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Presidential Documents

Title 3—

The President

Proclamation 9257 of April 17, 2015

National Crime Victims' Rights Week, 2015

By the President of the United States of America

A Proclamation

In recent decades, our Nation has made tremendous progress in reducing the crime rate and building safer communities for all Americans. Yet tragically, millions of people continue to be victimized by crime each year—it happens every day, and it can happen to anyone. When one person's life is shaken by crime, it tears at the fabric of our Nation and erodes the values we cherish. That is why we all must help rebuild the promise of justice and fairness for those whose lives are forever changed by crime. This week, as we stand with these men, women, and children, we renew our commitment to supporting them in their time of need, and we reaffirm the basic human right of all people to live free from violence.

All crime victims have fundamental rights; however, many underserved populations face significant barriers to accessing the protections and assistance they deserve. That is why as my Administration has worked to bolster the rights, services, and support for all victims of crime, we have particularly focused on at-risk communities. I was proud to sign the reauthorization of the Violence Against Women Act, which included additional provisions to help immigrants and Native American communities, as well as new protections to ensure victims do not face discrimination based on sexual orientation or gender identity when they seek assistance. And we are investing in training programs for law enforcement and other professionals who assist underserved individuals.

My Administration is committed to standing up for the rights of those affected by all types of crime, and we are taking action to stop crime before it happens. Last year, I established the White House Task Force to Protect Students from Sexual Assault to improve efforts to prevent and effectively respond to sexual assault on our Nation's campuses. The Federal Government is developing new tools to assist victims of economic and financial crimes. We are also working to implement the recommendations from my Task Force on 21st Century Policing, which generated a series of practical, commonsense proposals to help reduce crime while building public trust. And we continue our work to reduce other violent and heinous crimes—such as human trafficking, elder abuse, and violence against persons with disabilities—and to improve access to necessary services for the victims of these crimes.

When communities come together to declare that crime is not tolerated, to empower victims, and to work toward a brighter tomorrow, it gives new life to our democracy and our system of justice. During National Crime Victims' Rights Week, we lift up service providers, criminal justice professionals, and all who are committed to improving efforts to prevent and respond to the effects of crime. Together, let us rededicate ourselves to the important work of supporting victims' rights and continue our efforts to build a safer, stronger, more just future for all Americans.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 19 through April 25, 2015, as National Crime Victims' Rights Week. I call upon all

Americans to observe this week by participating in events that raise awareness of victims' rights and services, and by volunteering to serve victims in their time of need.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of April, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2015–09558
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Rules and Regulations

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2014–0003]

RIN 0579–AD89

Importation of Apples From China

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow the importation of fresh apples (*Malus pumila*) from China into the continental United States. As a condition of entry, apples from areas in China in which the Oriental fruit fly (*Bactrocera dorsalis*) is not known to exist will have to be produced in accordance with a systems approach that includes requirements for registration of places of production and packinghouses, inspection for quarantine pests at set intervals by the national plant protection organization of China, bagging of fruit, safeguarding, labeling, and importation in commercial consignments. Apples from areas in China in which Oriental fruit fly is known to exist may be imported into the continental United States if, in addition to these requirements, the apples are treated with fumigation plus refrigeration. All apples from China will also be required to be accompanied by a phytosanitary certificate with an additional declaration stating that all conditions for the importation of the apples have been met and that the consignment of apples has been inspected and found free of quarantine pests. This action allows for the importation of apples from China into the continental United States while continuing to provide protection against the introduction of quarantine pests.

DATES: Effective May 26, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Lamb, Senior Regulatory Policy Specialist, RPM, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2018.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–71, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The national plant protection organization (NPPO) of China has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow apples (*Malus pumila*) from China to be imported into the continental United States.

In response to that request, we prepared a pest risk assessment (PRA) and a risk management document (RMD). Based on the conclusions of the PRA and the RMD, on July 18, 2014, we published in the **Federal Register** (79 FR 41930–41934, Docket No. APHIS–2014–0003) a proposal [1] to amend the regulations to authorize the importation of fresh apples into the continental United States, provided that the apples were produced in accordance with a systems approach consisting of the following requirements: Production by a grower who is part of a certification program administered by the NPPO of China; fruit bagging; pre-harvest NPPO inspection; packing in packinghouses that are registered with the NPPO; packinghouse procedures including traceback and box marking; post-harvest washing; waxing; treatment with inspection after packing for quarantine pests; issuance of a phytosanitary certificate; importation in commercial consignments only; sealed boxes; and location of apples in a cold storage facility while awaiting export to the continental United States. For apples from those areas of China south of the 33rd parallel, where the Oriental fruit fly (*Bactrocera dorsalis*) is known to exist, we proposed to require treatment in accordance with 7 CFR 305.2, which provides that approved treatment schedules are set out in the Plant Protection and Quarantine (PPQ) Treatment Manual, found online at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf.*

We note that we are changing the bagging protocol from that which was set out in the proposed rule. The proposed systems approach would have required that bags remain on the fruit until its arrival at the packinghouse. In the final rule, we are requiring that the bags stay on until at least 14 days prior to harvest instead of remaining on the fruit until it reaches the packinghouse. Though we modeled the systems approach on a similar systems approach for the importation of pears from China, bag removal at this stage is a necessary practice among apple growers in countries where bagging protocols are employed as apples must be exposed to sunlight so that they may color up prior to harvest. Pears do not require similar treatment in order to achieve their coloration.

Bagging is an important mitigation; however, we believe that removing the bags for the last 14 days before harvest is unlikely to significantly increase the risk because bagging is only one mitigation out of a number that are part of a systems approach.

Apples produced south of the 33rd parallel will require an APHIS-approved treatment for Oriental fruit fly. Specifically, this is fumigation plus refrigeration. This treatment will effectively mitigate any pests that might be present on the fruit after the removal of the bags.

Most, if not all, of the apple production areas in China are north of the 33rd parallel. All of the *Lepidoptera* and *Coleoptera* listed in the PRA as following the pathway of fresh apples from China were assigned a medium risk of doing so. These pests are mitigated by a number of other factors apart from bagging, including commercial production only, culling at the packinghouse, and the required inspection by the NPPO of China.

APHIS does not expect this change to significantly increase the risk of pests from China apples. Growers will still be responsible for maintaining low pest

[1] To view the proposed rule, its supporting documents, or the comments that we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0003.*

populations of target quarantine pests, with oversight by the NPPO of China and APHIS. These measures and others, including removing fallen fruit, will maintain low pest populations in the production sites. The required culling will also remove pests from the pathway. The biometric sampling rate can be increased, if necessary, in order to look for pests that may be present in smaller numbers in consignments, thus heightening the level of phytosanitary security. In addition, the bags will be removed for 2 weeks in the fall, when temperatures are rapidly declining leading to winter and insects are prone to reduced activity leading to dormancy.

Some of the pests of concern primarily attack the fruit early in the season when the fruit is at a small stage. For example, the *Rhynchites* spp. adult weevils attack small, newly formed fruit in the spring and early summer and the eggs are laid in those fruit often causing fruit drop. The larvae develop in 3 or 4 weeks after the eggs are laid and the larvae emerge from the fruit and pupate in the soil. There is only one generation per year. Infested fruit are misshapen with feeding damage and can easily be identified and culled. These pests are very unlikely to be present in the fruit in the fall when the bags are removed 2 weeks before the apples are harvested, and any infested, misshapen fruit would be unlikely to be packed and can be easily spotted upon inspection.

Some of the *Lepidoptera* species do not attack the fruit, and are only present on the fruit as contaminants, for example *Cryptoblabes gnidiella* primarily attacks fruit that has infestations of *Homoptera* sp., which produce honey dew. Small larvae feed on the honey dew and do not attack the fruit until they have grown to a larger stage. The larvae initially feed on the surface of the fruit and do not bore into the fruit. Based on the pest damage symptoms, inspection and culling will remove *Lepidoptera* pests from the pathway.

Carposina sasakii larvae may bore into the fruit near the calyx, but according to a 2014 data sheet from the European and Mediterranean Plant Protection Organization, ''Infested apples exude a sticky gum, pears turn yellow and apricots ripen unevenly.'' [2] These symptoms would allow any infested fruit to be readily detected during culling and inspections. The window for the pests to attack after the bags are removed is also very small; for approximately 90 percent of the time after blossom drop and fruit set, the fruit will be protected by bags.

The *Euzophera* spp. may also attack the bark of the trees as well as fruit. These pests build up in unmanaged and backyard fruit trees. Well-managed production sites will rarely have infestations.

Leucoptera malifoliella, the pear leaf blister moth, is a leaf mining species that is only found on the fruit if leaves are attached to the fruit. Leaves and other plant parts are prohibited, so the risk of importing this pest with the fruit is minimal. This pest is an external miner; any leaves or mines should be readily detected and culled or found during inspection.

The eight species of *Tortricidae,* (*Adoxophyes orana, Archips micaceana, Argyrotaenia ljungiana, Cydia funebrana, Ulodemis trigrapha, Grapholita inopinata, Spilonota albicana,* and *Spilonota prognathana*) are leaf rollers. They typically lay eggs on leaves and roll them up and feed on leaf tissue. When fruit are adjacent to leaves, the larvae may attack the fruit, usually leaving external feeding damage and sometimes boring into the fruit leaving visible holes and larval waste. These species are unlikely to be present in any numbers during the fall and are also expected to be controlled by required pest management and standard agricultural best practices. This, combined with the small amount of time that the fruit will be exposed when the bags are removed, will greatly reduce the possibility that these *Tortricidae* will follow the pathway. In addition APHIS readily inspects for *Tortricidae* on many commodities. The only time quarantine treatments are required is when high populations and frequent interceptions occur. APHIS does not expect this, but removal of production sites in any problem areas will allow APHIS to mitigate this risk further.

As noted previously, the window for pest attack after the bags are removed is very small (approximately 90 percent of the time after blossom drop and fruit set, the fruit will be protected by bags). Attacks on the fruit by *Lepidoptera* and *Curculionidae* pests during this time are unlikely when these pest populations are kept in check by good pest management and agricultural practices, which has been our experience with pears from China and we expect this to be true for apples. All of the *Lepidoptera* and *Curculionidae* pests are borers into the fruit from eggs laid externally. Besides inspection for external oviposition, there will be larval holes and feeding damage and larval waste that is readily apparent on inspection. If necessary, APHIS can suspend production sites with pest interceptions until pest populations are mitigated.

We are also adding two post-harvest treatment requirements to those listed in the proposed rule. The RMD that accompanied the proposed rule required apples to undergo washing and waxing. This procedure was included because washing removes hitchhiking, casual, and surface pests associated with smooth-skinned fruit such as apples, and waxing also serves to eliminate many surface pests including *Homoptera* and mites. Washing and waxing may also remove external spores of plant pathogens.

The two treatments we are adding in this final rule are fruit brushing and spraying with compressed air. Fruit brushing will be required as an additional packinghouse treatment requirement, while spraying with compressed air will be an alternative to waxing. Brushing adds another level of phytosanitary protection against surface pests and external spores and spraying with compressed air serves the same purpose as waxing in removing hitchhiking, casual, and surface pests. While brushing and spraying with compressed air are not widely used in fruit processing in the United States, these treatments are commonly used in the fruit packing industry in China and other Asian countries. For example, in § 319.56–65(c)(2), we require spraying with compressed air as a treatment for pineapples imported from Malaysia.

We solicited comments concerning our proposal for 60 days ending September 16, 2014. We received 128 comments by that date. They were from a national organization that represents U.S. apple producers, State departments of agriculture, a State representative, scientific advisory groups, an environmental organization, domestic apple producers, and private citizens. The comments that we received are discussed below, by topic.

General Comments on the Proposed Rule

One commenter asked what sort of outreach APHIS had conducted to publicize the availability of the proposed rule for comment. The commenter claimed that the number of comments received suggested that stakeholders and other interested parties were unaware of its existence.

We disagree with the commenter's assessment. As stated above, we received 128 comments on the proposed rule from a variety of commenters. In addition to notifying members of PPQ's

[2] You may view the data sheet on the Internet at *https://www.eppo.int/QUARANTINE/insects/Carposina_sasakii/CARSSA_ds.pdf.*

Stakeholder Registry,[3] we performed outreach activities to the following industry and trade groups: The U.S. Apple Export Council, the U.S. Apple Association, the Washington Apple Commission, the Northwest Horticultural Council, and the Apple Commodity Committee of Northwest Fruit Exporters.

A number of commenters stated that we produce sufficient apples domestically and should therefore not import apples from China.

Such prohibitions would be beyond the scope of APHIS' statutory authority under the Plant Protection Act (7 U.S.C. 7701 *et seq.,* referred to below as the PPA). Under the PPA, APHIS may prohibit the importation of a fruit or vegetable into the United States only if we determine that the prohibition is necessary in order to prevent the introduction or dissemination of a plant pest or noxious weed within the United States.

Additionally, as a signatory to the World Trade Organization's Agreement on Sanitary and Phytosanitary Measures (SPS Agreement), the United States has agreed that any prohibitions it places on the importation of fruits and vegetables will be based on scientific evidence related to phytosanitary measures and issues, and will not be maintained without sufficient scientific evidence. The blanket prohibitions requested by the commenters would not be in keeping with this agreement.

Another commenter suggested that we should instead focus on importing fruits and vegetables from Europe instead of China.

APHIS's phytosanitary evaluation process only begins once a country has submitted a formal request for market access for a particular commodity. APHIS does not solicit such requests, nor do we control which countries submit requests.

One commenter said that we should require that every imported apple be labeled as a product of China.

Under the Country of Origin Labeling (COOL) law, which is administered by the Agricultural Marketing Service, retailers, such as full-time grocery stores, supermarkets, and club warehouse stores, are required to notify their customers with information regarding the source of certain food, including fresh and frozen fruits. Any apples imported from China would be subject to such requirements.

Other commenters stated that, if imported Chinese apples were to be processed into products such as apple juice or applesauce, COOL would be circumvented.

While, as stated above, APHIS does not administer COOL and, as such, these concerns are outside the scope of our authority, we believe that the relatively high price of apples imported from China when compared to domestic apple prices will prevent a situation such as the one described by the commenters. A full explanation of the economic factors associated with this rule, including apple pricing, see the section entitled, ''Executive Order 12866 and Regulatory Flexibility Act.''

One commenter observed that the importation of apples from China would bypass U.S. regulations regarding plant origins, growing practices, and laborer and produce health standards set out by the U.S. Environmental Protection Agency (EPA), the U.S. Food and Drug Administration (FDA), and the U.S. Department of Labor (DOL).

While we agree that Chinese producers are not subject to DOL rules and regulations, given that DOL's authority does not extend beyond the United States, we disagree with the assessment that apples from China would not be subject to agricultural standards. The regulations and the operational workplan set out requirements, including requirements regarding sourcing of apples only from registered places of production and growing practices which Chinese producers must meet in order to export apples to the United States. Further, the FDA samples and tests imported fruits and vegetables for pesticide residues. Yearly monitoring reports and information on the program may be found here: *http://www.fda.gov/Food/FoodborneIllnessContaminants/Pesticides/UCM2006797.htm.*

A number of commenters were concerned about the environmental state of China, citing in particular, heavy metal pollution in the Chinese air, water, and soil as a specific concern. The commenters further suggested that potential Chinese use of pesticides currently banned in the United States would lead to contamination of crops shipped from that country.

While the United States does not have direct control over pesticides that are used on food commodities such as apples in other countries, there are regulations in the United States concerning the importation of food to ensure that commodities do not enter the United States containing illegal pesticide residues. Through section 408 of the Federal Food, Drug, and Cosmetic Act, the EPA has the authority to establish, change, or cancel tolerances for food commodities. These EPA-set tolerances are the maximum levels of pesticide residues that have been determined, through comprehensive safety evaluations, to be safe for human consumption. Tolerances apply to both food commodities that are grown in the United States and food commodities that are grown in other countries and imported into the United States. The EPA tolerance levels are enforced once the commodity enters the United States. Chemicals such as DDT that are banned in the United States do not have tolerances on food commodities. Federal Government food inspectors are responsible for monitoring food commodities that enter the United States to confirm that tolerance levels are not exceeded and that residues of pesticide chemicals that are banned in the United States are not present on the commodities. Tolerance levels for all chemicals that are acceptable for use on apples may be found in EPA's regulations in 40 CFR 180.101 through 180.2020. Tolerance information can also be obtained at *http://www.epa.gov/pesticides/food/viewtols.htm*. Pesticide use in China is regulated by the Institute for the Control of Agrochemicals (ICAMA) under the current pesticide management law, the ''Regulation on Pesticide Administration (RPA)''. Under this authority, all pesticides are required to be registered and all pesticide handlers must be licensed. In addition, the ICAMA restricts or bans the use of any pesticide when evidence shows that the pesticide is an imminent hazard to crops, fish, livestock, the environment, or public health.

One commenter said that the FDA is currently unable to cope with its obligation to safety test the current level of imported food coming into U.S. markets. The commenter asserted that allowing the importation of apples from China would prove overly burdensome.

As stated previously, the FDA samples and tests imported fruits and vegetables for pesticide residues. We have received no indication from the FDA that they are unable to successfully carry out these duties. Furthermore, the commenter provided no support for the assertions regarding the FDA's oversight capabilities.

Comments on APHIS Oversight

Several commenters stated that there exists doubt that APHIS possesses the necessary resources to oversee and monitor the terms of the operational workplan and successfully intercept any quarantine pests as necessary. The commenters cited governmental budget cuts and staffing levels as the reason for these systemic weaknesses.

[3] You may sign up for the PPQ Stakeholder Registry on the Internet at *https://public.govdelivery.com/accounts/USDAAPHIS/subscriber/new/.*

APHIS has reviewed its resources and believes it has adequate coverage across the United States to ensure compliance with its regulations, including the Chinese apple import program, as established by this rule. In addition, the APHIS International Services Area Director in Beijing serves as APHIS' representative in China in order to assess the operations of the program there.

Two commenters asked how APHIS will regulate apple shipments to avoid the importation of leaves and debris, which, the commenter stated, may pose a risk of introducing pests which may not feed or reproduce in or on the fruit.

APHIS inspectors have the authority to reject consignments that contain contaminants such as leaves and other plant debris, especially if any pests are found to be generally infesting that shipment. As stipulated in § 319.56–3(a), ''All fruits and vegetables imported under this subpart, whether in commercial or noncommercial consignments, must be free from plant litter or debris and free of any portions of plants that are specifically prohibited in the regulations in this subpart.''

One commenter stated that APHIS would be unable to directly participate in the Chinese import program until such time as a pest infestation or other problem arose. The commenter suggested that APHIS expand its oversight to allow for action prior to that point.

Contrary to the commenter's assertion, our standard practice is to conduct site visits prior to the initiation of any import program. This is to ensure that all required mitigations are in place and the agreed upon operational workplan is being enforced. Subject matter experts inspect production sites and packinghouses and report their findings to APHIS. Furthermore, the operational workplan authorizes the APHIS International Services Area Director in Beijing to conduct periodic audit visits of production sites.

Comments on Chinese Oversight

A number of commenters expressed distrust in the Chinese NPPO's ability to maintain the program at an acceptable level of compliance. One commenter specifically cited an FDA report that highlights risks associated with China's inadequate enforcement of food safety standards. Another commenter stated that contaminants such as arsenic are of concern, citing a paper entitled ''Current Research Problems of Chronic Arsenicosis in China'' [4] (June 2006).

Like the United States, China is a signatory to the SPS Agreement. As such, it has agreed to respect the phytosanitary measures the United States imposes on the importation of plants and plant products from China when the United States demonstrates the need to impose these measures in order to protect plant health within the United States. The PRA that accompanied the proposed rule provided evidence of such a need. That being said, as we mentioned in the proposed rule, APHIS will monitor and audit China's implementation of the systems approach for the importation of apples into the continental United States. If we determine that the systems approach has not been fully implemented or maintained, we will take appropriate remedial action to ensure that the importation of apples from China does not result in the dissemination of plant pests within the United States.

The report referenced by the commenter was prepared by the United States Department of Agriculture's (USDA) Economic Research Service [5] utilizing data collected by the FDA. The report found that three broad categories of products—fish and shellfish, fruit products, and vegetable products—combined accounted for 70 to 80 percent of FDA import refusals from China in recent years. Fruit and vegetable products are those that have been processed in China before being shipped to the United States, whereas the main concern when it comes to contamination of unprocessed fruits and vegetables is the presence of plant pests being introduced into the United States via the importation of unprocessed fruits and vegetables. Given the findings of the PRA, we are confident that the systems approach required for apples from China will mitigate the risk posed by such apples to introduce these pests. The other paper cited by the other commenter refers only to the effects of arsenic in drinking water and not to food contamination. As stated previously, FDA samples and tests imported fruits and vegetables for pesticide residues as well as other adulterants and additives, such as arsenic.

Several commenters expressed concern that the rule gives authority for inspecting for pests to the NPPO of China and therefore U.S. phytosanitary security would be under the purview of a foreign government.

While it is true that after initial APHIS approval of the export program is made, the required regular inspections are the responsibility of the NPPO of China, APHIS may request submission of inspection records at any time. In addition, port of entry inspection is performed by trained agriculture specialists employed by U.S. Customs and Border Protection (CBP).

A commenter pointed out that we had modeled the systems approach on a similar systems approach for the importation of pears from China, and that pears imported under this protocol had sometimes been determined to be infested with plant pests. The commenter stated that this calls into question the efficacy of China's ability to employ the systems approach.

The pest interceptions referred to by the commenter were 15 infested pears over a 15 year period. Given the lengthy time period in question and the level of imports during that time, this interception rate does not call into question the efficacy of the systems approach, but rather underscores its quality.

One commenter stated that Chinese producers are not subject to the same regulatory oversight as U.S. producers and therefore would be at a competitive advantage. The commenter said that the United States should not accept any produce or products from China for that reason.

As stated previously, such a prohibition would be beyond the scope of APHIS' statutory authority under the PPA, whereby APHIS may prohibit the importation of a fruit or vegetable into the United States only if we determine that the prohibition is necessary in order to prevent the introduction or dissemination of a plant pest or noxious weed within the United States. Additionally, as a signatory to the World Trade Organization's SPS Agreement, the United States has agreed that any prohibitions it places on the importation of fruits and vegetables will be based on scientific evidence related to phytosanitary measures and issues, and will not be maintained without sufficient scientific evidence. The blanket prohibition requested by the commenters would not be in keeping with this agreement.

One commenter said that, apart from the requirements specifically listed in the regulations and the operational workplan, the methods of growth, harvest, treatment, and export of apples from China are generally unknown. The commenter argued that this makes it difficult for APHIS to ensure that the apples were handled with care, without pesticides banned in the United States,

[4] You may view the paper on the Internet at *http://bioline.org.br/pdf?hn06022.*

[5] The report, entitled, ''Imports From China and Food Safety Issues,'' (July 2009) may be viewed on the Internet at *http://www.ers.usda.gov/media/156008/eib52_1_.pdf.*

and with the precautions necessary to prevent the introduction of invasive pests. The commenter concluded that, until a more strictly monitored set of requirements are established, APHIS should not allow the importation of apples from China.

We disagree with the commenter's assessment. The commenter is asking for certain requirements that either the mandatory systems approach does require or does not need to address for reasons we have explained above. Further, the commenter's characterization of the extent of the operational workplan is incorrect. While the regulations themselves are written more broadly to allow for programmatic flexibility, operational workplans establish detailed procedures and guidance for the day-to-day operations of specific import/export programs. Workplans also establish how specific phytosanitary issues are dealt with in the exporting country and make clear who is responsible for dealing with those issues.

The NPPO of China is expected to maintain program records for at least 1 year and provide them to APHIS upon request. One commenter asked why we only expect the NPPO of China to maintain program records for 1 year. The commenter suggested that we make record maintenance a permanent requirement.

There is no technical justification for keeping records for longer than 1 year. If a pest problem is detected, the immediate past records will likely offer the most valuable information necessary to aid in resolution of the issue. This period of time is the APHIS standard for almost all pest programs and there is no special justification to extend it here.

General Comments on Phytosanitary Security

A commenter expressed concern that apples from China pose a high risk of introducing quarantine pests into the United States. Another commenter asked that APHIS prove that any pests associated with the importation of apples from China would lend themselves to effective control measures if they were to become established in the United States. Another commenter asked if APHIS has experience with the listed pathogens to ensure that the proposed mitigations will be effective in controlling diseases that are not present in the United States. Another commenter said that the RMD's report of 15 pest interceptions in 15 years in the Chinese pear importation program, which features a similar pest complex and mitigation measures as were proposed for Chinese apples, calls the efficacy of the systems approach into question. The commenter concludes that interception records cover only known interceptions and ignores the possibility of infested or diseased fruit that is imported but not detected.

For the reasons explained in the proposed rule, the RMD, and this final rule, we consider the provisions of this final rule adequate to mitigate the risk associated with the importation of apples from China. The commenters did not provide any evidence suggesting that the mitigations are individually or collectively ineffective.

One commenter suggested that past history bears out the fact that invasive species from China may prove to be destructive plant pests. The commenter cited the brown marmorated stink bug, *Halyomorpha halys,* and the vinegar fly, *Drosophila suzukii,* as two examples that are causing significant damage to American crops.

As stated above, we consider the provisions of this final rule adequate to mitigate against the pests of concern as identified by the PRA. Specific to the commenter's examples, both pests have been present in the United States for many years and originated in Asia, not necessarily China in particular. The brown marmorated stink bug most likely entered the United States as a hitchhiking insect overwintering in a cargo container. *Drosophila suzukii* possibly made its initial entrance via importation of strawberries. Strawberries have been permitted entry from almost all countries since well before APHIS began requiring PRAs. Neither of these pests has been identified as being associated with a crop that has been permitted importation into the United States subsequent to the preparation of a PRA. Rather they are hazards of international trade, which occur infrequently over the span of decades.

Another commenter stated that APHIS lacks information on the full range of pests associated with apples imported from China as Chinese literature sources have proven deficient or incomplete.

We disagree. The PRA that accompanied the proposed rule provided a list of all pests of apples known to exist in China. This list was prepared using multiple data sources to ensure its completeness. For this same reason, we are confident it is accurate. Further, the pest complex associated with apples from China is very similar to the pest complex associated with pears from China, which have been imported into the United States for 15 years under a very similar systems approach with very few pest interceptions.

Another commenter observed that certain areas in the United States must establish buffer zones to keep non-commercially grown apples separated from high production orchards in order to maintain pest freedom. The commenter stated that phytosanitary treatments or other measures, such as those we proposed to require for apples from China, were insufficient to achieve this separation domestically and therefore a similar quarantine is necessary in China.

APHIS will require bagging and phytosanitary treatment to mitigate risk of fruit flies and other insects in apples imported from China. The bagging is an equivalent measure to a domestic quarantine since, done correctly, bagging excludes pest species from the fruits. We are also requiring additional mitigation measures including fumigation plus refrigeration for those apples grown in areas where the Oriental fruit fly is known to exist. In the United States, bagging is not used as a mitigation measure for fruit because of the labor requirements necessary to bag each fruit. Bagging is used as a mitigation for fruit from China, Japan, and Korea, because it is a culturally indigenous mitigation to those countries and because large scale labor at a lower cost is available to apply the mitigation.

One commenter stated that while the RMD asserts that the designated phytosanitary measures will mitigate the risk presented by the importation of apples from China into the continental United States, the document makes no claim as to a specific amount of risk reduction. The commenter further states that the RMD does not establish an appropriate level of phytosanitary protection, or state that the listed mitigation measures will achieve such a level. The commenter said that the PRA should provide more precise and preferably quantitative information about the likelihood that imported apple fruit would transmit any actionable pest or disease. The commenter concluded that APHIS has never established or published any explicit level, either qualitative or quantitative, by which it consistently judges risk.

APHIS believes that a qualitative analysis is appropriate in this situation. APHIS' evaluations are based on science and conducted according to the factors identified in § 319.5(d), which include biosecurity measures, projected export quantity, and the proposed end use of the imported commodity (*e.g.,* propagation, consumption, milling, decorative, processing, etc.). Most of APHIS' risk assessments have been, and continue to be, qualitative in nature. Contrary to the commenter's assertion

that a qualitative analysis should include an explicit level of phytosanitary protection, the relative flexibility afforded by a qualitative analysis allows us to evaluate commodity import programs in a holistic way.

While APHIS believes that quantitative risk assessment models are useful in some rare cases, qualitative risk assessments, when coupled with site visit evaluations, provide the necessary information to assess the risk of pest introduction through importation of commodities such as apples from China. Additionally, there are several disadvantages associated with the use of quantitative risk assessment models. Quantitative models also tend to be data-intensive, and the types of data required by such models are often not available or adequate. Quantitative models are also necessarily developed using a set of assumptions that may not always adequately represent the biological situation in question, thus resulting in a wide range of uncertainty in interpretation of the model outcomes. The models also require constant updating, which is dependent on availability of current research and data, and thus may not always represent the current state of scientific information. Finally, uncertainty in the results or outcomes of quantitative models also arises from a large number of sources, including problem specification, conceptual or computational model construction and model misspecification, estimation of input values, and other model misspecification issues. Neither the regulations in 7 CFR part 319 nor APHIS guidance documents require a quantitative risk analysis or indicate that one is needed here.

The same commenter said that the PRA's assessment that certain of the pests considered were ''unlikely'' or ''highly unlikely'' to follow the pathway of importation of apples from China was not the same thing as stating that these pests would never follow the pathway. The commenter went on to say that the PRA provides no quantitative indication of what level of incidence is signified by the determinations ''unlikely'' and ''highly unlikely.'' The commenter added that the systems approach specified in the proposed rule could prove ineffective if one of the pests deemed ''unlikely'' or ''highly unlikely'' to follow the pathway were imported, as the elements of the systems approach were not developed with those pests in mind.

For the reasons stated previously, APHIS rarely performs quantitative risk assessments. However, just because the risk is not quantified does not mean it cannot be assessed and mitigated. Each organism carries its own risk of following the pathway, and APHIS has been very successful in assessing and mitigating the risks associated with new market access. We have stated in the past that if zero tolerance for pest risk were the standard applied to international trade in agricultural commodities, it is quite likely that no country would ever be able to export a fresh agricultural commodity to any other country. Our pest risk analysis process will identify and assign appropriate and effective mitigations for any identified pest risks. If, based on our PRA, we conclude that the available mitigation measures against identified pest risks are insufficient to provide an appropriate level of protection, then we will not authorize the importation of the particular commodity.

The same commenter claimed that the brevity of the RMD, particularly the portion evaluating the efficacy of the proposed mitigation measures, was of concern given the biologic and economic complexities of the proposed action.

It would be inappropriate for APHIS to include an economic analysis in the RMD. Our economic assessment of this action may be found in both the initial regulatory flexibility analysis that was made available with our July 2014 proposed rule and the final regulatory flexibility analysis prepared for this final rule. Copies of the full analyses are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

We disagree with the commenter's claim that the length of a document is in any way directly correlated to the efficacy of the mitigation measures discussed therein. The bagging requirements for all fruit intended for export will exclude almost all pests. We are confident of this fact because similar pest mitigations have successfully been used to allow for the importation of pears from China, which have a similar pest complex to apples from China. The pear importation program has been highly effective—15 pest interceptions in 15 years—with an import volume of about 10,000 metric tons (MT) annually. Although the bagging requirement differs slightly from that used for pears, we have detailed previously why the phytosanitary protections are expected to be effective.

The same commenter stated that the low interception rate reported in the RMD does not prove the efficacy of the proposed mitigation measures. The commenter argued that interception rates of fruit with a high actual infestation rate may be low or even zero if the inspection procedure has a low sensitivity or sampling rate. The commenter concluded that, because the RMD includes no information about inspection sensitivity or sampling rate, there is not enough information available to determine if the low interception rate truly reflects reality or if it is instead due to low inspection sensitivity or sampling.

Generally, CBP inspectors use a sample rate of 2 percent as a standard sample rate. Specific sampling rates may be adjusted based on various factors including the inspector's experience working with the shipper and the type of fruits or vegetables being imported. The standard sample rate may be increased for smaller shipments, or for a shipper or commodity that the inspector is encountering for the first time. APHIS reserves the right to suspend a program and readjust sampling levels accordingly if unacceptable levels of pests are detected.

The RMD included a description of packinghouse culling, which is a standard industry practice to remove all obviously blemished, diseased, and insect-infested fruits from the importation pathway. The same commenter argued that the RMD's supposition of the efficacy of culling ignores the potential existence of diseased, and insect-infested fruit that are not obviously diseased or insect-infested. The commenter said that, in the projected 10,000 MT of apples imported from China, the likelihood of a number of asymptomatic diseased or insect-infested fruit may not be negligible.

We are confident that packinghouse culling, in concert with the other requirements of the systems approach will be effective in mitigating phytosanitary risk. Any fruit that appeared asymptomatic, as posited by the commenter, would likely be in the early stages of disease or infestation. Given the transit time required to ship apples from China to the United States as well as mandatory port of entry inspections, it is likely that any latent infection or infestation would be detected at this point in the importation process. We have stated in the past that if zero tolerance for pest risk were the standard applied to international trade in agricultural commodities, it is quite likely that no country would ever be able to export a fresh agricultural commodity to any other country and, thus, zero risk is not a realistic standard.

The same commenter cited Article 5.4 of the SPS Agreement, which requires that members institute phytosanitary requirements while simultaneously minimizing negative trade effects; and Article 5.6, which requires that members ensure that any required phytosanitary measures are not more trade-restrictive than necessary, taking into account technical and economic feasibility. The commenter noted that the RMD contains no analysis indicating that the proposal is compliant with these articles and goes on to state that the RMD only evaluates one option, which consists of 14 specific measures. The commenter suggested that, if evaluated individually and in varying combinations, fewer than the 14 measures presented might prove sufficient to mitigate the phytosanitary risk posed by apples from China, a smaller systems approach that would be easier to implement and less trade-restrictive.

APHIS has determined that the listed risk management measures, along with the requirement of a phytosanitary certificate and the port of entry inspection, will mitigate the risk of pest introductions on apples from China into the continental United States. While bagging is the primary mitigation, the other mitigations serve to ensure that no pests will follow the importation pathway. Once the system has been in place and is operational, it may become clear that some mitigations may be reduced or removed. Prior to the program becoming operational, APHIS will not remove mitigations since, as stated previously, a similar systems approach is successfully utilized for the importation of pears from China. Although the bagging requirement differs slightly from that used for pears, we have detailed previously why the phytosanitary protections otherwise remain the same.

The commenter went on to state that the RMD provides no evidence to support the assertion that the 14 phytosanitary measures are sufficient to mitigate the pest risk associated with the importation of apples from China. In particular, the commenter observes that there is no description of apple growing or commercial apple processing in China that would support the claim that standard packinghouse procedures, such as culling and inspection, will prove efficacious. Similarly, another commenter stated that the required inspections do not guarantee that quarantine pests will not be introduced.

APHIS (and its predecessor agencies within the USDA) has been relying on inspection for almost 100 years to remove pests and we are therefore confident in its efficacy as a mitigation. As stated previously, APHIS' evaluations are based on science and conducted according to the factors identified in § 319.5(d). Specifically, paragraph (d)(5) of that section requires that any country requesting market access for a specific commodity to submit a full account of measures currently utilized in-country to mitigate against pests of concern in a domestic setting. We also require references to back up the information supplied by the country. APHIS then conducts its own assessment of the in-country mitigations, which includes multiple site visits in order to assess potential places of production, packinghouses, etc. We are confident that we have fully taken into account the ability of Chinese producers and the NPPO of China to meet the standards set out in the systems approach and the operational workplan.

The same commenter stated that Article 6.3 of the SPS Agreement requires that, ''Exporting Members claiming that areas within their territories are pest- or disease-free areas or areas of low pest or disease prevalence shall provide the necessary evidence thereof in order to objectively demonstrate to the importing Member that such areas are, and are likely to remain, pest- or disease-free areas or areas of low pest or disease prevalence, respectively.'' The commenter said that APHIS does not provide any information about evidence provided by China concerning pest- or disease-free areas or areas of low pest or disease prevalence within China or within specific regions in China. The commenter concluded that it appears that APHIS never even considered the existence of pest- or disease-free areas or areas of low pest or disease prevalence.

While the section of the SPS Agreement cited by the commenter is accurate concerning official recognition of pest- or disease-free areas or areas of low pest or disease prevalence, the recognition of such areas requires a formal request be made on the part of the exporting country. China did not request that APHIS recognize any such areas. Consequently, APHIS is not establishing formal pest- or disease-free areas or areas of low pest or disease prevalence in relation to the importation of apples from China, nor are such designations a requirement for the importation of commodities into the United States. As stated previously, we are confident that the systems approach provides the necessary pest mitigation for the importation of apples into the continental United States.

The same commenter said that the PRA's lack of information concerning pest and disease prevalence in China calls into question the adequacy of China's pest and disease surveillance programs and added that the PRA does not provide the information necessary for a determination regarding the adequacy of pest and disease surveillance. The commenter stated that there may be pests and diseases of concern not considered by the PRA and RMD due to the potential inadequacy of Chinese phytosanitary surveillance.

As stated previously, APHIS' evaluations are based on science and conducted according to the factors identified in § 319.5(d). Specifically, the requirements of paragraphs (d)(4) and (d)(5) of that section require that any country requesting market access for a specific commodity must submit to APHIS a complete list of pests present in that country that are associated with the commodity in question as well as the measures currently utilized in-country to mitigate against those pests in a domestic setting. We also require references to back up the information supplied by the country. APHIS then conducts its own assessment of the pest complex and in-country mitigations, which includes multiple site visits in order to assess potential places of production, packinghouses, etc.

Another commenter asked if APHIS will require a trapping program be established for the listed pests of concern.

As stated in the proposed rule, paragraph (b)(1) would require the place of production to carry out any phytosanitary measures specified for the place of production under the operational workplan. Depending on the location, size, and plant pest history of the orchard, these measures may include surveying protocols or application of pesticides and fungicides. Trapping programs may be required in the case of fruit fly, key *Lepidoptera,* and/or weevils. This will be decided on a case-by-case basis, with the details of any such programs laid out in the operational workplan.

Comments on the Pest List

The PRA that accompanied the proposed rule identified 21 pests of quarantine significance present in China that could be introduced into the continental United States through the importation of Chinese apples:

- *Adoxophyes orana* (Fischer von Röslerstamm), summer fruit tortix.
- *Archips micaceana* (Walker), a moth.
- *Argyrotaenia ljungiana* (Thunberg), grape tortix.

- *Bactrocera dorsalis* (Hendel), Oriental fruit fly.
- *Carposina sasakii* Matsumura, peach fruit moth.
- *Cenopalpus pulcher* (Canestrini & Fanzago), flat scarlet mite.
- *Cryptoblabes gnidiella* (Millière), honeydew moth.
- *Cydia funebrana* (Treitschke), plum fruit moth.
- *Euzophera bigella* (Zeller), quince moth.
- *Euzophera pyriella* Yang, a moth.
- *Grapholita inopinata* Heinrich, Manchurian fruit moth.
- *Leucoptera malifoliella* (Costa), apple leaf miner.
- *Monilia polystroma* van Leeuwen, Asian brown rot.
- *Monilinia fructigena* Honey, brown fruit rot.
- *Rhynchites auratus* (Scopoli), apricot weevil.
- *Rhynchites bacchus* (L.), peach weevil.
- *Rhynchites giganteus* Krynicky, a weevil.
- *Rhynchites heros* Roelofs, a weevil.
- *Spilonota albicana* (Motschulsky), white fruit moth.
- *Spilonota prognathana* Snellen, a moth.
- *Ulodemis trigrapha* Meyrick, a moth.

We received a number of comments regarding these pests as well as suggestions for other pests commenters believed to be of phytosanitary significance that were not included.

One commenter stated that many irrelevant species, such as longhorn beetles (*Cerambycidae* sp.), were included in the PRA. The commenter said that the PRA should focus only on those pests associated with apple fruit or those that could be transported with the commodity. The commenter said that including a number of species that do not meet those criteria results in a large document, which renders it difficult to assess pests that may be of true significance and thus determine the quality and value of the PRA.

Our task in developing the PRA was to review all pests of apple that are present in China and then assess how likely they are to be associated with harvested fruit. For the sake of transparency, we include those pests that we conclude are not of quarantine significance or unlikely to follow the pathway of importation as we must first identify all pests that exist in China before narrowing the list to the specific pests of concern. This allows stakeholders and other interested parties the fullest degree of access to the pest list.

Another commenter wanted to know whether the reference to ''stem'' as the plant part affected in the PRA includes the fruit pedicel, which may, in some cases, be attached to the fruit in the marketplace. The commenter said that if the term ''stem'' refers only to woody tissue, such as an apple branch, then the commenter agrees with many of the assessments made regarding infestation of stems and the likelihood of such a pest following the pathway of importation. The commenter went on to state that many of the pests in the *Cerambycidae, Lucanidae, Scolytinae, Tenebrionidae,* and *Curculionidae* species listed in the PRA may infest stems and also the fruit pedicel, which would mean they could potentially pose a phytosanitary risk.

We considered the importation of apple fruit only, with no stem attached. This does not include the fruit pedicel.

Another commenter observed that the PRA did not consider the risks posed by those pests of phytosanitary concern in the United States that may be present in China but are not currently reported or known to be present. The commenter additionally stated that the PRA did not consider the risks posed by those pests that are of phytosanitary concern in the United States that are present in China but not currently reported to be associated with apples.

A second commenter stated that one of the general challenges encountered in reviewing the PRA is in understanding the biology of some of the exotic insect species and the specific risk of early season latent infection or late season infestation that may not be unequivocally obvious at harvest.

We believe that the standard suggested by the commenters would call for APHIS to postulate based on wholly unknowable risk factors. The PRA that accompanied the proposed rule provided a list of all pests of apples known to exist in China. This list was prepared using multiple data sources to ensure its completeness. For this same reason, we are confident it is accurate.

If, however, a new pest of apples is detected in China, APHIS will conduct further risk analysis in order to evaluate the pest to determine whether it is a quarantine pest, and whether it is likely to follow the pathway of apples from China that are imported into the United States. If we determine that the pest is a quarantine pest and is likely to follow the pathway, we will work with the NPPO of China to adjust the pest list and related phytosanitary measures to prevent its introduction into the United States.

Since the Oriental fruit fly is known to exist, in varying population densities, in areas of China south of the 33rd parallel, apples from such areas will be subject to treatment in accordance with 7 CFR part 305. Within part 305, § 305.2 provides that approved treatment schedules are set out in the PPQ Treatment Manual, found online at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf.* (The manual specifies that fumigation plus refrigeration schedule T108-a is effective in neutralizing Oriental fruit fly on apples.) The RMD also states that any other treatment subsequently approved by APHIS may be used. One commenter expressed concern at the non-specific nature of those potential alternative treatments.

While APHIS cannot offer specifics on phytosanitary treatments that are not currently approved for use, the language in the RMD is intended to indicate that such treatments may become available in the future. APHIS has a rigorous procedure for approving new quarantine treatments, which includes soliciting comments from stakeholders in accordance with § 305.3. New treatments are tested to a very high standard of efficacy. Generally speaking, that means that an approved treatment is effective in removing 99.99 percent of pests.

Another commenter said that there is a lack of research to support that the systems approach proposed by APHIS will be effective in mitigating the phytosanitary risk posed by the Oriental fruit fly.

We disagree with the commenter's assertion. These mitigations have been used on a similar pest complex for the importation of pears from China. This is a highly successful import program with only 15 interceptions of any quarantine pests in 15 years of operation and no fruit fly interceptions. As most apples in China are grown above the 33rd parallel, the risk of fruit fly interceptions in consignments of apples is small. The commenter provided no specific data to support the argument that apples from China pose a unique pest risk.

One commenter stated that the Oriental fruit fly and the apple leaf miner are of particular concern given that they are high risk pests and Oriental fruit flies have been detected on numerous occasions at U.S. ports of entry.

While it is true that APHIS has made interceptions of Oriental fruit fly at U.S. ports of entry, most of those interceptions were in passenger baggage. Oriental fruit fly is additionally present in Hawaii, which may lead to a higher number of interstate interceptions.

Another commenter said that melon fly (*Bactrocera cucurbitae*) and solanum fruit fly (*Bactrocera latifrons*) are known pests of apple, but the PRA states that non-cucurbit hosts require confirmation. The commenter reasons that, for such severe pests of commodities other than apple, it would make sense to consider both as potential pests of apple. The commenter asked if there are areas of overlap between the flies' distribution areas and apple growing areas. Lastly, the commenter said that the honeydew moth (*Cryptoblabes gnidiella*) remained on the list in spite of the facts that the pest has a warm climate distribution and that apple is only an occasional host. The commenter said it would therefore be consistent to treat melon fly and solanum fruit fly similarly.

These particular fruit flies are not found in apple producing parts of China and, as the commenter observes, apple is not a primary host. Thus infestations of apple would be unusual and exclusionary mitigations like bagging will help prevent any infestation. We found references indicating the host status of apples (regardless of major or minor status) for the honeydew moth whereas we did not for either melon fly or solanum fruit fly. If, upon inspection, melon fly or solanum fruit fly are found to be generally infesting shipments of apples we will adjust our mitigations as necessary.

One commenter stated that there is an unknown risk of apple leaf miner escaping detection.

We disagree with the commenter's claim that apple leaf miner may easily escape detection. Leaf miners are not typically found on fruit; leaves, which they more readily infest, are not authorized for importation. In addition, leaf miners typically leave a visible tunnel as they mine, which aids in inspection and detection.

Another commenter asked why apple ring rot (*Macrophoma kawatsukai*) and the fungus, *Penicillium diversum,* were removed from the pest list when both were present on a draft version of the list. The commenter asked why the genus *Penicillium* is considered non-actionable at ports of entry.

These pests are post-harvest pathogens. In general, post-harvest pathogens are not considered for analysis because most are cosmopolitan and it is unlikely to impossible for them to be transferred to fruit in the field. *Penicillium* is a cosmopolitan genus that only causes post-harvest rots. Consequently, it is not actionable. APHIS determines whether a pest is actionable based on its novelty and known prevalence or distribution within and throughout the United States, its potential harm to U.S. agricultural, environmental, or other resources, and the need to mitigate its pest risk, if any.

The same commenter stated that spores from the fungal pathogens *Monilia polystroma* and *Monilinia fructigena* might easily go undetected in inspections and present a risk of becoming established on several crops in the State of Florida.

Phytosanitary security is provided by several layers of inspection: Field inspection, packinghouse inspection, and port of entry inspection. As these inspections take place over a period of time, it becomes increasingly likely that any consignments with symptomatic fruit will be identified. As stated previously, these mitigations have been successfully used on a similar pest complex for the importation of pears from China.

The same commenter stated that, contrary to APHIS's assertion in the PRA that interception records indicate no association between *Tetranychus* species of spider mite and commercially produced and shipped apples, the apple industry has experienced infestations of *Tetranychus* and *Panonychus* spider mite species in apple production areas. The commenter added that the hawthorn spider mite (*Amphitetranychus viennensis*) could present a similar risk given that it is recorded as attacking leaves, fruit, and blossoms. Another commenter stated that, late in the growing season, hawthorn spider mites sometimes collect in the calices of apples, with either motile forms or eggs present. The commenters urged APHIS to reexamine the data in light of this.

While we have made no changes in response to this comment, as the data we have do not support the commenters' assertion, we do note that typical required mitigations for spider mites are packinghouse procedures (*i.e.,* washing, brushing, spraying with compressed air), culling, and inspection. Those measures will be included as requirements in the operational workplan and should mitigate against any unforeseen pests of this nature. If one of these pests is detected upon inspection we will take appropriate measures to prevent its introduction into the United States. The hawthorn spider mite was considered in the PRA. It attacks apple leaves; we found no evidence of it being present on fruit.

The same commenter asked why *Eotetranychus* sp. mites were listed as being associated with apples in China with actionable or undetermined regulatory status but was not included in the listing of actionable pests reported on apples in any country and present in China on any host.

While *Eotetranychus* sp. mites are generally actionable, investigation into the *Eotetranychus* species that are present in China and known to affect apples did not reveal any known species that are considered actionable in the United States, so we did not include them in the second listing. Some non-actionable species from this genus are listed in an appendix to the PRA.

The same commenter expressed concern that multivoltine fruit feeding insects may be able to oviposit on fruit once the bags that are required by the systems approach to be placed over each developing fruit are removed. The commenter further asked that APHIS ensure that the required fruit bags are not applied too late in the spring or removed too early as the fruit matures in the interest of addressing horticultural quality needs and color development at the expense of pest mitigation.

Our requirement, which will be stipulated in the operational workplan, is that the bags must remain on the fruit until at least 14 days before harvest. PPQ will ensure that the bags are in place early enough to exclude insect pests. If infestations of insects such bagging is intended to exclude are found upon inspection, production sites and packinghouses may be suspended from the export program.

The same commenter stated that snout beetles (*Curculionidae*) can be serious pests of tree fruit with limited control options. While the commenter noted that the PRA lists a number of *Curculionidae* species as following the importation pathway, the commenter noted the following additional species of weevils for inclusion: *Coenorrhynus* sp., *Enaptorrhinus sinensis* Waterhouse, *Involvulus* sp., *Neomyllocerus hedini* (Marshall), *Rhynchites coreanus* Kono, and *Rhynchites heros* Roelofs.

In particular, the commenter asked why *Enaptorrhinus sinensis* Waterhouse is listed as infesting fruit, but unlikely to follow the pathway of importation. The commenter observed that *Enaptorrhinus sinensis* Waterhouse is one of three species on the PRA list of quarantine pests that are likely to follow the pathway that is classed as a fruit feeder. The commenter went on to state that *Neomyllocerus hedini* (Marshall) is also present on the PRA list of quarantine pests that are likely to follow the pathway.

Finally, the commenter stated that an Australian PRA cites *Rhynchites coreanus* Kono as a high-risk quarantine

pest from China, but was not considered in the APHIS PRA.

The bagging requirement discussed above should effectively exclude *Curculionidae.* In addition, weevils typically leave feeding damage and holes with frass that are easily visible upon inspection. We would note that we analyzed *Rhynchites heros* Roelofs and determined that it presents a medium risk of introduction via the importation pathway and that *Rhynchites coreanus* Kono is a synonym of *Rhynchites heros* Roelofs.

Contrary to the commenter's assertion, *Enaptorrhinus sinensis* Waterhouse is not listed in the PRA as affecting fruit: ''Adults, which are moderately large beetles (body length: 6.2–6.4 mm, width: 3.2–3.3 mm; Han, 2002), may feed on apple fruit (You, 2004), but are considered unlikely to remain with fruit through harvest and post-harvest processing.'' *Neomyllocerus hedini* (Marshall) is listed as affecting leaves but not fruit.

As for the other weevils cited by the commenter, we found no evidence during our assessment that those pests were likely to follow the pathway.

The same commenter observed that, since members of the *Diapididae* and *Pseudococcidae* families of scale insects feed on stems, leaves, and fruit in U.S. apple orchards and are treated as quarantine pests in many countries around the world, the following species should have been included in the PRA: *Diaspidiotus* (= *Quadraspidiotus*) *slavonicus* (Green), *Phenacoccus pergandei* Cockerell, *Spilococcus* (= *Atrococcus*) *pacificus* (Borchsenius), and *Leucoptera malifoliella* (*Lyonetiidae*).

Another commenter said that the PRA's determination of a negligible possibility of Japanese wax scale (*Ceroplastes japonicas*) following the pathway of importation was based on the idea that Chinese apples will be safely discarded. The commenter stated that, if even a small percentage of imported apples are discarded improperly, there is risk, particularly if they are discarded near host material.

In general, scale insects are excluded via washing, brushing, spraying with compressed air, culling, and inspection. These mandatory measures will be a part of the operational workplan. However, *Phenacoccus pergandei* Cockerell is found to affect leaves only, *Spilococcus* (= *Atrococcus*) *pacificus* (Borchsenius) is found to affect stems only, and *Ceroplastes japonicas* is found to affect both leaves and stems. The commenters provided no evidence that these scales were of concern on fruit. Although *Leucoptera malifoliella* (Lyonetiidae) is not on the pest list, *Leucoptera malifoliella* (Costa) is listed with a high risk of following the pathway and will be mitigated as described previously. Lyonetiidae is the family name for this pest, Costa is the authority. They are the same pest, notated differently. Finally, in a risk analysis titled, ''Phytosanitary Risks Associated with Armored Scales in Commercial Shipments of Fruit for Consumption to the United States'' (June 2007)[6] we determined that the likelihood of introduction of armored scales via the specific pathway represented by commercially produced fruit shipped without leaves, stems, or contaminants is low because these scales have a very poor ability to disperse from fruits for consumption onto hosts. Females do not possess wings or legs; legs are also absent in feeding immature forms. Males are capable of flight, however they are short-lived, do not feed, and tend to mate only with nearby females. For this reason, the armored scale *Diaspidiotus* (= *Quadraspidiotus*) *slavonicus* (Green) is not a pest of concern.

One commenter stated that since the taxonomy of the fungus *Botryosphaeria dothidea* is under active consideration by the research community, the assertion that the Asian *Botryosphaeria dothidea* is the same species as is found in the United States is not settled science. The commenter argued that they should be considered distinct species until scientists from China provide additional studies demonstrating that they are synonymous.

We disagree. The most recent and conclusive study on this matter[7] found that the causal agent of apple ring spot and apple white rot was the same. The agent was identified as *Botryosphaeria dothidea* for both diseases. Thus, the pathogen is present in both the United States and China.

Another commenter stated that there is an unknown risk of fungi of the genus *Monilinia* escaping detection.

We disagree with the commenter's assertion regarding unknown risk. *Monilinia mali* is unlikely to be present on mature fruit. *Monilinia fructigena* is unlikely to come in contact with host material, since spores need to be near actual apple trees. Unless *Monilinia fructigena*-infected fruit are sporulating in close proximity to host material, they cannot infect it and we consider this possibility unlikely. Other specific members of *Monilinia* sp. are discussed below.

One commenter said that it needs to be demonstrated, through scientific study and examination of mature fruit taken from orchards which have suffered epidemics at several early seasonal timings, that latent infections of the fungus *Monilinia* ma/1, which is the causal agent of monilia leaf blight, are not sometimes still present later at harvest on normal appearing fruit.

Field inspection data for *Monilinia fructigena* and *Monilinia polystroma* was presented by all orchards inspected in our site visit and certified by the Chinese Entry and Exit Inspection and Quarantine Service. This data shows no report of the diseases, and if there are no disease records, then there can be no latency problem such as the commenter described. In addition, packinghouse inspections show no history of the disease.

The same commenter said that the fungus *Monilinia mali,* which does not occur in the United States, was not included in the listing of actionable pests reported on apples in any country and present in China on any host and should be added. The commenter additionally stated that the fungus *Monilinia polystroma* should be added to that list as well, as it has been reported to attack apples in Europe and has been recently reported from China.

Contrary to the commenter's assertion, both pathogens are listed. Currently there is only a single report of *Monilinia polystroma* on apples. That identification is debatable since it was based on molecular evidence alone. The European report stated that the symptoms disappeared after the initial observation. Thus, the observations have not been replicated outside of this single incident. In Japan and China, where stone fruit (the primary host for the pathogen) and apples are grown in close proximity, there are no reports of *Monilinia polystroma* on apples. Despite the weak evidence, we did analyze *Monilinia polystroma* and found it to be high risk. It was therefore considered when we were developing the requirements of the systems approach and will be considered in development of the operational workplan. There is also considerable uncertainty about the presence of *Monilinia mali* but it was also listed. However, it was not analyzed because it is not found on mature fruit.

The PRA lists certain organisms that APHIS is only able to identify to the

[6] Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

[7] That study, Phylogenetic and pathogenic analyses show that the causal agent of apple ring rot in China is *Botryosphaeria dothidea,* may be found on the Internet at *http://apsjournals.apsnet.org/doi/pdf/10.1094/PDIS-08-11-0635.*

genus level and notes that these organisms may prove to have actionable status. One commenter noted this and categorized this as an arbitrary decision by APHIS. The commenter stated that APHIS is incorrect to say that the risk potential of these species should be considered low because APHIS cannot evaluate risk as completely as would be desirable. The commenter appears to suggest that APHIS study these unknown organisms further or that APHIS evaluate risk for genera taken as a whole.

Another commenter requested further information regarding the following fungi, identified only to the genus level, which were listed as being associated with apples in China with actionable or undetermined regulatory status: *Cladosporium, Fusarium, Fusidium, Penicillium,* and *Psuedocercospora.* The commenter stated that these may represent novel species and wanted to know if APHIS went back to original sources or voucher specimens to attempt to confirm the specific identity of these fungi.

Another commenter observed that some pest organisms were only identified to the genus level in the PRA and are thus not included in the evaluation. The commenter particularly cited *Drosophila* sp. as of potential concern, stating that, though many members of the species only attack and reproduce in damaged fruit, the U.S. apple industry has found that the spotted-wing drosophila (*Drosophila suzukii*) readily attacks and reproduces in intact fruit. The commenter said that this behavior is present in many plant-attacking arthropods and added that the Chinese arthropod fauna is very poorly known and therefore we have no idea of their geographic or host ranges and, consequently, their possible agricultural and ecological impacts.

These commenters ask APHIS to meet an impossible standard of certainty in terms of species knowledge. Further, the SPS Agreement allows for signatory countries to only consider risks that are known and scientifically documented. Under the SPS Agreement, if a country cannot scientifically document the risk associated with a given pest or commodity as a whole, then that country cannot mitigate that unknown risk by imposing phytosanitary requirements or denying market access. We do not have access to any further information on the specific species cited by the commenters as there is no existing research on these species beyond the genus level. While, as stated, we are unable to assess the risk associated with scientifically unknown species, we include the genera in the PRA in case more information is discovered later. In the event of new pest information and research, we will adjust our mitigations as necessary.

Another commenter stated that the sooty blotch and flyspeck complex of fungi, which occurs in China, represents a phytosanitary challenge given that most of these fungi have an extremely long incubation period or latent period before colonies become visible on fruit surfaces. Additionally, the commenter identified three species, *Zygophiala cylindrical, Zygophiala qianensis,* and *Strelitziana mali,* which are reported to occur on apples in China but are not included on the pest list.

As with *Penicillium,* which was discussed previously, these pests are post-harvest pathogens. In general, post-harvest pathogens are not considered for analysis because most are cosmopolitan and it is unlikely to impossible for them to be transferred to fruit in the field.

The same commenter observed that nematodes are often mistakenly considered to be solely root feeders. While root feeders would not likely be expected to be part of the fruit pathway, *Aphelenchoides limberi,* a shoot feeder, might present a higher risk than assigned in the pest list and therefore be deserving of additional consideration. The commenter asked why no *Ditylenchus* or *Anguina* species were included in the PRA, given the regional proximity of seed-gall nematode, *Anguina tritici.*

As the commenter stated, generally speaking, nematodes inhabit the soil and infest plant roots. While there are a few tissue feeding species, it is highly unlikely that any will be present on apples given that they are shoot feeders and not pathogens of the mature fruit. We are confident that the PRA has captured all fruit feeding pests of concern.

The same commenter observed that the moth *Spulerina astaurota,* the lace bug (*Stephanitis* (*Stephanitis*) *nashi* Esaki & Takeya, 1931), and the tortricid moths *Acleris fimbriana, Adoxophyes orana,* and *Spilonota lechriaspis* are listed as associated with fruit in a 2003 Australian review of pests associated with Chinese pears. The commenter said that this association should prove true for apples from China as well and these pests should therefore be added to the pest list.

We are aware of the review referenced by the commenter but disagree with the commenter's conclusions. Our examination of the source literature for the review as well as other documents did not indicate that any of these pests, with the exception of *Adoxophyes orana,* is present on apple fruit. *Adoxophyes orana* was analyzed in the PRA and we determined that it presents a medium likelihood of introduction. It is therefore covered by the mitigations in the systems approach.

Another commenter asked why the summer fruit tortix (*Adoxophyes orana*) and the plum fruit moth (*Cydia funebrana*) would not require an approved treatment in regions where these pests are present, as will be required for Oriental fruit fly.

These pests are mitigated by the required bagging protocol that is part of the systems approach. Bagging excludes all *Lepidoptera* pests. This systems approach has been used for pears from China for the past 15 years, resulting in a very low number of *Lepidoptera* sp. interceptions.

Another commenter stated that, although there are four species of thrips (*Thysanoptera*) listed in the PRA, none were considered to follow the pathway of importation since they only damage leaves. The commenter said that many thrips are known to shelter in the calyxes of fruit and could enter the importation pathway in this manner.

We disagree with the commenter's assessment. Apart from principally attacking leaves, thrips are a highly mobile pest. Any thrips that sheltered in the fruit calyx or elsewhere would not do so for long and would be mitigated by the required washing, brushing, and spraying with compressed air at the packinghouse.

The same commenter said that the PRA did not consider the pear fruit borer (*Pempelia heringii*) as a candidate for risk management based primarily on the fact that it has not been a significant pest in the last 100 years, but that records indicate that it was a pest that bored into the fruit of apples and pears. The commenter stated that a report of this species in Hawaii throws into doubt the restricted host range it is thought to have and therefore the precautionary principle should be applied in including it on the pest list.

One of the risk elements analyzed in the guidelines for risk assessment is damage potential in the endangered area. Considering all available information, the analysis determines whether or not a significant level of damage would be likely to occur in the endangered area (*e.g.,* more than 10 percent yield loss, significant increases in production costs, impacts on threatened or endangered species). As the commenter notes, reports of significant damage in fruit production as a result of *Pempelia heringii* infestation are over 100 years old. Apple and pear production in China and Japan are economically important aspects of

national agriculture; if significant damage was to occur again, it would have been reported in the literature. While there is some uncertainty regarding the cause of the absence of *Pempelia heringii* infestations, based on available literature, the potential for damage in the United States is considered low.

The same commenter stated that the mealybug *Pseudococcus cryptus* was not considered a candidate for risk management in the PRA because risk of establishment was considered first, and since that was deemed negligible, the likelihood of introduction was not evaluated. The commenter said the argument regarding negligible establishment is based on the idea that it is unlikely that an infested fruit will be discarded near a potential host, as well as the presumed frailty of the crawlers. The commenter went on to say that, in the event that apples are or become a host, the crawlers of other mealybug species are known to aggregate around the calyx of fruit, which would provide shelter and render them difficult to detect and therefore the absence of any mealybug species from the PRA list for risk management measures should be examined.

The mealybug analysis concludes as follows: ''Dispersal by wind is dependent on prevailing wind direction; nymphs have no control over where they are blown. This dispersal strategy relies on a very high number of nymphs, so that a few will arrive serendipitously on a suitable new host. Commercial fruit arriving in the United States is highly unlikely to carry high populations of pregnant females. Crawlers would be unlikely to survive shipment, especially in chilled, low humidity conditions. Some people dispose of inedible fruit in outdoor compost bins, but since only a small number of fruit are likely to be infested, only very rarely would infested fruit be composted. For these reasons, mealybugs arriving on commercial fruit for consumption have a negligible likelihood of dispersing to hosts.'' Sufficient evidence to change this has not been presented.

The same commenter observed that the oriental red mite (*Eutetranychus orientalis*) was dismissed as a risk by the PRA as there were no records indicated in a ''thorough National Agricultural Library, Google Scholar, and PestID database search.'' The commenter stated that, to the contrary, there is literature that lists *Eutetranychus orientalis* as a pest of apple and other rosaceous hosts.

This species is a well-known and thoroughly researched pest of citrus. Given the vast amount of literature available on this species, primary records of detections on apple should be available, if extant. Given the lack of such primary records, we consider the listing of apples as a natural host for *Eutetranychus orientalis* dubious and therefore we did not include it on the pest list.

The same commenter stated that the peach fruit moth (*Carposina sasakii*) is treated as not meeting the criteria for spread potential in the PRA, but that the PRA also states that the lack of spread is due to strict quarantine regulations. The commenter went on to say that this is a serious pest in infested regions and should be included for risk management.

We concluded in the PRA that the peach fruit moth was likely to cause unacceptable consequences if introduced into the United States. It was assigned a medium likelihood of introduction and is therefore covered by the requirements in the systems approach.

Comments on the Systems Approach

We proposed to require the NPPO of China to provide an operational workplan to APHIS that details the activities that the NPPO would, subject to APHIS' approval of the workplan, carry out to meet the requirements of the regulations. An operational workplan is an agreement between PPQ, officials of the NPPO of a foreign government, and, when necessary, foreign commercial entities that specifies in detail the phytosanitary measures that will comply with our regulations governing the import or export of a specific commodity. Operational workplans establish detailed procedures and guidance for the day-to-day operations of specific import/export programs. Workplans also establish how specific phytosanitary issues are dealt with in the exporting country and make clear who is responsible for dealing with those issues. The implementation of a systems approach typically requires an operational workplan to be developed. Two commenters stated that since the operational workplan, in particular the section on required production practices, has not yet been approved by APHIS it was impossible to adequately evaluate the risks of the proposal. Another commenter asked us to present details of the operational workplan.

Generally speaking, APHIS does not finalize an operational workplan until after the rule itself is finalized given that changes may be made to the rule as a result of public comment. However, given the similarity of the systems approaches, we anticipate that the operational workplan associated with the importation of apples from China will be very similar to the workplan for the importation of pears from China, which has been used to mitigate risk successfully for the past 15 years. This will likely include such requirements as field inspection, orchard control, culling, and spraying with compressed air.

We proposed to require that, when any apples destined for export to the continental United States are still on the tree and are no more than 2 centimeters in diameter, double-layered paper bags must be placed wholly over the apples.

We are making a minor change to the requirements as they pertain to when the bags are placed as they were set out in the proposed rule. Instead of requiring that bags be placed over the apples when they are no more than 2 centimeters in diameter, we are requiring that the bags be placed over the apples when they are no more than 2.5 centimeters in diameter. The 2 centimeter diameter specified in the proposed rule was an error and the change to 2.5 centimeters is necessary to keep the regulations in line with bagging protocols for pears from China. The change from 2 centimeters to 2.5 centimeters will have no effect on the phytosanitary safety of the young apple fruit. At this stage in the fruit's growth any attacks made by surface feeding or internally feeding pests will lead to visible deformation of the fruit and to fruit drop. Further, an increase of 0.5 centimeters in fruit diameter at this stage represents generally a week's worth of growth, which is insufficient time for any widespread infestation of young fruit to occur.

Two commenters asked which studies confirm APHIS's assertion that bagging the fruit will mitigate all the pests of concern discussed in the PRA. Another commenter wanted to know whether APHIS can prove the effectiveness of fruit bagging as a phytosanitary mitigation based on the volume of apples that will likely be shipped. Another commenter pointed out that we had modeled the bagging protocol on a similar protocol for the importation of pears from China, and that pears imported under this protocol had sometimes been determined to be infested with plant pests. The commenter stated that this calls into question the efficacy of this mitigation.

We did not claim that the required bagging will serve as sole mitigation for the pests of concern listed in the PRA. The entire systems approach, which comprises a number of requirements working in concert, will provide that mitigation. While we do not possess

evidence regarding the efficacy of bagging for apples in particular, the efficacy of bagging as a means of preventing fruit from becoming infested with quarantine insects is well established: The RMD cited several peer-reviewed studies regarding its efficacy. Additionally, we note that bagging is a pest-exclusionary technique that is similar to safeguarding with mesh, tarps, containment structures, and other mitigations APHIS has relied on to prevent pests from following the pathway of fruits for many years.

Fruit bagging has been a required aspect of the systems approach for the importation of pears from China for the past 15 years. This program experiences an extremely low interception rate—15 interceptions in 15 years—with an import volume of about 10,000 MT annually. Although it is not possible to say with absolute certainty, given the structure and past behavior of the Chinese apple industry, which is discussed in detail in the final regulatory flexibility analysis, we expect apples to be imported at a similar rate. Contrary to the third commenter's claim that 15 pest interceptions over a 15-year period is troubling, given the time period in question and the level of imports during that time, this interception rate does not call into question the efficacy of bagging, but rather underscores its efficacy.

We proposed to require the NPPO of China to visit and inspect registered places of production prior to harvest for signs of infestations. One commenter stated that the required interval for inspection was insufficient and would not serve to ensure compliance. Two commenters said that the required inspection frequency was also inadequate to enforce the requirement for removal of fallen fruit at the place of production.

As stated in the proposed rule, this provision is modeled on an existing provision that has been successfully employed as part of the systems approach that used by APHIS for the importation of fragrant pears and sand pears from China. Given our knowledge and experience with the importation of these pears, we are confident that the requirement is adequate. In addition, as with any regulatory program, unannounced inspections and spot checks are often used to ensure compliance. Suspension or expulsion from the export program would also serve to discourage noncompliance. Our approach to any required orchard procedures, such as the removal of fallen fruit, would be the same.

We proposed to set forth requirements for mitigation measures that would have to take place at registered packinghouses. These measures include a requirement that during the time registered packinghouses are in use for packing apples for export to the continental United States, the packinghouses may only accept apples that are from registered places of production and that are produced in accordance with the regulations, tracking and traceback capabilities, establishment of a handling procedure (*e.g.,* culling damaged apples, removing leaves from the apples, wiping the apples with a clean cloth, air blasting, or grading) for the apples that is mutually agreed upon by APHIS and the NPPO of China, washing, brushing, spraying with compressed air, and box marking. A commenter said that the inspection procedures for packinghouses do not provide sufficient detail. The commenter said that packinghouse inspections must adequately ensure that leaf removal and washing of apples are conducted according to applicable requirements and added that the packinghouse must address the risk associated with apples originating from nonregistered places of production that may have been processed ahead of the packaging of the apples destined for U.S. markets. Several commenters stated that we should require that Chinese packinghouses handling apples intended for export to the United States not accept commodities destined for any other markets given that the phytosanitary standards required to access non-U.S. markets may be weaker. Another commenter pointed out that the size of the required biometric sample was unspecified. Another commenter stated that packinghouse culling and inspection do not eliminate all lepidopteran and curculionid pests in the United States, so APHIS should not assume that they will do so in China.

As stated previously, APHIS inspectors have the authority to reject consignments that contain contaminants such as leaves and other plant debris, especially if any pests are found to be generally infesting that shipment. As stipulated in § 319.56–3(a), ''All fruits and vegetables imported under this subpart, whether in commercial or noncommercial consignments, must be free from plant litter or debris and free of any portions of plants that are specifically prohibited in the regulations in this subpart.'' Washing of apples will be required under the regulations, with specific washing procedures set out in the operational workplan. We will also stipulate that packinghouses may not be used for packing apples from non-registered places of production simultaneous to packing apples from registered places of production. Requiring a facility be dedicated for shipping only to the United States is not technically justified if that facility can demonstrate and practice effective methods for identifying and segregating fruit destined for different markets.

The specifics of packinghouse inspection procedures are listed in the operational workplan in order to offer the greatest amount of flexibility in responding to any rapidly changing pest issues that may arise. Typically APHIS will require at least 300 fruit be inspected, a number that will detect a 1 percent or greater pest population with 95 percent confidence. APHIS will also require that a portion of the fruit be cut open to look for internally feeding pests. Any fruit with damage or signs of pest presence will be sampled first.

We disagree with the commenter's assessment of the presence of lepidopteran and curculionid pests in the United States post culling and inspection. The commenter did not provide any support for the claim that these pests are evading domestic phytosanitary measures.

One commenter said that, while box labeling and traceback information are vital to prevent the further spread of any plant pest, this information alone does not prevent the establishment of the pest in the United States.

We agree. However, box labeling and traceback are only one aspect of the required systems approach for the importation of apples from China. The systems approach must be considered as a whole with its combined effect of various mitigation measures in order that its pest mitigation capabilities be fully assessed. We are confident that it will prove effective.

We proposed to require treatment of fumigation plus refrigeration for those apples grown south of the 33rd parallel, since Oriental fruit fly is known to exist, in varying population densities, in that region. One commenter stated that it is possible that a mutated gene may eventually allow a number of Oriental fruit flies to resist fumigation.

If Oriental fruit flies were to become resistant to the designated phytosanitary treatment, the import program would be shut down completely until an investigation has been completed and the reason for the program failure resolved.

Several commenters stated that we should require that Chinese cold storage facilities housing apples intended for export to the United States not accept commodities destined for any other

markets given that the phytosanitary standards required to access non-U.S. markets may be weaker.

Requiring a facility be dedicated for shipping only to the United States is not technically justified if that facility can demonstrate and practice effective methods for identifying and segregating fruit destined for different markets.

Comments on the Economic Analysis

We prepared an initial regulatory flexibility analysis in connection with the proposed rule regarding the economic effects of the rule on small entities. We invited comments on any potential economic effects and received a number of comments. Those comments are discussed and responded to in detail in the final regulatory flexibility analysis associated with this final rule. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Comments on General Economic Effects

While specific comments on the initial regulatory flexibility analysis are addressed in the final regulatory flexibility analysis as previously stated, we received a number of comments concerning the overall economic effect of the rule as it relates to U.S. trade policies concerning China that are more appropriately addressed here.

One commenter stated that APHIS did not meet those requirements of Executive Order 13563 that specify that agencies must take into account the benefits and costs, both qualitative and quantitative, of the rules they promulgate. The commenter specifically said that APHIS had failed to demonstrate that the proposed rule provided any benefit to U.S. consumers and stakeholders.

We disagree with the commenter's assessment. Executive Order 13563 requires that agencies propose or adopt a regulation upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify). The Executive Order also states that, where appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts. The Executive Order ultimately leaves the type of analysis to the discretion of the Agency. We have previously explained the reasons for which APHIS conducts qualitative rather than quantitative analyses.

As detailed in the initial regulatory flexibility analysis that accompanied the proposed rule and restated in the final regulatory flexibility analysis associated with this rule, we find it unlikely that the importation of apples from China will represent a cost to the U.S. apple industry or to U.S. consumers. This is due to the relatively small amount of apples that are expected to be exported and qualitative factors associated with consumer demand such as variety, flavor (acids, sugars, aroma), juiciness, crispness, firmness, appearance (color, shape and size), freshness, perceived health benefits, production method (organic or conventional), and product origin (local, regional, domestic or import). Moreover, trade with China represents an opportunity for potential expansion of the U.S. export market and the benefits associated with such an expansion.

One commenter claimed that China is not an open market for fair trade and, as a result, efforts to market U.S. apples in China in return for allowing Chinese apples access to U.S. markets will prove unsuccessful. Another commenter said that, in the past, China claimed that U.S. apples presented unacceptable phytosanitary risk and subsequently halted all importation of apples from the United States into China. The commenter stated that this was done without substantiated claims or investigation as a tactic to force the United States to open its markets to Chinese apples.

We disagree with the claim that China's prohibition on the importation of apples from the United States was without basis and was motivated by bilateral trade concerns. In 2012, the NPPO of China suspended access for red and golden delicious apples from the State of Washington due to repeated interceptions of three apple pests the NPPO considers significant: Speck rot (caused by *Phacidiopycnis washingtonensis*), bull's-eye rot (caused by four species of *Neofabraea*), and *Sphaeropsis* rot (caused by *Sphaeropsis pyriputrescens*). In response, APHIS worked with the U.S. apple industry to develop additional safeguarding measures to address China's concerns about these pests. As a result, red and golden delicious apples were permitted to be imported from the United States into China beginning in early November 2014.

Another commenter stated that Chinese import competition affects local labor markets by triggering declines in associated wages and employment.

While APHIS is sensitive to the costs its actions may impose on producers in the United States, as detailed in the final regulatory flexibility analysis, apples are not inexpensive to produce in China due, in large part, to differences between the way the apple industry is structured in the United States and China. Most apple growers in China operate on a very small scale and production is labor-intensive, requiring significant labor resources to plant, tend, and harvest the crop.

One commenter urged APHIS to support and encourage consumers in doing business with local farmers. The commenter claimed that the low price of Chinese apples would cause domestic producers economic distress.

We would observe that consumer practices when purchasing fresh apples are influenced by factors other than price. These factors include variety, size, color, flavor, texture, freshness, product origin, and production method. American consumers benefit from a diverse and abundant supply of fresh apples that are locally, regionally, and nationally distributed to them; it is highly unlikely that China will become a dominant supplier.

Comments on Bilateral Trade

Several commenters pointed out that access to Chinese markets for U.S. apples is not currently assured at this point in time. The commenters asked that APHIS make sure that the proposed rule would not be finalized before reciprocal market access is granted. One of the commenters added that, if Chinese apples were able to be imported into the United States, but U.S. apples could not be exported to China, then the underlying assumptions concerning the economic impact of the importation of apples from China would prove incorrect. Another commenter stated that, if China were to allow for the importation of apples from the United States, there is concern that small American producers will not be able to make such market access opportunities profitable. Another commenter suggested that APHIS regulate the amount and variety of apples allowed into the United States from China.

Other countries make decisions as to whether to allow the importation of U.S. products only when formally requested. APHIS formally requested that China allow the importation of U.S. apples, and we worked with the U.S. apple industry to address concerns raised by the NPPO of China, resulting in the successful reopening of the Chinese apple market to U.S. apple growers in November 2014. However, APHIS' primary responsibility with regard to international import trade is now, and has been for many years, to identify and manage the phytosanitary risks

associated with importing commodities. When we determine that the risk associated with the importation of a commodity can be successfully mitigated, it is our responsibility under the trade agreements to which we are signatory to make provisions for the importation of that commodity. Moreover, under the PPA, our decisionmaking related to allowing or denying the importation of commodities must be based on phytosanitary considerations rather than the goal of reciprocal market access.

Another commenter stated that the PPA requires that APHIS base its regulations on sound science and that the desire for reciprocal apple trade with China is not science-based. The commenter said that if hope of such mutual access was influential in the development of the proposed rule, then the rule is not compliant with the PPA, and therefore illegal. The same commenter also stated that such a situation violates the conditions of the SPS Agreement, particularly Article 2.2, which requires that signatories base sanitary and phytosanitary regulations on scientific principles, and Article 5.1, which requires that signatories base their actions on a risk assessment. The commenter reiterates that reciprocal trade is neither a scientific principle nor a risk assessment and APHIS's proposed action may therefore be out of compliance with the SPS Agreement.

This action was predicated on several risk assessment documents that provide a scientific basis for potential importation of apples from China. Without these risk assessment documents, which have withstood several reviews and public comment periods, APHIS would not have proposed this action. Political and economic interests may stimulate consideration of the expansion of trade of agricultural commodities between countries, but all decisionmaking concerning phytosanitary restrictions on trade must be science-based. APHIS stands behind the risk assessment documents that support this rule, and believes they are based on sound science.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Apples are the second most popular fresh fruit for U.S. consumers and the third most valuable fruit crop produced in the United States. The United States is the world's second largest apple producer and became the world's largest apple exporter in terms of value in 2012, generating a surplus of $909 million in fresh apple trade (exports minus imports). That year, the United States commercially produced 4.1 million metric tons (MT) of apples, valued at $3 billion, of which 3 million MT of apples were sold fresh and 1.1 million MT were used for processing. Although apples are commercially grown in all 50 States, 9 States accounted for 96 percent of production. The State of Washington was by far the largest producer, at more than 2.9 million MT per year (over 70 percent of the U.S. total).

Almost all apple farms are family-owned, and many of these families have been engaged in apple production for many generations. The U.S. apple industry is challenged by relatively flat domestic apple consumption, and its continued growth relies on expanded global trade. Roughly 30 percent of fresh apples produced in the United States were exported in 2012. That year, roughly 8 percent of fresh apples consumed in the United States were imported, totaling 183,000 MT and valued at $164 million. Virtually all imports came from four trading partners: Chile, New Zealand, Canada, and Argentina.

By quantity, China was the world's largest producer, consumer and exporter of apples in 2012. (In 2013, Poland became the world's largest exporter of apples in quantity, whereas the United States remained the world's largest exporter of apples in value). Apples are the leading fruit produced in China, with production having increased from 2.3 million MT in 1978, to 38.5 million MT (33.3 million MT for fresh markets and 5.2 million MT for processing) in 2012. China's apple consumption has grown to 37.5 million MT.

In contrast to that of the United States, China's apple industry relies marginally on international trade—in 2012, it exported about 3 percent of fresh apples produced and imported 0.1 percent of fresh apples consumed. China's exports of fresh apples peaked in 2009 at 1.2 million MT and declined to 0.98 million MT in 2012. Most of the 4.3 million apple growers in China operate on a small scale, with farm acreages averaging 1.3 acres. The Fuji variety accounts for about 70 percent of China's apple production. China's heavy dependence on the Fuji variety is in sharp contrast to the many diverse varieties produced in the United States. China's export markets are concentrated in Russia, Southeast Asia, and the Middle East. Chinese fresh apples also have been exported for more than a decade to Canada; however, Canada accounted only for 0.4 percent of China's fresh apple exports in 2012. In fact, China's combined export volume to Canada, European Union (EU) member countries, Australia, and Mexico is very small (0.8 percent of its total fresh apple exports in 2012), and has significantly declined in the last 6 years, from 45,267 MT in 2007 (4.4 percent of Chinese apple exports) to 8,273 MT in 2012. Average export prices of fresh apples from China in 2012 to the aforementioned countries (Canada, $1.50/kilogram (kg); EU, $1.10/kg; Australia, $1.83/kg; and Mexico, $1.55/kg) are consistently higher than the average price paid in all 67 countries to which China exported fresh apples ($0.98/kg). It is reasonable to expect that price for fresh apples exported to the United States will be similar to prices paid in Canada and Mexico. Considering the current availability of relatively low-priced imported apples in the United States and the wide range of domestic varieties, apples imported from China are not likely to compete solely on price in the U.S. market. U.S. consumers make their purchasing decisions for fresh apples based not only on price, but also on intrinsic product attributes such as variety, color, size, flavor, texture, freshness, production method, and product origin.

Based on historic data of China's apple production, consumption, export volumes, and prices, we expect no more than 10,000 MT of fresh apples will be imported from China into the continental United States annually, which represents less than 0.44 percent of the U.S. domestic fresh apple supply and less than 5 percent of U.S. imports in 2012. Most of China's fresh apple exports to the United States will likely be shipped to West Coast ports, primarily ones in California, and are expected to be distributed through Asian ethnic supermarkets mainly to Asian communities.

California is the largest market for Washington State apples; any effects of the rule may be borne mainly by

Washington and California apple growers. In particular, U.S. apple growers of the Fuji variety, which comprised about 8 percent of U.S. production in 2011, may be more directly affected by an increase in supply because we expect the majority of fresh apples from China will be of the Fuji variety. However, given the relatively small quantity expected to be imported from China, any negative impacts for U.S. small entities will not be significant.

Executive Order 12988

This final rule allows apples to be imported into the continental United States from China. State and local laws and regulations regarding apples imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule, which were filed under 0579–0423, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the **Federal Register** providing notice of what action we plan to take.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the EGovernment Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.56–72 is added to read as follows:

§ 319.56–72 Apples from China.

Fresh apples (*Malus pumila*) from China may be imported into the continental United States from China only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Adoxophyes orana* (Fischer von Röslerstamm), summer fruit tortix; *Archips micaceana* (Walker), a moth; *Argyrotaenia ljungiana* (Thunberg), grape tortix; *Bactrocera dorsalis* (Hendel), Oriental fruit fly; *Carposina sasakii* Matsumura, peach fruit moth; *Cenopalpus pulcher* (Canestrini & Fanzago), flat scarlet mite; *Cryptoblabes gnidiella* (Millière), honeydew moth; *Cydia funebrana* (Treitschke), plum fruit moth; *Euzophera bigella* (Zeller), quince moth; *Euzophera pyriella* Yang, a moth; *Grapholita inopinata* Heinrich, Manchurian fruit moth; *Leucoptera malifoliella* (Costa), apple leaf miner; *Monilia polystroma* van Leeuwen, Asian brown rot; *Monilinia fructigena* Honey, brown fruit rot; *Rhynchites auratus* (Scopoli), apricot weevil; *Rhynchites bacchus* (L.), peach weevil; *Rhynchites giganteus* Krynicky, a weevil; *Rhynchites heros* Roelofs, a weevil; *Spilonota albicana* (Motschulsky), white fruit moth; *Spilonota prognathana* Snellen, a moth; and *Ulodemis trigrapha* Meyrick, a moth. The conditions for importation of all fresh apples from China are found in paragraphs (a) through (e) of this section; additional conditions for apples imported from areas of China south of the 33rd parallel are found in paragraph (f) of this section.

(a) *General requirements.* (1) The national plant protection organization (NPPO) of China must provide an operational workplan to APHIS that details the activities that the NPPO of China will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section.

(2) The apples must be grown at places of production that are registered with the NPPO of China.

(3) Apples from China may be imported in commercial consignments only.

(b) *Place of production requirements.* (1) The place of production must carry out any phytosanitary measures specified for the place of production under the operational workplan as described in the regulations.

(2) When any apples destined for export to the continental United States are still on the tree and are no more than 2.5 centimeters in diameter, double-layered paper bags must be placed wholly over the apples. The bags must remain intact and on the apples until at least 14 days prior to harvest.

(3) The NPPO of China must visit and inspect registered places of production prior to harvest for signs of infestation and/or infection.

(4) If *Monilia polystroma* van Leeuwen or *Monilinia fructigena* is detected at a registered place of production, APHIS may reject the consignment or prohibit the importation into the continental United States of apples from the place of production for the remainder of the season. The exportation to the continental United States of apples from the place of production may resume in the next growing season if an investigation is conducted by the NPPO, and APHIS and the NPPO conclude that appropriate remedial action has been taken.

(c) *Packinghouse requirements.* (1) Packinghouses must be registered with the NPPO of China, and during the time registered packinghouses are in use for packing apples for export to the continental United States, the packinghouses may only accept apples that are from registered places of production and that are produced in accordance with the requirements of this section.

(2) Packinghouses must have a tracking system in place to readily identify all apples destined for export to the continental United States that enter the packinghouse and be able to trace the apples back to their place of production.

(3) Following the packinghouse inspection, the packinghouse must follow a handling procedure for the apples that is mutually agreed upon by APHIS and the NPPO of China.

(4) The apples must be washed and brushed as well as waxed or sprayed with compressed air prior to shipment.

(5) The apples must be packed in cartons that are labeled with the identity of the place of production and the packinghouse.

(d) *Shipping requirements.* Sealed containers of apples destined for export to the continental United States must be held in a cold storage facility while awaiting export.

(e) *Phytosanitary certificate.* Each consignment of apples imported from China into the continental United States must be accompanied by a phytosanitary certificate issued by the NPPO of China with an additional declaration stating that the requirements of this section have been met and the consignment has been inspected by the NPPO and found free of quarantine pests.

