For clarification purposes, EPA includes additional language in the final rule for the Two-Step General Permit approach to emphasize that the permitting authority's public notice for the second step (pursuant to § 122.28(d)(2)(ii)) must include, apart from the NOI and the proposed additional permit terms and conditions, ''the basis for these additional requirements.'' This requirement is consistent with the requirements of § 124.8(b) for what must be included in a permit fact sheet. EPA does not find it necessary for the permitting authority to produce a full fact sheet for each individual MS4 permittee under a Two-Step General Permit, nor do the regulations require this for the type of permit requirements that are being established under the second step. A fact sheet is required for the issuance of the general permit, regardless of whether the general permit is a Comprehensive General Permit or the base general permit in a Two-Step General Permit. See § 124.8(a), which requires fact sheets to be prepared for general permits. However, the NPDES regulations do not require a separate fact sheet to be developed for the additional terms and conditions that are established for individual MS4s in the second step of the Two-Step General Permit, since these requirements are not themselves part of the base general permit, nor do they necessarily fall under any of the other types of permits listed in § 124.8(a) as requiring a fact sheet (*e.g.,* a ''major'' NPDES facility or site). Short of requiring a separate fact sheet for the draft additional permit conditions, EPA finds it reasonable to expect the proposed additional permit terms and conditions to be accompanied by the supporting rationale for why these requirements satisfy the MS4 permit standard.

One commenter also suggested that permitting authorities be required to explain in the administrative record why any alternative standards recommended in public comments or included in any of EPA's MS4 permit compendia were not adopted. Permitting authorities are required to respond to significant comments received in response to the public notice for the Comprehensive General Permit and the base general permit of a Two-Step General Permit, and, in addition, to respond to the comments on the second step public notice under a Two-Step General Permit. Such comments could include alternative standards suggested for inclusion in the permit. EPA does not agree that permitting authorities should be required to explain in the administrative record why a provision included in any of the agency's MS4 permit compendia was not used in any particular permit. Again, the example permit provisions that are highlighted in the permit compendia are provided as guidance and are not intended to provide a floor for what types of provisions must be used in MS4 permits.

*G. Minimum Federal Permit Requirements*

Several commenters requested clarification or raised concerns about the extent to which the Phase II regulations establish minimum permit requirements. This question is often raised in the context of state laws that prohibit the permitting authority from including terms and conditions in a permit that are more stringent than the federal minimum requirements or include more than the federal minimum requirements. Some comments confuse

''minimum permit requirements'' with the specified elements of the minimum control measures described in § 122.34(b). In a related manner, a number of permitting authorities have shared with EPA their experiences in encountering resistance to a proposed permit requirement on the basis that it is not explicitly required in the federal regulations. In addition, some commenters asked EPA to clarify that suggestions made in the ''guidance'' paragraphs that are unique to the small MS4 regulations are not mandatory permit terms.

The regulations specify the elements that must be addressed in a permit. It is up to the permitting authority to establish the specific terms and conditions to meet the MS4 permit standard for each of these elements. The minimum control measures set forth in § 122.34(b), for instance, are not intended as minimum permit requirements, but rather areas of municipal stormwater management that must be addressed in permits through terms and conditions that are determined adequate to meet the MS4 permit standard. For that matter, if a permitting authority were to merely use the minimum control measure language from § 122.34(b) word-for-word and include no further enforceable permit terms and conditions, this permit would not satisfactorily meet the requirement to establish clear, specific, and measurable requirements that together ensure permittees will comply with the MS4 permit standard. EPA emphasizes that what constitutes compliance with the MS4 permit standard continues to evolve. The need to reevaluate what is meant by ''maximum extent practicable'' for each permit term, as well as the need to determine what is necessary to protect water quality and satisfy the appropriate water quality requirements of the CWA, means that what constitutes compliance will by necessity change over time. Therefore, in EPA's view, those that argue that the minimum federal requirements are what is included in the wording of the minimum control measures, are misconstruing the intent of the regulations, and are handicapping permits by artificially tying the MS4 permit standard to the minimum control measures.

EPA emphasizes that the minimum control measures do not restrict the permitting authority from regulating additional sources of stormwater pollutant discharges, not specifically mentioned in the minimum control measure language. For example, some states require small MS4s with very large populations to implement a program that addresses industrial sites due to the concentration of industrial sites in many of their larger urban areas. (Consider that some small MS4s can be the same size as ''medium'' MS4s, which are required to have a program for addressing stormwater discharges from industrial sites.) Such a requirement represents what is necessary, for those small MS4s, to reduce pollutants as necessary to meet the MS4 permit standard. This does not mean that the requirement is more stringent than the minimum control measures, but rather it constitutes what is needed in the permitting authority's view to satisfy the MS4 permit standard.

In response to the comments relating to the guidance language in § 122.34(b), EPA verifies that this ''guidance'' is intended to act as suggested methods of implementation, not mandatory permit terms. Having said this, EPA points out that these guidelines could form the basis of permit terms that meet the § 122.34(a) requirement to articulate requirements in a clear, specific, and measurable manner. EPA's interest in having more specific requirements in permits is to provide clarity of expectations and to hold MS4s accountable for implementing a program that continues to make progress toward achievement of water quality objectives. For a permitting authority to include requirements in a permit based on these ''guidance requirements,'' because in its view they are necessary to ensure MS4s meet the MS4 permit standard, does not mean that the permit has established requirements beyond the federal minimum or that the permitting authority impermissibly used guidance to develop enforceable requirements.

### *H. Comments Beyond the Scope of This Rulemaking*

EPA received numerous public comments suggesting revisions to the substantive requirements in § 122.34. EPA clearly stated its intent in the preamble to the proposed rule that it was not proposing to change any substantive requirement and therefore the many comments suggesting the addition of specific requirements (*e.g.,* establish or do not establish a numeric retention standard for post-construction stormwater controls) are outside the scope of this rulemaking.

## VII. Revisions to Other Parts of § 122.34

### *A. Compliance Timeline for New MS4 Permittees*

EPA proposed a minor revision to § 122.34(a) to include the word ''new'' before ''permittees'' to indicate that the five-year period allowed to develop and implement their stormwater management program applies to the initial permit for new permittees. New permittees could include small MS4s that are in urbanized areas for the first time because of demographic changes reflected in the latest decennial census, or they could be specifically designated by a permitting authority as needing an NPDES permit to protect water quality. This change is intended to preserve the flexibility included in Phase II regulations in place prior to this final rule, and to more clearly indicate that the extended time period for compliance is intended to apply to MS4s that must put a stormwater management program in place for the first time. This revision does not change the status quo; it merely recognizes that first-time small MS4 permittees have up to five years to develop and implement their SWMPs, while small MS4s that have already been permitted will have developed and implemented their SWMPs when they reapply for permit coverage under an individual permit or submit an NOI under the next small MS4 general permit. This is not to say that all actions necessary to achieve pollutant reductions must be completed in the first five years. EPA recognizes that MS4s may need more time, for example, to complete the various steps needed to get structural controls into place and operational (*e.g.,* design project(s), secure funding, follow procurement procedures, etc. before installing structural BMPs). Therefore, EPA is retaining in the final rule the proposed clarification that permitting authorities may provide up to 5 years for small MS4s being permitted for the first time to come into compliance with the terms and conditions of the permit and to implement necessary BMPs.

### *B. Revisions to Evaluation and Assessment Provisions*

EPA proposed to renumber existing § 122.34(g) as § 122.34(d) and to incorporate the stylistic changes described in Section VII.E of this preamble. Several commenters suggested that the terminology in this paragraph be changed to conform to the text changes made elsewhere. EPA agrees that changes to reflect the remand changes similar to the ones made elsewhere in the section are appropriate for the newly designated § 122.34(d)(1) concerning requirements for evaluation and assessment. The new § 122.34(d)(1) now states that the permit must require the permittee to evaluate compliance with the terms and conditions of the permit, the effectiveness of the components of its stormwater management program, and of achieving

the measurable requirements in the permit. Rather than evaluate the appropriateness of self-identified BMPs and measurable goals as previously required, the final rule requires permits to include terms and conditions to evaluate compliance with permit requirements, including achievement of measurable requirements established as permit requirements. This language more closely aligns the required evaluation and assessment requirements with the newly articulated requirements for developing permit conditions that are clear, specific, and measurable. It also more accurately describes the objectives of the evaluation and assessment requirements, given other revisions made in response to the remand to clarify that permitting authorities determine what is constitutes compliance, not the regulated MS4s.

The proposed rule inadvertently omitted a recent amendment to § 122.34(g) (§ 122.34(d) in the final rule) that was added by the eReporting rule (80 FR 64064, Oct. 22, 2015). This omission is corrected in the rule text that appears in this **Federal Register** document. The relevant provision in § 122.34(d)(3) states that, among other things, starting on December 21, 2020 all reports submitted in compliance with this section must be submitted electronically by the owner, operator, or the duly authorized representative of the small MS4 to the permitting authority or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), § 122.22, and 40 CFR part 127, and that prior to this date, and independent of part 127, the owner, operator, or the duly authorized representative of the small MS4 may be required to report electronically if specified by a particular permit or if required to do so by state law. Section IX addresses in more detail the relationship between this final rule and the eReporting rule.

EPA received a request to revise proposed § 122.34(d)(2) regarding recordkeeping requirements to mandate that MS4s post on-line the SWMP documents required under § 122.34(b). Currently, MS4s are only required to make summaries of their SWMP available to the public upon request. EPA is of the view that on-line posting of information is an effective way to communicate stormwater program information, and encourages MS4s to post on-line documents that describe their stormwater management plans, as well as provide other information about managing stormwater for various audiences. EPA, however, declines to adopt a regulatory requirement for MS4s to post documents on-line. EPA did not propose any changes to the recordkeeping requirements, and accordingly, the request is outside the scope of the proposal. EPA notes that some permitting authorities have required on-line posting of SWMP information and educational materials to implement minimum controls measures for public education and involvement, as well as elements of other minimum control measures such as the illicit discharge detection and elimination, construction and post-construction program minimum controls, and other permit requirements.

*C. Establishing Water Quality-Based Requirements*

EPA made minor changes to the provisions for establishing ''other applicable requirements.'' See § 122.34(c). The following discussion explains these changes and describes how the section has been rearranged. It then discusses issues raised about how water quality-based requirements can be established under the two general permit options.

EPA proposed to consolidate existing paragraphs (e)(1) and (f) into one paragraph and to move this consolidated provision to § 122.34(c). EPA also proposed to delete guidance paragraph (e)(2). Existing § 122.34(e)(1) addresses the need to comply with permit requirements that are in addition to the minimum control measures based on a TMDL or equivalent analysis. Existing § 122.34(f) requires compliance with permit requirements that have been developed consistent with provisions in §§ 122.41 through 122.49, as appropriate. EPA is promulgating the proposed revisions, with minor editorial changes, as discussed below.

The new § 122.34(c)(1) states that the permit will include, as appropriate, more stringent terms and conditions, including permit requirements that modify, or are in addition to, the minimum control measures, based on an approved total maximum daily load (TMDL) or equivalent analysis, or where the NPDES permitting authority determines such terms and conditions are needed to protect water quality. EPA replaced the term ''effluent limitations'' with ''terms and conditions'' to be consistent with changes made to § 122.34(a). In a minor change from the proposal, the paragraph now more clearly indicates that the permitting authority has the discretion to require additional measures to protect water quality, not limited to requirements based on a TMDL or equivalent analysis. This change reflects the authority granted by the statute to protect water quality in section 402(p)(6) of the CWA. It also responds to a comment that due to the time it takes for TMDL development, permitting authorities should not be limited to consideration of only TMDL or equivalent analyses before imposing water quality based requirements. As a general matter, EPA agrees that other types of watershed plans that identify sources that should be controlled can provide a valid basis for establishing additional permit terms and conditions. Additionally, EPA recognizes that there may be instances where other information about the water quality impacts of the MS4 discharges may be sufficient to indicate the need for additional controls. (Of course, permitting authorities must have a rational basis and record support for determining that additional requirements serve a water quality objective.)

The final rule deletes existing § 122.34(e)(2), as was proposed. As explained in the preamble to the proposed rule, the guidance in existing § 122.34(e)(2) reflects EPA's recommendation for the initial round of permit issuance, which has already occurred for all permitting authorities. The phrasing of the guidance language no longer represents EPA policy with respect to including additional requirements. EPA has found that an increasing number of permitting authorities are already including specific requirements in their small MS4 permits that address not only wasteload allocations in TMDLs, but also other requirements that are in addition to permit provisions implementing the six minimum control measures irrespective of the status of EPA's § 122.37 evaluation. See EPA's *Compendium of MS4 Permitting Approaches—Part 3: Water Quality-Based Requirements* (EPA, 2016).[9] Based on the advancements made by specific permitting programs, and information that points to stormwater discharges continuing to cause waterbody impairments around the country, prior to the promulgation of this final rule, EPA has advised in guidance that permitting authorities write MS4 permits with provisions that are ''clear, specific, measurable, and enforceable,'' incorporating such requirements as clear performance standards, and including measurable goals or quantifiable targets for

[9] This document will be made available at on EPA's Web site at *https://www.epa.gov/npdes/stormwater-discharges-municipal-sources#resources.*

implementation.[10] This guidance is a more accurate reflection of the agency's current views on how the Phase II regulations should be implemented than the guidance currently in § 122.34(e)(2).

EPA received few comments about the proposed removal of § 122.34(e)(2). Several commenters strongly supported the deletion of § 122.34(e)(2), while others expressed concern that MS4s may not be in a position to implement additional controls. The MS4 permit standard embodies a great deal of flexibility and gives the permitting authority discretion to address particular water quality impairments. Where a waterbody is impaired in part due to discharges from small MS4s, especially where an approved TMDL allocates wasteload reduction responsibilities to those MS4s, additional controls to achieve reasonable progress towards attainment of water quality standards will need to be considered. The permitting authority has the ability under the final rule to develop requirements tailored to a particular MS4, either by issuing an individual permit or by employing the Two-Step General Permit process in § 122.28(d)(2). Some permitting authorities have successfully created requirements for specific MS4s in a more comprehensive general permit. For example, the 2013 California Small MS4 general permit establishes additional requirements for small MS4s discharging to waters with an approved TMDL. Each set of ''deliverables'' or ''actions required'' is tailored to the individual MS4, or groupings of MS4s, based on the pollutant of concern and the particular wasteload allocation. See Appendix G of the 2013 California Small MS4 general permit.