(f) *Additional conditions for apples from areas of China south of the 33rd parallel.* In addition to the conditions in paragraphs (a) through (e) of this section, apples from areas of China south of the 33rd parallel apples must be treated in accordance with 7 CFR part 305. (Approved by the Office of Management and Budget under control number 0579–0423)

Done in Washington, DC, this 20th day of April 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015–09508 Filed 4–22–15; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0830; Directorate Identifier 2015–NM–024–AD; Amendment 39–18141; AD 2015–08–05]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2013–26–05 for all Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; Model MYSTERE–FALCON 200 airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes. AD 2013–26–05 required repetitive weighing of fire extinguisher bottles having a certain part number, and eventual replacement of those bottles to terminate the repetitive weighing. This new AD continues to require repetitive weighing of fire extinguisher bottles having a certain part number, and eventual replacement of those bottles to terminate the repetitive weighing. This AD was prompted by our determination that certain text in the method of compliance language specified in AD 2013–26–05 incorrectly refers to Airbus, instead of ''Dassault Aviation.'' We are issuing this AD to detect and correct a dormant failure in the fire suppression system, which could result in the inability to put out a fire in an engine, auxiliary power unit (APU), or rear compartment.

DATES: This AD becomes effective May 8, 2015.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of October 20, 2014 (79 FR 54897, dated September 15, 2014).

We must receive comments on this AD by June 8, 2015.

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

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

For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0830; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

On August 29, 2014, we issued AD 2013–26–05, Amendment 39–17714 (79 FR 54897, September 15, 2014), which applied to all Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; Model MYSTERE–FALCON 200 airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes. AD 2013–26–05 was prompted by reports of a manufacturing defect in the charge indicator on fire extinguisher bottles. AD 2013–26–05 required repetitive weighing of fire extinguisher bottles having a certain part number, and eventual replacement of those bottles to terminate the repetitive weighing. We issued AD 2013–26–05 to detect and correct a dormant failure in the fire suppression system, which could result in the inability to put out a fire in an engine, APU, or rear compartment.

AD 2013–26–05, Amendment 39–17714 (79 FR 54897, September 15, 2014), corresponds to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) AD 2012–0189, dated September 24, 2012. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0830.

Since we issued AD 2013–26–05, Amendment 39–17714 (79 FR 54897, September 15, 2014), we have determined that there is an error in the manufacturer's name in the method of compliance language in certain text in the ''Explanation of Change Made to This AD'' section and in certain paragraphs of the regulatory text of AD 2013–26–05. AD 2013–26–05 refers to Airbus's EASA Design Organization Approval (DOA), instead of Dassault Aviation's EASA DOA. In order to refer to the appropriate EASA DOA, this AD replaces ''Airbus's'' with ''Dassault Aviation's'' in paragraphs (h)(2), (h)(2)(i), (h)(2)(ii), (h)(2)(iii), (h)(2)(iv), (i), (i)(1), (i)(2), (i)(3), (i)(4), (j)(1), (j)(2), (j)(3), (j)(4), and (l)(2) of this AD. The ''Explanation of Change Made to This AD'' section of AD 2013–26–05 is not restated in this AD.

FAA's Determination and Requirements of This AD

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

FAA's Determination of the Effective Date

We are superseding AD 2013–26–05, Amendment 39–17714 (79 FR 54897, September 15, 2014), to correct certain erroneous manufacturer information in the ''Explanation of Changes to This AD'' section and in certain paragraphs of the regulatory text. No other changes have been made to AD 2013–26–05. Therefore, we determined that notice and opportunity for prior public comment are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–0830; Directorate Identifier 2015–NM–024–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD affects 185 airplanes of U.S. registry.

The actions required by AD 2013–26–05, Amendment 39–17714 (79 FR 54897, September 15, 2014), and retained in this AD take about 4 work-hours per product, at an average labor rate of $85 per work-hour. Required parts cost about $6,400 per product. Based on these figures, the estimated cost of the actions that were required by AD 2013–26–05 is $1,246,900, or $6,740 per product.

The new requirements of this AD add no additional economic burden.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2013–26–05, Amendment 39–17714 (79 FR 54897, September 15, 2014), and adding the following new AD:

2015–08–05 Dassault Aviation: Amendment 39–18141. Docket No. FAA–2015–0830; Directorate Identifier 2015–NM–024–AD.

(a) Effective Date

This AD becomes effective May 8, 2015.

(b) Affected ADs

This AD replaces AD 2013–26–05, Amendment 39–17714 (79 FR 54897, September 15, 2014).

(c) Applicability

This AD applies to Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; Model MYSTERE–FALCON 200 airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes, certificated in any category; all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire Protection.

(e) Reason

This AD was prompted by reports of a manufacturing defect in the charge indicator on fire extinguisher bottles and also our determination that certain text in the method of compliance language specified in AD 2013–26–05, Amendment 39–17714 (79 FR 54897, September 15, 2014), incorrectly refers to ''Airbus'' instead of ''Dassault Aviation.'' We are issuing this AD to detect and correct a dormant failure in the fire suppression system, which could result in the inability to put out a fire in an engine, auxiliary power unit (APU), or rear compartment.

(f) Compliance

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

(g) Retained Definitions, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2013–26–05, Amendment 39–17714 (79 FR 54897, September 15, 2014), with no changes. For the purposes of this AD, the following definitions apply.

(1) An affected fire extinguisher bottle is any fire extinguisher bottle having a part number included in table 1 to the introductory text of paragraph (h) of this AD and having a manufacturing batch number 168 through 200 inclusive on the data plate of the charge indicator.

(2) A serviceable fire extinguisher bottle is any fire extinguisher bottle having a manufacturing batch number lower than 168 or higher than 200 on the data plate of the charge indicator.

(h) Retained Determining Charge Indicator Batch Number, With Revised Method of Compliance Language

This paragraph restates the requirements of paragraph (h) of AD 2013–26–05, Amendment 39–17714 (79 FR 54897, September 15, 2014), with revised method of compliance language in paragraphs (h)(2), (h)(2)(i), (h)(2)(ii), (h)(2)(iii) and (h)(2)(iv) of this AD. Within 30 days or 100 flight hours after October 20, 2014 (the effective date of AD 2013–26–05), whichever occurs first: Determine the manufacturing batch number for the charge indicator installed on each engine and APU fire extinguisher bottle having a part number included in table 1 to the introductory text of paragraph (h) of this AD, in accordance with the Accomplishment Instructions of Dassault Service Bulletin F20–785, also referred to as 785, dated June 11, 2012 (for Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes); or Dassault Service Bulletin F200–131, also referred to as 131, dated June 11, 2012 (for Model MYSTERE–FALCON 200 airplanes).

TABLE 1 TO THE INTRODUCTORY TEXT OF PARAGRAPH (h) OF THIS AD—PART NUMBERS OF AFFECTED FIRE EXTINGUISHER BOTTLES

Type of bottle—	Part No.—
Engine Fire Extinguisher Bottle.	111–1555–324–12A
Engine Fire Extinguisher Bottle.	811456
Engine Fire Extinguisher Bottle.	111–355–32142A
APU Fire Extinguisher Bottle.	111–011–324–12A
APU Fire Extinguisher Bottle.	811475

(1) For fire extinguisher bottles with part numbers that are not included in table 1 to the introductory text of paragraph (h) of this AD, no further action is required by paragraph (h) of this AD.

(2) For any affected charge indicator, as identified in paragraph (g)(1) of this AD: Before further flight, weigh each affected fire extinguisher bottle, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Dassault Aviation's EASA Design Organization Approval (DOA). Weigh the fire extinguishers thereafter at intervals not to exceed 12 months until the replacement specified in paragraph (h)(2)(i), (h)(2)(ii), (h)(2)(iii), (h)(2)(iv), or (j) of this AD is accomplished. If it is determined that the fire extinguisher weighs less than the lowest weight limit indicated on the fire extinguisher's data plate, before further flight, replace any affected fire extinguisher bottle and charge indicator cartridge with a serviceable part, in accordance with the applicable method specified in paragraph (h)(2)(i), (h)(2)(ii), (h)(2)(iii), or (h)(2)(iv) of this AD.

Note 1 to paragraph (h)(2) of this AD: The instructions specified in Dassault Maintenance Procedure, ''Weighing of Engine Freon Fire Extinguishers,'' (page 601, ''Inspection/Check'') of Subject 26–20–2, ''Extinguishing System—Description and Operation, of Chapter 26, ''Fire Protection,'' in Book 2 of the Dassault Falcon 20 Maintenance Manual, Phase 50, dated October 2011 (for Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes); or Procedure 2, ''Engine and Rear Compartment Extinguisher (14W1–14W2): Weighing'' of Falcon 200 Maintenance Requirement Card 171.0, Revised December 2011, of Chapter 26, ''Fire Protection,'' in Book 1, ''Work Cards,'' of the Dassault Falcon 200 Maintenance Manual, Revision 30, dated December 2011 (for Model MYSTERE–FALCON 200 airplanes); provide additional guidance for weighing affected fire extinguisher bottles. This service information is not incorporated by reference in this AD.

(i) For Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes: Replace the charge indicator cartridge with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Dassault Aviation's EASA DOA.

Note 2 to paragraphs (h)(2)(i), (i), (i)(1), and (j)(1) of this AD: The instructions specified in Dassault Maintenance Procedure, ''Removal of Pyrotechnical Cartridge for Check/Replacement'' (pages 401–403, ''Removal/Installation''), of Subject 26–20–2 ''Extinguishing System—Description and Operation,'' of Chapter 26, ''Fire Protection,'' in Book 2 of the Dassault Falcon 20 Maintenance Manual, Phase 50, dated October 2011, are a source of guidance for the actions specified in paragraphs (h)(2)(i), (i), (i)(1), and (j)(1) of this AD. This service information is not incorporated by reference in this AD.

(ii) For Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes: Replace the fire extinguisher bottle with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Dassault Aviation's EASA DOA.

(iii) For Model MYSTERE–FALCON 200 airplanes: Replace the charge indicator cartridge with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Dassault Aviation's EASA DOA.

Note 3 to paragraphs (h)(2)(iii), (i), (i)(3), and (j)(3) of this AD: Procedure 3, ''Engine and Rear Compartment Extinguisher (14W1–14W2): Check/Replacement of Percussion Cartridge,'' of Falcon 200 Maintenance Requirement Card 171.0, Revised December 2011, of Chapter 26, ''Fire Protection'', in Book 1, ''Work Cards,'' of the Dassault Falcon 200 Maintenance Manual, Revision 30, dated December 2011, is a source of guidance for paragraphs (h)(2)(iii), (i), (i)(3), and (j)(3) of this AD. This service information is not incorporated by reference in this AD.

(iv) For Model MYSTERE–FALCON 200 airplanes: Replace the fire extinguisher bottle with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Dassault Aviation's EASA DOA.

Note 4 to paragraphs (h)(2)(iv), (i)(4), and (j)(4) of this AD: Procedure 1, ''Removal/Installation,'' of Falcon 200 Maintenance Requirement Card 171.0, Revised December 2011, of Chapter 26, ''Fire Protection'', in Book 1, ''Work Cards,'' of the Dassault Falcon 200 Maintenance Manual, Revision 30, dated December 2011, is a source of guidance for replacing the fire extinguisher bottle. This service information is not incorporated by reference in this AD.

(i) Retained Repetitive Inspections To Determine if Charge Indicator Cartridge Was Fired, With Revised Method of Compliance Language

This paragraph restates the requirements of paragraph (i) of AD 2013–26–05, Amendment 39–17714 (79 FR 54897, September 15, 2014), with revised method of compliance language in paragraphs (i), (i)(1), (i)(2), (i)(3) and (i)(4) of this AD. Within 6 months after October 20, 2014 (the effective date of AD 2013–26–05): Do an inspection to determine if the charge indicator cartridge installed on each engine and APU fire extinguisher bottle, as identified in table 1 to the introductory text of paragraph (h) of this AD, was fired, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Dassault Aviation's EASA DOA. Repeat the inspection thereafter at intervals not to exceed 6 months until the replacement specified in paragraph (i)(1), (i)(2), (i)(3), (i)(4), or (j) of this AD is accomplished. If it is determined that any charge indicator cartridge was fired, before further flight, replace the affected fire extinguisher bottle and charge indicator cartridge with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Dassault Aviation's EASA DOA.

(1) For Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; and Model MYSTERE–FALCON 20–C5, 2–D5, 20–E5, and 20–F5 airplanes: Replace the charge indicator cartridge with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Dassault Aviation's EASA DOA.

(2) For Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes: Replace the

fire extinguisher bottle with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Dassault Aviation's EASA DOA.

(3) For Model MYSTERE–FALCON 200 airplanes: Replace the charge indicator cartridge with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Dassault Aviation's EASA DOA.

(4) For Model MYSTERE–FALCON 200 airplanes: Replace the fire extinguisher bottle with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Dassault Aviation's EASA DOA.

(j) Retained Replacement of Fire Extinguisher Bottle and Charge Indicator Cartridge, With Revised Method of Compliance Language

This paragraph restates the requirements of paragraph (j) of AD 2013–26–05, Amendment 39–17714 (79 FR 54897, September 15, 2014), with revised method of compliance language specified in paragraphs (j)(1), (j)(2), (j)(3), and (j)(4) of this AD. Unless previously accomplished as specified in paragraph (h)(2)(i), (h)(2)(ii), (h)(2)(iii), (h)(2)(iv), (i)(1), (i)(2), (i)(3), or (i)(4) of this AD: Within 60 months after October 20, 2014 (the effective date of AD 2013–26–05), replace any affected fire extinguisher bottle and charge indicator cartridge, as specified in paragraph (g)(1) of this AD, with a serviceable part, in accordance with the method specified in paragraph (j)(1), (j)(2), (j)(3), or (j)(4) of this AD, as applicable. Replacement of any affected fire extinguisher bottle and charge indicator cartridge with a serviceable part terminates the repetitive actions specified in paragraphs (h) and (i) of this AD.

(1) For Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes: Replace the charge indicator cartridge with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Dassault Aviation's EASA DOA.

(2) For Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes: Replace the fire extinguisher bottle with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Dassault Aviation's EASA DOA.

(3) For Model MYSTERE–FALCON 200 airplanes: Replace the charge indicator cartridge with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Dassault Aviation's EASA DOA.

(4) For Model MYSTERE–FALCON 200 airplanes: Replace the fire extinguisher bottle with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Dassault Aviation's EASA DOA.

(k) Retained Parts Installation Prohibition, With No Changes

This paragraph restates the requirements of paragraph (k) of AD 2013–26–05, Amendment 39–17714 (79 FR 54897, September 15, 2014), with no changes. As of October 20, 2014 (the effective date of AD 2013–26–05), no person may install, on any airplane, a fire extinguisher bottle having a part number included in table 1 to the introductory text of paragraph (h) of this AD, fitted with a charge indicator having a manufacturing batch number on the data plate of 168 through 200 inclusive.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Contacting the Manufacturer: As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Dassault Aviation's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(m) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2012–0189, dated September 24, 2012, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0830.

(n) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on October 20, 2014, (79 FR 54897, September 15, 2014).

(i) Dassault Service Bulletin F20–785, also referred to as 785, dated June 11, 2012.

(ii) Dassault Service Bulletin F200–131, also referred to as 131, dated June 11, 2012.

(4) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.*

(5) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on April 9, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–09290 Filed 4–22–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 150318286–5286–01]

RIN 0694–AG58

Addition of Certain Persons to the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by adding eight persons under nine entries to the Entity List. The eight persons who are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These eight persons will be listed on the Entity List under the destinations of China, Iran, Taiwan, and Turkey. There are nine entries for the eight persons because one person is listed in two locations, resulting in an additional entry. Specifically, the additional entry covers one person that will be listed on the Entity List under the destination of Iran and Turkey.

DATE: *Effective Date:* This rule is effective April 23, 2015.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee,

Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to Part 744 of the EAR) notifies the public about entities that have engaged in activities that could result in an increased risk of the diversion of exported, reexported or transferred (in-country) items to weapons of mass destruction (WMD) programs. Since its initial publication, grounds for inclusion on the Entity List have expanded to include activities sanctioned by the State Department and activities contrary to U.S. national security or foreign policy interests. Certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require licenses from BIS and are usually subject to a policy of denial. The availability of license exceptions in such transactions is very limited. The license review policy for each entity is identified in the license review policy column on the Entity List and the availability of license exceptions is noted in the **Federal Register** notices adding persons to the Entity List. BIS places entities on the Entity List based on certain sections of part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

Additions to the Entity List

This rule implements the decision of the ERC to add eight persons under nine entries to the Entity List. These eight persons are being added on the basis of § 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The nine entries added to the Entity List consist of one entry in China, four entries in Iran, two entries in Taiwan, and two entries in Turkey.

The ERC reviewed § 744.11(b) (Criteria for revising the Entity List) in making the determination to add these eight persons to the Entity List. Under that paragraph, persons for whom there is reasonable cause to believe, based on specific and articulable facts, have been involved, are involved, or pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such persons may be added to the Entity List. Paragraphs (b)(1) through (b)(5) of § 744.11 include an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States.

Pursuant to § 744.11 of the EAR, the ERC determined that Shandong Sheenrun Optics & Electronics Co., Ltd. be added to the Entity List under the destination of China for actions contrary to the national security or foreign policy interests of the United States. Specifically, in April 2014, Shandong Sheenrun Optics & Electronics Co., Ltd. and related parties were indicted in the U.S. District Court for the District of Columbia for transshipping U.S.-origin items to Iran through China from 2009 through 2012 in violation of the Office of Foreign Assets Control's Iranian Transactions and Sanctions Regulations (ITSR) and the EAR.

In addition, the ERC determined the following seven persons being added to the Entity List under the destinations of Iran, Taiwan, and Turkey have been involved in activities contrary to the national security and foreign policy interests of the United States, and meet the criteria listed in § 744.11(b). Specifically, Faratel Company, Arash Servatian, Elaheh Siahpoush, Hosoda Taiwan Limited, Arthur Shyu, Golsad Istanbul Trading (a.k.a. Golsad Import-Export), and Abbas Goldoozan have been involved in actions that could enhance the military capability of or the ability to support terrorism of governments that have been designated by the Secretary of State as having repeatedly provided support for acts of international terrorism. The seven persons described in this paragraph being added to the Entity List were identified during a U.S. Government investigation of a network of companies and individuals involved in the procurement and delivery of items subject to the EAR and the ITSR to Iran, in violation of the EAR and the ITSR. These persons undertook procurement and delivery activities, activities to conceal the procurement and delivery activities, activities to circumvent the EAR and the ITSR license requirements, and/or activities to facilitate the procurement of export restricted items for Iranian military-related and other governmental-related end uses.

Pursuant to § 744.11(b)(5) of the EAR, the ERC determined that the conduct of these eight persons raises sufficient concern that prior review of exports, reexports, or transfers (in-country) of items subject to the EAR involving these persons, and the possible imposition of license conditions or license denials on shipments to the persons, will enhance BIS's ability to prevent violations of the EAR.

For the eight persons added to the Entity List, the ERC specified a license requirement for all items subject to the EAR and a license review policy of presumption of denial. The license requirements apply to any transaction in which items are to be exported, reexported, or transferred (in-country) to any of the persons or in which such persons act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to the persons being added to the Entity List in this rule.

This final rule adds the following eight persons under nine entries to the Entity List:

China

(1) *Shandong Sheenrun Optics & Electronics Co., Ltd.,* a.k.a., the following two aliases:

—China Sheenrun Optics and Electronics Co. Ltd.; *and*

—Jinan Sheenrun Electronics Company Ltd.

Room A312, Tower F1 Qilu Software Park, Hi-tech Zone, Jinan, China 250101.

Iran

(1) *Abbas Goldoozan,* No. 86 Negin Tower, Farmaniyeh St., 1937944633 Tehran, Iran (See also alternate address under Turkey);

(2) *Arash Servatian,* 12 Kandovan Alley Enghelab Ave., Opp. Villa (Ostad Nejatollahi) 1131834914 Tehran, Iran;

(3) *Elaheh Siahpoush,* 12 Kandovan Alley Enghelab Ave., Opp. Villa (Ostad Nejatollahi) 1131834914 Tehran, Iran; *and*

(4) *Faratel Company,* 12 Kandovan Alley Enghelab Ave., Opp. Villa (Ostad Nejatollahi) 1131834914 Tehran, Iran.

Taiwan

(1) *Arthur Shyu,* 3F–1 No. 52, SEC 2, Chung Shan N. Road, Taipei 104 Taiwan; *and*

(2) *Hosoda Taiwan Limited,* 3F–1 No. 52, SEC 2, Chung Shan N. Road, Taipei 104 Taiwan.

Turkey

(1) *Abbas Goldoozan,* Kimya IC VE Dis Ticaret Ltd., 2nd Floor, No. 2, Istanbul, Turkey; *and* Yesil Tulumba A, Istanbul, Turkey 34134 (See also alternate address under Iran); *and*

(2) *Golsad Istanbul Trading,* a.k.a., the following one alias:

—Golsad Import-Export.

Kimya IC VE Dis Ticaret Ltd., 2nd Floor, No. 2, Istanbul, Turkey; *and* Yesil Tulumba A, Istanbul, Turkey 34134.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export or reexport, on April 23, 2015, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR).

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2014, 79 FR 46959 (August 11, 2014), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. For the eight persons added under nine entries to the Entity List in this final rule, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by preventing items from being exported, reexported, or transferred (in-country) to the persons being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, then entities being added to the Entity List by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, because these parties may receive notice of the U.S. Government's intention to place these entities on the Entity List if a proposed rule is published, doing so would create an incentive for these persons to either accelerate receiving items subject to the EAR to conduct activities that are contrary to the national security or foreign policy interests of the United States, or to take steps to set up additional aliases, change addresses, and other measures to try to limit the impact of the listing on the Entity List once a final rule was published. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subject in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014); Notice of September 17, 2014, 79 FR 56475 (September 19, 2014); Notice of November 7, 2014, 79 FR 67035 (November 12, 2014); Notice of January 21, 2015, 80 FR 3461 (January 22, 2015).

■ 2. Supplement No. 4 to part 744 is amended:

■ a. By adding under China, in alphabetical order, one Chinese entity;

■ b. By adding under Iran, in alphabetical order, four Iranian entities;

■ c. By adding under Taiwan, in alphabetical order, two Taiwanese entities; *and*

■ d. By adding under Turkey, in alphabetical order, two Turkish entities.

The additions read as follows:

Supplement No. 4 to Part 744—Entity List

Country	Entity	License requirement	License review policy	*Federal Register* citation
*	* *	*	* *	*
CHINA, PEOPLE'S REPUBLIC OF.	* *	*	* *	*
	Shandong Sheenrun Optics & Electronics Co., Ltd., a.k.a., the following two aliases: —China Sheenrun Optics and Electronics Co. Ltd.; *and* —Jinan Sheenrun Electronics Company Ltd. Room A312, Tower F1 Qilu Software Park, Hi-tech Zone, Jinan, China 250101.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	80 FR [INSERT FR PAGE NUMBER] April 23, 2015.
	* *	*	* *	*
*	* *	*	* *	*
IRAN	* *	*	* *	*
	Abbas Goldoozan, No. 86 Negin Tower, Farmaniyeh St., 1937944633 Tehran, Iran (See also alternate address under Turkey).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	80 FR [INSERT FR PAGE NUMBER] April 23, 2015.
	* *	*	* *	*
	Arash Servatian, 12 Kandovan Alley Enghelab Ave., Opp. Villa (Ostad Nejatollahi) 1131834914 Tehran, Iran.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	80 FR [INSERT FR PAGE NUMBER] April 23, 2015.
	* *	*	* *	*
	Elaheh Siahpoush, 12 Kandovan Alley Enghelab Ave., Opp. Villa (Ostad Nejatollahi) 1131834914 Tehran, Iran.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	80 FR [INSERT FR PAGE NUMBER] April 23, 2015.
	* *	*	* *	*
	Faratel Company, 12 Kandovan Alley Enghelab Ave., Opp. Villa (Ostad Nejatollahi) 1131834914 Tehran, Iran.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	80 FR [INSERT FR PAGE NUMBER] April 23, 2015.
	* *	*	* *	*
*	* *	*	* *	*
TAIWAN	Arthur Shyu, 3F–1 No. 52, SEC 2, Chung Shan N. Road, Taipei 104 Taiwan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	80 FR [INSERT FR PAGE NUMBER] April 23, 2015.
	Hosoda Taiwan Limited, 3F–1 No. 52, SEC 2, Chung Shan N. Road, Taipei 104 Taiwan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	80 FR [INSERT FR PAGE NUMBER] April 23, 2015.
	* *	*	* *	*
*	* *	*	* *	*
TURKEY	* *	*	* *	*
	Abbas Goldoozan, Kimya IC VE Dis Ticaret Ltd., 2nd Floor, No. 2, Istanbul, Turkey; *and* Yesil Tulumba A, Istanbul, Turkey 34134 (See also alternate address under Iran).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	80 FR [INSERT FR PAGE NUMBER] April 23, 2015.
	* *	*	* *	*
	Golsad Istanbul Trading, a.k.a., the following one alias: —Golsad Import-Export.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	80 FR [INSERT FR PAGE NUMBER] April 23, 2015.

Country	Entity	License requirement	License review policy	*Federal Register* citation
	Kimya IC VE Dis Ticaret Ltd., 2nd Floor, No. 2, Istanbul, Turkey; *and* Yesil Tulumba A, Istanbul, Turkey 34134.			
*	*	*	*	*
*	*	*	*	*

Dated: April 17, 2015.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2015–09442 Filed 4–22–15; 8:45 am]

BILLING CODE 3510–33–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 237

Ukraine Guarantees Issued Under the Department of State, Foreign Operations, and Related Programs Appropriations Act of 2015, and the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014—Standard Terms and Conditions

AGENCY: Agency for International Development (USAID).

ACTION: Final rule.

SUMMARY: This regulation prescribes the procedures and standard terms and conditions applicable to loan guarantees to be issued for the benefit of Ukraine pursuant to Title III of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2015, and the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014.

DATES: Effective April 24, 2015.

FOR FURTHER INFORMATION CONTACT: D. Bruce McPherson, Office of General Counsel, U.S. Agency for International Development, Washington, DC 20523–6601; tel. 202–712–1611, fax 202–216–3055.

SUPPLEMENTARY INFORMATION: Pursuant to Title III of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2015 (Div. J, Pub. L. 113–235) and the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014 (Pub. L. 113–95), the United States of America, acting through the U.S. Agency for International Development, may issue certain loan guarantees applicable to sums borrowed by Ukraine (the ''Borrower''), not exceeding an aggregate total of U.S. $1 billion in principal amount. Upon issuance, the loan guarantees shall ensure the Borrower's repayment of 100% of principal and interest due under such borrowings and the full faith and credit of the United States of America shall be pledged for the full payment and performance of such guarantee obligations.

This rulemaking document is not subject to rulemaking under 5 U.S.C. 553 or to regulatory review under Executive Order 12866 because it involves a foreign affairs function of the United States. The provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) do not apply.

List of Subjects in 22 CFR Part 237

Foreign aid, Foreign relations, Guaranteed loans, Loan programs-foreign relations.

Authority and Issuance

■ Accordingly, part 237 is added to title 22, chapter II, of the Code of Federal Regulations, to read as follows:

PART 237—UKRAINE LOAN GUARANTEES ISSUED UNDER THE DEPARTMENT OF STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS APPROPRIATIONS ACT OF 2015, AND THE SUPPORT FOR THE SOVEREIGNTY, INTEGRITY, DEMOCRACY, AND ECONOMIC STABILITY OF UKRAINE ACT OF 2014—STANDARD TERMS AND CONDITIONS

Sec.

237.01 Purpose.
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237.03 The Guarantee.
237.04 Guarantee eligibility.
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237.06 Transferability of Guarantee; Note Register.
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237.09 No acceleration of Eligible Notes.
237.10 Payment to USAID of excess amounts received by a Noteholder.
237.11 Subrogation of USAID.
237.12 Prosecution of claims.
237.13 Change in agreements.
237.14 Arbitration.
237.15 Notice.
237.16 Governing law.
Appendix A to Part 237—Application for Compensation

Authority: Title III of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2015 (Div. J, Pub. L. 113–235); and the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014 (Pub. L. 113–95).

§ 237.01 Purpose.

The purpose of the regulations in this part is to prescribe the procedures and standard terms and conditions applicable to loan guarantees issued for the benefit of the Borrower, pursuant to Title III of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2015 (Div. J, Pub. L. 113–235) and the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014 (Pub. L. 113–95). The loan guarantees will be issued as provided herein pursuant to a Loan Guarantee Agreement to be signed in April 2015, between the United States of America and Ukraine (the ''Loan Guarantee Agreement''). The loan guarantee will apply to sums borrowed during a period beginning on the date that the Loan Guarantee Agreement enters into force and ending thirty days after such date, not exceeding an aggregate total of one billion United States Dollars ($1,000,000,000) in principal amount. The loan guarantees shall ensure the Borrower's repayment of 100% of principal and interest due under such borrowings. The full faith and credit of the United States of America is pledged for the full payment and performance of such guarantee obligations.

§ 237.02 Definitions.

Wherever used in the standard terms and conditions set out in this part:

Applicant means a Noteholder who files an Application for Compensation with USAID, either directly or through

the Fiscal Agent acting on behalf of a Noteholder.

Application for Compensation means an executed application in the form of Appendix A to this part which a Noteholder, or the Fiscal Agent on behalf of a Noteholder, files with USAID pursuant to § 237.08.

Borrower means Ukraine.

Business Day means any day other than a day on which banks in New York, NY are closed or authorized to be closed or a day which is observed as a federal holiday in Washington, DC, by the United States Government.

Date of Application means the date on which an Application for Compensation is actually received by USAID pursuant to § 237.15.

Defaulted Payment means, as of any date and in respect of any Eligible Note, any Interest Amount and/or Principal Amount not paid when due.

Eligible Note(s) means [a] Note[s] meeting the eligibility criteria set out in § 237.04.

Fiscal Agency Agreement means the agreement among USAID, the Borrower and the Fiscal Agent pursuant to which the Fiscal Agent agrees to provide fiscal agency and trust services in respect of the Note[s], a copy of which Fiscal Agency Agreement shall be made available to Noteholders upon request to the Fiscal Agent.

Fiscal Agent means the bank or trust company or its duly appointed successor under the Fiscal Agency Agreement which has been appointed by the Borrower with the consent of USAID to perform certain fiscal agency and trust services for specified Eligible Note[s] pursuant to the terms of the Fiscal Agency Agreement.

Further Guaranteed Payments means the amount of any loss suffered by a Noteholder by reason of the Borrower's failure to comply on a timely basis with any obligation it may have under an Eligible Note to indemnify and hold harmless a Noteholder from taxes or governmental charges or any expense arising out of taxes or any other governmental charges relating to the Eligible Note in the country of the Borrower.

Guarantee means the guarantee of USAID pursuant to this part 237, Title III of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2015 (Div. J, Pub. L. 113–235), and the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014 (Pub. L. 113–95).

Guarantee Payment Date means a Business Day not more than three (3) Business Days after the related Date of Application.

Interest Amount means for any Eligible Note the amount of interest accrued on the Principal Amount of such Eligible Note at the applicable Interest Rate.

Interest Rate means the interest rate borne by an Eligible Note.

Loss of Investment means, in respect of any Eligible Note, an amount in Dollars equal to the total of the:

(1) Defaulted Payment unpaid as of the Date of Application,

(2) Further Guaranteed Payments unpaid as of the Date of Application, and

(3) Interest accrued and unpaid at the Interest Rate(s) specified in the Eligible Note(s) on the Defaulted Payment and Further Guaranteed Payments, in each case from the date of default with respect to such payment to and including the date on which full payment thereof is made to the Noteholder.

Note[s] means any debt securities issued by the Borrower.

Noteholder means the owner of an Eligible Note who is registered as such on the Note Register.

Note Register means the register of Eligible Notes required to be maintained by the Fiscal Agent.

Person means any legal person, including any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof.

Principal Amount means the principal amount of the Eligible Notes issued by the Borrower. For purposes of determining the principal amount of the Eligible Notes issued by the Borrower, the principal amount of each Eligible Note shall be the stated principal amount thereof.

USAID means the United States Agency for International Development or its successor.

§ 237.03 The Guarantee.

Subject to the terms and conditions set out in this part, the United States of America, acting through USAID, guarantees to Noteholders the Borrower's repayment of 100 percent of principal and interest due on Eligible Notes. Under this Guarantee, USAID agrees to pay to any Noteholder compensation in Dollars equal to such Noteholder's Loss of Investment under its Eligible Note; provided, however, that no such payment shall be made to any Noteholder for any such loss arising out of fraud or misrepresentation for which such Noteholder is responsible or of which it had knowledge at the time it became such Noteholder. This Guarantee shall apply to each Eligible Note registered on the Note Register.

§ 237.04 Guarantee eligibility.

(a) Eligible Notes only are guaranteed hereunder. Notes in order to achieve Eligible Note status:

(1) Must be signed on behalf of the Borrower, manually or in facsimile, by a duly authorized representative of the Borrower;

(2) Must contain a certificate of authentication manually executed by the Fiscal Agent whose appointment by the Borrower is consented to by USAID in the Fiscal Agency Agreement; and

(3) Shall be approved and authenticated by USAID by either:

(i) The affixing by USAID on the Notes of a guarantee legend incorporating these Standard Terms and Conditions signed on behalf of USAID by either a manual signature or a facsimile signature of an authorized representative of USAID or

(ii) The delivery by USAID to the Fiscal Agent of a guarantee certificate incorporating these Standard Terms and Conditions signed on behalf of USAID by either a manual signature or a facsimile signature of an authorized representative of USAID.

(b) The authorized USAID representatives for purposes of the regulations in this part whose signature(s) shall be binding on USAID shall include the USAID Chief and Deputy Chief Financial Officer; Assistant Administrator and Deputy, Bureau for Economic Growth, Education, and Environment; Director and Deputy Director, Office of Development Credit; and such other individual(s) designated in a certificate executed by an authorized USAID Representative and delivered to the Fiscal Agent. The certificate of authentication of the Fiscal Agent issued pursuant to the Fiscal Agency Agreement shall, when manually executed by the Fiscal Agent, be conclusive evidence binding on USAID that an Eligible Note has been duly executed on behalf of the Borrower and delivered.

§ 237.05 Non-impairment of the Guarantee.

After issuance of a Guarantee, that Guarantee will be an unconditional, full faith and credit obligation of the United States of America, and will not be affected or impaired by any subsequent condition or event. This non-impairment of the guarantee provision shall not, however, be operative with respect to any loss arising out of fraud or misrepresentation for which the claiming Noteholder is responsible or of which it had knowledge at the time it

became a Noteholder. Moreover, the Guarantee shall not be affected or impaired by:

(a) Any defect in the authorization, execution, delivery or enforceability of any agreement or other document executed by a Noteholder, USAID, the Fiscal Agent or the Borrower in connection with the transactions contemplated by this Guarantee or

(b) The suspension or termination of the program pursuant to which USAID is authorized to guarantee the Eligible Notes.

§ 237.06 Transferability of Guarantee; Note Register.

A Noteholder may assign, transfer or pledge an Eligible Note to any Person. Any such assignment, transfer or pledge shall be effective on the date that the name of the new Noteholder is entered on the Note Register. USAID shall be entitled to treat the Persons in whose names the Eligible Notes are registered as the owners thereof for all purposes of this Guarantee and USAID shall not be affected by notice to the contrary.

§ 237.07 Fiscal Agent obligations.

Failure of the Fiscal Agent to perform any of its obligations pursuant to the Fiscal Agency Agreement shall not impair any Noteholder's rights under this Guarantee, but may be the subject of action for damages against the Fiscal Agent by USAID as a result of such failure or neglect. A Noteholder may appoint the Fiscal Agent to make demand for payment on its behalf under this Guarantee.

§ 237.08 Event of Default; Application for Compensation; payment.

At any time after an Event of Default, as this term is defined in an Eligible Note, any Noteholder hereunder, or the Fiscal Agent on behalf of a Noteholder hereunder, may file with USAID an Application for Compensation in the form provided in Appendix A to this part. USAID shall pay or cause to be paid to any such Applicant any compensation specified in such Application for Compensation that is due to the Applicant pursuant to the Guarantee as a Loss of Investment not later than the Guarantee Payment Date. In the event that USAID receives any other notice of an Event of Default, USAID may pay any compensation that is due to any Noteholder pursuant to a Guarantee, whether or not such Noteholder has filed with USAID an Application for Compensation in respect of such amount.

§ 237.09 No acceleration of Eligible Notes.

Eligible Notes shall not be subject to acceleration, in whole or in part, by USAID, the Noteholder or any other party. USAID shall not have the right to pay any amounts in respect of the Eligible Notes other than in accordance with the original payment terms of such Eligible Notes.

§ 237.10 Payment to USAID of excess amounts received by a Noteholder.

If a Noteholder shall, as a result of USAID paying compensation under this Guarantee, receive an excess payment, it shall refund the excess to USAID.

§ 237.11 Subrogation of USAID.

In the event of payment by USAID to a Noteholder under this Guarantee, USAID shall be subrogated to the extent of such payment to all of the rights of such Noteholder against the Borrower under the related Note.

§ 237.12 Prosecution of claims.

After payment by USAID to an Applicant hereunder, USAID shall have exclusive power to prosecute all claims related to rights to receive payments under the Eligible Notes to which it is thereby subrogated. If a Noteholder continues to have an interest in the outstanding Eligible Notes, such a Noteholder and USAID shall consult with each other with respect to their respective interests in such Eligible Notes and the manner of and responsibility for prosecuting claims.

§ 237.13 Change in agreements.

No Noteholder will consent to any change or waiver of any provision of any document contemplated by this Guarantee without the prior written consent of USAID.

§ 237.14 Arbitration.

Any controversy or claim between USAID and any Noteholder arising out of this Guarantee shall be settled by arbitration to be held in Washington, DC in accordance with the then prevailing rules of the American Arbitration Association, and judgment on the award rendered by the arbitrators may be entered in any court of competent jurisdiction.

§ 237.15 Notice.

Any communication to USAID pursuant to this Guarantee shall be in writing in the English language, shall refer to the Ukraine Loan Guarantee Number inscribed on the Eligible Note and shall be complete on the day it shall be actually received by USAID at the Office of Development Credit, Bureau for Economic Growth, Education and Environment, United States Agency for International Development, Washington, DC 20523–0030. Other addresses may be substituted for the above upon the giving of notice of such substitution to each Noteholder by first class mail at the address set forth in the Note Register.

§ 237.16 Governing law.

This Guarantee shall be governed by and construed in accordance with the laws of the United States of America governing contracts and commercial transactions of the United States Government.

Appendix A to Part 237—Application for Compensation

United States Agency for International Development

Washington, DC 20523

Ref: Guarantee dated as of _____, 20____:

Gentlemen: You are hereby advised that payment of $_____ (consisting of $_____ of principal, $_____ of interest and $_____ in Further Guaranteed Payments, as defined in § 237.02 of the Standard Terms and Conditions of the above-mentioned Guarantee) was due on _____, 20____, on $_____ Principal Amount of Notes issued by Ukraine (the ''Borrower'') held by the undersigned. Of such amount $_____ was not received on such date and has not been received by the undersigned at the date hereof. In accordance with the terms and provisions of the above-mentioned Guarantee, the undersigned hereby applies, under § 237.08 of said Guarantee, for payment of $_____, representing $_____, the Principal Amount of the presently outstanding Note(s) of the Borrower held by the undersigned that was due and payable on _____ and that remains unpaid, and $_____, the Interest Amount on such Note(s) that was due and payable by the Borrower on _____ and that remains unpaid, and $_____ in Further Guaranteed Payments,[1] plus accrued and unpaid interest thereon from the date of default with respect to such payments to and including the date payment in full is made by you pursuant to said Guarantee, at the rate of ____ % per annum, being the rate for such interest accrual specified in such Note. Such payment is to be made at [state payment instructions of Noteholder or Fiscal Agent, as applicable].

All capitalized terms herein that are not otherwise defined shall have the meanings assigned to such terms in the Standard Terms and Conditions of the above-mentioned Guarantee.

[Name of Applicant]

By: _____

Name: _____

Title: _____

Dated: _____

[1] In the event the Application for Compensation relates to Further Guaranteed Payments, such Application must also contain a statement of the nature and circumstances of the related loss.

Date: April 20, 2015.

D. Bruce McPherson,

Attorney Advisor, Office of the General Counsel, U.S. Agency for International Development.

[FR Doc. 2015–09466 Filed 4–22–15; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0296]

Drawbridge Operation Regulation; Lake Washington Ship Canal at Seattle, WA

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 University Bridge, mile 4.3, across Lake Washington Ship Canal at Seattle, WA. The deviation is necessary to accommodate the ''Beat the Bridge'' foot race event. This deviation allows the bridges to remain in the closed-to-navigation position to allow for the safe movement of event participants.

DATES: This deviation is effective from 8 a.m. to 9:30 a.m. on May 17, 2015.

ADDRESSES: The docket for this deviation, [USCG–2015–0296] 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. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Seattle Department of Transportation has requested a temporary deviation from the operating schedule for the University Bridge, mile 4.3, across the Lake Washington Ship Canal at Seattle, WA, to facilitate safe passage of participants in the ''Beat the Bridge'' foot race. The University Bridge, mile 4.3, provides a vertical clearance of 30 feet in the closed position; clearances are referenced to the mean water elevation of Lake Washington. The current operating schedule for the bridge is set out in 33 CFR 117.1051. The normal operating schedule for the University Bridge states that the bridge need not open from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday, except Federal holidays but Columbus Day for vessels less than 1000 tons. The normal operating schedule for the bridge also requires one hour advance notification for bridge openings between 11 p.m. and 7 a.m. Waterway usage on the Lake Washington Ship Canal ranges from commercial tug and barge to small pleasure craft.

Vessels able to pass through the bridge in the closed positions may do so at any time. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also 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 vessels 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 designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 14, 2015.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2015–09476 Filed 4–22–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0298]

Drawbridge Operation Regulation; Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the upper deck of the Steel Bridge across the Willamette River, mile 12.1, at Portland, OR. The deviation is necessary to accommodate the annual Rock 'n' Roll 10K event. This deviation allows the upper deck of the Steel Bridge to remain in the closed-to-navigation position and need not open for marine traffic.

DATES: This deviation is effective from 8:20 a.m. on May 17, 2015 until 10:35 a.m. on May 17, 2015.

ADDRESSES: The docket for this deviation, [USCG–2015–0298] 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. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The City of Portland Bureau of Transportation has requested that the upper deck of the Steel Bridge remain closed-to-navigation to accommodate the annual Rock 'n' Roll 10K event. The Steel Bridge crosses the Willamette River at mile 12.1 and is a double-deck lift bridge with a lower lift deck and an upper lift deck which operate independent of each other. When both decks are in the down position the bridge provides 26 feet of vertical clearance above Columbia River Datum 0.0. When the lower deck is in the up position the bridge provides 71 feet of vertical clearance above Columbia River Datum 0.0. This deviation does not affect the operating schedule of the lower deck which opens on signal. Under normal conditions the upper deck of the Steel Bridge operates in accordance with 33 CFR 117.897(c)(3)(ii) which states that from 8 a.m. to 5 p.m. Monday through Friday one hour advance notice shall be given for draw openings, and at all other times two hours advance notice shall be given to obtain an opening. This deviation period is from 8:20 a.m. on May 17, 2015 until 10:35 a.m. on May 17, 2015. The deviation allows the upper deck of the Steel Bridge across the Willamette

River, mile 12.1, to remain in the closed-to-navigation position and need not open for maritime traffic from 8:20 a.m. on May 17, 2015 until 10:35 a.m. on May 17, 2015. Waterway usage on this part of the Willamette River includes vessels ranging from commercial tug and barge to small pleasure craft.

Vessels able to pass through the bridge in the closed positions may do so at anytime. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also 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 vessels 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 designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 17, 2015.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2015–09481 Filed 4–22–15; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0924; FRL–9924–77–Region 9]

Revisions to the California State Implementation Plan, Feather River Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Feather River Air Quality Management District (FRAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC), oxides of nitrogen (NO_X) and particulate matter (PM) emissions from rice straw burning, surface preparation and cleanup for solvents, wood product coating operations, boilers, steam generators, process heaters, and stationary internal combustion engines. We are approving local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule is effective on June 22, 2015 without further notice, unless EPA receives adverse comments by May 26, 2015. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2014–0924, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. 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.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, (415) 972–3073, *Gong.Kevin@epa.gov.*

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

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I. The State's Submittal

A. What rules did the State submit?

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

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted or amended	Submitted
FRAQMD	10.9	Rice Straw Emission Reduction Credits and Banking	4/6/2009	11/6/2014
FRAQMD	3.14	Surface Preparation and Clean-Up	8/1/2011	2/10/2014
FRAQMD	3.20	Wood Products Coating Operations	8/1/2011	2/10/2014
FRAQMD	3.21	Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters.	6/5/2006	2/10/2014
FRAQMD	3.22	Stationary Internal Combustion Engines	10/6/2014	11/6/2014

On May 5, 2014, EPA determined that the submittal for FRAQMD Rules 3.14, 3.20 and 3.21 met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. On December 18, 2014, EPA determined that the submittal for FRAQMD Rules 10.9 and 3.22 met the completeness criteria.

B. Are there other versions of these rules?

There are no previous versions of Rules 10.9, 3.20 and 3.21 in the SIP. We approved an earlier version of Rule 3.14 that had been submitted by the Sutter County Air Pollution Control District (SCAPCD) on May 3, 1982 in 47 FR 118856. SCAPCD is a predecessor agency to FRAQMD and so that version of the rule is enforceable by FRAQMD. We included an earlier version of Rule 3.22 into the SIP on March 1, 2012 in 77 FR 12493 in a limited approval and limited disapproval action.

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

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. Rule 10.9 establishes standards, processes and procedures for calculating creditable VOC emissions reductions from the curtailment of rice straw burning. Rules 3.14 and 3.20 establish limits and control procedures for reducing VOC emissions resulting from solvent use and wood product coating operations. Rule 3.22 limits VOC emissions from internal combustion engines.

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control NO_X emissions. Rule 10.9 establishes standards, processes and procedures for calculating creditable NO_X emissions reductions from the curtailment of rice straw burning. Rules 3.21 and 3.22 limit NO_X emissions from combustion sources including internal combustion engines, boilers, steam generators, and process heaters.

PM 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. Rule 10.9 establishes standards, processes and procedures for calculating creditable PM emissions reductions from the curtailment of rice straw burning. Rules 3.21 and 3.22 directly limit NO_X emissions which are a precursor to $PM_{2.5}$.

EPA's technical support documents (TSDs) have more information about these rules.

II. EPA's Evaluation and Action

A. How is 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). Additionally, Rule 10.9 includes provisions that generate emission reduction credits for use as offsets in the New Source Review (NSR) program, and must meet the NSR requirement for valid offsets (see CAA section 173(c)). Such rules are also evaluated against EPA's non-binding guidance on economic incentive programs.

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 and 57 FR 18070, April 28, 1992).
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations'' (''the Bluebook,'' U.S. EPA, May 25, 1988; revised January 11, 1990).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies'' (''the Little Bluebook'', EPA Region 9, August 21, 2001).
4. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule'' (''the NO_X Supplement,'' 57 FR 55620, November 25, 1992).
5. ''Improving Air Quality with Economic Incentive Programs'' (EPA–452/R–01–001, January 2001) *http://www.epa.gov/ttn/oarpg/t1/memoranda/eipfin.pdf*.
6. Rice Straw Emission Reduction Credit Model Rule Support Document (White Paper), Sacramento Federal Non-Attainment Area, October 16, 2008.
7. ''Control Technique Guidelines for the Control of VOC Emission from Wood Furniture Manufacturing Operations'' (EPA–453/R–96–007, April 1996).
8. ''Control Technique Guidelines for Flat Wood Paneling Coatings'' (EPA–453/R–06–004, September 2006).
9. ''Control of Volatile Organic Emissions from Solvent Metal Cleaning'' (EPA–450/2–77–022, November 1977).
10. ''Control Techniques Guidelines for Industrial Cleaning Solvents'' (EPA–453/R–06–001 September 2006).
11. ''Control Technique Guidelines for Flexible Package Printing'' (EPA–453/R–06–003, September 2006)
12. ''Control of Volatile Organic Compound Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations'' (EPA–453/R–97–004, December 1997)

Generally, SIP rules must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each VOC and NO_X major source in ozone nonattainment areas classified as moderate or above (see sections 182(b)(2) and 182(f)). 40 CFR 81.305 describes FRAQMD as regulating a portion of the Sacramento Metro Area nonattainment area classified as Severe-15 for the 1997 and 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS), and classified as Severe-15 for the 1-hour ozone standard. The rest of FRAQMD is classified as a Section 185A Area for the 1-hour ozone standard. These rules must implement RACT, as the District regulates an ozone nonattainment area classified as Severe.

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT or RACM, and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

The TSDs describe additional rule revisions that we recommend for the next time the local agency modifies the rules but are not currently the basis for rule disapproval.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register,** we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by May 26, 2015, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on June 22, 2015. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the

incorporation by reference of the FRAQMD rules described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available electronically through *www.regulations.gov* and in hard copy at the appropriate EPA office (see the **ADDRESSES** 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 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 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 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).

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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 22, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of this **Federal Register,** rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: February 27, 2015.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.220, is amended by adding paragraphs (c)(442)(i)(E) and (c)(457) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(442) * * *

(i) * * *

(E) Feather River Air Quality Management District.

(*1*) Rule 3.14, ''Surface Preparation and Clean-Up,'' amended on August 1, 2011.

(*2*) Rule 3.20, ''Wood Products Coating Operations,'' amended on August 1, 2011.

(*3*) Rule 3.21, ''Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters,'' adopted on June 5, 2006.

* * * * *

(457) New and amended regulations for the following APCDs were submitted on November 6, 2014 by the Governor's designee.

(i) Incorporation by reference.

(A) Feather River Air Quality Management District.

(*1*) Rule 10.9, ''Rice Straw Emission Reduction Credits and Banking,'' amended on October 6, 2014.

(*2*) Rule 3.22, ''Stationary Internal Combustion Engines,'' amended on October 6, 2014.

[FR Doc. 2015–09409 Filed 4–22–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0355; FRL–9926–66]

Bicyclopyrone; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of bicyclopyrone

in or on field corn, forage; field corn, grain; field corn, stover; popcorn, grain; popcorn, stover; sweet corn, forage; sweet corn, ears; sweet corn, stover; sugarcane, stalks; cattle, liver; goat, meat byproducts; sheep, meat byproducts; horse, meat byproducts; and hog, meat byproducts. Syngenta requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 23, 2015. Objections and requests for hearings must be received on or before June 22, 2015, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0355, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0355 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before June 22, 2015. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2014–0355, by one of the following methods:

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

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of September 5, 2014 (79 FR 53009) (FRL–9914–98), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3F8225) by Syngenta Crop Protection, LLC., P.O. Box 18300, Greensboro, NC 27419. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the herbicide bicyclopyrone, herbicide, in or on field corn, forage at 0.4 parts per million (ppm); field corn, grain at 0.02 ppm; field corn, stover at 0.5 ppm; popcorn, grain at 0.02 ppm; popcorn, stover at 0.5 ppm; sweet corn, forage at 0.4 ppm; sweet corn, ears at 0.02 ppm; sweet corn, stover at 0.5 ppm; sugarcane, stalks at 0.01 ppm; and cattle, liver at 0.06 ppm. That document referenced a summary of the petition prepared by Syngenta Crop Protection, LLC., the registrant, which is available in the docket, *http://www.regulations.gov.* In the **Federal Register** of February 11, 2015 (80 FR 7559) (FRL–9921–94), EPA published a corrected notice of filing for the import tolerance on sugarcane petition. Comments were received for both items. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has revised the proposed tolerances to corn, field, forage at 0.30 ppm; corn, field, grain at 0.02 ppm; corn, field, stover at 0.40 ppm; corn, pop, grain at 0.02 ppm; corn, pop, stover at 0.40 ppm; corn, sweet, forage at 0.40 ppm; corn, sweet, kernel plus cob with husks removed at 0.03 ppm; corn, sweet, stover at 0.70 ppm; sugarcane, cane at 0.02 ppm; cattle, meat byproducts at 1.5 ppm; goat, meat byproducts at 1.5 ppm; sheep, meat byproducts at 1.5 ppm; horse, meat byproducts at 1.5 ppm; and hog, meat byproducts at 0.15 ppm. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes

exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for bicyclopyrone including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with bicyclopyrone follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The effects of bicyclopyrone are indicative of inhibition of 4-hydroxyphenylpyruvate dioxygenase (HPPD). Plasma tyrosine levels were consistently elevated in rats, rabbits, and dogs (levels in mice were not tested). Consistent with these elevated tyrosine levels, ocular effects (corneal opacity, keratitis) were observed for subchronic and chronic durations through the oral and dermal routes in rats, which was the most sensitive species tested (minor instances in dogs). There were also increased incidences of thyroid follicular hyperplasia and a chronic progressive nephropathy. While minor instances of ocular effects were observed in dogs, different toxicological effects were generally observed. For subchronic oral exposure, clinical signs (moderate hypoactivity, slightly unsteady gait, increased heart rate, regurgitation, and vomiting) were observed, and clinical pathological indicators of toxicity occurred in the eye and the thymus. Following chronic exposure, there was a dose-dependent increase in chromatolysis and swelling of selected neurons in the dorsal root ganglia, and degeneration of nerve fibers in the spinal nerve roots in both sexes. In one female dog at the high dose, corneal opacity and light sensitivity were observed.

Across the database, there were decreased absolute body weights (the only finding in mice for any duration) and food consumption. There were no signs of immunotoxicity or neurotoxicity in rodents.

Bicyclopyrone treatment resulted in developmental toxicity in both rats and rabbits, and there was an increased quantitative fetal susceptibility in both species tested. In rats, maternal toxicity was not observed up to 1000 mg/kg/day. Fetal effects occurred at all doses (≥100 mg/kg/day), and manifested as skeletal variations (increased incidences of full or rudimentary supernumerary ribs, pelvic girdle malpositioned caudal, costal cartilage 11 long). In New Zealand White rabbits, maternal effects consisted of mortality/moribundity in conjunction with minimal food consumption at 200 mg/kg/day. Fetal effects once again occurred at all doses tested (≥10 mg/kg/day). The sole fetal effect at the lowest dose tested was the appearance of the 27th presacral vertebrae. There were two studies in Himalayan rabbits. In both studies, maternal effects consisted of macroscopic findings in the stomach wall and an increased incidence of post-implantation loss at the 250 mg/kg/day dose level. In the first study, fetal effects occurred starting at 50 mg/kg/day and consisted of skeletal variations (increased incidence of the 27th prepelvic vertebra and malpositioned pelvic girdle). In the second study, the increased quantitative fetal susceptibility was not observed due to a change in the dose selection. Fetal effects occurred at 250 mg/kg/day and consisted of external, visceral, and skeletal abnormalities, and visceral variations, skeletal, bone and cartilage variations. In total, the effects in these studies are consistent with effects of other chemicals in this class.

In the two-generation reproductive study in rats, ocular toxicity occurred in parents and offspring and there was no increased offspring susceptibility of any kind. Reproductive effects included changes in sperm parameters, and a decrease of precoital interval.

To determine the mechanism for the thyroid hyperplasia observed in the chronic/carcinogenicity study in rats, two mode-of-action studies were performed. In the in vitro study, bicyclopyrone was negative for thyroid peroxidase inhibition. The results from the in vivo study suggested that the observed thyroid hyperplasia was the result of increased metabolism of thyroid hormones indicated by (1) decreased plasma T3 and T4 levels, (2) increased thyroid follicular cell hypertrophy, (3) increased liver weights associated, and (4) increased hepatocellular centrilobular hypertrophy and increased hepatic uridine diphosphate glucuronyl transferase (UDPGT) activities.

Bicyclopyrone is categorized as having low acute lethality via all routes of administration (Categories III and IV). Bicyclopyrone produces minimal eye irritation and mild acute inhalation toxicity (Toxicity Category IV).

Specific information on the studies received and the nature of the adverse effects caused by bicyclopyrone as well as the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document titled ''Bicyclopyrone: Human Health Risk Assessment for the Section 3 Registration Action on Corn and the Establishment of Permanent Tolerances for Residues in/on Corn and Imported Sugarcane'' at pp. 30–37 in docket ID number EPA–HQ–OPP–2014–0355.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for bicyclopyrone used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR BICYCLOPYRONE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–49 years of age).	LOAEL = 10 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF/UF_L = 10x	Acute RfD = 0.01 mg/kg/day. aPAD = 0.01 mg/kg/day	Prenatal Developmental Study (New Zealand White Rabbits). Developmental LOAEL = 10 mg/kg/day based on skeletal variations (the appearance of the 27th presacral vertebrae).
Acute dietary (General population including infants and children).	No endpoint attributable to a single dose and appropriate for the U.S. general population was seen in the bicyclopyrone toxicological database; therefore, an acute dietary point of departure for the general U.S. population was not established.		
Chronic dietary (All populations)	LOAEL= 10 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF/UF_L = 10x	Chronic RfD = 0.00028 mg/kg/day. cPAD = 0.00028 mg/kg/day	Carcinogenicity Study (rat). LOAEL = 0.28/0.35 mg/kg/day (Male/Female) based on a dose dependent increase in the incidence of opaque eyes and corneal damage in both sexes compared to controls, an increased incidence of thyroid follicular hyperplasia in males, and an increased incidence of chronic progressive nephropathy in the kidneys of males.
Dermal Short- (1–30 days) and Intermediate-Term (1–6 months).	LOAEL = 10 mg/kg/day. DAF = 20.44% UF_A = 10x UF_H = 10x FQPA SF/UF_L = 10x	LOC for MOE = 1000.	Prenatal Developmental Study (New Zealand White Rabbits). Developmental LOAEL = 10 mg/kg/day based on skeletal variations (the appearance of the 27th presacral vertebrae).
Inhalation Short- (1–30 days) and Intermediate-Term (1–6 months).	LOAEL = 10 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF/UF_L = 10x	LOC for MOE = 1000.	Prenatal Developmental Study (New Zealand White Rabbits). Developmental LOAEL = 10 mg/kg/day based on skeletal variations (the appearance of the 27th presacral vertebrae.
Cancer (Oral, dermal, inhalation).	Classification: ''Suggestive evidence of cancer'' based on the presence of rare ocular tumors in male rats. Quantification of bicyclopyrone's carcinogenic potential is not required. A non-linear approach (*i.e.,* RfD) will adequately account for all chronic toxicity, including carcinogenicity that could result from exposure to bicyclopyrone.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to bicyclopyrone, EPA considered exposure under the petitioned-for tolerances. EPA assessed dietary exposures from bicyclopyrone in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments

are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for bicyclopyrone. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 2003–2008 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). The acute dietary analysis was conducted for bicyclopyrone assuming tolerance level residues, default processing factors, and 100% crop treated (CT) information.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 2003–2008 CSFII. The chronic dietary exposure assessment was conducted for bicyclopyrone assuming average field trial residues for crops, tolerance-level residues for livestock commodities, default processing factors, and 100% CT information.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that bicyclopyrone should be classified as ''suggestive evidence of cancer'' based on the presence of rare ocular tumors in male rats. Quantification of bicyclopyrone's carcinogenic potential is not required. A non-linear approach (*i.e.,* RfD) will adequately account for all chronic toxicity, including carcinogenicity that could result from exposure to bicyclopyrone. Using EPA's non-linear approach, the 1000X combined uncertainty factor used to calculate the cRfD/cPAD for the chronic dietary assessment, generates a dose which is 100,000-fold lower than the dose at which the ocular tumors were observed and is thus protective of their potential formation.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for bicyclopyrone in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of bicyclopyrone. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

The Surface Water Concentration Calculator (SWCC) computer model was used to generate surface water Estimated Drinking Water Concentrations (EDWCs), while the Pesticide Root Zone Model for Groundwater (PRZM–GW) and the Screening Concentration in Ground Water (SCI–GROW) models were used to generate groundwater EDWCs.

The maximum acute and chronic surface water EDWCs associated with bicyclopyrone use on corn were 2.87 and 0.857 µg/L, respectively. For groundwater sources of drinking water, the maximum acute and chronic EDWCs of bicyclopyrone in shallow groundwater from PRZM–GW were 3.76 and 3.23 µg/L, respectively. EDWCs of 0.00376 ppm and 0.00323 ppm were used in the acute and chronic analyses, respectively.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Bicyclopyrone is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

There are marked differences among species in the ocular toxicity associated with bicyclopyrone's mechanism of toxicity, the inhibition of HPPD. Ocular effects following treatment with HPPD inhibitor herbicides are seen in the rat but not in the mouse. Monkeys also seem to be recalcitrant to the ocular toxicity induced by HPPD inhibition. One explanation for this species-specific response in ocular opacity may be related to species differences in the clearance of tyrosine. A metabolic pathway exists to remove tyrosine from the blood that involves the liver enzyme tyrosine aminotransferase (TAT). In contrast to rats where ocular toxicity is observed following exposure to HPPD-inhibiting herbicides, mice and humans are unlikely to achieve the levels of plasma tyrosine necessary to produce ocular opacities because the activity of TAT in these species is much greater compared to rats.

HPPD inhibitors (*e.g.,* nitisinone) are used as an effective therapeutic agent to treat patients suffering from rare genetic diseases of tyrosine catabolism. Treatment starts in childhood but is often sustained throughout patient's lifetime. The human experience indicates that a therapeutic dose (1 mg/kg/day dose) of nitisinone has an excellent safety record in infants, children, and adults and that serious adverse health outcomes have not been observed in a population followed for approximately a decade. Rarely, ocular effects are seen in patients with high plasma tyrosine levels; however, these effects are transient and can be readily reversed upon adherence to a restricted protein diet. This observation indicates that an HPPD inhibitor in and of itself cannot easily overwhelm the tyrosine-clearance mechanism in humans.

Therefore, exposures to environmental residues of HPPD-inhibiting herbicides are unlikely to result in the high blood levels of tyrosine and ocular toxicity in humans due to an efficient metabolic process to handle excess tyrosine. The EPA continues to study the complex relationships between elevated tyrosine levels and biological effects in various species. In the future, assessments of HPPD-inhibiting herbicides may consider more appropriate models and cross species extrapolation methods. EPA has not conducted cumulative risk assessment with other HPPD inhibitors.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. The FQPA SF is retained at 10X for all exposure scenarios based on use of a LOAEL for the points of departure. The toxicology database for bicyclopyrone is adequate for characterizing toxicity and quantification of risk for food and non-food uses; however, a LOAEL from the New Zealand white rabbit developmental and chronic/carcinogenicity rat toxicity studies has been used as the POD for several scenarios.

There is no evidence of neurotoxicity in either of the neurotoxicity screening batteries, but there are effects in the chronic dog study. The level of concern is low, however, since the study and POD chosen for the chronic dietary exposure scenario is protective of these

effects. There is evidence of increased quantitative fetal susceptibility following in utero exposure in both rats and rabbits; however, these effects are well characterized and the selected endpoints are protective of the observed fetal effects. Lastly, there are no residual uncertainties in the exposure database.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

Because there are no uses for bicyclopyrone that may result in residential exposures, the aggregate risk consists only of food and water.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to bicyclopyrone will occupy 2.9% of the aPAD for females 13–49 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to bicyclopyrone from food and water will utilize 91% of the cPAD for children 1–2 years old the population group receiving the greatest exposure. There are no residential uses for bicyclopyrone.

3. *Short-term risk.* A short-term adverse effect was identified; however, bicyclopyrone is not registered for any use patterns that would result in short-term residential exposure. Short-term risk is assessed based on short-term residential exposure plus chronic dietary exposure. Because there is no short-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short-term risk for bicyclopyrone.

4. *Intermediate-term risk.* An intermediate-term adverse effect was identified; however, bicyclopyrone is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for bicyclopyrone.

5. *Aggregate cancer risk for U.S. population.* A non-linear approach (*i.e.,* RfD) will adequately account for all chronic toxicity, including carcinogenicity that could result from exposure to bicyclopyrone.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to bicyclopyrone residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology liquid chromatography-mass spectroscopy/mass spectroscopy (LC–MS/MS) methods for tolerance enforcement have been developed and independently validated. For all matrices and analytes, the level of quantification (LOQ), defined as the lowest spiking level where acceptable precision and accuracy data were obtained, was determined to be 0.01 ppm for each of the common moieties, SYN503780 and CSCD686480, for a combined LOQ of 0.02 ppm is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established a MRL for bicyclopyrone.

C. Response to Comments

Seven comments were received in response to the September 5, 2014 notice of filing. Three of the comments were relevant to bicyclopyrone, the other four comments were relevant to other actions that were batched together with bicyclopryone in the same **Federal Register** document. The commenters noted that pesticides and bicyclopyrone pose a risk to pollinators. The agency has determined that bicyclopyrone is moderately to practically non-toxic to young adult honey bees (Apis mellifera) on an acute exposure basis.

One comment was received in response to the February 11, 2015 corrected notice of filing for the import tolerance on sugarcane petition. This comment was associated with an action that was batched together with bicyclopyrone in the same **Federal Register** document and was not relevant to bicyclopyrone.

D. Revisions to Petitioned-For Tolerances

The proposed tolerance levels for most corn (field, pop, and sweet) raw agricultural commodities (RAC) differ slightly from those being set by the EPA. Although both the registrant and EPA have used the OECD (Organization for Economic Cooperation and Development) calculation procedures to obtain tolerance levels, EPA only included data from trials conducted according to the proposed label directions. The registrant proposed a tolerance level for sugarcane, cane below the method LOQ (0.01 ppm); the appropriate level is at the LOQ (0.02 ppm). EPA's tolerance levels for livestock meat byproducts were based on the highest tissue-to-feed ratio calculated from the dose closest to maximum dietary burdens. As residues are expected in both liver and kidney, the appropriate RAC is ''meat byproducts.'' Per EPA policy, tolerances are set for all ruminants, not just cattle. EPA made numerous changes in the commodity definitions and revisions to the tolerance expression in order to conform to current Agency policy.

V. Conclusion

Therefore, tolerances are established for residues of the herbicide bicyclopyrone in or on corn, field, forage at 0.30 ppm; corn, field, grain at 0.02 ppm; corn, field, stover at 0.40 ppm; corn, pop, grain at 0.02 ppm; corn, pop, stover at 0.40 ppm; corn, sweet, forage at 0.40 ppm; corn, sweet, kernel plus cob with husks removed at 0.03 ppm; corn, sweet, stover at 0.70 ppm; sugarcane, cane at 0.02 ppm; cattle, meat byproducts at 1.5 ppm; goat, meat byproducts at 1.5 ppm; sheep, meat byproducts at 1.5 ppm; horse, meat byproducts at 1.5 ppm; and hog, meat byproducts at 0.15 ppm

VI. Statutory and Executive Order Reviews

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

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 17, 2015.

William Jordan,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Add § 180.682 to subpart C to read as follows:

§ 180.682 Bicyclopyrone; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the herbicide bicyclopyrone (4-hydroxy-3-[[2-[(2-methoxyethoxy)methyl]-6-(trifluoromethyl)-3-pyridinyl]carbonyl]bicyclo[3.2.1]oct-3-en-2-one), including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of the common moieties SYN503780 (2-[(2-methoxyethoxy)methyl]-6-(trifluoromethyl)-3-pyridinecarboxylic acid) and CSCD686480 (2-[(2-hydroxyethoxy)methyl]-6-(trifluoromethyl)-3-pyridinecarboxylic acid), calculated as the stoichiometric equivalent of bicyclopyrone, in or on the commodities.

Commodity	Parts per million
Corn, field, forage	0.30
Corn, field, grain	0.02
Corn, field, stover	0.40
Corn, pop, grain	0.02
Corn, pop, stover	0.40
Corn, sweet, forage	0.40
Corn, sweet, kernel plus cob with husks removed	0.03
Corn, sweet, stover	0.70
Sugarcane, cane [1]	0.02
Cattle, meat byproducts	1.5
Goat, meat byproducts	1.5
Sheep, meat byproducts	1.5
Horse, meat byproducts	1.5
Hog, meat byproducts	0.15

[1] There are no U.S. Registrations on Sugarcane as of March 13, 2015.

(2) [Reserved].

(b) [Reserved].

[FR Doc. 2015–09482 Filed 4–22–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 435

Eligibility in the States, District of Columbia, the Northern Mariana Islands, and American Samoa

CFR Correction

In Title 42 of the Code of Federal Regulations, Parts 430 to 481, revised as of October 1, 2014, on page 198, in § 435.912, revise paragraphs (a) and (b); redesignate paragraphs (c), (d), and (e) as paragraphs (e), (f), and (g), respectively; and add new paragraphs (c) and (d) to read as follows:

§ 435.912 Timely determination of eligibility. [Corrected]

(a) For purposes of this section—

(1) ''Timeliness standards'' refer to the maximum period of time in which every applicant is entitled to a determination

of eligibility, subject to the exceptions in paragraph (e) of this section.

(2) ''Performance standards'' are overall standards for determining eligibility in an efficient and timely manner across a pool of applicants, and include standards for accuracy and consumer satisfaction, but do not include standards for an individual applicant's determination of eligibility.

(b) Consistent with guidance issued by the Secretary, the agency must establish in its State plan timeliness and performance standards for, promptly and without undue delay—

(1) Determining eligibility for Medicaid for individuals who submit applications to the single State agency or its designee.

(2) Determining potential eligibility for, and transferring individuals' electronic accounts to, other insurance affordability programs pursuant to § 435.1200(e) of this part.

(3) Determining eligibility for Medicaid for individuals whose accounts are transferred from other insurance affordability programs, including at initial application as well as at a regularly-scheduled renewal or due to a change in circumstances.

(c)(1) The timeliness and performance standards adopted by the agency under paragraph (b) of this section must cover the period from the date of application or transfer from another insurance affordability program to the date the agency notifies the applicant of its decision or the date the agency transfers the individual to another insurance affordability program in accordance with § 435.1200(e) of this part, and must comply with the requirements of paragraph (c)(2) of this section, subject to additional guidance issued by the Secretary to promote accountability and consistency of high quality consumer experience among States and between insurance affordability programs.

(2) Timeliness and performance standards included in the State plan must account for—

(i) The capabilities and cost of generally available systems and technologies;

(ii) The general availability of electronic data matching and ease of connections to electronic sources of authoritative information to determine and verify eligibility;

(iii) The demonstrated performance and timeliness experience of State Medicaid, CHIP and other insurance affordability programs, as reflected in data reported to the Secretary or otherwise available; and

(iv) The needs of applicants, including applicant preferences for mode of application (such as through an internet Web site, telephone, mail, in-person, or other commonly available electronic means), as well as the relative complexity of adjudicating the eligibility determination based on household, income or other relevant information.

(3) Except as provided in paragraph (e) of this section, the determination of eligibility for any applicant may not exceed—

(i) Ninety days for applicants who apply for Medicaid on the basis of disability; and

(ii) Forty-five days for all other applicants.

(d) The agency must inform applicants of the timeliness standards adopted in accordance with this section.

* * * * *

[FR Doc. 2015–09487 Filed 4–22–15; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

Anthropomorphic Test Devices

CFR Correction

In Title 49 of the Code of Federal Regulations, Parts 572 to 999, revised as of October 1, 2014, on page 160, in § 572.198, reinstate paragraph (b)(10) to read as follows:

§ 572.198 Pelvis acetabulum.

* * * * *

(b) * * *

(10) The dummy's pelvis is impacted at the acetabulum at 6.7 ± 0.1 m/s.

* * * * *

[FR Doc. 2015–09488 Filed 4–22–15; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 140918791–4999–02]

RIN 0648–XD908

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the 2015 total allowable catch of pollock for Statistical Area 630 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 20, 2015, through 1200 hrs, A.l.t., June 1, 2015.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

The B season allowance of the 2015 total allowable catch (TAC) of pollock in Statistical Area 630 of the GOA is 4,800 metric tons (mt) as established by the final 2015 and 2016 harvest specifications for groundfish of the (80 FR 10250, February 25, 2015) and inseason adjustment (80 FR 16996, March 31, 2015).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the 2015 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,300 mt and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is

impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 17, 2015.

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

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: April 20, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–09450 Filed 4–20–15; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 131021878–4158–02]

RIN 0648–XD909

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Aleutian district (CAI) of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access fishery. This action is necessary to prevent exceeding the 2015 total allowable catch (TAC) of Pacific ocean perch in the CAI allocated to vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 20, 2015, through 2400 hrs, A.l.t., December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

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

The 2015 TAC of Pacific ocean perch, in the CAI, allocated to vessels participating in the BSAI trawl limited access fishery was established as a directed fishing allowance of 555 metric tons by the final 2014 and 2015 harvest specifications for groundfish in the BSAI (79 FR 12108, March 4, 2014).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the CAI by vessels participating in the BSAI trawl limited access fishery.

After the effective dates of this closure, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the Pacific ocean perch directed fishery in the CAI for vessels participating in the BSAI trawl limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 17, 2015. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: April 20, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–09454 Filed 4–20–15; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 140918791–4999–02]

RIN 0648–XD910

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Trawl Catcher Vessels in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2015 Pacific cod total allowable catch apportioned to trawl catcher vessels in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), April 20, 2015, through 1200 hours, A.l.t., June 10, 2015.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of the 2015 Pacific cod total allowable catch (TAC) apportioned to trawl catcher vessels in the Central Regulatory Area of the GOA is 9,623 metric tons (mt), as established

by the final 2015 and 2016 harvest specifications for groundfish of the GOA (80 FR 10250, February 25, 2015).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2015 Pacific cod TAC apportioned to trawl catcher vessels in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 8,623 mt and is setting aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 17, 2015.

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

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: April 20, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–09456 Filed 4–20–15; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 80, No. 78
Thursday, April 23, 2015

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

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[Docket No. EERE–2013–BT–TP–0055]

RIN 1905–AD50

Energy Conservation Program: Test Procedure for Pumps

Correction

In proposed rule document 2015–06945 beginning on page 17585 in the issue of Wednesday, April 1, 2015, make the following correction:

On page 17637, in the first column, beginning with the third paragraph under the section heading ''E. Issues on Which DOE Seeks Comment'' and continuing through to the third column, on page 17639 up to the heading entitled ''VI. Approval of the Office of the Secretary'', revise the existing text to read as follows:

(2) DOE requests comment on the proposed definitions for ''pump,'' ''bare pump,'' ''mechanical equipment,'' ''driver,'' and ''control.''

(3) DOE requests comment on the proposed definitions for ''continuous control'' and ''non-continuous control.''

(4) DOE also requests comment and information regarding how often pumps with continuous or non-continuous controls are packaged and distributed in commerce, by manufacturers, with integrated sensors and feedback logic that would allow such pumps to automatically actuate.

(5) DOE also requests comment on the likelihood of pumps with continuous and non-continuous controls being distributed in commerce, but never paired with any sensor or feedback mechanisms that would enable energy savings.

(6) DOE requests comment on the proposed definition for ''basic model'' as applied to pumps. Specifically, DOE is interested in comments on DOE's proposal to allow manufacturers the option of rating pumps with trimmed impellers as a single basic model or separate basic models, provided the rating for each pump model is based on the maximum impeller diameter for that model.

(7) DOE requests comment on the proposed definition for ''full impeller.''

(8) DOE requests comment on the proposal to require that all pump models be rated in a full impeller configuration only.

(9) DOE requests comment on any other characteristics of pumps that are unique from other commercial and industrial equipment and may require modifications to the definition of ''basic model,'' as proposed.

(10) DOE requests comment on the proposed applicability of the test procedure to the five pump equipment classes noted above, namely ESCC, ESFM, IL, RSV, and VTS pumps.

(11) DOE requests comment on the proposed definitions for end suction pump, end suction frame mounted pump, end suction close-coupled pump, in-line pump, radially split multi-stage vertical in-line casing diffuser pump, rotodynamic pump, single axis flow pump, and vertical turbine submersible pump.

(12) DOE requests comment on whether the references to ANSI/HI nomenclature are necessary as part of the equipment definitions in the regulatory text, are likely to cause confusion due to inconsistencies, and whether discussing the ANSI/HI nomenclature in this preamble would provide sufficient reference material for manufacturers when determining the appropriate equipment class for their pump models.

(13) DOE requests comment on whether it needs to clarify the flow direction to distinguish RSV pumps from other similar pumps when determining test procedure and standards applicability.

(14) DOE requests comment on whether any additional language is necessary in the proposed RSV definition to make the exclusion of immersible pumps clearer.

(15) DOE requests comment on its proposal to exclude circulators and pool pumps from the scope of this test procedure rulemaking.

(16) DOE requests comment on the proposed definitions for circulators and dedicated-purpose pool pumps.

(17) DOE requests comment on the extent to which ESCC, ESFM, IL, and RSV pumps require attachment to a rigid foundation to function as designed.

Specifically, DOE is interested to know if any pumps commonly referred to as ESCC, ESFM, IL, or RSV do not require attachment to a rigid foundation.

(18) DOE requests comment on its initial determination that axial/mixed flow and PD pumps are implicitly excluded from this rulemaking based on the proposed definitions and scope parameters. In cases where commenters suggest a more explicit exclusion be used, DOE requests comment on the appropriate changes to the proposed definitions or criteria that would be needed to appropriately differentiate axial/mixed flow and/or PD pumps from the specific rotodynamic pumps equipment classes proposed for coverage in this NOPR.

(19) DOE requests comment on the proposed definition for ''clean water pump.''

(20) DOE requests comment on its proposal to incorporate by reference the definition for ''clear water'' in HI 40.6–2014 to describe the testing fluid to be used when testing pumps in accordance with the DOE test procedure.

(21) DOE requests comment on the proposed definition for ''fire pump,'' ''selfpriming pump,'' ''prime-assisted pump,'' and ''sealless pump.''

(22) Regarding the proposed definition of a self-priming pump, DOE notes that such pumps typically include a liquid reservoir above or in front of the impeller to allow recirculating water within the pump during the priming cycle. DOE requests comment on any other specific design features that enable the pump to operate without manual re-priming, and whether such specificity is needed in the definition for clarity.

(23) DOE requests comment on the proposed specifications and criteria to determine if a pump is designed to meet a specific Military Specification and if Military Specifications other than MIL–P–17639F should be referenced.

(24) DOE requests comment on excluding the following pumps from the test procedure: fire pumps, self-priming pumps, prime-assist pumps, sealless pumps, pumps designed to be used in a nuclear facility subject to 10 CFR part 50—Domestic Licensing of Production and Utilization Facilities, and pumps meeting the design and construction requirements set forth in Military

Specification MIL–P–17639F, ''Pumps, Centrifugal, Miscellaneous Service, Naval Shipboard Use'' (as amended).

(25) DOE requests comment on the listed design characteristics (power, flow, head, design temperature, design speed, and bowl diameter) as limitations on the scope of pumps to which the proposed test procedure would apply.

(26) DOE requests comment on the proposed definition for ''bowl diameter'' as it would apply to VTS pumps.

(27) DOE requests comment on its proposal to test pumps sold with non-electric drivers as bare pumps.

(28) DOE requests comment on its proposal that any pump distributed in commerce with a single-phase induction motor be tested and rated in the bare pump configuration, using the calculation method.

(29) DOE requests comment from interested party on any categories of electric motors, except submersible motors, that: (1) Are used with pumps considered in this rulemaking and (2) typically have efficiencies lower than the default nominal full load motor efficiency for NEMA Design A, NEMA Design B, or IEC Design N motors. . . .

(30) DOE requests comment on the proposed load points and weighting for PEICL for bare pumps and pumps sold with motors and PEIVL for pumps inclusive of motors and continuous or non-continuous controls.

(31) DOE requests comments on the proposed PEICL and PEIVL metric architecture.

(32) DOE requests comment on its proposal to base the default motor horsepower for the minimally compliant pump on that of the pump being evaluated. That is, the motor horsepower for the minimally compliant pump would be based on the calculated pump shaft input power of the pump when evaluated at 120 percent of BEP flow for bare pumps and the horsepower of the motor with which that pump is sold for pumps sold with motors and controls (with or without continuous or non-continuous controls).

(33) DOE requests comment on using HI 40.6–2014 as the basis of the DOE test procedure for pumps.

(34) DOE requests comment on its proposal to not incorporate by reference section 40.6.5.3, section A.7, and appendix B of HI 40.6–2014 as part of the DOE test procedure.

(35) DOE requests comment on its proposal to require that data be collected at least every 5 seconds for all measured quantities.

(36) DOE requests comment on its proposal to allow dampening devices, as described in section 40.6.3.2.2, but with the proviso noted above (*i.e.*, permitted to integrate up to the data collection interval, or 5 seconds).

(37) DOE requests comment on its proposal to require data collected at the pump speed measured during testing to be normalized to the nominal speeds of 1,800 and 3,600.

(38) DOE requests comment on its proposal to adopt the requirements in HI 40.6–2014 regarding the deviation of tested speed from nominal speed and the variation of speed during the test. Specifically, DOE is interested if maintaining tested speed within ±1 percent of the nominal speed is feasible and whether this approach would produce more accurate and repeatable test results.

(39) DOE requests comment on the proposed voltage, frequency, voltage unbalance, total harmonic distortion, and impedance requirements that are required when performing a wire-to-water pump test or when testing a bare pump with a calibrated motor. Specifically, DOE requests comments on whether these tolerances can be achieved in typical pump test labs, or whether specialized power supplies or power conditioning equipment would be required.

(40) DOE requests comment on its proposal to test RSV and VTS pumps in their 3- and 9-stage versions, respectively, or the next closest number of stages if the pump model is not distributed in commerce with that particular number of stages.

(41) DOE requests comment on its proposal to use a linear regression of the pump shaft input power with respect to flow rate at all the tested flow points greater than or equal to 60 percent of expected BEP flow to determine the pump shaft input power at the specific load points of 75, 100, and 110 percent of BEP flow. DOE is especially interested in any pump models for which such an approach would yield inaccurate measurements.

(42) DOE requests comment on its proposal that for pumps with BEP at run-out, the BEP would be determined at 40, 50, 60, 70, 80, 90, and 100 percent of expected BEP flow instead of the seven data points described in section 40.6.5.5.1 of HI 40.6–2014 and that the constant load points for pumps with BEP at run-out shall be 100, 90, and 65 percent of BEP flow, instead of 110, 100, and 75 percent of BEP flow.

(43) DOE requests comment on the type and accuracy of required measurement equipment, especially the equipment required for electrical power measurements for pumps sold with motors having continuous or noncontinuous controls.

(44) DOE requests comment on its proposal to conduct all calculations and corrections to nominal speed using raw measured values and that the PERCL and PEICL or PERVL and PEIVL, as applicable, be reported to the nearest 0.01.

(45) DOE requests comment on its proposal to determine the default motor horsepower for rating bare pumps based on the pump shaft input power at 120 percent of BEP flow. DOE is especially interested in any pumps for which the 120 percent of BEP flow load point would not be an appropriate basis to determine the default motor horsepower (*e.g.*, pumps for which the 120 percent of BEP flow load point is a significantly lower horsepower than the BEP flow load point).

(46) DOE requests comment on its proposal that would specify the default, minimally compliant nominal full load motor efficiency based on the applicable minimally allowed nominal full load motor efficiency specified in DOE's energy conservation standards for NEMA Design A, NEMA Design B, and IEC Design N motors at 10 CFR 431.25 for all pumps except pumps sold with submersible motors.

(47) DOE requests comment on the proposed default minimum full load motor efficiency values for submersible motors.

(48) DOE requests comment on defining the proposed default minimum motor full load efficiency values for submersible motors relative to the most current minimum efficiency standards levels for regulated electric motors, through the use of ''bands'' as presented in Table III.6.

(49) DOE requests comment on the proposal to allow the use of the default minimum submersible motor full load efficiency values presented in Table III.6 to rate: (1) VTS bare pumps, (2) pumps sold with submersible motors, and (3) pumps sold with submersible motors and continuous or noncontinuous controls as an option instead of wire-to-water testing.

(50) DOE requests comment on the development and use of the motor part load loss factor curves to describe part load performance of covered motors and submersible motors including the default motor specified in section III.D.1 for bare pumps and calculation of PERSTD.

(51) DOE requests comment on its proposal to determine the part load losses of motors covered by DOE's electric motor energy conservation standards at 75, 100, and 110 percent of BEP flow based on the nominal full load efficiency of the motor, as determined in accordance with DOE's electric motor

test procedure, and the same default motor part load loss curve applied to the default motor in test method A.1 for the bare pump.

(52) DOE requests comment on its proposal to determine the PERCL of pumps sold with submersible motors using the proposed default minimum efficiency values for submersible motors and applying the same default motor part load loss curve to the default motor in test method A.1 for the bare pump.

(53) DOE also requests comment on its proposal that pumps sold with motors that are not addressed by DOE's electric motors test procedure (except submersible motors) would be rated based on a wire-to-water, testing-based approach.

(54) DOE requests comment on the proposed system curve shape to use, as well as whether the curve should go through the origin instead of the statically loaded offset.

(55) DOE requests comment on the proposed calculation approach for determining pump shaft input power for pumps sold with motors and continuous controls when rated using the calculation-based method.

(56) DOE requests comment on the proposal to adopt four part load loss factor equations expressed as a function of the load on the motor (*i.e.*, motor brake horsepower) to calculate the losses of a combined motor and continuous controls, where the four curves would correspond to different horsepower ratings of the continuous control.

(57) DOE also requests comment on the accuracy of the proposed equation compared to one that accounts for multiple performance variables (speed and torque).

(58) DOE requests comment on the proposed 5 percent scaling factor that was applied to the measured VSD efficiency data to generate the proposed coefficients of the four part load loss curves. Specifically, DOE seeks comment on whether another scaling factor or no scaling factor would be more appropriate in this context.

(59) DOE requests comment on the variability of control horsepower ratings that might be distributed in commerce with a given pump and motor horsepower.

(60) DOE requests comment and data from interested parties regarding the extent to which the assumed default part load loss curve would represent minimum efficiency motor and continuous control combinations.

(61) DOE requests comment on its proposal to require testing of each individual bare pump as the basis for a certified PEICL or PEIVL rating for one or more pump basic models.

(62) DOE requests comment on its proposal to limit the use of calculations and algorithms in the determination of pump performance to the calculation-based methods proposed in this NOPR.

(63) DOE requests comment on its proposal to determine BEP for pumps rated with a testing-based method by using the ratio of input power to the driver or continuous control, if any, over pump hydraulic output. DOE also seeks input on the degree to which this method may yield significantly different BEP points from the case where BEP is determined based on pump efficiency.

(64) DOE requests comment on the proposed testing-based method for pumps sold with motors and continuous or non-continuous controls.

(65) DOE requests comment on the proposed testing-based method for determining the input power to the pump for pumps sold with motors and non-continuous controls.