*D. Establishing Water Quality-Based Requirements Under the Two General Permit Options*

EPA received a number of questions and suggestions concerning how requirements to implement applicable TMDLs should be incorporated into general permits under any of the proposed options. Some comments asserted that there is incompatibility between the proposed Option 1 approach and the need to establish permit terms and conditions that address TMDLs, which require watershed- and MS4-specific provisions. One commenter questioned whether a general permit can incorporate different water quality-based effluent limitations for different MS4s asserting that the NPDES regulations require that general permits include the same water quality-based effluent limits for sources within the same category. Several commenters also suggested that requirements addressing TMDLs are ones that are amenable to using the Option 2 approach given their inherently watershed-specific nature and the fact that TMDL implementation plans often need to be developed with the involvement of the community so that issues such as implementation schedules and BMP approaches reflect the interests of the affected public and are attainable.

EPA clarifies that in order to comply fully with the Comprehensive General Permit approach, all terms and conditions established based on approved TMDLs must be included within the permit itself. Use of the Comprehensive General Permit approach means that the permit needs to spell out the requirements necessary for permittees ''to achieve reasonable further progress toward attainment of water quality standards.'' (64 FR 68753, December 8, 1999) Therefore, where a TMDL establishes wasteload allocations specifically or categorically for MS4 discharges to the impaired water, the permittee should expect to find ''clear, specific, and measurable'' requirements within the permit that delineate their responsibilities during the permit term relative to that TMDL and associated wasteload allocation(s). There are a variety of approaches for incorporating these TMDL-related requirements into general permits for specific MS4s. One noteworthy approach places all applicable water quality-based effluent limitations in an appendix to the general permit (*e.g.,* Appendix 2 of the 2012 Western Washington Small MS4 General Permit). For this particular permit, the state evaluated all relevant TMDLs addressing discharges from small MS4s eligible for coverage under the permit and assigned additional requirements focused on reducing the discharge of the impairment pollutant. See EPA's *Compendium of MS4 Permitting Approaches—Part 3: Water Quality-Based Requirements* (EPA, 2016), which will be posted on EPA's Web site at *https://www.epa.gov/npdes/stormwater-discharges-municipal-sources#resources,* for additional examples.

EPA does not view any of these approaches as inconsistent with the NPDES regulatory requirement that ''where sources within a specific category or subcategory of dischargers are subject to water quality-based limits . . . the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.'' See § 122.28(a)(3). It is certainly true that, due to the watershed-specific nature of TMDLs, requirements in general permit based on TMDLs can vary for individual MS4s based on the impaired water to which they discharge and the specific details of the applicable TMDL. EPA, however, does not view these differing water quality-based limit requirements within the same general permit as running afoul of the § 122.28(a)(3) requirement. EPA considers the different water quality-based requirements that are unique to a TMDL and/or to MS4s that are subject to the TMDL to be the equivalent of dividing the MS4 permittee universe into subcategories based on these requirements. This categorization is not dissimilar to the way in which EPA and many states issue their Multi-Sector General Permits for Stormwater Discharges Associated with Industrial Activity, in which there are requirements common to all facilities and a separate set of requirements that apply to different industrial sectors or subsectors. By establishing different permittee subcategories based on TMDLs, the permit remains consistent with the requirement in § 122.28(a)(3).

Use of a Two-Step General Permit similarly requires that where requirements are necessary under § 122.34(c) to address TMDLs that they be expressed in a clear, specific, and measurable manner. These requirements can be included in the base general permit or they can be developed through the second permitting step of the Two-Step General Permit approach where additional terms and conditions are established for individual MS4s. EPA agrees with the commenters that, given the watershed-specific nature of TMDLs and the strategies needed to address them, in many cases it may be that a Two-Step General Permit is the approach that provides the greatest amount of flexibility to account for these differences. The advantage of this approach is that it allows each MS4 to develop and propose stormwater control strategies that are supported by the community and that can then be reviewed by the permitting authority for adequacy. EPA notes that there are several states that have already set up permit approaches that require MS4s to first develop TMDL implementation plans that are then reviewed and approved by the permitting authority. These approaches may provide useful models to draw from especially for those permitting authorities that choose to establish water quality-based requirements through a Two-Step

[10] See *EPA's MS4 Permit Improvement Guide* (EPA, 2010).

General Permit. See examples in EPA's compendium document, *Compendium of MS4 Permitting Approaches—Part 3: Water Quality-Based Requirements* (EPA, 2016), which will be posted on EPA's Web site at *https://www.epa.gov/npdes/stormwater-discharges-municipal-sources#resources.*

*E. Restructuring, Consolidating, Conforming, and Other Editorial Revisions*

EPA proposed a restructuring of certain provisions in § 122.34(c) through (e) and making a number of minor editorial revisions to reflect the changes made elsewhere to meet remand requirements and to change the style of regulatory text, as discussed earlier in this preamble. EPA proposed to update the cross-references in § 122.35 to conform to the rearrangement of provisions in § 122.34. The preamble at Section VIII.B addresses changes to address water quality-based permit provisions currently in § 122.34(e) and to consolidate existing paragraphs (e) and (f) into new paragraph (c). This section explains other revisions. For the most part, EPA is promulgating these proposed revisions and has added similar revisions to additional provisions that were identified in comments. The following discussion briefly explains those changes.

First, the current § 122.34(c) of the regulations concerning ''qualifying local programs'' has been moved to § 122.34(e) as proposed. The only changes to the text of the existing language are to remove the words ''you'' and replace it with ''the permittee.'' EPA received no comments on this proposed revision.

Second, the current § 122.34(d) that addresses information requirements for obtaining NPDES permit coverage under a general or individual permit has been moved to § 122.33(b)(2). All basic information requirements necessary to obtain permit coverage under the two types of individual permits and two types of general permits are now consolidated in § 122.33. EPA clarifies that these information requirements apply to individual permits, while the information required to be included in NOIs for general permits is to be determined by the permitting authority based on what it needs in order to establish the permit terms and conditions necessary to meet the MS4 permit standard. See further discussion in Sections IV.C and E.

Third, EPA also proposed to delete paragraphs (d)(2) and (3) in § 122.34 that required the permitting authority to provide a menu of BMPs for each minimum control measure, and, where such a menu of BMPS had not been provided, stated that a small MS4 need not be held to any ''measurable goal'' for that BMP. The final rule deletes these paragraphs as no longer necessary. EPA provided a menu of BMPs that has been available on its Web site for a number of years. EPA expects that this menu and any similar state menus will continue to be available. In addition, the function of ''measurable goals'' in the permitting process is clarified under the final rule. In order to address the *EDC* court's concerns about the lack of permitting authority review of the NOI, which contains information such as the MS4 operator's proposed measurable goals, the final rule clarifies that measurable goals are submitted in proposed form and must be reviewed and approved, and modified where necessary, by the permitting authority prior to becoming effective as enforceable requirements. Therefore, in the final rule, ''measurable goals'' are now ''proposed measurable goals'' that are submitted by an MS4 seeking an individual permit to implement the requirements in § 122.34, and at the discretion of the permitting authority, if included as required to be submitted in an NOI for coverage under a Two-Step General Permit under § 122.28(d)(2) as information necessary to establish permit conditions.

Some commenters favored keeping the requirements for a menu of BMPs as a way to promote equitable treatment among MS4s that have similar circumstances. While EPA has deleted the proviso that MS4s will not be held accountable for their selected measurable goals if a menu of BMPs has not been developed by the permitting authority, EPA does not expect permitting authorities to eliminate existing and future BMPs menus. Under § 123.35(g), an approved state is still obligated to establish BMP menus for the minimum control measures to facilitate effective program implementation. Not making information about BMPs available would be counter to effective program implementation. EPA anticipates that equity amongst MS4s will be further enhanced by the requirement for clear, specific, and measurable permit terms and conditions. It should be clear from any proposed general permit if similar MS4s are not being treated equitably and the public will have an opportunity to voice (through comments or a public hearing, if one is held) support or objections to different permit terms and conditions among MS4s. MS4s include a broad range of entities that, as noted by several commenters, are likely to need different terms and conditions for their particular situations, *e.g.,* state departments of transportation that generally do not have the same police powers as local governments and who serve a largely transient audience. EPA also expects that dissimilar requirements for similar MS4s would be explained in the fact sheet or other document that provides the rationale for permit terms and conditions.

Finally, in the proposed rule, EPA used the term ''Director'' in place of ''NPDES Permitting Authority'' in §§ 122.33–122.35. This proposed revision was intended to use terminology in the Phase II regulations that is used in other sections of part 122. ''Director'' and ''NPDES Permitting Authority'' mean the same thing, *i.e.,* the Regional Administrator or the Director of an authorized State NPDES program, depending on which entity issues the NPDES permits in a particular area. EPA uses these terms interchangeably. However, for purposes of minimizing the number of changes not directly related to the remand, EPA has decided to retain the status quo with respect to how these terms are used currently. In the sections that address the small MS4 program (§§ 122.32—122.35), the final rule uses the term ''NPDES permitting authority.'' This is different than the terminology that was proposed. The other sections of part 122, for example, §§ 122.26 and 122.28, will continue to use the term ''Director.''

**VIII. Final Rule Implementation**

*A. When the Final Rule Must Be Implemented*

EPA received comments from state permitting authorities requesting clarification on the implementation timeframe for the new rule. EPA also received comments from environmental organizations indicating that given the length of time since the Ninth Circuit found the procedural aspects of the Phase II regulations to be invalid, that permitting authorities should be required to modify their general permit procedures now to comport their program with the CWA requirements for permitting authority review and public participation, and also recommended that EPA should require current permits to be reopened for this purposes.

To clarify, this final rule becomes effective on January 9, 2017. It is not EPA's expectation that permitting authorities be required to reopen permits currently in effect to comply with the requirements of this final rule. However, EPA does expect that permitting authorities comply with the final rule when the next permit is being

issued following the expiration of the current permit. Having said this, EPA acknowledges that there are a small number of states whose permits are expiring within a few months of the final rule's effective date, and for these states it is likely too late in their process for them to make the necessary changes to fully comply with the final rule. Therefore, a permitting authority that has proposed a permit, is in the final stages of issuing a new permit (*e.g.,* after the close of the public comment period), or has issued a final permit before this rule becomes effective will not be expected to re-open those permits. Where the permitting authority has not yet proposed a permit, EPA expects that these permits will be issued consistent with the final rule's requirements.

EPA recognizes that development of a new small MS4 general permit starts well in advance of the expiration of existing permits. Still, EPA anticipates that most states can develop clear, specific, and measurable permit terms and conditions without the need for a change to their legal authorities to implement the type(s) of general permits it plans to use. The substantive standard has not changed (*i.e.,* the MS4 permit standard); the final rule merely clarifies the way in which permit terms and conditions that comply with the standard must be expressed and how they are established. Even where a state determines that it needs to change its regulations to establish new procedural requirements to implement the final rule, such as where a state establishes the general permit through a rulemaking process, it may be able to develop necessary permit terms and conditions consistent with the final rule based on its existing statutory authorities. In the event that states must change their legal authorities before they can act, the existing regulations at § 123.62 provides states up to one year to make the necessary changes and up to two years if a statutory change is needed.

*B. Status of the 2004 Interim Guidance*

This final rule, upon its effective date on January 9, 2017, establishes the requirements for issuing general permits for small MS4 discharges in response to the U.S. Court of Appeals for the Ninth Circuit's decision in *Environmental Defense Center* v. EPA. The 2004 Interim Guidance (*Implementing the Partial Remand of the Stormwater Phase II Regulations Regarding Notices of Intent & NPDES General Permitting for Phase II MS4s,* EPA (2004)), by its own terms, ''provides interim guidance to EPA and State NPDES permitting authorities pending a rulemaking to conform the Phase II rule to the court's order.'' With the promulgation of this final rule, the ''interim guidance'' is no longer needed.

## IX. Consistency With the NPDES Electronic Reporting Rule

EPA issued a final NPDES Electronic Reporting Rule (referred to as the ''eReporting Rule'') requiring that permitting authorities and regulated entities electronically submit permit and reporting information instead of submitting paper forms. (80 FR 64064, Oct. 22, 2015) The promulgation of the eReporting Rule includes ''data elements'' (in appendix A of the rule) that must be reported on by both Phase II small MS4s and permitting authorities related to individual NOIs submitted for general permit coverage and required program reports. The data elements included in the eReporting Rule for Phase II MS4s are based on the regulatory requirements in existence at the time that rule was promulgated. These data elements, therefore, do not reflect changes that are being made to the corresponding requirements as part of this MS4 remand rule.

EPA received two public comments, which were similarly focused on the need to ensure consistency between the final MS4 remand rule and the eReporting Rule. One commenter recommended that EPA be prepared once the MS4 remand rule is finalized to make conforming regulatory changes to the eReporting Rule so that programs are again aligned. The other commenter also gave examples of how the wording of the eReporting data elements would be inconsistent with the rule language under consideration for Option 1 of the proposed MS4 remand rule. More specifically, the commenter questioned how permitting authorities would be able to populate the required data elements for the NOI for a general permit implemented under proposed Option 1 considering that information on the MS4 operator's BMPs and measurable goals would no longer be required as part of the NOI.

EPA agrees with the commenters on the importance of consistency between this final rule and the eReporting Rule. Because the appendix A data elements are no more than a reflection of what the NPDES regulations require for NOIs and compliance reports, where the underlying regulations change, as they are under the final MS4 remand rule, it is necessary to make conforming changes to appendix A. Now that the final MS4 remand rule language is set, there are some data elements that will need to be updated to conform to the new expectations for NOIs and program reports. EPA is aware of the following types of inconsistencies between the final MS4 remand rule and the appendix A data elements related to small MS4s:

- References to ''measurable goals'' in data name and data descriptions associated with minimum control measures—Under the final MS4 remand rule, the MS4 operator's measurable goals no longer take on the same role that they did under the previous regulations. See related discussion in Section VII.E. Under the new regulations, the final terms and conditions in the general permit and any additional requirements developed through the Two-Step process, are what is relevant. References in appendix A to the permittee's measurable goals will need to be substituted with appropriate references to the final terms and conditions of the permit. Additional updates are also needed in some places in appendix A to change the reference from ''measurable goals'' to the applicable schedule or deadline for compliance with the specific permit requirement.
- References to the permittee's intended actions during the permit term—The data elements in appendix A, Table 2 describe a number of the minimum control measure elements as reflecting what the permittee intends to accomplish during the permit term. Under the final MS4 remand rule, the MS4's intended actions are not what the permittee is held to, but rather the final permit terms and conditions. Therefore, EPA will need to update any references to intended actions to reflect the fact that the terms and conditions of the permit are what is necessary to report as a data element.
- Regulatory citations—Updates are also necessary to the citations in appendix A to reflect changes made to the Phase II regulations by the final MS4 remand rule.
- NPDES Data Group Number (appendix A, Table 2)—This number corresponds to the entity that is required to provide information on the data element under the eReporting Rule. Table 1 of appendix A assigns a ''Data Provider'' number to various entities, which is reflected in Table 2. In the portion of appendix A related to information from the NOIs, the ''Data Provider'' for most of the minimum control measure data elements is indicated as the ''Authorized NPDES Program'' (or permitting authority) and/or the ''NPDES Permittee.'' Because the permitting authority under the final MS4 remand rule is solely responsible for establishing final permit terms and conditions, EPA will need to update the

Data Provider to remove references to the NPDES Permittee, where applicable.