(66) DOE requests comment on any other type of non-continuous control that may be sold with a pump and for which the proposed test procedure would not apply.

(67) DOE requests comment on its proposal to establish calculation-based test methods as the required test method for bare pumps and testing-based methods as the required test method for pumps sold with motors that are not regulated by DOE's electric motor energy conservation standards, except for submersible motors, or for pumps sold with any motors and with noncontinuous controls.

(68) DOE also requests comment on the proposal to allow either testing-based methods or calculation-based methods to be used to rate pumps sold with continuous control-equipped motors that are either (1) regulated by DOE's electric motor standards or (2) submersible motors.

(69) DOE requests comment on the level of burden to include with any certification requirements the reporting of the test method used by a manufacturer to certify a given pump basic model as compliant with any energy conservation standards DOE may set.

(70) DOE requests comment on the proposed sampling plan for certification of commercial and industrial pump models.

(71) DOE requests comment regarding the size of pump manufacturing entities and the number of manufacturing businesses represented by this market.

(72) DOE requests comment on its assumption that, for most pump models, only physical testing of the underlying bare pump model is required, and subsequent ratings for that bare pump sold with a motor or motor and continuous control can be based on calculations only.

(73) DOE requests information on the percentage of pump models for which the rating of the bare pump, pump sold with a motor, and pump sold with a motor and controls cannot be based on the same fundamental physical test of the bare pump. For example, DOE is interested in the number of pump models sold with motors that are not covered by DOE's energy conservation standards for electric motors or the number of pump models sold with controls that would not meet DOE's definition of continuous control.

(74) DOE requests comment on the testing currently conducted by pump manufacturers and the magnitude of incremental changes necessary to transform current test facilities to conduct the DOE test procedure as described in this NOPR.

(75) DOE requests comment on its assumption that using a non-calibrated test motor and VFD would be the most common and least costly approach for testing bare pumps in accordance with the proposed DOE test procedure.

(76) DOE requests comment on the estimates of materials and costs to build a pump testing facility as presented.

(77) DOE requests comment on the test facility description and measurement equipment assumed in DOE's estimate of burden.

(78) DOE requests comment and information regarding the burden associated with achieving the power quality requirements proposed in the NOPR.

(79) DOE requests comment on the number of pump models per manufacturer that would be required to use the wire-to-water test method to certify pump performance.

(80) DOE requests comment on the estimation of the portion of pumps that would need to be newly certified or recertified annually.

(81) DOE requests comment on the use of annual sales as the financial indicator for this analysis and whether another financial indicator would be more representative to assess the burden upon the pump manufacturing industry.

(82) DOE requests comment on its conclusion that the proposed rule may have a significant impact on a substantial number of small entities. DOE is particularly interested in feedback on the assumptions and estimates made in the analysis of burden associated with implementing the proposed DOE test procedure.

(83) DOE requests comment on the burden estimate to comply with the proposed recordkeeping requirements.

[FR Doc. C1–2015–06945 Filed 4–22–15; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF EDUCATION

34 CFR Parts 361, 363, and 397

[Docket ID ED–2015–OSERS–0001]

State Vocational Rehabilitation Services Program; State Supported Employment Services Program; Limitations on Use of Subminimum Wage

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of public meetings.

SUMMARY: The Secretary announces plans to hold two public meetings to seek comments about the proposed regulatory changes contained in a notice of proposed rulemaking (NPRM) that was published in the **Federal Register** on April 16, 2015, which would implement statutory changes to the State Vocational Rehabilitation Services and the State Supported Employment Services programs, as well as provisions governing Limitations on the Use of Subminimum Wage that fall under the Secretary's purview. The statutory changes made by the Workforce Innovation and Opportunity Act (WIOA), which amended the Rehabilitation Act of 1973 (Rehabilitation Act), form the basis for this NPRM. In addition, the Secretary proposes to update, clarify, and improve the current regulations.

DATES: The meetings will take place on April 30, 2015, and May 20, 2015.

ADDRESSES: We will hold two public meetings about the NPRM:

1. April 30, 2015, 1:00 p.m. to 5:00 p.m. EDT, Washington-Lyndon Baines Johnson (LBJ), U.S. Department of Education Building, 400 Maryland Ave. SW., Barnard Auditorium, Washington, DC 20202.

2. May 20, 2015, 1:00 p.m. to 5:00 p.m. PDT, Sacramento—California Department of Rehabilitation, 721 Capitol Mall, Room 242, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Janet LaBreck, U.S. Department of Education, 400 Maryland Avenue SW., room 5086, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7488 or by email: *Janet.LaBreck@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The Workforce Innovation and Opportunity Act (WIOA) (Pub. L. 113–128), signed into law on July 22, 2014, made significant changes to the Rehabilitation Act of 1973 (Rehabilitation Act). As a result, in the separate NPRM (80 FR 21059, April 16, 2015), the Secretary proposes to amend parts 361 and 363 of title 34 of the Code of Federal Regulations (CFR). These parts, respectively, implement the:

- State Vocational Rehabilitation (VR) Services program; and
- State Supported Employment Services program.

In addition, WIOA added section 511 to title V of the Act. Section 511 limits the payment of subminimum wages to individuals with disabilities by employers holding special wage certificates under the Fair Labor Standards Act (FLSA). Although the Department of Labor administers the FLSA, some requirements of section 511 fall under the purview of the Department of Education. Therefore, the Secretary proposes to add a new part 397 to title 34 of the CFR to implement those particular provisions.

The proposed changes are further described under the *Summary of Proposed Changes* and *Significant Proposed Regulations* sections of the separate NPRM related to 34 CFR parts 361, 363, and 397.

Announcement of Public Meetings: The Office of Special Education and Rehabilitative Services will hold two public meetings during April and May of 2015. The meetings will provide the public with the opportunity to present public comments on only the separate NPRM amending 34 CFR parts 361, 363, and 397, which is the NPRM associated with Docket ID ED–2015–OSERS–0001. It is likely that each participant will be limited to five minutes. Speakers may also submit written comments at the public meetings. In addition, the Department will accept written comments through *www.regulations.gov,* as explained in the separate NPRM. This notice provides specific information about dates, locations, and times of these meetings in the **ADDRESSES** section.

Accessible Format: Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities at the Public Meetings: The meeting sites are accessible to individuals with disabilities, and sign language interpreters will be available. If you will need an accommodation or auxiliary aid other than a sign language interpreter in order to participate in the meeting (*e.g.,* other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in accessible format), please contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested accommodation or auxiliary aid because of insufficient time to arrange it.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature of this site, you can limit your search to documents published by the Department.

Dated: April 13, 2015.

Sue Swenson,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2015–09318 Filed 4–22–15; 8:45 am]

BILLING CODE 4000–01–P

POSTAL SERVICE

39 CFR Part 501

Revisions to the Requirements for Authority To Manufacture and Distribute Postage Evidencing Systems

AGENCY: Postal Service.™

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to revise the rules concerning

authorization to manufacture and distribute postage evidencing systems to reflect new revenue assurance practices.

DATES: Submit comments on or before May 26, 2015.

ADDRESSES: Mail or deliver written comments to the Manager, Payment Technology, U.S. Postal Service®, 475 L'Enfant Plaza SW., Room 3500, Washington, DC 20260. You may inspect and photocopy all written comments at the Payment Technology office by appointment only between the hours of 9 a.m. and 4 p.m., Monday through Friday by calling 1–202–268–7613 in advance. Email and faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Marlo Kay Ivey, Business Systems Analyst, Payment Technology, U.S. Postal Service, (202) 268–7613.

SUPPLEMENTARY INFORMATION: These proposed changes to the CFR support the ongoing effort of the Postal Service (USPS) to collect the appropriate revenue on mail pieces in a more automated fashion. Presently the system relies on a manual process to weigh and rate pieces and collect at the point of induction or at the point of delivery. The USPS is upgrading mail processing equipment to validate postage paid on individual pieces and working with the PC Postage Providers to make corrections to the postage paid collecting additional revenue when appropriate with an electronic process. The PC Postage Providers will have piece level information and interface with the customers to make the needed postage corrections. Customers will have the opportunity to appeal the process in an electronic format. The USPS will be the final decision maker in all disputes.

List of Subjects in 39 CFR Part 501

Administrative practice and procedure.

Accordingly, for the reasons stated, 39 CFR part 501 is proposed to be amended as follows:

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE EVIDENCING SYSTEMS

■ 1. The authority citation for 39 CFR part 501 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605, Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended); 5 U.S.C. App. 3.

■ 2. In § 501.1, revise paragraph (g) to read as follows:

§ 501.1 Definitions.

* * * * *

(g) A *customer* is a person or entity authorized by the Postal Service to use a Postage Evidencing System as an end user in accordance with *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) 604 Postage Payment Methods and Refunds, including 604.4.0 Postage Meters and PC Postage Products (Postage Evidencing Systems).

■ 3. In § 501.2, revise paragraph (d) to read as follows:

§ 501.2 Postage Evidencing System Provider authorization.

* * * * *

(d) Approval shall be based upon satisfactory evidence of the applicant's integrity and financial responsibility, commitment to comply with the Postal Service's revenue assurance practices as outlined in section 501.16, and a determination that disclosure to the applicant of Postal Service customer, financial, or other data of a commercial nature necessary to perform the function for which approval is sought would be appropriate and consistent with good business practices within the meaning of 39 U.S.C. 410(c)(2). The Postal Service may condition its approval upon the applicant's agreement to undertakings that would give the Postal Service appropriate assurance of the applicant's ability to meet its obligations under this section, including but not limited to the method and manner of performing certain financial, security, and servicing functions, and the need to maintain sufficient financial reserves to guarantee uninterrupted performance of not less than 3 months of operation.

* * * * *

■ 4. In § 501.16, add paragraph (i) to read as follows:

§ 501.16 PC postage payment methodology.

* * * * *

(i) *Revenue Assurance.* To operate PC Postage systems, the provider must support business practices to assure Postal Service revenue and accurate payment from customers. Specifically, the provider is required to notify the customer and adjust the balance in the postage evidencing system or otherwise facilitate postage corrections to address any postage discrepancies as directed by the Postal Service, subject to the applicable notification periods and dispute mechanisms available to customers for these corrections. The Postal Service will supply the provider with the necessary detail to justify the correction and amount of the postage correction to be used in the adjustment process. The provider must supply customers with visibility into the identified postage correction, facilitate a payment adjustment from the customer in the amount equivalent to the identified postage discrepancies to the extent possible, and enable customers to submit electronic disputes of such postage discrepancies to the Postal Service. Further if the Customer does not have funds sufficient to cover the amount of the discrepancies or the postage discrepancies have not been resolved, the provider may be required to temporarily suspend or permanently shut down the customer's ability to print PC Postage as described in the Domestic Mail Manual section 604.4.

■ 5. In § 501.18, revise paragraph (b)(2) and add paragraph (c)(6) to read as follows:

§ 501.18 Customer information and authorization.

* * * * *

(b)

* * * * *

(2) Within five years preceding submission of the information, the customer violated any standard for the care or use of the Postage Evidencing System, including any unresolved identified postage discrepancies that resulted in revocation of that customer's authorization.

* * * * *

(c)

* * * * *

(6) The customer has any unresolved postage discrepancies.

* * * * *

Stanley F. Mires,

Attorney, Federal Requirements.

[FR Doc. 2015–09424 Filed 4–22–15; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2013–0436; EPA–R05–OAR–2014–0663; FRL–9926–26–Region–5]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Midwest Generation Variances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve into the Illinois regional haze State Implementation Plan (SIP) variances affecting the following Midwest Generation, LLC facilities: Crawford Generating Station (Cook County), Joliet Generating Station (Will County),

Powerton Generating Station (Tazewell County), Waukegan Generating Station (Lake County), and Will County Generating Station (Will County). The Illinois Environmental Protection Agency (IEPA) submitted these variances to EPA for approval on May 16, 2013, and August 18, 2014.

DATES: Comments must be received on or before May 26, 2015.

ADDRESSES: Submit your comments, identified by Docket ID Nos. EPA–R05–OAR–2013–0436 and EPA–R05–OAR–2014–0663, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: aburano.douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Doug Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Doug Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID Nos. EPA–R05–OAR–2013–0436 and EPA–R05–OAR–2014–0663. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. 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 instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All 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 material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886–1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?
II. What is the background for this action?
III. What is EPA's analysis of the variances for Midwest Generation?
IV. What action is EPA taking?
V. Incorporation by Reference
VII. Statutory and Executive Order Reviews

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

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background for this action?

Regional haze is a visibility impairment that is caused by the cumulative emissions of fine particles ($PM_{2.5}$) (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon and dust) and their precursors (sulfur dioxide (SO_2), nitrogen oxides (NO_X), and in some cases ammonia and volatile organic compounds) from numerous sources over a wide geographic area. Fine particulate precursors react in the atmosphere to form $PM_{2.5}$. Aerosol $PM_{2.5}$ reduces the clarity and distance one can see by scattering and absorbing light.

The visibility protection program under sections 169A, 169B, and 110(a)(2)(J) of the Clean Air Act (CAA) is designed to protect visibility in national parks and wilderness areas (Class I areas). On December 2, 1980, EPA promulgated regulations, known as ''reasonably attributable visibility impairment (RAVI),'' to address visibility impairment in Class I areas that is reasonably attributable to a single source or small group of sources. On July 1, 1999, EPA promulgated the Regional Haze Rule which revised existing visibility regulations to incorporate provisions addressing regional haze impairment. EPA's Regional Haze Rule, as codified in Title 40 Code of Federal Regulations part 51.308 (40 CFR 51.308), requires states to submit regional haze SIPs. Among other things, the regional haze SIPs must include provisions requiring certain sources to install and operate best available retrofit technology (BART).

At 40 CFR 51.308(e)(2), the Regional Haze Rule allows states to meet BART

requirements by mandating alternative measures in lieu of mandating source-specific BART, so long as the alternative measures provide better visibility protection. Given the regional nature of visibility impairment, an alternative that results in lower emissions of SO_2 and NO_X will generally provide better visibility protection. Thus, in the absence of a difference in the spatial distribution of emissions, a modeling analysis is generally not necessary to be able to conclude that an alternative strategy with lower SO_2 and NO_X emissions provides better visibility protection.

On June 24, 2011, Illinois submitted a plan to address the requirements of the Regional Haze Rule, as codified at 40 CFR 51.308. EPA approved Illinois' regional haze SIP on July 6, 2012 (77 FR 39943). In its approval, EPA determined that the emission reductions from sources included in the Illinois plan are significantly greater than even conservative definitions of BART applied to BART subject units (77 FR 39945). EPA also addressed whether the Illinois plan, achieving greater emission reductions overall than the application of BART on BART-subject units, can also be expected to achieve greater visibility protection than application of BART on BART-subject units. Given that, in general, the Illinois power plants are substantial distances from any Class I area, and given that the averaging in Illinois' plan is only authorized within the somewhat limited region within which each utility's plants are located, EPA determined that a reallocation of emission reductions from one plant to another is unlikely to change the impact of those emission reductions significantly. Consequently, EPA concluded that the significantly greater emission reductions that Illinois required in its regional haze SIP will yield greater progress toward visibility protection as compared to the benefits of a conservative estimate of BART.

Among the rules approved in this action to meet BART requirements are Illinois Administrative Code rules: 35 Ill. Adm. Code 225.292: Applicability of the Combined Pollutant Standard; 35 Ill. Adm. Code 225.295 Combined Pollutant Standard: Emissions Standards for NO_X and SO_2; 35 Ill. Adm. Code 225.296 Combined Pollutant Standard: Control Technology Requirements for NO_X, SO_2, and PM emissions (except for paragraph 225.296(d)); and 35 Ill. Adm. Code 225 Appendix A.

Appendix A identifies the Midwest Generation Electric Generating Units (EGUs) specified for purposes of the combined pollutant standard (CPS). Section 225.292 provides that the owner or operator of specified EGUs in the CPS located at Fisk, Crawford, Joliet, Powerton, Waukegan, and Will County power plants may elect for all of those EGUs as a group to demonstrate compliance pursuant to the CPS. Section 225.295(b) establishes CPS group average annual SO_2 emissions rates beginning in calendar year 2013 and continuing in each calendar year thereafter. Section 225.296(a)(1) requires Midwest Generation to install and have operational a flue gas desulfurization (FGD) system on Unit 7 of the Waukegan Generation Station or shut down the unit on or before December 31, 2013. Section 225.296(c)(1) requires that Midwest Generation replace the hot-side electrostatic precipitator (ESP) on Unit 7 at the Waukegan Generation Station with a cold-side ESP, install an appropriately designed fabric filter, or permanently shut down the unit on or before December 31, 2013. Section 225.296(a)(2) requires Midwest Generation to install and have operational a FGD system on Unit 8 of the Waukegan Generation Station or shut down the unit by December 31, 2014.

The Illinois Pollution Control Board (IPCB) granted Midwest Generation variances to Section 225.296(a)(1) and 225.296(c)(1) on August 23, 2012 and to Section 225.295(b) and Section 225.296(a)(2) on April 4, 2013. IEPA submitted these variances as revisions to the Illinois regional haze SIP on May 16, 2013, and August 18, 2014.

III. What is EPA's analysis of the variances for Midwest Generation?

The variances granted by the IPCB and submitted by IEPA for approval change the requirements for Midwest Generation under the regional haze SIP as follows:

1. The IPCB granted Midwest Generation a variance from the average annual SO_2 emission rates of 0.28 pounds per million Btu (lb/mmBtu) in 2015 and 0.195 lb/mmBtu in 2016 in Section 225.295(b) subject to numerous conditions including, but not limited to, the following condition: Midwest Generation CPS group must comply with a system-wide average annual SO_2 emission rate of 0.38 lb/mmBtu from January 1, 2015 through December 31, 2016. The CPS group continues to be subject to the 2017, 2018, and 2019 system-wide average annual SO_2 emission rates of 0.15 lb/mmBtu, 0.13 lb/mmBtu, and 0.11 lb/mmBtu, respectively, set forth in Section 225.295(b).

2. The IPCB granted Midwest Generation a variance from the December 31, 2013, deadline for installation and operation of control equipment on Unit 7 of the Waukegan Generation Station as required by Section 225.296(a)(1) and (c)(1) subject to, among other things, the following condition: Midwest Generation must either install the required pollution controls or permanently shut down Unit 7 at the Waukegan Generating Station on or before December 31, 2014.

3. The IPCB granted Midwest Generation a variance from the December 31, 2014 deadline for installation and operation of FGD equipment on Unit 8 at the Waukegan Generating Station as required by Section 225.296(a)(2) subject to, among other things, the following condition: Midwest Generation must install the required pollution controls or permanently shut down Unit 8 at the Waukegan Generating Station by May 31, 2015. Midwest Generation is not allowed to operate Waukegan Unit 8 from January 1, 2015, until completion of the installation of FGD equipment.

4. In addition to the conditions described above, the variances granted by the IPCB are subject to a number of other conditions including, but not limited to, the following conditions:

a. Midwest Generation must shut down the coal-fired unit at Fisk Generation Station on or before December 31, 2012.

b. Midwest Generation must cease operation of the coal-fired units at the Crawford Generating Station by April 4, 2013, and shut down the units on or before December 31, 2014.

c. Midwest Generation must install and have operational FGD equipment and related ESP upgrades at Powerton Unit 6 by December 31, 2014.

d. Midwest Generation must limit annual system-wide mass emissions of SO_2 to no more than 57,000 tons in 2013, 54,000 tons in 2014, 39,000 tons in 2015, and 37,000 tons in 2016.

Midwest Generation ceased operation of the coal-fired boiler at Fisk on August 30, 2012, four months earlier than was required by the variance. Midwest Generation ceased operation at Crawford on August 28, 2012, seven months earlier than was required by the variance.

In evaluating the variances submitted by Illinois, EPA assessed the effect the variances would have on the emissions reductions expected under the CPS as currently approved into the regional haze SIP. Under the conditions of the currently approved regional haze SIP, the Midwest Generation CPS group would be expected to emit 190,181 tons of SO_2 for the 2013–2016 time period. Under the variances, the Midwest Generation CPU group would be

expected to emit 185,599 tons of SO_2 over that same time period; 4,582 tons fewer than would be expected under the current SIP. Further, because Midwest Generation ceased operation at the Fisk and Crawford Generating stations in August of 2012, there were 1,983 tons of SO_2 emissions reductions (734 tons at Fisk and 1,249 tons at Crawford) realized in 2012 that were not required by the SIP and an additional 8,563 tons of SO_2 emissions reductions from Crawford beyond what was required in the SIP for the 2017–2018 time period. Over the entire 2012–2018 time period it is estimated that the variances result in 15,129 tons fewer SO_2 emissions than were expected under the regional haze SIP.

In addition, under the conditions of the currently approved regional haze SIP, Unit 7 of the Waukegan Generation Station would be required to replace its hot-side ESP with a cold-side ESP, install an appropriately designed fabric filter, or permanently shut down by December 31, 2013. Because the variances allow this unit an additional year to install the required equipment, Unit 7 is projected to emit 157 tons of PM in 2014 rather than the 140 tons that was projected with the installation of a cold-side ESP. However, the variances also require the shutdown of Fisk and Crawford, which results in an estimated 1,579 ton reduction in PM emissions in 2014 from what was allowed at these sources under the CPS. Consequently, when taking into account the delay in the installation of a cold-side ESP at Waukegan Unit 7 and the shutdown of Fisk and Crawford, 1,562 fewer tons of PM emissions are expected in 2012 under the variances than were projected under the SIP. Over the entire 2012–2108 time period it is estimated that the variances result in 7,131 fewer tons of PM emissions than were expected under the regional haze SIP.

In addition, while the variances only modify the SO_2 and PM requirements of the regional haze SIP, reductions in emissions of other pollutants can also be attributed to the variances. The April 4, 2013, IPCB order approving the variance notes that over the 2013–2016 time period, the variance will also result in 11,553 tons fewer of NO_X, 183 pounds fewer of mercury and 22,266 tons fewer of greenhouse gasses.

Because the deadline for implementation of BART level controls is 2017 (within 5 years of approval of Illinois' SIP), EPA also evaluated 2017 emissions under the variance as compared to the 2017 emissions expected under the Illinois regional haze SIP. The variance does not revise the requirements of the Illinois regional haze SIP in 2017 and beyond, except that the current regional haze SIP would have allowed Crawford to operate in 2017 and 2018, thus requiring additional reductions under the variance. Therefore, the determination made in EPA's approval of the Illinois regional haze SIP, that emission reductions from sources included in the Illinois plan are significantly greater than even very conservative definitions of BART applied to BART subject units (77 FR 39945), continues to apply. In addition, for the reasons set forth in EPA's approval of the Illinois regional haze SIP (77 FR 39946) and summarized above, EPA continues to conclude that the significantly greater emission reductions required under the variance will yield greater progress toward visibility protection as compared to the benefits of a conservative estimate of BART.

In evaluating the approvability of the variances, EPA must also consider whether the SIP revision meets the requirements of section 110(l) of the CAA, 42 U.S.C. 7410(l). To be approved, a SIP revision must not interfere with any applicable requirement concerning attainment, reasonable further progress, or any other applicable requirement of the CAA. Currently, the SIP establishes CPS group average annual SO_2 emissions rates for the Midwest Generation CPS group, beginning in 2013. The SIP allows flexibility in achieving these overall emissions rates, not specifying limits for individual sources. The variances will not result in any increase in SO_2 emissions, but rather result in less SO_2 emissions over the 2012–2018 time period, as well as greater cumulative SO_2 emissions reductions every year throughout this time period.

The SIP does contain control technology requirements at Waukegan Unit 7, specifically the installation of FGD and a cold-side ESP which would be delayed a year under the variances, from December 31, 2013, to December 31, 2014. The Waukegan Generating Station is located in Lake County, which is designated as attainment for both SO_2 and $PM_{2.5}$, and the 12-month delay in the installation of this control equipment would not result in an increase in emissions at the source over current emissions levels. Further, overall SO_2 and PM emissions in 2014 are lower under the variances than under the current SIP. In addition, the variances require the installation of FGD on Unit 6 at the Powerton Generation Station four years earlier than is currently required in the SIP. The Powerton Generation Station is located in the portion of Tazewell County that is designated nonattainment as part of the Pekin SO_2 nonattainment area. This expedited installation of control equipment will aid in attainment planning for this nonattainment area.

The variances will not result in an increase in SO_2 or PM emissions, but rather will result in lower SO_2 and PM emissions overall and in 2017, the year that BART is required to be implemented in Illinois. In addition, reductions in NO_X, mercury, and greenhouse gasses can also be attributed to the variances. Therefore, for all of the reasons discussed above, the variances will not interfere with attainment, reasonable further progress, or any other applicable requirement of the CAA.

IV. What action is EPA taking?

EPA is proposing to approve the Midwest Generation variances submitted by IEPA on May 16, 2013, and August 18, 2014, as revisions to the Illinois regional haze SIP.

V. Incorporation by Reference

In this rule, 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, EPA is proposing to incorporate by reference Illinois Pollution Control Board Order PCB 12–121, effective August 23, 2012 and Illinois Pollution Control Board Order PCB 13–24, effective April 4, 2013. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 2, 2015.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2015–09365 Filed 4–22–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2015–0175; FRL–9926–70–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Determination of Attainment of the 2006 24-Hour Fine Particulate Standard for the Liberty-Clairton Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to make a determination of attainment regarding the Liberty-Clairton, Pennsylvania 2006 24-hour fine particulate matter ($PM_{2.5}$) nonattainment area (hereafter ''Liberty-Clairton Area'' or ''the Area''). EPA is proposing to determine that the Liberty-Clairton Area has attained the 2006 24-hour $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS), based upon quality-assured, quality-controlled and certified ambient air monitoring data for the calendar years 2012–2014. If EPA finalizes this ''clean data determination,'' the requirement for the Liberty-Clairton Area to submit an attainment demonstration, reasonably available control measures (RACM), reasonable further progress (RFP), and contingency measures related to attainment of the 2006 24-hour $PM_{2.5}$ NAAQS would be suspended for so long as the Area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS. If finalized, this determination will not constitute a redesignation to attainment. This proposed action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before May 26, 2015.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2015–0175 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Email: *powers.marilyn@epa.gov.*

C. Mail: EPA–R03–OAR–2015–0175, Marilyn Powers, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2015–0175. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. 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.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, (215) 814–2038, or by email at *velez-rosa.emlyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of Proposed Actions

EPA is proposing to make a determination that the Liberty-Clairton

Area has attained the 2006 24-hour $PM_{2.5}$ NAAQS. This proposed ''clean data determination'' is based upon quality assured and certified ambient air monitoring data that show the area has monitored attainment of the 2006 24-hour $PM_{2.5}$ NAAQS for the 2012–2014 monitoring period. If EPA finalizes this determination, the requirement for the Liberty-Clairton Area to submit an attainment demonstration, RACM, RFP, and contingency measures related to attainment of the 2006 24-hour $PM_{2.5}$ NAAQS shall be suspended for so long as the area continues to attain that NAAQS. However, if finalized, this determination of attainment will not suspend Pennsylvania's other required statutory obligations including requirements for an emissions inventory and preconstruction permitting program for the Liberty-Clairton Area for the 2006 24-hour $PM_{2.5}$ NAAQS. This final determination will not constitute a redesignation to attainment. The Liberty-Clairton Area will remain designated nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS until such time as EPA determines that the Liberty-Clairton Area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan under section 175A.

II. Background

A. $PM_{2.5}$ NAAQS History

On July 16, 1997, EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter (μg/m^3) (hereafter referred to as ''the 1997 annual $PM_{2.5}$ NAAQS''), based on a 3-year average of annual mean $PM_{2.5}$ concentrations (62 FR 38652, July 18, 1997). At that time, EPA also established a 24-hour standard of 65 μg/m^3 (hereafter referred to as ''the 1997 24-hour $PM_{2.5}$ NAAQS''). *See* 40 CFR 50.7. The 1997 $PM_{2.5}$ NAAQS were based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to particulate matter.

The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the CAA. On January 5, 2005 (70 FR 944), EPA published its nonattainment area designations for the 1997 annual $PM_{2.5}$ NAAQS based upon air quality monitoring data for calendar years 2001–2003. These designations, effective on April 5, 2005, included the Liberty-Clairton Area as a nonattainment area for the 1997 annual $PM_{2.5}$ NAAQS. The Liberty-Clairton Area is comprised of the following portion of Allegheny County: the boroughs of Lincoln, Glassport, Liberty, and Port Vue and the City of Clairton. *See* 40 CFR 81.339 (Pennsylvania). The Liberty-Clairton Area is surrounded by, but separate and distinct from, the Pittsburgh-Beaver Valley $PM_{2.5}$ nonattainment area.[1]

On September 21, 2006, EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15.0 μg/m^3 (hereby ''the 2006 annual $PM_{2.5}$ NAAQS'') based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a new 24-hour standard of 35 μg/m^3 based on a 3-year average of the 98th percentile of 24-hour concentrations (71 FR 61144, October 17, 2006). The revised 2006 24-hour $PM_{2.5}$ standard (hereafter ''the 2006 24-hour $PM_{2.5}$ NAAQS'') became effective on December 18, 2006. *See* 40 CFR 50.13. The more stringent 2006 24-hour $PM_{2.5}$ NAAQS is based on significant evidence and numerous health studies demonstrating that serious health effects are associated with short-term exposures to $PM_{2.5}$ at this level.

Many petitioners challenged aspects of EPA's 2006 revisions to the $PM_{2.5}$ NAAQS. *See American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (D.C. Cir. 2009). As a result of this challenge, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded the 2006 *annual* $PM_{2.5}$ NAAQS to EPA for further proceedings. The 2006 *24-hour* $PM_{2.5}$ NAAQS was not affected by the remand and remains in effect.

On November 13, 2009, EPA published designations for the 2006 24-hour $PM_{2.5}$ NAAQS (74 FR 58688), which became effective on December 14, 2009. In that action, EPA designated the Liberty-Clairton Area as nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS, retaining the same geographical boundaries as for the 1997 annual $PM_{2.5}$ NAAQS.

A nonattainment designation under the CAA triggers additional planning requirements for states to show attainment of the NAAQS in the nonattainment areas by a statutory attainment date, as specified in the CAA. Since 2005, EPA had implemented the 1997 and 2006 $PM_{2.5}$ NAAQS based on the general implementation provisions of subpart 1 of Part D of Title I of the CAA (subpart 1). On January 4, 2013, in *Natural Resources Defense Council* v. *EPA (NRDC* v. *EPA),* the D.C. Circuit determined that EPA should be implementing its $PM_{2.5}$ pollution standard under additional CAA requirements than those EPA had been following in subpart 1 and remanded to EPA the ''Final Clean Air Fine Particle Implementation Rule'' (1997 $PM_{2.5}$ Implementation Rule) (72 FR 20586, April 25, 2007) and the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' final rule (2008 NSR $PM_{2.5}$ Rule).[2] 706 F.3d 428 (D.C. Cir. 2013). The D.C. Circuit found that the EPA erred in implementing the 1997 $PM_{2.5}$ NAAQS solely pursuant to subpart 1, without consideration of the particulate matter specific provisions of subpart 4 of Part D of Title I of the CAA (subpart 4).

Although the D.C. Circuit declined to establish a deadline for EPA's response, EPA intends to respond promptly to the court's remand and to promulgate new generally applicable implementation regulations for the $PM_{2.5}$ NAAQS in accordance with the requirements of subparts 1 and 4. In the interim, however, states and EPA still need to proceed with implementation of the $PM_{2.5}$ NAAQS in a timely and effective fashion in order to meet statutory obligations under the CAA and to assure the protection of public health intended by those NAAQS.

While the regulatory provisions of EPA's 1997 $PM_{2.5}$ Implementation Rule do not explicitly apply to the 2006 24-hour $PM_{2.5}$ NAAQS, EPA's underlying statutory interpretation has been the same for both standards. On March 2, 2012, EPA provided implementation guidance for the 2006 24-hour $PM_{2.5}$ NAAQS which reaffirmed and continued the framework and policy approaches of the 1997 $PM_{2.5}$ Implementation Rule.[3] Thus, EPA believes that the Clean Data Policy provisions within the 1997 $PM_{2.5}$ Implementation Rule are also applicable to the 2006 24-hour $PM_{2.5}$ NAAQS. *See* 78 FR 49403 (August 14, 2013) (proposed determination that the Pittsburgh Area attained the 2006 24-hour $PM_{2.5}$ NAAQS which discussed the application of the 1997 $PM_{2.5}$ Implementation Rule's Clean Data Policy provisions to a determination of attainment for the 2006 standard). In addition, although the D.C. Circuit

[1] EPA previously made a determination of attainment for the Liberty-Clairton Area for the 1997 $PM_{2.5}$ NAAQS. 78 FR 63881 (October 25, 2013).

[2] EPA's 2008 NSR $PM_{2.5}$ Rule relates to requirements for the NSR permitting program required by parts C and D of title I of the CAA. The details and provisions of the 2008 NSR $PM_{2.5}$ Rule are not relevant to this proposed rulemaking.

[3] EPA subsequently withdrew the implementation guidance on June 6, 2013 subsequent to the D.C. Circuit's decision in *NRDC* v. *EPA*. EPA's June 6, 2013 withdrawal memorandum is available at *http://www.epa.gov/ttn/naaqs/pm/pdfs/implementationguidancewithdrawmemo.pdf.*

remanded the 1997 $PM_{2.5}$ Implementation Rule to EPA, the D.C. Circuit's decision in *NRDC* v. *EPA* related to EPA's use of subpart 1 for CAA Part D requirements instead of subpart 1 and subpart 4, and the decision did not cast doubt on EPA's interpretation of certain statutory provisions underlying the Clean Data Policy nor cast any doubt on EPA's Clean Data Policy interpretation in the 1997 $PM_{2.5}$ Implementation Rule. *See NRDC* v. *EPA,* 706 F.3d 428.

The statutory provisions in subpart 4 require EPA, among other things, to classify nonattainment areas for the $PM_{2.5}$ NAAQS based on the severity of their pollution problem. Under EPA's prior approach to implementing the 1997 and 2006 $PM_{2.5}$ standards according to subpart 1, EPA was not required to, and thus did not, identify any classifications for areas designated nonattainment. In contrast, subpart 4 of the CAA, at section 188, provides that all areas designated nonattainment are initially classified ''by operation of law'' as ''Moderate'' nonattainment areas, and they remain classified as Moderate nonattainment areas unless and until EPA later reclassifies them as Serious nonattainment areas or EPA determines that an area has not attained the $PM_{2.5}$ NAAQS by the area's applicable attainment date. On April 25, 2014, EPA finalized a rule identifying the classification of all $PM_{2.5}$ areas currently designated nonattainment for the 1997 and 2006 $PM_{2.5}$ NAAQS as ''Moderate,'' consistent with subpart 4 of the CAA. *See* 79 FR 31566 (June 2, 2014). Consequently, the Liberty-Clairton Area was classified as Moderate for the 2006 24-hour $PM_{2.5}$ NAAQS.

B. Determination of Attainment of the 2006 24-Hour NAAQS

Under section 188(c)(1) of the CAA, a Moderate nonattainment area shall attain the $PM_{2.5}$ NAAQS as expeditiously as practicable but no later than the end of the sixth calendar year after the area's designation to nonattainment. Because the designation of nonattainment areas for the 2006 24-hour $PM_{2.5}$ NAAQS became effective on December 14, 2009, the presumptive sixth year attainment date for Moderate nonattainment areas would be no later than December 2015.

To determine attainment with a NAAQS, EPA commonly uses three calendar years of complete air quality data available for the nonattainment area. The criteria for determining if an area is attaining the 2006 24-hour $PM_{2.5}$ NAAQS are set out in 40 CFR 50.13 and appendix N. In summary, the 2006 24-hour $PM_{2.5}$ NAAQS is met when the 24-hour design value is less than or equal to 35 $\mu g/m^3$. Three years of valid annual 98th percentile 24-hour average $PM_{2.5}$ concentration values are required to produce a valid 24-hour $PM_{2.5}$ design value. A year meets data completeness requirements when at least 75 percent of the scheduled sampling days for each quarter have valid data.

C. EPA's Clean Data Policy

Under EPA's longstanding Clean Data Policy interpretation, a determination that a nonattainment area has attained the NAAQS suspends the state's obligation to submit attainment-related planning requirements of the CAA for so long as the area continues to attain the standard.[4] These include requirements to submit an attainment demonstration, RFP, RACM, and contingency measures, because the purpose of these provisions is to help reach attainment, a goal which has already been achieved.

EPA incorporated its Clean Data Policy interpretation in both its 8-Hour Ozone Implementation Rule in 40 CFR 51.918 and in its 1997 $PM_{2.5}$ Implementation Rule in 40 CFR 51.1004(c). *See* 72 FR 20585, 20665 (April 25, 2007). While the D.C. Circuit in its January 4, 2013 decision remanded the 1997 $PM_{2.5}$ Implementation Rule, the Court did not address the merits of that regulation regarding our Clean Data Policy in 40 CFR 51.1004(c), nor cast any doubt on EPA's existing interpretation of the statutory provisions for the Clean Data Policy. In this section of the proposed rulemaking action, EPA is addressing the effect of a final determination of attainment under the Clean Data Policy for the Liberty-Clairton Area, as a moderate nonattainment area under subpart 4.

1. Background on Clean Data Policy

Over the past two decades, EPA has consistently applied its ''Clean Data Policy'' interpretation to attainment-related provisions of subparts 1, 2 and 4. The Clean Data Policy is the subject of several EPA memoranda such as the Seitz Memorandum and regulations. In addition, numerous individual rulemakings published in the **Federal Register** have applied the interpretation to a spectrum of NAAQS, including the 1-hour and 1997 ozone, coarse particulate matter (PM_{10}), $PM_{2.5}$, carbon monoxide (CO) and lead (Pb) standards. The D.C. Circuit has upheld the Clean Data Policy interpretation as embodied in EPA's 1997 8-Hour Ozone Implementation Rule, 40 CFR 51.918.[5] *NRDC* v. *EPA,* 571 F. 3d 1245 (D.C. Cir. 2009). Other U.S. Courts of Appeals that have considered and reviewed EPA's Clean Data Policy interpretation have upheld it and the rulemakings applying EPA's interpretation. *Sierra Club* v. *EPA,* 99 F.3d 1551 (10th Cir. 1996); *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004); *Our Children's Earth Foundation* v. *EPA,* N. 04–73032 (9th Cir. June 28, 2005) (memorandum opinion); and *Latino Issues Forum,* v. *EPA,* Nos. 06–75831 and 08–71238 (9th Cir.), Memorandum Opinion, March 2, 2009.

In light of the January 4, 2013 D.C. Circuit decision in *NRDC* v. *EPA,* EPA's Clean Data Policy interpretation under subpart 4 is set forth here, for the purpose of identifying the effects of a determination of attainment for the 2006 24-hour $PM_{2.5}$ NAAQS for the Liberty-Clairton Area. EPA has previously articulated its Clean Data Policy interpretation under subpart 4 in implementing the PM_{10} standard. *See, e.g.,* 75 FR 27944 (May 19, 2010) (determination of attainment of the PM_{10} standard in Coso Junction, California); 71 FR 6352 (February 8, 2006) (Ajo, Arizona Area); 71 FR 13021 (March 14, 2006) (Yuma, Arizona Area); 71 FR 40023 (July 14, 2006) (Weirton, West Virginia Area); 71 FR 44920 (August 8, 2006) (Rillito, Arizona Area); 71 FR 63642 (October 30, 2006) (San Joaquin Valley, California Area); 72 FR 14422 (March 28, 2007) (Miami, Arizona Area).

EPA has recently articulated as well its Clean Data Policy interpretation under subpart 4 in implementing the $PM_{2.5}$ standard, including specifically the 2006 24-hour $PM_{2.5}$ NAAQS. *See* 79 FR 25014 (May 2, 2014) (determination of attainment of the 2006 24-hour $PM_{2.5}$ NAAQS in Pittsburgh-Beaver Valley Area, Pennsylvania) and 78 FR 63881 (October 25, 2013) (determination of attainment of the 1997 annual $PM_{2.5}$ standard in Liberty-Clairton Area, Pennsylvania). Thus, EPA has established that, under subpart 4, an attainment determination suspends the obligations to submit an attainment

[4] For an EPA memorandum discussing interpretation that three years of data showing attainment of a NAAQS suspends requirements to submit certain attainment plan SIP requirements including those in section 172 of the CAA, see *Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,* EPA Memorandum from John S. Seitz, Director, Office of Air Quality Planning Standards, May 10, 1995 (Seitz Memorandum), located at *http://www.epa.gov/ttn/caaa/t1/memoranda/clean15.pdf.*

[5] ''EPA's Final Rule to implement the 8-Hour Ozone National Ambient Air Quality Standard-Phase 2 (Phase 2 Final Rule).'' *See* 70 FR 71612, 71645–46 (November 29, 2005).

demonstration, RACM, RFP contingency measures, and other measures related to attainment.

2. Application of the Clean Data Policy to Attainment-Related Provisions of Subpart 4

EPA initially set forth at length its rationale for applying the Clean Data Policy to PM_{10} under subpart 4 in EPA's proposed and final rulemaking actions determining that the San Joaquin Valley nonattainment area attained the PM_{10} standard. The Ninth Circuit upheld EPA's final rulemaking, and specifically EPA's Clean Data Policy, in the context of subpart 4. *Latino Issues Forum* v. *EPA,* supra. Nos. 06–75831 and 08–71238 (9th Cir.), Memorandum Opinion, March 2, 2009. In rejecting the petitioner's challenge to the Clean Data Policy under subpart 4 for PM_{10}, the Ninth Circuit stated, ''As the EPA explained, if an area is in compliance with PM_{10} standards, then further progress for the purpose of ensuring attainment is not necessary.''

The general requirements of subpart 1 apply in conjunction with the more specific requirements of subpart 4, to the extent they are not superseded or subsumed by the subpart 4 requirements. Subpart 1 contains general air quality planning requirements for areas designated as nonattainment. *See* section 172(c). Subpart 4, itself, contains specific planning and scheduling requirements for PM_{10} nonattainment areas, and under the Court's January 4, 2013 decision in *NRDC* v. *EPA,* these same statutory requirements also apply for $PM_{2.5}$ nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. *See* ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' (57 FR 13498, April 16, 1992) (General Preamble). In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent ''subsumed by, or integrally related to, the more specific PM_{10} requirements.'' *Id.* These subpart 1 requirements include, among other things, provisions for attainment demonstrations, RACM, RFP, emissions inventories, and contingency measures.

EPA has long interpreted the provisions of subpart 1 (sections 171 and 172) as not requiring the submission of RFP for an area already attaining the ozone NAAQS.[6] For an area that is attaining, showing that the state will make RFP towards attainment ''will, therefore, have no meaning at that point.'' *Id. See also* 71 FR 40952 and 71 FR 63642 (proposed and final determination of attainment for San Joaquin Valley); 75 FR 13710 and 75 FR 27944 (proposed and final determination of attainment for Coso Junction).

Section 189(c)(1) of subpart 4 states that:

> Plan revisions demonstrating attainment submitted to the Administrator for approval under this subpart shall contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section [section 171(1)] of this title, toward attainment by the applicable date.

With respect to RFP, section 171(1) states that, for purposes of part D, RFP ''means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.'' Thus, whether dealing with the general RFP requirement of section 172(c)(2), the ozone-specific RFP requirements of sections 182(b) and (c), or the specific RFP requirements for PM_{10} areas of part D, subpart 4, section 189(c)(1), the stated purpose of RFP is to ensure attainment by the applicable attainment date.

Although section 189(c) states that revisions shall contain milestones which are to be achieved until the area is redesignated to attainment, such milestones are designed to show reasonable further progress ''toward attainment by the applicable attainment date,'' as defined by section 171. Thus, it is clear that once the area has attained the standard, no further milestones are necessary or meaningful. This interpretation is supported by language in section 189(c)(3), which mandates that a state that fails to achieve a milestone must submit a plan that assures that the state will achieve the next milestone or attain the NAAQS if there is no next milestone. Section 189(c)(3) assumes that the requirement to submit and achieve milestones does not continue after attainment of the NAAQS.

In the General Preamble, EPA noted with respect to section 189(c) that the purpose of the milestone requirement ''is 'to provide for emission reductions adequate to achieve the standards by the applicable attainment date' (H.R. Rep.No. 490 101st Cong., 2d Sess. 267 (1990)).'' (57 FR 13539, April 16, 1992). If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled.[7]

Similarly, the requirements of section 189(c)(2) with respect to milestones no longer apply so long as an area has attained the standard. Section 189(c)(2) provides in relevant part that:

> Not later than 90 days after the date on which a milestone applicable to the area occurs, each State in which all or part of such area is located shall submit to the Administrator a demonstration . . . that the milestone has been met.

Where the area has attained the standard and there are no further milestones, there is no further requirement to make a submission showing that such milestones have been met. This is consistent with the position that EPA took with respect to the general RFP requirement of section 172(c)(2) in the April 16, 1992 General Preamble and also in the Seitz Memorandum with respect to the requirements of section 182(b) and (c). In the Seitz Memorandum, EPA also noted that section 182(g), the milestone requirement of subpart 2, which is analogous to provisions in section 189(c), is suspended upon a determination that an area has attained. The Seitz Memorandum, in citing additional provisions related to attainment demonstration and RFP requirements, stated:

> Inasmuch as each of these requirements is linked with the attainment demonstration or RFP requirements of section 182(b)(1) or 182(c)(2), if an area is not subject to the requirement to submit the underlying attainment demonstration or RFP plan, it need not submit the related SIP submission either.

See Seitz Memorandum at 5.

[6] *See* the Seitz Memorandum.

[7] Thus, EPA believes that it is a distinction without a difference that section 189(c)(1) speaks of the RFP requirement as one to be achieved until an area is ''redesignated attainment,'' as opposed to section 172(c)(2), which is silent on the period to which the requirement pertains, or the ozone nonattainment area RFP requirements in sections 182(b)(1) or 182(c)(2), which refer to the RFP requirements as applying until the ''attainment date,'' since section 189(c)(1) defines RFP by reference to section 171(1) of the CAA. Reference to section 171(1) clarifies that, as with the general RFP requirements in section 172(c)(2) and the ozone-specific requirements of section 182(b)(1) and 182(c)(2), the PM-specific requirements may only be required ''for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' 42 U.S.C. 7501(1). As discussed in the text of this rulemaking, EPA interprets the RFP requirements, in light of the definition of RFP in section 171(1), and incorporated in section 189(c)(1), to be a requirement that no longer applies once the standard has been attained.

With respect to the attainment demonstration requirements of section 172(c) and section 189(a)(1)(B) in subpart 4, an analogous rationale leads to the same result. Section 189(a)(1)(B) requires that the plan provide for ''a demonstration (including air quality modeling) that the [SIP] will provide for attainment by the applicable attainment date . . . '' As with the RFP requirements, if an area is already monitoring attainment of the standard, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of the section 172(c) requirements provided by EPA in the General Preamble, and the section 182(b) and (c) requirements set forth in the Seitz Memorandum. As EPA stated in the General Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached.'' 57 FR 13564.

Other SIP submission requirements are linked with these attainment demonstration and RFP requirements, and similar reasoning applies to them. These requirements include the contingency measure requirements of section 172(c)(9). EPA has interpreted the contingency measure requirements of section 172(c)(9) [8] as no longer applying when an area has attained the standard because those ''contingency measures are directed at ensuring RFP and attainment by the applicable date.'' *See* 57 FR 13564 and Seitz Memorandum, pp. 5–6.

Section 172(c)(9) provides that SIPs in nonattainment areas:

> shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the [NAAQS] by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or [EPA].

The contingency measure requirement is inextricably tied to the reasonable further progress and attainment demonstration requirements. Contingency measures are implemented if reasonable further progress targets are not achieved, or if attainment is not realized by the attainment date.

Where an area has already achieved attainment by the attainment date, it has no need to rely on contingency measures to come into attainment or to make further progress to attainment. As EPA stated in the General Preamble: ''The section 172(c)(9) requirements for contingency measures are directed at ensuring RFP and attainment by the applicable date.'' *See* 57 FR 13564. Thus these requirements no longer apply when an area has attained the standard.

Both sections 172(c)(1) and 189(a)(1)(C) require ''provisions to assure that reasonably available control measures'' (*i.e.,* RACM) are implemented in a nonattainment area. The General Preamble, (57 FR at 13560, April 16, 1992), states that EPA interprets section 172(c)(1) so that RACM requirements are a ''component'' of an area's attainment demonstration. Thus, for the same reason the attainment demonstration no longer applies by its own terms, the requirement for RACM no longer applies. EPA has consistently interpreted this provision to require only implementation of potential RACM measures that could contribute to reasonable further progress or to attainment. General Preamble, 57 FR 13498. Thus, where an area is already attaining the standard, no additional RACM measures are required.[9] EPA is interpreting section 189(a)(1)(C) consistent with its interpretation of section 172(c)(1).

The suspension of the obligations to submit SIP revisions concerning these RFP, attainment demonstration, RACM, contingency measures and other related requirements exists only for as long as the area continues to monitor attainment of the standard. If EPA determines, after notice-and-comment rulemaking, that the area has monitored a violation of the NAAQS, the basis for the requirements being suspended would no longer exist. In that case, the area would again be subject to a requirement to submit the pertinent SIP revision or revisions and would need to address those requirements. Thus, a final determination that the area need not submit one of the pertinent SIP submittals amounts to no more than a suspension of the requirements for so long as the area continues to attain the standard. Only if and when EPA redesignates the area to attainment would the area be relieved of these submission obligations. Attainment determinations under the Clean Data Policy do not shield an area from obligations unrelated to attainment in the area, such as provisions to address nonattainment area permitting requirements, emission inventory requirements, and pollution transport. *See* 79 FR 77911 (December 29, 2014) (discussion of remaining attainment plan SIP requirements in CAA section 172(c) in the final determination of attainment rulemaking for the Lyons, Pennsylvania lead nonattainment area).

For this proposed rulemaking action, EPA has evaluated $PM_{2.5}$ air quality data to propose to determine that the Liberty-Clairton Area is attaining the 2006 24-hour $PM_{2.5}$ NAAQS.

III. EPA's Evaluation of the Liberty-Clairton $PM_{2.5}$ Air Quality Data

The Allegheny County Health Department (ACHD) submitted quality-assured and certified air quality monitoring data into the EPA Air Quality System (AQS) database for the 2012–2014 monitoring period. There are two $PM_{2.5}$ monitors in the Liberty-Clairton Area—one in Liberty Borough and one in the City of Clairton. Both monitors had complete data for all quarters in the calendar years 2012 through 2014.

This proposed determination of attainment for the Liberty-Clairton Area is based on EPA's evaluation of quality-controlled, quality assured, certified $PM_{2.5}$ air quality data for 2012–2014, as summarized in Table 1.

TABLE 1—2012–2014 LIBERTY-CLAIRTON AREA DAILY $PM_{2.5}$ MONITORING DATA & COMPLETENESS

Monitor name	AQS site ID	Location	98th percentile			2012–2014 Design value (μg/m³)	Complete data?
			2012	2013	2014		
Liberty	42–003–0064	Liberty Borough	42.5	31.1	32.2	35	Yes.
Clairton	42–003–3007	City of Clairton	19.2	17.1	31.2	23	Yes.

[8] *See* section 182(c)(9) for ozone.

[9] EPA's interpretation that the statute requires implementation only of RACM measures that would advance attainment was upheld by the United States Court of Appeals for the Fifth Circuit in *Sierra Club* v. *EPA,* 314 F.3d 735, 743–745 (5th Cir. 2002) and by the United States Court of Appeals for the D.C. Circuit in *Sierra Club* v. *EPA,* 294 F.3d 155, 162–163 (D.C. Cir. 2002).

As shown, the design values for both monitors in the Liberty-Clairton Area are 35 μg/m³ or less for the 2012–2014 monitoring period. Thus, in accordance with EPA's requirements in 40 CFR part 50, the monitors in the Liberty-Clairton Area are showing attainment of the 2006 24-hour $PM_{2.5}$ NAAQS, based on the 2012–2014 quality-assured and certified air quality data, the most recent three years of data for the Area.

Based on our review of the Liberty-Clairton Area's $PM_{2.5}$ ambient air monitoring data, EPA proposes to determine that the Liberty-Clairton Area has attained the 2006 24-hour $PM_{2.5}$ NAAQS during the 2012–2014 monitoring period, in accordance with 40 CFR part 50. Additional information on air quality data for the Liberty-Clairton Area can be found in the technical support document (TSD) prepared for this proposed action.

IV. Proposed Actions

EPA is proposing to determine, based on the most recent three years of complete quality-assured, and certified data for 2012–2014 meeting the requirements of 40 CFR part 50, appendix N, that the Liberty-Clairton Area is currently attaining the 2006 24-hour $PM_{2.5}$ NAAQS. In accordance with our Clean Data Policy, based upon this proposed determination of attainment, EPA also proposes to determine that the obligation to submit the following attainment-related planning requirements for the Liberty-Clairton Area are not applicable for so long as the Area continues to monitor attainment for the 2006 24-hour $PM_{2.5}$ NAAQS: Subpart 4 obligations to provide an attainment demonstration pursuant to section 189(a)(1)(B), the RACM provisions of section 189(a)(1)(C), the RFP provisions of section 189(c), and related attainment demonstration, RACM, RFP, and contingency measure provisions requirements of subpart 1, section 172. If in the future, EPA determines after notice-and-comment rulemaking that the Liberty-Clairton Area again violates the 2006 24-hour $PM_{2.5}$ NAAQS, the basis for suspending these requirements would no longer exist. This proposed rulemaking action, if finalized, would not constitute a redesignation to attainment under CAA section 107(d)(3). In addition, this determination, if finalized, does not relieve the requirement for Pennsylvania to submit for the Liberty-Clairton Area an emissions inventory as required by CAA section 172(c)(3) or to have a nonattainment area permitting program pursuant to CAA sections 172(c)(5) and 173. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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 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, this proposed rule, proposing to determine that the Liberty-Clairton Area has attained the 2006 24-hour $PM_{2.5}$ NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: April 10, 2015.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2015–09416 Filed 4–22–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0924; FRL–9924–78–Region 9]

Revisions to the California State Implementation Plan, Feather River Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Feather River Air Quality Management District (FRAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC), oxides of nitrogen (NOx), and particulate matter (PM) emissions from rice straw burning, boilers, steam generators, process heaters, stationary internal combustion engines, surfacing preparation and cleanup solvents, and wood product coating operations. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: Any comments on this proposal must arrive by May 26, 2015.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2014–0924, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. 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.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, (415) 972–3073, *Gong.Kevin@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following FRAQMD rules: 10.9, 3.14, 3.20, 3.21 and 3.22. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: February 27, 2015.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2015–09405 Filed 4–22–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2014–0902; FRL–9926–71–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation Request and Associated Maintenance Plan for the Johnstown Nonattainment Area for the 1997 Annual and 2006 24-Hour Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the Commonwealth of Pennsylvania's December 3, 2014 request to redesignate to attainment the Johnstown nonattainment area (Johnstown Area or Area) for the 1997 annual and 2006 24-hour fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS or standards). EPA is also proposing to determine that the Area continues to attain the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. In addition, EPA is proposing to approve as a revision to the Pennsylvania State Implementation Plan (SIP) the associated maintenance plan that was submitted with the redesignation request, to show maintenance of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS through 2025 for the Area. The maintenance plan includes the 2017 and 2025 $PM_{2.5}$ and nitrogen oxides (NO_X) motor vehicle emissions budgets (MVEBs) for the Area for both NAAQS, which EPA is proposing to approve for transportation conformity purposes. Furthermore, EPA is proposing to approve as a revision to the Pennsylvania SIP the 2007 emissions inventory that is also included in the maintenance plan for the Area for both NAAQS. This rulemaking action to propose approval of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS redesignation request and associated maintenance plan for the Johnstown Area is based on EPA's determination that Pennsylvania has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA) for both NAAQS.

DATES: Written comments must be received on or before May 26, 2015.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2014–0902 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Email: *fernandez.cristina@epa.gov.*

C. Mail: EPA–R03–OAR–2014–0902, Cristina Fernandez, Associate Director, Office of Air Quality Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2014–0902. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. 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.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182 or by email at *quinto.rose@epa.gov.*

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I. Background

The first air quality standards for $PM_{2.5}$ were established on July 18, 1997 (62 FR 38652). EPA promulgated an annual standard at a level of 15 micrograms per cubic meter (μg/m³), based on a three-year average of annual mean $PM_{2.5}$ concentrations (the 1997 annual $PM_{2.5}$ NAAQS). In the same rulemaking action, EPA promulgated a 24-hour standard of 65 μg/m³, based on a three-year average of the 98th percentile of 24-hour concentrations.

On January 5, 2005 (70 FR 944), EPA published air quality area designations for the 1997 $PM_{2.5}$ NAAQS. In that rulemaking action, EPA designated the Johnstown Area as nonattainment for the 1997 annual $PM_{2.5}$ NAAQS. *Id.* at 1000. The Johnstown Area is comprised of Cambria County and portions of Indiana County (Township of West Wheatfield, Center, East Wheatfield, and Armagh Borough and Homer City Borough). *See* 40 CFR 81.339.

On October 17, 2006 (71 FR 61144), EPA retained the annual average standard at 15 μg/m³, but revised the 24-hour standard to 35 μg/m³, based again on the three-year average of the 98th percentile of 24-hour concentrations (the 2006 24-hour $PM_{2.5}$ NAAQS). On November 13, 2009 (74 FR 58688), EPA published designations for the 2006 24-hour $PM_{2.5}$ NAAQS, which became effective on December 14, 2009. In that rulemaking action, EPA designated the Johnstown Area as nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS. The Johnstown Area is comprised of Cambria County and portions of Indiana County. *See* 40 CFR 81.339.

On September 25, 2009 (74 FR 48863) and March 29, 2012 (77 FR 18922), EPA made determinations that the Johnstown Area had attained the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, respectively. Pursuant to 40 CFR 51.1004(c) and based on these determinations, the requirements for the Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning SIPs related to the attainment of either the 1997 annual or 2006 24-hour $PM_{2.5}$ NAAQS were, and continue to be, suspended until such time as: the Area is redesignated to attainment for each standard, at which time the requirements no longer apply; or EPA determines that the Area has again violated any of the standards, at which time such plans are required to be submitted. On July 29, 2011 (76 FR 45424), EPA also determined, in accordance with section 179(c) of the CAA, that the Johnstown Area attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010.

On December 3, 2014, the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP), formally submitted a request to redesignate the Johnstown Area from nonattainment to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Concurrently, PADEP submitted a combined maintenance plan for the Area as a SIP revision to ensure continued attainment throughout the Area over the next 10 years. The maintenance plan includes the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs for the Area for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS. Also included in the maintenance plan is the 2007 comprehensive emissions inventory for both the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS for $PM_{2.5}$, NO_X, sulfur dioxide (SO_2), volatile organic compounds (VOCs), and ammonia (NH_3).

In this proposed rulemaking action, EPA also addresses the effects of several decisions of the United States Court of Appeals for the District of Columbia (D.C. Circuit Court) and a decision of the United States Supreme Court: (1) The D.C. Circuit Court's August 21, 2012 decision to vacate and remand to EPA the Cross-State Air Pollution Control Rule (CSAPR); (2) the Supreme Court's April 29, 2014 reversal of the vacature of CSAPR, and remand to the D.C. Circuit Court; (3) the D.C. Circuit Court's October 23, 2014 decision to lift the stay of CSAPR; and (4) the D.C. Circuit Court's January 4, 2013 decision to remand to EPA two final rules implementing the 1997 annual $PM_{2.5}$ NAAQS.

II. EPA's Requirements

A. Criteria for Redesignation to Attainment

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation providing that: (1) EPA determines that the area has attained the applicable NAAQS; (2) EPA has fully approved the applicable implementation plan for the area under section 110(k); (3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions; (4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the state containing such area has met all requirements applicable to the area under section 110 and part D. Each of these requirements are discussed in Section V. of today's proposed rulemaking action.

EPA provided guidance on redesignations in the ''SIPs; General Preamble for the Implementation of Title I of the CAA Amendments of 1990,'' (57 FR 13498, April 16, 1992) (the General Preamble) and has provided further guidance on processing redesignation requests in the following documents: (1) ''Procedures for Processing Requests to Redesignate

Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the 1992 Calcagni Memorandum); (2) ''SIP Actions Submitted in Response to CAA Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and (3) ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994.

B. Requirements of a Maintenance Plan

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future $PM_{2.5}$ violations.

The 1992 Calcagni Memorandum provides additional guidance on the content of a maintenance plan. The Memorandum states that a maintenance plan should address the following provisions: (1) An attainment emissions inventory; (2) a maintenance demonstration showing maintenance for 10 years; (3) a commitment to maintain the existing monitoring network; (4) verification of continued attainment; and (5) a contingency plan to prevent or correct future violations of the NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIP revisions for nonattainment areas and maintenance plans for areas seeking redesignation to attainment for a given NAAQS. These emission control strategy SIP revisions (*e.g.,* RFP and attainment demonstration SIP revisions) and maintenance plans also create MVEBs based on onroad mobile source emissions for the relevant criteria pollutants and/or their precursors, where appropriate, to address pollution from onroad transportation sources. The MVEBs are the portions of the total allowable emissions that are allocated to onroad vehicle use that, together with emissions from all other sources in the area, will provide attainment, RFP, or maintenance, as applicable. The budget serves as a ceiling on emissions from an area's planned transportation system. Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan.

The maintenance plan for the Johnstown Area, comprised of Cambria County and portions of Indiana County in Pennsylvania, includes the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs for transportation conformity purposes. The transportation conformity determination for the Area is further discussed in Section V.C. of today's proposed rulemaking action and in a technical support document (TSD), ''Adequacy Findings for the Motor Vehicle Emissions Budgets in the 1997 and 2006 $PM_{2.5}$ National Ambient Air Quality Standard Maintenance Plan for the Johnstown, Pennsylvania 1997 and 2006 $PM_{2.5}$ Nonattainment Area,'' dated February 12, 2015, available on line at *www.regulations.gov,* Docket ID No. EPA–R03–OAR–2014–0902.

III. Summary of Proposed Actions

EPA is proposing to take several rulemaking actions related to the redesignation of the Johnstown Area to attainment for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS. EPA is proposing to find that the Johnstown Area meets the requirements for redesignation of the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve Pennsylvania's request to change the legal designation of the Johnstown Area from nonattainment to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA is also proposing to approve the associated maintenance plan for the Johnstown Area as a revision to the Pennsylvania SIP for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, including the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs for the Area for transportation conformity purposes. Approval of the maintenance plan is one of the CAA criteria for redesignation of the Area to attainment for both NAAQS. Pennsylvania's combined maintenance plan is designed to ensure continued attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS in the Area for at least 10 years after redesignation.

EPA previously determined that the Johnstown Area attained both the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS (*see* 74 FR 48863 (September 25, 2009) and 77 FR 18922 (March 29, 2012)), and EPA is proposing to find that the Area continues to attain both NAAQS. EPA is also proposing to approve the 2007 comprehensive emissions inventory submitted with Pennsylvania's maintenance plan that includes an inventory of $PM_{2.5}$, SO_2, NO_X, VOC, and NH_3 for the Area as a revision to the Pennsylvania SIP for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS in order to meet the requirements of section 172(c)(3) of the CAA. EPA's analysis of the proposed actions is provided in Section V. of today's proposed rulemaking.

IV. Effects of Recent Court Decisions on Proposed Actions

A. Effect of the Court Decisions Regarding EPA's CSAPR

1. Background

The D.C. Circuit Court and the Supreme Court have issued a number of decisions and orders regarding the status of EPA's regional trading programs for transported air pollution, the Clean Air Interstate Rule (CAIR) and CSAPR, that impact this proposed redesignation action. In 2008, the D.C. Circuit Court initially vacated CAIR, *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008). On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit Court's remand, EPA promulgated CSAPR, to address interstate transport of emissions and resulting secondary air pollutants and to replace CAIR.[1] CSAPR requires substantial reductions of SO_2 and NO_X emissions from electric generating units (EGUs) in 28 states in the Eastern United States. Implementation of CSAPR was scheduled to begin on January 1, 2012, when CSAPR's cap-and-trade programs would have superseded the CAIR cap-and-trade programs. Numerous parties filed petitions for review of CSAPR, and on December 30, 2011, the D.C. Circuit Court issued an order staying CSAPR pending resolution of the petitions and directing EPA to continue to administer CAIR. *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. Dec. 30, 2011), Order at 2.

On August 21, 2012, the D.C. Circuit Court issued its ruling, vacating and remanding CSAPR to EPA and once again ordering continued implementation of CAIR. *EME Homer*

[1] CAIR addressed the 1997 annual $PM_{2.5}$ NAAQS and the 1997 8-hour ozone NAAQS. CSAPR addresses contributions from upwind states to downwind nonattainment and maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS as well as the ozone and $PM_{2.5}$ NAAQS addressed by CAIR.

City Generation, L.P. v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012). The D.C. Circuit Court subsequently denied EPA's petition for rehearing en banc. *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302, 2013 WL 656247 (D.C. Cir. Jan. 24, 2013), at *1. EPA and other parties then petitioned the Supreme Court for a writ of certiorari, and the Supreme Court granted the petitions on June 24, 2013. *EPA* v. *EME Homer City Generation, L.P.,* 133 S. Ct. 2857 (2013).

On April 29, 2014, the Supreme Court vacated and reversed the D.C. Circuit Court's decision regarding CSAPR, and remanded that decision to the D.C. Circuit Court to resolve remaining issues in accordance with its ruling. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014). EPA moved to have the stay of CSAPR lifted in light of the Supreme Court decision. *EME Homer City Generation, L.P.* v. *EPA,* Case No. 11–1302, Document No. 1499505 (D.C. Cir. filed June 26, 2014). In its motion, EPA asked the D.C. Circuit Court to toll CSAPR's compliance deadlines by three years, so that the Phase 1 emissions budgets apply in 2015 and 2016 (instead of 2012 and 2013), and the Phase 2 emissions budgets apply in 2017 and beyond (instead of 2014 and beyond). On October 23, 2014, the D.C. Circuit Court granted EPA's motion and lifted the stay of CSAPR which was imposed on December 30, 2011. *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. Oct. 23, 2014), Order at 3. On December 3, 2014, EPA issued an interim final rule to clarify how EPA will implement CSAPR consistent with the D.C. Circuit Court's order granting EPA's motion requesting lifting the stay and tolling the rule's deadlines. *See* 79 FR 71663 (December 3, 2014) (interim final rulemaking). Consistent with that rule, EPA began implementing CSAPR on January 1, 2015.

2. Proposal on This Issue

Because CAIR was promulgated in 2005 and incentivized sources and states to begin achieving early emission reductions, the air quality data examined by EPA in issuing a final determination of attainment for the Johnstown Area in 2009 (September 25, 2009, 74 FR 48863) and the air quality data from the Area since 2005 necessarily reflect reductions in emissions from upwind sources as a result of CAIR, and Pennsylvania included CAIR as one of the measures that helped to bring the Area into attainment. However, modeling conducted by EPA during the CSAPR rulemaking process, which used a baseline emissions scenario that ''backed out'' the effects of CAIR, *see* 76 FR 48223, projected that the counties in the Johnstown Area would have design values below the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS for 2012 and 2014 without taking into account emission reductions from CAIR or CSAPR. *See* Appendix B of EPA's ''Air Quality Modeling Final Rule Technical Support Document,'' (Pages B–57 and B–86), which is available in the docket for this proposed rulemaking action. In addition, the 2011–2013 quality-assured, quality-controlled, and certified monitoring data for the Johnstown Area confirms that the $PM_{2.5}$ design values for the Area remained well below the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS in 2013.

The status of CSAPR is not relevant to this redesignation. CSAPR was promulgated in June 2011, and the rule was stayed by the D.C. Circuit Court just six months later, before the trading programs it created were scheduled to go into effect. As stated previously, EPA began implementing CSAPR on January 1, 2015, subsequent to the emission reductions documented in the Commonwealth's December 3, 2014 request for redesignation. Therefore, the Area's attainment of the 1997 annual or the 2006 24-hour $PM_{2.5}$ NAAQS cannot have been a result of any emission reductions associated with CSAPR. In summary, neither the status of CAIR nor the current status of CSAPR affects any of the criteria for proposed approval of this redesignation request for the Johnstown Area.

B. Effect of the D.C. Circuit Court Decision Regarding $PM_{2.5}$ Implementation Under Subpart 4 of Part D of Title I of the CAA

1. Background

On January 4, 2013, in *NRDC* v. *EPA,* the D.C. Circuit Court remanded to EPA the ''Final Clean Air Fine Particle Implementation Rule'' (72 FR 20586, April 25, 2007) and the ''Implementation of the New Source Review (NSR) Program for $PM_{2.5}$'' final rule (73 FR 28321, May 16, 2008) (collectively, 1997 $PM_{2.5}$ Implementation Rule). 706 F.3d 428 (D.C. Cir. 2013). The D.C. Circuit Court found that EPA erred in implementing the 1997 annual $PM_{2.5}$ NAAQS pursuant to the general implementation provisions of subpart 1 of part D of Title I of the CAA (subpart 1), rather than the particulate-matter-specific provisions of subpart 4 of part D of Title I (subpart 4).

Prior to the January 4, 2013 decision, the states had worked towards meeting the air quality goals of the 1997 and 2006 $PM_{2.5}$ NAAQS in accordance with EPA regulations and guidance derived from subpart 1 of part D of Title I of the CAA. In response to the D.C. Circuit Court's remand, EPA took this history into account by setting a new deadline for any remaining submissions that may be required for moderate nonattainment areas as a result of the D.C. Circuit Court's decision regarding the applicability of subpart 4 of part D of Title I of the CAA.

On June 2, 2014 (79 FR 31566), EPA issued a final rule, ''Identification of Nonattainment Classification and Deadlines for Submission of SIP Provisions for the 1997 and 2006 $PM_{2.5}$ NAAQS'' (the $PM_{2.5}$ Subpart 4 Classification and Deadline Rule), which identifies the classification under subpart 4 as ''moderate'' for areas currently designated nonattainment for the 1997 annual and/or 2006 24-hour $PM_{2.5}$ NAAQS. The rule set a deadline for states to submit attainment plans and meet other subpart 4 requirements. The rule specified December 31, 2014 as the deadline for states to submit any additional attainment-related SIP elements that may be needed to meet the applicable requirements of subpart 4 for areas currently designated nonattainment for the 1997 $PM_{2.5}$ and/or 2006 $PM_{2.5}$ NAAQS and to submit SIPs addressing the nonattainment NSR requirements in subpart 4.

As explained in detail in the following section, since Pennsylvania submitted its request to redesignate the Johnstown Area on December 3, 2014, any additional attainment-related SIP elements that may be needed for the Area to meet the applicable requirements of subpart 4 were not due at the time Pennsylvania submitted its request to redesignate the Area for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

2. Proposal on This Issue

In this proposed rulemaking action, EPA addresses the effect of the D.C. Circuit Court's January 4, 2013 ruling and the June 2, 2014 $PM_{2.5}$ Subpart 4 Classification and Deadline Rule on the redesignation request for the Area. EPA is proposing to determine that the D.C. Circuit Court's January 4, 2013 decision does not prevent EPA from redesignating the Area to attainment for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS. Even in light of the D.C. Circuit Court's decision, redesignation for this Area is appropriate under the CAA and EPA's longstanding interpretations of the CAA's provisions regarding redesignation. EPA first explains its longstanding interpretation that requirements that are imposed, or that become due, after a complete

redesignation request is submitted for an area that is attaining the standard, are not applicable for purposes of evaluating a redesignation request. Second, EPA then shows that, even if EPA applies the subpart 4 requirements to the redesignation request of the Area and disregards the provisions of its 1997 $PM_{2.5}$ Implementation Rule recently remanded by the D.C. Circuit Court, Pennsylvania's request for redesignation of the Area still qualifies for approval. EPA's discussion also takes into account the effect of the D.C. Circuit Court's ruling and the June 2, 2014 $PM_{2.5}$ Subpart 4 Classification and Deadline Rule on the maintenance plan of the Area, which EPA views as approvable even when subpart 4 requirements are considered.

a. Applicable Requirements Under Subpart 4 for Purposes of Evaluating the Redesignation Request of the Area

With respect to the 1997 $PM_{2.5}$ Implementation Rule, the D.C. Circuit Court's January 4, 2013 ruling rejected EPA's reasons for implementing the $PM_{2.5}$ NAAQS solely in accordance with the provisions of subpart 1, and remanded that matter to EPA, so that it could address implementation of the $PM_{2.5}$ NAAQS under subpart 4 of part D of the CAA, in addition to subpart 1. For the purposes of evaluating Pennsylvania's December 3, 2014 redesignation request for the Area, to the extent that implementation under subpart 4 would impose additional requirements for areas designated nonattainment, EPA believes that those requirements are not ''applicable'' for the purposes of section 107(d)(3)(E) of the CAA, and thus EPA is not required to consider subpart 4 requirements with respect to the redesignation of the Area. Under its longstanding interpretation of the CAA, EPA has interpreted section 107(d)(3)(E) to mean, as a threshold matter, that the part D provisions which are ''applicable'' and which must be approved in order for EPA to redesignate an area include only those which came due prior to a state's submittal of a complete redesignation request. *See* 1992 Calcagni Memorandum. *See also* ''SIP Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) NAAQS on or after November 15, 1992,'' Memorandum from Michael Shapiro, Acting Assistant Administrator, Air and Radiation, September 17, 1993 (Shapiro memorandum); Final Redesignation of Detroit-Ann Arbor, (60 FR 12459, 12465–66, March 7, 1995); Final Redesignation of St. Louis, Missouri, (68 FR 25418, 25424–27, May 12, 2003); *Sierra Club* v. *EPA,* 375 F.3d 537, 541 (7th Cir. 2004) (upholding EPA's redesignation rulemaking applying this interpretation and expressly rejecting Sierra Club's view that the meaning of ''applicable'' under the statute is ''whatever should have been in the plan at the time of attainment rather than whatever actually was in the plan and already implemented or due at the time of attainment'').[2] In this case, at the time that Pennsylvania submitted its redesignation request for the Johnstown Area for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS, the requirements under subpart 4 were not due.[3]

EPA's view that, for purposes of evaluating the redesignation of the Area, the subpart 4 requirements were not due at the time Pennsylvania submitted the redesignation request is in keeping with the EPA's interpretation of subpart 2 requirements for subpart 1 ozone areas redesignated subsequent to the D.C. Circuit Court's decision in *South Coast Air Quality Mgmt. Dist.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006). In *South Coast,* the D.C. Circuit Court found that EPA was not permitted to implement the 1997 8-hour ozone standard solely under subpart 1, and held that EPA was required under the statute to implement the standard under the ozone-specific requirements of subpart 2 as well. Subsequent to the *South Coast* decision, in evaluating and acting upon redesignation requests for the 1997 8-hour ozone standard that were submitted to EPA for areas under subpart 1, EPA applied its longstanding interpretation of the CAA that ''applicable requirements,'' for purposes of evaluating a redesignation, are those that had been due at the time the redesignation request was submitted. *See, e.g.,* Proposed Redesignation of Manitowoc County and Door County Nonattainment Areas (75 FR 22047, 22050, April 27, 2010). In those rulemaking actions, EPA therefore did not consider subpart 2 requirements to be ''applicable'' for the purposes of evaluating whether the area should be redesignated under section 107(d)(3)(E) of the CAA.

EPA's interpretation derives from the provisions of section 107(d)(3) of the CAA. Section 107(d)(3)(E)(v) states that, for an area to be redesignated, a state must meet ''all requirements 'applicable' to the area under section 110 and part D.'' Section 107(d)(3)(E)(ii) provides that EPA must have fully approved the ''applicable'' SIP for the area seeking redesignation. These two sections read together support EPA's interpretation of ''applicable'' as only those requirements that came due prior to submission of a complete redesignation request.

First, holding states to an ongoing obligation to adopt new CAA requirements that arose after the state submitted its redesignation request, in order to be redesignated, would make it problematic or impossible for EPA to act on redesignation requests in accordance with the 18-month deadline Congress set for EPA action in section 107(d)(3)(D). If ''applicable requirements'' were interpreted to be a continuing flow of requirements with no reasonable limitation, states, after submitting a redesignation request, would be forced continuously to make additional SIP submissions that in turn would require EPA to undertake further notice-and-comment rulemaking actions to act on those submissions. This would create a regime of unceasing rulemaking that would delay action on the redesignation request beyond the 18-month timeframe provided by the CAA for this purpose.

Second, a fundamental premise for redesignating a nonattainment area to attainment is that the area has attained the relevant NAAQS due to emission reductions from existing controls. Thus, an area for which a redesignation request has been submitted would have already attained the NAAQS as a result of satisfying statutory requirements that came due prior to the submission of the request. Absent a showing that unadopted and unimplemented requirements are necessary for future maintenance, it is reasonable to view the requirements applicable for purposes of evaluating the redesignation request as including only those SIP requirements that have already come due. These are the requirements that led to attainment of the NAAQS. To require, for redesignation approval, that a state also satisfy additional SIP requirements coming due after the state submits its complete redesignation request, and while EPA is reviewing it, would compel the state to do more than is necessary to attain the NAAQS, without a showing that the additional requirements are necessary for maintenance.

[2] Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. *See* section 175A(c) of the CAA.

[3] EPA found Pennsylvania's December 3, 2014 submittal for redesignation of the Area complete on January 13, 2015. EPA's complete determination is available in the docket for this rulemaking at regulations.gov, Docket ID No. EPA–R03–OAR–2014–0902.

In the context of this redesignation, the timing and nature of the D.C. Circuit Court's January 4, 2013 decision in *NRDC* v. *EPA,* and EPA's June 2, 2014 $PM_{2.5}$ Subpart 4 Classification and Deadline Rule compound the consequences of imposing requirements that come due after the redesignation request is submitted. Pennsylvania submitted its redesignation request for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS on December 3, 2014 for the Johnstown Area, which is prior to the deadline by which the area is required to meet the attainment plan and other requirements pursuant to subpart 4.

To require Pennsylvania's fully-complete and pending redesignation request for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS to comply now with requirements of subpart 4 that the D.C. Circuit Court announced only in January 2013 and for which the December 31, 2014 deadline to comply occurred subsequent to EPA's receipt of Pennsylvania's December 3, 2014 redesignation request, would be to give retroactive effect to such requirements and provide Pennsylvania a unique and earlier deadline for compliance solely on the basis of submitting its redesignation request for the Area. The D.C. Circuit Court recognized the inequity of this type of retroactive impact in *Sierra Club* v. *Whitman,* 285 F.3d 63 (D.C. Cir. 2002),[4] where it upheld the D.C. Circuit Court's ruling refusing to make retroactive EPA's determination that the areas did not meet their attainment deadlines. In that case, petitioners urged the D.C. Circuit Court to make EPA's nonattainment determination effective as of the date that the statute required, rather than the later date on which EPA actually made the determination. The D.C. Circuit Court rejected this view, stating that applying it ''would likely impose large costs on States, which would face fines and suits for not implementing air pollution prevention plans . . . even though they were not on notice at the time.'' *Id.* at 68. Similarly, it would be unreasonable to penalize Pennsylvania by rejecting its December 3, 2014 redesignation request for the Johnstown Area that EPA previously determined was attaining the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS and that met all applicable requirements known to be in effect at the time of the request. For EPA now to reject the redesignation request solely because Pennsylvania did not expressly address subpart 4 requirements which came due after receipt of such request, (and for which it had little to no notice), would inflict the same unfairness condemned by the D.C. Circuit Court in *Sierra Club* v. *Whitman.*

b. Subpart 4 Requirements and Pennsylvania's Redesignation Request

Even if EPA were to take the view that the D.C. Circuit Court's January 4, 2013 decision, or the June 2, 2014 $PM_{2.5}$ Subpart 4 Classification and Deadline Rule, requires that, in the context of a pending redesignation request for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS, which were submitted prior to December 31, 2014, subpart 4 requirements must be considered as being due and in effect, EPA proposes to determine that the Area still qualifies for redesignation to attainment for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS. As explained subsequently, EPA believes that the redesignation request for the Area, though not expressed in terms of subpart 4 requirements, substantively meets the requirements of that subpart for purposes of redesignating the Area to attainment for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS.

With respect to evaluating the relevant substantive requirements of subpart 4 for purposes of redesignating the Area, EPA notes that subpart 4 incorporates components of subpart 1 of part D, which contains general air quality planning requirements for areas designated as nonattainment. *See* section 172(c). Subpart 4 itself contains specific planning and scheduling requirements for coarse particulate matter (PM_{10})[5] nonattainment areas, and under the D.C. Circuit Court's January 4, 2013 decision in *NRDC* v. *EPA,* these same statutory requirements also apply for $PM_{2.5}$ nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. *See* the General Preamble. In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent ''subsumed by, or integrally related to, the more specific PM_{10} requirements'' (57 FR 13538, April 16, 1992). The subpart 1 requirements include, among other things, provisions for attainment demonstrations, RACM, RFP, emissions inventories, and contingency measures.

For the purposes of this redesignation request, in order to identify any additional requirements which would apply under subpart 4, consistent with EPA's June 2, 2014 $PM_{2.5}$ Subpart 4 Classification and Deadline Rule, EPA is considering the areas to be ''moderate'' $PM_{2.5}$ nonattainment areas. As EPA explained in its June 2, 2014 rule, section 188 of the CAA provides that all areas designated nonattainment areas under subpart 4 are initially to be classified by operation of law as ''moderate'' nonattainment areas, and remain moderate nonattainment areas unless and until EPA reclassifies the area as a ''serious'' nonattainment area. Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include the following: (1) An approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to PM_{10}, without adding to them. Consequently, EPA believes that section 189(a)(1)(A) does not itself impose for redesignation purposes any additional requirements for moderate areas beyond those contained in subpart 1.[6] In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment NSR program is not considered an applicable requirement for redesignation, provided the area can maintain the standard with a prevention of significant deterioration (PSD) program after redesignation. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D NSR Requirements for Areas Requesting Redesignation to

[4] *Sierra Club* v. *Whitman* was discussed and distinguished in a recent D.C. Circuit Court decision that addressed retroactivity in a quite different context, where, unlike the situation here, EPA sought to give its regulations retroactive effect. *National Petrochemical and Refiners Ass'n* v. *EPA,* 630 F.3d 145, 163 (D.C. Cir. 2010), *rehearing denied* 643 F.3d 958 (D.C. Cir. 2011), *cert denied* 132 S. Ct. 571 (2011).

[5] PM_{10} refers to particulates nominally 10 micrometers in diameter or smaller.

[6] The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating this redesignation is discussed in this rulemaking action.

Attainment.'' *See also* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). With respect to the specific attainment planning requirements under subpart 4,[7] when EPA evaluates a redesignation request under either subpart 1 or 4, any area that is attaining the $PM_{2.5}$ NAAQS is viewed as having satisfied the attainment planning requirements for these subparts. For redesignations, EPA has for many years interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble, EPA stated that: ''The requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.''

The General Preamble also explained that: ''[t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans . . . provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.'' *Id.* EPA similarly stated in its 1992 Calcagni Memorandum that, ''The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.''

It is evident that even if we were to consider the D.C. Circuit Court's January 4, 2013 decision in *NRDC* v. *EPA,* or the June 2, 2014 $PM_{2.5}$ Subpart 4 Classification and Deadline Rule, to mean that attainment-related requirements specific to subpart 4 were either due prior to Pennsylvania's December 3, 2014 redesignation request or became due subsequent to the December 3, 2014 redesignation request and must now be imposed retroactively,[8] those requirements do not apply to areas that are attaining the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS for the purpose of evaluating a pending request to redesignate the areas to attainment. EPA has consistently enunciated this interpretation of applicable requirements under section 107(d)(3)(E) since the General Preamble was published more than twenty years ago. Courts have recognized the scope of EPA's authority to interpret ''applicable requirements'' in the redesignation context. *See Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004).

Moreover, even outside the context of redesignations, EPA has viewed the obligations to submit attainment-related SIP planning requirements of subpart 4 as inapplicable for areas that EPA determines are attaining the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA's prior ''Clean Data Policy'' rulemakings for the PM_{10} NAAQS, also governed by the requirements of subpart 4, explain EPA's reasoning. They describe the effects of a determination of attainment on the attainment-related SIP planning requirements of subpart 4. *See* ''Determination of Attainment for Coso Junction Nonattainment Area,'' (75 FR 27944, May 19, 2010). *See also* Coso Junction Proposed PM_{10} Redesignation, (75 FR 36023, 36027, June 24, 2010); Proposed and Final Determinations of Attainment for San Joaquin Nonattainment Area (71 FR 40952, 40954–55, July 19, 2006; and 71 FR 63641, 63643–47, October 30, 2006). In short, EPA in this context has also long concluded that to require states to meet superfluous SIP planning requirements is not necessary and not required by the CAA, so long as those areas continue to attain the relevant NAAQS.

As stated previously in this proposed rulemaking action, on September 25, 2009 (74 FR 48863) and March 29, 2012 (77 FR 18922), EPA made determinations that the Johnstown Area had attained the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, respectively. Pursuant to 40 CFR 51.1004(c) and based on these determinations, the requirements for the Area to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and other planning SIPs related to the attainment of either the 1997 annual or 2006 24-hour $PM_{2.5}$ NAAQS were, and continue to be, suspended until such time as: the Area is redesignated to attainment for each standard, at which time the requirements no longer apply; or EPA determines that the Area has again violated any of the standards, at which time such plans are required to be submitted. Under its longstanding interpretation, EPA is proposing to determine here that the Area meets the attainment-related plan requirements of subparts 1 and 4 for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS. Thus, EPA is proposing to conclude that the requirements to submit an attainment demonstration under 189(a)(1)(B), a RACM determination under section 172(c)(1) and section 189(a)(1)(c), a RFP demonstration under 189(c)(1), and contingency measure requirements under section 172(c)(9) are satisfied for purposes of evaluating this redesignation request.

c. Subpart 4 and Control of $PM_{2.5}$ Precursors

The D.C. Circuit Court in *NRDC* v. *EPA* remanded to EPA the two rules at issue in the case with instructions to EPA to re-promulgate them consistent with the requirements of subpart 4. EPA in this section addresses the D.C. Circuit Court's opinion with respect to $PM_{2.5}$ precursors. While past implementation of subpart 4 for PM_{10} has allowed for control of PM_{10} precursors, such as NO_X from major stationary, mobile, and area sources in order to attain the standard as expeditiously as practicable, section 189(e) of the CAA specifically provides that control requirements for major stationary sources of direct PM_{10} shall also apply to PM_{10} precursors from those sources, except where EPA determines that major stationary sources of such precursors ''do not contribute significantly to PM_{10} levels which exceed the standard in the area.''