EPA has also discovered in reviewing this issue that it inadvertently omitted two data elements from the final eReporting Rule. These data elements correspond to the schedules, deadlines, and milestones that are specified in the permit for the pollution prevention and good housekeeping for municipal operations requirements established under § 122.34(b)(6), and any additional requirements that may be established under § 122.34(c).

EPA is interested in taking the time needed to ensure that the edits required to appendix A are made precisely. Due to the time constraints associated with finalizing the MS4 remand rule, EPA has determined that the updates needed in appendix A require a separate regulatory action outside of this rulemaking. In addition, EPA notes that the deadline for implementation of the affected eReporting rule provisions is December 21, 2020, therefore there should be sufficient time to make the necessary changes before electronic reporting is required under the regulations. EPA will initiate the rulemaking process immediately and will complete it as soon as possible. In the meantime, EPA will continue to work with its state counterparts to provide appropriate guidance on applying the data elements in the near term.

## X. Statutory and Executive Orders Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket for this action. In addition, EPA prepared an analysis of the potential costs associated with this action. This analysis, ''Economic Analysis for the Municipal Separate Storm Sewer System (MS4) General Permit Remand Rule,'' is summarized in Section I.D and is available in the docket.

### *B. Paperwork Reduction Act (PRA)*

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2040–0004.

### *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. Although small MS4s are regulated under the Phase II regulations, this rule does not change the underlying requirements to which these entities are subject. Instead, the focus of this rule is on ensuring that the process by which NPDES permitting authorities authorize discharges from small MS4s using general permits comports with the legal requirements of the Clean Water Act and the applicable NPDES regulations.

### *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. This action does not significantly or uniquely affect small governments because this rulemaking focuses on the way in which state permitting authorities administer general permit coverage to small MS4s, and does not modify the underlying permit requirements to which they are subject. Nonetheless, EPA consulted with small governments concerning the regulatory requirements that might indirectly affect them, as described in Section I.E.

### *E. Executive Order 13132: Federalism*

This rule will not have substantial direct effects on the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The rule makes changes to the way in which NPDES permitting authorities, including authorized state government agencies, provide general permit coverage to small MS4s. The impact to states which are NPDES permitting authorities may range from $558,025 and $604,770 annually, depending upon the rule option that is finalized. Details of this analysis are presented in ''Economic Analysis for the Final Municipal Separate Storm Sewer System General Permit Remand Rule,'' which is available in the docket for the rule at *http://www.regulations.gov* under Docket ID No. EPA–HQ–OW–2015–0671.

Keeping with the spirit of E.O. 13132 and consistent with EPA's policy to promote communications between EPA and state and local governments, EPA met with state and local officials throughout the process of developing the proposed rule and received feedback on how proposed options would affect them. EPA engaged in extensive outreach via conference calls to authorized states (*e.g.,* individual state permitting authorities, and the Association of Clean Water Administrators) and regulated MS4s (*e.g.,* the National Association of Clean Water Agencies, Water Environment Federation, National Association of Flood & Stormwater Management Agencies, National Municipal Stormwater Alliance) to gather input on how EPA's current regulations are affecting them, and to enable officials of affected state and local governments to have meaningful and timely input into the development of the options presented in this rule. EPA also reached out to a number of environmental organizations (*e.g.,* American Rivers, Chesapeake Bay Foundation, Cahaba River Society, Natural Resources Defense Council, PennFuture, River Network) and regulated industry (*e.g.,* National Association of Home Builders).

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

This action does not have tribal implications as specified in Executive Order 13175 since it does not have a direct substantial impact on one or more federally recognized tribes. The rule affects the way in which small MS4s are covered under a general permit for stormwater discharges and primarily affects the NPDES permitting authorities. No tribal governments are authorized NPDES permitting authorities at this time. The rule could have an indirect impact on an Indian tribe that is a regulated MS4 in that the NOI required for coverage under a general permit may be changed as a result of the rule (if finalized) or may be subject to closer scrutiny by the permitting authority and more of the requirements could be established as enforceable permit conditions. However, the substance of what an MS4 must do will not change significantly as a result of this rule. Thus, Executive Order 13175 does not apply to this action.

Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, EPA conducted outreach to tribal officials during the development of this action. EPA spoke with tribal members during a conference call with the National Tribal Water Council to gather input on how tribal governments are currently affected by MS4 regulations and may be affected by

the options in this rule. Based on this outreach and additional, internal analysis, EPA confirmed that this action would have little tribal impact.

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

EPA interprets Executive Order 13045 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, because it does not significantly affect energy supply, distribution, or use.

*I. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards.

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

EPA determined that 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. This action affects the procedures by which NPDES permitting authorities provide general permit coverage for small MS4s, to help ensure that small MS4s ''reduce the discharge of pollutants to the maximum extent practicable (MEP), to protect water quality and to satisfy the water quality requirements of the Clean Water Act.'' It does not change any current human health or environmental risk standards.

*K. Congressional Review Act*

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 122**

Environmental protection, Storm water, Water pollution.

Dated: November 17, 2016.

**Gina McCarthy,**

*Administrator.*

For the reasons stated in the preamble, EPA amends 40 CFR part 122 as set forth below:

## PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

■ 1. The authority citation for part 122 continues to read as follows:

**Authority:** The Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 2. Amend § 122.28 by adding paragraph (d) to read as follows:

**§ 122.28 General permits (applicable to State NPDES programs, see § 123.25).**

* * * * *

(d) *Small municipal separate storm sewer systems (MS4s)* (Applicable to State programs). For general permits issued under paragraph (b) of this section for small MS4s, the Director must establish the terms and conditions necessary to meet the requirements of § 122.34 using one of the two permitting approaches in paragraph (d)(1) or (2) of this section. The Director must indicate in the permit or fact sheet which approach is being used.

(1) *Comprehensive general permit.* The Director includes all required permit terms and conditions in the general permit; or

(2) *Two-step general permit.* The Director includes required permit terms and conditions in the general permit applicable to all eligible small MS4s and, during the process of authorizing small MS4s to discharge, establishes additional terms and conditions not included in the general permit to satisfy one or more of the permit requirements in § 122.34 for individual small MS4 operators.

(i) The general permit must require that any small MS4 operator seeking authorization to discharge under the general permit submit a Notice of Intent (NOI) consistent with § 122.33(b)(1)(ii).

(ii) The Director must review the NOI submitted by the small MS4 operator to determine whether the information in the NOI is complete and to establish the additional terms and conditions necessary to meet the requirements of § 122.34. The Director may require the small MS4 operator to submit additional information. If the Director makes a preliminary decision to authorize the small MS4 operator to discharge under the general permit, the Director must give the public notice of and opportunity to comment and request a public hearing on its proposed authorization and the NOI, the proposed additional terms and conditions, and the basis for these additional requirements. The public notice, the process for submitting public comments and hearing requests, and the hearing process if a request for a hearing is granted, must follow the procedures applicable to draft permits set forth in §§ 124.10 through 124.13 (excluding § 124.10(c)(2)). The Director must respond to significant comments received during the comment period as provided in § 124.17.

(iii) Upon authorization for the MS4 to discharge under the general permit, the final additional terms and conditions applicable to the MS4 operator become effective. The Director must notify the permittee and inform the public of the decision to authorize the MS4 to discharge under the general permit and of the final additional terms and conditions specific to the MS4.

■ 3. Revise § 122.33 to read as follows:

**§ 122.33 Requirements for obtaining permit coverage for regulated small MS4s.**

(a) The operator of any regulated small MS4 under § 122.32 must seek coverage under an NPDES permit issued by the applicable NPDES permitting authority. If the small MS4 is located in an NPDES authorized State, Tribe, or Territory, then that State, Tribe, or Territory is the NPDES permitting authority. Otherwise, the NPDES permitting authority is the EPA Regional Office for the Region where the small MS4 is located.

(b) The operator of any regulated small MS4 must seek authorization to discharge under a general or individual NPDES permit, as follows:

(1) *General permit.* (i) If seeking coverage under a general permit issued by the NPDES permitting authority in accordance with § 122.28(d)(1), the small MS4 operator must submit a Notice of Intent (NOI) to the NPDES permitting authority consistent with § 122.28(b)(2). The small MS4 operator may file its own NOI, or the small MS4 operator and other municipalities or governmental entities may jointly submit an NOI. If the small MS4 operator wants to share responsibilities for meeting the minimum measures with other municipalities or governmental entities, the small MS4 operator must submit an NOI that describes which minimum measures it will implement and identify the entities that will implement the other minimum measures within the area served by the MS4. The general permit will explain any other steps necessary to obtain permit authorization.

(ii) If seeking coverage under a general permit issued by the NPDES permitting authority in accordance with § 122.28(d)(2), the small MS4 operator must submit an NOI to the Director consisting of the minimum required information in § 122.28(b)(2)(ii), and any other information the Director identifies as necessary to establish additional terms and conditions that satisfy the permit requirements of § 122.34, such as the information required under § 122.33(b)(2)(i). The general permit will explain any other steps necessary to obtain permit authorization.

(2) *Individual permit.* (i) If seeking authorization to discharge under an individual permit to implement a program under § 122.34, the small MS4 operator must submit an application to the appropriate NPDES permitting authority that includes the information required under § 122.21(f) and the following:

(A) The best management practices (BMPs) that the small MS4 operator or another entity proposes to implement for each of the storm water minimum control measures described in § 122.34(b)(1) through (6);

(B) The proposed measurable goals for each of the BMPs including, as appropriate, the months and years in which the small MS4 operator proposes to undertake required actions, including interim milestones and the frequency of the action;

(C) The person or persons responsible for implementing or coordinating the storm water management program;

(D) An estimate of square mileage served by the small MS4;

(E) Any additional information that the NPDES permitting authority requests; and

(F) A storm sewer map that satisfies the requirement of § 122.34(b)(3)(i) satisfies the map requirement in § 122.21(f)(7).

(ii) If seeking authorization to discharge under an individual permit to implement a program that is different from the program under § 122.34, the small MS4 operator must comply with the permit application requirements in § 122.26(d). The small MS4 operator must submit both parts of the application requirements in § 122.26(d)(1) and (2). The small MS4 operator must submit the application at least 180 days before the expiration of the small MS4 operator's existing permit. Information required by § 122.26(d)(1)(ii) and (d)(2) regarding its legal authority is not required, unless the small MS4 operator intends for the permit writer to take such information into account when developing other permit conditions.

(iii) If allowed by your NPDES permitting authority, the small MS4 operator and another regulated entity may jointly apply under either paragraph (b)(2)(i) or (ii) of this section to be co-permittees under an individual permit.

(3) *Co-permittee alternative.* If the regulated small MS4 is in the same urbanized area as a medium or large MS4 with an NPDES storm water permit and that other MS4 is willing to have the small MS4 operator participate in its storm water program, the parties may jointly seek a modification of the other MS4 permit to include the small MS4 operator as a limited co-permittee. As a limited co-permittee, the small MS4 operator will be responsible for compliance with the permit's conditions applicable to its jurisdiction. If the small MS4 operator chooses this option it must comply with the permit application requirements of § 122.26, rather than the requirements of § 122.33(b)(2)(i). The small MS4 operator does not need to comply with the specific application requirements of § 122.26(d)(1)(iii) and (iv) and (d)(2)(iii) (discharge characterization). The small MS4 operator may satisfy the requirements in § 122.26 (d)(1)(v) and (d)(2)(iv) (identification of a management program) by referring to the other MS4's storm water management program.

(4) *Guidance for paragraph (b)(3) of this section.* In referencing the other MS4 operator's storm water management program, the small MS4 operator should briefly describe how the existing program will address discharges from the small MS4 or would need to be supplemented in order to adequately address the discharges. The small MS4 operator should also explain its role in coordinating storm water pollutant control activities in the MS4, and detail the resources available to the small MS4 operator to accomplish the program.

(c) If the regulated small MS4 is designated under § 122.32(a)(2), the small MS4 operator must apply for coverage under an NPDES permit, or apply for a modification of an existing NPDES permit under paragraph (b)(3) of this section, within 180 days of notice of such designation, unless the NPDES permitting authority grants a later date.

■ 4. Revise § 122.34 to read as follows:

**§ 122.34 Permit requirements for regulated small MS4 permits.**

(a) *General requirements.* For any permit issued to a regulated small MS4, the NPDES permitting authority must include permit terms and conditions to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. Terms and conditions that satisfy the requirements of this section must be expressed in clear, specific, and measurable terms. Such terms and conditions may include narrative, numeric, or other types of requirements (*e.g.,* implementation of specific tasks or best management practices (BMPs), BMP design requirements, performance requirements, adaptive management requirements, schedules for implementation and maintenance, and frequency of actions).

(1) For permits providing coverage to any small MS4s for the first time, the NPDES permitting authority may specify a time period of up to 5 years from the date of permit issuance for the permittee to fully comply with the conditions of the permit and to implement necessary BMPs.

(2) For each successive permit, the NPDES permitting authority must include terms and conditions that meet the requirements of this section based on its evaluation of the current permit requirements, record of permittee compliance and program implementation progress, current water quality conditions, and other relevant information.

(b) *Minimum control measures.* The permit must include requirements that ensure the permittee implements, or continues to implement, the minimum control measures in paragraphs (b)(1) through (6) of this section during the permit term. The permit must also require a written storm water management program document or documents that, at a minimum, describes in detail how the permittee intends to comply with the permit's requirements for each minimum control measure.

(1) *Public education and outreach on storm water impacts.* (i) The permit must identify the minimum elements and require implementation of a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff.