EPA's 1997 $PM_{2.5}$ Implementation Rule, remanded by the D.C. Circuit Court, contained rebuttable presumptions concerning certain $PM_{2.5}$ precursors applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002, EPA provided, among other things, that a state was ''not required to address VOC [and NH_3] as . . . $PM_{2.5}$ attainment plan precursor[s] and to evaluate sources of VOC [and NH_3] emissions in the State for control measures.'' EPA intended these to be rebuttable presumptions. EPA established these presumptions at the time because of uncertainties regarding the emission inventories for these pollutants and the effectiveness of specific control measures in various regions of the country in reducing $PM_{2.5}$ concentrations. EPA also left open the possibility for such regulation of VOC and NH_3 in specific areas where that was necessary.

The D.C. Circuit Court in its January 4, 2013 decision made reference to both

[7] EPA refers here to attainment demonstration, RFP, RACM, milestone requirements, and contingency measures.

[8] As explained earlier, EPA does not believe that the D.C. Circuit Court's January 4, 2013 decision should be interpreted so as to impose these requirements on the states retroactively. *Sierra Club* v. *Whitman, supra.*

section 189(e) and 40 CFR 51.1002, and stated that, ''In light of our disposition, we need not address the petitioners' challenge to the presumptions in [40 CFR 51.1002] that VOCs and NH_3 are not $PM_{2.5}$ precursors, as subpart 4 expressly governs precursor presumptions.'' *NRDC* v. *EPA,* at 27, n.10.

Elsewhere in the D.C. Circuit Court's opinion, however, the D.C. Circuit Court observed: ''NH_3 is a precursor to fine particulate matter, making it a precursor to both $PM_{2.5}$ and PM_{10}. For a PM_{10} nonattainment area governed by subpart 4, a precursor is presumptively regulated. *See* 42 § U.S.C. 7513a(e) [section 189(e)].'' *Id.* at 21, n.7.

For a number of reasons, the redesignation of the Johnstown Area for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS is consistent with the D.C. Circuit Court's decision on this aspect of subpart 4. While the D.C. Circuit Court, citing section 189(e), stated that ''for a PM_{10} area governed by subpart 4, a precursor is 'presumptively' regulated,'' the D.C. Circuit Court expressly declined to decide the specific challenge to EPA's 1997 $PM_{2.5}$ Implementation Rule provisions regarding NH_3 and VOC as precursors. The D.C. Circuit Court had no occasion to reach whether and how it was substantively necessary to regulate any specific precursor in a particular $PM_{2.5}$ nonattainment area, and did not address what might be necessary for purposes of acting upon a redesignation request.

However, even if EPA takes the view that the requirements of subpart 4 were deemed applicable at the time the state submitted the redesignation request, and disregards the 1997 $PM_{2.5}$ Implementation Rule's rebuttable presumptions regarding NH_3 and VOC as $PM_{2.5}$ precursors, the regulatory consequence would be to consider the need for regulation of all precursors from any sources in the Area to demonstrate attainment and to apply the section 189(e) provisions to major stationary sources of precursors. In the case of the Johnstown Area, EPA believes that doing so is consistent with proposing redesignation of the Area for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS. The Area has attained the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS without any specific additional controls of NH_3 and VOC emissions from any sources in the Area.

Precursors in subpart 4 are specifically regulated under the provisions of section 189(e), which requires, with important exceptions, control requirements for major stationary sources of PM_{10} precursors.[9] Under subpart 1 and EPA's prior implementation rule, all major stationary sources of $PM_{2.5}$ precursors were subject to regulation, with the exception of NH_3 and VOC. Thus, EPA must address here whether additional controls of NH_3 and VOC from major stationary sources are required under section 189(e) of subpart 4 in order to redesignate the Area for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS. As explained subsequently, EPA does not believe that any additional controls of NH_3 and VOC are required in the context of this redesignation.

In the General Preamble, EPA discusses its approach to implementing section 189(e). *See* 57 FR 13538–13542. With regard to precursor regulation under section 189(e), the General Preamble explicitly stated that control of VOC under other CAA requirements may suffice to relieve a state from the need to adopt precursor controls under section 189(e). *See* 57 FR 13542. EPA in this rulemaking action, proposes to determine that the Pennsylvania SIP revision has met the provisions of section 189(e) with respect to NH_3 and VOC as precursors. These proposed determinations are based on EPA's findings that: (1) The Johnstown Area contains no major stationary sources of NH_3; and (2) existing major stationary sources of VOC are adequately controlled under other provisions of the CAA regulating the ozone NAAQS.[10] In the alternative, EPA proposes to determine that, under the express exception provisions of section 189(e), and in the context of the redesignation of the Area, which is attaining the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS, at present NH_3 and VOC precursors from major stationary sources do not contribute significantly to levels exceeding the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS in the Area. *See* 57 FR 13539–42.

EPA notes that its 1997 $PM_{2.5}$ Implementation Rule provisions in 40 CFR 51.1002 were not directed at evaluation of $PM_{2.5}$ precursors in the context of redesignation, but at SIP plans and control measures required to bring a nonattainment area into attainment of the 1997 annual $PM_{2.5}$ NAAQS. By contrast, redesignation to attainment primarily requires the nonattainment area to have already attained due to permanent and enforceable emission reductions, and to demonstrate that controls in place can continue to maintain the standard. Thus, even if we regard the D.C. Circuit Court's January 4, 2013 decision as calling for ''presumptive regulation'' of NH_3 and VOC for $PM_{2.5}$ under the attainment planning provisions of subpart 4, those provisions in and of themselves do not require additional controls of these precursors for an area that already qualifies for redesignation. Nor does EPA believe that requiring Pennsylvania to address precursors differently than it has already would result in a substantively different outcome.

Although, as EPA has emphasized, its consideration here of precursor requirements under subpart 4 is in the context of a redesignation to attainment, EPA's existing interpretation of subpart 4 requirements with respect to precursors in attainment plans for PM_{10} contemplates that states may develop attainment plans that regulate only those precursors that are necessary for purposes of attainment in the area in question, *i.e.,* states may determine that only certain precursors need be regulated for attainment and control purposes.[11] Courts have upheld this approach to the requirements of subpart 4 for PM_{10}.[12] EPA believes that application of this approach to $PM_{2.5}$ precursors under subpart 4 is reasonable. Because the Area has already attained the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS with its current approach to regulation of $PM_{2.5}$ precursors, EPA believes that it is reasonable to conclude in the context of this redesignation that there is no need to revisit an attainment control strategy with respect to the treatment of precursors. Even if the D.C. Circuit Court's decision is construed to impose an obligation, in evaluating this redesignation request, to consider additional precursors under subpart 4, it would not affect EPA's approval here of Pennsylvania's request for redesignation of the Johnstown Area for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS. In the context of a

[9] Under either subpart 1 or subpart 4, for purposes of demonstrating attainment as expeditiously as practicable, a state is required to evaluate all economically and technologically feasible control measures for direct PM emissions and precursor emissions, and adopt those measures that are deemed reasonably available.

[10] The Area has reduced VOC emissions through the implementation of various control programs including VOC Reasonably Available Control Technology (RACT) regulations and various on-road and non-road motor vehicle control programs.

[11] *See, e.g.,* ''Approval and Promulgation of Implementation Plans for California—San Joaquin Valley PM_{10} Nonattainment Area; Serious Area Plan for Nonattainment of the 24-Hour and Annual PM_{10} Standards,'' (69 FR 30006, May 26, 2004) (approving a PM_{10} attainment plan that impose controls on direct PM_{10} and NO_X emissions and did not impose controls on SO_2, VOC, or NH_3 emissions).

[12] *See, e.g., Assoc. of Irritated Residents* v. *EPA et al.,* 423 F.3d 989 (9th Cir. 2005).

redesignation, Pennsylvania has shown that the Area has attained both standards. Moreover, Pennsylvania has shown, and EPA proposes to determine, that attainment of the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS in this Area is due to permanent and enforceable emission reductions on all precursors necessary to provide for continued attainment of the NAAQS. *See* Section V.A.3 of this proposed rulemaking action. It follows logically that no further control of additional precursors is necessary. Accordingly, EPA does not view the January 4, 2013 decision of the D.C. Circuit Court as precluding redesignation of the Area to attainment for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS at this time.

In summary, even if, prior to submitting its December 3, 2014 redesignation request submittal or subsequent to such submission and prior to December 31, 2014, Pennsylvania was required to address precursors for the Area under subpart 4 rather than under subpart 1, as interpreted in EPA's remanded 1997 $PM_{2.5}$ Implementation Rule, EPA would still conclude that the Area had met all applicable requirements for purposes of redesignation in accordance with section 107(d)(3)(E)(ii) and (v) of the CAA.

V. EPA's Analysis of Pennsylvania's Submittal

EPA is proposing several rulemaking actions for the Johnstown Area: (1) To redesignate the Johnstown Area to attainment for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS; (2) to approve into the Pennsylvania SIP the associated maintenance plan for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS; and (3) to approve the 2007 comprehensive emissions inventory into the Pennsylvania SIP to satisfy the requirements of section 172(c)(3) of the CAA for the Area for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS, which is one of the CAA criteria for redesignation. EPA's proposed approval of the redesignation request and maintenance plan for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS are based upon EPA's determination that the Area continues to attain both standards, which EPA is proposing in this rulemaking action, and that all other redesignation criteria have been met for the Area. In addition, EPA is proposing to approve the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs included in the maintenance plan for the Area for transportation conformity purposes. The following is a description of how Pennsylvania's December 3, 2014 submittal satisfies the requirements of the CAA including specifically section 107(d)(3)(E) for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

A. Redesignation Request

1. Attainment

On September 25, 2009 (74 FR 48863) and July 29, 2011 (76 FR 45424), EPA determined that the Johnstown Area attained the 1997 annual $PM_{2.5}$ NAAQS based on quality-assured and certified ambient air monitoring data for 2006–2008 and by its applicable attainment date of April 5, 2010 based on quality-assured and certified ambient air quality monitoring data for 2007–2009, respectively. In a separate rulemaking action dated March 29, 2012 (77 FR 18922), EPA determined that the Johnstown Area attained the 2006 24-hour $PM_{2.5}$ NAAQS, based on quality-assured and certified ambient air quality monitoring data for 2008–2010. The basis and effect of these determinations of attainment for both the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS were discussed in the notices of the proposed (74 FR 38158 (July 31, 2009) and 77 FR 2941 (January 20, 2012), respectively) and final (74 FR 48863 and 77 FR 18922, respectively) rulemakings which determined the Area attained the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, respectively.

EPA has reviewed the ambient air quality $PM_{2.5}$ monitoring data in the Area consistent with the requirements contained in 40 CFR part 50, and recorded in EPA's Air Quality System (AQS) database, including quality-assured, quality-controlled, and state-certified data for the monitoring periods 2007–2009, 2008–2010, 2009–2011, 2010–2012, and 2011–2013. This data, provided in Tables 1 and 2, shows that the Area continues to attain the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

TABLE 1—DESIGN VALUES FOR THE JOHNSTOWN AREA FOR THE 1997 ANNUAL $PM_{2.5}$ NAAQS ($\mu G/M^3$) FOR 2007–2009, 2008–2010, 2009–2011, 2010–2012, AND 2011–2013

Monitor ID #	2007–2009	2008–2010	2009–2011	2010–2012	2011–2013
420210011	13.4	12.6	12.4	12.3	12.3

TABLE 2—DESIGN VALUES FOR THE JOHNSTOWN AREA FOR THE 2006 24-HOUR $PM_{2.5}$ NAAQS ($\mu G/M^3$) FOR 2007–2009, 2008–2010, 2009–2011, 2010–2012, AND 2011–2013

Monitor ID #	2007–2009	2008–2010	2009–2011	2010–2012	2011–2013
420210011	32	30	30	30	30

EPA's review of the monitoring data from 2007 through 2013 supports EPA's previous determinations that the Area has attained the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, and that the Area continues to attain both standards. In addition, as discussed subsequently, with respect to the maintenance plan, Pennsylvania has committed to continue monitoring ambient $PM_{2.5}$ concentrations in accordance with 40 CFR part 58. Thus, based upon analysis of currently available data, EPA is proposing to determine that the Johnstown Area continues to attain the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

2. The Area Has Met All Applicable Requirements Under Section 110 and Subpart 1 of the CAA and Has a Fully Approved SIP Under Section 110(k)

In accordance with section 107(d)(3)(E)(v), the SIP revision for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS for the Johnstown Area must be fully approved under section 110(k) and all the requirements applicable to the Area under section 110 of the CAA (general SIP requirements) and part D of Title I of the CAA (SIP requirements for nonattainment areas) must be met.

a. Section 110 General SIP Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control

measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to, the following: (1) submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; (2) provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; (3) implementation of a minor source permit program and provisions for the implementation of part C requirements (PSD); (4) provisions for the implementation of part D requirements for NSR permit programs; (5) provisions for air pollution modeling; and (6) provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision for various NAAQS, EPA has required certain states to establish programs to address transport of air pollutants in accordance with EPA's Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone (63 FR 57356, October 27, 1998), also known as the NO_X SIP Call; amendments to the NO_X SIP Call (64 FR 26298, May 14, 1999 and 65 FR 11222, March 2, 2000), CAIR (70 FR 25162, May 12, 2005) and CSAPR. However, section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that these requirements are applicable requirements for purposes of redesignation.

In addition, EPA believes that the other section 110(a)(2) elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The Area will still be subject to these requirements after it is redesignated. EPA concludes that the section 110(a)(2) and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request, and that section 110(a)(2) elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. This approach is consistent with EPA's existing policy on applicability of conformity (*i.e.,* for redesignations) and oxygenated fuels requirement. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). For additional discussion on this issue, *see* the Cincinnati, Ohio redesignation (65 FR at 37890, June 19, 2000) and the Pittsburgh-Beaver Valley, Pennsylvania redesignation (66 FR at 53099, October 19, 2001).

EPA has reviewed the Pennsylvania SIP and has concluded that it meets the general SIP requirements under section 110(a)(2) of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of Pennsylvania's SIP addressing section 110(a)(2) requirements, including provisions addressing $PM_{2.5}$. *See* 77 FR 58955 (September 25, 2012) (approving infrastructure submittals for 1997 and 2006 $PM_{2.5}$ NAAQS). These requirements are, however, statewide requirements that are not linked to the $PM_{2.5}$ nonattainment status of the Area. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of the Commonwealth's $PM_{2.5}$ redesignation request.

b. Subpart 1 Requirements

Subpart 1 sets forth the basic nonattainment plan requirements applicable to $PM_{2.5}$ nonattainment areas. Under section 172, states with nonattainment areas must submit plans providing for timely attainment and must meet a variety of other requirements.

EPA's longstanding interpretation of the nonattainment planning requirements of section 172 is that once an area is attaining the NAAQS, those requirements are not ''applicable'' for purposes of section 107(d)(3)(E)(ii) and therefore need not be approved into the SIP before EPA can redesignate the area. In the 1992 General Preamble for Implementation of Title I, EPA set forth its interpretation of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard. *See* 57 FR 13498, 13564 (April 16, 1992). EPA noted that the requirements for RFP and other measures designed to provide for attainment do not apply in evaluating redesignation requests because those nonattainment planning requirements ''have no meaning'' for an area that has already attained the standard. *Id.* This interpretation was also set forth in the 1992 Calcagni Memorandum. EPA's understanding of section 172 also forms the basis of its Clean Data Policy, which was articulated with regard to $PM_{2.5}$ in 40 CFR 51.1004(c), and suspends a state's obligation to submit most of the attainment planning requirements that would otherwise apply, including an attainment demonstration and planning SIPs to provide for RFP, RACM, and contingency measures under section 172(c)(9).[13] Courts have upheld EPA's interpretation of section 172(c)(1)'s ''reasonably available'' control measures and control technology as meaning only those controls that advance attainment, which precludes the need to require additional measures where an area is already attaining. *NRDC* v. *EPA,* 571 F.3d 1245, 1252 (D.C. Cir. 2009); *Sierra Club* v. *EPA,* 294 F.3d 155, 162 (D.C. Cir. 2002); *Sierra Club* v. *EPA,* 314 F.3d 735, 744 (5th Cir. 2002).

Therefore, because attainment has been reached for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS in the Johnstown Area (*see* September 25, 2009 (74 FR 48863) and March 29, 2012 (77 FR 18922)), no additional measures are needed to provide for attainment, and section 172(c)(1) requirements for an attainment demonstration and RACM are no longer considered to be applicable for purposes of redesignation as long as the Area continues to attain each standard until redesignation. Section 172(c)(2)'s requirement that nonattainment plans contain provisions promoting RFP toward attainment is also not relevant for purposes of redesignation because EPA has determined that the Johnstown Area has monitored attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. In addition, because the Johnstown Area has attained the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS and is no longer subject to a RFP requirement, the requirement to submit the section 172(c)(9) contingency measures is not

[13] This regulation was promulgated as part of the 1997 $PM_{2.5}$ NAAQS implementation rule that was subsequently challenged and remanded in *NRDC* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013), as discussed in Section IV.B of this rulemaking. However, the Clean Data Policy portion of the implementation rule was not at issue in that case.

applicable for purposes of redesignation. Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the NAAQS. Because attainment has been reached, no additional measures are needed to provide for attainment.

The requirement under section 172(c)(3) of the CAA was not suspended by EPA's clean data determination for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS and is the only remaining requirement under section 172 to be considered for purposes of redesignation of the Area. Section 172(c)(3) of the CAA requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. To satisfy the 172(c)(3) requirement for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, Pennsylvania's December 3, 2014 redesignation request and maintenance plan for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS contains a 2007 comprehensive emissions inventory. The 2007 emissions inventory was the most current accurate and comprehensive emissions inventory of $PM_{2.5}$, NO_X, SO_2, VOC, and NH_3 for the Area when the Area attained the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Thus, as part of this rulemaking action, EPA is proposing to approve Pennsylvania's 2007 comprehensive emissions inventory for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS as satisfying the requirement of section 172(c)(3) of the CAA for both standards. Final approval of the 2007 base year emissions inventory will satisfy the emissions inventory requirement under section 172(c)(3) of the CAA for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS. The 2007 comprehensive emissions inventory addresses the general source categories of point sources, area sources, on-road mobile sources, and non-road mobile sources. A summary of the 2007 comprehensive emissions inventory is shown in Table 3. For more information on EPA's analysis of the 2007 emissions inventory, *see* the TSD prepared by EPA Region III Office of Air Monitoring and Analysis dated March 3, 2015, ''TSD for the Redesignation Request and Maintenance Plan for the Johnstown 1997 and 2006 $PM_{2.5}$ Nonattainment Area'' (Inventory TSD), available in the docket for this rulemaking action at *www.regulations.gov. See* Docket ID No. EPA–R03–OAR–2014–0902.

TABLE 3—2007 EMISSIONS FOR THE JOHNSTOWN AREA, IN TONS PER YEAR (TPY)

Sector	$PM_{2.5}$	NO_X	SO_2	VOC	NH_3
Point	3,091	41,876	143,322	242	35
Area	719	607	858	2,415	409
Onroad	131	4,011	30	1,770	63
Nonroad	89	1,464	42	897	1
Total	4,031	47,958	144,252	5,325	508

Section 172(c)(4) of the CAA requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a nonattainment NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Nevertheless, Pennsylvania currently has an approved NSR program codified in Pennsylvania's regulations at 25 Pa. Code 127.201 *et seq. See* 77 FR 41276 (July 13, 2012) (approving NSR program into the SIP). *See also* 49 FR 33127 (August 21, 1984) (approving Pennsylvania's PSD program which incorporates by reference the Federal PSD program at 40 CFR 52.21). However, Pennsylvania's PSD program will become effective in the Johnstown Area upon redesignation to attainment.

Section 172(c)(7) of the CAA requires the SIP to meet the applicable provisions of section 110(a)(2). As noted previously, EPA believes the Pennsylvania SIP meets the requirements of section 110(a)(2) that are applicable for purposes of redesignation.

Section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area ''for at least 10 years after the redesignation.'' On December 3, 2014, in conjunction with its request to redesignate the Johnstown Area to attainment status, Pennsylvania submitted a SIP revision to provide for maintenance of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS in the Johnstown Area for at least 10 years after redesignation, throughout 2025. Pennsylvania is requesting that EPA approve the maintenance plan to meet the requirements of section 175A of the CAA for both NAAQS. Once approved, the maintenance plan for the Area will ensure that the SIP for Pennsylvania meets the requirements of the CAA regarding maintenance of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS for the Area. EPA's analysis of the maintenance plan is provided in Section V.B. of this proposed rulemaking action.

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded or approved under Title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other Federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability which EPA promulgated pursuant to its authority under the CAA. EPA approved Pennsylvania's transportation conformity SIP requirements on April 29, 2009 (74 FR 19541).

EPA interprets the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under CAA section 107(d) because state conformity rules are still required after redesignation, and Federal conformity rules apply where state rules have not been approved. *See Wall* v. *EPA,* 265 F. 3d 426 (6th Cir.

2001) (upholding this interpretation) and 60 FR 62748 (December 7, 1995) (discussing Tampa, Florida).

Thus, for purposes of redesignating to attainment the Johnstown Area for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, EPA proposes that upon final approval of the 2007 comprehensive emissions inventory as proposed in this rulemaking action, Pennsylvania will meet all the applicable SIP requirements under part D of Title I of the CAA for purposes of redesignating the Area to attainment for both the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

c. The Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

Upon final approval of the 2007 comprehensive emissions inventory as proposed in this rulemaking action, EPA will have fully approved all applicable requirements of Pennsylvania's SIP for the Johnstown Area for purposes of redesignation to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS in accordance with section 110(k) of the CAA.

3. Permanent and Enforceable Reductions in Emissions

For redesignating a nonattainment area to attainment, section 107(d)(3)(E)(iii) requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions. Pennsylvania has calculated the change in emissions between 2005, a year showing nonattainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS in the Johnstown Area, and 2007, one of the years for which the Area monitored attainment for both standards.

A summary of the emissions reductions of $PM_{2.5}$, NO_X, SO_2, VOC, and NH_3 from 2005 to 2007 in the Johnstown Area, submitted by PADEP, is provided in Table 4. For more information on EPA's analysis of the 2005 and 2007 emissions inventories, *see* EPA's Inventory TSD dated March 3, 2015 available in the docket for this proposed rulemaking action.

TABLE 4—EMISSION REDUCTIONS FROM 2005 TO 2007 IN THE JOHNSTOWN AREA

[TPY]

	Sector	2005	2007	Net reduction 2005–2007	Percent reduction 2005–2007
$PM_{2.5}$	Point	11,872	3,091	8,781	74
	Area	1,201	719	482	40
	On-road	142	131	10	7
	Non-road	84	89	−5	−6
	Total	13,299	4,031	9,268	70
NO_X	Point	41,646	41,876	−230	−1
	Area	751	607	144	19
	On-road	4,483	4,011	472	11
	Non-road	1,364	1,464	−100	−7
	Total	48,244	47,958	286	1
SO_2	Point	152,657	143,322	9,335	6
	Area	1,859	858	1,001	54
	On-road	61	30	31	51
	Non-road	112	42	70	63
	Total	154,689	144,252	10,437	7
VOC	Point	344	243	101	30
	Area	3,092	2,415	677	22
	On-road	1,919	1,770	149	8
	Non-road	945	897	48	5
	Total	6,300	5,325	975	15
NH_3	Point	5	35	−30	−600
	Area	511	409	102	20
	On-road	67	63	4	6
	Non-road	1	1	0	0
	Total	584	508	76	13

The reduction in emissions and the corresponding improvement in air quality from 2005 to 2007 for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, respectively, in the Johnstown Area can be attributed to a number of regulatory control measures that have been implemented in the Area and contributing areas in recent years.

a. Federal Measures Implemented

Reductions in $PM_{2.5}$ precursor emissions have occurred statewide and in upwind states as a result of Federal emission control measures, with additional emission reductions expected to occur in the future.

Control of NO_X and SO_2

$PM_{2.5}$ concentrations in the Johnstown Area are impacted by the transport of sulfates and nitrates, and the Area's air quality is strongly affected by regulation of SO_2 and NO_X emissions from power plants.

NO_X SIP Call—On October 27, 1998 (63 FR 57356), EPA issued the NO_X SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO_X, a precursor to ozone pollution.[14] Affected states were required to comply with Phase I of the SIP Call beginning in 2004 and Phase II beginning in 2007. Emission reductions resulting from regulations developed in response to the NO_X SIP Call are permanent and enforceable. By imposing an emissions cap regionally, the NO_X SIP Call reduced NO_X emissions from large

[14] Although the NO_X SIP Call was issued in order to address ozone pollution, reductions of NO_X as a result of that program have also impacted $PM_{2.5}$ pollution, for which NO_X is also a precursor emission.

EGUs and large non-EGUs such as industrial boilers, internal combustion engines, and cement kilns. In response to the NO_X SIP Call, Pennsylvania adopted its NO_X Budget Trading Program regulations for EGUs and large industrial boilers, with emission reductions starting in May 2003. Pennsylvania's NO_X Budget Trading Program regulation was approved into the Pennsylvania SIP on August 21, 2001 (66 FR 43795). To meet other requirements of the NO_X SIP Call, Pennsylvania adopted NO_X control regulations for cement plants and internal combustion engines, with emission reductions starting in May 2005. These regulations were approved into the Pennsylvania SIP on September 29, 2006 (71 FR 57428).

CAIR—As previously noted, CAIR (70 FR 25162, May 12, 2005) created regional cap-and-trade programs to reduce SO_2 and NO_X emissions in 27 eastern states, including Pennsylvania. EPA approved the Commonwealth's CAIR regulation, codified in 25 Pa. Code Chapter 145, Subchapter D, into the Pennsylvania SIP on December 10, 2009 (74 FR 65446). In 2009, the CAIR ozone season NO_X trading program superseded the NO_X Budget Trading Program, although the emission reduction obligations of the NO_X SIP Call were not rescinded. *See* 40 CFR 51.121(r) and 51.123(aa). EPA promulgated CSAPR to replace CAIR as an emission trading program for EGUs. As discussed previously, pursuant to the D.C. Circuit Court's October 23, 2014 Order, the stay of CSAPR has been lifted and implementation of CSAPR commenced in January 2015. EPA expects that the implementation of CSAPR will preserve the reductions achieved by CAIR and result in additional SO_2 and NO_X emission reductions throughout the maintenance period.

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards

These emission control requirements result in lower NO_X emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules were phased in between 2004 and 2009. EPA estimated that, after phasing in the new requirements, the following vehicle NO_X emission reductions will have occurred nationwide: Passenger cars (light duty vehicles) (77 percent); light duty trucks, minivans, and sports utility vehicles (86 percent); and larger sports utility vehicles, vans, and heavier trucks (69 to 95 percent). Some of the emissions reductions resulting from new vehicle standards occurred during the 2008–2010 attainment period; however, additional reductions will continue to occur throughout the maintenance period as new vehicles replace older vehicles. EPA expects fleet wide average emissions to decline by similar percentages as new vehicles replace older vehicles.

Heavy-Duty Diesel Engine Rule

EPA issued the Heavy-Duty Diesel Engine Rule in July 2000. This rule included standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007 which reduced $PM_{2.5}$ emissions from heavy-duty highway engines and further reduced the highway diesel fuel sulfur content to 15 parts per million (ppm). Standards for gasoline engines were phased in starting in 2008. The total program is estimated to achieve a 90 percent reduction in direct $PM_{2.5}$ emissions and a 95 percent reduction in NO_X emissions for new engines using low sulfur diesel fuel.

Nonroad Diesel Rule

On June 29, 2004 (69 FR 38958), EPA promulgated the Nonroad Diesel Rule for large nonroad diesel engines, such as those used in construction, agriculture, and mining, to be phased in between 2008 and 2014. The rule phased in requirements for reducing the sulfur content of diesel used in nonroad diesel engines. The reduction in sulfur content prevents damage to the more advanced emission control systems needed to meet the engine standards. It will also reduce fine particulate emissions from diesel engines. The combined engine standards and the sulfur in fuel reductions will reduce NO_X and PM emissions from large nonroad engines by over 90 percent, compared to current nonroad engines using higher sulfur content diesel.

Nonroad Large Spark-Ignition Engine and Recreational Engine Standards

In November 2002, EPA promulgated emission standards for groups of previously unregulated nonroad engines. These engines include large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles using spark-ignition engines such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines. Emission standards from large spark-ignition engines were implemented in two tiers, with Tier 1 starting in 2004 and Tier 2 in 2007. Recreational vehicle emission standards are being phased in from 2006 through 2012. Marine diesel engine standards were phased in from 2006 through 2009. With full implementation of all of the nonroad spark-ignition engine and recreational engine standards, an overall 80 percent reduction in NO_X is expected by 2020. Some of these emission reductions occurred by the 2002–2007 attainment period and additional emission reductions will occur during the maintenance period as the fleet turns over.

Federal Standards for Hazardous Air Pollutants

As required by the CAA, EPA developed Maximum Available Control Technology (MACT) Standards to regulate emissions of hazardous air pollutants from a published list of industrial sources referred to as ''source categories.'' The MACT standards have been adopted and incorporated by reference in Section 6.6 of Pennsylvania's Air Pollution Control Act and implementing regulations in 25 Pa. Code § 127.35 and are also included in Federally enforceable permits issued by PADEP for affected sources. The Industrial/Commercial/Institutional (ICI) Boiler MACT standards (69 FR 55217, September 13, 2004 and 76 FR 15554, February 21, 2011) are estimated to reduce emissions of PM, SO_2, and VOCs from major source boilers and process heaters nationwide. Also, the Reciprocating Internal Combustion Engines (RICE) MACT will reduce NO_X and PM emissions from engines located at facilities such as pipeline compressor stations, chemical and manufacturing plants, and power plants.

b. State Measures

Heavy-Duty Diesel Emissions Control Program

In 2002, Pennsylvania adopted the Heavy-Duty Diesel Emissions Control Program for model years starting in May 2004. The program incorporates California standards by reference and required model year 2005 and beyond heavy-duty diesel highway engines to be certified to the California standards, which were more stringent than the Federal standards for model years 2005 and 2006. After model year 2006, Pennsylvania required implementation of the Federal standards that applied to model years 2007 and beyond, discussed in the Federal measures section of this proposed rulemaking action. This program reduced emissions of NO_X statewide.

Vehicle Emission Inspection/Maintenance (I/M) Program

Pennsylvania's Vehicle Emission I/M program was expanded into the Johnstown Area in early 2004 and applies to model year 1975 and newer gasoline-powered vehicles that are 9,000

pounds and under. The program, approved into the Pennsylvania SIP on October 6, 2005 (70 FR 58313), consists of annual on-board diagnostics and gas cap test for model year 1996 vehicles and newer, and an annual visual inspection of pollution control devices and gas cap test for model year 1995 vehicles and older. This program reduces emissions of NO_X from affected vehicles.

Consumer Products Regulation

Pennsylvania regulation ''Chapter 130, Subpart B. Consumer products'' established, effective January 1, 2005, VOC emission limits for numerous categories of consumer products, and applies statewide to any person who sells, supplies, offers for sale, or manufactures such consumer products on or after January 1, 2005 for use in Pennsylvania. It was approved into the Pennsylvania SIP on December 8, 2004 (69 FR 70895).

Adhesives, Sealants, Primers and Solvents Regulation

Pennsylvania adopted a regulation in 2010 to control VOC emissions from adhesives, sealants, primers and solvents. This regulation was approved into the Pennsylvania SIP on September 26, 2012 (77 FR 59090).

Based on the information summarized above, Pennsylvania has adequately demonstrated that the improvements in air quality in the Johnstown Area are due to permanent and enforceable emissions reductions. The reductions result from Federal and State requirements and regulation of precursors within Pennsylvania that affect the Johnstown Area.

B. Maintenance Plan

On December 3, 2014, PADEP submitted a combined maintenance plan for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, as required by section 175A of the CAA. EPA's analysis for proposing approval of the maintenance plan is provided in this section.

1. Attainment Emissions Inventory

An attainment inventory is comprised of the emissions during the time period associated with the monitoring data showing attainment. PADEP determined that the appropriate attainment inventory year for the maintenance plan for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS is 2007, one of the years in the periods during which the Johnstown Area monitored attainment for both NAAQS. The 2007 emissions inventory submitted by PADEP that was included in the maintenance plan contains primary $PM_{2.5}$ emissions (including condensables), SO_2, NO_X, VOC, and NH_3.

In its redesignation request and maintenance plan for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS submitted on December 3, 2014, PADEP described the methods used for developing its 2007 emissions inventory. EPA reviewed the procedures used to develop the inventory and found them to be reasonable. EPA has reviewed the documentation provided by PADEP and found the 2007 emissions inventory to be approvable. For more information on EPA's analysis of the 2007 emissions inventory, *see* Appendices B–1 and C–1 of the Pennsylvania submittal and EPA's Inventory TSD dated March 3, 2015 available in the docket for this proposed rulemaking action.

2. Maintenance Demonstration

Section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area ''for at least 10 years after the redesignation.'' EPA has interpreted this as a showing of maintenance ''for a period of ten years following redesignation.'' The Federal and State measures described in Section V.A.3 of this proposed rulemaking action demonstrate that the reductions in emissions from point, area, and mobile sources in the Area has occurred and will continue to occur through 2025. In addition, the following State and Federal regulations and programs ensure the continuing decline of SO_2, NO_X, $PM_{2.5}$, and VOC emissions in the Area during the maintenance period and beyond:

Non-EGUs Previously Covered Under the NO_X SIP Call

Pennsylvania established NO_X emission limits for the large industrial boilers that were previously subject to the NO_X SIP Call, but were not subject to CAIR. For these units, Pennsylvania established an allowable ozone season NO_X limit based on the unit's previous ozone season's heat input. A combined NO_X ozone season emissions cap of 3,418 tons applies for all of these units.

CSAPR (August 8, 2011, 76 FR 48208)

EPA promulgated CSAPR to replace CAIR as an emission trading program for EGUs. As discussed previously, implementation of CSAPR commenced in January 2015. EPA expects that the implementation of CSAPR will preserve the reductions achieved by CAIR and result in additional SO_2 and NO_X emission reductions throughout the maintenance period.

Regulation of Cement Kilns

On July 19, 2011 (76 FR 52558), EPA approved amendments to 25 Pa. Code Chapter 145 Subchapter C to further reduce NO_X emissions from cement kilns. The amendments established NO_X emission rate limits for long wet kilns, long dry kilns, and preheater and precalciner kilns that are lower by 35 percent to 63 percent from the previous limit of 6 pounds of NO_X per ton of clinker that applied to all kilns. The amendments were effective on April 15, 2011.

Stationary Source Regulations

Pennsylvania regulation 25 Pa. Code Chapter 130, Subchapter D for Adhesives, Sealers, Primers, and Solvents was approved into the Pennsylvania SIP on September 26, 2012 (77 FR 59090). The regulation established VOC content limits for various categories of adhesives, sealants, primers, and solvent, and became applicable on January 1, 2012.

Amendments to Pennsylvania regulation 25 Pa. Code Chapter 130, Subchapter B, Consumer Products, established, effective January 1, 2009, new or more stringent VOC standards for consumer products. This regulation applies statewide to any person who sells, supplies, offers for sale, or manufactures such consumer products on or after January 1, 2009 for use in Pennsylvania. The amendments were approved into the Pennsylvania SIP on October 18, 2010 (75 FR 63717).

Pennsylvania's Clean Vehicle Program

The Pennsylvania Clean Vehicles Program (formerly, New Motor Vehicle Control Program) incorporates by reference the California Low Emission Vehicle program (CA LEVII), although it allowed automakers to comply with the NLEV program as an alternative to this program until Model Year (MY) 2006. The Clean Vehicles Program, codified in 25 Pa. Code Chapter 126, Subchapter D, was modified to require CA LEVII to apply to MY 2008 and beyond, and was approved into the Pennsylvania SIP on January 24, 2012 (77 FR 3386). The Clean Vehicles Program incorporates by reference the emission control standards of CA LEVII, which, among other requirements, reduces emissions of NO_X by requiring that passenger car emission standards and fleet average emission standards also apply to light duty vehicles. Model year 2008 and newer passenger cars and light duty trucks are required to be certified for emissions by the California Air Resource Board

(CARB), in order to be sold, leased, offered for sale or lease, imported, delivered, purchased, rented, acquired, received, titled or registered in Pennsylvania. In addition, manufacturers are required to demonstrate that the California fleet average standard is met based on the number of new light-duty vehicles delivered for sale in the Commonwealth. The Commonwealth's submittal for the January 24, 2012 rulemaking projected that, by 2025, the program will achieve approximately 36 tons more NO_X reductions than Tier II for the counties in the Johnstown Area.

Two Pennsylvania regulations—the Diesel-Powered Motor Vehicle Idling Act (August 1, 2011, 76 FR 45705) and the Outdoor Wood-Fired Boiler regulation (September 20, 2011, 76 FR 58114)—were not included in the projection inventories, but may also assist in maintaining the standard. Also, the Tier 3 Motor Vehicle Emission and Fuel Standards (79 FR 23414, April 29, 2014) establishes more stringent vehicle emissions standards and will reduce the sulfur content of gasoline beginning in 2017. The fuel standard will achieve NO_X reductions by further increasing the effectiveness of vehicle emission controls for both existing and new vehicles.

Natural Gas Activities

The emissions growth due to a new emissions source, development of natural gas resources from Marcellus Shale (and other deep formations), is included in the Area source inventory. PADEP requires annual emission reporting under 25 Pa. Code Chapter 135 (relating to reporting of sources) of unconventional natural gas development companies. The initial annual source reporting for unconventional natural gas operations began in 2012 for emissions during the 2011 calendar year. Emissions were projected to 2017 and 2025 based on the most recent emissions inventory reports available (2013 for compressor engines and 2012 for all other sources). *See* Appendix B–3 of Pennsylvania's submittal for more details on the methodology used for estimating Marcellus Shale development activity and for the emission totals by pollutant. Starting January 2015, Federal regulations (40 CFR part 60, subpart OOOO) require wells to capture gas at the wellhead. EPA estimates that VOC emissions from hydraulically fractured well completions will decrease by 95 percent as a result of this regulation.

The State and Federal regulations and programs described above ensure the continuing decline of SO_2, NO_X, $PM_{2.5}$, and VOC emissions in the Johnstown Area during the maintenance period and beyond. A summary of the projected reductions from these measures from 2007 to 2025 is shown in Table 5. The future year inventory included potential emissions increases from natural gas activities.

TABLE 5—EMISSION REDUCTIONS FROM 2007 TO 2025 DUE TO CONTROL MEASURES IN TPY

	$PM_{2.5}$	NO_X	SO_2	VOC	NH_3
Point	96	1,304	1,820	−4	−1
Area	66	28	441	312	−7
On-Road	80	2,813	19	1193	22
Non-Road	51	801	40	444	0
Natural Gas Activities	−3	−98	0	−91	0
Total	290	4,848	2,320	1,854	14

Where the emissions inventory method of showing maintenance is used, its purpose is to show that emissions during the maintenance period will not increase over the attainment year inventory. *See* 1992 Calcagni Memorandum, pages 9–10. For a demonstration of maintenance, emissions inventories are required to be projected to future dates to assess the influence of future growth and controls; however, the demonstration need not be based on modeling. *See Wall* v. *EPA, supra; Sierra Club* v. *EPA, supra. See also* 66 FR 53099–53100 and 68 FR 25430–32. PADEP uses projection inventories to show that the Johnstown Area will remain in attainment and developed projection inventories for an interim year of 2017 and a maintenance plan end year of 2025 to show that future emissions of NO_X, SO_2, $PM_{2.5}$, VOC, and NH_3 will remain at or below the attainment year 2007 for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, respectively, throughout the Johnstown Area through the year 2025.

EPA has reviewed the documentation provided by PADEP for developing annual 2017 and 2025 emissions inventories for the Johnstown Area. *See* Appendix C–2 and C–3 of Pennsylvania's submittal. EPA has determined that the 2017 and 2025 projected emissions inventories provided by PADEP are approvable. For more information on EPA's analysis of the emissions inventories, *see* EPA's Inventory TSD dated March 3, 2015 available in the docket for this proposed rulemaking action.

Tables 6a through 6e provide a summary of the inventories in tpy for the 2007 attainment year, as compared to projected inventories for the 2017 interim year and the 2025 maintenance plan end year for the Area. The future year inventories include potential emissions increases from natural gas activities.

TABLE 6a—COMPARISON OF 2007, 2017, AND 2025 EMISSIONS OF $PM_{2.5}$ FOR THE JOHNSTOWN AREA

$PM_{2.5}$							
Sector	2007	2017	2025	2007–2017		2007–2025	
				Reduction	Percent reduction	Reduction	Percent reduction
Point	3,091	2,788	2,995	303	10	96	3
Area	719	692	654	27	4	65	9
On-Road	131	71	51	61	46	80	61
Non-Road	89	52	38	37	41	51	57

TABLE 6a—COMPARISON OF 2007, 2017, AND 2025 EMISSIONS OF $PM_{2.5}$ FOR THE JOHNSTOWN AREA—Continued

$PM_{2.5}$							
Sector	2007	2017	2025	2007–2017		2007–2025	
				Reduction	Percent reduction	Reduction	Percent reduction
Natural Gas Activities ..	.....	2	3	−2	.....	−3	.....
Total	4,031	3,605	3,741	426	11	289	7

TABLE 6b—COMPARISON OF 2007, 2017, AND 2025 EMISSIONS OF NO_X FOR THE JOHNSTOWN AREA

NO_X							
Sector	2007	2017	2025	2007–2017		2007–2025	
				Reduction	Percent reduction	Reduction	Percent reduction
Point	41,876	37,562	40,572	4,314	10	1,304	3
Area	607	576	579	31	5	28	5
On-Road	4,011	1,946	1,198	2,065	51	2,813	70
Non-Road	1,464	910	663	554	39	801	55
Natural Gas Activities ..	.....	52	98	−52	.....	−98	.....
Total	47,958	41,046	43,110	6,912	14	4,848	10

TABLE 6c—COMPARISON OF 2007, 2017, AND 2025 EMISSIONS OF SO_2 FOR THE JOHNSTOWN AREA

SO_2							
Sector	2007	2017	2025	2007–2017		2007–2025	
				Reduction	Percent reduction	Reduction	Percent reduction
Point	143,322	132,128	141,502	11,194	8	1,820	1
Area	858	683	418	175	20	440	51
On-Road	30	11	11	19	63	19	64
Non-Road	42	1	1	41	98	41	98
Natural Gas Activities ..	.....	0	0	0	.....	0	.....
Total	144,252	132,823	141,932	11,429	8	2,320	2

TABLE 6d—COMPARISON OF 2007, 2017, AND 2025 EMISSIONS OF VOC FOR THE JOHNSTOWN AREA

VOC							
Sector	2007	2017	2025	2007–2017		2007–2025	
				Reduction	Percent reduction	Reduction	Percent reduction
Point	243	234	247	9	4	−4	−2
Area	2,415	2,219	2,103	196	8	312	13
On-Road	1,770	899	577	871	49	1,193	67
Non-Road	897	526	453	371	41	444	50
Natural Gas Activities ..	.....	47	91	−47	.....	−91	.....
Total	5,325	3,925	3,471	1,400	26	1,854	35

TABLE 6e—COMPARISON OF 2007, 2017, AND 2025 EMISSIONS OF NH_3 FOR THE JOHNSTOWN AREA

NH_3							
Sector	2007	2017	2025	2007–2017		2007–2025	
				Reduction	Percent reduction	Reduction	Percent reduction
Point	35	34	36	1	3	−1	0
Area	409	413	416	−4	−1	−7	−2

TABLE 6e—COMPARISON OF 2007, 2017, AND 2025 EMISSIONS OF NH_3 FOR THE JOHNSTOWN AREA—Continued

Sector	NH_3						
	2007	2017	2025	2007–2017		2007–2025	
				Reduction	Percent reduction	Reduction	Percent reduction
On-Road	63	42	41	21	33	22	35
Non-Road	1	1	1	0	0	0	0
Natural Gas Activities		0	0	0		0	
Total	508	490	494	18	4	14	3

As shown in Tables 6a–6e, the projected levels for $PM_{2.5}$, NO_x, SO_2, VOC, and NH_3 are under the 2007 attainment levels for each of these pollutants. Pennsylvania has adequately demonstrated that the Area will continue to maintain the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

3. Monitoring Network

Pennsylvania's maintenance plan includes a commitment by PADEP to continue to operate its EPA-approved monitoring network, as necessary to demonstrate ongoing compliance with the NAAQS. Pennsylvania currently operates a $PM_{2.5}$ monitor in the Johnstown Area. In its December 3, 2014 submittal, Pennsylvania stated that it will consult with EPA prior to making any necessary changes to the network and will continue to operate the monitoring network in accordance with the requirements of 40 CFR part 58.

4. Verification of Continued Attainment

To provide for tracking of the emission levels in the Area, PADEP will: (a) evaluate annually the vehicle miles travelled (VMT) data and the annual emissions reported from stationary sources to compare them with the assumptions used in the maintenance plan, and (b) evaluate the periodic emissions inventory for all $PM_{2.5}$ precursors prepared every three years in accordance with EPA's Air Emissions Reporting Requirements (AERR) to determine whether there is an exceedance of more than ten percent over the 2007 inventories. Also, as noted in the previous subsection, PADEP will continue to operate its monitoring system in accordance with 40 CFR part 58 and remains obligated to quality-assure monitoring data and enter all data into the AQS in accordance with Federal requirements. PADEP will use this data, supplemented with additional data, as necessary, to assure continuing attainment in the Area.

5. Contingency Measures

The contingency plan provisions are designed to promptly correct any violation of the 1997 annual and/or the 2006 24-hour $PM_{2.5}$ NAAQS that occurs in the Johnstown Area after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that a state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would ''trigger'' the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

Pennsylvania's maintenance plan describes the procedures for the adoption and implementation of contingency measures to reduce emissions should a violation occur. Pennsylvania's contingency measures include a first level response and a second level response. A first level response is triggered when the annual mean $PM_{2.5}$ concentration exceeds 15.5 $\mu g/m^3$ in a single calendar year within the Area, when the 98th percentile 24-hour $PM_{2.5}$ concentration exceeds 35.0 $\mu g/m^3$ in a single calendar year within the Area, or when the periodic emissions inventory for the Area exceeds the attainment year inventory (2007) by more than ten percent. The first level response will consist of a study to determine if the emissions trends show increasing concentrations of $PM_{2.5}$, and whether this trend is likely to continue. If it is determined through the study that action is necessary to reverse a trend of emissions increases, Pennsylvania will, as expeditiously as possible, implement necessary and appropriate control measures to reverse the trend.

A second level response will be prompted if the two-year average of the annual mean concentration exceeds 15.0 $\mu g/m^3$ or if the two-year average of 98th percentile 24-hour $PM_{2.5}$ concentration exceeds 35.0 $\mu g/m^3$ within the Area. This would trigger an evaluation of the conditions causing the exceedance, whether additional emission control measures should be implemented to prevent a violation of the standard, and analysis of potential measures that could be implemented to prevent a violation. Pennsylvania would then begin its adoption process to implement the measures as expeditiously as practicable. If a violation of the $PM_{2.5}$ NAAQS occurs, PADEP will propose and adopt necessary additional control measures in accordance with the implementation schedule in the maintenance plan.

Pennsylvania's candidate contingency measures include the following: (1) A regulation based on the Ozone Transport Commission (OTC) Model Rule to update requirements for consumer products; (2) a regulation based on the Control Techniques Guidelines (CTG) for industrial cleaning solvents; (3) voluntary diesel projects such as diesel retrofit for public or private local onroad or offroad fleets, idling reduction technology for Class 2 yard locomotives, and idling reduction technologies or strategies for truck stops, warehouses, and other freight-handling facilities; (4) promotion of accelerated turnover of lawn and garden equipment, focusing on commercial equipment; and (5) promotion of alternative fuels for fleets, home heating and agricultural use. Pennsylvania's rulemaking process and schedule for adoption and implementation of any necessary contingency measure is shown in the SIP submittals as being 18 months from PADEP's approval to initiate rulemaking. For all of the reasons discussed in this section, EPA is proposing to approve Pennsylvania's 1997 annual and 2006 24-hour $PM_{2.5}$ maintenance plan for the Johnstown Area as meeting the requirements of section 175A of the CAA.

C. Motor Vehicle Emissions Budgets

Section 176(c) of the CAA requires Federal actions in nonattainment and maintenance areas to ''conform to'' the goals of SIPs. This means that such actions will not cause or contribute to violations of a NAAQS, worsen the severity of an existing violation, or delay timely attainment of any NAAQS or any interim milestone. Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the transportation conformity rule (40 CFR part 93, subpart A). Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state air quality and transportation agencies, EPA, and the FHWA and FTA to demonstrate that their long range transportation plans and transportation improvement programs (TIP) conform to applicable SIPs. This is typically determined by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the MVEBs contained in the SIP.

On December 3, 2014, Pennsylvania submitted a SIP revision that contains the 2017 and 2025 $PM_{2.5}$ and NO_X onroad mobile source budgets for Cambria County and portions of Indiana County (Townships of West Wheatfield, Center, East Wheatfield, and Armagh Borough and Homer City Borough). Pennsylvania did not provide MVEBs for SO_2, VOC, and NH_3 because it concluded, consistent with the presumptions regarding these precursors in the Transportation Conformity Rule at 40 CFR 93.102(b)(2)(v), which predated and were not disturbed by the litigation on the 1997 $PM_{2.5}$ Implementation Rule, that emissions of these precursors from motor vehicles are not significant contributors to the Area's $PM_{2.5}$ air quality problem. EPA issued conformity regulations to implement the 1997 annual $PM_{2.5}$ NAAQS in July 2004 and May 2005 (69 FR 40004, July 1, 2004 and 70 FR 24280, May 6, 2005). The D.C. Circuit Court's January 2013 decision does not affect EPA's proposed approval of the MVEBs for the Area. The MVEBs are presented in Table 8.

TABLE 8—MVEBS FOR THE JOHNSTOWN AREA FOR THE 1997 ANNUAL AND 2006 24-HOUR $PM_{2.5}$ NAAQS IN TPY

County	Year	$PM_{2.5}$	NO_X
Cambria County	2017	62.79	1,707.03
	2025	46.71	1,077.46
Indiana County (Partial)	2017	7.95	238.50
	2025	4.38	120.98

EPA's substantive criteria for determining adequacy of MVEBs are set out in 40 CFR 93.118(e)(4). Additionally, to approve the MVEBs, EPA must complete a thorough review of the SIP, in this case the $PM_{2.5}$ maintenance plan, and conclude that with the projected level of motor vehicle and all other emissions, the SIPs will achieve its overall purpose, in this case providing for maintenance of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and (3) EPA taking action on the MVEB.

In this proposed rulemaking action, EPA is also initiating the process for determining whether or not the MVEBs are adequate for transportation conformity purposes. The publication of this proposed rulemaking action starts a 30-day public comment period on the adequacy of the submitted MVEBs. This comment period is concurrent with the comment period on this proposed rulemaking action and comments should be submitted to the docket for this rulemaking. EPA may choose to make its determination on the adequacy of the budgets either in the final rulemaking on this maintenance plan and redesignation request or by informing Pennsylvania of the determination in writing, publishing a notice in the **Federal Register** and posting a notice on EPA's adequacy Web page *(http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm)*.[15]

EPA has reviewed the MVEBs and finds that the submitted MVEBs are consistent with the maintenance plan and meet the criteria for adequacy and approval in 40 CFR part 93, subpart A. Therefore, EPA is proposing to approve the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs for Cambria County and portions of Indiana County for transportation conformity purposes. Additional information pertaining to the review of the MVEBs can be found in the TSD dated February 12, 2015, ''Adequacy Findings for the MVEBs in the 1997 and 2006 $PM_{2.5}$ NAAQS Maintenance Plan for the Johnstown, Pennsylvania 1997 and 2006 $PM_{2.5}$ Nonattainment Areas,'' available on line at *www.regulations.gov,* Docket ID No. EPA–R03–OAR–2014–0902.

VI. Proposed Actions

EPA is proposing to approve Pennsylvania's request to redesignate the Johnstown Area from nonattainment to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA has evaluated Pennsylvania's redesignation request and determined that the Area meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. The monitoring data demonstrates that the Johnstown Area attained the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS, as determined by EPA in prior rulemaking actions and, for reasons discussed herein, that it will continue to attain both NAAQS. Final approval of this redesignation request would change the designation of the Johnstown Area from nonattainment to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA is also proposing to approve the associated maintenance plan for the Johnstown Area as a revision to the Pennsylvania SIP for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS because it meets the requirements of section 175A of the CAA as described previously in this proposed rulemaking. In addition, EPA is proposing to approve the 2007 emissions inventory as meeting the requirement of section 172(c)(3) of the CAA for both NAAQS. Furthermore, EPA is proposing to approve the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs for Cambria County and portions of Indiana County for transportation conformity purposes. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

[15] For additional information on the adequacy process, please refer to 40 CFR 93.118(f) and the discussion of the adequacy process in the preamble to the 2004 final transportation conformity rule. *See* 69 FR at 40039–40043.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely 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 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, this rule proposing to approve Pennsylvania's redesignation request, maintenance plan, 2007 emissions inventory for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, and MVEBs for transportation conformity purposes for the Johnstown Area for both NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: April 10, 2015.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2015–09368 Filed 4–22–15; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 27

[WT Docket Nos. 14–170, 05–211, GN Docket No. 12–268, RM–11395; FCC 15–49]

Request for Further Comment on Issues Related to Competitive Bidding Proceeding; Updating Competitive Bidding Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; comment request.

SUMMARY: In this *Updating Part 1 Competitive Bidding Rules Additional Request for Comment,* the Federal Communications Commission (Commission) seeks additional comment on changes to the Commission's Competitive Bidding rules suggested by commenters in response to the questions and proposals set forth in the *Updating Part 1 Competitive Bidding Rules Notice of Proposed Rulemaking* (*Part 1 NPRM*). This *Updating Part 1 Competitive Bidding Rules Additional Request for Comment* will be referred to as the *Part 1 Request for Comment.*

DATES: Comments are due on or before May 14, 2015, and reply comments are due on or before May 21, 2015.

ADDRESSES: Interested parties may submit comments to the *Part 1 Request for Comment,* WT Docket Nos. 14–170, 05–211, GN Docket No. 12–268, RM–11395, by any of the following methods:

- *FCC's Web site:* Federal Communication Commission's Electronic Comment Filing System (ECFS): *http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* FCC Headquarters, 445 12th Street SW., Room TW–A325, Washington, DC 20554
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, or audio format), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

For detailed instructions for submitting comments, see the **SUPPLEMENTARY INFORMATION** section of this document.

Initial Paperwork Reduction Act of 1995 (PRA) Analysis:

This *Part 1 Request for Comment* contains proposed new or modified information collection requirements and seeks PRA comment. The *Part 1 NPRM* sought comment from the general public and the Office of Management and Budget on the information collection requirements contained therein, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it may ''further reduce the information collection burden for small business concerns with fewer than 25 employees'' in the light of the alternative proposals set forth in the *Part 1 Request for Comment.*

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* Leslie Barnes at (202) 418–0660; *Spectrum and Competition Policy Division* (for questions related to joint bidding arrangements): Michael Janson at (202) 418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the *Part 1 Request for Comment* in GN Docket No. 12–268, WT Docket Nos. 14–170, 05–211, FCC 15–49, released on April 17, 2015. The complete text of this document, including any attachment, is available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The *Part 1 Request for Comment* and related documents also are available on the

Internet at the Commission's Web site: *http://wireless.fcc.gov,* or by using the search function for WT Docket No. 14–170 on the Commission's ECFS Web page at *http://www.fcc.gov/cgb/ecfs/.*

All filings in response to the *Part 1 Request for Comment* must refer to GN Docket No. 12–268 and WT Docket Nos. 14–170 and 05–211. The Commission strongly encourages parties to develop responses to the *Part 1 Request for Comment* that adhere to the organization and structure of the document.

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Federal Communication Commission's Electronic Comments Filing System (ECFS): *http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.

• *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission (FCC). All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to the FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. ET. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

Initial Paperwork Reduction Act of 1995 (PRA) Analysis:

This *Part 1 Request for Comment* contains proposed new or modified information collection requirements and seeks PRA comment. The *Part 1 NPRM* sought comment from the general public and the Office of Management and Budget on the information collection requirements contained therein, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. *In addition, pursuant to the* Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it may ''further reduce the information collection burden for small business concerns with fewer than 25 employees'' in the light of the alternative proposals set forth in the *Part 1 Request for Comment.*

I. Introduction

1. The *Part 1 Request for Comment* seeks additional comment on a number of proposed changes to the Commission's part 1 competitive bidding rules offered by commenters in response to the questions and proposals set forth in the *Part 1 NPRM,* 79 FR 68172, November 14, 2014. Specifically, the Commission seeks further, more detailed input on alternative proposals as well as questions posed and issues raised by commenters on how the Commission can meet its statutory obligation to ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women (collectively, designated entities or DEs) have an opportunity to participate in the provision of spectrum-based services, while at the same time ensuring that there are adequate safeguards to protect against unjust enrichment to ineligible entities. The Commission also seeks further comment on commenters' other suggestions for amending the competitive bidding rules governing auction participation by former defaulters, commonly controlled entities, and entities with joint bidding arrangements in response to proposals advanced in the *Part 1 NPRM.* Soliciting further input on alternative proposals and exploring other issues raised in the record to date will provide a more complete record for the Commission to evaluate and act upon, as appropriate, the concerns raised in the *Part 1 NPRM.*

II. Background

2. In the *Part 1 NPRM,* the Commission emphasized that ''it remain mindful of its responsibility to ensure that benefits are provided only to qualifying entities,'' and asked whether its proposals ''provide adequate safeguards against unjust enrichment to ensure that bidding credits are awarded only to qualifying small businesses.'' In discussing the Commission's proposed two-prong approach to evaluate attribution and establish eligibility for small business benefits, the Commission asked whether it should ''take additional steps to assure that ineligible entities cannot exercise undue influence over a small business,'' and also asked commenters to ''offer any other suggestions the Commission should consider to revise its rules and reform its small business policies.''

3. After the *Part 1 NPRM* was released in October 2014, the Commission conducted an auction for 1,614 Advanced Wireless Service licenses in the 1695–1710 MHz, 1755–1780 MHz, and 2155–2180 MHz bands (Auction 97), which closed on January 29, 2015. In order to allow interested parties an opportunity to take into account any ''lessons learned'' from Auction 97, the Wireless Telecommunications Bureau (WTB) extended the comment deadline for the *Part 1 NPRM* three times. Twenty-one parties submitted comments and fourteen parties submitted reply comments. Based on the issues raised in the *Part 1 NPRM,* several commenters offered alternative proposals, and suggested other policy considerations the Commission should weigh before amending its Part 1 rules. The *Part 1 Request for Comment* seeks additional comment on those proposals and suggestions.

III. Eligibility for Bidding Credits

A. Attribution Rules and Small Business Policies

4. In the *Part 1 NPRM,* the Commission sought comment on ''find[ing] a reasonable balance between the competing goals of affording [designated] entities reasonable flexibility to obtain the capital necessary to participate in the provision of spectrum-based services and effectively preventing the unjust enrichment of ineligible entities.'' The *Part 1 NPRM* proposed to modify the eligibility standard for small business benefits to provide small businesses greater opportunities to participate in a wide range of spectrum based services. Among other issues, the *Part 1 NPRM* sought comment on repealing the attributable material relationship (AMR) rule which, for the purposes of determining an entity's eligibility for small business benefits, attributes to the DE applicant the revenues of any entity with which it has one or more agreements for the lease or resale of, on a cumulative basis, more than 25 percent of the spectrum capacity of any individual license it holds. Likewise, the *Part 1 NPRM* revisited the policy underlying the AMR rule. In lieu of a bright-line test, the Commission proposed a more focused two-pronged approach to evaluate an entity's eligibility for benefits using its longstanding controlling interest and affiliation rules to determine whether an applicant: (1) Meets the applicable small business size standard, and (2) retains control over the spectrum associated with the licenses for which it seeks small business benefits. The Commission also proposed to modify the secondary market rules to make

clear that DEs may fully benefit from the same *de facto* control standard for spectrum manager leasing as is applied to non-DE lessors.

5. Several commenters support the Commission's proposal to modify the DE eligibility standard by eliminating the AMR rule, stating that it will allow small businesses the flexibility needed to obtain the capital necessary to participate in the provision of spectrum-based services. Those commenters note, among other things, that the proposal relies on well-established Commission standards to evaluate *de jure* and *de facto* control with which licensees are familiar, and is coupled with effective unjust enrichment provisions to safeguard against abuse of small business benefits. The Commission invites additional comment on this proposal and related concerns. Specifically, parties supporting the elimination of the AMR rule should explain how eliminating or loosening the restriction will promote competition and ensure small business participation in spectrum-based services, while guarding against ineligible entities' acquiring small business benefits. Several other parties oppose the Commission's proposal to eliminate the AMR rule to replace it with a two-pronged control analysis, arguing that doing so would increase the likelihood that DE benefits might unfairly flow to ineligible entities or spectrum ''speculators'' in contravention of Congressional intent. Commenters advocating for alternative rule amendments for the DE eligibility rules and the award of benefits should specifically address how the Commission should consider relationships with and investment in a DE applicant, particularly in connection with any use of spectrum acquired with benefits.

6. Other parties argue that the AMR rule should not only be retained, but strengthened. For instance, some advocate that a DE should be prohibited from leasing more than 25 percent of its spectrum in the aggregate across one or more licenses. Another commenter argues that, if the AMR rule is retained, a DE should not be allowed to lease more than 25 percent of its total spectrum to any one wireless operator. In light of these and similar comments, the Commission seeks further comment on how much of a DE's spectrum it should be able to lease or resell without having to attribute the revenues of its lessees or resellers. Is there a different percentage threshold, either higher or lower, that would better serve the Commission's statutory goals? Should the Commission instead reinstate an absolute limit on the percentage of a DE's spectrum that it may lease or resell? If so, what should that limit be and why? Should any such limit affect DE eligibility as to any license, or only on a license-by-license basis? Should the Commission have different rules for licenses acquired by DEs without bidding credits? Should the Commission's rules regarding spectrum use agreements with DE's differ for those that have an equity interest in the DE? Commenters should also address how any proposed rule amendments for DE eligibility would impact the Commission's goal of providing small businesses with greater access to capital.

7. Further, some parties suggest that the Commission should consider whether to distinguish between pure spectrum leasing arrangements and network facilities-based wholesale arrangements when evaluating whether to retain the AMR rule. The Commission seeks further comment on this distinction and asks whether and how it should treat wholesale and resale agreements differently from lease arrangements for purposes of attributing revenues to a DE applicant. Commenters are also requested to discuss how the Commission should define ''resale'' and ''wholesale agreements'' for purposes of any such distinction, as well as for any other rule modifications it might consider, including if the Commission ultimately choose to retain the AMR rule, and the policy of requiring facilities-based service underlying the rule. Are there any potential advantages of distinguishing between agreements on the basis of the provision of facilities-based service? Are there any potential negative effects of such a distinction such that, on balance, it is preferable to retain the current AMR rule?

8. Some parties suggest that the AMR rule be retained, but modified to allow DEs to lease spectrum to rural carriers or other DEs without attribution and allow DEs that have acquired licenses without bidding credits to lease those licenses without attribution. In particular, Blooston Rural proposes that the AMR be retained with respect to spectrum licenses that are both acquired with bidding credits and leased to nationwide wireless providers. The Commission seeks comment on these proposals. Commenters are specifically invited to address how the proposed modifications will achieve the Commission's goals of facilitating small business participation in spectrum-based services and enhancing competition, while preventing ineligible entities from acquiring small business benefits and unjust enrichment. Is there a limit on the overall amount of spectrum that a DE should be permitted to lease to another DE or rural carrier? Should any such limit affect DE eligibility as to any license, or only on a license-by-license basis? Commenters are also invited to address whether the proposals regarding modifications to the DE eligibility rules and award of DE bidding credits negatively or positively affect auction revenues, and the extent to which 47 U.S.C. 309(j) permits consideration of any such effects.

9. With regard to the policy underlying the AMR rule, a number of parties suggest, however, that the Commission should continue to encourage DEs to provide facilities-based service. For instance, one party supports the elimination of the AMR rule, but states that DEs should be required to be facilities-based providers. Some commenters contend that any rule changes related to eligibility for small business benefits must continue to require an applicant seeking to utilize those benefits to be primarily a facilities-based provider. Other commenters support the Commission's proposal to reconsider requiring DEs to primarily provide facilities-based service directly to the public, and favor the elimination of the policy. The Commission invites further comment on the proposed change to this policy, including whether such a change would comply with the statute's directive that the Commission prescribes ''ensur[ing] that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.'' Commenters are requested to discuss how a policy favoring facilities-based service affects the Commission's ability to prevent warehousing and unjust enrichment, and ensure that small business benefits flow to eligible entities. For instance, should the Commission automatically treat an entity that manages a DE's spectrum license utilization for provisioning services as a controlling interest of the DE? Additionally, the Commission seeks comment as to ways in which the Commission can implement the policy that DEs provide facilities-based services if the AMR rule is eliminated.

10. The record also includes numerous additional proposals that expand or offer alternative proposals for evaluating DE eligibility. The Commission seeks comment on the specific suggestions raised in the record and set forth below, and asks interested parties to provide specific details on how any proposed rule amendment would further its policy objectives of

providing small businesses opportunities and preventing unjust enrichment of ineligible entities: (1) Modify the applicable attribution, controlling interest or affiliation rule to alter the types of equity arrangements available to a DE applicant, by: (i) ''Attribut[ing] to a DE the revenues and spectrum of any spectrum holding entity that holds an interest, direct or indirect, equity or non-equity of more than 10 percent,'' consistent with the spectrum attribution rules used to consider spectrum aggregation, (ii) Restricting larger nationwide and regional carriers, entities with a certain number of end-user customers, and/or other large companies from providing a material portion of the total capitalization of DE applicants or otherwise exercising control over such applicants as part of the definition of 'material relationship;' (iii) ''[A]dopting a rebuttable presumption that equity interests of 50 percent or more represent *de facto* control of the [DE] company;'' (2) Adopt a 25 percent minimum equity requirement for DEs to ''ensure that controlling interests are properly invested in their companies,'' and provide that ''any loans to achieve minimum equity thresholds should be negotiated at arms-length;'' (3) Limit the total dollar amount of DE benefits that any DE (or group of affiliated DEs) may claim during any given auction, based on some multiple of its annual revenues, or a set cap of $32.5 million to ''ensure that DEs cannot acquire spectrum in a manner that is wildly disproportionate to the concept of a small business;'' (4) Limit the overall amount that a small business can bid in order to ensure that a DE is not able to ''bid at levels that undercut the purpose of the DE program'' and base such cap on some multiple of a small business gross revenue threshold in the Part 1 schedule, such as ten times the annual gross revenues; (5) Rather than capping DE benefits, adopt another limiting metric such as population, to tie bidding credits more closely to a typical business plan of a small business. Under this proposal, a DE applicant bidding on licenses covering a relatively small number of pops, such as in rural areas, would not be subject to a cap, but nationwide licenses or licenses covering high-value, metropolitan areas would be limited; (6) Narrow the scope of the affiliation rules to exclude individuals and entities whose revenues are currently attributable to a DE, such as directors and certain family members, including in-laws, siblings, step-siblings, and half-siblings, if they are unlikely to exercise control over the applicant entity unless the applicant has more than incidental business relationships with a particular relation; and (7) ''[C]larify the affiliation rules to prevent rural telephone companies from losing [DE] status because they hold a fractional interest in a cellular partnership,'' where the rural telephone company has no ability to control the partnership's day-to-day operations and/or strategy in any significant way.

11. In addressing proposals proffered in the record, commenters are requested to provide specific comment about how the proposals could be implemented and whether there are any alternative thresholds that would better meet the Commission's goals. For example, commenters should address whether and how any relevant terms should be defined and how the proposals should apply to existing DEs and those that will apply for benefits in the future. Are the existing standards for disclosable interest holders and affiliates appropriate for evaluating DE eligibility consistent with the Commission's policy objectives, or should the Commission modify its rules to include other non-controlling interests in a DE that may potentially cause unjust enrichment of ineligible entities or enable ineligible entities to exercise undue influence over a DE? Should there be a cap on the overall amount of money that non-controlling interests can contribute to a DE? Should there be a cap on, or a prohibition of, a non-controlling interest holder's use of spectrum for a license that has been acquired with DE benefits? For attribution purposes, is the revenue information the Commission uses to determine DE eligibility appropriate, or should the Commission consider other revenues such as sources of personal income? To what extent should an interest holder's revenues be attributed to a DE, for instance, should the attribution of revenues be based on the correlating percentage of the interest holder's equity contribution to the DE rather than all gross revenues? In advocating for particular changes, commenters should discuss how such changes or any resulting disclosure requirements could be implemented in the auction process, including the short-form application stage. To the extent that the proposals recommend incorporating specific percentages, thresholds, or procedures into the Commission's DE eligibility rules, commenters should explain how these approaches, or any other alternatives, would improve the Commission's DE program and better serve its statutory goals. Additionally, how should the Commission factor in the rising cost of acquiring spectrum licenses into any rule amendments that it consider?

12. On February 26, 2015, United States Senator Claire McCaskill sent a letter to Chairman Wheeler requesting that the Commission eliminate the ''preferential'' treatment for Alaska Native Corporations (ANCs) that do not meet the standard definition of a small business under the Commission's attribution rules. Under 47 CFR 1.2110(c)(5)(xi), small businesses affiliated with Indian tribes or ANCs are not required to include revenues of those Indian tribes or ANCs, other than gaming revenues, into their gross revenues for purposes of determining eligibility as a small business. In adopting this exemption, the Commission sought to ensure that its rules remained consistent with other Federal laws, policies, and regulations, and most notably the affiliation rules of the Small Business Administration. The Commission seeks comment on whether ANC revenues should be treated the same way as attributable revenues for purposes of DE eligibility. Additionally, the Commission seeks comment on whether its rules concerning Indian tribes or ANCs remain consistent with other Federal policies and practices, and whether and how to amend them. The Commission also seeks comment on whether its rules pertaining to ANCs increase the risk of unjust enrichment to some entities.

B. Unjust Enrichment

13. In the *Part 1 NPRM,* the Commission also sought comment on what safeguards it should consider to ensure that bidding credits are extended only to qualifying small businesses, noting that ''[unjust enrichment] provisions will be as important as ever and that strong enforcement of [the Commission's] rules is critical.'' The Commission sought comment on whether any changes were needed to strengthen the unjust enrichment rules and how best it can continue to scrutinize applications and proposed transactions to ensure that only eligible entities receive benefits, while not undermining the statutory directive to ensure that DEs are given the opportunity to participate in the provision of spectrum-based services.

14. Commenters are divided on whether the existing rules provide a sufficient safeguard to protect against unjust enrichment, while ensuring that DEs have an opportunity to participate in the provision of spectrum-based services. Several parties urge the Commission to retain the existing rules, noting that a longer unjust enrichment period would ''hamper or eliminate the

ability of DEs to raise and retain capital or operate their businesses with flexibility comparable to businesses in the rest of the industry.''

15. Other commenters urge the Commission to adopt stronger rules to provide a more meaningful deterrent to speculation and abuse. T-Mobile, for example, advocates that the unjust enrichment rules should be adjusted to: ''(1) encompass the entire license term; and (2) require licensees that profit from the sale of a license obtained at a discount to repay that windfall profit [the sales price of the licenses above and beyond the auction bid price], plus interest.'' T-Mobile further notes that, ''in cases where spectrum is not available for use in the near term due to Federal Government or commercial incumbents, the Commission's existing holding periods . . . do not correspond with any rational benchmark for licensees to engage in a legitimate business.'' To ensure that spectrum resources are made available to the public in a timely manner, T-Mobile advocates that the Commission should require DEs to show some evidence of build-out activity within one year of acquiring the license or upon clearing spectrum incumbents. In addition, Taxpayer Advocates urges the Commission to require a DE to pay back all or part of its bidding credit if it chooses to ''lease or sell a significant portion of spectrum within the first five years of ownership.'' Other commenters contend that more stringent requirements like these proposals will further impede small businesses' ability to acquire access to capital.

16. The Commission seeks comment on these alternative viewpoints. Specifically, the Commission seeks additional comment on whether to extend the unjust enrichment period for a specified number of years (*e.g.,* 10 years), the entire license term or to link it to an interim construction milestone. Are there other alternatives the Commission should consider? For example, should the Commission revisit the percentage amounts associated with its unjust enrichment repayment schedule? Alternatively, should the Commission enhance its unjust enrichment rules as T-Mobile suggests to address concerns that the current unjust enrichment repayment rules are viewed as a ''mere cost of doing business'' by requiring repayment of any profit or some multiple of the bidding credit received? Commenters are also invited to address whether the DE benefits associated with any and all of a DE's licenses should be forfeited if it loses DE eligibility as to any one license. Finally, the Commission seeks comment on whether it should consider the proposal in the record to impose additional build-out and reporting obligations on DEs by requiring them to demonstrate ''tangible steps toward deployment'' within one year of acquiring license(s) or clearing incumbent spectrum users. Is one year an appropriate timeframe or should the Commission require demonstrations at additional benchmarks? Are there any other options the Commission should consider to prevent spectrum warehousing and promote expeditious build-out, *e.g.,* require repayment of some percentage of a bidding credit if a DE fails to meet a benchmark? The Commission asks commenters to address any trade-offs related to these proposals, including the extent to which any implemented rule amendments would restrict a DE's ability to access capital, deter participation of ineligible entities in the DE program, and prevent unjust enrichment.

C. Bidding Credits

17. In the *Part 1 NPRM,* the Commission proposed to increase the gross revenues thresholds for defining the three tiers of small businesses, in order to reflect the changing nature of the wireless industry, including the overall increase in the size of wireless networks and the increasing capital costs to deploy them. Based upon the percentage increase in the Gross Domestic Product (GDP) price index from when the small business definitions were first adopted, the Commission proposed to adjust the three-year gross revenues thresholds from $3 million to $4 million for businesses potentially eligible for a 35 percent bidding credit; from $15 million to $20 million for business potentially eligible for a 25 percent bidding credit; and from $40 million to $55 million for businesses potentially eligible for a 15 percent bidding credit. The Commission also sought comment regarding the following: increasing the percentage amounts of bidding credits available to small businesses in 47 CFR 1.2110(f); adding additional small business definitions and associated tiers of bidding credit amounts; and offering bidding preferences based on criteria other than business size.

1. Small Business Bidding Credits

18. Many commenters support increasing the gross revenues thresholds by the proposed increments, citing the lack of DE participation in recent auctions, changes in capital markets, and the long period of time since the current thresholds were set. Some commenters further advocate that the Commission increase the revenue thresholds even more than proposed in the *Part 1 NPRM.* Several commenters support the continued use of gross revenues as the basis for analyzing business size, referring to the administrative workability of this metric. ARC proposes indexing the gross revenue tiers to the costs of auctioned spectrum on a MHz per pop basis. With respect to the credit percentages themselves, many commenters support increasing the credit percentages generally or across the board, and several support specific increases for the lowest threshold tier (the largest credit). On the other hand, CAGW opposes increasing the bidding credit percentages, arguing that such an increase ''could lead to even more questionable affiliations between large and small companies.'' Others suggest that bidding credit increases and expanding the eligibility for the DE program should not be implemented until the rules are revised and there is surety that ineligible entities will not benefit from bidding credits. How does this suggestion align with the Commission's proposals to address all issues at the same time in this proceeding?

19. The Commission invites comment on these views. Commenters should address implementation issues associated with any alternate approaches, and provide concrete data and analysis to demonstrate whether and how such approaches will better meet the Commission's statutory goals.

2. Other Bidding Preferences/Types of Credits

20. A number of commenters urge the Commission to consider bidding credits based on criteria other than business size. Several parties, for example, encourage the Commission to implement a bidding credit for rural telephone companies, ranging from 25 to 35 percent, to be awarded in addition to any small business bidding credit for which an applicant may qualify. Another commenter urged the Commission to re-examine its rules concerning the tribal land bidding credit. Other parties request that the Commission adopt bidding credits or other preference for parties that commit to serve rural, unserved and underserved areas. In addition at least one party advocates that the Commission's rules should remain focused on small businesses.

21. The Commission seeks specific, data-driven comment regarding these alternative suggestions, including associated implementation issues. Commenters are also requested to

discuss how such proposals would advance the Commission's statutory objectives and why they would be preferable to other proposals.

22. The Commission specifically invites comment on the threshold percentages proposed with regard to the adoption of a bidding credit reserved for rural telephone companies, as well as the suggestion that such a bidding credit be cumulative with any small business bidding credit for which a rural telephone company may also qualify, possibly exceeding 50 percent. To what extent would a rural telephone company bidding credit better enable these entities to compete successfully for licenses at auction? Are the higher costs of service and lower population densities already reflected in the winning bid price for rural markets? In addition to the data submitted by Blooston Rural, commenters are invited to provide additional analyses to demonstrate the need for a rural bidding credit. Does the possibility of cumulating small business and rural telephone company bidding credits increase the risk of unjust enrichment or cause concern regarding other statutory provisions? Commenters are requested to address the extent to which a rural bidding credit may be duplicative of other Commission and Federal government programs designed to facilitate network expansion into rural, unserved, and underserved communities. Is there any way to properly monitor any targeted program or other programs run by the Commission or other agencies to prevent potential abuse? Should the Commission consider any additional obligations or responsibilities for entities that benefit from both a small business and rural bidding credit?

D. Alternatives To Promote Small Business Participation in the Wireless Sector

23. In the *Part 1 NPRM,* the Commission sought comment on suggestions that would enable the DE program to remain a viable mechanism for small businesses to gain flexibility to access capital, compete in auctions, and participate in new and innovative ways to provision services in a mature wireless industry. Several commenters provided suggestions in response to the Commission's inquiry stating that a review of alternatives is necessary to ascertain whether the current DE program is helpful or harmful to its intended beneficiaries. Many parties advocate for alternatives they contend would facilitate small business access to benefits in both the auction and secondary market contexts. For instance, AT&T suggests that providing ''incentives for secondary market transactions or virtual networks,'' may offer a more direct path for more valuable small businesses in the telecommunications industry and may be more effective than facilitating participation in auctions due to the cost of licenses and capital needed to build networks. Other incentives may include Blooston Rural's proposal which advocates for a change that would allow a winning bidder to deduct from the auction purchase price the *pro rata* portion of its winning bid payment of any area that is partitioned to a rural telephone company or cooperative. ARC would expand Blooston Rural's proposal to DEs and argues that this change would ''benefit DEs by providing incentives for partitioning and promoting secondary market transactions.'' Additionally, would strengthening the Commission's build-out requirements and improving processes to reclaim licenses provide opportunities for small businesses to gain access to spectrum and increase diversity of license holders? Interested parties should provide specific instances where they think improvements could be made and options the Commission could pursue.

24. The Commission seeks comment on these proposals. In particular, commenters should address whether and how Blooston Rural's proposal could be implemented in light of the Commission's rules prohibiting certain communications and payment timeframes. Are there alternative frameworks that the Commission should consider to promote a diverse telecommunications ecosystem, including incentives for secondary market transactions or virtual networks that could provide a more direct path into the industry for all entities, including DEs? Pursuant to the Commission's statutory objectives, what role(s) can and should small businesses play in the ''provision of spectrum-based services'' in today's telecommunications industry?

IV. Other Part 1 Considerations

A. Former Defaulter Rule

25. The *Part 1 NPRM* proposed to tailor the former defaulter rule by balancing concerns that the current application of the rule is overbroad against the Commission's continued need to ensure that auction bidders are financially reliable. Specifically, consistent with the terms of a general waiver it granted for Auction 97, the Commission proposed to exclude any cured default on any Commission license or delinquency on any non-tax debt owed to any Federal agency for which any of the following criteria are met: (1) The notice of the final payment deadline or delinquency was received more than seven years before the relevant short-form application deadline; (2) the default or delinquency amounted to less than $100,000; (3) the default or delinquency was paid within two quarters (*i.e.,* 6 months) after receiving the notice of the final payment deadline or delinquency; or (4) the default or delinquency was the subject of a legal or arbitration proceeding and was cured upon resolution of the proceeding.

26. Nearly all of the commenters support the Commission's proposal, some with modest additions, noting that the proposed former defaulter rule strikes the right balance between ensuring that winning bidders are capable of meeting their financial obligations and limiting costly and overbroad application of the rule. AT&T suggests that the Commission should also ''include an exemption based on an applicant's credit-rating,'' because ''applicants with an investment grade credit rating pose no meaningful risk of defaulting on a Commission obligation and thus should not be required to submit an additional 50 percent upfront payment penalty.'' NTCH, however, suggests that the Commission eliminate the former defaulter rule altogether because it is ineffective, unneeded, and counterproductive. The Commission seeks comment on these alternative proposals. To the extent commenters support the proposal to eliminate the former defaulter rule altogether, the Commission seeks specific comment on how it can adequately ensure that bidders are capable of meeting their financial commitments.

B. Commonly Controlled Entities

27. The *Part 1 NPRM* proposed to codify the Commission's longstanding competitive bidding procedure that prohibits the same individual or entity from filing more than one short-form application, and to establish a new rule to prohibit entities that are exclusively controlled by a single individual or set of individuals from qualifying to bid on licenses in the same or overlapping geographic areas in a specific auction based on more than one short-form application. Commenters addressing this issue largely support the Commission's proposals, although some encourage the Commission to take a step further and consider whether to apply the proposals to entities with common, non-controlling interests. T-Mobile notes, for example, that ''it is critical

that the Commission also address the potential for coordinated bidding behavior by bidders that are linked by common attributable interests,'' noting that otherwise these entities would ''have unfair advantages in an auction and [could] manipulate bidding to the detriment of other participants and the public.'' For example, Spectrum Financial implies that allowing an entity with ownership in more than one bidder which exceeds a certain percentage (*e.g.,* 50% or more) to participate in an auction promotes collusion. To address this concern, one commenter recommends that the Commission ''adopt a requirement in addition to its existing [47 CFR 1.2105's] rules [prohibiting certain communications] that individuals or entities listed as disclosable interest [holders on more than one short-form application certify that they are not, and will not be, privy to, or involved in, the bidding strategy of more than one auction participant.'' AT&T proposes that ''each applicant should certify that it has not entered into any agreements with [any] other applicant regarding their bids or bidding strategy, and that they are not privy to any other applicant's bids or bidding strategy'' in lieu of the current disclosure requirements under the Commission's rules. Commenters also suggest that applicants be limited in holding ownership interests in multiple auction applicants. If the Commission were to set an ownership limit, what is the appropriate limit? Should entities be restricted from having an interest (direct or indirect) in more than one applicant for a license in a geographic license area? Alternatively, would establishing a limit on financial investments that an entity may make in other auction participants address commenters' concerns? Should such entities be restricted from directing or participating directly in the bidding of more than one applicant, regardless of whether there is common control? The Commission seeks comment on these concerns and suggestions and any alternatives. In particular, commenters are invited to address what attribution standards the Commission should use in the context of any such rule. Finally, the Commission observes that the adoption of some of the alternatives by commenters may directly or indirectly conflict with other Part 1 competitive bidding rules. For instance, one commenter proposed an additional certification on certain prohibited communications for disclosable interest holders, which may conflict with an exception in the Commission's current rules on prohibiting certain communications. The Commission seeks comment on these potential conflicts and how to harmonize the proposals with its competitive bidding rules, while fulfilling its statutory goals.

C. Joint Bidding Arrangements

28. In light of the evolution of the mobile wireless marketplace since the Commission last adopted joint bidding rules in 1994, the *Part 1 NPRM* proposed to prohibit joint bidding and other arrangements among nationwide providers, including agreements to participate in an auction through a newly formed joint entity. For purposes of the Commission's joint bidding rules, it proposed to distinguish nationwide providers from non-nationwide providers because of the increased likelihood that joint bidding arrangements between nationwide providers would lead to competitive harm or otherwise harm the public interest. In contrast, the Commission observed a reduced likelihood for competitive harm if non-nationwide providers entered into joint bidding agreements with other non-nationwide providers. Accordingly, the Commission tentatively concluded that it should continue to permit joint bidding arrangements among non-nationwide providers and asked commenters proposing any changes to the joint bidding rules for arrangements among non-nationwide providers to discuss why such changes are necessary. Additionally, the Commission sought comment on the policies and procedures that should apply to bidding arrangements between nationwide and non-nationwide providers. Finally, the Commission also sought comment on its analysis of the harms and benefits of joint bidding arrangements generally, and on whether its proposals ''provide an effective framework for addressing the[se] relative harms and benefits.''

29. Commenters are divided on these proposals, with some offering additional recommendations. Sprint opposes prohibiting bidding arrangements between nationwide providers because such a rule would not account for differences in the relative market power of the four current nationwide providers. T-Mobile opposes instituting bright-line rules at all, advocating for adherence to the Commission's existing practice of addressing all bidding agreements on a case-by-case basis. RWA, ARC, and CCA support continuing to allow joint bidding by non-nationwide providers, with ARC arguing that such arrangements ''can enable smaller companies to pool their resources and compete effectively for licenses that they would be unable to acquire on their own.'' Likewise, RWA contends that ''joint bidding arrangements can provide some small and rural wireless carriers with opportunities that might otherwise be unavailable due to limited financial resources.''

30. AT&T, Taxpayer Advocates, and T-Mobile contend that the Commission should place greater limitations on joint bidding than proposed in the *Part 1 NPRM* based upon perceived negative effects of non-nationwide providers using joint bidding arrangements in Auction 97. These commenters argue that certain bidders exploited the Commission's rules to the detriment of other bidders and the public interest. Accordingly, some of these commenters submit alternative proposals, which they believe are less likely to lead to competitive harm or otherwise harm the public interest. The Commission seeks comment on these alternative proposals: (1) Prohibit all joint bidding agreements between DEs and non-DEs; (2) Prohibit all joint bidding arrangements and require instead that entities seeking to coordinate their bidding activities form a bidding consortium or joint venture and divide the licenses acquired after the auction is over; (3) Prohibit all joint bidding arrangements between commonly controlled or affiliated entities; (4) Generally prohibit parties that are privy to others' bidding information during the auction from placing multiple coordinated bids on a common license; (5) Prohibit an individual from serving as an authorized bidder for more than one auction participant; (6) Permit bidding agreements between all providers in rural Partial Economic Areas where the providers involved have less than 45 MHz*pops of below-1-GHz spectrum; (7) Modify the definition of ''joint bidding and other arrangements'' to include only arrangements that are directly related to the coordination of bidding strategies or mechanics; (8) Require a more comprehensive certification concerning bidding agreements and bidding strategies in addition to, or in lieu of, current disclosure requirements, such as a requirement that all disclosable interest holders on more than one application certify that they do not have knowledge of the bidding strategy of more than one applicant; and (9) Implement a prior approval process for joint bidding arrangements before the short-form deadline, including how to implement the process in an efficient manner.

31. In addition, the Commission seeks to expand the record and request comment on the following proposals: (1)

Prohibit parties to a joint bidding agreement from bidding separately on licenses in the same market; (2) Prohibit communications among joint bidders when bidding on licenses in any of the same markets; and (3) Prohibit any individual or entity from serving on more than one bidding committee.

32. The Commission requests comment on whether and how all of the proposals offered above would better protect against anti-competitive behavior—such as preserving bidding eligibility, and limiting bid exposure and distortion of demand—or other harms to the public interest. Commenters are also requested to address specifically how such proposals could be implemented to preserve auction integrity.

IV. Procedural Matters

A. Ex Parte Presentations

33. *Requests for Ex Parte Meetings.* This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the *ex parte* rules, as set forth in paragraph 145 of the *Part 1 NPRM.* Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in 47 CFR 1.1206(b).

B. Supplement to Initial Regulatory Flexibility Analysis

34. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the *Part 1* NPRM included an Initial Regulatory Flexibility Analysis (IRFA) exploring the potential impact on small entities of the Commission's proposals. 47 U.S.C. Section 309(j)(4)(D) of the Communications Act requires that when the Commission prescribes regulations in designing systems of competitive bidding, it shall ''ensure that small businesses, rural telephone companies, and businesses owned by member of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.'' Consistent with this statutory objective, the Commission sought written public comment on the proposals in the *Part 1 NPRM,* including comment on the IRFA. Though numerous responses were directed at the small business aspects of the *Part 1 NPRM,* the Commission received no comments in direct response to the IRFA. This supplemental IRFA addresses the possible incremental significant economic impact on small entities of the alternative proposals in the *Part 1 Request for Comment.* Interested parties are invited to submit written public comments on this supplemental analysis. Any such comments must be filed in accordance with the same filing deadlines reflected in the ''Dates'' section of this publication and have a separate and distinct heading designating them as responses to this supplemental analysis. The Commission will send a copy of the *Part 1 Request for Comment,* including this supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *Part 1 Request for Comment* and supplemental IRFA (or summaries thereof) will be published in the **Federal Register**.

35. *Need for, and Objectives of, the Proposed Competitive Bidding Procedures.* The *Part 1 Request for Comment* seeks additional comment on a number of specific changes to the Commission's Part 1 competitive bidding rules suggested by commenters in response to the questions and proposals set forth in the *Part 1 NPRM.* Specifically, it seeks comment on alternative proposals for evaluating DE eligibility for bidding credits and for updating other Part 1 competitive bidding rules governing auction participation by former defaulters, commonly controlled entities, and entities with joint bidding arrangements. The *Part 1 Request for Comment* continues to advance the Commission's statutory directive to ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women (collectively, DEs) are given the opportunity to participate in the provision of spectrum-based services, and fulfill the commitment made in the *BIA Report & Order.* Soliciting further input on these alternative proposals will provide a more complete record to evaluate and act upon the concerns raised in the *Part 1 NPRM.*

36. The *Part 1 Request for Comment* seeks comment on the following alternative proposals that would modify the Commission's rules concerning DE eligibility: (1) Modify the attributable material relationship (AMR) rule to distinguish between pure spectrum leasing arrangements and network-based wholesale arrangements and/or to allow DEs to lease spectrum to rural carriers or other DEs without attribution; (2) Retain or eliminate the AMR rule and continue to require DEs to provide facilities-based service; (3) Eliminate the requirement that DEs provide facilities-based service; (4) Strengthen the AMR rule by prohibiting DEs from leasing more than 25 percent of their spectrum in the aggregate, across one or more licenses or to any one wireless operator; (5) Modify the applicable attribution, controlling interest, or affiliation rule to alter the types of equity arrangements available to a DE applicant, by: (i) attributing to a DE the revenues and spectrum of any spectrum holding entity that holds an interest, direct or indirect, equity or non-equity of more than 10 percent; (ii) restricting larger nationwide and regional carriers, entities with a certain number of end-user customers, and/or other large companies from providing a material portion of the total capitalization of DE applicants or otherwise exercising control over such applicants as part of the definition of ''material relationship;'' and (iii) adopting a rebuttable presumption that equity interests of 50 percent or more represent de facto control of the DE company; (6) Adopt a 25 percent minimum equity requirement for DEs and ensure that any loans to achieve minimum equity thresholds should be negotiated at arms-length; (7) Limit the total dollar amount of DE benefits that any DE (or group of affiliated DEs) may claim during any given auction, based on some multiple of its annual revenues, or a set cap of $32.5 million; alternatively, base this limit on some multiple times the applicable small business definition in the Part 1 schedule, or another metric like population to tie bidding credits more closely to a typical small business plan; (8) Narrow the scope of affiliation rules to exclude individuals and entities whose revenues are currently attributable to a DE if they are unlikely to exercise control over the applicant entity, such as directors and certain family members, including in-laws, siblings, step-siblings, and half-siblings, unless the applicant has more than incidental business relationships with a particular relation; (9) Clarify the affiliation rules to prevent rural telephone companies from losing DE status by holding a fractional interest in a cellular partnership where the rural telephone company has no control over the partnership's day-to-day operations and/or strategy; (10) Treat the revenues of Alaska Native Corporations the same way as attributable revenues for purposes of DE eligibility under the Commission's rules; (11) Retain the existing unjust enrichment rules or strengthen the rules by: (i) changing the unjust enrichment period to encompass the entire license term, for a specified

number of years, or linking it to an interim construction milestone; and (ii) requiring licensees that profit from the sale of a license obtained at a discount to repay that windfall profit, plus interest, in addition to the bidding credit discount; (12) Require DEs to show some evidence of build-out activity within one year of acquiring the license or upon clearing spectrum incumbents and require repayment of some percentage of its bidding credit discount if it fails to meet the build-out milestone; (13) Adjust the percentage amounts associated with the Commission's unjust enrichment repayment schedule; (14) Require DEs to pay back all or part of its bidding credit if it chooses to lease or sell a significant portion of spectrum within the first five years of ownership; (15) Adjust the percentage amounts associated with the Commission's unjust enrichment repayment schedule; (16) Decline to increase the *Part 1 NPRM's* proposed gross revenue thresholds defining the three tiers of small business bidding credits and to increase the scale of the DE program prior to reform; (17) Modify the definition of small business for acquiring bidding credits by: (i) Increasing the gross revenue thresholds above the original proposed amounts in the *Part 1 NPRM;* (ii) indexing the gross revenue tiers to the costs of auctioned spectrum on a MHz per pop basis (rather than using the Gross Domestic Product price index); and (iii) increasing the bidding credit percentages across all three tiers or solely for the lowest tier (the largest credit); (18) Consider the adoption or review of other bidding preferences/types of credits by: (i) Adopting a bidding credit for rural telephone companies to be awarded in addition to any small business bidding credit for which an applicant may qualify; (ii) adopting a bidding credit for parties that commit to serve unserved and underserved areas; (iii) reviewing the tribal land biding credit; (iv) establishing a mechanism for a winning bidder to deduct from its auction purchase price the *pro rata* portion of its winning bid payment of any area partitioned to a rural telephone company or cooperative or any DE; and (v) adopting a ''localism'' bidding credit for any DE applicant with an 10% or greater interest holder that has been a resident of an unserved, underserved, or persistent poverty area for more than a year; and (19) Provide incentives for secondary market transactions or virtual networks.

37. The *Part 1 Request for Comment* also seeks comment on alternatives proposed for other Part 1 competitive bidding rules relating to former defaulters, commonly controlled entities, and entities with joint bidding arrangements. Specifically, these alternative proposals would: (1) Modify the former defaulter rule to include an exemption based on an applicant's investment grade rating or eliminate the former defaulter rule altogether; (2) Apply also, common, non-controlling entities to the *Part 1 NPRM's* proposed rule to prohibit commonly controlled entities from qualifying to bid on licenses in the same or overlapping geographic areas based on more than one short-form application; (3) Limit the ownership interests or financial investments an auction applicant may have in other auction applicants; (4) Adopt a requirement in addition to the Commission's existing 47 CFR 1.2105's rules that individuals or entities listed as disclosable interest holders on more than one short-form application certify that they are not, and will not be, privy to, or involved in, the bidding strategy of more than one auction participant; (5) Modify the Commission's rules governing the treatment of joint bidding arrangements by: (i) Prohibiting all joint bidding agreements between DEs and non-DEs and between commonly controlled or affiliated entities; (ii) prohibiting all joint bidding arrangements and requiring instead that entities seeking to coordinate their bidding activities form a bidding consortium or a joint venture and divide the licenses acquired after the auction is over; (iii) permitting bidding agreements between all providers in rural Partial Economic Areas where the providers involved have less than 45 MHz*pops of below-1–GHz spectrum; (iv) modifying the definition of ''joint bidding and other arrangements'' to include only arrangements that are directly related to the coordination of bidding strategies or mechanics; and (v) prohibiting parties to a joint bidding agreement from bidding separately on licenses in the same market and from communicating about bidding information when bidding on licenses in any of the same markets; (6) Prohibit parties that are privy to others' bidding information during the auction from placing multiple coordinated bids on a common license; (7) Prohibit an individual from serving as an authorized bidder for more than one auction participant; (8) Prohibit any individual or entity from serving on more than one bidding committee; and (9) Implement a prior approval process for joint bidding arrangements before the short-form deadline, including how to implement the process in an efficient manner.

38. *Legal Basis for Proposed Rules.* The *Part 1 Request for Comment* is adopted pursuant to sections 1, 4(i), 303(r), 309(j), 316 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(r), 309(j), 316.

39. *Description and Estimate of the Number of Small Entities to which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by rules proposed in that rulemaking proceeding, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. If adopted, the alternative proposals in the *Part 1 Request for Comment* may, over time, affect small entities that are not easily categorized at present. However, the alternative proposals described in the *Part 1 Request for Comment* will affect the same individuals and entities described in paragraphs 7 through 17 of the IRFA associated with the underlying *Part 1 NPRM.*

40. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The *Part 1 Request for Comment* seeks additional comment on a number of rule changes proposed by commenters that will affect reporting, recordkeeping, and other compliance requirements for small entities. However, the majority of these alternatives are outgrowths of the *Part 1 NPRM's* proposals and policies in which a description was previously provided under paragraphs 19 through 33 of the IRFA. To the extent the alternative proposals discussed in the *Part 1 Request for Comment* differ from the *Part 1 NPRM,* the Commission discusses these changes.

41. *Eligibility for Bidding Credits.* The proposals advanced by commenters in the proceeding would distinguish for purposes of establishing DE qualifications between pure spectrum leasing and network-based wholesale arrangements. Other new proposals would modify the attribution rules to restrict the types of equity arrangements available to a DE applicant, limit the amount of DE benefits that a DE may claim or the overall amount that a small

business can bid, narrow the entities whose revenues are attributable to a DE, prevent certain rural telephone companies from losing DE status, treat ANC revenues the same way as attributable revenues, lengthen the unjust enrichment period, require licensees that profit from the sale of a DE license to repay such profit with interest, require forfeiture of DE benefits for all licenses if a DE forfeits DE eligibility for one license, and require DEs to show some evidence of build-out under the DE annual reporting requirement within one year of acquiring the license or upon clearing spectrum incumbents.

42. *Bidding Credits.* The *Part 1 Request for Comment* also seeks comments on alternative proposals that would include additional bidding credits for rural telephone companies, for companies committed to providing service to unserved or underserved areas, and for any DE applicant with a 10 percent or greater interest holder that has been a resident of an unserved, underserved, or persistent poverty area for more than a year. Another suggestion would establish an auction mechanism which would allow a winning bidder to deduct from its auction purchase price the *pro rata* portion of its winning bid payment of any area partitioned to a rural telephone company or cooperative, or any DE.

43. *Other Part 1 Rules.* In the *Part 1 Request for Comment* the Commission seeks comment on alternative suggestions to modify other Part 1 competitive bidding rules concerning former defaulters, commonly controlled entities, and entities with joint bidding agreements. With respect to the former defaulter rule, one commenter suggested that the Commission adopt an exemption based on an applicant's investment grade rating, while another commenter suggested eliminating the former defaulter rule altogether. In regards to the *Part 1 NPRM's* proposal concerning commonly controlled entities, several commenters urged the Commission to apply its proposal to entities with common, non-controlling interests as well. One commenter proposed that the Commission adopt a certification to prohibit certain communications on the Commission's short-form application, while another commenter submitted a similar proposal but would use the certification in lieu of the Commission's disclosure requirements.

44. The Commission received several alternative suggestions concerning joint bidding agreements and other arrangements. Several commenters opposed the Commission's proposal to prohibit bidding arrangements between nationwide providers; instead, these commenters advocated for adherence to the Commission's existing practice of analyzing bidding arrangements on a case-by-case basis. Other commenters urged the Commission to adopt proposals that would: (1) Prohibit joint bidding agreements between DEs and non-DEs and between commonly controlled or affiliated entities; (2) prohibit all joint bidding arrangements and require instead the formation of a bidding consortium or a joint venture which would divide the licenses acquired after the auction is over; (3) permitting bidding agreements between all providers in rural PEAs where the providers involved have less than 45 MHz*pops of below-1–GHz spectrum; (4) narrow the definition of ''joint bidding agreement and other arrangements'' to arrangements directly related to coordination of bidding strategies or mechanics; (5) prohibit parties to a joint bidding agreement from bidding separately on licenses in the same market and from communicating about bidding information when bidding on licenses in any of the same markets; (6) prohibit parties that are privy to others' bidding information during the auction from placing multiple coordinated bids on a common license; (7) prohibit an individual from serving as an authorized bidder for more than one auction participant; (8) prohibit any individual or entity from serving on more than one bidding committee; (9) implement a prior approval process for joint bidding arrangements before the short-form deadline, including how to implement the process in an efficient manner; and (10) limit an auction applicant's ownership interest or financial investment in other auction applicants.

45. *Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives beneficial to small entities considered in reaching a proposed approach, which may include the following four alternatives (among others): (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification for small entities of compliance and reporting requirements; (3) use of performance, rather than design, standards; and (4) an exemption for small entities.

46. Most of the alternative proposals in *Part 1 Request for Comment* correlate to the *Part 1 NPRM's* proposals and policies for modifying the Commission's Part 1 competitive bidding rules. As such, a description of the steps taken to minimize the significant economic impact and the alternatives considered for these proposals can be found under paragraphs 34 through 38 of the *Part 1 NPRM's* IRFA. To the extent that some of the alternative proposals may be distinguishable from the *Part 1 NPRM,* the Commission seeks additional comment on these suggestions to fully evaluate the alternatives raised in the record to date. In doing so, the Commission remains mindful of its statutory obligations which require the Commission to ''ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.'' The statute also directs the Commission to promote ''economic opportunity and competition . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses.''

47. In *Part 1 Request for Comment* the Commission continues to explore alternative proposals for establishing DE eligibility and modifying other Part 1 competitive bidding rules. With respect to the DE rules concerning attribution and unjust enrichment, the Commission seeks to provide small businesses with the flexibility to engage in business ventures that include increased forms of leasing and other spectrum use agreements. In pursuing these goals, however, the Commission also remains mindful of its responsibility to ensure that DE benefits are provided only to qualifying entities. Accordingly, the Commission also aims to employ adequate safeguards against unjust enrichment.

48. As part of this proceeding, the Commissions took a fresh look at its bidding credit program since its inception in 1997 to ensure that it continues to be a viable mechanism for small businesses in light of the current wireless marketplace. The Commission's bidding credit program is the primary way it facilitates participation by small businesses at auction. As a general matter, most of the alternative proposals would provide small businesses with an economic benefit by providing a percentage discount on auction winning bids and therefore make it easier for small businesses to compete in auction and acquire spectrum licenses.

49. To clarify and streamline the Commission competitive bidding rules in advance of BIA, the Commission also explored the need for other revisions to its Part 1 competitive bidding rules to improve transparency and efficiency of the auction process. As noted in the *Part 1 NPRM,* most of the proposed changes to the Part 1 rules would apply to all entities in the same manner as the Commission would apply these changes uniformly to all entities that choose to participate in spectrum license auctions. Applying the same rules equally in this context provides consistently and predictability to the auction process, and minimizes administrative burdens for all auction participants including small businesses. In fact, many of the proposed rule revisions clarify the Commission's competitive bidding rules, including short-form application requirements. For instance, nearly all commenters supported the Commission's proposal to modify the former defaulter rule by balancing concerns that the current application of the rule is overbroad with the Commission's continued need to ensure that auction bidders are financially responsible. Finally, the Commission continues to focus its attention on joint bidding agreements and other arrangements to preserve and promote robust competition in the mobile wireless marketplace and facilitate competition among bidders at auction, including small entities.

50. *Federal Rules Which Duplicate, Overlap, or Conflict With the Proposed Rules.*

None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2015–09489 Filed 4–22–15; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 80, No. 78
Thursday, April 23, 2015

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

AFRICAN DEVELOPMENT FOUNDATION

Public Quarterly Meeting of the Board of Directors

AGENCY: United States African Development Foundation.

ACTION: Notice of meeting.

SUMMARY: The U.S. African Development Foundation (USADF) will hold its quarterly meeting of the Board of Directors to discuss the agency's programs and administration.

DATES: The meeting date is Tuesday, April 28th, 2015, 12 p.m. to 3 p.m.

ADDRESSES: The meeting location is 1400 I Street Northwest, Suite #1000 (Main Conference Room), Washington, DC 20005–2246.

FOR FURTHER INFORMATION CONTACT: Michele Rivard, 202–233–8804.

Authority: Public Law 96–533 (22 U.S.C. § 290h).

Dated: April 15, 2015.

Doris Martin,

General Counsel.

[FR Doc. 2015–09422 Filed 4–22–15; 8:45 am]

BILLING CODE 6117–01–P

DEPARTMENT OF AGRICULTURE

National Agricultural Library

Agricultural Research Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Library, Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the Agricultural Research Service's (ARS) intention to request an extension of a currently approved information collection, Information Collection For Document Delivery Services at the National Agricultural Library (NAL), that expires October 31, 2015.

DATES: Comments must be submitted on or before June 22, 2015.

ADDRESSES: Send Comments to: USDA, ARS–NAL, Digitization and Access Branch, 10301 Baltimore Avenue, Room 304, Beltsville, Maryland 20705–2351.

FOR FURTHER INFORMATION CONTACT: Kay Derr, Digitization Librarian, telephone: 301–504–5879; email: *kay.derr@ars.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Collection For Document Delivery Services.

OMB Number: 0518–0027.

Expiration Date of Approval: October 31, 2015.

Type of Request: To extend a currently approved information collection.

Abstract: In its role as both a preeminent agricultural research library and a National Library of the United States, NAL (part of the USDA's ARS) provides loans and photocopies of materials from its collections to libraries and other institutions and organizations. NAL follows applicable copyright laws and interlibrary loan guidelines, standards, codes, and practices when providing loans and photocopies and charges a fee, if applicable, for this service. To request a loan or photocopy, institutions must provide a formal request to NAL using either NAL's web-based online request system or an interlibrary loan request system such as the Online Computer Library Center or the National Library of Medicine's Docline. Information provided in these requests include the name, address, and telephone number of the party requesting the material, and depending on the method of delivery of the material to the requestor, may include either an email address or Ariel address. The requestor must also provide a statement acknowledging copyright compliance, bibliographic information for the material they are requesting, and the maximum dollar amount they are willing to pay for the material. The collected information is used to deliver the material to the requestor, bill for and track payment of applicable fees, monitor the return to NAL of loaned material, identify and locate the requested material in NAL collections, and determine whether the requesting party consents to the fees charged by NAL.

Estimate of Burden: Average 1.00 minute per response.

Description of Respondents: Respondents to the collection of information are those libraries, institutions, or organizations that request interlibrary loans or copies of material in the NAL collections. Each respondent must furnish the information for each loan or copying request.

Estimated Number of Respondents: 700.

Frequency of Responses: Average 8 per respondent.

Estimated Total Annual Burden on Respondents: 93 hours.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have a practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques. Comments may be sent to Kay Derr at the address listed above within 60 days of date of publication. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 13, 2015.

Simon Y. Liu,

Associate Administrator, ARS.

[FR Doc. 2015–09475 Filed 4–22–15; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2015–0006]

Notice of Availability of a Treatment Evaluation Document; Hot Water Treatment of Oversized Mangoes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that we have determined that it is necessary to amend hot water treatment schedule T102-a in the Plant Protection and Quarantine Treatment Manual to extend the applicability of the treatment to additional mango commodities. We have prepared a treatment evaluation document that describes the revised treatment schedule and explains why we have determined that it is effective at neutralizing certain target pests. We are making this treatment evaluation document available to the public for review and comment.

DATES: We will consider all comments that we receive on or before June 22, 2015.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0006.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2015–0006, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0006* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P.S. Gadh, Senior Risk Manager—Treatments, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2018.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR chapter III are intended, among other things, to prevent the introduction or dissemination of plant pests and noxious weeds into or within the United States. Under the regulations, certain plants, fruits, vegetables, and other articles must be treated before they may be moved into the United States or interstate. The phytosanitary treatments regulations contained in 7 CFR part 305 (referred to below as the regulations) set out standards for treatments required in 7 CFR parts 301, 318, and 319 for fruits, vegetables, and other articles.

In § 305.2, paragraph (b) states that approved treatment schedules are set out in the Plant Protection and Quarantine (PPQ) Treatment Manual.[1] Section 305.3 sets out the processes for adding, revising, or removing treatment schedules in the PPQ Treatment Manual. In that section, paragraph (b) sets out the process for adding, revising, or removing treatment schedules when there is an immediate need to make a change. The circumstances in which an immediate need exists are described in § 305.3(b)(1). They are:

- PPQ has determined that an approved treatment schedule is ineffective at neutralizing the targeted plant pest(s).
- PPQ has determined that, in order to neutralize the targeted plant pest(s), the treatment schedule must be administered using a different process than was previously used.
- PPQ has determined that a new treatment schedule is effective, based on efficacy data, and that ongoing trade in a commodity or commodities may be adversely impacted unless the new treatment schedule is approved for use.
- The use of a treatment schedule is no longer authorized by the U.S. Environmental Protection Agency or by any other Federal entity.

A treatment currently listed in the PPQ Treatment Manual (T102–a) requires mango (*Mangifera indica*) to be treated with hot water immersion to prevent the introduction into the United States of *Ceratitis capitata* (Mediterranean fruit fly) and *Anastrepha* spp. fruit flies, including *A. ludens* (Mexican fruit fly). Historically, the treatment schedules for T102–a required the fruit to undergo different immersion times based on the fruit's country of origin, shape, and size (weight). While rounded mango varieties weighing up to 900 grams were authorized for importation from Mexico, Central America (north of and including Costa Rica), Puerto Rico, the U.S. Virgin Islands, and the West Indies excluding islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, and Trinidad and Tobago, the maximum allowable size of rounded mango varieties that could be treated with T102–a and imported into the United States from Panama, countries in South America, and the West Indies islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, and Trinidad and Tobago was only 650 grams.

In 2009, the national plant protection organization (NPPO) of Peru formally requested that the Animal and Plant Health Inspection Service (APHIS) amend the PPQ Treatment Manual to allow the use of T102–a hot-water immersion treatment as a phytosanitary treatment to mitigate fruit fly risks in mangoes weighing more than 650 grams. A similar interest had previously been expressed by other countries in South America, namely Brazil, Ecuador, and Venezuela. Based on research conducted by the NPPO of Peru in support of its request, APHIS has concluded that the T102–a treatment schedule of 110-minute fruit immersion in a constant 70 °F (41.6 °C) hot-water bath is an efficacious phytosanitary treatment for eggs and larvae of *C. capitata* and *Anastrepha* spp. fruit flies in mangoes weighing 651 to 900 grams and that the treatment is effective for these over-sized mangoes regardless of their country of origin.

In 2014, APHIS inspectors working in Mexico and Brazil observed that approximately 20 percent of the treatments using the T102–a treatment schedule involving ''flat'' or ''elongated'' mangoes weighing between 525 grams and 570 grams contained fruit that did not reach the target pulp temperature for mitigating the risk from fruit flies at the end of treatment duration. However, after conducting a literature review, APHIS determined that mango shape did not affect the efficacy of the treatment. Therefore, as an emergency measure, the treatment was amended so that all would have to undergo hot water immersion treatment with treatment duration strictly governed by weight class. Treatment duration times were based on the treatment duration times previously put in place for rounded mangoes from those countries. As an emergency measure, this action was done administratively and was not meant to be permanent.

Based on Peru's research validating treatment efficacy on over-sized mangoes and APHIS' conclusion that the 110-minute immersion at 70 °F treatment covers mangoes weighing up to 900 grams regardless of their country

[1] The PPQ Treatment Manual is available at *http://www.aphis.usda.gov/import_export/plants/manuals/index.shtml* or by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Manuals Unit, 92 Thomas Johnson Drive, Suite 200, Frederick, MD 21702.

of origin, APHIS has determined that restrictions associated with shape or country of origin are no longer relevant. Therefore, in accordance with § 305.3(b)(2), we are providing notice that we have determined that it is necessary to amend treatment schedule T102–a to specify the following weight-based dip times:

If the weight is (grams):	Then the dip time (minutes) is:
Up to 375	65
376 to 500	75
501 to 700	90
701 to 900	110

Valid if the fruit is not hydro-cooled within 30 minutes of removal from the hot-water immersion tank. Alternatively, 10 minutes may be added to the treatment duration to allow immediate hydro-cooling.

In order to have minimum adverse impact on the ongoing trade of this commodity from mango exporting countries, we are making these changes effective immediately upon publication of this notice.

The reasons for these revisions to the treatment manual are described in detail in the treatment evaluation document (TED) we have prepared to support this action. The TED may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may also request paper copies of the TED by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the TED when requesting copies.

After reviewing the comments we receive, we will announce our decision regarding the revised treatment schedule described in the TED in a subsequent notice, in accordance with paragraph (b)(3) of § 305.3. If we do not receive any comments, or the comments we receive do not change our determination that the proposed changes are effective, we will affirm these changes to the PPQ Treatment Manual and make available a new version of the PPQ Treatment Manual reflecting these changes. If we receive comments that cause us to determine that additional changes need to be made to treatment schedule T102–a, we will make available a new version of the PPQ Treatment Manual that reflects the changes.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 17th day of April 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015–09468 Filed 4–22–15; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: U.S. Census Bureau.

Title: Business Research & Development and Innovation Survey.

OMB Control Number: 0607–0912.

Form Number(s): BRDI–1 and BRD–1S.

Type of Request: Revision of a currently approved collection.

Number of Respondents: 45,000.

Average Hours per Response: BRDI–1—14.85 hours; BRD–1(S)—.59 hours.

Burden Hours: 126,500.

Needs and Uses: Companies are the major performers of research and development (R&D) in the United States (U.S.), accounting for over 70 percent of total U.S. R&D outlays each year. A consistent business R&D information base is essential to government officials formulating public policy, industry personnel involved in corporate planning, and members of the academic community conducting research. In order to develop policies designed to promote and enhance science and technology, past trends and the present status of R&D must be known and analyzed. Without comprehensive business R&D statistics, it would be impossible to evaluate the health of science and technology in the United States or to make comparisons between the technological progress of our country and that of other nations.

The National Science Foundation Act of 1950 as amended authorizes and directs National Science Foundation (NSF) ''. . . to provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources and to provide a source of information for policy formulation by other agencies of the Federal government.'' One of the methods used by the NSF to fulfill this mandate is The Business R&D and Innovation Survey (BRDIS)—the primary federal source of information on R&D in the business sector. The NSF together with the Census Bureau, the collecting and compiling agent, analyze the data and publish the resulting statistics.

The NSF has published annual R&D statistics collected from the Survey of Industrial Research and Development (SIRD) (1953–2007) and BRDIS (2008–2013) for 60 years. The results of the survey are used to assess trends in R&D expenditures by industry sector, investigate productivity determinants, formulate science and tax policy, and compare individual company performance with industry averages. This survey is the Nation's primary source for international comparative statistics on business R&D spending.

The BRDIS will continue to collect the following types of information:

- R&D expense based on accounting standards.
- Worldwide R&D of domestic companies.
- Business segment detail.
- R&D related capital expenditures.
- Detailed data about the R&D workforce.
- R&D strategy and data on the potential impact of R&D on the market.
- R&D directed to application areas of particular national interest.
- Data measuring innovation, and intellectual property protection activities.

The following changes were made to the 2014 BRDIS from the 2013 BRDIS.

- Section 1: Moved foreign ownership question up above ownership question. Changed the EIN of owner to the ownership question instead of the foreign ownership question.
- Section 2: Added some questions to gather data on monetary gifts to academia.
- Section 6: Added a question on revenue from sale of patents. Added two questions in regards to how much the company paid others to purchase patents or license patents. Removed the question on how many agreements company entered into. Information from the BRDIS will continue to support the following initiatives:

Science of Science and Innovation Policy (SciSIP), the NSF's program to foster the development of the knowledge, theories, data, tools, and human capital needed to underwrite fundamental research that creates new explanatory models and analytic tools designed to inform the Nation's public and private sectors about the processes through which investments in science and engineering are transformed into social and economic outcomes.

America Competes Act of 2007, which calls for the doubling of funding for

basic research in physical sciences, improvement of math instruction, and expansion of low-income students' access to Advance Placement (AP) coursework through AP/International Baccalaureate Program to, as The White House fact sheet on the America Competes Act says, ''encourage scientists to explore promising and critical areas such as nanotechnology, supercomputing, and alternative energy sources.''

Rising Above the Gathering Storm, the National Research Council (NRC) report that recommends increasing America's talent pool by improving K–12 math and science education; sustaining and strengthening the Nation's commitment to long-term basic research; developing and recruiting top students, scientists and engineers from U.S. and abroad; and ensuring that the U.S. is the premier place in the world for innovation.

Policy officials from many Federal agencies rely on these statistics for essential information. For example, total U.S. R&D expenditures statistics have been used by the Bureau of Economic Analysis (BEA) to update the System of National Accounts and, in fact, the BEA recently has incorporated R&D as a direct component of the System. Accurate R&D data are needed to continue the development and subsequent updates to this detailed satellite account. Also, a data linking project has been designed to augment the Foreign Direct Investment (FDI) data collected by BEA. The initial attempt to link the SIRD data with BEA's FDI benchmark files was successful, and plans now call for the annual linkage of the R&D data to the FDI and U.S. Direct Investment Abroad (USDIA) data. Further, the Census Bureau links data collected by the Survey with other statistical files. At the Census Bureau, historical company-level R&D data are linked to a file that contains information on the outputs and inputs of companies' manufacturing plants. Researchers are able to analyze the relationships between R&D funding and other economic variables by using micro-level data.

Individuals and organizations access the survey statistics via the Internet in annual National Center for Science and Engineering Statistics (NCSES) InfoBriefs that announce the availability of statistics from each cycle of the Survey and provide detailed statistical table reports that contain all of the statistics the NSF produces from the Survey. Information about the kinds of projects that rely on statistics from the Survey is available from internal records at the NSF's NCSES. In addition, survey statistics are regularly cited in trade publications and many researchers use the survey statistics from these secondary sources without directly contacting the NSF or the Census Bureau. Some of the users of the survey statistics and the types of information they request are described below.

Government Users

Government policy officials who are involved in assessing the role of the Federal government in promoting economic growth use R&D statistics in their decision-making processes since R&D results affect technological and economic progress. Members of Congress make extensive use of R&D statistics in preparing tax legislation, contacting the NSF or the Census Bureau directly through their own staffs, one of the House or Senate science committees, or the Congressional Research Service.

The NSF staff also work closely with the Office of Science and Technology Policy (OSTP), providing R&D statistics and indications of emerging trends to assist the OSTP staff in their analyses of the status of science and technology in the United States. In addition, the NSF has frequent contact with the Office of Management and Budget (OMB), the Congressional Budget Office (CBO), the Congressional Research Service (CRS), and the Congressional Joint Economic Committee which use R&D statistics in their studies.

Statistics produced from the Survey also have been requested by officials from other Federal government and quasi-governmental agencies including the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Labor, State, Treasury; the Bureau of Economic Analysis; Bureau of Labor Statistics (BLS); Congressional Joint Committee on Taxation; Consumer Products Safety Commission; Environmental Protection Agency; Federal Reserve Banks of Chicago, Dallas, New York, and San Francisco; Government Accountability Office; Government Publishing Office; International Trade Administration; International Trade Commission; National Aeronautics and Space Administration; National Institute of Standards and Technology; National Institutes of Health; National Oceanic and Atmospheric Administration; Oakridge National Laboratory; Office of Naval Research; President's Council of Economic Advisors; Office of Trade Policy Analysis; U.S. Federal Trade Commission; U.S. Patent Office; and U.S. Small Business Administration.

As states and local governments seek to attract high-tech industries to their areas, the NSF and the Census Bureau are frequently asked to provide R&D funding and employment figures. Among the state governments and state organizations requesting industry R&D statistics have been Alabama, Arkansas, California Energy Commission, Center for Innovative Technology (VA), Georgia, Indiana, Maine Development Foundation, Maine Science and Technology Foundation, Maryland, Massachusetts Department of Revenue, Michigan Department of Labor and Economic Growth, Michigan Economic Development Corporation, Minnesota, Mississippi, New Jersey Research and Development Council, New York State Department of Taxation and Finance, New York State Economic Development Authority, North Carolina, North Dakota Department of Commerce, Ohio, Oklahoma, Pennsylvania, South Carolina, Southern Growth Policies Board (representing Alabama, Arkansas, Georgia, Kentucky, Louisiana, Missouri, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Virginia, and West Virginia), and Utah.

Information and statistics from the Survey also are supplied to the NSF internal organizations. For example, survey statistics are used in the ''Research and Development: National Trends and International Linkages'' and ''Industry, Technology, and the Global Marketplace'' chapters of the Congressionally mandated Science and Engineering Indicators series, a biennial report in which the National Science Board continues its effort to describe quantitatively the condition of U.S. science and research. Survey results are also included in the NSF's annual National Patterns of R&D Resources tabulations.

International Users

The international community uses R&D spending information as part of its comparisons of the economic performance among nations. U.S. R&D statistics are compiled in a format that can be compared with those of other countries. These statistics are transmitted to the Organization for Economic Cooperation and Development (OECD) that relies on the Survey as its primary source for business R&D statistics for the United States. Also, R&D statistics are used by multi-national committees and subcommittees studying and maintaining the North American Industry Classification System (NAICS) and North American Product Classification System (NAPCS).

Other international and foreign entities that have requested statistics on U.S. business R&D expenditures include the Brazilian National Council for

Scientific and Technological Development, Canadian Ministry of Treasury and Economics, Delegation of the European Communities, Department of State and Regional Development (Australia), Department of Technology Policy (Austria), European Commission's Joint Research Center, French Embassy, French Federal Institute of Research, Embassy of Finland, Embassy of Germany, Hungarian Academy of Sciences,, Industry Canada, Instituto Nacional de Estadistica (Madrid), National Technology Agency of Finland, Natural Sciences and Engineering Research Council of Canada, Puerto Rico Planning Board, Office of the Representative of the Republic of Taiwan, Statistics Canada, and Statistics Quebec.

Business Users

Although the primary purpose of the survey is to provide accurate R&D statistics for well-informed public policy decisions, business users also benefit from the survey figures, and one of the goals of the redesign is to increase the utility of the information for companies. There is a special obligation to keep the survey relevant to industry users particularly because business personnel spend time answering the annual questionnaire. Firms and trade associations in all industries, whether large or small in terms of R&D performance, are interested in making intra-industry comparisons, as well as comparing other industries' performance with their own.

Each year the NSF and Census Bureau receive many requests for R&D information from business users. Some of the industries where users who have requested information are aerospace, telecommunications, healthcare, pharmaceuticals, chemicals, software, and motor vehicles.

In addition to industry researchers who utilize the R&D statistics directly from the NSF Web site and publications, there are many who use the Survey's tabulations in their own trade reports.

Other trade publications that regularly print statistics directly from the Survey include multiple Fortune 500 companies and various trade associations.

Unions also consider business R&D statistics relevant to their members' well-being. R&D statistics also are used by research organizations devoted to the study of industry, R&D, science and technology and related topics.

Other Users

Research undertaken at universities on innovation and economic growth has relied heavily on the detailed R&D time series from the Survey. Research projects that have used R&D statistics obtained from the Survey have been conducted at many colleges and universities.

In addition, inquiries are regularly received from the news media. And finally, Internet sites continue to link with the Survey's results.

In summary, each item in the Survey has been the subject of research by someone interested in business R&D performance. Although the consumers of the R&D statistics from the Survey are diverse, there is one common element underlying all the uses of the survey statistics—an attempt to gain a better understanding of some aspect of the nation's scientific and technological resources. The detailed statistics provided by the Survey are the most complete set of elements for assessing the impact of R&D on business development and the nation's economy.

The total burden estimate for the 2014 BRDIS has increased due to an increase in amount of companies that are receiving the longer Form BRDI–1 from 3,000 to 7,000. The increase in the number of companies receiving form BRDI–1 is the result of lowering the R&D threshold for receiving the longer form from $7 million to $1 million. At the same time the burden on companies receiving the shorter form has been reduced. Prior to 2012 the shorter form (then called Form BRDI–1A) was 32 pages (168 response fields). The current shorter form (Form BRD–1S) is 8 pages (61 response fields).

The increase in burden also reflects a slight increase in the total number of companies in the sample from the prior OMB submission.

Affected Public: Business or other for-profit.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 182, 224 and 225; NSF Act of 1950.

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

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

Dated: April 17, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015–09433 Filed 4–22–15; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–22–2015]

Foreign-Trade Zone (FTZ) 134—Chattanooga, Tennessee; Notification of Proposed Production Activity, Cormetech, Inc. (Selective Catalyst Reduction Catalysts), Cleveland, TN

Cormetech, Inc. (Cormetech), an operator of FTZ 134, submitted a notification of proposed production activity to the FTZ Board for its facility in Cleveland, Tennessee. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on April 1, 2015.

A separate request for subzone designation at the Cormetech facility is planned and will be processed under Section 400.31 of the FTZ Board's regulations. The facility is used for the production of selective catalyst reduction catalysts and related elements (logs), which are used for emissions reduction in power generation, industrial, marine and petrochemical applications. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Cormetech from customs duty payments on the foreign status materials and components used in export production. On its domestic sales, Cormetech would be able to choose the duty rate during customs entry procedures that applies to selective catalyst reduction catalysts and related elements (free) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: Anatase titanium dioxide; glass fiber; clay; carboxyl methyl cellulose; polypropylene (RP chop); polyethylene oxide (PEO); ammonium metavanadate (AMT); hydroxypropyl methylcellulose (methocel); manganese acetate; vanadyl oxalate; ammonium heptamolybdate (AHM); pressing/lubricating agents; ammonium polyvanadate; and, honeycomb ceramic porcelain (duty rate ranges from free to 6.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The

closing period for their receipt is June 2, 2015.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: April 16, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–09533 Filed 4–22–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–23–2015]

Foreign-Trade Zone (FTZ) 93—Raleigh-Durham, North Carolina; Notification of Proposed Production Activity; Cormetech, Inc. (Selective Catalyst Reduction Catalysts), Durham, North Carolina

The Triangle J Council of Governments, grantee of FTZ 93, submitted a notification of proposed production activity to the FTZ Board on behalf of Cormetech, Inc., located in Durham, North Carolina. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on April 9, 2015.

A separate request for subzone designation at the Cormetech facility is planned and will be processed under Section 400.31 of the FTZ Board's regulations. The facility is used for the production of selective catalyst reduction catalysts and related elements (logs), which are used for emissions reduction in power generation, industrial, marine and petrochemical applications. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Cormetech from customs duty payments on the foreign status materials and components used in export production. On its domestic sales, Cormetech would be able to choose the duty rate during customs entry procedures that applies to selective catalyst reduction catalysts and related elements (free) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: Anatase titanium dioxide; glass fiber; clay; carboxyl methyl cellulose; polypropylene (RP chop); polyethylene oxide (PEO); ammonium metavanadate (AMT); hydroxypropyl methylcellulose (methocel); manganese acetate; vanadyl oxalate; ammonium heptamolybdate (AHM); pressing/lubricating agents; ammonium polyvanadate; and, honeycomb ceramic porcelain (duty rate ranges from free to 6.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is June 2, 2015.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

FOR FURTHER INFORMATION CONTACT: Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: April 16, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–09532 Filed 4–22–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–21–2015]

Approval of Subzone Status; Red Wing Shoe Company, Inc., Red Wing, Minnesota

On February 20, 2015, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Greater Metropolitan Area Foreign Trade Commission, grantee of FTZ 119, requesting subzone status subject to the existing activation limit of FTZ 119 on behalf of Red Wing Shoe Company, Inc., in Red Wing, Minnesota.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (80 FR 10456, February 26, 2015). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board's Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 119K is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 119's 2,000-acre activation limit.

Dated: April 16, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–09534 Filed 4–22–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–812]

Steel Wire Garment Hangers From the Socialist Republic of Vietnam: 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 rescinding the administrative review of the antidumping duty order on steel wire garment hangers from the Socialist Republic of Vietnam (''Vietnam'') for the period February 1, 2014 through January 31, 2015.

DATES: *Effective Date:* April 23, 2015.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6905.

SUPPLEMENTARY INFORMATION:

Background

On April 3, 2015, based on a timely request for review by M&B Metal Products Company, Inc.; Innovative Fabrication LLC/Indy Hanger; and US Hanger Company, LLC (collectively, ''Petitioners''),[1] the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on steel wire garment hangers from

[1] *See* Petitioners' submission, ''Steel Wire Garment Hangers from Vietnam: Request for Second Administrative Review,'' dated March 2, 2015.

Vietnam covering the period February 1, 2014, through January 31, 2015.[2] The review covers 50 companies.[3] On April 7, 2015, the Department clarified with Petitioners the spelling of certain names requested for initiation.[4] On April 8, 2015, Petitioners withdrew their request for an administrative review on all of the 50 companies listed in the *Initiation Notice*.[5] No other party requested a review of these or any other exporters of subject merchandise.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review. In this case, Petitioners timely withdrew their request by the 90-day deadline, and no other party requested an administrative review of the antidumping duty order. As a result, pursuant to 19 CFR 351.213(d)(1), we are rescinding the administrative review of the antidumping duty order on steel wire garment hangers from Vietnam for the period February 1, 2014, through January 31, 2015, in its entirety.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. Because the Department is rescinding this administrative review in its entirety, the entries to which this administrative review pertained shall be assessed antidumping duties 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)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice in the **Federal Register,** if appropriate.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a final 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 or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: April 15, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–09530 Filed 4–22–15; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 18202, 18207 (April 3, 2015) (''*Initiation Notice*'').

[3] *Id.*

[4] *See* ''Memorandum to the File, from Irene Gorelik, Analyst; re: Clarification of Company Names Within Petitioners' Review Request,'' dated April 7, 2015.

[5] *See* Petitioners' Submission re; ''Second Administrative Review of Steel Wire Garment Hangers from Vietnam—Petitioners' Withdrawal of Review Request,'' dated April 8, 2015.

DEPARTMENT OF COMMERCE

International Trade Administration

Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) seeks public comment on any subsidies, including stumpage subsidies, provided by certain countries exporting softwood lumber or softwood lumber products to the United States during the period July 1, 2014 through December 31, 2014.

DATES: Comments must be submitted within 30 days after publication of this notice.

ADDRESSES: *See* the Submission of Comments section below.

FOR FURTHER INFORMATION CONTACT: James Terpstra, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3965.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 2008, section 805 of Title VIII of the Tariff Act of 1930 (the Softwood Lumber Act of 2008) was enacted into law. Under this provision, the Secretary of Commerce is mandated to submit to the appropriate Congressional committees a report every 180 days on any subsidy provided by countries exporting softwood lumber or softwood lumber products to the United States, including stumpage subsidies.

The Department submitted its last subsidy report on December 12, 2014. As part of its newest report, the Department intends to include a list of subsidy programs identified with sufficient clarity by the public in response to this notice.

Request for Comments

Given the large number of countries that export softwood lumber and softwood lumber products to the United States, we are soliciting public comment only on subsidies provided by countries whose exports accounted for at least one percent of total U.S. imports of softwood lumber by quantity, as classified under Harmonized Tariff Schedule code 4407.1001 (which accounts for the vast majority of imports), during the period July 1, 2014 through December 31, 2014. Official U.S. import data published by the United States International Trade Commission Tariff and Trade DataWeb indicate that only two countries, Canada and Chile, exported softwood lumber to the United States during that time period in amounts sufficient to account for at least one percent of U.S. imports of softwood lumber products. We intend to rely on similar previous six-month periods to identify the countries subject to future reports on softwood lumber subsidies. For example, we will rely on U.S. imports of softwood lumber and softwood lumber products during the period January 1, 2015 through June 30, 2015, to select the countries subject to the next report.

Under U.S. trade law, a subsidy exists where an authority: (i) Provides a financial contribution; (ii) provides any form of income or price support within the meaning of Article XVI of the GATT 1994; or (iii) makes a payment to a funding mechanism to provide a financial contribution to a person, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally

followed by governments, and a benefit is thereby conferred.[1]

Parties should include in their comments: (1) The country which provided the subsidy; (2) the name of the subsidy program; (3) a brief description (at least 3–4 sentences) of the subsidy program; and (4) the government body or authority that provided the subsidy.

Submission of Comments

Persons wishing to comment should file comments by the date specified above. Comments should only include publicly available information. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially due to business proprietary concerns or for any other reason. The Department will return such comments or materials to the persons submitting the comments and will not include them in its report on softwood lumber subsidies. The Department requests submission of comments filed in electronic Portable Document Format (PDF) submitted on CD–ROM or by email to the email address of the EC Webmaster, below.

The comments received will be made available to the public in PDF on the Enforcement and Compliance Web site at the following address: *http://enforcement.trade.gov/sla2008/sla-index.html.* Any questions concerning file formatting, access on the Internet, or other electronic filing issues should be addressed to Laura Merchant, Enforcement and Compliance Webmaster, at (202) 482–0367, email address: *webmaster_support@trade.gov.*

All comments and submissions in response to this Request for Comment should be received by the Department no later than 5 p.m. Eastern Standard Time on the above-referenced deadline date.

Dated: April 13, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–09514 Filed 4–22–15; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* section 771(5)(B) of the Tariff Act of 1930, as amended.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–837, A–533–828, A–588–068, A–580–852, A–201–831, A–549–820, C–533–829]

Prestressed Concrete Steel Wire Strand From Brazil, India, Japan, the Republic of Korea, Mexico, and Thailand: Continuation of the Antidumping Duty Finding/Orders and Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) and the International Trade Commission (the ITC) have determined that revocation of the antidumping duty (AD) finding on prestressed concrete steel wire strand (PC strand) from Japan, and the AD orders on PC strand from Brazil, India, the Republic of Korea, Mexico, and Thailand, would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States. The Department and the ITC have also determined that revocation of the countervailing duty (CVD) order on PC strand from India would likely lead to continuation or recurrence of net countervailable subsidies and material injury to an industry in the United States. Therefore, the Department is publishing a notice of continuation for these AD finding/orders and CVD order.

DATES: *Effective Dates:* April 23, 2015.

FOR FURTHER INFORMATION CONTACT: Michael Romani, AD/CVD Operations, Office I (AD Orders), or Mandy Mallott, 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) 482–0198 or (202) 482–6430, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 2014, the Department initiated [1] and the ITC instituted [2] five-year (sunset reviews) of the AD finding on PC strand from Japan,[3] the AD orders on PC strand from Brazil, India, the Republic of Korea, Mexico, and Thailand,[4] and the CVD order on PC strand from India,[5] pursuant to sections 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, the Department determined that revocation of the AD finding/orders would likely lead to continuation or recurrence of dumping and that revocation of the CVD order would likely lead to continuation or recurrence of net countervailable subsidies, and therefore, notified the ITC of the magnitude of the margins and the subsidy rates likely to prevail should the finding/orders be revoked, pursuant to sections 751(c)(1) and 752(b) and (c) of the Act.[6]

On April 15, 2015, the ITC published its determination that revocation of the AD finding on PC strand from Japan, the AD orders on PC strand from Brazil, India, the Republic of Korea, Mexico, and Thailand, and the CVD order on PC strand from India would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, pursuant to sections 751(c) of the Act.[7]

Scope of the Order

The product covered in the sunset reviews of the antidumping duty orders on PC strand from Brazil, India, Korea, Mexico, and Thailand and the countervailing duty order on PC strand from India is steel strand produced from wire of non-stainless, non-galvanized steel, which is suitable for use in

[1] *See Initiation of Five-Year (''Sunset'') Review,* 79 FR 65186 (November 3, 2014).

[2] *See Prestressed Concrete Steel Wire Strand From Brazil, India, Japan, Korea, Mexico, and Thailand; Institution of Five-Year Reviews,* 79 FR 65246 (November 3, 2014).

[3] *See Steel Wire Strand for Prestressed Concrete from Japan; Finding of Dumping,* 43 FR 57599 (December 8, 1978) conducted by the Treasury Department (at that time a determination of dumping resulted in a ''finding'' rather than the later applicable ''order'').

[4] *See* (1) *Notice of Antidumping Duty Order: Prestressed Concrete Steel Wire Strand from Brazil,* 69 FR 4112 (January 28, 2004); (2) *Notice of Antidumping Duty Order: Prestressed Concrete Steel Wire Strand from India,* 69 FR 4110 (January 28, 2004); (3) *Steel Wire Strand for Prestressed Concrete from Japan; Finding of Dumping,* 43 FR 57599 (December 8, 1978); (4) *Notice of Antidumping Duty Order: Prestressed Concrete Steel Wire Strand from the Republic of Korea,* 69 FR 4109 (January 28, 2004); (5) *Notice of Antidumping Duty Order: Prestressed Concrete Steel Wire Strand from Mexico,* 69 FR 4112 (January 28, 2004); and (6) *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Prestressed Concrete Steel Wire Strand from Thailand,* 69 FR 4111 (January 28, 2004).

[5] *See Countervailing Duty Order: Prestressed Concrete Steel Wire Strand From India,* 69 FR 5319 (February 4, 2004).

[6] *See Prestressed Concrete Steel Wire Strand from Brazil, India, Japan, the Republic of Korea, Mexico, and Thailand: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Finding/Orders,* 80 FR 13827 (March 17, 2015), and *Final Results of Expedited Sunset Review of Countervailing Duty Order: Prestressed Concrete Steel Wire Strand from India,* 80 FR 12804 (March 11, 2015).

[7] *See* Prestressed Concrete Steel Wire Strand from Brazil, India, Japan, Korea, Mexico, and Thailand, 80 FR 20244 (April 15, 2015).

prestressed concrete (both pre-tensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand.

The product covered in the sunset review of the antidumping duty finding on PC strand from Japan is steel wire strand, other than alloy steel, not galvanized, which is stress-relieved and suitable for use in prestressed concrete.

The merchandise subject to the finding/orders is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the finding/orders is dispositive.

Continuation of the Finding/Orders

As a result of the determinations by the Department and the ITC that revocation of the AD finding/orders would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States and that revocation of the CVD order would likely lead to continuation or recurrence of countervailable subsidies and material injury to an industry in the United States, pursuant to section 75l(d)(2) of the Act and 19 CFR 351.218(a), the Department hereby orders the continuation of the AD finding on PC strand from Japan, the AD orders on PC strand from Brazil, India, the Republic of Korea, Mexico, and Thailand, and the CVD order on PC strand from India. U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the AD finding/orders and CVD order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), the Department intends to initiate the next five-year review of these finding/orders not later than 30 days prior to the fifth anniversary of the effective date of this continuation notice.

These five-year sunset reviews and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: April 17, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–09528 Filed 4–22–15; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC645

Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations; Issuance of Permit

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

ACTION: Notice.

SUMMARY: NMFS hereby issues an amended permit to authorize the incidental, but not intentional, take of two stocks of marine mammals listed as threatened or endangered under the Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), by the California (CA) thresher shark/swordfish drift gillnet fishery (≥14 in mesh) and the Washington (WA)/Oregon (OR)/CA sablefish pot fishery. In accordance with the MMPA, NMFS has made a determination that incidental taking from commercial fishing will have a negligible impact on the endangered humpback whale, CA/OR/WA stock and endangered sperm whale, CA/OR/WA stock. This authorization is based on a determination that this incidental take will have a negligible impact on the affected marine mammal stocks, recovery plans have been developed for each species, a monitoring program is established, vessels in the fisheries are registered, and that the necessary take reduction planning is in place for the humpback and sperm whale stocks. This amended permit replaces the permit issued on September 4, 2013.

DATES: This amended permit is effective on April 23, 2015 and expires on September 4, 2016.

ADDRESSES: Reference material for this permit is available on the Internet at: *http://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/marine_mammals_html.* Recovery plans for these species are available on the Internet at: *http://www.nmfs.noaa.gov/pr/recovery/plans.htm#mammals.* Information on the Pacific Offshore Cetacean Take Reduction Plan is available on the Internet at: *http://www.nmfs.noaa.gov/pr/interactions/trt/poctrp.htm.*

Copies of the reference materials may also be obtained from the Protected Resources Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Monica DeAngelis, NMFS West Coast Region, (562) 980–3232, or Shannon Bettridge, NMFS Office of Protected Resources, (301) 427–8402.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(E) of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.,* states that NOAA's National Marine Fisheries Service (NMFS), as delegated by the Secretary of Commerce, shall for a period of up to three years allow the incidental taking of marine mammal species listed under the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.,* by persons using vessels of the United States and those vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1824(b), while engaging in commercial fishing operations, if NMFS makes certain determinations. NMFS must determine, after notice and opportunity for public comment, that: (1) Incidental mortality and serious injury will have a negligible impact on the affected species or stock; (2) a recovery plan has been developed or is being developed for such species or stock under the ESA; and (3) where required under section 118 of the MMPA, a monitoring program has been established, vessels engaged in such fisheries are registered in accordance with section 118 of the MMPA, and a take reduction plan has been developed or is being developed for such species or stock.

On August 25, 2014 (79 FR 50626), NMFS proposed to issue an amended permit under MMPA section 101(a)(5)(E) to vessels registered in the CA thresher shark/swordfish drift gillnet fishery (≥14 in mesh) to incidentally take individuals from two stocks of threatened or endangered marine mammals: The CA/OR/WA stock of humpback whales (*Megaptera novaeangliae*) and the CA/OR/WA stock of sperm whales (*Physeter macrocephalus*); and to vessels registered in WA/OR/CA sablefish pot fishery to incidentally take individuals from the CA/OR/WA stock of humpback whales. A history of MMPA section 101(a)(5)(E) permits related to these stocks was included in previous notices

for other permits to take threatened or endangered marine mammals incidental to commercial fishing (*e.g.,* 72 FR 60814, October 26, 2007; 78 FR 54553, September 4, 2013) and is not repeated here. The data for considering these authorizations were reviewed coincident with the 2014 MMPA List of Fisheries (LOF; 79 FR 14418, March 14, 2014), final 2013 U.S. Pacific Marine Mammal Stock Assessment Reports (SAR; Carretta *et al.* 2014a), the draft 2014 U.S. Marine Mammal SAR (Carretta *et al.* 2014b), Carretta and Moore (2014), Moore and Barlow (2014), the Fishery Management Plan (FMP) for U.S. West Coast Fisheries for Highly Migratory Species (HMS), recovery plans for these species (available on the Internet at: *http://www.nmfs.noaa.gov/pr/recovery/plans.htm#mammals*), the best scientific information and available data, and other relevant sources.

The previous permit was issued on September 4, 2013 (78 FR 54553), valid for a period of up to 3 years and expiring on September 4, 2016, and covered the CA/OR/WA stocks of humpback, fin, and sperm whale. Since issuing that permit, there have been significant changes in the information and conditions used to make the negligible impact determination for that permit. This MMPA 101(a)(5)(E) permit amends the previously issued permit, updates the information on the known biological and ecological data on sperm and humpback whales, and updates information on human-caused mortality and serious injury (M/SI), since the September 2013 permit (78 FR 54553). This 101(a)(5)(E) permit does not extend the expiration date and remains effective until September 4, 2016. The final amended negligible impact determination does not include the CA/OR/WA fin whale stock because there has been no observed take of a fin whale in the CA thresher shark/swordfish drift gillnet fishery (≥14 in mesh) for the past 15 years. Therefore, the new amended permit will only cover the CA/OR/WA stocks of humpback and sperm whales and will no longer cover the CA/OR/WA fin whale stock.

Based on observer data and marine mammal reporting forms, the vessels operating in the Category I CA thresher shark/swordfish drift gillnet fishery (≥14 in mesh) and the Category II WA/OR/CA sablefish pot fishery are the only Federal Category I and II fisheries that operate in the ranges of affected stocks, namely the CA/OR/WA stocks of humpback whale and sperm whale, are currently authorized. A detailed description of these fisheries can be found in the negligible impact determination (see **ADDRESSES**). The CA thresher shark/swordfish drift gillnet fishery (≥14 in mesh) is the only Category I fishery operating off the coasts of California, Oregon, and Washington. All other Category II fisheries that may interact with the marine mammal stocks observed off the coasts of California, Oregon, and Washington are state managed and are not considered for authorization under this permit. NMFS calculated the total known, assumed, or extrapolated human-caused M/SI to make a final negligible impact determination for this authorization and included all human sources. Participants in Category III fisheries are not required to obtain incidental take permits under MMPA section 101(a)(5)(E) but are required to report any mortality or injury of marine mammals incidental to their operations (Section 118 of the MMPA 16 U.S.C. 1387 and 50 CFR part 229).

Basis for Determining Negligible Impact

Prior to issuing a permit to take ESA-listed marine mammals incidental to commercial fishing, NMFS must determine if M/SI incidental to commercial fisheries will have a negligible impact on the affected species or stocks of marine mammals. NMFS satisfied this requirement through completion of a negligible impact determination (see **ADDRESSES**). NMFS clarifies that incidental M/SI from commercial fisheries includes M/SI from entanglement in fishing gear or ingestion of fishing gear. NMFS calculated the total human-caused M/SI to make a negligible impact determination for this authorization and included all human sources, such as commercial fisheries and ship strikes. Indirect effects, such as the effects of removing prey from habitat, are not included in this analysis. A biological opinion prepared under ESA section 7 considers direct and indirect effects of Federal actions (available at *http://www.westcoast.fisheries.noaa.gov/*) and thus contains a broader scope of analysis than is required by MMPA section 101(a)(5)(E).

Although the MMPA does not define ''negligible impact,'' NMFS has issued regulations providing a qualitative definition of ''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.'' Through scientific analysis, peer review, and public notice, NMFS has developed a quantitative approach to making a negligible impact determination for MMPA section 101(A)(5)(E) permits, and is followed here. The development of the approach is outlined in previous notices for other permits to take threatened or endangered marine mammals incidental to commercial fishing (*e.g.,* 72 FR 60814, October 26, 2007; 78 FR 54553, September 4, 2013).

Criteria for Determining Negligible Impact

In 1999, NMFS proposed criteria to determine whether M/SI incidental to commercial fisheries will have a negligible impact on a listed marine mammal stock for MMPA 101(a)(5)(E) permits (64 FR 28800, May 27, 1999). In applying the 1999 criteria, Criterion 1 is whether total known, assumed, or extrapolated human-caused M/SI is less than 10 percent of the potential biological removal level (PBR) for the stock. If total known, assumed, or extrapolated human-caused M/SI is less than 10 percent of PBR, the analysis would be concluded, and the impact would be determined to be negligible. If Criterion 1 is not satisfied, NMFS may use one of the other criteria as appropriate. Criterion 2 is satisfied if the total known, assumed, or extrapolated human-caused M/SI is greater than PBR, but fisheries-related M/SI is less than 10 percent of PBR. If Criterion 2 is satisfied, vessels operating in individual fisheries may be permitted if management measures are being taken to address non-fisheries-related mortality and serious injury. Criterion 3 is satisfied if total fisheries-related M/SI is greater than 10 percent of PBR and less than PBR, and the population is stable or increasing. Fisheries may then be permitted subject to individual review and certainty of data. Criterion 4 stipulates that if the population abundance of a stock is declining, the threshold level of 10 percent of PBR will continue to be used. Criterion 5 states that if total fisheries-related M/SI are greater than PBR, permits may not be issued for that species or stock.

We considered two time frames for this analysis: 5 years (2009–2013) and 13 years (2001–2013). The first time frame we considered for both stocks of whales was the most recent 5-year period (here, January 1, 2009 through December 31, 2013), which is typically used for negligible impact determination analyses. A 5-year time frame in many cases provides enough data to adequately capture year-to-year variations in take levels, while reflecting current environmental and fishing conditions as they may change over time. For humpback whales, we used a 5-year period consistent with the general recommendations in NMFS' Guidelines for Assessing Marine

Mammal Stocks (GAMMS) for our final determination. However, GAMMS suggests that mortality estimates could be averaged over as many years as necessary to achieve a coefficient of variation of less than or equal to 0.3. Carretta and Moore (2014) determined that approximately 25 years of pooling data is necessary before bycatch CVs approached the value of 0.3, considered adequate for management (NMFS 2005) and recommend pooling longer time series of data when bycatch is a rare event. In their analysis, pooling 10 years of fishery data resulted in bycatch estimates within 25 percent of the true bycatch rate over 50 percent of the time (*i.e.,* estimates were within 25 percent of the true value more often than not). Key to this approach was that the fishery must have had sufficiently constant characteristics (*e.g.,* effort, gear, locations) to support the inference of consistent results across years such as with the CA thresher shark/swordfish drift gillnet fishery. Rare bycatch events typically involve smaller populations paired with low observer coverage in a fishery. If true bycatch mortality is low, but near PBR, then estimation bias needs to be reduced to allow reliable evaluation of the bycatch estimate against a low removal threshold.

Currently, the sperm whale is the only ESA-listed marine mammal species interacting with the thresher shark/swordfish drift gillnet fishery (≥14 in mesh) meeting the conditions described in Carretta and Moore (2014): The stock has a relatively small minimum population estimate (Nmin), and two members of the stock was recently recorded as having been incidentally killed or seriously injured in a rare event (in the CA thresher shark/swordfish drift gillnet fishery (≥14 in mesh)). The post-2000 time period best represents the current spatial state of the fishery; and, therefore, we used the 13-year period post-2000 to calculate mean annual mortality estimate for this stock of sperm whales, based on recommendations contained in the GAMMS and Carretta and Moore (2014). Moore and Barlow (2014) used a Bayesian hierarchical trend model for the CA/OR/WA sperm whale stock to more efficiently incorporate all available survey information to calculate the population abundance estimate using a longer time series to improve the precision of abundance estimates. The new analysis by Moore and Barlow (2014), estimates the minimum abundance at 1,332 sperm whales using the Bayesian hierarchical trend modeling of sighting data from 2001–2012. We use this estimate as the basis of this analysis. The associated PBR for the CA/OR/WA stock of sperm whales is 2.7 (Draft 2014 Pacific Marine Mammal Stock Assessment Reports, 80 FR 4881, January 29, 2015).

Negligible Impact Determinations

As explained above, the permit amendment relies on a negligible impact determination that uses a new 13-year period for averaging sperm whale bycatch rates rather than the 5-year period generally recommended in the GAMMS because it best represents the spatial state of the fishery and more effectively incorporates all available survey information to calculate the population abundance estimate using the longer time series. We used a 5-year period for humpback whales consistent with the general recommendations in NMFS' GAMMS for our final determination (note that a 13-year time period (2001–2013) also resulted in a finding of negligible impact for humpback whales). The PBR for the CA/OR/WA humpback whale stock is 11 animals.

The final amended negligible impact determination made available through this notice provides a complete analysis of the criteria for determining whether commercial fisheries off California, Oregon, and Washington are having a negligible impact on the CA/OR/WA stocks of humpback whale and sperm whale. A summary of the analysis and subsequent determination follows.

Criterion 1 Analysis

Criterion 1 would be satisfied if the total known, assumed, or extrapolated human-caused M/SI is less than 10 percent of PBR. The 5-year (2009–2013) average annual human-caused M/SI to the CA/OR/WA stock of humpback whales is 5.0 or 45.45 percent of the PBR. The 13-year (2001–2013) average annual M/SI to the CA/OR/WA stock of sperm whales from all human sources is 1.7 or 65.5 percent of the PBR. Criterion 1 was not satisfied for either stock because the total known, assumed, or extrapolated human-caused M/SI for these stocks is not less than 10 percent of PBR for the respective time period considered. As a result, the other criteria must be examined for the CA/OR/WA stocks of humpback and sperm whales.

Criterion 2 Analysis

Criterion 2 is satisfied if total known, assumed, or extrapolated human-caused M/SI are greater than PBR and the total fisheries related mortality is less than 10 percent of PBR. Criterion 2 was not satisfied for the CA/OR/WA stocks of humpback whales or sperm whales for each time frame considered, based on the calculations described under Criterion 1. As a result, the other criteria were examined.

Criterion 3 Analysis

Unlike Criteria 1 and 2, which examine total known, assumed, or extrapolated human-caused M/SI relative to PBR, Criterion 3 compares total fisheries-related M/SI to PBR. Criterion 3 would be satisfied if the total commercial fisheries-related M/SI (including state and federal fisheries) is greater than 10 percent and less than 100 percent of PBR for each stock for the respective time frame considered, and the populations of these stocks are considered to be stable or increasing. If the criterion is met, vessels may be permitted subject to individual review and certainty of data.

Criterion 3 was satisfied for the CA/OR/WA humpback whale stock as the fishery-related M/SI from all commercial fisheries for the CA/OR/WA humpback whale stock is estimated at 40 percent of PBR (5-year average from 2009–2013 and between 10 percent and 100 percent of PBR), the stock has experienced a positive growth rate (8 percent per year), and there have been few known or assumed M/SI due to the subject fisheries.

Criterion 3 was satisfied for the CA/OR/WA sperm whale stock as the total fishery-related M/SI is greater than 10 percent of and less than 100 percent of PBR, and the population is considered stable. The fishery-related M/SI from all commercial fisheries for the CA/OR/WA sperm whale stock is estimated at 57 percent of PBR for the 13-year period of 2001–2013.

In conclusion, based on the criteria outlined in 1999 (64 FR 28800), the final 2013 U.S. Pacific Marine Mammal SAR (Carretta *et al.* 2014), the draft 2014 U.S. Pacific Marine Mammal SAR (Carretta *et al.* 2014), Carretta and Moore (2014), Moore and Barlow (2014), and the best available scientific information, available data and other sources, NMFS has determined that the M/SI incidental to the CA thresher shark/swordfish drift gillnet fishery and the WA/OR/CA sablefish pot fishery will have a negligible impact on the CA/OR/WA stock of humpback whales and the CA thresher shark/swordfish drift gillnet fishery will have a negligible impact on the CA/OR/WA stock of sperm whales.

Determinations

Based on the above assessment and as described in the accompanying final negligible impact determination, NMFS concludes that the incidental M/SI from the CA thresher shark/swordfish drift

gillnet fishery (≥14 in mesh) and WA/OR/CA sablefish pot fishery will have a negligible impact on the CA/OR/WA stock of humpback whales and the CA/OR/WA stock of sperm whales, and the WA/OR/CA sablefish pot fishery will have a negligible impact on the CA/OR/WA stock of humpback whales. Since there have been no documented interactions between the CA/OR/WA stock of sperm whale and the WA/OR/CA sablefish pot fishery, that sperm whale stock is not evaluated for that fishery.

The National Environmental Policy Act (NEPA) requires Federal agencies to evaluate the impacts of alternatives for their actions on the human environment. The impacts on the human environment of continuing and modifying the CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh) (as part of the HMS fisheries) and the WA/OR/CA sablefish pot fishery (as part of the West Coast groundfish fisheries), including the taking of threatened and endangered species of marine mammals, were analyzed in: The Pacific Fishery Management Council Highly Migratory Species FMP final environmental impact statement (August 2003); the Pacific Fishery Management Council Proposed Harvest Specifications and Management Measures for the 2013–2014 Pacific Coast Groundfish Fishery and Amendment 21–2 to the Pacific Coast FMP (September 2012); Risk assessment of U.S. West Coast groundfish fisheries to threatened and endangered marine species (NWFSC, 2012); and in the Final Biological Opinion prepared for the West Coast groundfish fisheries (NMFS, 2012) and the draft Biological Opinion for the CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh) (NMFS, 2013), pursuant to the ESA. Because this permit would not modify any fishery operation and the effects of the fishery operations have been evaluated fully in accordance with NEPA, no additional NEPA analysis is required for this permit. Issuing the permit would have no additional impact to the human environment or effects on threatened or endangered species beyond those analyzed in these documents. NMFS now reviews the remaining requirements to issue a permit to take the subject listed species incidental to the CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh) and WA/OR/CA sablefish pot fisheries.

Recovery Plans

Recovery Plans for humpback whales and sperm whales have been completed (see *http://www.nmfs.noaa.gov/pr/recovery/plans.htm#mammals*). Accordingly, the requirement to have recovery plans in place or being developed is satisfied.

Vessel Registration

MMPA section 118(c) requires that vessels participating in Category I and II fisheries register to obtain an authorization to take marine mammals incidental to fishing activities. Further, section 118(c)(5)(A) provides that registration of vessels in fisheries should, after appropriate consultations, be integrated and coordinated to the maximum extent feasible with existing fisherman licenses, registrations, and related programs. Participants in the CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh) and WA/OR/CA sablefish pot fisheries already provide the information needed by NMFS to register their vessels for the incidental take authorization under the MMPA through the Federal groundfish limited entry permit process of the Federal Vessel Monitoring System. Therefore, vessel registration for an MMPA authorization is integrated through those programs in accordance with MMPA section 118.

Monitoring Program

The CA thresher shark/swordfish drift gillnet fishery (≥14 inch mesh) has been observed since the early 1990s. Levels of observer coverage vary over years but are adequate to produce reliable estimates of M/SI of listed species (*e.g.,* from 2000–2012, coverage ranged from approximately 12 to 22.9 percent). As part of the West Coast groundfish fishery and Magnuson-Stevens Fishery Conservation and Management Act objectives, the WA/OR/CA sablefish pot fishery, as managed under the groundfish FMP, and was observed in 2012 at approximately 73 percent. Accordingly, as required by MMPA section 118, a monitoring program is in place for both fisheries.

Take Reduction Plans

Subject to available funding, MMPA section 118 requires the development and implementation of a Take Reduction Plan (TRP) in cases where a strategic stock interacts with a Category I or II fishery. The two stocks considered for this permit are designated as strategic stocks under the MMPA because they are listed as endangered under the ESA (MMPA section 3(19)(C)).

In 1996, NMFS convened a take reduction team (TRT) to develop a TRP to address the incidental taking of several strategic marine mammal stocks, including CA/OR/WA stocks of sperm whales and humpback whales, in the CA thresher shark/swordfish drift gillnet fishery (≥14 in mesh). The Pacific Offshore Cetacean TRP was implemented through regulations in October, 1997 (62 FR 51813) and has been in place ever since. Although a TRP is in place for the gillnet fishery, there is not one in place for the pot fishery.

The short- and long-term goals of a TRP are to reduce mortality and serious injury of marine mammals incidental to commercial fishing to levels below PBR and to a zero mortality rate goal, defined by NMFS as 10 percent of PBR, respectively. MMPA section 118(b)(2) states that fisheries maintaining such M/SI levels are not required to further reduce their M/SI rates. However, the obligations to develop and implement a TRP are subject to the availability of funding. NMFS has insufficient funding available to simultaneously develop and implement TRPs for all stocks that interact with Category I or Category II fisheries. MMPA section 118(f)(3) (16 U.S.C. 1387(f)(3)) contains specific priorities for developing TRPs. As provided in MMPA section 118(f)(6)(A) and (f)(7), NMFS used the most recent SARs and LOF as the basis to determine its priorities for establishing TRTs and developing TRPs. Through this process, NMFS evaluated the CA/OR/WA stock of humpback whales and the WA/OR/CA sablefish pot fishery and identified the level of interactions as a lower priority compared to other marine mammal stocks and fisheries for establishing TRTs, based on population trends of the stock and M/SI levels incidental to that commercial fishery. In addition, NMFS continues to collect data to categorize fixed gear fisheries and assess risk to large whales off the U.S. west coast. Accordingly, given these factors and NMFS' priorities, implementation of the developing TRP for the WA/OR/CA sablefish pot trap fishery and other similar Category II fisheries will defer further development of a TRP for these fisheries under section 118 as other stocks/fisheries are a higher priority for any available funding for establishing new TRTs.

Current Permit

As noted in the summary above, all of the requirements to issue a permit to the following Federally-authorized fisheries have been satisfied: the CA thresher shark/swordfish DGN fishery (≥14 inch mesh) and WA/OR/CA sablefish pot fishery. Accordingly, NMFS hereby amends the permit to participants in the Category I CA thresher shark/swordfish DGN fishery (≥14 inch mesh) fishery for the taking of CA/OR/WA humpback

whales and CA/OR/WA sperm whales, and participants in the Category II WA/OR/CA sablefish pot fishery for the taking of CA/OR/WA stock of humpback whales, incidental to the fisheries' operations. As noted under MMPA section 101(a)(5)(E)(ii), no permit is required for vessels in Category III fisheries. For incidental taking of marine mammals to be authorized in Category III fisheries, M/SI must be reported to NMFS. If NMFS determines at a later date that incidental M/SI from commercial fishing is having more than a negligible impact on the CA/OR/WA stocks of humpback or sperm whales, NMFS may use its emergency authority under MMPA section 118 to protect the stock and may modify the permit issued herein.

MMPA section 101(a)(5)(E) requires NMFS to publish in the **Federal Register** a list of fisheries that have been authorized to take threatened or endangered marine mammals. A list of such fisheries was most recently published on October 16, 2014 (79 FR 62105), which authorized the taking of threatened or endangered marine mammals incidental to the Hawaii deep-set and shallow-set longline fisheries. With issuance of this current amended permit, NMFS is not adding any fisheries to this list (Table 1).

TABLE 1—LIST OF FISHERIES AUTHORIZED TO TAKE SPECIFIC THREATENED AND ENDANGERED MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS

Fishery	Category	Marine mammal stock
HI deep-set (tuna target) longline	I	Humpback whale, CNP stock. Sperm whale, Hawaii stock. False killer whale, MHI IFKW stock.
CA thresher shark/swordfish drift gillnet fishery (>14 in mesh)	I	Fin whale, CA/OR/WA stock. Humpback whale, CA/OR/WA stock. Sperm whale, CA/OR/WA stock.
HI shallow-set (swordfish target) longline/set line	II	Humpback whale, CNP stock.
AK Bering Sea/Aleutian Islands flatfish trawl	II	Steller sea lion, Western U.S. stock.
AK Bering Sea/Aleutian Island pollock trawl	II	Fin whale, NEP stock. Steller sea lion, Western U.S. stock.
AK Bering Sea sablefish pot	II	Humpback whale, WNP stock. Humpback whale, CNP stock.
AK Bering Sea/Aleutian Islands Pacific cod longline fisheries	II	Steller sea lion, Western U.S. stock.
WA/OR/CA sablefish pot fishery	II	Humpback whale, CA/OR/WA stock.

Comments and Responses

NMFS received letters containing comments from three organizations, the Marine Mammal Commission (Commission), the Humane Society of the United States (HSUS), and the Center for Biological Diversity. NMFS also received two letters from private citizens.

Comment 1: The Commission briefly summarized NMFS' findings for the proposed permit and agreed with NMFS' analyses and actions proposed for the CA/OR/WA humpback whale stock and has no further comments or recommendations pertaining to that stock.

Response: NMFS appreciates the Commission's comment and agrees with issuing the permit as required by the MMPA.

Comment 2: The Commission recommended that NMFS be explicit in future negligible impact determinations and stock assessment reports using a non-standard averaging period about the factors it considered and the quantitative or qualitative criteria used to decide whether substantial and significant changes in the system consisting of the fishery and the CA/OR/WA sperm whale stock have or have not occurred. Further, the Commission recommended that NMFS define the circumstances under which non-standard averaging periods are appropriate. The Commission noted that the shift toward a longer-term view of the CA/OR/WA sperm whale stock and its interactions with the CA thresher shark/swordfish drift gillnet fishery (≥14 in mesh) is appropriate but has risk when averaging mortality and serious injury over longer periods of time relative to NMFS' ability to detect and respond to significant changes in the sperm whale bycatch rate.

Response: The guidelines for preparing marine mammal stock assessments (GAMMS) provide a general recommendation to pool bycatch over a period of 5 years, but also note that: ''It is suggested that mortality estimates could be averaged over as many years necessary to achieve a CV of less than or equal to 0.3, but should usually not be averaged over a time period of more than the most recent 5 years for which data have been analyzed. However, information that is more than 5 years old should not be ignored if it is the most appropriate information available in a particular case.'' (NMFS 2005). However, the guidance for 5-year averaging is based on bycatch being a relatively common event with adequate sample sizes and sufficient observer coverage. Pooling over longer periods is acceptable, if additional years accurately represent the current state of the fisheries and their inclusion reduces estimation bias. Two major factors were considered in using a pooling period in excess of 5 years: (1) Demonstration that the five-year period used in most stock assessments is itself subjective and is insufficient to generate unbiased estimates of bycatch for rare events (Carretta and Moore 2014), and (2) recognition that a fishery closure was implemented in 2001 that limits fishing spatially and seasonally to areas that represent lower bycatch risk to sperm whales. Thus, bycatch is pooled from 2001 to 2013, to reflect current fishing practices and current fishing effort. Both considerations are outlined in the draft 2014 marine mammal stock assessment for CA/OR/WA sperm whales (Carretta *et al.* 2014b). Alternatively, one may use models that pool >5 years of bycatch data to obtain statistically robust and unbiased bycatch rate estimates and apply these to individual years. NMFS has previously done this for other species, such as harbor porpoise (Orphanides 2009).

NMFS appreciates the Commission's support for using the longer time frame for evaluating the CA thresher shark/swordfish drift gillnet fishery (≥14 in mesh) interactions with the CA/OR/WA sperm whale stock. NMFS acknowledges the Commission's concern regarding the use of longer-term data in the case of rare bycatch events (*i.e.,* where the 13 years used to compute the mortality and serious

injury rate have several years where recorded bycatch is zero and the influence those zeros have on the mean). However, Carretta and Moore (2014) determine that the post-2000 time period best represents the current spatial state of the fishery and use the same time period to calculate mean annual bycatch estimate for the CA/OR/WA stock of sperm whales, consistent with recommendations in the GAMMS. Annual estimates of bycatch events in the fishery, and subsequent longer term averaging of those data, would necessitate an evaluation that the conditions supporting the use of the longer term period are still valid; for example, that fishery characteristics are still constant or relatively unchanged. NMFS is mindful that increases in rate of expected annual bycatch could be a signal that something is changing in the system and further action is needed.

Comment 3: The Commission recommended that NMFS continue to monitor the CA thresher shark/swordfish drift gillnet fishery (≥14 in mesh) and if the observed or reported mortality and serious injury of sperm whales exceeds the level specified in the Incidental Take Statement (the Commission is referencing the Incidental Take Statement in the Biological Opinion issued on May 2, 2013), that the following occur: (1) Reinitiation of formal consultation; (2) a reassessment of the MMPA negligible impact; and, (3) reconvene the Pacific Offshore Take Reduction Team (POCTRT) to consider whether additional measure are necessary to reduce the probability of interactions.

Response: The CA thresher shark/swordfish DGN fishery (≥14 inch mesh) has been observed by NMFS-certified observers since the early 1990s. NMFS targets 20% observer coverage in this fishery and levels vary over time but are adequate to produce reliable estimates of mortality and serious injury of marine mammals. If mortality or serious injury exceeded the level specified in the Incidental Take Statement of the Biological Opinion issued by NMFS on May 2, 2013, the following would occur, as is standard practice: (1) Reinitation of consultation under Section 7 of the Endangered Species Act, which is described in Section XI, titled Reinitiation Notice of the Biological Opinion; (2) Reevaluation of the negligible impact determination, although no change may be necessary; and, (3) Reconvening the POCTRT, if appropriate (but note that an in-person meeting would be subject to the availability of funding).

Comment 4: The Commission requested that NMFS further justify its negligible impact determination for sperm whales under Criterion 3 given the requirement of ''certainty of data'' that the population is stable or increasing, given the substantial uncertainty regarding the population trend.

Response: NMFS used the best available science in making the negligible impact determination. Moore and Barlow (2014) report that the abundance of sperm whales appeared stable from 1991 to 2008, but that any reliable conclusions on trends could not be made for the whole population because the precision of estimated growth rates was poor. However, they also reported that trends in the detection of single animals (presumably large, solitary males) apparently doubled over this time period. The authors could not determine if the apparent increase in sightings comprising single animals reflected an increase in the number of adult male sperm whales in the population or merely increased use of the U.S. west coast waters by adult males in recent years. Therefore, because the stock is not decreasing, it is considered to be either stable or increasing.

Comment 5: The Commission requested that NMFS review and improve the criteria for making a negligible impact determination before any more such determinations are issued.

Response: NMFS agrees that the criteria for establishing a negligible impact determination under section 101(a)(5)(E) of the MMPA should be reviewed and appreciates the Commission's willingness to work with NMFS to review and, if necessary, modify the criteria. NMFS appreciates the Commission's recommendation to refrain from issuing more permits until new criteria are established; however, given the time it would take to develop criteria, solicit public review and comment, and issue the final criteria, NMFS will still need to evaluate fisheries that are taking threatened or endangered marine mammals and, if a negligible impact determination can be made for those fisheries, issue a permit under MMPA 101(a)(5)(E).

Comment 6: The Humane Society of the United States (HSUS) expressed concern with NMFS' use of a PBR for sperm whales that was from the Moore and Barlow (2014) paper as it differs substantially from the PBR published in the 2013 SAR (*i.e.,* 1.5 in the 2013 SAR vs. 2.7 in Moore and Barlow 2014). Additionally, NMFS' proposal to calculate the annual average serious injury and mortality using 13 years of data was based on a novel approach in a non-peer reviewed tech memo (Carretta and Moore 2014). HSUS stated that it was inappropriate for NMFS to rely upon estimates of mortality that are calculated in a manner that differs from traditional methods used in the SARs and has not undergone public scrutiny.

Response: NMFS acknowledges that there was a difference in the PBR estimate used in the negligible impact determination for the CA/OR/WA sperm whale stock when comparing Moore and Barlow's (2014) estimate of 2.7 to the most recent final SAR (PBR for the CA/OR/WA sperm whale stock is 1.5; Carretta *et al.* 2014a). The revised negligible impact determination relies upon the PBR for the CA/OR/WA sperm whale stock based on Moore and Barlow (2014) and is included in the draft 2014 SAR (Carretta *et al.* 2014b), which is publically available for review and comment (80 FR 4881, January 29, 2015).

Regarding use of the 13-year timeframe, we refer to our response to Comment 2. NMFS must use the best available scientific information in making its determination. This information is not limited to just what has been published in SARs, but information that has been published or otherwise made available and that NMFS determines represents the best information to use. NOAA's Southwest Fisheries Science Center uses the NOAA Technical Memorandum series to issue scientific and technical publications. These manuscripts have been peer reviewed and edited, and documents published in this series may be cited in the scientific and technical literature. Additionally, these analyses were considered at the 2014 Pacific Science Review Group meeting and were reviewed and accepted by that Group.

Comment 7: Regarding the CA/OR/WA stock of sperm whales, HSUS pointed out that the **Federal Register** Notice (79 FR 50626; August 25, 2014) proposing a negligible impact determination includes a statement that the paper by Moore and Barlow ''suggest[s] that the revised abundance estimates are higher and more stable across years than currently published values'' and NMFS assumes an increasing trend. HSUS indicates that this assumption lacks important caveats that are stated in the Moore and Barlow paper such as the authors ''were unable to precisely estimate overall abundance trends for sperm whales in the study area.'' Further ''whether this trend reflects a population-level increase in adult male abundance or merely increased use of the study area by adult males is not possible to say from the data'' and go on to say that the authors

were ''unable to obtain good estimates of abundance trends for the entire California-Oregon-Washington stock of sperm whales.''

Response: NMFS did not assume an increasing trend. We assumed, based on the best available science, that sperm whale abundance was not decreasing: therefore, it must either be stable or increasing. Refer to our response in Comment 4 regarding the abundance and trend for the CA/OR/WA sperm whale stock. Because of the information provided in Moore and Barlow (2014) on the abundance of male sperm whales and the uncertainty in the cause of those results (*e.g.,* whether this trend reflects a population-level increase in adult male abundance or merely increased use of the study area by adult males), we did not separate our analysis by gender but assumed that the stock was either stable or increasing. We further acknowledge that the true stock size may be larger, because not all animals are in U.S. waters when surveys are conducted. Although there will always be some uncertainty relative to the population abundance of sperm whales (as there is always some inherent uncertainty in any population estimate), the apparent trend for sperm whales in the Pacific Ocean is stable or increasing, and this is occurring even with current levels of mortality and serious injury.

Comment 8: HSUS referenced the Pacific Fishery Management Council's (PFMC) consideration of imposing additional measures on the CA thresher shark/swordfish DGN fishery (≥14 inch mesh) that appear to be necessary to assure that the fishery does not repeat the events of 2010 in which 2 sperm whales suffered mortality or serious injury. HSUS maintains that a negligible impact determination is premature at this time because management measures have not substantively changed since the takes in 2010 and the PFMC itself believes that there is a need to impose caps and other management measure to ensure that takes are sustainable.

Response: The PFMC met September 12–17, November 14–19, 2014, and March 6–12, 2015, to deliberate management measures, including hard caps (or limits on the number of animals that can be taken in the fishery). The PFMC has directed its Highly Migratory Species management team to consider hard caps, but the management team has not developed recommendations at this time. NMFS cannot predict what the PFMC regulatory decisions may be, but at this time, we are able to make a negligible impact determination and satisfy the requirements under Criterion 3 for the CA/OR/WA sperm whale stock. In addition, under Section 118 of the MMPA, take reduction plans are designed to recover and prevent the depletion of strategic marine mammal stocks that interact with Category I and II fisheries. The goal of the Pacific Offshore Cetacean Take Reduction Plan is to reduce serious injuries and deaths of several marine mammal stocks incidental to the CA thresher shark/swordfish drift gillnet fishery (≥14 in mesh).