(ii) Guidance for NPDES permitting authorities and regulated small MS4s: The permittee may use storm water educational materials provided by the State, Tribe, EPA, environmental, public interest or trade organizations, or other MS4s. The public education program

should inform individuals and households about the steps they can take to reduce storm water pollution, such as ensuring proper septic system maintenance, ensuring the proper use and disposal of landscape and garden chemicals including fertilizers and pesticides, protecting and restoring riparian vegetation, and properly disposing of used motor oil or household hazardous wastes. EPA recommends that the program inform individuals and groups how to become involved in local stream and beach restoration activities as well as activities that are coordinated by youth service and conservation corps or other citizen groups. EPA recommends that the permit require the permittee to tailor the public education program, using a mix of locally appropriate strategies, to target specific audiences and communities. Examples of strategies include distributing brochures or fact sheets, sponsoring speaking engagements before community groups, providing public service announcements, implementing educational programs targeted at school age children, and conducting community-based projects such as storm drain stenciling, and watershed and beach cleanups. In addition, EPA recommends that the permit require that some of the materials or outreach programs be directed toward targeted groups of commercial, industrial, and institutional entities likely to have significant storm water impacts. For example, providing information to restaurants on the impact of grease clogging storm drains and to garages on the impact of oil discharges. The permit should encourage the permittee to tailor the outreach program to address the viewpoints and concerns of all communities, particularly minority and disadvantaged communities, as well as any special concerns relating to children.

(2) *Public involvement/participation.* (i) The permit must identify the minimum elements and require implementation of a public involvement/participation program that complies with State, Tribal, and local public notice requirements.

(ii) Guidance for NPDES permitting authorities and regulated small MS4s: EPA recommends that the permit include provisions addressing the need for the public to be included in developing, implementing, and reviewing the storm water management program and that the public participation process should make efforts to reach out and engage all economic and ethnic groups. Opportunities for members of the public to participate in program development and implementation include serving as citizen representatives on a local storm water management panel, attending public hearings, working as citizen volunteers to educate other individuals about the program, assisting in program coordination with other pre-existing programs, or participating in volunteer monitoring efforts. (Citizens should obtain approval where necessary for lawful access to monitoring sites.)

(3) *Illicit discharge detection and elimination.* (i) The permit must identify the minimum elements and require the development, implementation, and enforcement of a program to detect and eliminate illicit discharges (as defined at § 122.26(b)(2)) into the small MS4. At a minimum, the permit must require the permittee to:

(A) Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all waters of the United States that receive discharges from those outfalls;

(B) To the extent allowable under State, Tribal or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into the storm sewer system and implement appropriate enforcement procedures and actions;

(C) Develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, to the system; and

(D) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

(ii) The permit must also require the permittee to address the following categories of non-storm water discharges or flows (*i.e.,* illicit discharges) only if the permittee identifies them as a significant contributor of pollutants to the small MS4: Water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(b)(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (discharges or flows from firefighting activities are excluded from the effective prohibition against non-storm water and need only be addressed where they are identified as significant sources of pollutants to waters of the United States).

(iii) Guidance for NPDES permitting authorities and regulated small MS4s: EPA recommends that the permit require the plan to detect and address illicit discharges include the following four components: Procedures for locating priority areas likely to have illicit discharges; procedures for tracing the source of an illicit discharge; procedures for removing the source of the discharge; and procedures for program evaluation and assessment. EPA recommends that the permit require the permittee to visually screen outfalls during dry weather and conduct field tests of selected pollutants as part of the procedures for locating priority areas. Illicit discharge education actions may include storm drain stenciling, a program to promote, publicize, and facilitate public reporting of illicit connections or discharges, and distribution of outreach materials.

(4) *Construction site storm water runoff control.* (i) The permit must identify the minimum elements and require the development, implementation, and enforcement of a program to reduce pollutants in any storm water runoff to the small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the Director waives requirements for storm water discharges associated with small construction activity in accordance with § 122.26(b)(15)(i), the permittee is not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites. At a minimum, the permit must require the permittee to develop and implement:

(A) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under State, Tribal, or local law;

(B) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(C) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(D) Procedures for site plan review which incorporate consideration of potential water quality impacts;

(E) Procedures for receipt and consideration of information submitted by the public, and

(F) Procedures for site inspection and enforcement of control measures.

(ii) Guidance for NPDES permitting authorities and regulated small MS4s: Examples of sanctions to ensure compliance include non-monetary penalties, fines, bonding requirements and/or permit denials for non-compliance. EPA recommends that the procedures for site plan review include the review of individual pre-construction site plans to ensure consistency with local sediment and erosion control requirements. Procedures for site inspections and enforcement of control measures could include steps to identify priority sites for inspection and enforcement based on the nature of the construction activity, topography, and the characteristics of soils and receiving water quality. EPA also recommends that the permit require the permittee to provide appropriate educational and training measures for construction site operators, and require storm water pollution prevention plans for construction sites within the MS4's jurisdiction that discharge into the system. See § 122.44(s) (NPDES permitting authorities' option to incorporate qualifying State, Tribal and local erosion and sediment control programs into NPDES permits for storm water discharges from construction sites). Also see § 122.35(b) (The NPDES permitting authority may recognize that another government entity, including the NPDES permitting authority, may be responsible for implementing one or more of the minimum measures on the permittee's behalf).

(5) *Post-construction storm water management in new development and redevelopment.* (i) The permit must identify the minimum elements and require the development, implementation, and enforcement of a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the small MS4. The permit must ensure that controls are in place that would prevent or minimize water quality impacts. At a minimum, the permit must require the permittee to:

(A) Develop and implement strategies which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for the community;

(B) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State, Tribal or local law; and

(C) Ensure adequate long-term operation and maintenance of BMPs.

(ii) Guidance for NPDES permitting authorities and regulated small MS4s: If water quality impacts are considered from the beginning stages of a project, new development and potentially redevelopment provide more opportunities for water quality protection. EPA recommends that the permit ensure that BMPs included in the program: Be appropriate for the local community; minimize water quality impacts; and attempt to maintain pre-development runoff conditions. EPA encourages the permittee to participate in locally-based watershed planning efforts which attempt to involve a diverse group of stakeholders including interested citizens. When developing a program that is consistent with this measure's intent, EPA recommends that the permit require the permittee to adopt a planning process that identifies the municipality's program goals (*e.g.,* minimize water quality impacts resulting from post-construction runoff from new development and redevelopment), implementation strategies (*e.g.,* adopt a combination of structural and/or non-structural BMPs), operation and maintenance policies and procedures, and enforcement procedures. In developing the program, the permit should also require the permittee to assess existing ordinances, policies, programs and studies that address storm water runoff quality. In addition to assessing these existing documents and programs, the permit should require the permittee to provide opportunities to the public to participate in the development of the program. Non-structural BMPs are preventative actions that involve management and source controls such as: Policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; policies or ordinances that encourage infill development in higher density urban areas, and areas with existing infrastructure; education programs for developers and the public about project designs that minimize water quality impacts; and measures such as minimization of percent impervious area after development and minimization of directly connected impervious areas. Structural BMPs include: Storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as grassed swales, sand filters and filter strips; and infiltration practices such as infiltration basins and infiltration trenches. EPA recommends that the permit ensure the appropriate implementation of the structural BMPs by considering some or all of the following: Pre-construction review of BMP designs; inspections during construction to verify BMPs are built as designed; post-construction inspection and maintenance of BMPs; and penalty provisions for the noncompliance with design, construction or operation and maintenance. Storm water technologies are constantly being improved, and EPA recommends that the permit requirements be responsive to these changes, developments or improvements in control technologies.