Comment 9: One member of the public stated concern that the negligible impact determination is not precautionary and deviates from well-established methods. They requested that NMFS provide more justification and conduct more research before the permit can be evaluated properly.

Response: Regarding pooling of bycatch data, see response to Comment 2. NOAA's ability to conduct research is dependent on funding and resources; however, the NMFS Southwest Fisheries Science Center recently conducted a research cruise called the California Current Cetacean and Ecosystem Assessment Survey, from August 5 to December 10, 2014, that surveyed the U.S. Exclusive Economic Zone and beyond. It is expected that results from this survey will provide updated information on marine mammal stocks in this area.

Comment 10: One individual stated that without any new data, NMFS is reversing its 2013 conclusion that emergency measures were necessary to ensure a negligible impact. Specifically, the use of the longer-time series to inflate sperm whale estimates far above what have been observed in recent surveys (for example, the most recent 2008 abundance point estimate is only 300 whales) and is deflating the estimated bycatch mortality by adding years of data in with no bycatch was observed. Further, the commenter stated that the proposed protections do not go far enough to protect sperm whales and the fishery should not be permitted to operate without protections that are at least as strong as the emergency measures put in place last year. It was requested that NMFS consider immediately reinstituting hard caps to protect sperm whales in the drift gillnet fishery.

Response: NMFS appreciates the comment and references its responses to Comments 2 and 5. Additionally, NMFS is not reversing its 2013 conclusion, rather we are amending it because since that time, there have been significant changes in the information and conditions used to make the negligible impact determination on September 4, 2013 (78 FR 54553). This MMPA 101(a)(5)(E) permit amends the previously issued permit, updates the information on the known biological and ecological data on sperm whales and humpback whales, and updates information on human-caused mortality and serious injury. The emergency rule was temporary and; therefore, when the new information became available, NMFS evaluated it and determined that the previous negligible impact analysis should be amended, while maintaining the same expiration date of September 4, 2016 for the permit.

Fisheries-related mortality and serious injury is a rare event for sperm whales. Given observer coverage of approximately 15%, the annual estimate of bycatch will always be either zero (if none observed) or at least 7 (if ≥1 observed), for estimates made using ratio methods. If the true average value for mortality and serious injury is >0 but less than a few animals per year, and if observer coverage generally remains <20%, then multiple years of data need to be pooled to for unbiased estimation of a mean annual rate (Carretta and Moore 2014). Pooling more years reduces bias and provides increased precision of estimates and thus, a better estimate of the long-term annual mortality and serious injury, which is what should be compared to PBR (barring changes to the fishery that could result in increased interaction rates not represented by historical data). NMFS has previously done this type of bycatch analysis for other species, such as loggerhead sea turtles (Murray 2006) and harbor porpoise (Orphanides 2009). NMFS acknowledges the commenter's concern regarding the use of longer-term data in the case of rare bycatch events (*i.e.,* where the 13 years used to compute the mortality and serious injury rate have several years where recorded bycatch is zero) and refers back to our response in Comment 2. Regarding hard caps, we refer to the response to Comment 7. The negligible impact determination and permit is issued under section 101(a)(5)(E) of the MMPA, which is separate from the PFMC's deliberations.

Dated: April 17, 2015.

Donna S. Wieting,

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

[FR Doc. 2015–09447 Filed 4–22–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD296

Endangered Species; File No. 18604

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that the Guam Department of Agriculture Division of Aquatic and Wildlife Resources (DAWR), 163 Dairy Road, Mangilao, Guam 96913 has been issued a permit to take green (*Chelonia mydas*) and hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Courtney Smith, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On May 20, 2014 and October 9, 2014, notice was published in the **Federal Register** (79 FR 28899 and 79 FR 61057, respectively) that a request for a scientific research permit to take green and hawksbill sea turtles had been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

DAWR has been issued a five-year research permit to gather information on green and hawksbill sea turtle movement, species distribution, and health status and to document threats to the species. Researchers may capture and release up to 66 green and 6 hawksbill sea turtles annually by hand or by net in Guam waters. Turtles may be measured, flipper tagged, photographed, passive integrated transponder tagged, tissue sampled, and released. A subset of each species may have a satellite transmitter attached to the turtle's carapace. This information would be used to develop conservation management measures for these species.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: April 13, 2015.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–09443 Filed 4–22–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD694

Marine Mammals; File No. 18662

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to Allyson Hindle, Ph.D., Assistant Professor of Anesthesia, Massachusetts General Hospital, 55 Fruit Street, Thier 503, Boston, MA 02114 to receive, import, and export specimens of marine mammals for scientific research purposes.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Rosa L. González or Amy Sloan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On January 8, 2015, notice was published in the **Federal Register** (80 FR 1027) that a request for a permit to receive, import, and export specimens of marine mammals for scientific research purposes had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The permit authorizes the applicant to receive, import, and export specimen materials for comparative research on the physiology and other biological aspects of marine mammals. Unlimited samples from up to 200 individual cetaceans and 200 individual pinnipeds (excluding walrus) are authorized to be received, imported, or exported annually on an opportunistic basis from other permitted sources (legal subsistence harvests and legal commercial fishing operations; stranded animals in foreign countries; captive animals; and other permitted research in the U.S. and abroad). Samples collected from stranded animals in the U.S. and received under separate authorization may be exported and re-imported. No takes of live animals are permitted. The permit is valid through March 31, 2020.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: April 14, 2015.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–09438 Filed 4–22–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD887

Marine Mammals; File No. 19444

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Richard Breezy Wynn, 7216 Wellington Drive, Knoxville, TN 37919, has applied in due form for a permit to conduct commercial or educational photography

on killer (*Orcinus orca*) and beluga (*Delphinapterus leucas*) whales.

DATES: Written, telefaxed, or email comments must be received on or before May 26, 2015.

ADDRESSES: These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 19444 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Brendan Hurley, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to film killer and beluga whales, focusing on their relationship with salmon. Filming would occur in Bristol Bay, Nushagak and Kvichak Bays, Kenai Fjords, Resurrection Bay, Aialik Bay, Harris Bay and Blying Sound, Alaska. A maximum of 45 killer whales and 25 belugas would be approached for filming. In addition, 25 harbor seals (*Phoca vitulina*), 20 gray whales (*Eschrichtius robustus*), 25 Dall's porpoises (*Phocoenoides dalli*), and 25 harbor porpoises (*Phocoena phocoena*) may be incidentally harassed during filming operations. Filming would occur from boats, a kayak, and an underwater diver. Hydrophones would be used to record sounds. Researchers familiar with the key species are working with the applicant as advisors. Footage would be used in a feature film for theatrical release and related projects, all focusing on salmon and their environment. Filming would occur in the summer and fall of 2015. The permit would be valid until October 31, 2015.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 20, 2015.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–09477 Filed 4–22–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Recruitment of First Responder Network Authority Board Members

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The National Telecommunications and Information Administration (NTIA) issues this Notice on behalf of the First Responder Network Authority (FirstNet) as part of the annual process to seek expressions of interest from individuals who would like to serve on the FirstNet Board.[1] Four of the 12 appointments of non-permanent members to the FirstNet Board are expiring in August 2015. The Secretary of Commerce may reappoint individuals to serve on the FirstNet Board provided they have not served two consecutive full three-year terms.[2] NTIA issues this Notice to obtain expressions of interest in the event the Secretary must fill any vacancies arising on the Board. Expressions of interest will be accepted until May 15, 2015.

DATES: Expressions of Interest must be postmarked or electronically transmitted on or before May 15, 2015.

ADDRESSES: Persons wishing to submit expressions of interest as described below should send that information to: Marsha MacBride, Acting Associate Administrator of NTIA's Office of Public Safety Communications by email to *FirstNetBoard@ntia.doc.gov;* by U.S. mail or commercial delivery service to: Office of Public Safety Communications, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 7324, Washington, DC 20230; or by facsimile transmission to (202) 501–0536. Please note that all material sent via the U.S. Postal Service (including ''Overnight'' or ''Express Mail'') is subject to delivery delays of up to two weeks due to mail security procedures.

FOR FURTHER INFORMATION CONTACT: Marsha MacBride, Acting Associate Administrator, Office of Public Safety Communications, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 7324, Washington, DC 20230; telephone: (202) 482–1150; email: *mmacbride@ntia.doc.gov.* Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

The Middle Class Tax Relief and Job Creation Act of 2012 (Act) created the First Responder Network Authority (FirstNet) as an independent authority within NTIA and charged it with establishing and overseeing a nationwide, interoperable public safety broadband network, based on a single, national network architecture.[3] FirstNet is responsible for, at a minimum, ensuring nationwide standards for use and access of the network; issuing open, transparent, and competitive requests for proposals (RFPs) to build, operate, and maintain the network; encouraging these RFPs to leverage, to the maximum extent economically desirable, existing commercial wireless infrastructure to speed deployment of the network; and managing and overseeing contracts with non-federal entities to build, operate, and maintain the network.[4] FirstNet holds the single public safety license granted for wireless public safety broadband deployment. The FirstNet Board is responsible for making strategic decisions about FirstNet's operations

[1] The Middle Class Tax Relief and Job Creation Act of 2012 (Act) created FirstNet as an independent authority within NTIA, directing it to establish a single nationwide interoperable broadband network. Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156 (''Act''), *to be codified* at 47 U.S.C. 1401 *et. seq.* The Act requires that FirstNet be led by a 15-person Board, with the Secretary of Homeland Security, the Attorney General, and the Director of the Office of Management and Budget serving as permanent members of the Board. 47 U.S.C. 1424(b)(1).

[2] 47 U.S.C. 1424(c)(2)(A)(ii).

[3] 47 U.S.C. 1422(b).

[4] 47 U.S.C. 1426(b)(1).

and ensuring the success of the nationwide network.

II. Structure

The FirstNet Board is composed of 15 voting members. The Act names the U.S. Attorney General, the Director of the Office of Management and Budget, and the Secretary of the Department of Homeland Security as permanent members of the Board. The Secretary of Commerce appoints the twelve non-permanent members of the FirstNet Board.[5] The Act requires each Board member to have experience or expertise in at least one of the following substantive areas: public safety, network, technical, and/or financial.[6] Additionally, the composition of the FirstNet Board must satisfy the other requirements specified in the Act, including that: (i) at least three Board members have served as public safety professionals; (ii) at least three members represent the collective interests of states, localities, tribes, and territories; and (iii) its members reflect geographic and regional, as well as rural and urban, representation.[7] An individual Board member may satisfy more than one of these requirements. The current non-permanent FirstNet Board members are (noting length of term):

- Barry Boniface, telecommunications executive and private equity investor (Term expires: August 2016)
- Tim Bryan, CEO, National Rural Telecom Cooperative (Term expires: August 2015)
- Chris Burbank, Chief, Salt Lake City Police Department (Term expires: August 2017)
- James Douglas, Former Governor of Vermont (Term expires: August 2017)
- Jeffrey Johnson (Vice Chair), Fire Chief (retired); CEO, Western Fire Chiefs Association; former Chair, Oregon State Interoperability Council (Term expires: August 2016)
- Kevin McGinnis, Chief/Community Paramedicine, North East Mobile Health Services (Term expires: August 2015)
- Annise Parker, Mayor, City of Houston, Texas (Term expires: August 2015)
- Frank Plastina, telecommunications/technology executive (Term expires: August 2015)
- Ed Reynolds, telecommunications executive (retired) (Term expires: August 2017)
- Richard Stanek, Sheriff of Hennepin County, Minnesota and National Sheriffs' Association Executive Committee Member (Term expires: August 2017)
- Susan Swenson (Chair), telecommunications/technology executive (Term expires: August 2016)
- Teri Takai, government information technology expert; former CIO, States of Michigan and California (Term expires: August 2016)

More information about the FirstNet Board is available at *www.firstnet.gov/about/Board.* Board members are appointed for a term of three years, and Board members may not serve more than two consecutive full three-year terms.

III. Compensation and Status as Government Employees

FirstNet Board members are appointed as special government employees. FirstNet Board members are compensated at the daily rate of basic pay for level IV of the Executive Schedule (approximately $155,000 per year).[8] Each Board member must be a United States citizen, cannot be a registered lobbyist, and cannot be a registered agent of, employed by, or receive payments from a foreign government.[9]

IV. Financial Disclosure and Conflicts of Interest

FirstNet Board members must comply with certain federal conflict of interest statutes and ethics regulations, including some financial disclosure requirements. A FirstNet Board member will generally be prohibited from participating on any particular matter that will have a direct and predictable effect on his or her personal financial interests or on the interests of the appointee's spouse, minor children, or non-federal employer.

V. Selection Process

At the direction of the Secretary of Commerce, NTIA, in consultation with FirstNet, will conduct outreach to the public safety community, state and local organizations, and industry to solicit nominations for candidates to the Board who satisfy the statutory requirements for membership. In addition, by this Notice, the Secretary of Commerce, through NTIA, will accept expressions of interest until May 15, 2015 from any individual, or any organization that wishes to propose a candidate, who satisfies the statutory requirements for membership on the FirstNet Board.[10]

All parties wishing to be considered should submit their full name, address, telephone number, email address, a current resume, and a statement of qualifications that references how the candidate satisfies the Act's expertise, representational, and geographic requirements for FirstNet Board membership, as described in this Notice, along with a statement describing why they want to serve on the FirstNet Board and affirming their ability to take a regular and active role in the Board's work.

The Secretary of Commerce will select FirstNet Board candidates based on the eligibility requirements in the Act and recommendations submitted by NTIA, in consultation with the FirstNet Board's Governance and Personnel Committee. NTIA will recommend candidates based on an assessment of their qualifications as well as their demonstrated ability to work in a collaborative way to achieve the goals and objectives of FirstNet as set forth in the Act. Board candidates will be vetted through the Department of Commerce and are subject to an appropriate background check for security clearance.

Dated: April 20, 2015.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

[FR Doc. 2015–09527 Filed 4–22–15; 8:45 am]

BILLING CODE 3510–60–P

[5] 47 U.S.C. 1424(b).

[6] 47 U.S.C. 1424(b)(2)(B).

[7] 47 U.S.C. 1424(b)(2)(A).

[8] 47 U.S.C. 1424(g).

[9] *See, Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards, and Commissions,* Office of Management and Budget, 79 FR 47482 (Aug. 13, 2014).

[10] Incumbent Board members whose terms expire in August 2015, and who wish to be considered for reappointment, do not need to submit an expression of interest in response to this Notice.

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0037]

Proposed Collection; Comment Request

AGENCY: Defense Technical Information Center (DTIC), DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Technical Information Center (DTIC), DoD announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the

information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 22, 2015.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

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

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Technical Information Center (DTIC), 8725 John J. Kingman Road, ATTN: Ms. Angela Davis, Ft. Belvoir, VA 22060–6218, or call the DTIC Communications & Customer Access Division at 1–800–225–3842 (Option #3).

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Defense User Registration System (DURS) Records; DD Form 2345 Militarily Critical Technical Data Agreement; OMB Control Number 0704–XXXX.

Needs and Uses: The information collection requirement is necessary to collect registration requests, validate eligibility, and maintain an official registry that identifies individuals who apply for, and are granted access privileges to DTIC owned or controlled computers, databases, products, services, and electronic information systems. Authority for maintenance of the system: E.O. 13526, Classified National Security Information; DoD Directive (DODD) 5105.73 Defense Technical Information Center (DTIC); DoDD 5230.25 Withholding of Unclassified Technical Data from Public Disclosure; DoD Instruction (DODI) 3200.12 DoD Scientific and Technical Information (STI) Program (STIP); DoDI 3200.14 Principles and Operational Parameters of the DoD Scientific and Technical Information Program; DoDI 5230.24 Distribution Statements on Technical Documents; DoD Manual 5200.01—Volume 3, DoD Information Security Program: Protection of Classified Information; and DoD Regulation 5200.2–R, Personnel Security Program.

Affected Public: Business or other for profit; Not-for-profit institutions; Federal Government.

Annual Burden Hours: 101.

Number of Respondents: 605 (Non-CAC Users who use DURS).

Responses per Respondent: 1.

Average Burden per Response: 10 minutes.

Frequency: On Occasion.

Department of Defense (DoD) military and civilian personnel and other U.S. Federal Government personnel, their contractors and grantees, designated officials and employees of foreign embassies according to agreements with DoD who request access privileges to DTIC products, services and electronic information systems.

Dated: April 17, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–09439 Filed 4–22–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2015–HA–0036]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 22, 2015.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

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

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Health Agency, Office of General Counsel, 61401 E. Centretech Parkway, ATTN: Bridget Ewings, Aurora, CO 80011, or call Defense Health Agency, Office of General Counsel, at (303) 676–3705.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Statement of Personal Injury—

Possible Third Party Liability, Defense Health Agency; DD Form 2527; OMB Number 0720–0003.

Needs and Uses: This information collection is completed by TRICARE (formerly CHAMPUS) beneficiaries suffering from personal injuries and receiving medical care at Government expense. The information is necessary in the assertion of the Government's right to recovery under the Federal Medical Care Recovery Act. The data is used in the evaluation and processing of these claims.

Affected Public: Individuals or Households; Federal Government.

Annual Burden Hours: 47,023.

Number of Respondents: 188,090.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

The Federal Medical Recovery Act, 42 U.S.C. 2651–2653 as implemented by Executive Order No. 11060 and 28 CFR part 43 provides for recovery of the reasonable value of medical care provided by the United States to a person who is injured or suffers a disease under circumstances creating tort liability in a third person. DD Form 2527 is required for investigating and asserting claims in favor of the United States arising out of such incidents.

When a claim for TRICARE benefits is identified as involving possible third party liability and the information is not submitted with the claim, the TRICARE contractor requests that the injured party (or a designee) complete DD Form 2527. To protect the interests of the Government, the contractor suspends claims processing until the requested third party liability information is received. The contractor conducts a preliminary evaluation based upon the collection of information and refers the case to a designated appropriate legal officer of the Uniformed Services. The responsible Uniformed Services legal officer uses the information as a basis for asserting and settling the Government's claim. When appropriate, the information is forwarded to the Department of Justice as the basis for litigation.

Section 1 of the Form is used to collect general information, such as name, address and telephone numbers about the military sponsor and the injured beneficiary and the date, time and location where the injured occurred.

Section 2 of the Form is used to collect information about accidental injuries. Most of the investigations for third party liability involve motor vehicle accidents. Information about insurance coverage for the parties involved in the accident is collected. Section 2 of the Form is also used to collect information about accidents not involving motor vehicles. Information such as the type of accident, the place where the injury occurred, the name of the property owner where the injury occurred and cause of the injury is collected. The name and address of the employer is collected when the injury was work related.

Section 3 of the Form is used for miscellaneous information such as possible medical treatment at a Government hospital, the name and address of the beneficiary's attorney, and information regarding any possible releases or settlements with another party to the accident. It also contains the certification, date and signature of the beneficiary (or a designee).

Dated: April 16, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–09434 Filed 4–22–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Office of Economic Adjustment; Announcement of Federal Funding Opportunity (FFO)

AGENCY: Office of Economic Adjustment (OEA), Department of Defense (DoD).

ACTION: Federal funding opportunity announcement.

SUMMARY: The Secretary of Defense was previously authorized to establish a limited program to construct, renovate, repair, or expand elementary and secondary public schools on military installations in order to address capacity or facility condition deficiencies at such schools. In fiscal year 2015 Congress made available an additional $175 million for the program and included additional program requirements regarding cost sharing or matching applicable to the additional $175 million and any remaining unobligated balances for this program. This notice explains the additional program requirements regarding cost sharing or matching and provides updated proposal and submission information and Federal award agency contact information for this program.

SUPPLEMENTARY INFORMATION:

a. Federal Awarding Agency: Office of Economic Adjustment (OEA), Department of Defense (DoD).

b. Funding Opportunity Title: Department of Defense Program for Construction, Renovation, Repair or Expansion of Public Schools Located on Military Installations.

c. Announcement Type: Modification of Previously Announced Federal Funding Opportunity published in the September 9, 2011 **Federal Register** (76 FR 55883).

d. Catalog of Federal Domestic Assistance (CFDA) Number & Title: 12.600, Community Investment.

e. Key Dates: Submissions will be accepted by invitation only as described in the **Federal Register** Notice dated September 9, 2011 (76 FR 55883), and this notice.

I. Period of Funding Opportunity

Funding remains available until expended, as described in the **Federal Register** Notice dated September 9, 2011 (76 FR 55883), and this notice.

II. Funding Opportunity

a. Program Description

Please refer to the *Federal Funding Opportunity Title:* Department of Defense Program for Construction, Renovation, Repair or Expansion of Public Schools Located on Military Installations.

Announcement Type: Federal Funding Opportunity.

Catalog of Federal Domestic Assistance (CFDA) Number: 12.600.

Date: September 9, 2011

The Secretary of Defense is authorized by Section 8017 of Public Law 113–291, the Consolidated and Further Continuing Appropriations Act of 2015, acting through OEA, to provide up to $175 million ''to make grants, conclude cooperative agreements, or supplement other Federal funds to construct, renovate, repair, or expand elementary and secondary public schools on military installations in order to address capacity or facility condition deficiencies at such schools: Provided further, that in making such funds available, OEA shall give priority consideration to those military installations with schools having the most serious capacity or facility condition deficiencies as determined by the Secretary of Defense: Provided further, that a matching share, as outlined by the Department of Defense in the guidelines published in the September 9, 2011, **Federal Register** (76 FR 55883), is required to be provided by the local education authority (LEA) or the State in which the school is located. Provided further, these provisions apply to funds provided under this section, and to funds previously provided by Congress to construct, renovate, repair, or expand elementary and secondary

public schools on military installations in order to address capacity or facility condition deficiencies at such schools to the extent such funds remain unobligated the date of enactment of this section.'' Section 8109 of Public Law 112–10, the Department of Defense and Full-Year Continuing Appropriations Act, 2011; Section 8118 of Public Law 112–74, the Consolidated Appropriations Act, 2012; and Section 8108 of Public Law 113–6, the Consolidated and Further Continuing Appropriations Act, 2013, previously provided a total of $770 million to construct, renovate, repair, or expand elementary and secondary public schools on military installations. OEA announced procedures for administering this program in a **Federal Register** Notice dated September 9, 2011 (76 FR 55883).

This notice explains additional program requirements applicable to the additional $175 million and any remaining unobligated balances previously provided by Congress for this program, pursuant to Section 8017 of Public Law 113–291.

b. Federal Award Information

Awards under this FFO will be issued in the form of a grant agreement in accordance with 31 U.S.C. 6304.

III. Eligibility Information

a. Eligible Applicants

As described in the **Federal Register** Notice dated September 9, 2011 (76 FR 55883).

b. Eligible Activities

As described in the **Federal Register** Notice dated September 9, 2011 (76 FR 55883).

c. Cost Sharing or Matching

Section 8017 of Public Law 113–291 established a matching share requirement applicable to the $175 million provided by that legislation, and any remaining unobligated balances previously provided for this program.

(1) A matching share, equal to not less than twenty (20) percent of the total project cost, shall be provided by the LEA or the State in which the school is located.

(2) The matching share may be cash, an in-kind contribution, or a combination of both. The LEA or the State must demonstrate that the match is or will be available to permit timely execution of the project.

(3) For the purposes of this funding, the LEA or the State may use other Federal-sourced or non-Federal funds (State, local, or private contributions) committed to or available for the project to meet the matching share requirement.

(4) OEA may, in its sole discretion, waive part of the matching share requirement provided the LEA or the State establishes to the satisfaction of OEA an inability to provide the required matching share.

(5) Otherwise eligible schools that are unable to provide the required matching share and have not established an inability to do so will not be considered for funding.

IV. Proposal and Submission Information

a. Submission of a Proposal

As described in the **Federal Register** Notice dated September 9, 2011 (76 FR 55883).

b. Content and Form of Proposal Submission

As described in the **Federal Register** Notice dated September 9, 2011 (76 FR 55883).

c. Unique Entity Identifier and System for Award Management (SAM)

Each applicant is required to: (a) Provide a valid Dun and Bradstreet Universal Numbering System (DUNS) number; (b) be registered in SAM before submitting its application; and (c) continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. OEA may not make a Federal award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time OEA is ready to issue a Federal award, OEA may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

d. Submission Dates and Times

Proposals will be accepted by invitation only, subject to available appropriations, commencing on the date of publication of this notice and as described in the **Federal Register** Notice dated September 9, 2011 (76 FR 55883).

e. Application Review Information

i. Selection Criteria

As described in the **Federal Register** Notice dated September 9, 2011 (76 FR 55883).

ii. Review and Selection Process

As described in the **Federal Register** Notice dated September 9, 2011 (76 FR 55883).

f. Federal Award Adminstration Information

i. Federal Award Notices

In the event a grant is awarded, the successful applicant (Grantee) will receive a notice of award in the form of a grant agreement, signed by the Director, OEA (Grantor), on behalf of DoD. The grant agreement will be transmitted electronically or, if necessary, by U.S. Mail.

ii. Administrative and National Policy Requirements

Any grant awarded under this program will be governed by the provisions of the OMB circulars applicable to financial assistance and DoD's implementing regulations in place at the time of the award. A Grantee receiving funds under this opportunity and any consultant or pass-thru entity operating under the terms of a grant shall comply with all Federal, State, and local laws applicable to its activities. Federal regulations that will apply to an OEA grant include administrative requirements and provisions governing allowable costs as stated in:

- 2 CFR part 200, ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards'';
- 2 CFR part 1103, ''Interim Grants and Cooperative Agreements Implementation of Guidance in 2 CFR part 200, ''Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards'';
- 2 CFR part 25, ''Universal Identifier and System for Award Management'';
- 2 CFR part 170, ''Reporting Subaward and Executive Compensation Information'';
- 2 CFR part 180, OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement), as implemented by DoD in 2 CFR part 1125, Department of Defense Nonprocurement Debarment and Suspension; and
- 32 CFR part 28, ''New Restrictions on Lobbying''.

Additional requirements applicable to construction awards include compliance with:

- National Environmental Protection Act (NEPA)
- National Historic Preservation Act

iii. Reporting

OEA requires periodic performance reports, an interim financial report for each 12 months a grant is active, and one final performance report for any grant. The performance reports will contain information on the following:

- A comparison of actual accomplishments to the objectives established for the period;
- reasons for slippage if established objectives were not met;
- additional pertinent information when appropriate;
- a comparison of actual and projected quarterly expenditures in the grant; and,
- the amount of Federal cash on hand at the beginning and end of the reporting period.

The final performance report must contain a summary of activities for the entire grant period. All required deliverables should be submitted with the final performance report.

The final SF 425, ''Federal Financial Report,'' must be submitted to OEA within 90 days after the end of the grant.

V. Federal Awarding Agency Contacts

For further information, to answer questions, or for help with problems related to this program, contact: Ms. Nia Hope, Program Director, Community Investment, Office of Economic Adjustment, 2231 Crystal Drive, Suite 520, Arlington, VA 22202–3711. Office: (703) 697–2088. Email: *nia.a.hope.civ@mail.mil.*

The OEA homepage address is: *http://www.oea.gov.*

Specific questions concerning the Department's Public Schools on Military Installations Priority List should be directed to Gerald David, Department of Defense Education Activity at *gerald.david@hq.dodea.edu.*

Dated: April 20, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–09485 Filed 4–22–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Strengthening Institutions Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information

Strengthening Institutions Program.

Notice inviting applications for new awards for fiscal year (FY) 2015.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.031A.

DATES:

Applications Available: April 23, 2015.

Deadline for Transmittal of Applications: June 8, 2015.

Deadline for Intergovernmental Review: August 6, 2015.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Strengthening Institutions Program (SIP) provides grants to eligible institutions of higher education (IHEs) to help them become self-sufficient and expand their capacity to serve low-income students by providing funds to improve and strengthen the institution's academic quality, institutional management, and fiscal stability.

Priority: This notice contains one competitive preference priority. The competitive preference priority is from 34 CFR 75.226.

Competitive Preference Priority: For FY 2015 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award three additional points to an application that meets this priority.

This priority is:

Competitive Preference Priority—Supporting Strategies for which there is Moderate Evidence of Effectiveness (3 additional points).

Projects that propose a process, product, strategy, or practice supported by moderate evidence of effectiveness (as defined in this notice).

Note: Applicants seeking to address this competitive preference priority should identify a minimum of one up to a maximum of two studies that support their proposed project and meet the definition of ''moderate evidence of effectiveness.'' Applicants should clearly identify if they are addressing the priority on the one-page abstract submitted with the application. All cited studies must also be submitted with the application as a PDF. If the Department determines that an applicant has provided insufficient information, the applicant will not have an opportunity to provide additional information at a later time.

To qualify as moderate evidence of effectiveness, among other things, a study's evaluation design must meet What Works Clearinghouse (WWC) Evidence Standards (as defined in this notice). The What Works Clearinghouse Procedures and Standards Handbook describes in detail which types of study designs can meet WWC Evidence Standards with or without reservations including both quasi-experimental design studies and randomized controlled trials (as defined in this notice). The WWC review protocol for individual studies in the postsecondary education topic area, which describes the specific types of outcomes, populations, and other criteria that will be used by the Department to determine whether a study meets WWC Evidence Standards, can be found at: *http://ies.ed.gov/ncee/wwc/pdf/reference_resources/wwc_pe_protocol_v3.0.pdf.*

Applicants may cite studies that (1) have already been determined by the Department to meet the WWC Evidence Standards (*e.g.,* studies listed in the WWC-reviewed studies database or in the WWC database under the postsecondary topic area as having met WWC standards with or without reservations) or (2) have not yet been reviewed by the Department but that the applicant thinks will meet the WWC Evidence Standards. In the case of studies that have not yet been reviewed, the Department will review the studies to determine if they meet WWC Evidence Standards, in accordance with the procedures described under *Review and Selection Process* in section IV of this notice. In both cases, the studies will be reviewed by the Department to determine if they also meet the other requirements of the definition for ''moderate evidence of effectiveness.''

In order to receive the three additional points under this competitive preference priority, applicants should propose to implement the strategy from their supporting study or studies as closely as possible and describe in the narrative response to this priority how they will do so. Where modifications to a cited strategy will be made to account for student or institutional characteristics, resource limitations, or other special factors, the applicant should provide a justification or basis for the modifications in the narrative response to this priority. Modifications may not be proposed to the core aspects of any cited strategy.

Definitions: These definitions are from 34 CFR 77.1(c) and apply to the priority in this notice.

Large sample means an analytic sample of 350 or more students (or other single analysis units), or 50 or more groups (such as classrooms or schools) that contain 10 or more students (or other single analysis units).

Moderate evidence of effectiveness means one of the following conditions is met:

(i) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse

Evidence Standards without reservations, found a statistically significant favorable impact on a relevant outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), and includes a sample that overlaps with the populations or settings proposed to receive the process, product, strategy, or practice.

(ii) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards with reservations, found a statistically significant favorable impact on a relevant outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), includes a sample that overlaps with the populations or settings proposed to receive the process, product, strategy, or practice, and includes a large sample and a multi-site sample. (**Note:** multiple studies can cumulatively meet the large and multi-site sample requirements as long as each study meets the other requirements in this paragraph.)

Multi-site sample means more than one site, where site can be defined as an LEA, locality, or State.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental design by identifying a comparison group that is similar to the treatment group in important respects. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards with reservations (but not What Works Clearinghouse Evidence Standards without reservations).

Randomized controlled trial means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to receive the intervention being evaluated (the treatment group) or not to receive the intervention (the control group). The estimated effectiveness of the intervention is the difference between the average outcomes for the treatment group and for the control group. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards without reservations.

What Works Clearinghouse Evidence Standards means the standards set forth in the What Works Clearinghouse Procedures and Standards Handbook (Version 3.0, March 2014), which can be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

Program Authority: 20 U.S.C. 1057–1059d (title III, part A, of the Higher Education Act of 1965, as amended (HEA)).

Note: In 2008, the HEA was amended by the Higher Education Opportunity Act of 2008 (HEOA) (Pub. L. 110–315). The HEOA made a number of technical and substantive revisions to SIP, and the program regulations in 34 CFR part 607 have not yet been updated to reflect these statutory changes.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 607.

II. Award Information

Type of Award: Discretionary grants—Individual Development Grants and Cooperative Arrangement Development Grants.

Estimated Available Funds: $18,197,309.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2016 from the list of unfunded applicants from this competition.

Individual Development Grants

Estimated Range of Awards: $400,000–$450,000 per year.

Estimated Average Size of Awards: $425,000 per year.

Maximum Award: We will reject any application that proposes a budget exceeding $450,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 36.

Cooperative Arrangement Development Grants

Estimated Range of Awards: $600,000–$650,000 per year.

Estimated Average Size of Awards: $625,000 per year.

Maximum Award: We will reject any application that proposes a budget exceeding $650,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months for each type of award.

III. Eligibility Information

1. *Eligible Applicants:* (a) This program is authorized by title III, part A, of the HEA. To qualify as an eligible institution under any title III, part A program, an institution must be—

(i) Accredited or pre-accredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(ii) Legally authorized by the State in which it is located to be a junior or community college or to provide an educational program for which it awards a bachelor's degree;

(iii) Designated as an ''eligible institution'' by demonstrating that it has: (A) an enrollment of needy students as described in 34 CFR 607.3; and (B) low average educational and general expenditures per full-time equivalent (FTE) undergraduate student as described in 34 CFR 607.4.

Note: For purposes of establishing eligibility for this competition, the notice inviting applications for eligibility designation for FY 2015 was published in the **Federal Register** on November 3, 2014 (79 FR 65197) and applications were due on December 22, 2014. Only institutions that submitted the required application and received designation through this process are eligible to submit applications for this competition.

(b) A grantee under the Developing Hispanic-Serving Institutions (HSI) Program, which is authorized under title V of the HEA, may not receive a grant under any HEA, title III, part A program, including SIP. Furthermore, a current HSI Program grantee may not give up its HSI grant to receive a grant under SIP or any title III, part A program as described in 34 CFR 607.2(g)(1).

An eligible HSI that is not a current grantee under the HSI Program may apply for a FY 2015 grant under all title III, part A programs for which it is eligible, as well as receive consideration for a grant under the HSI Program. However, a successful applicant may receive only one grant as described in 34 CFR 607.2(g)(1).

(c) An eligible IHE that submits an application for an Individual

Development Grant and a Cooperative Arrangement Development Grant may be awarded both grants.

(d) An eligible IHE that currently has a SIP Individual Development Grant may apply for and be awarded a Cooperative Development Grant. A grantee with an Individual Development Grant or Cooperative Arrangement Development Grant may be a partner or subgrantee in one or more Cooperative Arrangement Development Grants. The lead institution in a Cooperative Arrangement Development Grant must be an eligible institution. Partners or subgrantees are not required to be eligible institutions.

2.a. *Cost Sharing or Matching:* This program does not require cost sharing or matching unless the grantee uses a portion of its grant for establishing or improving an endowment fund. If a grantee uses a portion of its grant for endowment fund purposes, it must match those grant funds with non-Federal funds (20 U.S.C. 1059c(c)(3)(B)).

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Grant funds shall be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds (34 CFR 607.30(b)).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application via the Internet using the following address: *www.Grants.gov.* If you do not have access to the Internet, please contact one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting one of the program contact persons listed UNDER **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria and the competitive preference priority that reviewers use to evaluate your application. We have established the following mandatory page limits for Individual Development Grant and Cooperative Arrangement Development Grant applications:

- If you are not addressing the competitive preference priority you must limit your application narrative to no more than 50 pages for an Individual Development Grant application and to no more than 70 pages for a Cooperative Arrangement Development Grant application.
- If you are addressing the competitive preference priority you must limit your application narrative to no more than 55 pages for an Individual Development Grant application and 75 pages for a Cooperative Arrangement Development Grant application.

Applicants should provide information addressing the competitive preference priority in the section of the application titled ''Competitive Preference Priority—Supporting Strategies for which there is Moderate Evidence of Effectiveness.''

For the purpose of determining compliance with the page limit, each page on which there are words will be counted as one full page. Applicants must use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides. Page numbers and an identifier may be within the 1″ margins.
- Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, and captions. Text in charts, tables, figures, and graphs in the application narrative may be single spaced and will count toward the page limit.
- Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch). However, you may use a 10-point font in charts, tables, figures, graphs, footnotes, and endnotes.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit applies to all of the application narrative section, including your complete response to the selection criteria and the competitive preference priority. However, the page limit does not apply to Part I, the Application for Federal Assistance (SF 424-cover sheet); the Department of Education Supplemental Information Form (SF 424); Part II, the Budget Information-Non-Construction Programs Form (ED 524); Section A—Budget Summary—U.S. Department of Education Funds; Section B—Budget Summary—Non-Federal Funds; and Section C—Budget Narrative; Part IV, the assurances and certifications; the one-page program abstract; or bibliography. The page limit also does not apply to any copies of studies that are submitted in response to the competitive preference priority. However, if you include any attachments or appendices not specifically listed in this section or requested in the application package, these items will be counted as part of your application narrative for the purpose of the page-limit requirement.

Note: The Budget Information-Non-Construction Programs Form (ED 524) Sections A–C are not the same as the narrative response to the Budget section of the selection criteria.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: April 23, 2015.

Deadline for Transmittal of Applications: June 8, 2015.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice. Deadline for Intergovernmental Review: August 6, 2015.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372

is in the application package for this program.

5. *Funding Restrictions:* (a) *General.* We specify unallowable costs in 34 CFR 607.10(c). We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

(b) *Applicability of Executive Order 13202.* Applicants that apply for construction funds under the title III, part A, HEA programs must comply with Executive Order 13202, as amended. This Executive order provides that recipients of Federal construction funds may not ''require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other construction project(s)'' or ''otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s).'' Projects funded under this program that include construction activity will be provided a copy of this Executive order and will be asked to certify that they will adhere to it.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under the Strengthening Institutions Program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Strengthening Institutions Program, CFDA number 84.031A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for this competition at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.031, not 84.031A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News

and Events on the Department's G5 system home page at *www.G5.gov.*

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Nalini Lamba-Nieves, U.S. Department of Education, 1990 K Street NW., Room 6024, Washington, DC 20006–8513. FAX: (202) 502–7861.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.031A), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.031A), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to youa notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 607.22(a)–(g). Applicants must address each of the following selection criteria. The total maximum number of points under the selection criteria is 100 points; the maximum score under each criterion is noted in parentheses. The complete text of the selection criteria is in the application package for this competition.

(a) *Quality of the Applicant's Comprehensive Development Plan.* (Maximum 25 Points) The extent to which—

(1) The strengths, weaknesses, and significant problems of the institution's academic programs, institutional management, and fiscal stability are clearly and comprehensively analyzed and result from a process that involved major constituencies of the institution;

(2) The goals for the institution's academic programs, institutional management, and fiscal stability are realistic and based on comprehensive analysis;

(3) The objectives stated in the plan are measurable, related to institutional goals, and, if achieved, will contribute to the growth and self-sufficiency of the institution; and

(4) The plan clearly and comprehensively describes the methods and resources the institution will use to institutionalize practice and improvements developed under the proposed project, including, in particular, how operational costs for personnel, maintenance, and upgrades of equipment will be paid with institutional resources.

(b) *Quality of Activity Objectives.* (Maximum 15 Points) The extent to which the objectives for each activity are—

(1) Realistic and defined in terms of measurable results; and

(2) Directly related to the problems to be solved and to the goals of the comprehensive development plan.

(c) *Quality of Implementation Strategy.* (Maximum 20 Points) The extent to which—

(1) The implementation strategy for each activity is comprehensive;

(2) The rationale for the implementation strategy for each activity is clearly described and is supported by the results of relevant studies or projects; and

(3) The timetable for each activity is realistic and likely to be attained.

(d) *Quality of Key Personnel.* (Maximum 7 Points) The extent to which—

(1) The past experience and training of key professional personnel are directly related to the stated activity objectives; and

(2) The time commitment of key personnel is realistic.

(e) *Quality of Project Management Plan.* (Maximum 10 Points) The extent to which—

(1) Procedures for managing the project are likely to ensure efficient and effective project implementation; and

(2) The project coordinator and activity directors have sufficient authority to conduct the project effectively, including access to the president or chief executive officer.

(f) *Quality of Evaluation Plan.* (Maximum 15 Points) The extent to which—

(1) The data elements and the data collection procedures are clearly described and appropriate to measure the attainment of activity objectives and to measure the success of the project in achieving the goals of the comprehensive development plan; and

(2) The data analysis procedures are clearly described and are likely to produce formative and summative results on attaining activity objectives and measuring the success of the project on achieving the goals of the comprehensive development plan.

(g) *Budget.* (Maximum 8 Points) The extent to which the proposed costs are necessary and reasonable in relation to the project's objectives and scope.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Awards will be made in rank order according to the average score received from an evaluation performed by a panel of non-Federal reviewers based on responses to the selection criteria and, if applicable, the competitive preference priority. If an application is scored highly, has the possibility of being funded, and includes a response to the competitive preference priority, IES will review the studies cited in the application to determine whether they meet the ''moderate evidence of effectiveness'' standard. Only those applications that address the competitive preference priority and have the possibility of being funded because of high scores and available funds for new awards will undergo further review by IES. At least one study submitted must be found to meet the definition of ''moderate evidence of effectiveness,'' in order for applicants to receive the additional points.

Tie-breaker for Development Grants. In tie-breaking situations for Development Grants, 34 CFR 607.23(b) requires that we award one additional point to an application from an IHE that has an endowment fund of which the current market value, per full time equivalent (FTE) enrolled student, is less than the average current market value of the endowment funds, per FTE enrolled student, at comparable type institutions that offer similar instruction. We also award one additional point to an application from an IHE that has expenditures for library materials per FTE enrolled student that are less than the average expenditure for library materials per FTE enrolled student at similar type institutions. We also add one additional point to an application from an IHE that proposes to carry out one or more of the following activities—

(1) Faculty development;

(2) Funds and administrative management;

(3) Development and improvement of academic programs;

(4) Acquisition of equipment for use in strengthening management and academic programs;

(5) Joint use of facilities; and

(6) Student services.

For the purpose of these funding considerations, we use 2012–2013 data.

If a tie remains after applying the tie-breaker mechanism above, priority will be given in the case of applicants for: (a) Individual Development Grants, to applicants that have the lowest endowment values per FTE student; and (b) Cooperative Arrangement Development Grants, to applicants in accordance with section 394(b) of the HEA, if the Secretary determines that the cooperative arrangement is geographically and economically sound or will benefit the applicant institution.

3. *Special Conditions:* Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant (34 CFR 607.24(c)(2)); or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the Strengthening Institutions Program:

a. The percentage change, over the five-year period, of the number of full-time degree-seeking undergraduates enrolled at SIP institutions. Note that this is a long-term measure, which will be used to periodically gauge performance;

b. The percentage of first-time, full-time degree-seeking undergraduate students at four-year SIP institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same SIP institution;

c. The percentage of first-time, full-time degree-seeking undergraduate students at two-year SIP institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same SIP institution;

d. The percentage of first-time, full-time degree-seeking undergraduate students enrolled at four-year SIP institutions graduating within six years of enrollment;

e. The percentage of first-time, full-time degree-seeking undergraduate students enrolled at two-year SIP institutions graduating within three years of enrollment; and

f. The cost per successful program outcome: Federal cost per undergraduate and graduate degree at SIP institutions.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Nalini Lamba-Nieves, Pearson Owens, or Don Crews, U.S. Department of Education, 1990 K Street NW., Room 6024, Washington, DC 20006–8513. You may contact these individuals at the following email addresses and telephone numbers:

Nalini.Lamba-Nieves@ed.gov; (202) 502–7562

Pearson.Owens@ed.gov; (202) 502–7804

Don.Crews@ed.gov; (202) 502–7574

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to either program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Delegation of Authority: The Secretary of Education has delegated authority to Jamienne S. Studley, Deputy Under Secretary, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: April 20, 2015.

Jamienne S. Studley,

Deputy Under Secretary.

[FR Doc. 2015–09492 Filed 4–22–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2015–OESE–0047]

Proposed Waiver and Extension of the Project Period; Territories and Freely Associated States Education Grant Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Proposed waiver and extension of the project period.

[CFDA Number: 84.256A]

SUMMARY: For 36-month projects funded in fiscal year (FY) 2012 under the Territories and Freely Associated States Education Grant (T&FASEG) program, the Secretary proposes to waive the requirement that prohibits the extension of project periods involving the obligation of additional Federal funds. The Secretary also proposes to extend the project period of these grants for up to an additional 24 months. The proposed waiver and extension would enable the five current T&FASEG grantees to continue to receive Federal funding annually for project periods through FY 2016 and possibly through FY 2017. In addition, during this period, the Pacific Regional Educational Laboratory (Pacific REL) would continue to receive funds set aside for technical assistance under the T&FASEG program.

DATES: We must receive your comments on or before May 26, 2015.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Are you new to the site?''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about this proposed waiver and extension of the project period, address them to Collette Fisher, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E231, Washington, DC 20202–6400.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Collette Fisher. Telephone: (202) 401–0039 or by email at: *collette.fisher@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this proposed waiver and extension. We are particularly interested in receiving comments on the potential impact that this proposed waiver and extension might have on the five current T&FASEG program grantees: American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the U.S. Virgin Islands, and the Republic of Palau. We note that these grantees also constitute the eligible applicants under the T&FASEG program.

During and after the comment period, you may inspect all public comments about this proposed waiver and extension by accessing Regulations.gov. You may also inspect all public comments in Room 3E231, 400 Maryland Ave. SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week, except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed waiver and extension. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

The T&FASEG program is authorized under section 1121(b) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). Under this program, the Secretary is authorized to award grants, on a competitive basis, to local educational agencies (LEAs) in the U.S. Territories—American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands—and one eligible Freely Associated State, the Republic of Palau. Through these grants, the T&FASEG program supports projects to raise student achievement through direct educational services.

T&FASEG program grant funds may be used for activities authorized under the ESEA, including teacher training, curriculum development, development or acquisition of instructional materials, and general school improvement and reform. More specifically, under the T&FASEG program, grant funds may be used to—

(a) Conduct activities consistent with the programs described in the ESEA, including the types of activities authorized under—

(1) Title I—Improving the Academic Achievement of the Disadvantaged;

(2) Title II—Preparing, Training, and Recruiting Highly-Quality Teachers and Principals;

(3) Title III—Language Instruction for Limited English Proficient and Immigrant Students;

(4) Title IV—21st Century Schools; and

(5) Title V—Promoting Informed Parental Choice and Innovative Programs; and

(b) Provide direct educational services that assist all students with meeting challenging State academic content standards.

In addition, section 1121(b)(3)(d) of the ESEA authorizes the Secretary to provide up to five percent of the amount reserved for T&FASEG program grants to pay the administrative costs of the Pacific REL, which provides technical assistance to grant recipients regarding the administration and implementation of their projects.

On April 30, 2012, we published in the **Federal Register** (77 FR 25452) a notice inviting applications for new awards under the FY 2012 T&FASEG program competition (2012 Notice Inviting Applications).

In FY 2012, the Department made three-year awards to five T&FASEG projects. The project period for these T&FASEG program grants is currently scheduled to end on September 30, 2015. The Secretary proposes to waive the requirement in 34 CFR 75.261(c)(2), which prohibits the extension of project periods involving the obligation of additional Federal funds, and proposes to extend the project period for current T&FASEG grant recipients for up to 24 months. This would allow the grantees to continue to receive Federal funding annually for project periods through FY 2016 and possibly FY 2017.

We are proposing this waiver and extension because we have concluded

that it would not be in the public interest to incur a disruption in the services associated with holding a new T&FASEG competition in FY 2015. Rather, it would be more effective to maintain the continuity of current projects by allowing grantees the opportunity to continue to provide high-quality direct educational services in support of the Secretary's priorities to students and teachers in the U.S. Territories and the Republic of Palau without interruption. Consistent with the scope, goals, and objectives of the current projects, grantees would continue to support initiatives on standards and assessments, effective teachers and leaders, and projects that are designed to improve student achievement or teacher effectiveness through the use of high-quality digital tools or materials, which include preparing teachers to use technology to improve instruction, as well as developing, implementing, or evaluating digital tools or materials. Moreover, we believe that a longer project period will better enable grantees to carry out project objectives and anticipate providing for longer project periods in future competitions. Additionally, given that all eligible applicants currently receive grant awards under the T&FASEG program, the proposed waiver and extension would have limited impact on those entities.

We intend to fund the extended project period by using funds Congress appropriates under the current statutory authority, including FY 2014 funds available for awards made in FY 2015 and, if the grants are extended for two years, FY 2015 funds available for awards made in FY 2016.

Under this proposed waiver and extension of the project period—

(1) Current grantees would be authorized to receive T&FASEG continuation awards annually for up to two years through FY 2017;

(2) We would not announce a new T&FASEG competition or make new T&FASEG grant awards in FY 2015;

(3) During the extension period, any activities carried out would be consistent with, or a logical extension of, the scope, goals, and objectives of each grantee's approved application from the 2012 T&FASEG program competition;

(4) The requirements established in the program regulations and the 2012 Notice Inviting Applications would continue to apply to each grantee that receives a continuation award; and

(5) All requirements applicable to continuation awards for current T&FASEG grantees and the requirements in 34 CFR 75.253 would apply to any continuation awards received by current T&FASEG grantees.

If we announce this proposed waiver and extension as final, we will make decisions regarding annual continuation awards based on grantee performance as demonstrated through program narratives, budgets and budget narratives, and performance reports, and based on the regulations in 34 CFR 75.253. We intend to award continuation grants based on information provided to us annually by each grantee, indicating that it is making substantial progress performing its T&FASEG program activities based on substantial performance and progress.

Regulatory Flexibility Act Certification

The Secretary certifies that the proposed waiver and extension and the activities required to support additional years of funding would not have a significant economic impact on a substantial number of small entities. The entities that would be affected by this proposed waiver and extension are the five current T&FASEG program grantees receiving Federal funds. There are no other potential applicants.

The Secretary certifies that the proposed waiver and extension would not have a significant economic impact on these entities because the extension of an existing project imposes minimal compliance costs, and the activities required to support the additional years of funding would not impose additional regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1995

This proposed waiver and extension does not contain any information collection requirements.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 6331.

Dated: April 20, 2015.

Deborah S. Delisle,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2015–09510 Filed 4–22–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board Meeting, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, May 20, 2015, 1:00 p.m.–5:15 p.m.

ADDRESSES: Sandia Hotel, Hummingbird Room, 30 Rainbow Road, Albuquerque, New Mexico 87113.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *Menice.Santistevan@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Call to Order by Deputy Designated Federal Officer (DDFO)
- Establishment of a Quorum: Roll Call and Excused Absences
- Welcome and Introductions
- Approval of Agenda and Meeting Minutes of March 25, 2015
- Old Business
  - Written Reports
  - Other Items
- New Business
  - Appointment of Nominating Committee for Election of Officers in September 2015
- Update from DDFO
- DOE Presentation
- Update from Liaisons
  - Update from DOE
  - Update from Los Alamos National Laboratory
  - Update from New Mexico Environment Department
- Public Comment Period
- Wrap-Up Comments from NNMCAB Members
- Adjourn

Public Participation: The EM SSAB, Northern New Mexico, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.energy.gov/*

Issued at Washington, DC on April 16, 2015.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2015–09537 Filed 4–22–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, May 20, 2015, 5:00 p.m.

ADDRESSES: National Atomic Testing Museum, 755 East Flamingo Road, Las Vegas, Nevada 89119.

FOR FURTHER INFORMATION CONTACT: Barbara Ulmer, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 630–0522; Fax (702) 295–5300 or Email: *NSSAB@nnsa.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Briefing and Recommendation Development for Corrective Action Alternatives for Corrective Action Unit 568, Area 3 Plutonium Dispersion Sites—Work Plan Item #2
2. Briefing and Recommendation Development for Soils Quality Assurance Plan—Work Plan Item #4

Public Participation: The EM SSAB, Nevada, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Barbara Ulmer at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Barbara Ulmer at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments can do so during the 15 minutes allotted for public comments.

Minutes: Minutes will be available by writing to Barbara Ulmer at the address listed above or at the following Web site: *http://nv.energy.gov/nssab/MeetingMinutes.aspx*.

Issued at Washington, DC on April 17, 2015.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2015–09536 Filed 4–22–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC15–124–000.

Applicants: FR Kingfisher Holdings LLC, FR Kingfisher Holdings II LLC, MidAmerican Wind Tax Equity Holdings, LLC.

Description: Joint Application for Authorization under Section 203 of the Federal Power Act and Request for Confidential Treatment of FR Kingfisher Holdings LLC, et al. under EC15–124.

Filed Date: 4/16/15.

Accession Number: 20150416–5250.

Comments Due: 5 p.m. ET 5/7/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1942–012; ER10–2042–018; ER10–1941–007; ER11–3840–005; ER10–1938–013; ER13–1407–004; ER14–2931–002; ER10–1934–012; ER10–1893–012; ER10–1888–007; ER10–1885–007; ER10–1884–007; ER10–1883–007; ER10–1878–007; ER10–1876–007; ER10–1875–007; ER10–1873–007; ER12–1987–005; ER10–1947–007; ER10–1864–006; ER10–1862–012; ER12–2261–005; ER10–1865–007.

Applicants: Calpine Construction Finance Company, L.P., Calpine Energy Services, L.P., Calpine Gilroy Cogen, L.P., Calpine Greenleaf, Inc., Calpine Power America—CA, LLC, CCFC Sutter Energy, LLC, CES Marketing IX, LLC, Calpine Fore River Energy Center, LLC, CES Marketing X, LLC, Creed Energy Center, LLC, Delta Energy Center, LLC, Geysers Power Company, LLC, Gilroy Energy Center, LLC, Goose Haven Energy Center, LLC, Los Esteros Critical Energy Facility, LLC, Los Medanos Energy Center, LLC, Metcalf Energy Center, LLC, O.L.S. Energy-Agnews,

Inc., Otay Mesa Energy Center, LLC, Pastoria Energy Facility, L.L.C., Power Contract Financing, L.L.C., Russell City Energy Company, LLC, South Point Energy Center, LLC, Calpine Construction Finance Company, LP

Description: Notification of Change in Status of the Calpine Southwest MBR Sellers.

Filed Date: 4/15/15.

Accession Number: 20150415–5335.

Comments Due: 5 p.m. ET 5/6/15.

Docket Numbers: ER15–1065–000.

Applicants: Balko Wind, LLC.

Description: Second Supplement to February 18, 2015 Balko Wind, LLC tariff filing.

Filed Date: 4/17/15.

Accession Number: 20150417–5087.

Comments Due: 5 p.m. ET 4/24/15.

Docket Numbers: ER15–1509–001.

Applicants: ISO New England Inc.

Description: Tariff Amendment per 35.17(b): Do Not Exceed Real-Time Dispatch to be effective 4/10/2016.

Filed Date: 4/16/15.

Accession Number: 20150416–5214.

Comments Due: 5 p.m. ET 5/7/15.

Docket Numbers: ER15–1520–000.

Applicants: Catalina Solar 2, LLC.

Description: Baseline eTariff Filing per 35.1: Catalina Solar 2 Concurrence to Shared Transmission Facilities Agreement to be effective 5/31/2015.

Filed Date: 4/16/15.

Accession Number: 20150416–5234.

Comments Due: 5 p.m. ET 5/7/15.

Docket Numbers: ER15–1521–000.

Applicants: Southern California Edison Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Amended LGIA for RE Astoria, Service Agreement No. 157 to be effective 6/16/2014.

Filed Date: 4/16/15.

Accession Number: 20150416–5238.

Comments Due: 5 p.m. ET 5/7/15.

Docket Numbers: ER15–1522–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Amendment to Kings River GIA and GSFA, TO Service Agreement No. 57 to be effective 4/15/2015.

Filed Date: 4/16/15.

Accession Number: 20150416–5239.

Comments Due: 5 p.m. ET 5/7/15.

Docket Numbers: ER15–1523–000.

Applicants: San Diego Gas & Electric Company.

Description: Compliance filing per 35: Certificate of Concurrence in LGIA to be effective 10/21/2014.

Filed Date: 4/17/15.

Accession Number: 20150417–5143.

Comments Due: 5 p.m. ET 5/8/15.

Docket Numbers: ER15–1524–000.

Applicants: PacifiCorp.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): OATT Formula Rate—Schedule 10 Loss Factor to be effective 6/1/2015.

Filed Date: 4/17/15.

Accession Number: 20150417–5193.

Comments Due: 5 p.m. ET 5/8/15.

Docket Numbers: ER15–1525–000.

Applicants: The Connecticut Light and Power Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Amendment to CL&P and CMEEC WDS Agreement ? Electric Rate Schedule FERC No. WD–1 to be effective 6/16/2015.

Filed Date: 4/17/15.

Accession Number: 20150417–5206.

Comments Due: 5 p.m. ET 5/8/15.

Docket Numbers: ER15–1526–000.

Applicants: SIG Energy, LLLP.

Description: Notice of cancellation of MBR tariff of SIG Energy, LLLP.

Filed Date: 4/17/15.

Accession Number: 20150417–5218.

Comments Due: 5 p.m. ET 5/8/15.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES15–16–000.

Applicants: DTE Electric Company.

Description: Application of DTE Electric Company For Authorization to Issue Securities.

Filed Date: 4/16/15.

Accession Number: 20150416–5252.

Comments Due: 5 p.m. ET 5/7/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 17, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–09471 Filed 4–22–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–536–002.

Applicants: PJM Interconnection, L.L.C., Baltimore Gas and Electric Company.

Description: Compliance filing per 35: BGE submits Errata to Compliance Filing in Docket No. ER15–536–001 to be effective 2/2/2015.

Filed Date: 4/17/15.

Accession Number: 20150417–5271.

Comments Due: 5 p.m. ET 5/8/15.

Docket Numbers: ER15–1066–001.

Applicants: Red Horse Wind 2, LLC.

Description: Supplement to February 18, 2015 and March 27, 2015 Red Horse Wind 2, LLC tariff filings.

Filed Date: 4/17/15.

Accession Number: 20150417–5270.

Comments Due: 5 p.m. ET 4/24/15.

Docket Numbers: ER15–1527–000.

Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Joint OATT Amendment to Schedule 4 to be effective 6/17/2015.

Filed Date: 4/17/15.

Accession Number: 20150417–5228.

Comments Due: 5 p.m. ET 5/8/15.

Docket Numbers: ER15–1528–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Attach P Revisions—Implementation of the OATI Preemption & Competition Module to be effective 6/16/2015.

Filed Date: 4/17/15.

Accession Number: 20150417–5243.

Comments Due: 5 p.m. ET 5/8/15.

Docket Numbers: ER15–1529–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing per 35: 2015–04–17_Unreserved Use Revenue Distribution Methodology to be effective 5/1/2015.

Filed Date: 4/17/15.

Accession Number: 20150417–5274.

Comments Due: 5 p.m. ET 5/8/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and

§ 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 17, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–09472 Filed 4–22–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC15–122–000.

Applicants: AIA Energy North America LLC, Cross-Sound Cable Company, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act and Request for Expedited Action and Privileged and Confidential Treatment of AIA Energy North America LLC, *et al.*

Filed Date: 4/15/15.

Accession Number: 20150415–5333.

Comments Due: 5 p.m. ET 5/6/15.

Docket Numbers: EC15–123–000.

Applicants: Alta Wind X, LLC, Alta Wind XI, LLC.

Description: Joint Application for Authorization under Section 203 of the Federal Power Act and Request for Expedited Action of Alta Wind X, LLC, *et al.*

Filed Date: 4/16/15.

Accession Number: 20150416–5199.

Comments Due: 5 p.m. ET 5/7/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–359–003.

Applicants: Samchully Power & Utilities 1 LLC.

Description: Notice of Non-Material Change in Status of Samchully Power & Utilities 1 LLC.

Filed Date: 4/16/15.

Accession Number: 20150416–5125.

Comments Due: 5 p.m. ET 5/7/15.

Docket Numbers: ER15–760–001.

Applicants: Western Antelope Blue Sky Ranch A LLC.

Description: Supplement to December 30, 2014 and February 19, 2015 Western Antelope Blue Sky Ranch A LLC tariff filings.

Filed Date: 4/16/15.

Accession Number: 20150416–5120.

Comments Due: 5 p.m. ET 5/7/15.

Docket Numbers: ER15–762–001.

Applicants: Sierra Solar Greenworks LLC.

Description: Supplement to December 30, 2014 and February 19, 2015 Sierra Solar Greenworks LLC tariff filings.

Filed Date: 4/16/15.

Accession Number: 20150416–5195.

Comments Due: 5 p.m. ET 5/7/15.

Docket Numbers: ER15–1515–000.

Applicants: PJM Interconnection, L.L.C., Commonwealth Edison Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): ComEd submits ministerial revisions to OATT Attachment H–13A to be effective 6/1/2015.

Filed Date: 4/15/15.

Accession Number: 20150415–5285.

Comments Due: 5 p.m. ET 5/6/15.

Docket Numbers: ER15–1517–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Withdrawal per 35.15: Notice of Cancellation of Original Service Agreement No. 3687; Queue No. Y3–027 to be effective 2/18/2015.

Filed Date: 4/16/15.

Accession Number: 20150416–5160.

Comments Due: 5 p.m. ET 5/7/15.

Docket Numbers: ER15–1518–000.

Applicants: ITC Midwest LLC.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Joint Use Pole Agreement with Guthrie County REC to be effective 6/15/2015.

Filed Date: 4/16/15.

Accession Number: 20150416–5182.

Comments Due: 5 p.m. ET 5/7/15.

Docket Numbers: ER15–1519–000.

Applicants: Catalina Solar Lessee, LLC, Catalina Solar 2, LLC, Pacific Wind Lessee, LLC.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Revised Shared Transmission Facilities Agreement of Pacific Wind Lessee *et al.* to be effective 5/31/2015.

Filed Date: 4/16/15.

Accession Number: 20150416–5203.

Comments Due: 5 p.m. ET 5/7/15.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM15–3–000.

Applicants: Arkansas Electric Cooperative Corp.

Description: Application of Arkansas Electric Cooperative Corporation on Behalf of Itself and Its Members to Terminate Mandatory PURPA Purchase Obligation in the Midcontinent Independent System Operator, Inc.

Filed Date: 4/15/15.

Accession Number: 20150415–5324.

Comments Due: 5 p.m. ET 5/13/15.

Docket Numbers: QM15–4–000.

Applicants: Arkansas Electric Cooperative Corp.

Description: Application of Arkansas Electric Cooperative Corporation on Behalf of Itself and Its Members to Terminate Mandatory PURPA Purchase Obligation in the Southwest Power Pool, Inc.

Filed Date: 4/15/15.

Accession Number: 20150415–5328.

Comments Due: 5 p.m. ET 5/13/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 16, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–09470 Filed 4–22–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0277; FRL–9926–63]

Pesticide Program Dialogue Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Environmental Protection Agency's (EPA's) Office of Pesticide Programs is announcing a public meeting of the Pesticide Program Dialogue Committee (PPDC) on May 14–15, 2015. In addition, EPA is announcing meetings

on May 13, 2015, of the following PPDC Workgroups: Integrated Pest Management, Comparative Safety Statements, 21st Century Toxicology/New Integrated Testing Strategies, and Public Health. These meetings provide advice and recommendations to the EPA Administrator on issues associated with pesticide regulatory development and reform initiatives, evolving public policy and program implementation issues, and science issues associated with evaluating and reducing risks from use of pesticides.

DATES: *Meeting:* The PPDC meeting will be held on Thursday, May 14, 2015, from 9 a.m. to 5 p.m., and Friday, May 15, 2015, from 9 a.m. to 12 p.m.

Work Group Meetings: On Wednesday, May 13, 2015, PPDC Work Group meetings are scheduled as follows: Integrated Pest Management Work Group, 9:30 a.m. to 11:30 a.m., Comparative Safety Statements Work Group, 2:00 p.m. to 3:30 p.m., 21st Century Toxicology/New Integrated Testing Strategies Work Group, 1 p.m. to 3 p.m., and Public Health Work Group, 2:00 p.m. to 5:00 p.m.

Agenda: A draft agenda will be posted on or before April 30, 2015.

Accommodations requests: To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The PPDC Meeting and PPDC Work Group meetings will be held at 1 Potomac Yard South, 2777 S. Crystal Drive, Arlington, VA. The PPDC meeting will be held in the lobby-level Conference Center. The PPDC Work Group meetings will be held as follows: Integrated Pest Management Work Group and the Comparative Safety Statements Work Group in the lobby-level Conference Center; 21st Century Toxicology/New Integrated Testing Strategies Work Group in the fourth floor conference room number N4850–70; and Public Health Work Group in the seventh floor conference room number PYS7100.

EPA's Potomac Yard South Bldg. is approximately 1 mile from the Crystal City Metro Station.

FOR FURTHER INFORMATION CONTACT: Dea Zimmerman, Office of Pesticide Programs (LC–8J), Environmental Protection Agency, 77 W. Jackson Boulevard, Chicago, IL 60604; telephone number: (312) 353–6344; email address: *zimmerman.dea@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you work in an agricultural settings or if you are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) of 1996; the Pesticide Registration Improvement Act, and the Endangered Species Act. Potentially affected entities may include, but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer, and farm worker groups; pesticide users and growers; animal rights groups; pest consultants; State, local, and tribal governments; academia; public health organizations; and the public. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0277, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Background

The PPDC is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92–463. EPA established the PPDC in September 1995 to provide advice and recommendations to the EPA Administrator on issues associated with pesticide regulatory development and reform initiatives, evolving public policy and program implementation issues, and science issues associated with evaluating and reducing risks from use of pesticides. The following sectors are represented on the current PPDC: Environmental/public interest and animal rights groups; farm worker organizations; pesticide industry and trade associations; pesticide user, grower, and commodity groups; Federal and state/local/tribal governments; the general public; academia; and public health organizations.

III. How can I request to participate in this meeting?

PPDC meetings are free, open to the public, and no advance registration is required. Public comments may be made during the public comment session of each meeting or in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 136 *et seq.*

Dated: April 16, 2015.

Jack Housenger,

Director, Office of Pesticide Programs.

[FR Doc. 2015–09478 Filed 4–22–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:34 a.m. on Tuesday, April 21, 2015, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Jeremiah O. Norton (Appointive), concurred in by Director Thomas J. Curry (Comptroller of the Currency), Director Richard Cordray (Director, Consumer Financial Protection Bureau), and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10).

Federal Deposit Insurance Corporation.

Dated: April 21, 2015.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–09570 Filed 4–21–15; 4:15 pm]

BILLING CODE 6714–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0043; Docket 2015–0076; Sequence 8]

Information Collection; Delivery Schedules

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning delivery schedules.

DATES: Submit comments on or before June 22, 2015.

ADDRESSES: Submit comments identified by Information Collection 9000–0043, Delivery Schedules by any of the following methods:

- Regulations.gov: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0043, Delivery Schedules''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0043, Delivery Schedules'' on your attached document.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0043, Delivery Schedules.

Instructions: Please submit comments only and cite Information Collection 9000–0043, Delivery Schedules, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Federal Acquisition Policy Division, GSA 202–208–4949 or via email at *michaelo.jackson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The time of delivery or performance is an essential contract element and must be clearly stated in solicitations and contracts. The contracting officer may set forth a required delivery schedule or may allow an offeror to propose an alternate delivery schedule, for other than those for construction and architect-engineering, by inserting in solicitations and contracts a clause substantially the same as either FAR 52.211–8, Time of Delivery, or FAR 52.211–9, Desired and Required Time of Delivery. These clauses allow the contractor to fill-in their proposed delivery schedule. The information is needed to assure supplies or services are obtained in a timely manner.

B. Annual Reporting Burden

Respondents: 3,440.
Responses per Respondent: 5.
Annual Responses: 17,200.
Hours per Response: .167.
Total Burden Hours: 2,872.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulation (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0043, Delivery Schedules, in all correspondence.

Dated: April 17, 2015.

Edward Loeb,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2015–09449 Filed 4–22–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0035; Docket 2015–0076; Sequence 7]

Information Collection; Claims and Appeals

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning claims and appeals.

DATES: Submit comments on or before June 22, 2015.

ADDRESSES: Submit comments identified by Information Collection 9000–0035, Claims and Appeals by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0035, Claims and Appeals.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0035, Claims and Appeals'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0035, Claims and Appeals.

Instructions: Please submit comments only and cite Information Collection

9000–0035, Claims and Appeals, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Gray, Procurement Analyst, Federal Acquisition Policy Division, GSA, 703–795–6328 or via email at *charles.gray@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Purpose

It is the Government's policy to try to resolve all contractual issues by mutual agreement at the contracting officer's level without litigation. Reasonable efforts should be made to resolve controversies prior to submission of a contractor's claim. The Contract Disputes Act of 1978 (41 U.S.C. 7103) requires that claims exceeding $100,000 must be accompanied by a certification that (1) the claim is made in good faith; (2) supporting data are accurate and complete; and (3) the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable. The information, as required by FAR clause 52.233–1, Disputes, is used by a contracting officer to decide or resolve the claim. Contractors may appeal the contracting officer's decision by submitting written appeals to the appropriate officials.

B. Annual Reporting Burden

Respondents: 4,500.
Responses per Respondent: 3.
Annual Responses: 13,500.
Hours per Response: 1.
Total Burden Hours: 13,500.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0035, Claims and Appeals, in all correspondence.

Dated: April 17, 2015.

Edward Loeb,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2015–09451 Filed 4–22–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0067; Docket 2015–0076; Sequence 10] Information Collection; Incentive Contracts

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning incentive contracts.

DATES: Submit comments on or before June 22, 2015.

ADDRESSES: Submit comments identified by Information Collection 9000–0067, Incentive Contracts, by any of the following methods:

- Regulations.gov: *http://www.regulations.gov*. Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0067, Incentive Contracts.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0067, Incentive Contracts'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0067, Incentive Contracts.

Instructions: Please submit comments only and cite Information Collection 9000–0067, Incentive Contracts, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Jackson, Procurement Analyst, Office of Acquisition Policy, GSA 202–208–4949 or via email *michaelo.jackson@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Purpose

In accordance with FAR 16.4, incentive contracts are normally used when a firm fixed-price contract is not appropriate and the required supplies or services can be acquired at lower costs, and sometimes with improved delivery or technical performance, by relating the amount of profit or fee payable under the contract to the contractor's performance.

The information required periodically from the contractor, such as cost of work already performed, estimated costs of further performance necessary to complete all work, total contract price for supplies or services accepted by the Government for which final prices have been established, and estimated costs allocable to supplies or services accepted by the Government and for which final prices have not been established, is needed to negotiate the final prices of incentive-related items and services. Contractors are required to submit the information in accordance with several incentive fee FAR clauses: FAR 52.216–16, Incentive Price Revision—Firm Target; FAR 52.216–17, Incentive Price Revision—Successive Targets; and FAR 52.216–10, Incentive Fee.

The contracting officer evaluates the information received to determine the contractor's performance in meeting the incentive target and the appropriate price revision, if any, for the items or services.

B. Annual Reporting Burden

Respondents: 1,000.
Responses per Respondent: 2.
Annual Responses: 2,000.
Hours per Response: 1.5.
Total Burden Hours: 3,000.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal

Acquisition Regulation (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0067, Incentive Contracts, in all correspondence.

Dated: April 17, 2015.

Edward Loeb,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2015–09452 Filed 4–22–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Administration on Intellectual and Developmental Disabilities, President's Committee for People With Intellectual Disabilities; Meeting

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The President's Committee for People with Intellectual Disabilities (PCPID) will host a webinar/conference call for its members to discuss the recommendation sections of the 2015 Report to the President (RTP). The topic of the PCPID 2015 RTP will be on the roles of technology in the lives of individuals with intellectual and developmental disabilities and their families.

All the PCPID meetings, in any format, are open to the public. This virtual meeting will be conducted in a discussion format.

The public can register to attend this webinar/conference call at *https://aoa-events.webex.com/aoa-events/onstage/g.php?MTID=e9c2bd91a90e7ed853b85f3ba0b1b62a2.*

DATES:

Webinar: Monday, May 11, 2015 from 1:30 p.m. to 3:00 p.m. (EST).

Registration for Webinar: April 20, 2015 through May 8, 2015.

ADDRESSES: *Webinar Web page: https://aoa-events.webex.com/aoa-events/onstage/g.php?MTID=e9c2bd91a90e7ed853b85f3ba0b1b62a2.*

For Further Information and Reasonable Accommodations Needs Contact: Dr. MJ Karimi, PCPID Team Lead, One Massachusetts Avenue NW., Room 4206, Washington, DC 20201. Email: *MJ.Karimie@acl.hhs.gov;* telephone: 202–357–3588; fax: 202–357–3466.

SUPPLEMENTARY INFORMATION:

Background: The PCPID members participated in a virtual meeting on April 7, 2015 and streamlined the process of preparing the 2015 RTP. They discussed the following four focus areas that will be included on the Report:

1. Education
2. Community Living
3. Health and Wellness
4. Economic Well-being

The PCPID members will further discuss the development of potential recommendations for inclusion to the PCPID 2015 RTP.

The general purpose of this meeting is to provide the PCPID members with an opportunity to further discuss the recommendation sections of the 2015 RTP on technology for individuals with intellectual and developmental disabilities in each focus area.

Webinar and Registration: The webinar is scheduled for May 11, 2015, 1:30 p.m. to 3:00 p.m. (EST) and may end early if discussions are finished. Registration for the webinar is required and is open from April 20, 2015 to May 8, 2015.

Instructions to Register in the Webinar/Conference Call on Monday, May 11, 2015:

1. WebEx Link: *https://aoa-events.webex.com/aoa-events/onstage/g.php?MTID=e9c2bd91a90e7ed853b85f3ba0b1b62a2.*
2. Click on the ''Register'' button on the page.
3. Enter the required information and click ''Submit''.

Instructions to Participate in the Webinar/Conference Call on Monday, May 11, 2015:

4. WebEx Link: *https://aoa-events.webex.com/aoa-events/onstage/g.php?MTID=e9c2bd91a90e7ed853b85f3ba0b1b62a2.*
5. Click on the ''join'' button on the page.
6. Enter your name and email address.
7. Follow additional instructions as provided by WebEx. If a password is needed for the WebEx link, please enter 123456.

Call-in number: (888) 469–0957; Pass Code: 8955387 (please put your phone on mute during this virtual meeting)

Background information on PCPID: The PCPID acts in an advisory capacity to the President and the Secretary of Health and Human Services, through the Administration on Intellectual and Developmental Disabilities, on a broad range of topics relating to programs, services and support for individuals with intellectual disabilities. The PCPID Executive Order stipulates that the Committee shall: (1) Provide such advice concerning intellectual disabilities as the President or the Secretary of Health and Human Services may request; and (2) provide advice to the President concerning the following for people with intellectual disabilities: (A) Expansion of educational opportunities; (B) promotion of homeownership; (C) assurance of workplace integration; (D) improvement of transportation options; (E) expansion of full access to community living; and (F) increasing access to assistive and universally designed technologies.

Dated: April 17, 2015.

Aaron Bishop,

Commissioner, Administration on Intellectual and Developmental Disabilities.

[FR Doc. 2015–09473 Filed 4–22–15; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Draft National Toxicology Program Technical Report; Availability of Document; Request for Comments; Notice of Meeting

SUMMARY: The National Toxicology Program (NTP) announces the availability of a draft NTP Technical Report (TR) scheduled for peer review: Pentabromodiphenyl ether mixture [DE–71 (technical grade)]. The peer review meeting is open to the public. Registration is requested for both public attendance and oral comment and required to access the webcast. Information about the meeting and registration are available at *http://ntp.niehs.nih.gov/go/36051.*

DATES: *Meeting:* June 25, 2015, 2 p.m. to approximately 4:30 p.m. Eastern Daylight Time (EDT).

Document Availability: Draft TR should be available by May 14, 2015, at *http://ntp.niehs.nih.gov/go/36051.*

Written Public Comment Submissions: Deadline is June 11, 2015.

Registration for Meeting, Oral Comments, and/or to View Webcast:

Deadline is June 18, 2015. Registration to view the meeting via the webcast is required.

ADDRESSES:

Meeting Location: Rodbell Auditorium, Rall Building, NIEHS, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Meeting Web page: The draft TR, preliminary agenda, registration, and other meeting materials are at *http://ntp.niehs.nih.gov/go/36051*.

Webcast: The URL for viewing webcast will be provided to those who register.

FOR FURTHER INFORMATION CONTACT: Dr. Yun Xie, NTP Designated Federal Official, Office of Liaison, Policy and Review, DNTP, NIEHS, P.O. Box 12233, MD K2–03, Research Triangle Park, NC 27709. Phone: (919) 541–3436, Fax: (301) 451–5455, Email: *yun.xie@nih.gov.* Hand Delivery/Courier: 530 Davis Drive, Room 2161, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Meeting and Registration: The meeting is open to the public with time set aside for oral public comment; attendance at the NIEHS is limited only by the space available. Registration to attend the meeting in-person, provide oral comments, and/or view webcast is by June 18, 2015, at *http://ntp.niehs.nih.gov/go/36051*. Registration is required to view the webcast; the URL for the webcast will be provided in the email confirming registration. Visitor and security information for those attending in-person is available at *http://www.niehs.nih.gov/about/visiting/index.cfm*. Individuals with disabilities who need accommodation to participate in this event should contact Dr. Yun Xie at phone: (919) 541–3436 or email: *yun.xie@nih.gov.* TTY users should contact the Federal TTY Relay Service at (800) 877–8339. Requests should be made at least five business days in advance of the event.

The preliminary agenda and draft TR should be posted on the NTP Web site (*http://ntp.niehs.nih.gov/go/36051*) by May 14, 2015. Additional information will be posted when available or may be requested in hardcopy, see **FOR FURTHER INFORMATION CONTACT**. Following the meeting, a report of the peer review will be prepared and made available on the NTP Web site. Registered attendees are encouraged to access the meeting Web page to stay abreast of the most current information.

Request for Comments: The NTP invites written and oral public comments on the draft TR. The deadline for submission of written comments is June 11, 2015, to enable review by the peer review panel and NTP staff prior to the meeting. Registration to provide oral comments is by June 18, 2015, at *http://ntp.niehs.nih.gov/go/36051*. Public comments and any other correspondence on the draft TR should be sent to the **FOR FURTHER INFORMATION CONTACT**. Persons submitting written comments should include their name, affiliation, mailing address, phone, email, and sponsoring organization (if any) with the document. Written comments received in response to this notice will be posted on the NTP Web site, and the submitter will be identified by name, affiliation, and/or sponsoring organization.

Public comment at this meeting is welcome, with time set aside for the presentation of oral comments on the draft TR. In addition to in-person oral comments at the NIEHS, public comments can be presented by teleconference line. There will be 50 lines for this call; availability is on a first-come, first-served basis. The lines will be open from 2 p.m. until approximately 4:30 p.m. EDT on June 25, 2015, although oral comments will be received only during the formal public comment periods indicated on the preliminary agenda. The access number for the teleconference line will be provided to registrants by email prior to the meeting. Each organization is allowed one time slot. At least 7 minutes will be allotted to each time slot, and if time permits, may be extended to 10 minutes at the discretion of the chair.

Persons wishing to make an oral presentation are asked to register online at *http://ntp.niehs.nih.gov/go/36051* by June 18, 2015, indicate whether they will present comments in-person or via the teleconference line. If possible, oral public commenters should send a copy of their slides and/or statement or talking points at that time. Written statements can supplement and may expand the oral presentation. Registration for in-person oral comments will also be available at the meeting, although time allowed for presentation by on-site registrants may be less than that for registered speakers and will be determined by the number of speakers who register on-site.

Background Information on NTP Peer Review Panels: NTP panels are technical, scientific advisory bodies established on an ''as needed'' basis to provide independent scientific peer review and advise the NTP on agents of public health concern, new/revised toxicological test methods, or other issues. These panels help ensure transparent, unbiased, and scientifically rigorous input to the program for its use in making credible decisions about human hazard, setting research and testing priorities, and providing information to regulatory agencies about alternative methods for toxicity screening. The NTP welcomes nominations of scientific experts for upcoming panels. Scientists interested in serving on an NTP panel should provide current *curriculum vitae* to the **FOR FURTHER INFORMATION CONTACT**. The authority for NTP panels is provided by 42 U.S.C. 217a; section 222 of the Public Health Service (PHS) Act, as amended. The panel is governed by the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: April 16, 2015.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2015–09440 Filed 4–22–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Biological Testing Facility (Contract Review).

Date: June 23, 2015.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852.

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 17, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–09441 Filed 4–22–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX15LR000F60100]

Agency Information Collection Activities: Request for Comments

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension and revision of a currently approved information collection (1028–0053).

SUMMARY: We (the U.S. Geological Survey) are asking the Office of Management and Budget (OMB) to approve the information collection (IC) described below. This collection consists of 27 forms. As part of the requested extension, we will make several revisions to the number of the associated collection instruments. These revisions include: (1) Deleting USGS Form 9–4053–A, USGS Form 9–4073–A, and USGS Form 9–4097–A; (2) changing USGS Form 9–4094–A and USGS Form 9–4095–A from monthly and annual to annual-only reporting forms; (3) changing USGS Form 9–4057–A and USGS Form 9–4060–A from quarterly and annual to annual-only reporting forms; and (4) decreasing the average burden time for USGS Form 9–4074–A from 2 hours to 1 hour. As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This collection is scheduled to expire on August 31, 2015.

DATES: To ensure that your comments are considered, OMB must receive them on or before May 26, 2015.

ADDRESSES: Please submit your written comments on this information collection directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, at *OIRA_SUBMISSION@omb.eop.gov* (email); or (202) 395–5806 (fax). Please also forward a copy of your comments to the Information Collection Clearance Officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192 (mail); 703–648–7195 (fax); or *gs-info_collections@usgs.gov* (email). Reference ''Information Collection 1028–0053, Nonferrous Metals Surveys'' in all correspondence.

FOR FURTHER INFORMATION CONTACT: Elizabeth S. Sangine at 703–648–7720 (telephone); *escottsangine@usgs.gov* (email); or by mail at U.S. Geological Survey, 988 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192. You may also find information about this Information Collection Request (ICR) at *www.reginfo.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Respondents to these forms supply the USGS with domestic production and consumption data for 22 ores, concentrates, and metals, some of which are considered strategic and critical. These data and derived information will be published as chapters in Minerals Yearbooks, monthly and quarterly Mineral Industry Surveys, annual Mineral Commodity Summaries, and special publications, for use by Government agencies, industry education programs, and the general public.

II. Data

OMB Control Number: 1028–0053.

Form Number: Various (27 forms).

Title: Nonferrous Metals Surveys.

Type of Request: Extension and revision of a currently approved collection.

Affected Public: Business or Other-For-Profit Institutions: U.S. nonfuel minerals consumers of nonferrous metals and related materials.

Respondent Obligation: None. Participation is voluntary.

Frequency of Collection: Monthly, Quarterly, or Annually.

Estimated Number of Annual Responses: 4,252.

Estimated Time per Response: For each form, we will include an average burden time ranging from 20 minutes to 1 hour.

Annual Burden Hours: 3,212 hours.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are no ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number and current expiration date.

III. Request for Comments

On January 27, 2015, a 60-day Federal Register notice (80 FR 4306) was published announcing this information collection. Public comments were solicited for 60 days ending March 30, 2015. We received one public comment in response to that notice from the Department of Commerce Bureau of Economic Analysis (BEA) supporting the continued collection of these data which are an important data source for key components of BEA's economic statistics. We again invite comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden time to the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, 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 view, we cannot guarantee that it will be done.

Michael J. Magyar,

Associate Director, National Minerals Information Center.

[FR Doc. 2015–09469 Filed 4–22–15; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[156A2100DD/AAKC001030/A0A501010.999900 253G]

Renewal of Agency Information Collection for the Application for Admission to Haskell Indian Nations University and to Southwestern Indian Polytechnic Institute

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Education (BIE) is seeking comments on the renewal of Office of Management and Budget (OMB) approval for the collection of information for the Application for Admission to Haskell Indian Nations University (Haskell) and to Southwestern Indian Polytechnic Institute (SIPI), authorized by OMB Control Number 1076–0114. This information collection expires August 31, 2015.

DATES: Submit comments on or before June 22, 2015.

ADDRESSES: You may submit comments on the information collection to: Ms. Jacquelyn Cheek, Special Assistant to the Director, Bureau of Indian Education, 1849 C Street NW., Mailstop 4657–MIB, Washington, DC 20240; facsimile: (202) 208–3312; or email to: *Jacklyn.Cheek@bia.edu*.

FOR FURTHER INFORMATION CONTACT: Ms. Jacquelyn Cheek, phone: (202) 208–6983.

SUPPLEMENTARY INFORMATION:

I. Abstract

The BIE is requesting renewal of OMB approval for the admission forms for Haskell and SIPI. These admission forms are used in determining program eligibility of American Indian and Alaska Native students for educational services. These forms are utilized pursuant to the Blood Quantum Act, Public Law 99–228; the Synder Act, Chapter 115, Public Law 67–85; and, the Indian Appropriations of the 48th Congress, Chapter 180, page 91, For Support of Schools, July 4, 1884.

II. Request for Comments

The BIE requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it displays a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0114.

Title: Application for Admission to Haskell Indian Nations University and to Southwestern Indian Polytechnic Institute.

Brief Description of Collection: Submission of these eligibility application forms is mandatory in determining a student's eligibility for educational services. The information is collected on two forms: Application for Admission to Haskell form and SIPI form.

Type of Review: Extension without change of currently approved collection.

Respondents: Students.

Number of Respondents: 4,000 per year, on average.

Frequency of Response: Once per year for Haskell; each trimester for SIPI.

Estimated Time per Response: 30 minutes per Haskell application; 30 minutes per SIPI application.

Estimated Total Annual Hour Burden: 2,000 hours.

Estimated Total Annual Non-Hour Dollar Cost: $10,000.

Dated: April 16, 2015.

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action, Indian Affairs.

[FR Doc. 2015–09538 Filed 4–22–15; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[156A2100DD/AAKC001030/ A0A501010.999900 253G]

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Extension of Tribal-State Class III Gaming Compact.

SUMMARY: This publishes notice of the extension of the Class III gaming compact between the Rosebud Sioux Tribe and the State of South Dakota.

DATES: *Effective Date:* April 23, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Pursuant to 25 CFR 293.5, an extension to an existing tribal-state Class III gaming compact does not require approval by the Secretary if the extension does not include any amendment to the terms of the compact. The Rosebud Sioux Tribe and the State of South Dakota have reached an agreement to extend the expiration of their existing Tribal-State Class III gaming compact until August 9, 2015. This publishes notice of the new expiration date of the compact.

Dated: April 15, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2015–09541 Filed 4–22–15; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV912. L10200000.PH0000 LXSS006F0000 261A; 14–08807; MO# 4500078797]

Notice of Public Meetings: Sierra Front-Northwestern Great Basin Resource Advisory Council, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Sierra Front-Northwestern Great Basin Resource Advisory Council (RAC), will hold a meeting in Nevada, in May 2015. The meeting is open to the public.

DATES: May 14 and15 at the BLM Carson City, Nevada District. A field trip will be held on Thursday, May 14, at the Desatoya Mountain Range and a meeting will be held on Friday, May 15, at the St. Augustines Cultural Center (113 Virginia Street) in Austin, Nevada. Approximate meeting times are 8 a.m. to 1 p.m. However, meetings could end earlier if discussions and presentations conclude before 1 p.m. The meeting will include a public comment period at approximately 11 a.m.

FOR FURTHER INFORMATION CONTACT: Lisa Ross, Public Affairs Specialist, Carson City District Office, 5665 Morgan Mill

Road, Carson City, NV 89701, telephone: (775) 885–6107, email: *lross@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Nevada. Topics for discussion at the meeting will include, but are not limited to:

- May 14–15 (Carson City)—landscape vegetative management, rangeland health assessments, Carson City Resource Management Plan, greater sage-grouse/Bi State conservation, recreation, drought, and fire restoration (Field trip on May).

Managers' reports of district office activities will be distributed at each meeting. The Council may raise other topics at the meetings.

Final agendas will be posted on-line at the BLM Sierra Front-Northwestern Great Basin RAC Web site at *http://bit.ly/SFNWRAC* and will be published in local and regional media sources at least 14 days before each meeting.

Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish to receive a copy of each agenda, may contact Lisa Ross no later than 10 days prior to each meeting.

Paul McGuire,

Acting Chief, Office of Communications.

[FR Doc. 2015–09543 Filed 4–22–15; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Recombinant Factor VIII Products, DN 3065*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Baxter International Inc.; Baxter Healthcare Corporation and Baxter Healthcare SA on April 16, 2015. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain recombinant factor VIII products. The complaint names as respondents Novo Nordisk A/S of Denmark and Novo Nordisk Inc. of Plainsboro, New Jersey. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3065'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *Electronic Filing Procedures*).[4] Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov*.

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov*.

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov*.

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*.

confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: April 17, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–09418 Filed 4–22–15; 8:45 am]

BILLING CODE 7020–02–P

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On April 13, 2015, the Department of Justice lodged a proposed consent decree with the United States District Court for the Southern District of Mississippi in the lawsuit entitled *United States and State of Mississippi, by and through the Mississippi Commission on Environmental Quality* v. *Cal-Maine Foods, Inc.,* Civil Action No. 3:15–cv–00278–HTW–LRA.

The lawsuit was filed against Cal-Maine Foods, Inc. (''Cal-Maine'') on April, 13, 2015 pursuant to Clean Water Act (''CWA'') Sections 309(b) and (d), 33 U.S.C. 1319(b) and (d), and the Mississippi Air and Water Pollution Control Law, Miss. Code Ann. Sec. 49–17–1 through 49–17–43, seeking penalties and injunctive relief under Sections 301 and 402 of the CWA, 33 U.S.C. 1311 and 1342, and under Miss. Code Ann. Secs. 49–17–29(2) and 49–17–43(1) for unauthorized discharges of pollutants into waters of the United States and the State of Mississippi, and noncompliance with National Pollutant Discharge Elimination System (''NPDES'') permit conditions, including failure to conduct quarterly storm water monitoring, failure to timely submit annual discharge monitoring reports, violation of buffer setback requirements for application of wastewater to fields, application of manure, litter and/or process wastewater during prohibited periods, application of manure, litter and/or process wastewater in exceedance of the rates set for nitrogen, and failure to maintain land application records.

The proposed consent decree contains injunctive relief, including (a) compliance with land application standard operating procedures, including (i) maintaining a 35 foot wide vegetated buffer, (ii) applying all nutrients in accordance with specified application rates, (iii) monitoring land application equipment during application, and (iv) creating and maintaining land application records at the facility; (b) compliance with production area standard operating procedures, including (i) inspecting each production area, (ii) documenting the results of such inspections, (iii) taking any necessary corrective measures, including actions necessary to eliminate discharges of pollutants to waters of the United States and/or the state, (iv) creating and maintaining production area inspection and corrective action records, and (v) reporting any discharges of pollutants from the production areas to waters of the United States and/or state; and (c) implementation and compliance with the employee training policy. Cal-Maine has also agreed to pay a penalty of $475,000, of which $237,500 will be paid to the United States and $237,500 will be paid to the Mississippi Department of Environmental Quality.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of Mississippi, by and through the Mississippi Commission on Environmental Quality* v. *Cal-Maine Foods, Inc.,* D.J. Ref. No. 90–5–1–1–10734. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $19.25 (25 cents per page reproduction cost) payable to the United States Treasury for a copy of the consent decree with Appendices, or $12.50 (25 cents per page reproduction cost) for a copy of the consent decree without Appendices.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2015–09382 Filed 4–22–15; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Funding Opportunity Announcement for Disability Employment Initiative Cooperative Agreements

AGENCY: Employment and Training Administration, Labor.

ACTION: Funding Opportunity Announcement (FOA).

Funding Opportunity Number: FOA–ETA–15–08.

SUMMARY: The Employment and Training Administration (ETA) announces the availability of approximately $15 million in grant funds for the Disability Employment Initiative authorized by Section 169, subsection (b), of the Workforce Innovation and Opportunity Act (WIOA). The Department expects to fund approximately eight cooperative agreements to state workforce agencies, ranging from $1.5 million to $2.5 million each. Applicants may apply for up to $2.5 million.

The purpose of this program is to provide funding to expand the capacity of American Job Centers (AJCs) to improve employment outcomes of individuals with disabilities (including those with significant disabilities). The DEI plans to accomplish this by increasing their participation in career pathways systems and successful existing programs in the public workforce system in partnership with community colleges and other education partners, human services, businesses, and other partners. These

career pathways systems are capitalizing on the flexibility that the career pathways model provides to use innovative service delivery strategies. Grantees will use their award to support job-driven approaches in their pre-existing career pathway systems and programs to equip individuals with disabilities with the skills, competencies, and credentials necessary to help them obtain in-demand jobs, increase earnings, and advance their careers.

The complete FOA and any subsequent FOA amendments in connection with this solicitation are described in further detail on ETA's Web site at *http://www.doleta.gov/grants/* or on *http://www.grants.gov*. The Web sites provide application information, eligibility requirements, review and selection procedures, and other program requirements governing this solicitation.

DATES: The closing date for receipt of applications under this announcement is June 11, 2015. Applications must be received no later than 4:00:00 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Cam Nguyen, 200 Constitution Avenue NW., Room N–4716, Washington, DC 20210; Telephone: 202–693–2838.

Signed April 17, 2015 in Washington, DC

Donna Kelly,

Grant Officer, Employment and Training Administration.

[FR Doc. 2015–09407 Filed 4–22–15; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for Guam Military Base Realignment Contractor Recruitment Standards, Extension With Revisions

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)] (PRA). The PRA helps ensure that respondents can provide requested data in the desired format with minimal reporting burden (time and financial resources), collection instruments are clearly understood and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the extension of the collection of data for the Guam Military Base Realignment Contractor Recruitment Standards, which expires on September 30, 2015.

DATES: Submit written comments to the office listed in the addresses section below on or before June 22, 2015.

ADDRESSES: Send written comments to Pamela Frugoli, Office of Workforce Investment, Room C4526, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone number: 202–693–3643 (This is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Fax: 202–693–3015, email: *Frugoli.pam@dol.gov.* To obtain a copy of the proposed information collection request (ICR, please contact the person listed above.

SUPPLEMENTARY INFORMATION:

I. Background

The Military Construction Authorization Act, as amended by the National Defense Authorization Act for Fiscal Year 2010, prohibits contractors engaged in construction projects related to the realignment of U.S. military forces from Okinawa to Guam from hiring workers holding H–2B visas under the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(ii)(b), unless the Governor of Guam (Governor), in consultation with the Secretary of Labor (Secretary), certifies that: (1) There is an insufficient number of U.S. workers that are able, willing, qualified, and available to perform the work; and (2) that the employment of workers holding H–2B visas will not have an adverse effect on either the wages or the working conditions of workers in Guam.

In order to allow the Governor to make this certification, the NDAA requires contractors to recruit workers in the U.S., including in Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the U.S. Virgin Islands, and Puerto Rico, according to the terms of a recruitment plan developed and approved by the Secretary. This recruitment plan was published as a set of Contractor Recruitment Standards in the **Federal Register** on January 8, 2013 (78 FR 1256) and is available at: *https://www.federalregister.gov/articles/2013/01/08/2013-00114/guam-military-base-realignment-contractor-recruitment-standards.* Under the NDAA, no Guam base realignment construction project work may be performed by a person holding an H–2B visa under the Immigration and Nationality Act until the contractor complies with the Department's Contractor Recruitment Standards and the Governor of Guam issues a certification of that compliance.

II. Review Focus

The Department is particularly interested in comments which:

- 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 submissions of responses.

III. Current Actions

Type of Review: Extension without revisions.

Title: Guam Military Base Realignment Contractor Recruitment Standards.

OMB Number: 1205–0484.

Affected Public: Private sector businesses or other for-profits.

Estimated Total Annual Respondents: 5.

Estimated Total Annual Responses: 110.

Estimated Total Annual Burden Hours: 330.

Estimated Total Annual Other Costs Burden: 0.

We will summarize and/or include in the request for OMB approval of the ICR, the comments received in response to this comment request; they will also become a matter of public record.

Portia Wu,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2015–09480 Filed 4–22–15; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[OMB 1205–0490]

Comment Request for Information Collection: Self-Employment Assistance for Unemployment Insurance Claimants, Extension With Revisions

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the collection of data about Self-Employment Assistance (SEA) activities, expiring October 31, 2015.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before June 22, 2015.

ADDRESSES: Submit written comments to Lidia Fiore, Office of Unemployment Insurance, Room S–4524, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–3029 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Email: *Fiore.Lidia@dol.gov.* A copy of the proposed information collection request (ICR), please contact the person above.

SUPPLEMENTARY INFORMATION:

I. Background

The Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998 (Public Law 105–306) permanently authorized the SEA program, which is a reemployment program that helps Unemployment Insurance (UI) claimants start their own businesses, and Public Law 112–96, the Middle Class Tax Relief and Job Creation Act of 2012 (Act) expanded the SEA program to provide states the opportunity to allow UI claimants receiving Extended Benefits to participate in the SEA program. Currently, a handful of states use this reemployment program, for which a minor amount of information (claimants entering the program, and weeks and amounts of dollars paid) is collected under OMB Control Number 1205–0010.

In accordance with statutory requirements and to assist states in establishing, improving, and administering SEA programs (section 2183(a)), the Employment and Training Administration (ETA) uses the ETA 9161 to collect information specific to the SEA program.

Section 2183(b)(1) of the 2012 Act directs the Secretary of Labor to establish reporting requirements for States that have established SEA programs, which shall include reporting on—(A) the total number of individuals who received unemployment compensation and—(i) were referred to a SEA program; (ii) participated in such program; and (iii) received an allowance under such program; (B) the total amount of allowances provided to individuals participating in a SEA program; (C) the total income (as determined by survey or other appropriate method) for businesses that have been established by individuals participating in a SEA program, as well as the total number of individuals employed through such businesses; and (D) any additional information, as determined appropriate by the Secretary. ETA currently uses Form ETA–9161 as an electronic reporting mechanism to collect this required information. In addition to Public Law 112–96, collection of data is used for oversight of the program as authorized under Section 303(a)(6) of the Social Security Act.

Previously such information was collected for participants eligible for Emergency Unemployment Compensation, however that program has expired and authorization for that portion of this data collection is no longer necessary.

II. Review Focus

The Department is particularly interested in comments which:

- 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 submissions of responses.

III. Current Actions

Type of Review: Extension with revision

Title: Self-Employment Assistance for UI Claimants, ETA 9161.

OMB Number: 1205–0490.

Affected Public: State Workforce Agencies, SEA participants.

Estimated Total Annual Respondents: 1,607.

Estimated Total Annual Responses: 1,607 respondents × 4 quarterly reports = 6,428 responses.

Estimated Total Annual Burden Hours: 6,456 hours.

Total Estimated Annual Other Cost Burden: There are no other costs associated with this collection of information.

We will summarize and/or include in the request for OMB approval of the ICR, the comments received in response to this comment request; they will also become a matter of public record.

Portia Wu,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2015–09479 Filed 4–22–15; 8:45 am]

BILLING CODE 4510–FW–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8907; NRC–2013–0036]

License Amendment for United Nuclear Corporation, Church Rock Facility, McKinley County, New Mexico

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering amending Source Materials License SUA–1475 issued to the United Nuclear Corporation (UNC), a subsidiary of

General Electric (GE), to revise current ground water protection standards in License Condition 30.B of SUA–1475. The NRC has prepared an environmental assessment (EA) for this proposed action in accordance with its regulations. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The NRC will issue the amended license following the publication of this document.

DATES: The Final EA and FONSI are available as of April 23, 2015.

ADDRESSES: Please refer to Docket ID: NRC–2013–0036 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID: NRC–2013–0036. 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.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The EA and FONSI can be found under ADAMS accession no. ML14339A839.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Ashley Waldron, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7317; email: *Ashley.Waldron@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On April 17, 2012, UNC, a subsidiary of GE, submitted to the NRC an application to amend Source Materials License SUA–1475 for the former Uranium Church Rock Mill Site (the Mill Site) (ADAMS Accession No. ML12150A146). This proposed amendment would revise current ground water protection standards in License Condition 30.B of SUA–1475 for the following constituents: Arsenic, Cadmium, Gross Alpha, Lead, Lead-210, Nickel, Radium-226 and -228, Selenium, Thorium-230, and Uranium. These proposed standards (values) are derived from a re-calculated background concentration for each constituent. The Mill Site is located approximately 17 miles northeast of Gallup in McKinley County, New Mexico.

The UNC supplemented its request on November 16, 2012, by submitting a three-dimensional ground water flow model for the Mill Site and adjacent down-gradient areas (ADAMS Accession Nos. ML12334A292; ML12305A320; ML12305A309; ML12305A324). On January 10, 2013, the NRC accepted the amendment request for formal review (ADAMS Accession No. ML13007A069). The NRC issued a Request for Additional Information (RAI) on June 4, 2013 (ADAMS Accession No. ML13121A553), and the UNC responded on January 10, 2014 (ADAMS Accession Nos. ML14056A541; ML14059A208). Subsequently, the NRC staff determined that all technical deficiencies had been addressed in the RAIs and requested the UNC to update the ground water flow model report (ADAMS Accession No. ML14063A497). The UNC submitted the revised ground water flow model report by letter dated June 3, 2014 (ADAMS Accession Nos. ML14161A255; ML14161A311).

In accordance with part 40, appendix A, criterion 5, paragraph 5B(5) of Title 10 of the *Code of Federal Regulations* (10 CFR), the NRC may establish ground water protection standards at the point of compliance (POC) either (1) by reference to the background concentrations in the ground water, (2) by assigning the appropriate value found in the table given in paragraph 5C, or (3) by using alternative concentration limits established by the NRC. The POC is defined in appendix A as the site-specific location in the uppermost aquifer where the ground water protection standard must be met. In addition, criterion 5, paragraph 5B(1) states the objective of the POC location is to provide the earliest practicable warning that the impoundment is releasing hazardous constituents, with the goal that hazardous constituents from a licensed site not exceed the specified concentration limits in the uppermost aquifer beyond the POC during the compliance period. At the Mill Site, POC wells are located in three subsurface hydrostratigraphic units: the Southwest Alluvium, and Zone 1 and Zone 3 of the Upper Gallup Sandstone. The UNC's proposed license amendment would affect ground water protection standards in each of these units. Additionally, paragraph 5B(6) of criterion 5 to 10 CFR part 40, appendix A states that, ''[c]onceptually, background concentrations pose no incremental hazards . . .''

The NRC staff has prepared an EA in support of its review of the proposed license amendment. The staff assessed the potential environmental impacts associated with amending the ground water protection standards and documented the results of the assessment in the EA. The NRC staff performed this assessment in accordance with the requirements of 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.''

Uranium mill tailings at the Mill Site are located onsite, within the tailings impoundment area comprising three contiguous cells differentiated as the North, Central and South Cells (see Figure 1, ADAMS Accession No. ML12150A146). The Central Cell also has two borrow pits. Borrow Pit No. 1 was used to dispose of tailings and Borrow Pit No. 2 was used to retain tailings liquids (ADAMS Accession No. ML063630443).

Seepage from the three tailings disposal cells and the borrow pits, as well as infiltration of mine effluent water during dewatering operations of the nearby Northeast Church Rock and Quivira mines, have contributed to the saturated conditions found in the Southwest Alluvium and in Zones 1 and 3 of the Upper Gallup Sandstone (ADAMS Accession Nos. ML050070220; ML050070233; ML050070242; ML050070245).

II. Environmental Assessment Summary

Description of the Proposed Action

The UNC is requesting a license amendment for the Mill Site to revise License Condition 30.B of Source Materials License SUA–1475. The UNC requests revisions to the current ground water protection standards in the license condition for the following constituents: Arsenic, Cadmium, Gross Alpha, Lead and Lead-210, Nickel,

Radium-226 and -228, Selenium, Thorium-230, and Uranium for the Southwest Alluvium, Zone 1, and Zone 3. No changes are proposed for the other constituents in License Condition 30.B (*i.e.,* Beryllium, Total Trihalomethanes, and Vanadium).

Need for the Proposed Action

The proposed action is needed to provide ground water protection standards for the Mill Site that are consistent with 10 CFR part 40, appendix A, paragraph 5B(1) and background ground water quality that is protective of public health and safety.

Environmental Impacts of the Proposed Action

The NRC staff determined that, due to the nature of the proposed action, environmental impacts would be limited to subsurface ground water resources, and that such impacts would be small and not significant. Staff expects no impacts to public health and safety, ecological resources, or historical and cultural resources. Therefore, the NRC staff does not expect significant impacts to result from the proposed modification to the ground water protection standards in SUA–1475 and considers that impacts from the proposed action would be protective of public health and safety and the environment.

In conducting its assessment, the NRC staff considered the following:

- Information in the license application and supporting documentation;
- Information in modeling reports and NRC staff review reports;
- Information in land use and environmental monitoring reports;
- Information from NRC staff site visits and inspections;
- 10 CFR part 40, appendix A, ''Criteria Relating to the Operation of Uranium Mills and the Disposition of Tailings or Wastes Produced by the Extraction or Concentration of Source Material From Ores Processed Primarily for Their Source Material Content;''
- NUREG–1620, Rev. 1, ''Standard Review Plan for the Review of a Reclamation Plan for Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act of 1978'' (ADAMS Accession No. ML031550522); and
- NUREG–1748, ''Environmental Review Guidance for Licensing Actions Associated with NMSS Programs, Final Report'' (ADAMS Accession No. ML032540811).

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.,* the ''no-action alternative''). Denial of the proposed license amendment would result in no change in the currently approved ground water protection standards. The proposed action is needed to revise the ground water protection standards to more accurately reflect current background conditions. Both the No-Action alternative and the Proposed Action for the Mill Site are consistent with appendix A, criterion 5, paragraph 5B(1) and background ground water quality that is protective of public health and safety.

Agencies and Persons Consulted

The NRC staff determined that the proposed action would be limited to impacts to subsurface ground water resources and therefore is not expected to affect listed endangered and threatened species or their critical habitat. As well, the proposed action is not expected to impact potential or identified cultural or historical resources. Therefore, no further consultation was completed under Section 7 of the Endangered Species Act or under Section 106 of the National Historic Preservation Act.

During preparation of the EA, the NRC staff consulted with the following federal, tribal, and state agencies: the U.S. Environmental Protection Agency (EPA) Regions 6 and 9, the U.S. Department of Energy, the Navajo Nation EPA, and the New Mexico Environment Department. The purpose of this consultation was to request comments on the proposed action; however, none of the agencies identified concerns with the proposed action.

III. Finding of No Significant Impact

Based on its review of the UNC's license amendment request to revise License Condition 30.B of SUA–1475, the NRC staff expects there to be no significant environmental impacts in connection with the proposed action as the proposed ground water protection standard values, conceptually, pose no incremental hazards to public health and safety. Therefore, a Finding of No Significant Impact (FONSI) is appropriate and preparation of an Environmental Impact Statement is not warranted.

Dated at Rockville, Maryland, this 9th day of April 2015.

For the Nuclear Regulatory Commission.

Craig G. Erlanger,

Deputy Director, Division of Fuel Cycle Safety, Safeguards and Environmental Review, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2015–09516 Filed 4–22–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–012 and 52–013; NRC–2008–0091]

Nuclear Innovation North America LLC; South Texas Project, Units 3 and 4

AGENCY: Nuclear Regulatory Commission.

ACTION: Combined license application; availability.

SUMMARY: On September 20, 2007, South Texas Project Nuclear Operating Company (STPNOC) submitted to the U.S. Nuclear Regulatory Commission (NRC) an application for combined licenses (COLs) for two additional units (Units 3 and 4) at the South Texas Project (STP) Electric Generating Station site in Matagorda County near Bay City, Texas. The NRC published a notice of receipt and availability for this COL application in the **Federal Register** on December 5, 2007. In a letter dated January 19, 2011, STPNOC notified the NRC that, effective January 24, 2011, Nuclear Innovation North America LLC (NINA) became the lead applicant for STP, Units 3 and 4. This notice is being published to notify the public of the availability of the COL application for STP, Units 3 and 4.

DATES: The COL application is available on April 23, 2015.

ADDRESSES: Please refer to Docket ID NRC–2008–0091 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0091. 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.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/*

adams.html. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it available in ADAMS) is provided the first time that a document is referenced. For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Tom Tai, telephone: 301–415–8484, email: *Tom.Tai@nrc.gov;* or Luis Betancourt, telephone: 301–415–6145, email: *Luis.Betancourt@nrc.gov.* Both are staff of the Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: On September 20, 2007, the NRC received a COL application from STPNOC, filed pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, and Part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' to construct and operate two additional units (Units 3 and 4) at the STP Electric Generating Station site in Matagorda County near Bay City, Texas. The additional units are based on the U.S. Advanced Boiling Water Reactor design, which is certified in 10 CFR part 52, appendix A. The NRC published a notice of receipt and availability for an application for a COL in the **Federal Register** on December 5, 2007 (72 FR 68597). In a letter dated January 19, 2011, STPNOC notified the NRC that, effective January 24, 2011, NINA became the lead applicant for STP, Units 3 and 4. As such, NINA assumed responsibility for the design, construction and licensing of STP, Units 3 and 4. The application is currently under review by the NRC.

An applicant may seek a COL in accordance with Subpart C of 10 CFR part 52. The information submitted by the applicant includes certain administrative information, such as financial qualifications submitted pursuant to 10 CFR 52.77, as well as technical information submitted pursuant to 10 CFR 52.79. This notice is being provided in accordance with the requirements in 10 CFR 50.43(a)(3).

Availability of Documents

The documents identified in the following table are available to interested persons through the ADAMS Public Documents collection. A copy of the COL application is also available for public inspection at the NRC's PDR and at *http://www.nrc.gov/reactors/new-reactors/col.html.*

Document	ADAMS Accession No.
South Texas Project, Units 3 and 4, Combined License Application, Revision 0, September 20, 2007	ML072830407.
South Texas Project, Units 3 and 4, Supplement to Combined License Application ''Safeguards Information,'' Part 8, Revision 0, September 26, 2007.	ML072740461.
South Texas Project, Units 3 and 4, Supplement to Combined License Application Revision 0, October 15, 2007	ML072960352.
South Texas Project, Units 3 and 4, Supplement to Combined License Application Revision 0, October 18, 2007	ML072960489.
South Texas Project, Units 3 and 4, Supplement to Combined License Application Revision 0, November 13, 2007	ML073200992.
South Texas Project, Units 3 and 4, Supplement to Combined License Application Revision 0, November 21, 2007	ML073310616.
South Texas Project, Units 3 and 4, Combined License Application, Revision 1, January 31, 2008	ML080700399.
South Texas Project, Units 3 and 4, Submittal of Supplement to Combined License Application ''Safeguards Information,'' Part 8, Revision 1, January 31, 2008.	ML080420090.
South Texas Project, Units 3 and 4, Combined License Application, Revision 2, September 24, 2008	ML082830938.
South Texas Project, Units 3 and 4, Submittal of Supplement to Combined License Application ''Safeguards Information,'' Part 8, Revision 2, September 24, 2008.	ML082730700.
South Texas Project, Units 3 and 4, Submittal of Combined License Application, ''Proprietary Information,'' Part 10, Revision 2, December 11, 2008.	ML083530131.
South Texas Project, Units 3 and 4, Combined License Application, Revision 3, September 16, 2009	ML092930393.
South Texas Project, Units 3 and 4, Submittal of Supplement to Combined License Application ''Safeguards Information,'' Part 8, Revision 3, July 15, 2010.	ML102010268.
South Texas Project, Units 3 and 4, Combined License Application, Revision 4, October 5, 2010	ML102861292.
South Texas Project, Units 3 and 4, Submittal of Supplement to Combined License Application ''Safeguards Information,'' Part 8, Revision 4, February 3, 2011.	ML110400425.
South Texas Project, Units 3 and 4, Update to Change in Lead Applicant, January 19, 2011	ML110250369.
South Texas Project, Units 3 and 4, Combined License Application, Revision 5, January 26, 2011	ML110340451.
South Texas Project, Units 3 and 4, Submittal of Supplement to Combined License Application ''Safeguards Information,'' Part 8, Revision 5, August 30, 2011.	ML11243A171.
South Texas Project, Units 3 and 4, Combined License Application, Revision 6, August 30, 2011	ML11252A505.
South Texas Project, Units 3 and 4, Combined License Application, Revision 7, February 1, 2012	ML12048A714.
South Texas Project, Units 3 and 4, Combined License Application, Revision 8, September 17, 2012	ML12291A415.
South Texas Project, Units 3 and 4, Combined License Application, Revision 9, April 17, 2013	ML13115A094.
South Texas Project, Units 3 and 4, Combined License Application, Revision 10, October 29, 2013	ML13310A599.
South Texas Project, Units 3 and 4, Combined License Application, Revision 11, October 21, 2014	ML14307A876.

Dated at Rockville, Maryland, this 14th day of April 2015.

For the Nuclear Regulatory Commission.

Samuel Lee,

Chief, Licensing Branch 2, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2015–09517 Filed 4–22–15; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

[OPIC–52, OMB–3420–00011]

Submission for OMB Review; Comments Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Notice and request for comments; correction.

SUMMARY: This document contains a correction to the notice for OPIC–52 published in the **Federal Register** volume 80 FR 20270 on April 15, 2015. This new notice updates the expected reporting hours and federal cost estimates to reflect current usage of the information collection. Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is renewing an existing form and as such has prepared an information collection for OMB review and approval and requests public review and comment on the submission. OPIC received no comments in response to the sixty (60) day notice published in **Federal Register** volume 80 FR 5584 on February 2, 2015. The purpose of this notice is to allow an additional thirty (30) days for public comments to be submitted. Comments are being solicited on the need for the information; the accuracy of OPIC's burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: Comments must be received within thirty (30) calendar days of publication of this Notice.

ADDRESSES: Mail all comments and requests for copies of the subject form to OPIC's Agency Submitting Officer: James Bobbitt, Overseas Private Investment Corporation, 1100 New York Avenue NW., Washington, DC 20527. See **SUPPLEMENTARY INFORMATION** for other information about filing.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: James Bobbitt, (202) 336–8558.

SUPPLEMENTARY INFORMATION: All mailed comments and requests for copies of the subject form should include form number [OPIC–52] on both the envelope and in the subject line of the letter. Electronic comments and requests for copies of the subject form may be sent to *James.Bobbitt@opic.gov,* subject line [OPIC–52].

Summary Form Under Review

Type of Request: Extension without change of a currently approved information collection.

Title: Application for Political Risk Insurance.

Form Number: OPIC–52.

Frequency of Use: One per investor per project.

Type of Respondents: Business or other institution (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 675 hours (9 hours × 75 responses).

Number of Responses: 75 per year.

Federal Cost: $7,715 (2 hours × 75 responses × GS–14/1 DCB).

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The application is the principal document used by OPIC to determine the investor's and the project's eligibility for political risk insurance and collect information for underwriting analysis.

Dated: April 20, 2015.

Nichole Cadiente,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2015–09542 Filed 4–22–15; 8:45 am]

BILLING CODE 3210–01–P

POSTAL REGULATORY COMMISSION

[Docket No. R2015–4; Order No. 2444]

Market Dominant Price Adjustment

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently filed Postal Service notice concerning amended rate adjustments and classification changes affecting Standard Mail, Periodicals, and Package Services. The amended rate adjustments and other changes are scheduled to take effect May 31, 2015. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 23, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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II. Background
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V. Ordering Paragraphs

I. Introduction

In Order No. 2398, the Commission remanded the Postal Service's planned rates for Standard Mail, Periodicals, and Package Services for non-compliance with certain legal requirements.[1] On April 16, 2015, the Postal Service filed a Response to Order No. 2398 with revised Standard Mail and Periodicals prices, updated Mail Classification (MCS) pages, updated workshare discount tables, updated exigent surcharges affected by the revised prices, and revised price cap calculation workpapers for Standard Mail, Periodicals, and Package Services.[2] The revised prices are scheduled to go into effect on May 31, 2015.[3]

II. Background

On January 15, 2015, the Postal Service filed notice of a market dominant price adjustment, proposing price adjustments for all five classes of market dominant mail and associated mail classification changes. Notice at 1. In Order Nos. 2365 and 2388, the Commission approved the proposed price adjustments and mail

[1] Order on Amended Price Adjustments for Standard Mail, Periodicals, and Package Services Products, March 18, 2015 (Order No. 2398).

[2] Response of the United States Postal Service to Order No. 2398, April 16, 2015, at 2 (Response to Order No. 2398).

[3] *Id.* at 3. The Postal Service initially intended to implement the market dominant price adjustments on April 26, 2015. United States Postal Service Notice of Market-Dominant Price Adjustment, January 15, 2015 (Notice). On March 31, 2015, the Postal Service announced that it was delaying the implementation of the proposed price adjustments. Docket Nos. R2015–4 and CP2015–33, Notice of the United States Postal Service of Delayed Implementation of First-Class Mail, Special Services, and Competitive Prices, March 31, 2015. As a result, the Commission amended its orders approving the First-Class Mail and Special Services price adjustments to account for the delay. Order No. 2426, Order Amending Order Nos. 2365 and 2388, April 7, 2015. The Postal Service now plans to implement all price adjustments on May 31, 2015. Response to Order No. 2398 at 3. The Postal Service states that it plans to make an exception for the Earned Value Reply Mail promotion, which it plans to begin on May 1, 2015, as initially planned. *Id.*

classification changes for the First-Class Mail and Special Services classes respectively.[4] In Order No. 2378, the Commission remanded the proposed price adjustments for the Standard Mail, Periodicals, and Package Services classes for failure to comply with certain legal requirements.[5]

On March 12, 2015, the Postal Service filed its response to Order No. 2378.[6] The Postal Service stated that it complied with each of the Commission's directives and recommendations from Order No. 2378 and included revised Standard Mail and Periodicals prices, updated Mail Classification (MCS) pages, updated workshare discount tables, updated exigent surcharges affected by the revised prices, and revised price cap calculation workpapers for Standard Mail, Periodicals, and Package Services with its response. *Id.* at 1–2.

On March 18, 2015, the Commission issued Order No. 2398 and found that the Postal Service had not fully complied with applicable statutory and regulatory requirements and Order No. 2378. Order No. 2398 at 2. As a result, the Commission remanded the revised price adjustments for the Standard Mail, Periodicals, and Package Services classes for further revision, correction, and clarification. *Id.* The Commission explained that after the Postal Service files an amended notice of rate adjustment addressing the deficiencies described in Order No. 2398, the Commission would allow seven days for public comment in accordance with 39 CFR 3010.11(g). *Id.*

III. Order No. 2398 and the Postal Service's Response

Standard Mail. In Order No. 2398, the Commission found that the Postal Service did not equalize all nonprofit and commercial discounts as it was ordered to in Order No. 2378. Order No. 2398 at 3–5.[7] In addition, the Commission required the Postal Service to provide the calculations used to develop the exigent surcharges for each new Standard Mail Flats Sequencing System (FSS) category to assist the Commission in verifying the calculated exigent surcharges. Order No. 2398 at 4–5.

In response to Order No. 2398, the Postal Service states that it has equalized all nonprofit and commercial discounts. Response to Order No. 2398 at 4. The Postal Service explains that it also adjusted other discount relationships that were out of alignment in its prior filings. *Id.* at 4–5. It also states that it has corrected 12 exigent surcharges and provided the calculations used to develop the exigent surcharges for each Standard Mail FSS price category. *Id.* at 6.

Periodicals. In Order No. 2398, the Commission ordered the Postal Service to provide a revised price cap calculation that addressed the deficiencies identified by the Commission. Order No. 2398 at 6–7. In addition, the Commission found the Postal Service must demonstrate compliance with 39 CFR 3010.12(b)(4). *Id.* at 7.

In response to Order No. 2398, the Postal Service proposes a revised set of Periodicals prices and a revised price cap calculation that address the Commission's directives. Response to Order No. 2398 at 7. The Postal Service explains that it has made some adjustments to the Commission's suggested approach, corrected additional errors it has identified, and increased the discount provided by the per-piece editorial adjustment for Outside County Periodicals. *Id.* at 8–9. The Postal Service states that the revised price adjustments result in a total percentage price increase of 1.966 percent for the Periodicals class, which uses all of its price adjustment authority for the class. *Id.* at 9.

Package Services. In Order No. 2398, the Commission found that it was unable to make the finding required under 39 U.S.C. 3622 and 39 CFR 3010.11 due to inaccurate billing determinant adjustments and data inconsistencies. Order No. 2398 at 9–11. The Commission identified specific information the Postal Service must provide in its response to show the deficiencies had been corrected. *Id.* at 11.

In response to Order No. 2398, the Postal Service states that it has provided the information required by the Commission in Order No. 2398. Response to Order No. 2398 at 10–23. In addition, the Postal Service files revised price cap calculation workpapers, which it represents correct the issues previously identified by the Commission. *Id.* at 24.

IV. Notice of Commission Action

In accordance with 39 U.S.C. 3622 and 39 CFR part 3010, the Commission will review the Postal Service's amended price adjustments in Docket No. R2015–4. The Commission invites comments from interested persons on whether the price adjustments, as amended in the Response to Order No. 2378 and Response to Order No. 2398, are consistent with 39 U.S.C. 3622 and the requirements of 39 CFR part 3010. Comments are due no later than April 23, 2015. 39 CFR 3010.11(g). The Postal Service's filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

Pursuant to 39 U.S.C. 505, James Waclawski will continue to serve as an officer of the Commission (Public Representative) representing the interests of the general public in this proceeding.[8]

V. Ordering Paragraphs

It is ordered:

1. Comments on the revised planned price adjustments and related classification changes for Standard Mail, Periodicals, and Package Services are due no later than April 23, 2015.

2. Pursuant to 39 U.S.C. 505, James Waclawski will continue to serve as an officer of the Commission (Public Representative) representing the interests of the general public in this proceeding.

3. The Commission directs the Secretary of the Commission to arrange for prompt publication of this notice in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2015–09446 Filed 4–22–15; 8:45 am]

BILLING CODE 7710–FW–P

[4] Order No. 2365, Order on Price Adjustments for First-Class Products and Related Mail Classification Changes, February 24, 2015; Order No. 2388, Order on Price Adjustments for Special Services Products and Related Mail Classification Changes, March 10, 2015.

[5] Order on Price Adjustments for Standard Mail, Periodicals, and Package Services Products, March 6, 2015 (Order No. 2378).

[6] Response of the United States Postal Service to Order No. 2378, March 12, 2015.

[7] See also Order No. 2378 at 8–9.

[8] See Order No. 2327, Notice and Order on Rate Adjustments, Classification Changes, and Temporary Promotions for Market Dominant Products, January 20, 2015, at 5.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74759; File No. SR–MIAX–2015–28]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish the MIAX Order Feed

April 17, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 7, 2015, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to establish the MIAX Order Feed (''MOR'').

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish the MIAX Order Feed (''MOR'') data product. MOR is a real-time full order book data feed that provides information for orders on the MIAX order book. The proposed data feed is based on the substantially similar market data feed of another options exchange.[3]

MOR will provide real-time information to enable users to keep track of the simple order book for all symbols listed on MIAX. MOR will provide real-time data including the limit price, origin, and size of each order for the entire order book to its users. It is a compilation of data for orders residing on the Exchange's order book for options traded on the Exchange that the Exchange provides through a real-time data feed. The Exchange updates the information upon receipt of each order or change in status to any order resting on the book (*e.g.,* routing, trading, or cancelling of the order).

The Exchange believes that some users do not wish or need to subscribe to the full MIAX Top of Market Options (''ToM'') data product;[4] the MOR data product is being offered to those users that want the order book information but don't have the need for the entire ToM data product. Accordingly, the Exchange proposes to make available the MOR data product for any user that needs or wants only order book information.

The Exchange represents that it will make MOR equally available to any market participant that wishes to subscribe to it. The Exchange will establish monthly fees for the MOR data product by way of a separate proposed rule change, which the Exchange will submit after the MOR product is established.

MOR will provide subscribers with specific order book data that should enhance their ability to analyze market conditions, and to create and test trading models and analytical strategies. The Exchange believes that MOR is a valuable tool that subscribers can use to gain comprehensive insight into the limit order book in a particular option.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The MOR market data product is designed to promote just and equitable principles of trade by providing all subscribers with limit order book data that should enable them to make informed decisions on trading in MIAX options by using the MOR data to assess current market conditions that directly affect such decisions. The proposed market data product facilitates transactions in securities, removes impediments to and perfect the mechanisms of a free and open market and a national market system by enhancing the subscribers' ability to make decisions on trading strategy, and by providing data that should help bring about such decisions in a timely manner to the protection of investors and the public interest. The market data provided by MOR removes impediments to, and is designed to further perfect, the mechanisms of a free and open market and a national market system by making the MIAX market more transparent and accessible to market participants making routing decisions concerning their options orders. The MOR market data product is also designed to protect investors and the public interest by providing data to subscribers that is already currently available on other exchanges and will enable MIAX to compete with such other exchanges, thereby offering market participants with additional data in order to seek the market center with the best price and the most liquidity on which to execute their transactions, all to the benefit of investors and the public interest, and to the marketplace as a whole.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. On the contrary, the Exchange believes that the new market data product will enhance competition in the U.S. options markets by providing subscribers on MIAX a market data product that is similar to that which is currently provided on other options exchange.[7]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66993 (May 15, 2012), 77 FR 30043 (May 21, 2012) (SR–PHLX–2012–63).

[4] *See* Securities Exchange Act Release Nos. 73395 (October 21, 2014), 79 FR 63979 (October 27, 2014) (SR–MIAX–2014–53); 69007 (February 28, 2013), 78 FR 14617 (March 6, 2013) (SR–MIAX–2013–05).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* Securities Exchange Act Release No. 66993 (May 15, 2012), 77 FR 30043 (May 21, 2012) (SR–PHLX–2012–63).

19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] 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[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission believes that waiver of the operative delay is consistent with investor protection and the public interest because the proposal will provide market participants with additional data in order to seek the market center with the best price and most liquidity on which to execute their transactions, and is substantially similar to that of another exchange.[14] Further, waiver of the operative delay would provide access to this additional data without delay. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2015–28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2015–28. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2015–28, and should be submitted on or before May 14, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Brent J. Fields,

Secretary.

[FR Doc. 2015–09427 Filed 4–22–15; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *See supra* note 3.

[15] 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).

[16] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74763; File No. SR–EDGA–2015–10]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rules 11.6, 11.8, 11.9, 11.10 and 11.11 of EDGA Exchange, Inc.

April 17, 2015.

On February 20, 2015, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rules 11.6, 11.8, 11.9, 11.10 and 11.11 to clarify and to include additional specificity regarding the current functionality of the Exchange's System,[3] including the operation of its order types and order instructions. On February 27, 2015, the Exchange filed Amendment No. 1 to the proposal.[4] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on March 10, 2015.[5] The Commission received no comment letters.

Section 19(b)(2) of the Act[6] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''System'' is defined as ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.'' *See* Exchange Rule 1.5(cc).

[4] Amendment No. 1 replaced SR–EDGA–2015–10 and superseded such filing in its entirety.

[5] *See* Securities Exchange Act Release No. 74435 (March 4, 2015), 80 FR 12655.

[6] 15 U.S.C. 78s(b)(2).

proceedings to determine whether these proposed rule changes should be disapproved. The 45th day for this filing is April 24, 2015.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider and take action on the Exchange's proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act [7] and for the reasons stated above, the Commission designates June 8, 2015, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change, as modified by Amendment No. 1 (File No. SR–EDGA–2015–10).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Brent J. Fields,

Secretary.

[FR Doc. 2015–09431 Filed 4–22–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74764; File No. SR–NASDAQ–2015–037]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to HGX and OSX

April 17, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 10, 2015, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by NASDAQ. 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

NASDAQ proposes to amend Chapter XV, entitled ''Options Pricing,'' at Section 2, which governs pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options, to remove references to the PHLX Housing Sector™ (HGX℠) and PHLX Oil Service Sector℠ (OSX℠).

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on May 1, 2015.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Chapter XV, Section 2, ''NASDAQ Options Market—Fees and Rebates'' to remove references to HGX and OSX, as these indexes will be delisted on or before May 1, 2015.

Today, the Exchange assesses fees related to these NASDAQ OMX PHLX LLC (''Phlx'') proprietary indexes which are listed on NOM. The Exchange assesses the following fees for HGX and OSX:

Fee for Adding Liquidity	$0.40	$0.89	$0.89	$0.89	$0.40	$0.89
Fee for Removing Liquidity	0.40	0.89	0.89	0.89	0.40	0.89

The Exchange will delist these two proprietary indexes and will no longer assess the above-referenced fees for HGX and OSX. The Exchange will continue to assess the above fees for the PHLX Semiconductor Sector℠ (SOX℠) index.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and with Section 6(b)(4) and 6(b)(5) of the Act,[4] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposal to remove the references and not assess fees for HGX and OSX is reasonable because the Exchange is seeking to delist these indexes from NOM as of the delisting.

The Exchange's proposal to remove the references and not assess fees for HGX and OSX is equitable and not unfairly discriminatory because no market participant will be able to transact options in HGX or OSX on NOM as of the delisting.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ 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 Exchange will delist HGX and OSX on or before May 1, 2015 and no longer offer market participants the opportunity to transact options in those indexes, therefore the removal of the fees does not impose an undue burden on competition. No market participant will be able to transact options in HGX or OSX on NOM as of the delisting.

[7] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[8] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4) and (5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[5] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–NASDAQ–2015–037 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–NASDAQ–2015–037.* 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR–NASDAQ–2015–037* and should be submitted on or before May 14, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Brent J. Fields,

Secretary.

[FR Doc. 2015–09432 Filed 4–22–15; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74762; File No. SR–EDGX–2015–08]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rules 11.6, 11.8, 11.9, 11.10 and 11.11 of EDGX Exchange, Inc.

April 17, 2015.

On February 20, 2015, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rules 11.6, 11.8, 11.9, 11.10 and 11.11 to clarify and to include additional specificity regarding the current functionality of the Exchange's System,[3] including the operation of its order types and order instructions. On February 27, 2015, the Exchange filed Amendment No. 1 to the proposal.[4] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on March 10, 2015.[5] The Commission received no comment letters.

Section 19(b)(2) of the Act[6] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether these proposed rule changes should be disapproved. The 45th day for this filing is April 24, 2015.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider and take action on the Exchange's proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act[7] and for the reasons stated above, the Commission designates June 8, 2015, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change, as modified by Amendment No. 1 (File No. SR–EDGX–2015–08).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Brent J. Fields,

Secretary.

[FR Doc. 2015–09430 Filed 4–22–15; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''System'' is defined as ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.'' *See* Exchange Rule 1.5(cc).

[4] Amendment No. 1 replaced SR–EDGX–2015–08 and superseded such filing in its entirety.

[5] *See* Securities Exchange Act Release No. 74439 (March 4, 2015), 80 FR 12666.

[6] 15 U.S.C. 78s(b)(2).

[7] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[8] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74761; File No. SR–CME–2015–013]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Liquidity Risk Management

April 17, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 17, 2015, Chicago Mercantile Exchange Inc. (''CME'' or ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by CME. CME filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(4)(ii) [4] thereunder, so that the proposal was 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

CME is filing a proposed rule change that is limited to its business as a derivatives clearing organization (''DCO''). More specifically, the proposed changes would amend current CME Rules in the area of liquidity risk management.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose 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. CME 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

CME is registered as a DCO with the Commodity Futures Trading Commission (''CFTC'') and currently offers clearing services for many different futures and swaps products. With this filing, CME proposes to make rulebook changes that are limited to its business clearing futures and swaps under the exclusive jurisdiction of the CFTC. More specifically, the proposed rules would enhance CME's existing liquidity framework by providing additional liquidity resources and a framework for establishment of additional highly reliable prearranged funding arrangements.

On December 2, 2013, the CFTC adopted final regulations to establish additional standards for compliance with the DCO core principles set forth in the Commodity Exchange Act (''CEA'') for systemically important DCOs (''SIDCOs'') and DCOs that elect to opt-in to the SIDCO regulatory requirements (''SIDCO Rules''). CFTC Regulation 39.33(c) established enhanced liquidity standards for SIDCOs. CFTC Regulation 39.33(c)(1)(i) requires SIDCOs to maintain eligible liquidity resources that, ''at a minimum, will enable it to meet its intraday, same-day, and multiday obligations to perform settlements, as defined in § 39.14(a)(1), with a high degree of confidence under a wide range of stress scenarios that should include, but not be limited to, a default by the clearing member creating the largest aggregate liquidity obligation for the [SIDCO] . . . in extreme but plausible market conditions.'' Regulation 39.33(c)(3) establishes qualifying liquidity resources as follows:

> (3) Qualifying liquidity resources. (i) Only the following liquidity resources are eligible for the purpose of meeting the requirement of paragraph (c)(1) of this section: (A) Cash in the currency of the requisite obligations, held either at the central bank of issue or at a creditworthy commercial bank; (B) Committed lines of credit; (C) Committed foreign exchange swaps; (D) Committed repurchase agreements; or (E)(1) Highly marketable collateral, including high quality, liquid, general obligations of a sovereign nation (2) The assets described in paragraph (c)(3)(i)(E)(1) of this section must be readily available and convertible into cash pursuant to prearranged and highly reliable funding arrangements, even in extreme but plausible market conditions.

Additionally, the CFTC finalized CFTC Regulation 39.35 in the SIDCO Rules requiring, among other things, rules to address liquidity shortfalls as follows:

> (b) Allocation of uncovered liquidity shortfalls. (1) Each systemically important derivatives clearing organization and subpart C derivatives clearing organization shall establish rules and/or procedures that enable it promptly to meet all of its settlement obligations, on a same day and, as appropriate, intraday and multiday basis, in the context of the occurrence of either or both of the following scenarios: (i) An individual or combined default involving one or more clearing members' obligations to the systemically important derivatives clearing organization or subpart C derivatives clearing organization; or (ii) A liquidity shortfall exceeding the financial resources of the systemically important derivatives clearing organization or subpart C derivatives clearing organization. (2) The rules and procedures described in paragraph (b)(1) of this section shall: (i) Enable the systemically important derivatives clearing organization or subpart C derivatives clearing organization promptly to meet its payment obligations in all relevant currencies; (ii) Be designed to enable the systemically important derivatives clearing organization or subpart C derivatives clearing organization to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations; and (iii) Address the systemically important derivatives clearing organization's or subpart C derivatives clearing organization's process to replenish any liquidity resources it may employ during a stress event so that it can continue to operate in a safe and sound manner.

CME currently employs a sound risk-management framework for comprehensively managing liquidity risk. This framework serves to effectively measure, monitor, and manage liquidity risk on an ongoing basis. The framework includes assessment and maintenance of sufficient liquid resources to effect same-day settlement of payment obligations with a high degree of confidence under a wide range of potential stress scenarios. The stress scenarios include the default of the clearing member and its affiliates that would generate the largest aggregate, with consideration of the second largest, and by currency liquidity obligation under extreme but plausible market conditions. CME manages liquidity risk through utilization of qualifying liquid resources to meet the liquidity obligation calculated under the framework. In order to augment this framework and comply with CFTC Regulations, CME will add certain requirements and/or capabilities that it will employ in its administration of its liquidity risk program. This rules-based approach to liquidity risk management will also rely on and be augmented by CME's collateral policy determinations, with liquidity risk management serving

[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)(4)(ii).

as a primary consideration in the enumeration of such collateral policies.

Rule 822.A.1. Substitution of Cash Guaranty Fund Deposits

Rule 822.A establishes a liquidity ''waterfall'' where in the event CME needs to obtain liquidity for non-cash collateral for same day settlement it will first attempt to obtain liquidity for such collateral through asset sale, any uncommitted funding arrangements, its committed lines of credit and any committed repurchase agreements. In the event CME requires further liquidity or such means were unsuccessful, CME may then declare a ''Liquidity Event,'' which is a newly defined term in the proposed rule change,[5] and substitute any cash deposited by clearing members in satisfaction of their guaranty fund requirements up to the amount of U.S. Treasuries deposited by a clearing member subject of such Liquidity Event. The amount of U.S. Treasuries substituted will be sized using the haircutted market value from the prior day's close of business utilizing a recognized third party pricing source and CME's then prevailing haircut schedule. Any assets so transferred will be applied as guaranty fund deposits of any such clearing member whose cash was substituted and will be allocated pro rata among any clearing members with cash deposits. To the extent requested by the impacted clearing member within 24 hours of substitution, CME Clearing will replace the cash for such substituted U.S. Treasuries, to the extent still on deposit, within 29 days of the date of original substitution. Additionally, to ensure sufficient cash exists in a guaranty fund for the above mentioned substitution, CME may require any clearing member that is (or has an affiliate that is) a broker-dealer that functions in the operation of markets for U.S. Treasuries (a ''U.S. Government Securities Broker-Dealer'' [6]) to replace its non-cash guaranty fund deposits with cash upon 60 minutes' notice. To the extent that a clearing member fails to provide cash within 60 minutes or the request occurs after 3 p.m. Central time, CME may debit cash from that clearing member's settlement bank account in the amount of the clearing member's non-cash guaranty fund assets.

Rule 822.A.2. U.S. Treasury Sale To Meet Clearing House Settlement Variation Obligations

Further, pursuant to proposed Rule 822.A.2 in the event a liquidity shortfall remains after the substitution provided by Rule 822.A.1, CME may satisfy a settlement variation obligation to a clearing member that is (or has an affiliate that is) a U.S. Government Securities Broker-Dealer with a forced sale of U.S. Treasuries using a valuation based on the prior day's closing prices with prevailing CME haircuts applied and netting the cash proceeds of the sale against the Clearing House's settlement variation obligation. The amount of settlement variation that can be satisfied in this manner will be subject to a limit equal to the receiving clearing member's guaranty fund requirement at such time.

Rule 822.B. Transfer or Disbursement of Collateral as Compensation for Portfolio Auction, Sale or Transfer With Notice in Advance

As part of its default management practices, CME will conduct an auction, sale or transfer of defaulted member positions and will compensate or receive payment from the winner/transferee of such positions based on bids received during the terms of the related default management action. Traditionally the compensation is denominated in cash. CME is proposing Rule 822.B to provide it with the option to include as part of the terms of an auction, sale or transfer the ability to satisfy any payment owed to a winner of an auction, sale or transfer with Federal Reserve discount window eligible securities with a market value (determined by the Clearing House as of the prior day's close of business utilizing a recognized third party pricing source) equal to the amount of such payment obligation. Any such option would be included as part of the terms of the auction, sale or transfer in advance of bidding so that bidding firms can provide pricing information taking the payment in kind possibility into account.

Rule 901.Q. Requirement To Establish Uncommitted Repo

New Rule 901.Q will require each clearing member that is a U.S. Government Securities Broker-Dealer or has a U.S. Government Securities Broker-Dealer affiliate to enter into (or arrange for such affiliate to enter into) a master repurchase agreement with CME on terms substantially similar to those set out by CME. Consistent with CFTC Regulation 39.33(c)(3), CME accepts certain highly marketable collateral to satisfy performance bond and guaranty fund obligations. CME currently utilizes prearranged master repurchase agreements that are highly reliable as required by paragraph 39.33(c)(3)(i)(E)(1) of the CFTC regulations. In order to ensure a diverse group of repo counterparties available to CME in times of market stress, CME is requiring that any clearing member that is a U.S. Government Securities Broker-Dealer or has a U.S. Government Securities Broker-Dealer affiliate to enter into (or arrange for such affiliate to enter into) a master repurchase agreement with CME on terms substantially similar to those set out by CME.

The proposed rule change that is described in this filing is limited to CME's business as a DCO clearing products under the exclusive jurisdiction of the CFTC. CME has not cleared security based swaps and does not plan to and therefore the proposed rule change does not impact CME's security-based swap clearing business in any way. The proposed changes would become effective immediately. CME notes that it has also submitted the proposed rule change that is the subject of this filing to its primary regulator, the CFTC, in CME Submission 13–565ARR.

CME believes the proposed rule change is consistent with the requirements of the Exchange Act including Section 17A.[7] The proposed rules enhance CME's existing liquidity framework by providing additional liquidity resources, a framework for establishment of additional highly reliable prearranged funding arrangements and payment in kind of Federal Reserve eligible securities in the event the liquidity resources are insufficient. These rule changes are therefore designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivatives agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or

[5] The proposed rules provide for the following new definition: ''Liquidity Event'' shall mean the Clearing House requires liquidity (1) to satisfy obligations of a defaulted or suspended Clearing Member, (2) to satisfy obligations associated with the transfer of account(s) of a defaulted or suspended Clearing Member or (3) as a result of a liquidity constraint or default by a depositary or settlement bank.

[6] The proposed rules provide for the following new definition: ''U.S. Government Securities Broker-Dealer'' shall mean a broker-dealer that functions in the operation of markets for U.S. Treasuries. The functions may include, but are not limited to: (1) Acting as a channel for the United States Department of the Treasury and investors in primary market for U.S. Treasuries (for example, by participating in auctions); (2) Acting as providers of liquidity in primary and secondary markets for U.S. Treasuries; and (3) Acting as providers of asset transformation and market making services in the market for U.S. Treasuries.

[7] 15 U.S.C. 78q–1.

control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest consistent with Section 17A(b)(3)(F) of the Exchange Act.[8]

Furthermore, the proposed changes are limited to CME's futures and swaps clearing businesses, which mean they are limited in their effect to products that are under the exclusive jurisdiction of the CFTC. As such, the proposed changes are limited to CME's activities as a DCO clearing futures that are not security futures and swaps that are not security-based swaps. CME notes that the policies of the CFTC with respect to administering the CEA are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for over-the-counter derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest.

Because the proposed changes are limited in their effect to CME's futures and swaps clearing businesses, the proposed changes are properly classified as effecting a change in an existing service of CME that:

(a) Primarily affects the clearing operations of CME with respect to products that are not securities, including futures that are not security futures, swaps that are not security-based swaps or mixed swaps; and forwards that are not security forwards; and

(b) does not significantly affect any securities clearing operations of CME or any rights or obligations of CME with respect to securities clearing or persons using such securities-clearing service.

As such, the changes are therefore consistent with the requirements of Section 17A of the Exchange Act[9] and are properly filed under Section 19(b)(3)(A)[10] and Rule 19b–4(f)(4)(ii)[11] thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition. The proposed rules merely enhance CME's existing liquidity framework by providing additional liquidity resources and a framework for establishment of additional highly reliable prearranged funding arrangements. Further, the changes are limited to CME's futures and swaps clearing businesses and, as such, do not affect the security-based swap clearing activities of CME in any way and therefore do not impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)[12] of the Act and Rule 19b–4(f)(4)(ii)[13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–CME–2015–013 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–CME–2015–013. 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 CME and on CME's Web site at *http://www.cmegroup.com/market-regulation/rule-filings.html*.

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–CME–2015–013 and should be submitted on or before May 14, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Brent J. Fields,

Secretary.

[FR Doc. 2015–09429 Filed 4–22–15; 8:45 am]

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[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78q–1.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(4)(ii).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(4)(ii).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74758; File No. SR–MIAX–2015–27]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

April 17, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 7, 2015, Miami International Securities Exchange LLC (''MIAX'' 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its current Priority Customer Rebate Program (the ''Program'') to modify the volume thresholds of tiers 1–5.[3] Under the Program, the Exchange proposes to credit each Member the per contract amount set forth in the table below resulting from each Priority Customer[4] order transmitted by that Member which is executed on the Exchange in all multiply-listed option classes (excluding mini-options, Priority Customer-to-Priority Customer Orders, PRIME AOC Responses, PRIME Contra-side Orders, PRIME Orders for which both the Agency and Contra-side Order are Priority Customers, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAX Rule 1400), provided the Member meets certain volume thresholds in a month as described below. For each Priority Customer order transmitted by that Member which is executed electronically on the Exchange in MIAX Select Symbols, MIAX will continue to credit each member at the separate per contract rate for MIAX Select Symbols.[5] For each Priority Customer order submitted into the PRIME Auction as a PRIME Agency Order, MIAX will continue to credit each member at the separate per contract rate for PRIME Agency Orders.[6] The volume thresholds are calculated based on the customer average daily volume over the course of the month. Volume will be recorded for and credits will be delivered to the Member Firm that submits the order to the Exchange.

Percentage thresholds of national customer volume in multiply-listed options classes listed on MIAX (Monthly)	Per contract credit	Per contract credit in MIAX select symbols	Per contract credit for PRIME agency order
0.00%–0.40%	$0.00	$0.00	$0.10
Above 0.40%–0.75%	0.10	0.10	0.10
Above 0.75%–1.75%	0.15	0.20	0.10
Above 1.75%–2.40%	0.17	0.20	0.10
Above 2.40%	0.18	0.20	0.10

Other aspects of the Program will remain the same as before. Consistent with the current Fee Schedule, the Exchange will continue to aggregate the contracts resulting from Priority Customer orders transmitted and executed electronically on the Exchange from affiliated Members for purposes of the thresholds above, provided there is at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A. In the event of a MIAX System outage or other interruption of electronic trading on MIAX, the Exchange will adjust the national customer volume in multiply-listed options for the duration of the outage. A Member may request to receive its credit under the Priority Customer Rebate Program as a separate direct payment.

In addition, the rebate payments will continue to be calculated from the first executed contract at the applicable threshold per contract credit with the rebate payments made at the highest achieved volume tier for each contract traded in that month. For example, if Member Firm XYZ, Inc. (''XYZ'') has enough Priority Customer contracts to achieve 3.25% of the national customer volume in multiply-listed option contracts during the month of April, XYZ will receive a credit of $0.18 for each Priority Customer contract executed in the month of April.

The purpose of the Program is to encourage Members to direct greater Priority Customer trade volume to the Exchange. Increased Priority Customer volume will provide for greater liquidity, which benefits all market participants. The practice of incentivizing increased retail customer order flow in order to attract professional liquidity providers (Market-Makers) is, and has been, commonly practiced in the options markets. As such, marketing fee programs,[7] and customer posting incentive programs,[8] are based on attracting public customer order flow. The Program similarly intends to attract Priority Customer order flow, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market

[3] *See* Securities Exchange Act Release Nos. 74007 (January 9, 2015), 80 FR 1537 (January 12, 2015) (SR–MIAX–2014–69); 72799 (August 8, 2014), 79 FR 47698 (August 14, 2014) (SR–MIAX–2014–40); 72355 (June 10, 2014), 79 FR 34368 (June 16, 2014) (SR–MIAX–2014–25); 71698 (March 12, 2014), 79 FR 15185 (March 18, 2014) (SR–MIAX–2014–12); 71283 (January 10, 2014), 79 FR 2914 (January 16, 2014) (SR–MIAX–2013–63); 71009 (December 6, 2013), 78 FR 75629 (December 12, 2013) (SR–MIAX–2013–56).

[4] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). *See* MIAX Rule 100.

[5] *See* Securities Exchange Release Nos. 74291 (February 18, 2015), 80 FR 9841 (February 24, 2015)(SR–MIAX–2015–09); 74288 (February 18, 2015), 80 FR 9837 (February 24, 2015) (SR–MIAX–2015–08); 71700 (March 12, 2014), 79 FR 15188 (March 18, 2014) (SR–MIAX–2014–13); 72356 (June 10, 2014), 79 FR 34384 (June 16, 2014) (SR–MIAX–2014–26); 72567 (July 8, 2014), 79 FR 40818 (July 14, 2014) (SR–MIAX–2014–34); 73328 (October 9, 2014), 79 FR 62230 (October 16, 2014) (SR–MIAX–2014–50).

[6] *See* Securities Exchange Release No. 72943 (August 28, 2014), 79 FR 52785 (September 4, 2014) (SR–MIAX–2014–45).

[7] *See* MIAX Fee Schedule, Section 1(b).

[8] *See* NYSE Arca, Inc. Fees Schedule, page 4 (section titled ''Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues'').

participants and causing a corresponding increase in order flow from such other market participants.

The specific volume thresholds of the Program's tiers were set based upon business determinations and an analysis of current volume levels. The volume thresholds are intended to incentivize firms that route some Priority Customer orders to the Exchange to increase the number of orders that are sent to the Exchange to achieve the next threshold and to incent new participants to send Priority Customer orders as well. Increasing the number of orders sent to the Exchange will in turn provide tighter and more liquid markets, and therefore attract more business overall. Similarly, the different credit rates at the different tier levels were based on an analysis of revenue and volume levels and are intended to provide increasing ''rewards'' for increasing the volume of trades sent to the Exchange. The specific amounts of the tiers and rates were set in order to encourage suppliers of Priority Customer order flow to reach for higher tiers.

The credits paid out as part of the program will be drawn from the general revenues of the Exchange.[9] The Exchange calculates volume thresholds on a monthly basis.

2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(4) of the Act [11] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposed Priority Customer Rebate Program is fair, equitable and not unreasonably discriminatory. The Program is reasonably designed because it will incent providers of Priority Customer order flow to send that Priority Customer order flow to the Exchange in order to receive a credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The Program is also reasonably designed because the proposed credits are within the range of credits assessed by other exchanges employing similar rebate programs. The proposed rebate program is fair and equitable and not unreasonably discriminatory because it will apply equally to all Priority Customer orders. All similarly situated Priority Customer orders are subject to the same rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory. In addition, the Program is equitable and not unfairly discriminatory because, while only Priority Customer order flow qualifies for the Program, an increase in Priority Customer order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads. Similarly, offering increasing credits for executing higher percentages of total national customer volume (increased credit rates at increased volume tiers) is equitable and not unfairly discriminatory because such increased rates and tiers encourage Members to direct increased amounts of Priority Customer contracts to the Exchange. Market participants want to trade with Priority Customer order flow. To the extent Priority Customer order flow is increased by the proposal, market participants will increasingly compete for the opportunity to trade on the Exchange including sending more orders and providing narrower and larger sized quotations in the effort to trade with such Priority Customer order flow. The resulting increased volume and liquidity will benefit those Members who receive the lower tier levels, or do not qualify for the Program at all, by providing more trading opportunities and tighter spreads.

Limiting the Program to multiply-listed options classes listed on MIAX is reasonable because those parties trading heavily in multiply-listed classes will receive a credit for such trading, and is equitable and not unfairly discriminatory because the Exchange does not trade any singly-listed products at this time. If at such time the Exchange develops proprietary products, the Exchange anticipates having to devote a lot of resources to develop them, and therefore would need to retain funds collected in order to recoup those expenditures.

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 Exchange believes that the proposed change would increase both intermarket and intramarket competition by incenting Members to direct their Priority Customer orders to the Exchange, which will enhance the quality of quoting and increase the volume of contracts traded here. To the extent that there is additional competitive burden on non-Priority Customers, the Exchange believes that this is appropriate because the rebate program should incent Members to direct additional order flow to the Exchange and thus provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded here. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposed rule change reflects this competitive environment because it reduces the Exchange's fees in a manner that encourages market participants to direct their customer order flow, to provide liquidity, and to attract additional transaction volume to the Exchange. Given the robust competition for volume among options markets, many of which offer the same products, implementing a volume based customer rebate program to attract order flow like the one being proposed in this filing is consistent with the above-mentioned goals of the Act. This is especially true for the smaller options markets, such as MIAX, which is competing for volume with much larger exchanges that dominate the options trading industry.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[12] At any time within 60 days of the filing of the proposed rule change, the Commission

[9] Despite providing credits under the Program, the Exchange represents that it will continue to have adequate resources to fund its regulatory program and fulfill its responsibilities as a self-regulatory organization while the Program will be in effect.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2015–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2015–27. 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2015–27, and should be submitted on or May 14, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Brent J. Fields,

Secretary.

[FR Doc. 2015–09426 Filed 4–22–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74760; File No. SR–NYSEMKT–2015–29]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying the NYSE Amex Options Fee Schedule Relating to the Amex Customer Engagement Program

April 17, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 10, 2015, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') 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 modify the NYSE Amex Options Fee Schedule (''Fee Schedule'') related to the Amex Customer Engagement (''ACE'') Program. The Exchange proposes to implement the fee change effective April 10, 2015. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend existing tiers and add a new tier to the ACE Program.

Section I.E. of the Fee Schedule describes the ACE Program,[3] which currently features four tiers expressed as a percentage of total industry Customer equity and ETF option average daily volume (''ADV'').[4] Order Flow Providers (''OFPs'') receive per contract credits solely for Electronic Customer volume that the OFP, as agent, submits to the Exchange.[5] The ACE Program offers the following two methods for OFPs to receive credits:

1. By calculating, on a monthly basis, the average daily Customer contract volume an OFP executes Electronically on the Exchange as a percentage of total average daily industry Customer equity and ETF options volume or[6];

2. By calculating, on a monthly basis, the average daily contract volume an OFP executes Electronically in all participant types (*i.e.,* Customer, Firm, Broker-Dealer, NYSE Amex Options Market Maker, Non-NYSE Amex Options Market Maker, and Professional Customer) on the Exchange, as a

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* NYSE Amex Options Fee Schedule, *available here, https://www.theice.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf.*

[4] In calculating ADV, the Exchange utilizes monthly reports published by the OCC for equity options and ETF options that show cleared volume by account type. *See* OCC Monthly Statistics Reports, *available here, http://www.theocc.com/webapps/monthly-volume-reports* (including for equity options and ETF options volume, subtotaled by exchange, along with OCC total industry volume). The Exchange calculates the total OCC volume for equity and ETF options that clear in the Customer account type and divide this total by the number of trading days for that month (*i.e.,* any day the Exchange is open for business). For example, in a month having 21 trading days where there were 252,000,000 equity option and ETF option contracts that cleared in the Customer account type, the calculated ADV would be 12,000,000 (252,000,000/21= 12,000,000).

[5] Electronic Customer volume is volume executed electronically through the Exchange System, on behalf of an individual or organization that is not a Broker-Dealer and who does not meet the definition of a Professional Customer.

[6] *See supra* n. 4

percentage of total average daily industry Customer equity and ETF option volume,[7] with the further requirement that a specified percentage of the minimum volume required to qualify for the Tier must be Customer volume.

Upon reaching a higher tier, an OFP would receive for all eligible Customer volume the per contract credit associated with the highest tier achieved, retroactive to the first contract traded each month, regardless of which of the two calculation methods the OFP qualifies under.[8]

The Exchange proposes to:

(a) Lower the thresholds required to reach each tier;

(b) introduce an additional tier, which would be an intermediate tier between current tiers 3 and 4; and

(c) increase the credits available for the highest tier.

Specifically, the Exchange proposes to modify the ACE Program tiers as illustrated in the table below, with proposed additions appearing underscored and proposed deletions appearing in brackets:

Tier	ACE Program—Standard options			Credits payable on customer volume only		
	Customer electronic ADV as a % of industry customer equity and ETF options ADV		Total electronic ADV (of which 20% or greater of the minimum qualifying volume for each tier must be customer) as a % of industry customer equity and ETF options ADV	Customer volume credits	1 Year enhanced customer volume credits	3 Year enhanced customer volume credits
1	0.00% to *0.60%* [0.75%].	OR	N/A	$0.00	$0.00	$0.00
2	>*0.60%* [0.75%] to *0.80%* [1.00%].	.....	N/A	(0.13)	(0.13)	(0.13)
3	>*0.80%* [1.00%] to *1.25%* [2.00%].	.....	1.50% to *2.50%* [3.50%] of which 20% or greater of 1.50% must be Customer.	(0.14)	(0.16)	(0.18)
4	*>1.25 to 1.75%*	.....	*>2.50% to 3.50% of which 20% or greater of 2.50% must be Customer.*	*(0.17)*	*(0.19)*	*(0.21)*
5 [4] ..	>*1.75* [2.00%]	.....	>3.50% of which 20% or greater of 3.5% must be Customer.	*(0.19)* [(0.14)]	*(0.21)* [(0.16)]	*(0.23)* [(0.20)]

The proposed amendments to the ACE Program are designed to make each of the tiers more achievable, through reduced volume requirements, while enhancing the rebates. When combined, the Exchange believes the proposed changes to the ACE Program would attract more volume and liquidity to the Exchange, which would benefit all Exchange participants through increased opportunities to trade as well as enhancing price discovery.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[10] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Overall, the Exchange believes that the proposed changes to the ACE Program are reasonable, equitable and not unfairly discriminatory because the credits offered are based on the amount of business transacted on the Exchange. As proposed the ACE Program continues to enable an OFP to earn enhanced credits if the OFP has an Affiliated NYSE Amex Options Market Maker (*i.e.*, the entities share ''70% common ownership'' [11]) that has committed to either of the proposed Prepayment Programs, per Section I.D. of the Fee Schedule (each an ''Affiliated OFP''). As the Exchange explained in further detail when it introduced the ACE Program in January 2015, it is not unreasonable, inequitable or unfairly discriminatory to offer to offer [sic] Affiliated OFPs enhanced discounts or credits for several reasons.[12] In short, the Exchange believes that offering the ACE Program enhanced credits recognizes that such Affiliated OFPs have a shared economic interest with its affiliated Market Maker, which is subject to heightened obligations and costs.[13] By contrast, non-Affiliated OFPs do not share economic interests with a Market Maker that is subject to higher obligations and costs. In addition, each non-Affiliated OFP has the opportunity to establish such an affiliation by several means, including but not limited to, a business combination (*e.g.*, merger or acquisition) or the establishment of their own market making operation, which as a Broker-Dealer, each OFP has the potential to establish.

In addition, the Exchange believes that the proposed amendments to the ACE Program are reasonable, equitable and not unfairly discriminatory because they would enhance the incentives to OFPs to transact Customer orders on the Exchange, which would benefit all market participants by providing more trading opportunities and tighter spreads, even to those market participants that do not participate in the ACE Program. Additionally, the

[7] *Id.*

[8] In the event that an OFP is eligible for credits under both calculation methods, the OFP would benefit from whichever criterion results in the highest per contract credit for all the OFP's eligible ADV. In calculating an OFP's Electronic volume, certain volumes are excluded (*e.g.,* QCC trades). *See* Fee Schedule (Section I.E.), *supra* n. 3.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *See* Fee Schedule, Key Terms and Definitions, *supra* n. 3 (defining Affiliates as ''a person that directly or indirectly through one or more intermediaries, has a 70% common ownership with, the person specified'').

[12] *See* Securities Exchange Act Release No. 74086 (January 16, 2015), 80 FR 3701, 3711–12 (January 23, 2015) (SR–NYSEMKT–2015–04) (Notice of Filing of fee change to adopt the ACE Program).

[13] *See, e.g.*, Rule 925.1NY(c) (setting forth requirement that Marker Makers maintain active two-sided markets in the classes in which they are appointed, and must meet certain minimum quoting requirements). *See also* Fee Schedule, Sections III.A., C. and D., *supra* n. 3 (setting forth higher fixed costs imposed on Marker Makers that are not assessed upon other market participants, including relatively more expensive ATP fees applicable to Market Makers, Rights Fees, and Premium Product Fees).

Exchange believes the proposed changes to the ACE Program are consistent with the Act because they may attract greater volume and liquidity to the Exchange, which would benefit all market participants by providing tighter quoting and better prices, all of which perfects the mechanism for a free and open market and national market system.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[14] 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 believes the proposed amendments to the ACE Program are pro-competitive as the proposed reduced volume thresholds and increased rebates may encourage OFPs to direct Customer order flow to the Exchange and any resulting increase in volume and liquidity to the Exchange would benefit all of Exchange participants through increased opportunities to trade as well as enhancing price discovery.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[15] of the Act and subparagraph (f)(2) of Rule 19b–4[16] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[17] 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–2015–29 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–NYSEMKT–2015–29. 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 offices 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–2015–29, and should be submitted on or before May 14, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Brent J. Fields,

Secretary.

[FR Doc. 2015–09428 Filed 4–22–15; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78f(b)(8).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(2).

[17] 15 U.S.C. 78s(b)(2)(B).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

ForceField Energy Inc.; Order of Suspension of Trading

April 21, 2015.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ForceField Energy Inc. (''FNRG'') because of concerns about the adequacy and accuracy of information available to investors concerning the funding of recent articles and promotions touting FNRG, including for example in articles published on December 9, 2014 and February 26, 2015. Questions have also arisen concerning potential manipulative activity of FNRG's stock, including transactions between February 25 and April 2, 2015 and the funding of those transactions. FNRG is a Nevada corporation with its principal office in New York, New York. It is listed on NASDAQ under the symbol FNRG.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on April 21, 2015 through 11:59 p.m. EDT, on May 4, 2015.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–09555 Filed 4–21–15; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74755; File No. SR–NYSEArca–2015–02]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Amend NYSE Arca Equities Rule 8.600 To Adopt Generic Listing Standards for Managed Fund Shares

April 17, 2015.

On February 17, 2015, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares. The proposed rule change was published for comment in the **Federal Register** on March 10, 2015.[3] The Commission received three comments on the proposal.[4]

Section 19(b)(2) of the Act [5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is April 24, 2015. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments received. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates June 8, 2015, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2015–02).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Brent J. Fields,

Secretary.

[FR Doc. 2015–09425 Filed 4–22–15; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74433 (March 4, 2015), 80 FR 12690 (''Notice'').

[4] *See* letter dated March 31, 2015 from Anonymous; letter dated March 31, 2015 from Dorothy Donohue, Deputy General Counsel, Securities Regulation, Investment Company Institute, to Brent J. Fields, Secretary, Commission; and letter dated March 31, 2015 from Thomas E. Faust Jr., Chairman and Chief Executive Officer, Eaton Vance Corp., to Brent J. Fields, Secretary, Commission; all available at: *http://www.sec.gov/comments/sr-nysearca-2015-02/nysearca201502.shtml.*

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

DEPARTMENT OF STATE

[Public Notice: 9100]

Provision of Certain Temporary Sanctions Relief

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The U.S. government is renewing temporary waivers of certain sanctions to allow for a discrete range of transactions related to the provision of satellite connectivity services to the Islamic Republic of Iran Broadcasting (IRIB). The U.S. government is renewing these waivers based on Iran's commitment to ensure that harmful uplink satellite interference does not emanate from its territory, and verification by the U.S. government that harmful uplink satellite interference is not currently emanating from the territory of Iran.

DATES: *Effective Date:* The effective dates of these waiver actions are as described in the determinations set forth below.

FOR FURTHER INFORMATION CONTACT: On general issues: Paul Pavwoski, Office of Economic Sanctions Policy and Implementation, Department of State, Telephone: (202) 647–7489.

On January 30, the Secretary of State took the following actions:

Acting under the authorities vested in me as Secretary of State, I hereby make the following determinations and certifications:

Pursuant to Sections 1244(i), 1246(e) and 1247(f) of the Iran Freedom and Counter-Proliferation Act of 2012 (subtitle D of title XII of Public Law 112–239, 22 U.S.C. 8801 *et seq.*) (IFCA) and the Delegation of Certain Functions and Authorities under IFCA, 78 FR 35545 (June 13, 2013), I determine that it is vital to the national security of the United States to waive the imposition of sanctions pursuant to:

1. Section 1244(c)(1) of IFCA [1] to the extent required for:

a. Transactions involving the provision of ground connectivity services using earth stations and fiber optic connections outside of Iran and the provision and management of satellite capacity for sale or resale to the Islamic Republic of Iran Broadcasting (IRIB), where such ground connectivity services and satellite capacity are to be used for the provision to Iran of public international telecommunications services, and

b. transactions involving the provision of the following related administrative services to, or for the benefit of, the IRIB, to the extent such services are necessary to establish and maintain ground and satellite connectivity with IRIB: Standard operational support, including coordinating with in-country personnel on matters such as configuring ground and earth station equipment to access space segment capacity; marketing services; billing services; and legal services, and excluding any transactions involving persons other than the IRIB on the SDN List.

2. Section 1246(a) of IFCA [2] to the extent required for the provision of underwriting services or insurance or reinsurance for:

a. Transactions involving the provision of ground connectivity services using earth stations and fiber optic connections outside of Iran and the provision and management of satellite capacity for sale or resale to the IRIB, where such ground connectivity services and satellite capacity are to be used for the provision to Iran of public international telecommunications services, and excluding any transactions

[1] Pursuant to section 1244(c)(2)(C)(iii) of IFCA, the relevant sanction in Section 1244(c)(1) continues not to apply, by its terms, in the case of Iranian financial institutions that have not been designated for the imposition of sanctions in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, support for international terrorism, or abuses of human rights (as described in section 1244(c)(3)).

[2] Pursuant to section 1246(a)(1)(C) of IFCA, the relevant sanction in Section 1246(a)(1)) continues not to apply, by its terms, in the case of Iranian financial institutions that have not been designated for the imposition of sanctions in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, support for international terrorism, or abuses of human rights (as described in section 1246(b)).

involving persons other than the IRIB on the SDN List; and

b. transactions involving the provision of the following related administrative services to, or for the benefit of, Iran, to the extent such services are necessary to establish and maintain ground and satellite connectivity with IRIB: Standard operational support, including coordinating with in-country personnel on matters such as configuring ground and earth station equipment to access space segment capacity; marketing services; billing services; and legal services, and excluding any transactions involving persons other than the IRIB on the SDN List.

3. Section 1247(a) of IFCA [3] to the extent required for transactions by foreign financial institutions on behalf of IRIB involving:

a. The provision of ground connectivity services using earth stations and fiber optic connections outside of Iran and the provision and management of satellite capacity for sale or resale to the IRIB, where such ground connectivity services and satellite capacity are to be used for the provision to Iran of public international telecommunications services, and for associated services, and

b. transactions involving the provision of the following related administrative services to, or for the benefit of, Iran, to the extent such services are necessary to establish and maintain ground and satellite connectivity with IRIB: Standard operational support, including coordinating with in-country personnel on matters such as configuring ground and earth station equipment to access space segment capacity; marketing services; billing services; and legal services.

These waivers shall take effect upon transmittal to Congress.

(Signed John F. Kerry, Secretary of State)

Therefore, these sanctions have been waived as described in the determinations above. Relevant agencies and instrumentalities of the U.S. government shall take all appropriate measures within their authority to carry out the provisions of this notice.

Charles H. Rivkin,

Assistant Secretary for Economic and Business Affairs.

[FR Doc. 2015–09511 Filed 4–22–15; 8:45 am]

BILLING CODE 4710–07–P

[3] Pursuant to section 1247(a) of IFCA, the relevant sanction in section 1247(a) still continues not to apply, by its terms, in the case of Iranian financial institutions that have not been designated for the imposition of sanctions in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, support for international terrorism, or abuses of human rights (as described in section 1247(b)).

DEPARTMENT OF STATE

[Public Notice 9108]

The State Department's § 515.582 List

AGENCY: Department of State.

ACTION: Notice, initial publication of list of goods and services produced by Cuban independent entrepreneurs eligible for importation into the United States.

SUMMARY: On February 13, 2015, the Department of State published a list of goods and services produced by independent Cuban entrepreneurs that are eligible for importation into the United States, pursuant to § 515.582 of the Department of the Treasury's Cuban Assets Control Regulations, 31 CFR part 515 (''CACR''). The State Department is issuing a **Federal Register** notice to this effect.

DATES: *Effective Date:* February 13, 2015.

FOR FURTHER INFORMATION CONTACT: Office of Economic Sanctions Policy and Implementation, tel.: 202–647–7489; Office of the Coordinator for Cuban Affairs, tel.: 202–647–9273, Department of State, Washington, DC 20520 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning the List are available from the Department of State's Web site (*www.state.gov/e/eb/tfs/spi*).

Background

On January 16, 2015, the Department of the Treasury's Office of Foreign Assets Control (OFAC) published a final rule in the **Federal Register** (80 FR 2291) amending the Cuban Assets Control Regulations (CACR), 31 CFR part 515, to implement the President's December 17, 2014, policy announcement on Cuba. § 515.582 of the CACR was added to authorize commercial imports of certain goods and services produced by independent Cuban entrepreneurs, as determined by the State Department as set forth on the State Department's § 515.582 List. The State Department's § 515.582 List was published February 13, 2015 on its Web site (*http://www.state.gov/e/eb/tfs/spi*) and went into effect immediately upon publication. Per § 515.582 of the CACR, the State Department is issuing a **Federal Register** notice to this effect. The List is as follows, and may be updated by the State Department periodically.

U.S. Department of State

Section 515.582 List

Goods and Services Eligible for Importation

In accordance with the policy changes announced by the President on December 17, 2014, to further engage and empower the Cuban people, § 515.582 of the Cuban Assets Control Regulations (31 CFR part 515—the CACR) authorizes the importation into the United States of certain goods and services produced by independent Cuban entrepreneurs as determined by the State Department as set forth on the § 515.582 List, below.

Goods

The goods whose import is authorized by § 515.582 are goods produced by independent Cuban entrepreneurs, as demonstrated by documentary evidence, that are imported into the United States directly from Cuba, except for goods specified in the following sections/chapters of the Harmonized Tariff Schedule of the United States (HTS):

- Section I: Live Animals; Animal Products
  - All chapters
- Section II: Vegetable Products
  - All chapters
- Section III: Animal or Vegetable Fats and Oils and their Cleavage Products; Prepared Edible Fats; Animal or Vegetable Waxes
  - All chapters
- Section IV: Prepared Foodstuffs; Beverages, Spirits, and Vinegar; Tobacco and Manufactured Tobacco Substitutes
  - All chapters
- Section V: Mineral Products
  - All chapters
- Section VI: Products of the Chemical or Allied Industries
  - Chapters 28–32; 35–36, 38
- Section XI: Textile and Textile Articles
  - Chapters 51–52
- Section XV: Base Metals and Articles of Base Metal
  - Chapters 72–81
- Section XVI: Machinery and Mechanical Appliances; Electrical Equipment; Parts Thereof; Sound Recorders and Reproducers, Television Image and Sound Recorders and Reproducers, and Parts and Accessories of Such Articles

- All chapters
- Section XVII: Vehicles, Aircraft, Vessels, and Associated Transportation Equipment
  - All chapters
- Section XIX: Arms and Ammunition; Parts and Accessories Thereof
  - All chapters

Persons subject to U.S. jurisdiction engaging in import transactions involving goods produced by an independent Cuban entrepreneur pursuant to § 515.582 must obtain documentary evidence that demonstrates the entrepreneur's independent status, such as a copy of a license to be self-employed issued by the Cuban government or, in the case of an entity, evidence that demonstrates that the entrepreneur is a private entity that is not owned or controlled by the Cuban government.

This list does not supersede or excuse compliance with any additional requirements in U.S. law or regulation, including the relevant duties as set forth on the HTS.

For travelers importing authorized goods into the United States pursuant to § 515.582 as accompanied baggage, the $400 monetary limit set forth in § 515.560(c)(3) does not apply to such goods, but goods may be subject to applicable duties, fees, and taxes.

Services

The authorized services pursuant to 31 CFR 515.582 are services supplied by an independent Cuban entrepreneur in Cuba, as demonstrated by documentary evidence. Persons subject to U.S. jurisdiction engaging in import transactions involving services supplied by an independent Cuban entrepreneur pursuant to § 515.582 are required to obtain documentary evidence that demonstrates the entrepreneur's independent status, such as a copy of a license to be self-employed issued by the Cuban government or, in the case of an entity, evidence that demonstrates that the entrepreneur is a private entity that is not owned or controlled by the Cuban government. Supply of services must comply with other applicable state and federal laws.

Note 1: All payments in settlement of transactions authorized by § 515.582 should reference this section in order to avoid having them rejected.

Note 2: The authorization in § 515.582 of the CACR does not supersede or excuse compliance with U.S. laws or regulations or any other additional requirements.

Note 3: The Department of State, in consultation with other federal agencies, reserves the right to update this document periodically. Any subsequent updates will take effect when published on the Web page of the Bureau of Economic and Business Affairs' Office of Sanctions Policy and Implementation (*http://www.state.gov/e/eb/tfs/spi*). Updates will also be published in the **Federal Register**. For further information, please contact the State Department at 202–647–7489.

Note 4: For provisions relating to recordkeeping and reports, see 31 CFR 501.601 and 501.602 and 19 CFR part 163.

With this notice, the Department of State is publishing a copy of its February 13, 2015, § 515.582 List in the **Federal Register**.

Dated: April 16, 2015.

Charles H. Rivkin,

Assistant Secretary for Economic and Business Affairs.

[FR Doc. 2015–09509 Filed 4–22–15; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice: 9109]

30-Day Notice of Proposed Information Collection: Risk Analysis and Management (RAM) OMB Control Number 1405–0204

ACTION: Notice of request for public comment.

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 30 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to May 26, 2015.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

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, to Lisa M. Farrell, US Department of State, Office of Risk Analysis and Management, 2201 C St. NW., Washington, DC 20520, who may be reached on 202–647–6020 or at *FARRELLLM1@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Risk Analysis and Management.
- *OMB Control Number:* 1405–0204.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* A/LM.
- *Form Number: DS–4184.*
- *Respondents:* Potential Contractors and Grantees.
- *Estimated Number of Respondents: 800.*
- *Estimated Number of Responses:* 800.
- *Average Time Per Response:* 75 minutes.
- *Total Estimated Burden Time:* 1000 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

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 information collected from individuals and organizations is specifically used to conduct screening to ensure that State funded activities do not provide support to entities or individuals deemed to be a risk to national security.