(6) *Pollution prevention/good housekeeping for municipal operations.* (i) The permit must identify the minimum elements and require the development and implementation of an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, the State, Tribe, or other organizations, the program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.

(ii) Guidance for NPDES permitting authorities and regulated small MS4s: EPA recommends that the permit address the following: Maintenance activities, maintenance schedules, and long-term inspection procedures for structural and non-structural storm water controls to reduce floatables and other pollutants discharged from the separate storm sewers; controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations and snow disposal areas operated by the permittee, and waste transfer stations; procedures for properly disposing of waste removed from the separate storm

sewers and areas listed above (such as dredge spoil, accumulated sediments, floatables, and other debris); and ways to ensure that new flood management projects assess the impacts on water quality and examine existing projects for incorporating additional water quality protection devices or practices. Operation and maintenance should be an integral component of all storm water management programs. This measure is intended to improve the efficiency of these programs and require new programs where necessary. Properly developed and implemented operation and maintenance programs reduce the risk of water quality problems.

(c) *Other applicable requirements.* As appropriate, the permit will include:

(1) More stringent terms and conditions, including permit requirements that modify, or are in addition to, the minimum control measures based on an approved total maximum daily load (TMDL) or equivalent analysis, or where the Director determines such terms and conditions are needed to protect water quality.

(2) Other applicable NPDES permit requirements, standards and conditions established in the individual or general permit, developed consistent with the provisions of §§ 122.41 through 122.49.

(d) *Evaluation and assessment requirements*—(1) *Evaluation.* The permit must require the permittee to evaluate compliance with the terms and conditions of the permit, including the effectiveness of the components of its storm water management program, and the status of achieving the measurable requirements in the permit.

**Note to paragraph (d)(1):** The NPDES permitting authority may determine monitoring requirements for the permittee in accordance with State/Tribal monitoring plans appropriate to the watershed. Participation in a group monitoring program is encouraged.

(2) *Recordkeeping.* The permit must require that the permittee keep records required by the NPDES permit for at least 3 years and submit such records to the NPDES permitting authority when specifically asked to do so. The permit must require the permittee to make records, including a written description of the storm water management program, available to the public at reasonable times during regular business hours (see § 122.7 for confidentiality provision). (The permittee may assess a reasonable charge for copying. The permit may allow the permittee to require a member of the public to provide advance notice.)

(3) *Reporting.* Unless the permittee is relying on another entity to satisfy its NPDES permit obligations under § 122.35(a), the permittee must submit annual reports to the NPDES permitting authority for its first permit term. For subsequent permit terms, the permittee must submit reports in year two and four unless the NPDES permitting authority requires more frequent reports. As of December 21, 2020 all reports submitted in compliance with this section must be submitted electronically by the owner, operator, or the duly authorized representative of the small MS4 to the NPDES permitting authority or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), § 122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, the owner, operator, or the duly authorized representative of the small MS4 may be required to report electronically if specified by a particular permit or if required to do so by state law. The report must include:

(i) The status of compliance with permit terms and conditions;

(ii) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

(iii) A summary of the storm water activities the permittee proposes to undertake to comply with the permit during the next reporting cycle;

(iv) Any changes made during the reporting period to the permittee's storm water management program; and

(v) Notice that the permittee is relying on another governmental entity to satisfy some of the permit obligations (if applicable), consistent with § 122.35(a).

(e) *Qualifying local program.* If an existing qualifying local program requires the permittee to implement one or more of the minimum control measures of paragraph (b) of this section, the NPDES permitting authority may include conditions in the NPDES permit that direct the permittee to follow that qualifying program's requirements rather than the requirements of paragraph (b). A qualifying local program is a local, State or Tribal municipal storm water management program that imposes, at a minimum, the relevant requirements of paragraph (b).

■ 5. Amend § 122.35 by revising the section heading and paragraph (a) to read as follows:

**§ 122.35 May the operator of a regulated small MS4 share the responsibility to implement the minimum control measures with other entities?**

(a) The permittee may rely on another entity to satisfy its NPDES permit obligations to implement a minimum control measure if:

(1) The other entity, in fact, implements the control measure;

(2) The particular control measure, or component thereof, is at least as stringent as the corresponding NPDES permit requirement; and

(3) The other entity agrees to implement the control measure on the permittee's behalf. In the reports, the permittee must submit under § 122.34(d)(3), the permittee must also specify that it is relying on another entity to satisfy some of the permit obligations. If the permittee is relying on another governmental entity regulated under section 122 to satisfy all of the permit obligations, including the obligation to file periodic reports required by § 122.34(d)(3), the permittee must note that fact in its NOI, but the permittee is not required to file the periodic reports. The permittee remains responsible for compliance with the permit obligations if the other entity fails to implement the control measure (or component thereof). Therefore, EPA encourages the permittee to enter into a legally binding agreement with that entity if the permittee wants to minimize any uncertainty about compliance with the permit.

* * * * *

[FR Doc. 2016–28426 Filed 12–8–16; 8:45 am]

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# FEDERAL REGISTER

Vol. 81 Friday,
No. 237 December 9, 2016

Part V

## The President

Proclamation 9551—National Pearl Harbor Remembrance Day, 2016

Federal Register
Vol. 81, No. 237
Friday, December 9, 2016

# Presidential Documents

**Title 3—**

**The President**

**Proclamation 9551 of December 6, 2016**

## National Pearl Harbor Remembrance Day, 2016

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

**A Proclamation**

Seventy-five years ago, Japanese fighter planes attacked the United States Naval Base at Pearl Harbor, destroying much of our Pacific Fleet and killing more than 2,400 Americans. The following day, President Franklin D. Roosevelt called on the Congress to declare war and ''make it very certain that this form of treachery shall never again endanger us.'' In that spirit, Americans came together to pay tribute to the victims, support the survivors, and shed the comforts of civilian life to serve in our military and fight for our Union. Each year on National Pearl Harbor Remembrance Day, we honor those whose lives were forever changed that December morning and resolve to uphold the legacy of all who stepped forward in our time of need.

From the docks of Pearl Harbor to the beaches of Normandy and far around the world, brave patriots served their country and defended the values that have sustained our Nation since its founding. They went to war for liberty and sacrificed more than most of us will ever know; they chased victory and defeated fascism, turning adversaries into allies and writing a new chapter in our history. Through their service and unparalleled devotion, they inspired a generation with their refusal to give in despite overwhelming odds. And as we reflect on the profound debt of gratitude we owe them for the freedoms we cherish, we are reminded of the everlasting responsibilities we have to one another and to our country.

In memory of all who lost their lives on December 7, 1941—and those who responded by leaving their homes for the battlefields—we must ensure the sacrifices they made in the name of liberty and democracy were not made in vain. On this solemn anniversary, there can be no higher tribute to these American patriots than forging a united commitment to honor our troops and veterans, give them the support and care they deserve, and carry on their work of keeping our country strong and free.

The Congress, by Public Law 103–308, as amended, has designated December 7 of each year as ''National Pearl Harbor Remembrance Day.''

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim December 7, 2016, as National Pearl Harbor Remembrance Day. I encourage all Americans to observe this solemn day of remembrance and to honor our military, past and present, with appropriate ceremonies and activities. I urge all Federal agencies and interested organizations, groups, and individuals to fly the flag of the United States at half-staff this December 7 in honor of those American patriots who died as a result of their service at Pearl Harbor.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of December, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

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