Methodology

The State Department has implemented a Risk Analysis and Management Program to vet potential

contractors and grantees seeking funding from the Department of State to mitigate the risk that such funds might benefit entities or individuals who present a national security risk. To conduct this vetting program the Department collects information from contractors, subcontractors, grantees and sub-grantees regarding their directors, officers and/or key employees through mail, fax or electronic submission. The information collected is compared to information gathered from commercial, public, and U.S. government databases to determine the risk that the applying organization, entity or individual might use Department funds or programs in a way that presents a threat to national security. This program will continue as a pilot program consistent with the Department of State, Foreign Operation, and Related Programs Appropriations Act, 2015 (Div. J, Pub. L. 113–235).

Dated: April 16, 2015.

Catherine I. Ebert-Gray,

Deputy Assistant Secretary, Bureau of Administration, Department of State.

[FR Doc. 2015–09493 Filed 4–22–15; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0126]

Qualification of Drivers; Application for Exemptions; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to grant requests from 4 individuals for exemptions from the Agency's physical qualifications standard concerning hearing for interstate drivers. The current regulation prohibits hearing impaired individuals from operating CMVs in interstate commerce. After notice and opportunity for public comment, the Agency concluded that granting exemptions for these drivers to operate property-carrying CMVs will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions. The exemptions are valid for a 2-year period and may be renewed, and the exemptions preempt State laws and regulations.

DATES: The exemptions are effective April 23, 2015. The exemptions expire on April 24, 2017.

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Office of Carrier, Driver and Vehicle Safety, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

A. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

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

B. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the safety regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The current provisions of the FMCSRs concerning hearing state that a person is physically qualified to drive a CMV if that person:

> First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

49 CFR 391.41(b)(11). This standard was adopted in 1970, with a revision in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

FMCSA grants 4 individuals an exemption from § 391.41(b)(11) concerning hearing to enable them to operate property-carrying CMVs in interstate commerce for a 2-year period. The Agency's decision on these exemption applications is based on the current medical literature and information and the ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety'' (the 2008 Evidence Report) presented to FMCSA on August 26, 2008. The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) No studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the CDLIS,[1] for CDL holders, and inspections recorded in MCMIS.[2] For non-CDL holders, the Agency reviewed the driving records from the State licensing agency. Each applicant's record demonstrated a safe driving history. The Agency believes the drivers covered by the exemptions do not pose a risk to public safety.

C. Comments

On April 2, 2014, FMCSA published a notice of receipt of exemption applications and requested public comment on 4 individuals. The comment period ended on May 2, 2014. In response to the notice, FMCSA received two comments, one from Deb Letney and a late submission received May 5, from Kristine Thatcher.

Deb Letney acknowledges that crash data does not support an increased crash risk for hearing impaired drivers and that Oregon allows hearing impaired drivers to operate in intrastate commerce. However, she expresses concerns for ''the driver's ability to recognize activation of warning devices and to communicate with law enforcement or emergency workers.'' She recommends granting conditional exemptions requiring visual warning indicators and alternate forms of communication.

[1] *Commercial Driver License Information System* (CDLIS) is an information system that allows the exchange of commercial driver licensing information among all the States. CDLIS includes the databases of 51 licensing jurisdictions and the CDLIS Central Site, all connected by a telecommunications network.

[2] *Motor Carrier Management Information System* (MCMIS) is an information system that captures data from field offices through SAFETYNET, CAPRI, and other sources. It is a source for FMCSA inspection, crash, compliance review, safety audit, and registration data.

Kristine Thatcher questions whether a hearing impaired driver is ''as safe or safer in the operation of a CMV than those who are not hearing-impaired,'' and expresses concerns about recognizing ''mechanical wear or failure'' such as air leaks, pressure changes, worn brakes, or a hazard warning such as a horn, that are usually recognized through sound. She expresses concern for the hearing impaired driver's inability to communicate in an emergency situation, ''especially if passengers or hazardous materials are involved.'' Kristine Thatcher believes that during a skills test ''an examiner's ability to safely conduct a road test is compromised'' due to the distraction of alternate forms of communication. She doesn't believe that using flash cards during a skills test is appropriate because instruction ''cannot be condensed to one or two word flash cards'' and that ''CMV road test standards will be compromised.'' She believes that restrictions should be imposed to include class B only, no air brakes, automatic transmission only and no hazardous materials, no double/triple endorsements and no motor coach with passengers.

FMCSA Response: The Agency acknowledges these comments and concerns regarding testing and the public safety risk of a driver unable to verbally communicate and to hear warning signals or horns. However, because FMCSA's 2008 Evidence Report and previous research studies have not shown a higher safety risk for hearing impaired drivers, there is no basis for restrictions other than the current restriction of no operation of motorcoach or bus with passengers. Hearing impaired drivers routinely compensate for their lack of hearing through other senses. The concerns regarding testing can be overcome by using alternate forms of communication such as hand gestures, flash cards, pen/paper, dry erase board or by using electronic devices.

D. Exemptions Granted

Following individualized assessments of the exemption applications, FMCSA grants exemptions from 49 CFR 391.41(b)(11) to 4 individuals. Under current FMCSA regulations, the 4 drivers receiving exemptions from 49 CFR 391.41(b)(11) would have been considered physically qualified to drive a CMV in interstate commerce except that they do not meet the hearing requirement. FMCSA has determined that the following 4 applicants should be granted an exemption:

Rodney Braden

Mr. Braden, 48, holds an operator's license in Kentucky.

Arthur Brown

Mr. Brown, 47, holds an operator's license in Kentucky.

Anthony Castile, III

Mr. Castile, 45, holds an operator's license in Pennsylvania.

Michael Steggs

Mr. Steggs, 54, holds a Class A commercial driver's license (CDL) in Texas.

E. Basis for Exemption

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the hearing standard in 49 CFR 391.41(b)(11) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. With the exemption, applicants can drive in interstate commerce. Thus, the Agency's analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce. The driver must comply with the terms and conditions of the exemption. This includes reporting any crashes or accidents as defined in 49 CFR 390.5 and reporting all citations and convictions for disqualifying offenses under 49 CFR part 383 and 49 CFR 391.

Conclusion

The Agency is granting exemptions from the hearing standard, 49 CFR 391.41(b)(11), to 4 individuals based on an evaluation of each driver's safety experience. Safety analysis of information relating to these 4 applicants meets the burden of showing that granting the exemptions would achieve a level of safety that is equivalent to or greater than the level that would be achieved without the exemption. In accordance with 49 U.S.C. 31315, each exemption will be valid for 2 years from the effective date with annual recertification required unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

FMCSA exempts the following 4 drivers for a period of 2 years from the physical qualification standard concerning hearing: Rodney Braden (KY); Arthur Brown (KY); Anthony Castile, III (PA); and Michael Steggs (TX).

Issued on: April 17, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–09457 Filed 4–22–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0125]

Qualification of Drivers; Application for Exemptions; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to grant requests from 10 individuals for exemptions from the Agency's physical qualifications standard concerning hearing for interstate drivers. The current regulation prohibits hearing impaired individuals from operating CMVs in interstate commerce. After notice and opportunity for public comment, the Agency concluded that granting exemptions for these drivers to operate property-carrying CMVs will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions. The exemptions are valid for a 2-year period and may be renewed, and the exemptions preempt State laws and regulations.

DATES: The exemptions are effective April 23, 2015. The exemptions expire on April 24, 2017.

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Office of Carrier, Driver and Vehicle Safety, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

A. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov,* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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

B. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the safety regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The current provision (49 CFR 391.41(b)(11)) of the FMCSRs concerning hearing state that a person is physically qualified to drive a CMV if that person:

> First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970, with a revision in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

FMCSA grants 10 individuals an exemption from § 391.41(b)(11) concerning hearing to enable them to operate property-carrying CMVs in interstate commerce for a 2-year period. The Agency's decision on these exemption applications is based on the current medical literature and information and the ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety'' (the 2008 Evidence Report) presented to FMCSA on August 26, 2008. The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) No studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the CDLIS [1] for CDL holders, and inspections recorded in MCMIS.[2] For non-CDL holders, the Agency reviewed the driving records from the State licensing agency. Each applicant's record demonstrated a safe driving history. The Agency believes the drivers covered by the exemptions do not pose a risk to public safety.

C. Comments

On December 5, 2013, FMCSA published a notice of receipt of exemption applications and requested public comment on 10 individuals (Docket number FMCSA–2013–0125). The comment period ended on January 2, 2014. In response to the notice, FMCSA received three comments. All three commenters support the idea of granting exemptions. One of the commenters included in this notice, James Gooch, stated that he has held a CDL for a long time and has experience driving locally. Andrew Mudgett identified many important aspects that should be considered before granting a hearing exemption such as moral, economic, safety, exemption options and terms. Instead of disallowing deaf or hearing impaired drivers to drive, he supports restrictions if necessary and ''as much leniency as possible'' be given applicants of hearing exemptions. Bobby B stated that drivers should be evaluated individually because safety is important and that operating in a restricted environment should be considered if necessary.

FMCSA Response: FMCSA acknowledges that safety and a safe driving record are important factors to consider when granting hearing exemptions. All of the drivers in this notice hold CDLs and have demonstrated a safe driving history. FMCSA evaluates past driving history and violations to ensure an acceptable level of safety. The Agency acknowledges the necessity of restrictions in that the exemption restricts these applicants from operating a motorcoach or bus with passengers in interstate commerce.

D. Exemptions Granted

Following individualized assessments of the exemption applications, FMCSA grants exemptions from 49 CFR 391.41(b)(11) to 10 individuals. Under current FMCSA regulations, all of the 10 drivers receiving exemptions from 49 CFR 391.41(b)(11) would have been considered physically qualified to drive a CMV in interstate commerce except that they do not meet the hearing requirement. FMCSA has determined that the following applicants should be granted an exemption:

Sascha Cotton

Mr. Cotton, 40, holds a class A commercial driver's license (CDL) in Florida.

Keith C. Drown

Mr. Drown, 62, holds a class A commercial driver's license (CDL) in Idaho.

Norman Estes

Mr. Estes, 61, holds a class A commercial driver's license (CDL) in Alabama.

David Garland

Mr. Garland, 43, holds a class A commercial driver's license (CDL) in Maine.

James Gooch

Mr. Gooch, 54, holds a class A commercial driver's license (CDL) in Missouri.

Harold Johnson

Mr. Johnson, 62, holds a class A commercial driver's license (CDL) in Pennsylvania.

Michael Paasch

Mr. Paasch, 41, holds a class A commercial driver's license (CDL) in Nebraska.

William Symonds

Mr. Symonds, 56, holds a class B commercial driver's license (CDL) in Illinois.

[1] *Commercial Driver License Information System* (CDLIS) is an information system that allows the exchange of commercial driver licensing information among all the States. CDLIS includes the databases of 51 licensing jurisdictions and the CDLIS Central Site, all connected by a telecommunications network.

[2] *Motor Carrier Management Information System* (MCMIS) is an information system that captures data from field offices through SAFETYNET, CAPRI, and other sources. It is a source for FMCSA inspection, crash, compliance review, safety audit, and registration data.

Anthony Thong

Mr. Thong, 31, holds a class A commercial driver's license (CDL) in California.

Roger Allen Wright

Mr. Wright, 62, holds a class A commercial driver's license (CDL) in Alabama.

E. Basis for Exemption

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the hearing standard in 49 CFR 391.41(b)(11) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. With the exemption, applicants can drive in interstate commerce. Thus, the Agency's analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce. Based on its review of each driver's record, the Agency has concluded that allowing these applicants to drive only a property-carrying CMV in interstate commerce will achieve an equal level of safety. Each driver must comply with the terms and conditions of the exemption. This includes reporting any crashes or accidents as defined in 49 CFR 390.5 and reporting all citations and convictions for disqualifying offenses under 49 CFR part 383 and 49 CFR 391.

Conclusion

The Agency is granting exemptions from the hearing standard, 49 CFR 391.41(b)(11), to 10 CDL holders based on an evaluation of each driver's safety experience. Safety analysis of information relating to these 10 applicants meets the burden of showing that granting the exemptions to allow them to operate only property-carrying CMVs in interstate commerce would achieve a level of safety that is equivalent to or greater than the level that would be achieved without the exemption. As a result of the exemptions, the CMV industry will gain 10 additional CMV drivers. In accordance with 49 U.S.C. 31315, each exemption will be valid for 2 years from the effective date with annual recertification required unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to the exemption being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

FMCSA exempts the following 10 drivers for a period of 2 years from the physical qualification standard concerning hearing: Sascha Cotton (FL); Keith C. Drown (ID); Norman Estes (AL); David Garland (ME); James Gooch (MO); Harold Johnson (PA); Michael Paasch (NE); William Symonds (IL); Anthony Thong (CA); and Roger Allen Wright (AL).

Issued on: April 17, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–09459 Filed 4–22–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0102]

Qualification of Drivers; Application for Exemptions; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to grant requests from 17 individuals for exemptions from the Agency's physical qualifications standard concerning hearing for interstate drivers. The current regulation prohibits hearing impaired individuals from operating CMVs in interstate commerce. After notice and opportunity for public comment, the Agency concluded that granting exemptions for these drivers to operate property-carrying CMVs will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions. The exemptions are valid for a 2-year period and may be renewed, and the exemptions preempt State laws and regulations.

DATES: The exemptions are effective April 23, 2015. The exemptions expire on April 24, 2017.

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Office of Carrier, Driver and Vehicle Safety, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

A. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

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

B. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the safety regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The current provisions of the FMCSRs concerning hearing state that a person is physically qualified to drive a CMV if that person:

> First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

49 CFR 391.41(b)(11). This standard was adopted in 1970, with a revision in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

FMCSA grants 17 individuals an exemption from § 391.41(b)(11) concerning hearing to enable them to operate property-carrying CMVs in interstate commerce for a 2-year period. The Agency's decision on these exemption applications is based on the current medical literature and information and the ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety'' (the 2008 Evidence Report) presented to FMCSA on August 26, 2008. The evidence report reached two conclusions regarding the matter of

hearing loss and CMV driver safety: (1) No studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the CDLIS,[1] for CDL holders, and inspections recorded in MCMIS.[2] For non-CDL holders, the Agency reviewed the driving records from the State licensing agency. Each applicant's record demonstrated a safe driving history. The Agency believes the drivers covered by the exemptions do not pose a risk to public safety.

C. Comments

On May 22, 2014, FMCSA published a notice of receipt of exemption applications and requested public comment on 17 individuals. The comment period ended on June 23, 2014. In response to the notice, FMCSA received one comment from Ted Lapatka who said that the rule should be followed for the safety of everyone.

D. Exemptions Granted

Following individualized assessments of the exemption applications, FMCSA grants exemptions from 49 CFR 391.41(b)(11) to 17 individuals. Under current FMCSA regulations, all of the 17 drivers receiving exemptions from 49 CFR 391.41(b)(11) would have been considered physically qualified to drive a CMV in interstate commerce except that they do not meet the hearing requirement. FMCSA has determined that the following 17 applicants should be granted an exemption:

Donald Clupper

Mr. Clupper, 44, holds an operator's license in Delaware.

Andrew Deuschle

Mr. Deuschle, 45, holds an operator's license in Texas.

James Dignan

Mr. Dignan, 25, holds an operator's license in Illinois.

Timothy P. Gallagher

Mr. Gallagher, 52, holds an operator's license in Pennsylvania.

Joseph T. Kelly

Mr. Kelly, 28, holds an operator's license in Pennsylvania.

Timothy Laporte

Mr. Laporte, 27, holds an operator's license in Georgia.

James R. Lorshbaugh

Mr. Lorshbaugh, 44, holds an operator's license in Mississippi.

Douglas Mader

Mr. Mader, 46, holds an operator's license in Illinois.

Jose A. Martinez

Mr. Martinez, 52, holds a Class B commercial driver's license (CDL) in Texas.

Robert M. Mullens

Mr. Mullens, 34, holds a Class A commercial driver's license (CDL) in New Jersey.

Tim S. Oyler

Mr. Oyler, 47, holds a Class B commercial driver's license (CDL) in Utah.

Alfredo S. Ramirez

Mr. Ramirez, 44, holds a Class B commercial driver's license (CDL) in Texas.

Julie M. Ramirez

Ms. Ramirez, 43, holds an operator's license in Texas.

Tracy D. Robinson

Mr. Robinson, 49, holds an operator's license in California.

Linda L. Schmidt

Ms. Schmidt, 50, holds a Class A commercial driver's license (CDL) in Texas.

Kirk A. Soneson

Mr. Soneson, 49, holds an operator's license in Ohio.

Hayden A. Teesdale

Mr. Teesdale, 40, holds a Class A commercial driver's license (CDL) in Alabama.

E. Basis for Exemption

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the hearing standard in 49 CFR 391.41(b)(11) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. With the exemption, applicants can drive in interstate commerce. Thus, the Agency's analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce. The driver must comply with the terms and conditions of the exemption. This includes reporting any crashes or accidents as defined in 49 CFR 390.5 and reporting all citations and convictions for disqualifying offenses under 49 CFR part 383 and 49 CFR 391.

Conclusion

The Agency is granting exemptions from the hearing standard, 49 CFR 391.41(b)(11), to 17 individuals based on an evaluation of each driver's safety experience. Safety analysis of information relating to these 17 applicants meets the burden of showing that granting the exemptions would achieve a level of safety that is equivalent to or greater than the level that would be achieved without the exemption. In accordance with 49 U.S.C. 31315, each exemption will be valid for 2 years from the effective date with annual recertification required unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

FMCSA exempts the following 17 drivers for a period of 2 years from the physical qualification standard concerning hearing: Donald Clupper (DE); Andrew Deuschle (TX); James Dignan (IL); Timothy P. Gallagher (PA); Joseph T. Kelly (PA); Timothy Laporte (GA); James R. Lorshbaugh (MS); Douglas Mader (IL); Jose A. Martinez (TX); Robert M. Mullens (NJ); Tim S. Oyler (UT); Alfredo S. Ramirez (TX); Julie M. Ramirez (TX); Tracy D. Robinson (CA); Linda L. Schmidt (TX); Kirk A. Soneson (OH); and Hayden A. Teesdale (AL).

Issued on: April 17, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–09458 Filed 4–22–15; 8:45 am]

BILLING CODE 4910–EX–P

[1] *Commercial Driver License Information System* (CDLIS) is an information system that allows the exchange of commercial driver licensing information among all the States. CDLIS includes the databases of 51 licensing jurisdictions and the CDLIS Central Site, all connected by a telecommunications network.

[2] *Motor Carrier Management Information System* (MCMIS) is an information system that captures data from field offices through SAFETYNET, CAPRI, and other sources. It is a source for FMCSA inspection, crash, compliance review, safety audit, and registration data.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0124]

Beyond Compliance Program

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for public comment.

SUMMARY: The U.S. Department of Transportation and motor carriers have invested millions of dollars in research, development, and implementation of strategies and technologies to reduce truck and bus crashes. FMCSA is evaluating the impacts of considering a company's proactive voluntary implementation of state-of-the-art best practices and technologies when evaluating the carrier's safety. FMCSA requests responses to specific questions and any supporting data the Agency should consider in the potential development of a Beyond Compliance program. Beyond Compliance would include voluntary programs implemented by motor carriers that exceed regulatory requirements, and improve the safety of commercial motor vehicles and drivers operating on the Nations' roadways by reducing the number and severity of crashes. Beyond Compliance would not result in regulatory relief.

DATES: Comments must be received on or before June 22, 2015.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2015–0124 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The online Federal document management system is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

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

FOR FURTHER INFORMATION CONTACT: Mr. Bill Mahorney, Chief, Enforcement Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, Telephone 202–493–0000, E-Mail: *Bill.Mahorney@dot.gov*.

SUPPLEMENTARY INFORMATION:

FMCSA Research

During the past 10 years, FMCSA, Canada, Australia, and other countries have completed studies that provided information on Beyond Compliance programs and technology. For example, the FMCSA ''Driver Notification Feasibility Study,'' tested the use of an Employer Notification System (ENS) versus the current annual requirement for obtaining a driver motor vehicle record and reviewing the driver qualification files for violations. This report found that when registered carriers in that study received near real-time notification that a driver had been issued a citation, conviction or commercial driver's license disqualification, they took action. This study estimated that Nationwide implementation of ENS could prevent 6,828 crashes and 88 fatalities annually.[1] In addition, in 2005, the Agency completed additional studies on roll stability control systems [2] and tire pressure sensors [3] that demonstrate the safety benefits of these technologies. Likewise, a 2009 FMCSA study, ''Analysis of Benefits and Costs of Lane Departure Warning Systems for the Trucking Industry,'' [4] predicted a reduction of 1,973 injuries and 100 fatalities annually through use of that technology. This report projected that for each $1 spent on this technology, the return on investment was $1.98.

Additionally, in development of the Agency's Compliance, Safety, Accountable program, FMCSA conducted six listening sessions. In those sessions, it was agreed that an incentive-based approach to improving carrier safety would be a more effective tool than the current penalty-based system.

Transportation Research Board (TRB)

In 2007, the TRB explored the potential for integrating certification programs with regulatory frameworks.[5] The TRB research suggested that a pilot program for Beyond Compliance activities, certification, and identification of best practices be conducted. The 2007 report concluded that Beyond Compliance programs could provide significant incentives for carriers to adopt best practices. However, that study recommended additional research was needed to determine the level of effectiveness that a Beyond Compliance approach would have on safety.

On April 3, 2014, TRB's Truck and Bus Safety Research Committee published its ''Overview of Truck and Bus Safety Research Needs,'' which included a request for implementation of a Beyond Compliance pilot test to ''Develop, evaluate and promote new safety strategies, including technology applications, for appropriate carriers using discrete incentives or inducements, such as tax credits or exemptions relating to FMCSA's

[1] Smith, M., Owens, N., Stock, D., Lantz, B., Murray, D. and Sensiba, G. 2005. Driver Violation Notification Service Feasibility Study. Prepared by Science Applications International Corporation for the Federal Motor Carrier Safety Administration, USDOT.

[2] Murray, D., S. Shackelford and A. Houser. *Analysis of Benefits and Costs of Roll Stability Control Systems for the Trucking Industry.* Publication FMCSA–RRT–09–020. Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 2009.

[3] FMCSA. July 2005. Technical Brief: Commercial Motor Vehicle Tire Pressure Sensors. Federal Motor Carrier Safety Administration, U.S. Department of Transportation.

[4] Murray, D., S. Shackelford and A. Houser. *Analysis of Benefits and Costs of Lane Departure Warning Systems for the Trucking Industry.* Publication FMCSA–RRT–09–022. Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 2009.

[5] Bergoffen, G., Short, J., Inderbitzen, B. and Daecher, C. 2007. Commercial Truck and Bus Safety Synthesis 12: Commercial Motor Vehicle Carrier Safety Management Certification. Transportation Research Board.

Compliance, Safety, Accountability (CSA) system.''[6]

American Transportation Research Institute (ATRI)

In January 2011, the American Transportation Research Institute (ATRI) released a report titled, ''Assessing the Benefits of Alternative Compliance.''[7] The ATRI research was premised on the hypothesis that new approaches were needed to achieve the next significant improvement in the national highway safety statistics. The ATRI report identified possible alternatives for giving credit against things like Behavior Analysis System Improvement Category (BASIC) scores, based on motor carrier activities that are believed to provide safety and/or crash reduction benefits. In its analysis, ATRI considered carrier safety data for pre- and post-Compliance Review time periods. These were cross-factored by fleet sizes to determine the safety impact and significance of existing versus emerging safety compliance. Carrier Compliance Reviews and out-of-service rates were examined based on the safety rating received and carrier size to determine whether a Beyond Compliance program would benefit certain fleet sizes. Previous pre- and post-Compliance Review crash rate data were examined to identify carriers most affected by traditional compliance activities.

The ATRI report also considered implementation methods such as the Inspection Selection System (ISS). ATRI hypothesized that participation in a Beyond Compliance program could mean that a carrier would be provided with a 20 point leeway on the ISS inspection value. For example, an original ISS score of 60 would be modified by 20 points resulting in a new value of 40. Therefore, the Beyond Compliance program would be used as a reward system for carriers. The ATRI report also proposed credit in FMCSA's Safety Measurement System (SMS) for voluntary participation. ATRI also proposed other incentives beyond FMCSA's jurisdiction, including insurance costs decreases and tax credits.

Other Programs

FMCSA is aware of other non-governmental safety-related programs that have been voluntarily implemented by some motor carriers because they resulted in cost savings and safety benefits. These include, but are not limited to:

- North American Fatigue Management Program;
- ISO 9000;
- National Private Truck Council's Best Practices Program;
- North American Transportation Management Institute's (NATMI) Certification Program;
- Partners in Compliance (PIC);

Outside of the United States, FMCSA is aware of the successful implementation of the Maintenance Management Accreditation Scheme, the Australian Trucking Association's TruckSafe Program, and the Canadian Standards Association Safety Management System, which all encourage voluntary best practices and safety improvement programs.

FMCSA's Waiver, Exemption, and Pilot Programs

FMCSA is not considering regulatory relief as part of the Beyond Compliance program, because the Agency already has an existing process for seeking waivers for up to 90 days, applying for exemptions of up to 2 years (which can be renewed), and pilot programs that may run for up to 3 years. Through each of these processes, the Agency can provide relief from certain safety regulations as long as the terms and conditions of the waiver, exemption or pilot program ensure a level of safety equivalent to or greater than what would be achieved through compliance with the safety regulations. These processes are explained in 49 CFR part 381.

A pilot program is a formal project established by FMCSA in accordance with Part 381 to test the effectiveness of certain safety strategies or technologies, using a group of carriers and/or drivers. A pilot program includes relief from specified regulations during the life of the pilot program, up to 3 years, to allow testing of alternatives. Part 381 includes formal requirements for a pilot program.

While FMCSA is not considering waivers, exemptions, and pilot programs as Beyond Compliance, the Agency welcomes the opportunity to work with the private sector to conduct demonstration projects. A demonstration project is an informal effort, to show that certain safety strategies can be effective in reducing crashes. Individual carriers or groups of carriers may design and implement their own demonstration projects, or voluntarily participate in any sponsored by FMCSA.

Motor Carrier Safety Advisory Committee (MCSAC) Tasking

On March 30, 2015, FMCSA tasked the MCSAC with providing recommendations to the Agency on the potential benefits and feasibility of voluntary compliance and ways to credit carriers and drivers who initiate and establish programs that promote safety beyond the standards established in FMCSA regulations.

The Agency specifically asked for the views of the MCSAC on this concept, with any data or analysis to support it with regard to 3 basic areas:

1. What voluntary technologies or safety program best practices would be appropriate for beyond compliance?
2. What type of incentives would encourage motor carriers to invest in technologies and best practices programs?
3. How would FMCSA verify the voluntary technologies or safety programs were being implemented?

Per the tasking to the MCSAC, a letter report should be provided to the Administrator outlining recommendations on incentives for increased safety compliance by the MCSAC's June 2015 meeting.

Request for Comments

In determining possible development of a Beyond Compliance program, FMCSA seeks responses to the following specific questions and encourages the submission of any other reports or data on this issue.

1. What voluntary technologies or safety program best practices would be appropriate for a Beyond Compliance program?
2. What safety performance metrics should be used to evaluate the success of voluntarily implemented technologies or safety program best practices?
3. What incentives would encourage motor carriers to invest in technologies and best practices programs?

a. Credit on appropriate SMS scores (*e.g.,* credit in Driver Fitness for use of an employer notification system)?

b. Credit on ISS scores?

c. Reduction in roadside inspection frequency?

d. Other options?

4. What events should cause the incentives to be removed?

a. If safety goals for the carrier are not consistently achieved, what is the benefit to the motoring public?

5. Should this program be developed by the private sector like PrePass, ISO 9000, or Canada's Partners in Compliance (PIC)?

[6] *http://rns.trb.org/dproject.asp?n=36343.*

[7] ''Assessing the Benefits of Alternative Compliance,'' January 2011, Daniel C. Murray, Steve Keppler, Micah Lueck, Katie Fender, American Transportation Research Institute, St. Paul, MN.

6. How would FMCSA verify that the voluntary technologies or safety programs were being implemented?

Issued on: April 17, 2015.

T.F. Scott Darling, III,

Chief Counsel.

[FR Doc. 2015–09463 Filed 4–22–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0154; FMCSA–2012–0332]

Qualification of Drivers; Application for Exemptions; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to grant requests from 4 individuals for exemptions from the Agency's physical qualifications standard concerning hearing for interstate drivers. The current regulation prohibits individuals who do not meet the standard from operating CMVs in interstate commerce. After notice and opportunity for public comment, the Agency concluded that granting exemptions for these CMV drivers will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions. The exemptions are valid for a 2-year peiod and may be renewed, and the exemptions preempt State laws and regulations.

DATES: The exemptions are effective April 23, 2015. The exemptions expire on April 24, 2017.

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Office of Carrier, Driver and Vehicle Safety, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

A. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

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

B. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the safety regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The current provisions of the FMCSRs concerning hearing state that a person is physically qualified to drive a CMV if that person:

> First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

49 CFR 391.41(b)(11). This standard was adopted in 1970, with a revision in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

FMCSA grants 4 individuals an exemption from the regulatory requirement in § 391.41(b)(11) allowing individuals who do not meet the hearing requirements to operate CMVs in interstate commerce for a 2-year period. The Agency's decision on these exemption applications is based on the current medical literature and information and the ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety'' (the 2008 Evidence Report) presented to FMCSA on August 26, 2008. The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) No studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed the applicant's driving record found in the CDLIS,[1] for CDL holders, and interstate and intrastate inspections recorded in MCMIS.[2] The Agency acknowledges there could be potential consequences of a driver being hearing impaired and/or deaf while operating a CMV under some scenarios. However, the Agency believes the drivers covered by the exemptions do not pose a risk to public safety.

C. Comments

FMCSA announced the exemption applications and requested public comment for each of the applicants in the notices below. For those applicants discussed in a previous notice but who are not mentioned in this notice, the Agency has announced its decision in a previous notice.

Docket # FMCSA–2012–0154

On May 25, 2012, FMCSA published a notice of receipt of exemption applications and requested public comment on 45 individuals. The comment period ended on July 30, 2012. This application was in response to a request from the National Association of the Deaf (NAD). In response to this notice, FMCSA received 570 comments and granted 40 exemptions. The 570 comments were addressed in the Agency's notice published on February 1, 2013 (78 FR 7479).

Docket # FMCSA–2012–0332

On July 16, 2013, FMCSA published a notice of receipt of exemption applications and requested public comment on 9 individuals. The comment period ended on August 15, 2013. In response to the notice, FMCSA received seven comments. All seven commenters support the idea of granting exemptions.

D. Exemptions Granted

Following individualized assessments of the exemption applications, FMCSA grants exemptions from 49 CFR 391.41(b)(11) to 4 individuals. Under current FMCSA regulations, all of the 4 drivers receiving exemptions from 49 CFR 391.41(b)(11) would have been

[1] *Commercial Driver License Information System* (CDLIS) is an information system that allows the exchange of commercial driver licensing information among all the States. CDLIS includes the databases of 51 licensing jurisdictions and the CDLIS Central Site, all connected by a telecommunications network.

[2] *Motor Carrier Management Information System* (MCMIS) is an information system that captures data from field offices through SAFETYNET, CAPRI, and other sources. It is a source for FMCSA inspection, crash, compliance review, safety audit, and registration data.

considered physically qualified to drive a CMV in interstate commerce except that they do not meet the hearing requirement. FMCSA has determined that the following applicants should be granted an exemption.

Donald Lynch

Mr. Lynch, 38, holds a driver's license from the state of Florida.

Zachary Rietz

Mr. Rietz, 32, holds a driver's license from the state of Texas.

Bryon Smith

Mr. Smith, 28, holds a driver's license from the state of Louisiana.

Billy J. Warnock

Mr. Warnock, 43, holds a driver's license from the state of Indiana.

E. Basis for Exemption

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the hearing standard in 49 CFR 391.41(b)(11) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. With the exemption, applicants can drive in interstate commerce. Thus, the Agency's analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce. Based on its review of each driver's record, the Agency has concluded that allowing these applicants to drive in interstate commerce will achieve an equal level of safety. Each driver must comply with the terms and conditions of the exemption. This includes reporting any crashes or accidents as defined in 49 CFR 390.5 and reporting all citations and convictions for disqualifying offenses under 49 CFR part 383 and 40 CFR part 391.

Conclusion

The Agency is granting exemptions from the hearing standard, 49 CFR 391.41(b)(11), to 4 individuals based on an evaluation of each driver's safety experience. Safety analysis of information relating to these 4 applicants meets the burden of showing that granting the exemptions would achieve a level of safety that is equivalent to or greater than the level that would be achieved without the exemption. By granting the exemptions, the CMV industry will gain 4 additional CMV drivers. In accordance with 49 U.S.C. 31315, each exemption will be valid for 2 years from the effective date with annual recertification required unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

FMCSA exempts the following 4 drivers for a period of 2 years from the physical qualification standard concerning hearing: Donald Lynch (FL); Zachary Rietz (TX); Byron Smith (LA); and Billy J. Warnock (IN).

Issued on: April 17, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–09453 Filed 4–22–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0305]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions, request for comments.

SUMMARY: FMCSA announces receipt of applications from 35 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce.

DATES: Comments must be received on or before May 26, 2015. All comments will be investigated by FMCSA. The exemptions will be issued the day after the comment period closes.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2014–0305 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Carrier, Driver and Vehicle Safety Standards, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds

''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 35 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

Donald A. Becker, Jr.

Mr. Becker, 39, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is counting fingers, and in his left eye, 20/15. Following an examination in 2014, his ophthalmologist stated, ''In your medical opinion, Patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle, Yes [*sic*].'' Mr. Becker reported that he has driven straight trucks for 13 years, accumulating 195,000 miles. He holds a chauffer's license from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ronald G. Bradley

Mr. Bradley, 50, has had a macular scar in his left eye since 2005. The visual acuity in his right eye is 20/20, and in his left eye, 20/90. Following an examination in 2014, his optometrist stated, ''I have been asked to submit a signed statement certifying that Mr. Bradley has sufficient vision to drive a commercial vehicle . . . While his visual condition could change, my professional opinion is that since this condition has been stable for nearly ten years, I would expect it to continue to remain the same.'' Mr. Bradley reported that he has driven straight trucks for 32 years, accumulating 73,600 miles, and tractor-trailer combinations for 32 years, accumulating 320,000 miles. He holds a Class A CDL from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Rober J. Bruce

Mr. Bruce, 63, has had optic atrophy in his left eye since 2011. The visual acuity in his right eye is 20/25, and in his left eye, 20/70. Following an examination in 2014, his neurologist stated, ''In my opinion, based on these evaluations, Mr. Bruce has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Bruce reported that he has driven straight trucks for 12 years, accumulating 120,000 miles. He holds an operator's license from Arizona. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Mark A. Carter

Mr. Carter, 63, has had enucleation in his right eye due to a traumatic incident in 1977. The visual acuity in his right eye is no light perception, and in his left eye, 20/15. Following an examination in 2014, his optometrist stated, ''In my medical opinion I feel mark has sufficient vision to operate a commercial vehicle.'' Mr. Carter reported that he has driven straight trucks for 40 years, accumulating 20,000 miles, and tractor-trailer combinations for 43 years, accumulating 3.44 million miles. He holds a Class A CDL from Oklahoma. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

William T. Costie

Mr. Costie, 51, has had optic nerve hypoplasia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/80. Following an examination in 2014, his ophthalmologist stated, ''Mr. Costie is a 51 year old gentleman who has congenital optic nerve hypoplasia in the left eye . . . It is my opinion that this gentleman has not had, nor should have in the future, any problem driving a commercial vehicle.'' Mr. Costie reported that he has driven straight trucks for 10 years, accumulating 36,000 miles, and tractor-trailer combinations for 5 years, accumulating 500,000 miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows one crash, to which he did contribute but was not cited, and no convictions for moving violations in a CMV.

Donald W. Donaldson

Mr. Donaldson, 55, has a corneal scar in his right eye due to a traumatic incident in 1995. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''Visual field is adequate to operate a commercial vehicle and condition has been stable to for years without adverse effect on driving ability. Mr. Donaldson has adequate acuity and color perception to continue operating a commercial vehicle safely.'' Mr. Donaldson reported that he has driven tractor-trailer combinations for 30 years, accumulating 2.25 million miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Glenn E. Dowell

Mr. Dowell, 58, has aphakia in his left eye due to a traumatic incident in 1990. The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2014, his optometrist stated, ''I feel he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Dowell reported that he has driven tractor-trailer combinations for 40 years, accumulating two million miles. He holds an operator's license from Indiana. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he exceeded the speed limit by 10 mph.

James L. Duck

Mr. Duck, 70, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/25. Following an examination in 2014, his optometrist stated, ''Mr. Duck has had poor vison in his right eye since he was a child. This condition is stable, and he has compensated and adapted to this condition his entire adult life. As such, he still has sufficient visual acuity to perform the driving tasks required to operate a commercial vehicle.'' Mr. Duck reported that he has driven straight trucks for 50 years, accumulating 875,000 miles, tractor-trailer combinations for 50 years, accumulating 875,000 miles. He holds an operator's license from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Terrence R. Ervin

Mr. Ervin, 59, has complete loss of vision in his left eye due to a traumatic incident in 1992. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2014, his ophthalmologist stated, ''He knows and understands the precautions that are necessary for driving; therefore, his vision is sufficient to perform the driving tasks required to operate a commercial vehicle.'' Mr. Ervin reported that he has driven tractor-trailer combinations for 13 years, accumulating 2.6 million miles. He holds a Class A CDL from California. His driving record

for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Douglas E. Hetrick

Mr. Hetrick, 57, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2014, his ophthalmologist stated, ''Mr. Hetrick has a history of amblyopia in his left eye since childhood that is stable. . .With the following testing noted above, I believe that Mr. Hetrick is able to operate a commercial vehicle.'' Mr. Hetrick reported that he has driven straight trucks for 40 years, accumulating 50,000 miles. He holds a Class A CDL from Colorado. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Arthur R. Hughson

Mr. Hughson, 50, has had a deformed retina in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2015, his optometrist stated, ''His excellent driving record and adaptation to his visual status makes him a safe driver for a CDL.'' Mr. Hughson reported that he has driven straight trucks for 5 years, accumulating 500,000 miles, and tractor-trailer combinations for 3 years, accumulating 180,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Marc R. Johnston

Mr. Johnston, 54, has complete loss of vision in his left eye due to a traumatic incident in 1999. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2014, his optometrist stated, ''Mr. Johnston's right eye is very healthy. . .He is still able to drive a commercial vehicle.'' Mr. Johnston reported that he has driven tractor-trailer combinations for 31 years, accumulating 525,512 miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Joseph M. Jones

Mr. Jones, 70, has a retinal scar in his right eye due to a traumatic incident during childhood. The visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2014, his ophthalmologist stated, ''Mr. Jones has visual acuity of count fingers only in the right eye. . .I feel that the patient is qualified to obtain a commercial driver's license.'' Mr. Jones reported that he has driven tractor-trailer combinations for 20 years, accumulating 740,000 miles. He holds a Class A CDL from Idaho. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Larry C. Kautz

Mr. Kautz, 49, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/70, and in his left eye, 20/25. Following an examination in 2014, his optometrist stated, ''In my opinion, Larry Kautz has sufficient vision to operate a commercial vehicle.'' Mr. Kautz reported that he has driven straight trucks for 12 years, accumulating 10,800 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Theodore J. Kenyon

Mr. Kenyon, 73, has had refractive amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/40, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''He has a history of refractive amblyopia (lazy eye) in his RE since childhood. . . In my medical opinion Mr. Theodore Kenyon is qualified to drive a commercial vehicle on public roadways.'' Mr. Kenyon reported that he has driven straight trucks for 55 years, accumulating 825,000 miles, and tractor-trailer combinations for 30 years, accumulating 300,000 miles. He holds a Class A CDL from Vermont. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Howard H. Key, Jr.

Mr. Key, 54, has had a central macula scar in his right eye since 1989. The visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''In my opinion Mr. Key has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Key reported that he has driven straight trucks for 22 years, accumulating 440,000 miles. He holds an operator's license from Arkansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Bernard Khraich

Mr. Khraich, 38, has light perception in his right eye due to a traumatic incident during childhood. The visual acuity in his right eye is light perception, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''Capable of driving a commercial vehicle, has sufficient vision.'' Mr. Khraich reported that he has driven straight trucks for 10 years, accumulating 50,000 miles, tractor-trailer combinations for six years, accumulating 1,200 miles, and buses for five years, accumulating 500 miles. He holds an operator's license from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Bradley R. King

Mr. King, 58, has complete loss of vision in his right eye due to a traumatic incident in 1979. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2014, his ophthalmologist stated, ''Brad has sufficient vision to perform the driving tasks that are required to continue to operate a commercial vehicle.'' Mr. King reported that he has driven straight trucks for 42 years, accumulating 42,000 miles, and tractor-trailer combinations for 4 years, accumulating 28,000 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David C. Leoffler

Mr. Leoffler, 51, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2014, his optometrist stated, ''His Amblyopia was not successfully treated in early childhood, resulting in permanent monocular vision impairment. It is my professional judgment that Mr. Leoffler can safely and proficiently operate a commercial vehicle.'' Mr. Leoffler reported that he has driven straight trucks for 20 years, accumulating 600,000 miles, and tractor-trailer combinations for 20 years, accumulating 1.8 million miles. He holds a Class A CDL from Colorado. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Melvin D. Moffett

Mr. Moffett, 70, has had a retinal detachment in his left eye since 1999. The visual acuity in his right eye is 20/40, and in his left eye, 20/100. Following an examination in 2015, his

ophthalmologist stated, ''Posterior segment examination performed previously revealed evidence of an old, treated retinal detachment present in the patient's left eye . . . It appears at this time that Mr. Moffett should be able to operate a commercial vehicle appropriately.'' Mr. Moffett reported that he has driven straight trucks for 40 years, accumulating 80,000 miles. He holds an operator's license from Kentucky. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Armando F. Pedroso

Mr. Pedroso, 34, has corneal scarring in his right eye due to a traumatic incident during childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/15. Following an examination in 2014, his optometrist stated, ''It is my opinion that Mr. Armando Pedroso has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Pedroso reported that he has driven straight trucks for 8.5 years, accumulating 340,000 miles. He holds a Class B CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Quang M. Pham

Mr. Pham, 29, has had a large choroidal scar over macula in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2014, his optometrist stated, ''With both eyes open patient has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Pham reported that he has driven tractor-trailer combinations for 2 years, accumulating 52,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

William A. Ramirez Vazquez

Mr. Ramirez Vazquez, 37, has had chorioretinal scar in his left eye since 2001. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2014, his optometrist stated, ''In my medical opinion, William has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Ramirez Vazquez reported that he has driven straight trucks for 15 years, accumulating 150,000 miles, and tractor-trailer combinations for 4 years, accumulating 400,000 miles. He holds an operator's license from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Donald W. Randall

Mr. Randall, 55, has complete loss of vision in his left eye due to a traumatic incident during childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2014, his optometrist stated, ''He presented with a desire to get a CDL. There is no visual hindrance in the right eye that would inhibit his driving.'' Mr. Randall reported that he has driven straight trucks for 20 years, accumulating 20,000 miles, and tractor-trailer combinations for 20 years, accumulating 20,000 miles. He holds a Class A CDL from Utah. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Glen E. Robbins

Mr. Robbins, 71, has had a central macular scar in his right eye since 1963. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2014, his ophthalmologist stated, ''Based on the visual field extent demonstrated on the formal visual field, I feel he has sufficient vision to perform driving tasks in regards to operating a commercial vehicle.'' Mr. Robbins reported that he has driven straight trucks for 3.5 years, accumulating 223,562 miles, and tractor-trailer combinations for 48 years, accumulating 4.8 million miles. He holds a Class A CDL from Wyoming. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Enrique F. Rodriguez Gonzalez

Mr. Rodriguez Gonzalez, 45, has had glaucoma in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/50. Following an examination in 2014, his optometrist stated, ''This patient has sufficient clarity and visual field to operate a commercial motor vehicle safely.'' Mr. Rodriguez Gonzalez reported that he has driven straight trucks for 10.5 years, accumulating 273,000 miles. He holds an operator's license from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ronald P. Schoborg

Mr. Schoborg, 76, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2015, his ophthalmologist stated, ''I believe Mr. Schoborg has sufficient vision to perform the tasks necessary to drive a commercial vehicle.'' Mr. Schoborg reported that he has driven buses for 12 years, accumulating 396,000 miles. He holds a Class A CDL from Arkansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Raymond Sherrill

Mr. Sherrill, 40, has complete loss of vision in his left eye due to a traumatic incident in 2013. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2015, his optometrist stated, ''My opinion no visual problems to prohibit from commercial vehicle operation.'' Mr. Sherrill reported that he has driven straight trucks for 21 years, accumulating 63,000 miles. He holds a Class BM CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Roger D. Simpson

Mr. Simpson, 68, has had ischemic optic neuropathy in his right eye since 2009. The visual acuity in his right eye is 20/200, and in his left eye, 20/25. Following an examination in 2014, his optometrist stated, ''I explained to Mr. Simpson that his visual function appears stable and it is my medical opinion that he is able to continue to have sufficient vision to drive as a commercial driver adequately.'' Mr. Simpson reported that he has driven straight trucks for six months, accumulating 500 miles, and tractor-trailer combinations for 20 years, accumulating three million miles. He holds an operator's license from Arkansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Mehrzad Tavanaie

Mr. Tavanaie, 49, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2014, his optometrist stated, ''Amblyopic left eye has existed since birth. Patient is competent & comfortable in driving professionally for many year. Patient has been driving commercially [*sic*] for 19 yrs [*sic*] without incident.'' Mr. Tavanaie reported that he has driven tractor-trailer combinations for 19 years, accumulating 100,000 miles. He holds a Class A CDL from California. His driving record for the last 3 years shows

no crashes and no convictions for moving violations in a CMV.

Steven M. Tewhill

Mr. Tewhill, 49, has had ocular histoplasmosis in his left eye since 2007. The visual acuity in his right eye is 20/20, and in his left eye, 20/150. Following an examination in 2014, his optometrist stated, ''After thorough examination, it is my professional opinion that Mr. Tewhill has sufficient vision to perform his driving tasks to operate a commercial vehicle.'' Mr. Tewhill reported that he has driven straight trucks for 32 years, accumulating 16,000 miles, and tractor-trailer combinations for 10 years, accumulating 10,200 miles. He holds a Class A CDL from Arkansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Brett E. Thomas

Mr. Thomas, 46, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/50. Following an examination in 2014, his optometrist stated, ''His vision is great, and he is able to sufficiently able to operate a commercial vehicle safely!'' Mr. Thomas reported that he has driven straight trucks for 8.5 years, accumulating 85,000 miles, and tractor-trailer combinations for 8.5 years, accumulating 170,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Keith E. Thompson

Mr. Thompson, 40, has a severed optic nerve in his left eye due to a traumatic incident in 1994. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2014, his optometrist stated, ''Mr. Thompson has fully adapted to his monocular condition using visual cues to fill in for binocular situations (*i.e.* size, occlusion etc.). In my professional opinion, he is capable in handling any commercial truck while driving.'' Mr. Thompson reported that he has driven straight trucks for 21 years, accumulating 630,000 miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jeffrey W. Tucker

Mr. Tucker, 47, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2014, his optometrist stated, ''In my opinion, Mr. Tucker has sufficient vision to perform all driving tasks required to operate a commercial vehicle.'' Mr. Tucker reported that he has driven straight trucks for 5 years, accumulating 130,000 miles. He holds a chauffeur's license from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Thomas W. Workman

Mr. Workman, 63, has complete loss of vision in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2014, his optometrist stated, ''In my medical opinion, Thomas has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Workman reported that he has driven straight trucks for 45 years, accumulating 1.8 million miles. He holds a Class B CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

III. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and put the docket number FMCSA–2014–0304 in the ''Keyword'' box, and click ''Search. When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and insert the docket number FMCSA–2014–0304 in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued On: April 17, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–09460 Filed 4–22–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2015–0022]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated March 2, 2015, the City of Fort Collins (City), Colorado, has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 222, Use of Locomotive Horns at Public Highway-Rail Grade Crossings. FRA assigned the petition Docket Number FRA–2015–0022.

The City intends to establish a quiet zone that is 1.6 miles in length, consisting of 12 public highway-rail grade crossings on the BNSF Railway in the downtown area. The City is seeking a waiver from the requirements of 49 CFR 222.35(b) in order to permit the use of automatic warning devices consisting of flashing lights at seven of the public highway-rail grade crossings instead of the required automatic warning devices consisting of flashing lights and gates.

A copy of the petition, as well as any written communications concerning the

petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by June 8, 2015 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*. See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC, on April 14, 2015.

Ron Hynes,

Director, Office of Technical Oversight.

[FR Doc. 2015–09545 Filed 4–22–15; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Safety Advisory 2015–02]

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2015–0118, Notice No. 15–11]

Hazardous Materials: Information Requirements Related to the Transportation of Trains Carrying Specified Volumes of Flammable Liquids

AGENCY: Federal Railroad Administration (FRA) and Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of safety advisory.

SUMMARY: FRA and PHMSA are issuing this notice to remind railroads operating a ''high hazard flammable train'' (HHFT)—defined as a train comprised of 20 or more loaded tank cars of a Class 3 flammable liquid in a continuous block, or a train with 35 or more loaded tank cars of a Class 3 flammable liquid across the entire train—as well as the offerors of Class 3 flammable liquids transported on such trains, that certain information may be required by PHMSA and/or FRA personnel during the course of an investigation immediately following an accident.

FOR FURTHER INFORMATION CONTACT: Karl Alexy, Staff Director, Hazardous Materials Division, Office of Technical Oversight, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590; (202) 493–6245, or via email: *karl.alexy@dot.gov;* and Richard Raksnis, Director Field Services, Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590. Telephone (202) 366–4455 or, via-email: *Richard.raksnis@dot.gov.*

SUPPLEMENTARY INFORMATION: Due to recent derailments involving HHFTs, FRA and PHMSA have conducted several post-accident investigations and wish to ensure that stakeholders are fully aware of each agency's investigative authority and cooperate with agency personnel conducting such investigations, where time is of the essence in gathering evidence. Therefore, PHMSA and FRA are issuing this Safety Advisory notice to remind railroads operating HHFTs, and offerors of Class 3 flammable liquids being transported aboard those trains, of their obligation to provide PHMSA and FRA, as expeditiously as possible, with information agency personnel need to conduct investigations immediately following an accident or incident.

Federal law authorizes the Secretary of Transportation (Secretary) to investigate rail accidents. Among other things, related to railroad safety generally, the Department can subpoena witness testimony, inspect track, cars, and other equipment, and require (including by subpoena) the production of records and other evidence. 49 U.S.C. 20107, 20902 [1] FRA's regulations set forth its general accident investigation procedures at 49 CFR 225.31.

Federal law also authorizes the Secretary to investigate accidents involving hazardous materials, 49 U.S.C. 5121, and in so doing require (including by subpoena) the production of records, inspect packages, and gather other evidence. Where Federal law requires the maintenance of records related to hazardous materials transportation, Section 5121 obligates those responsible for maintaining such records to provide them to DOT personnel during the course of such investigations. PHMSA has promulgated rules at 49 CFR part 109 establishing investigative procedures for that agency under this authority.[2] The Secretary has also delegated FRA the authority to investigate rail accidents and incidents involving the transportation of hazardous material for compliance with the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*) and its implementing regulations. *See* 49 CFR 1.89(j). Stakeholder cooperation with a PHMSA or FRA investigation following an accident is critically important to transportation safety. Thus, PHMSA and FRA issue this joint Safety Advisory to remind stakeholders of their obligations to maintain and make available records concerning hazardous materials transportation in accordance with law and DOT regulations, and to explain that the following information is likely to prove important to PHMSA and FRA personnel during the course of an investigation—and thus should be

[1] The FRA Administrator may exercise this investigative authority pursuant to a delegation from the Secretary. 49 CFR 1.88(c), 1.89(a).

[2] The PHMSA Administrator may exercise this investigative authority pursuant to a delegation of the Secretary. 49 CFR 1.96 and 1.97.

provided as expeditiously as possible, upon request:

- Information on the train consist, including the train number, locomotive(s), locomotives as distributed power, end-of-train device information, number and position of tank cars in the train, tank car reporting marks, and the tank car specifications and relevant attributes [3] of the tank cars in the train.
- Waybill (origin and destination) information.
- The Safety Data Sheet(s) (SDS), or any other document used to provide comprehensive emergency response and incident mitigation information.
- Results of any product testing undertaken prior to transportation that was used to properly characterize the Class 3 flammable liquids for transportation (initial testing).
- Results from any analysis of product samples (taken prior to being offered into transportation) from tank car(s) involved in the derailment.
- Date of acceptance as required to be noted on shipping papers under 49 CFR 174.24.
- If a flammable liquid is involved, the type of liquid and the name and location of the company extracting the material.[4]
- The identification of the company having initial testing performed (sampling and analysis of material) and information on the lab (if external) conducting the analysis.
- Name and location of the company transporting the material from well head to loading facility or terminal.
- Name and location of the company that owns and that operates the terminal or loading facility that loaded the product for rail transportation.
- Name of the Railroad(s) handling the tank car(s) at any time from point of origin to destination and a timeline of handling changes between railroads.

FRA and PHMSA encourage railroad industry members to take actions that are consistent with the preceding discussion and to take other complementary actions to help ensure the safety of the Nation's railroads. FRA and PHMSA may modify this Safety Advisory, issue additional safety advisories, or take other appropriate actions necessary to ensure the highest level of safety on the Nation's railroads, including pursuing other corrective measures under their safety authority.

Issued in Washington, DC on April 17, 2015.

Timothy P. Butters,

Acting Administrator, Pipeline and Hazardous Materials Safety Administration.

Sarah E. Feinberg,

Acting Administrator, Federal Railroad Administration.

[FR Doc. 2015–09437 Filed 4–22–15; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Delayed Applications

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of application delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

Key to "Reason for Delay"

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of special permit applications

Meaning of Application Number Suffixes

N—New application

M—Modification request R—Renewal Request

P—Party To Exemption Request

Issued in Washington, DC, on April 8, 2015.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Applicant	Reason for delay	Estimated date of completion
Modification to Special Permits			
15642–M	Praxair Distribution, Inc., Danbury, CT	4	04–13–2015
11903–M	Comptank Corporation, Bothwell, ON	4	04–10–2015
13961–M	3AL Testing Corp., Centennial, CO	4	05–10–2015
11914–M	Cascade Designs, Inc., Seattle, WA	4	4–21–2015
15393–M	Savannah Acid Plant LLC, Savannah, GA	3	04–30–2015
8451–M	Special Devices, Inc., Mesa, AR	4	04–30–2015
15767–N	Union Pacific Railroad Company, Omaha, NE	1	05–20–2015
16001–N	VELTEK ASSOCIATES, INC., Malvern, PA	4	05–31–2015
16190–N	Digital Wave Corporation, Centennial, CO	4	05–20–2015
16198–N	Fleischmann's Vinegar Company, Inc., CERRITOS, CA	4	04–15–2015
16181–N	Arc Process, Inc., Pflugerville, TX	4	05–13–2015
16212–N	Entegris, Inc., Billerica, MA	4	04–30–2015
16220–N	Americase, Waxahache, TX	4	04–30–2015
16193–N	CH&I Technologies, Inc., Santa Paula, CA	4	05–20–2015
16261–N	Dexsil Corporation, Hamden, CT	4	05–31–2015
16238–N	Entegris, Inc., Billerica, MA	4	05–20–2015
16241–N	Linde Gas North America LLC, Murray Hill, NJ	4	04–15–2015
16274–N	Matheson Tri-Gas, Inc., Longmont, CO	4	05–31–2015

[3] Relevant attributes include information related to thermal protection, shell and head thickness, steel specification and grade, head shield, and pressure relief valve setting.

[4] For a manufactured flammable liquid, the manufacturer will be identified on the SDS.

Application No.	Applicant	Reason for delay	Estimated date of completion
16232–N	Linde Gas North America LLC, Murray Hill, NJ	1	04–20–2015
16249–N	Optimized Energy Solutions, LLC, Durango, CO	4	04–30–2015
11860–R	GATX Corporation, Chicago, IL	4	04–30–2015
15765–R	Delphi Automotive Systems, LLC, Kokomo, IN	4	05–15–2015

[FR Doc. 2015–09354 Filed 4–22–15; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials; Notice of Application for Modification of Special Permit

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, PHMSA, DOT.

ACTION: List of application for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the sun (''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before May 8, 2015.

ADDRESSES: *Address Comments To:* Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(6)).

Issued in Washington, DC, on April 8, 2015.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
		MODIFICATION SPECIAL PERMITS		
0587–M1		Thermo King Corporation Minneapolis, MN.	49 CFR 177.834(12)(i)	To modify the special permit to authorize a new series of heaters containing Class 3 liquids and/or Division 2.1 gases.
11911–M		Transfer Flow, Inc. Chico, CA.	49 CFR 177.834(h), and 178.700(c)(1).	To modify the special permit to remove the requirement that the discharge outlet is at the highest point of the tank.
12187–M		ITW Sexton Decatus, AL	49 CFR 173.304a; 175.3; 178.65.	To modify the special permit to raise the size for inner non-refillable metal receptacles to a water capacity of 61.0 cubic inches and add additional hazardous materials.
14437–M		Columbiana Boiler Company (CBCo) LLC Columbiana, OH.	49 CFR 179.300	To modify the special permit to authorize an additional manufacturing specification CBC 106W and the removal of clarification of language inconsistent with 179.300–19.
14778–M		Sea-Fire Marine Baltimore, MD.	49 CFR 173.301(f)	To modify the special permit to authorize non-DOT specification cylinders being used on foreign vessel to be transported for service while the vessel is in USA water.
14808–M1		Amtrol-Alfa Metalomecanica, S.A. West Warwick, RI.	49 CFR 178.51(b), (f)(1) and (2) and (g).	To modify the special permit to raise the maximum water capacity to 35.8 liters (9.5 US gallons).
14849–M		Call2Recycle, Inc. Atlanta, GA.	49 CFR 172.200, 172.300, 172.400.	To modify the special permit to remove the size restrictions for non-spillable batteries, add rail shipments and the Virgin Islands as an additional route.
15491–M		Sea-Fire Marine Baltimore, MD.	49 CFR 173.301(f)	To modify the special permit to authorize non-DOT specification cylinders being used on foreign vessel to be transported for service while the vessel is in USA water.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
16142–M	.....	Nontong CIMC Tank Equipment Co. Ltd. Jiangsu, Province.	49 CFR 178.274(b) and 178.276(b)(1).	To modify the special permit to specify the material of construction for the inner shell, raise the design pressure, water specification, and delete the quantity of baffles.

[FR Doc. 2015–09356 Filed 4–22–15; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2015–0099, Notice No. 15–7]

Hazardous Materials: Emergency Response Information Requirements

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice.

SUMMARY: PHMSA is issuing this notice to remind hazardous materials shippers and carriers of their responsibility to ensure that current, accurate and timely emergency response information is immediately available to emergency response officials for shipments of hazardous materials, and such information is maintained on a regular basis.

FOR FURTHER INFORMATION CONTACT: Neal Suchak, Transportation Specialist, Standards and Rulemaking Division, Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590. Telephone: (202) 366–8553 or, via email: *neal.suchak@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background and Recent Incidents

PHMSA is issuing this safety advisory notice to remind offerors, including re-offerors, and carriers of hazardous materials of their responsibilities pertaining to emergency response information. The Hazardous Materials Regulations (HMR; 49 CFR parts 171–180), specifically Subpart G of Part 172, prescribe requirements for detailed emergency response information, including, accessibility and communication of incident mitigation measures.

On February 16, 2015 a CSX train carrying 109 cars of petroleum crude oil derailed in Mt. Carbon, WV. The accident resulted in the derailment of 26 tank cars, 14 of which caught fire. On March 5, 2015, a BNSF train carrying 103 cars of petroleum crude oil derailed in Galena, Il. Of the 21 cars derailed involved in the incident, five caught fire. While the Department is still investigating the circumstances of these incidents, they serve as a reminder that accurate and accessible emergency response information can be a critical component for an adequate emergency response effort.

History

On June 27, 1989, the Research and Special Programs Administration (RSPA; the predecessor to PHMSA) published a final rule in the **Federal Register** that codified requirements to provide certain emergency response information on hazardous materials during their transportation. The final rule emphasized the importance for carriers and first responders to have first-hand, up-to-date, technical and emergency response information for hazardous materials to minimize the consequences and protect property and life where possible in the event of emergency incidents. This rulemaking action was issued as a result of the investigation by the National Transportation Safety Board (NTSB) of an accident which occurred near Odessa, Delaware in October 1982. Following the investigation, the NTSB issued Safety Recommendation I–83–2, which among other provisions, recommended that RSPA, ''Determine by mode of transportation the feasibility of requiring comprehensive product-specific emergency response information, such as Material Safety Data Sheets, to be appended to shipping documents for hazardous materials.'' [1] The requirements issued in the final rule were ''intended to provide specific information relative to the hazards of the materials being transported and provide immediate initial emergency response guidance until further specific information can be obtained from the shipper or others relative to long-term mitigation actions.'' [2]

Current Requirements

With limited exceptions, the HMR require shipments of hazardous materials to be accompanied by shipping papers and other documentation designed to communicate to transport workers and emergency responders the hazards associated with a specific shipment. This information must include the immediate hazard to health; risks of fire or explosion; immediate precautions to be taken in the event of an accident; immediate methods for handling fires; initial methods for handling spills or leaks in the absence of fire; and preliminary first aid measures. The information must be in writing, in English, and presented on a shipping paper or related shipping document. The offeror of a hazardous material is responsible for ensuring the emergency response information is current, correct, and accurate. Re-offerors are permitted to rely on previous data provided they take no intermediate action, such as blending or mixing the material.

A delay or improper response due to a lack of accurate or timely emergency response information may place emergency response personnel, transportation workers, and the general public or the environment at increased risk. Expeditious identification of the hazards and proper instructions for appropriate handling and clean up associated with specific hazardous materials is critical to quickly mitigating the consequences of unintended releases of hazardous materials and other incidents.

Section 172.600(b) of the HMR requires persons who offer for transportation, accept for transportation, transfer, or otherwise handle hazardous materials during transportation to provide emergency response information including an emergency response telephone number. Therefore, the responsibility to provide emergency response information is not solely that of an offeror. This responsibility is shared by those who offer, accept, transfer, or otherwise handle hazardous materials during transportation and must be completed prior to offering hazardous materials into transportation. A current safety data sheet (SDS) that includes accurate emergency response

[1] *http://www.ntsb.gov/safety/safety-recs/recletters/I83_2.pdf.*

[2] 54 FR 27142 (HM–126C).

information for the product being shipped, although not required, is one form of information that may be used to satisfy the emergency response information requirements.

Section 172.602(a)(1) requires that the emergency response information contain the basic description and technical name of the hazardous material as required by §§ 172.202 and 172.203(k). Section 172.602(b)(3) requires that the emergency response information be presented (i) on a shipping paper; (ii) in a document, other than a shipping paper, that includes both the basic description and technical name of the hazardous material (*e.g.* safety data sheet); or (iii) related to the information on a shipping paper, in a separate document (*e.g.,* an emergency response guidance document such as the most current revision of the Emergency Response Guidebook (ERG)), in a manner that cross references the description of the hazardous material on the shipping paper with the emergency response information contained in the document. If a guide number page from the ERG is used, it must include the basic description and, if applicable, the technical name of the hazardous material. If the entire ERG is present, however, the requirements of § 172.602 are satisfied.

Emergency response information must also be immediately available for use. Section 172.600(c) requires any person who offers, accepts, transfers or otherwise handles hazardous materials during transportation not do so unless emergency response information is immediately available for use at all times the hazardous material is present. Additionally, emergency response information, including the emergency response telephone number, must be immediately available to any person who, as a representative of a Federal, State or local government agency, responds to an incident involving a hazardous material, or is conducting an investigation which involves a hazardous material. Section 172.602(c) prescribes the maintenance of emergency response information. This information must be immediately accessible to train crew personnel, drivers of motor vehicles, flight crew members, and bridge personnel on vessels for use in the event of incidents involving hazardous materials. Carriers must maintain emergency response information in the same manner as prescribed for shipping papers (Subpart C of Part 172 of the HMR).

Emergency response information must be accompanied by an emergency response telephone number in accordance with § 172.604. This telephone number must be monitored at all times the hazardous material is in transportation, including storage incidental to transportation. The telephone number must be of a person who is either knowledgeable of the hazardous material being shipped and has comprehensive emergency response and incident mitigation information for that material, or has immediate access to a person who possess such knowledge and information.

NTSB Safety Recommendation R–14–18

As a result of the November 30, 2012 accident in which a Consolidated Rail Corporation train containing hazardous materials derailed, spilling vinyl chloride into Mantua Creek in Paulsboro, New Jersey, the NTSB issued a number of new Safety Recommendations. Among the recommendations issued to PHMSA was R–14–18, which urged PHMSA to ''take action to ensure that emergency response information carried by train crews is consistent with and is at least as protective as existing emergency response guidance provided in the Emergency Response Guidebook.'' [3] We are considering possible alternatives, including regulatory action, to affect this recommendation.

Conclusion

Emergency response information is a critical component of hazardous materials safety. The responsibility to provide accurate and timely information is a shared responsibility for all persons involved in the transportation of hazardous materials. It is a shipper's responsibility to provide accurate emergency response information that is consistent with both the information provided on a shipping paper and the material being transported. Likewise, re-offerors of hazardous materials must ensure that this information can be verified to be accurate, particularly if the material is altered, mixed or otherwise repackaged prior to being placed back into transportation. In addition, carriers must ensure that emergency response information is maintained appropriately, is accessible and can be communicated immediately in the event of a hazardous materials incident. Fulfilling these responsibilities is critical in reducing the severity of a hazardous materials incident and reduces the risk to emergency response personnel, transportation workers, and the general public.

Issued in Washington, DC on April 17, 2015.

Timothy P. Butters,

Acting Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2015–09436 Filed 4–22–15; 8:45 am]

BILLING CODE 4910–60–P

[3] *http://phmsa.dot.gov/pv_obj_cache/pv_obj_id_F69209B2F102C36FDEBED674D65AC72854380300/filename/NTSB_R-14-18_to-21_(8-22-14).pdf.*

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Actions on Special Permit Applications

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given of the actions on special permits applications in (October to October 2014). The mode of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the time certain special permits were issued.

Issued in Washington, DC, on April 8, 2015.

Donald Burger,

Chief, Special Permits and Approvals Branch.

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
MODIFICATION SPECIAL PERMIT GRANTED			
14700–M	Pentair Residential Filtration, LLC, Chardon, OH.	49 CFR 173.302a and 173.306(g)	To modify the special permit to authorize an increase to the tanks maximum operating pressure from 100 psig to 125 psig.
15552–M	Poly-Coat Systems, Inc., Liverpool, TX.	49 CFR 107.503(b) and (c), 173.241, 173.242, and 173.243.	To modify the special permit to provide a more accurate method of testing for lining failure.
14625–M	Sun & Skin Care Research, Inc., Cocoa, FL.	49 CFR 173.306(a)(3)(v)	To modify the special permit to include the use of DOT–2P aluminum cans.
NEW SPECIAL PERMIT GRANTED			
16154–N	Patriot Fireworks, LLC, Ann Arbor, MI.	49 CFR 172.101 Column (8C) and 173.62.	To authorize the transportation in commerce of certain consumer fireworks in a bulk packaging consisting of an ISO-standard freight container in which authorized explosives are packed on wooden or metal shelving systems which are waived from marking and labeling. (model)
16199–N	Schlumberger Technology Corporation, Rosharon, TX.	49 CFR 173.20I(c), 173.202(c), 173.203(c),173.301(f), 173.302(a), 173.304(a) and (d).	To authorize the transportation in commerce of a toxic flammable gas in a non-DOT specification cylinder. (modes 1, 2, 4)
16291–N	Procter & Gamble Distributing LLC, Cincinnati, OH.	49 CFR 172.30I(c), 173.306(a)(3)(ii)	To authorize the transportation in commerce of certain aerosol containers not fully conforming with specification DOT 2P. (mode 1)
16253–N	Trinity Manufacturing, Inc., Hamlet, NC.	49 CFR 171.23(a)(1), 171.23(a)(4)(i)	To authorize the transportation in commerce of non-DOT specification cylinders (ADR foreign cylinders) requalified in accordance with European Standard BS EN 1803:2002 ''Transportable Gas Cylinders—Periodic Inspection and Testing of Welded Carbon Steel Gas Cylinders'' in lieu of the requalification requirements in 49 CFR Part 180, Subpart C. (modes 1,3)
16392–N	Gem Air, LLC, Salmon, ID	49 CFR 172.101Hazardous Materials Table Column (9A), 175.75(6).	To authorize the transportation in commerce of propane aboard passenger-carrying aircraft within or into remote wilderness areas in the United States. (mode 5)
16374–N	Bristow U.S. LLC, New Iberia, LA.	49 CFR 172.101 Hazardous Materials Table Column (9A), 172.301(c).	To authorize the transportation in commerce of certain hazardous materials which exceed the authorized quantity limitations for passenger-carrying aircraft. (mode 5)
EMERGENCY SPECIAL PERMIT GRANTED			
16035–M	LCF Systems, Inc., Scottsdale, AZ.	49 CFR 173.302a	To modify the special permit to authorize an increase to the number of cylinders shipped. (modes I, 3, 4)
16061–N	Battery Solutions, LLC, Howell, MI.	49 CFR 172.200, 172.300, 172.400	To authorize the manufacture marking, sale and use of non-DOT specification fiberboard boxes for the transportation in commerce of certain batteries without shipping papers, marking of the paper shipping name and identification number or labeling, when transported for recycling or disposal. (mode 1)
16239–N	Trinity Containers, LLC, Dallas, TX.	49 CFR 171.7	To authorize the manufacture, marking, sale and use of non-DOT specification fiberboard boxes for the transportation in commerce of certain batteries without shipping papers, marking of the proper shipping name and identification number or labeling, when transported for recycling or disposal. (mode 1)
16420–N	Construction Helicopters, Inc., Howell, MI.	49 CFR 172.101 Materials Table Column (9B), 172.200, 172.204(c)(3), 172.300, 172.400, 173.315(j).	To authorize the transportation in commerce of propane by 14 CFR part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft without being subject to certain hazard communication requirements, quantity limitations and certain loading and stowage requirements. (mode 4)
EMERGENCY SPECIAL PERMIT WITHDRAWN			
16180–M	U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Washington, DC.	49 CFR 173.56 and 172.320	To modify the special permit by changing the carrier and extending the expiration date. (mode 1)

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
		DENIED	
12929–M	Request by Western International Gas & Cylinders, Inc. (Western) Bellville, TX March 25, 2015. To modify the special permit to change the refill requirements.		
16286–N	Request by Curtis Bay Energy, LP Curtis Bay, MD March 25, 2015. To authorize the transportation in commerce of ebola contaminated waste in alternative packaging.		

[FR Doc. 2015–09355 Filed 4–22–15; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Application for Special Permits

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before May 26, 2015.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 8, 2015.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
		NEW SPECIAL PERMITS		
16416–N	.....	INO_X India Limited, Gujarat, India.	49 CFR 173.316	To authorize the manufacture, mark sale and use of a DOT specification 4L cylinder to be used for the transportation in commerce of methane, refrigerated liquid, Division 2.1. (mode 1)
16417–N	.....	CB&I AREVA MOX Services, LLC, Aiken, SC.	49 CFR 173.420(a)(2)(i)	To authorize the transportation of uranium hexafluoride in cylinders that do not meet the specifications in ANSI N14.1. (mode 1)
16424–N	.....	Cimarron Composites, LLC, Huntsville, AL.	49 CFR 173.302a	To authorize the manufacture, mark, sale and use of a non-DOT specification fully wrapped fiber reinforced composite gas cylinders with a non-load sharing plastic liner that meets the ISO 11119–3 standard except for the design water capacity and working pressure. (modes 1, 2, 3)
16425–N	.....	Cabot Corporation, Tuscola, IL.	49 CFR 177.834(i)(3)	To authorize personnel to observe loading and unloading of cargo tank motor vehicles through two windows in a control center instead of being physically located within 25 feet of the cargo tanks. (mode 1)
16429–N	.....	Construction Helicopters, Inc., Howell, MI.	49 CFR 172.101 Hazardous Materials Table Column (9B), Subparts C, D, and E of Part 172, 175.30.	To authorize the transportation in commerce of commerce of certain hazardous materials by 14 CFR part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft. Such transportation is in support of construction operations when the use of cranes or other lifting devices is impracticable or unavailable, without being subject to hazard communication requirements and quantity limitations. (mode 4)

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
16430–N		Eniware LLC, Washington, DC.	49 CFR 172.101 Hazardous Materials Table Column (9A), 173.4a(b), (c), (d), and (e)(3), IMDG Code Sections 3.5.1.1.1, 3.5.1.2, and 3.5.2.1.2, ICAO T1 Table 3–1 Columns 10 and 11, 3.5.1.1(c), 3.5.1.2, and 3.5.2.1(b).	To authorize the manufacture, mark, sale and use of specialized packagings used to transport sterilization devices containing nitric acid as expected quantities. (modes 1, 2, 3, 4, 5)
16431–N		Arnold Aviation and Thunder Mountain Express, Inc., Cascade, ID.	49 CFR 172.101 Hazardous Materials Table Column (9A), 172.200, 175.33, 175.75(b).	To authorize the transportation in commerce of certain cylinders containing propane aboard passenger-carrying aircraft to remote locations. (mode 5)
16432–N		Panasonic Corporation of North America, Newark, NJ.	49 CFR Subparts C through H of Part 172.	To authorize the manufacture, mark, sale and use of specially-designed combination packagings for damaged or defective lithium ion batteries that originally met the requirements under 49 CFR 173.185(c). (modes 1, 2)

[FR Doc. 2015–09352 Filed 4–22–15; 08:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35895]

BNSF Railway Company—Lease Exemption—Union Pacific Railroad Company

[Docket No. FD 35896]

Union Pacific Railroad Company—Lease Exemption—BNSF Railway Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: The Board grants separate exemptions under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323–25 for BNSF to lease from UP approximately 54.12 miles of main line track for both track and signal maintenance and 7.80 miles of right of way for signal maintenance; and for UP to lease from BNSF approximately 14.85 miles of main line track for track and signal maintenance and 1.77 miles of right of way for track maintenance only. The proposed lease transactions involve lines located between South Denver and Bragdon, Colo. (the Joint Corridor) and between Prospect Junction and South Denver, Colo. (the Consolidated Corridor). The exemptions are subject to employee protective conditions.

DATES: The exemptions will be effective on April 30, 2015. Petitions to stay, petitions for reconsideration, and petitions to reopen are due by April 27, 2015.

ADDRESSES: An original and 10 copies of all pleadings, referring to Docket No. FD 35895 or Docket No. FD 35896, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Karl Morell & Associates, 655 Fifteenth Street, Suite 225, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn at (202) 245–0382. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Under the proposed transaction, BNSF would grant UP a non-exclusive lease for the following segments of BNSF-owned trackage: (i) On the Joint Corridor, main track 2, BNSF milepost 12.41, at or near Littleton, to BNSF milepost 25.21, at or near Sedalia; (ii) on the Joint Corridor, main track 2, BNSF milepost 49.79, at or near Spruce, to BNSF milepost 51.84, at or near Palmer Lake; and (iii) on the Joint Corridor, main track 2, BNSF milepost 84.36, at or near Crews, to BNSF milepost 86.13, south of Crews, excluding the signal system and grade crossing warning devices. UP would grant BNSF a non-exclusive lease for the following segments of UP-owned trackage: (i) On the Consolidated Corridor in Denver, main track 1, BNSF milepost 0.0 to BNSF milepost 0.85; (ii) on the Joint Corridor, main track 1, BNSF milepost 3.92, at or near South Denver, to BNSF milepost 25.21, at or near Sedalia (excluding Dupont Spur at approximately UP milepost 20.6, Fort Logan Spur at approximately UP milepost 9.1, and Iowa Spur No. 3 at approximately UP milepost 5.3); (iii) on the Joint Corridor, main track 1, BNSF milepost 48.97, at or near Spruce, to BNSF milepost 51.99, at or near Palmer Lake; (iv) on the Joint Corridor, main track 1, BNSF milepost 51.84 to BNSF milepost 51.99, at or near Palmer Lake; (v) on the Joint Corridor, the single track, BNSF milepost 51.99, at or near Palmer Lake, to BNSF milepost 78.75, at or near Kelker (excluding UP's yard in Colorado Springs between UP milepost 74.4 and UP milepost 75.4, the Templeton Gap Spur at approximately UP milepost 72.79, and the Russina Spur at approximately UP milepost 70.7); and (vi) on the Joint Corridor, main track 1, BNSF milepost 84.49, at or near Crews, to BNSF milepost 86.54, south of Crews. UP would also grant BNSF a non-exclusive lease of UP's signal system and grade crossing warning devices on the Joint Corridor, main track 2, BNSF milepost 86.13, south of Crews, to BNSF milepost 93.9, at or near Nixon.

Additional information is contained in the Board's decision. Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: April 20, 2015.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.

Raina S. Contee,

Clearance Clerk.

[FR Doc. 2015–09484 Filed 4–22–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Public Availability of the Department of Transportation FY 14 Service Contract Inventory

AGENCY: Department of Transportation.

ACTION: Notice of Public Availability of FY 14 Service Contract Inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010, Public Law 111–117, Department of Transportation is publishing this notice to advise the public of the availability of the FY 14 Service Contract Inventory and the FY 13 Service Contract Inventory Analysis Report. This inventory provides information on service contract actions over $25,000 that were made in FY 14. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default...052010.pdf*. Department of Transportation has posted its inventory and a summary of the FY 14 Inventory and the FY 13 Service Contract Inventory Analysis Report on the Department of Transportation's homepage at the following link: *http://www.dot.gov/assistant-secretary-administration/procurement/service-contract-inventory*. Questions regarding the Service Contract Inventory should be directed to Diane Morrison in the Office of the Senior Procurement Executive at 202–366–4960 or *diane.morrison@dot.gov*.

Dated: April 16, 2015.

Gregory Cate,

Deputy Director, Office of Senior Procurement Executive.

[FR Doc. 2015–09464 Filed 4–22–15; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning penalty on income tax return preparers who understate taxpayer's liability on a federal income tax return or a claim for refund.

DATES: Written comments should be received on or before June 22, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to R. Joseph Durbala, (202) 317–5746, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Penalty on Income Tax Return Preparers Who Understate Taxpayer's Liability on a Federal Income Tax Return or Claim for Refund.

OMB Number: 1545–1231.

Regulation Project Number: IA–38–90 (TD 9436—final).

Abstract: These regulations set forth rules under section 6694 of the Internal Revenue Code regarding the penalty for understatement of a taxpayer's liability on a Federal income tax return or claim for refund. In certain circumstances, the preparer may avoid the penalty by disclosing on a Form 8275 or by advising the taxpayer or another preparer that disclosure is necessary.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 684,268.

Estimated Time per Respondent: 15 hours, 36 min.

Estimated Total Annual Burden Hours: 10,679,320 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 17, 2015.

R. Joseph Durbala,

IRS, Tax Analyst.

[FR Doc. 2015–09435 Filed 4–22–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

AGENCY: Department of the Treasury.

ACTION: Notice.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before May 26, 2015 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8141, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0013.

Type of Review: Extension without change of a currently approved collection.

Title: Registration of Money Services Business, 31 CFR 1022.380.

Form: FinCEN Form 107.

Abstract: Money services businesses file Form 107 to register with the Department of the Treasury pursuant to 31 U.S.C. 5330 and 31 CFR 1022.380. The information on the form is used by criminal investigators, and taxation and regulatory enforcement authorities, during the course of investigations involving financial crimes.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 44,300.

OMB Number: 1506–0015.

Type of Review: Extension without change of a currently approved collection.

Title: Suspicious Activity Report by Money Services Business.

Abstract: Regulations under 31 CFR 1022.320 require Money Services Business' (MSB) to report suspicious transactions to the Department of the Treasury. The administrative burden of one hour is assigned to maintain the regulatory requirement in force. The burden for actual reporting is reflected in OMB Control number 1506–0065.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 1.

OMB Number: 1506–0061.

Type of Review: Extension without change of a currently approved collection.

Title: Suspicious Activity Report Filing Requirements for Residential Mortgage Lenders and Originators.

Abstract: FinCEN, a bureau of the Department of the Treasury, issued rules defining non-bank residential mortgage lenders and originators as loan or finance companies for the purpose of requiring them to establish anti-money laundering (AML) programs and suspicious activities report (SAR) under the Bank Secrecy Act. This information collection identifies burden associated with SAR. The administrative burden of one hour is assigned to maintain the regulatory requirement in force. The burden for actual reporting is reflected in OMB Control number 1506–0065.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 1.

Dated: April 20, 2015.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2015–09483 Filed 4–22–15; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

AGENCY: Department of the Treasury.

ACTION: Notice.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before May 26, 2015 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by emailing *PRA@treasury.gov,* calling (202) 927–5221, or viewing the entire information collection request at *www.reginfo.gov.*

Departmental Offices

OMB Number: 1505–0149.

Type of Review: Revision of a currently approved collection.

Title: 31 CFR part 128, Reporting of International Capital and Foreign Currency Transactions and Positions.

Abstract: Title 31 CFR part 128 establishes general guidelines for reporting on U.S. claims on, and liabilities to foreigners; on transactions in securities with foreigners; and on monetary reserve of the U.S. It also establishes guidelines for reporting on the foreign currency of U.S. persons. It includes a recordkeeping requirement in section 128.5.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 6,785.

Dated: April 20, 2015.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2015–09448 Filed 4–22–15; 8:45 am]

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Part II

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 383, 384 and 391

Medical Examiner's Certification Integration; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383, 384 and 391

[Docket No. FMCSA–2012–0178]

RIN 2126–AB40

Medical Examiner's Certification Integration

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs) to require certified medical examiners (MEs) performing physical examinations of commercial motor vehicle (CMV) drivers to use a newly developed Medical Examination Report (MER) Form, MCSA–5875, in place of the current MER Form and to use Form MCSA–5876 for the Medical Examiner's Certificate (MEC); and report results of all CMV drivers' physical examinations performed (including the results of examinations where the driver was found not to be qualified) to FMCSA by midnight (local time) of the next calendar day following the examination. The reporting of results includes all CMV drivers who are required to be medically certified to operate in interstate commerce, not only those who hold or apply for commercial learner's permits (CLP) or commercial driver's licenses (CDL), and results of any examinations performed in accordance with the FMCSRs with any applicable State variances (which will be valid for intrastate operations only). For holders of CLP/CDLs (interstate and intrastate), FMCSA will electronically transmit driver identification, examination results, and restriction information from examinations performed from the National Registry to the State Driver's Licensing Agencies (SDLAs). The Agency will also transmit medical variance information for all CMV drivers electronically to the SDLAs.

DATES: Effective on June 22, 2015. See the amendments to 49 CFR parts 383, 384 and 391 for compliance dates.

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Carrier, Driver, & Vehicle Safety Standards, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, by telephone at (202) 366–4001 or via email at *fmcsamedical@dot.gov.* Office hours are from 9 a.m. to 5 p.m. ET, Monday through Friday, except Federal holidays. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

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I. Rulemaking Documents

A. Availability of Rulemaking Documents

For access to docket FMCSA–2012–0178 to read background documents and comments received, go to *http://www.regulations.gov* at any time, or to U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

B. Privacy Act

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

II. Executive Summary

A. Purpose and Summary of the Major Provisions

The purpose of this final rule is to facilitate the electronic transmission of MEC information from FMCSA's National Registry to the SDLAs. This transmission will provide administrative cost savings to motor carriers, drivers, MEs, and SDLAs. In addition, it will reduce, to the greatest extent possible, the potential for the submission of falsified MECs to the States, which are required to post MEC information to CLP/CDL holders' records accessible via CDLIS. By ensuring that drivers are medically qualified, FMCSA will decrease the risk of CMV crashes, attributable in whole or in part, to drivers with medical conditions that adversely affect their ability to operate a CMV safely on the Nation's highways.

The final rule requires certified MEs performing physical examinations of CMV drivers to use a newly developed MER Form, MCSA–5875, in place of the current MER Form and to use the Form MCSA–5876 for the MEC. In addition, MEs are required to report results of each CMV drivers' physical examination, including the results of examinations where the driver was found not to be qualified, to FMCSA by midnight local time of the next calendar day following the examination. This includes all CMV drivers (CDL/CLP and Non-CDL/CLP) who are required to be medically certified to operate in interstate commerce and allows, but does not require, MEs to transmit any information about examinations performed in accordance with the FMCSRs with any applicable State variances, which will be valid for intrastate operations only. Examination results will be reported by completing a CMV Driver Medical Examination Results Form, MCSA–5850, via the ME's individual password-protected National Registry web account.

For applicants/holders of CLP/CDLs (interstate and intrastate), FMCSA will electronically transmit from the National Registry system to the SDLAs driver identification, examination results, and restriction information for examinations performed in accordance with the FMCSRs (49 CFR 391.41–391.49), as well as information about any examinations reported by the MEs that are performed in accordance with applicable State variances. This includes examination results that have been voided by FMCSA because the Agency finds that an ME has certified a driver who does not meet the interstate physical certification standards.

The Agency will also transmit medical variance information [1] for all CMV drivers electronically to the SDLAs. Transmission of this information will allow authorized State and Federal enforcement officials to view the most current and accurate information regarding the medical status of the CMV driver, all information on the MEC, any medical variance information (if applicable), and the issued and expiration date.

B. Benefits and Costs

The estimated cost of the final rule is not expected to exceed the $100 million annual threshold for economic significance. The modifications to the National Registry system and Commercial Driver's License Information System (CDLIS) that will allow the Agency to electronically transmit driver identification, examination results, and medical variance information from the National Registry system to the SDLAs, have been estimated to be a one-time rounded cost of $12,000,000.

SUMMARY OF QUANTIFIED COSTS

SDLA	$10,000,000
AAMVA	1,000,000
FMCSA	1,000,000
Total Costs (rounded)	12,000,000

The implementation of this rule will result in changes to the annual paperwork burden hours and costs for the Medical Qualification Requirements and the Commercial Driver Licensing and Testing Standards information collections (ICs). As a result, the motor carriers, drivers, MEs, and SDLAs affected will benefit from a decrease in annual burden hours and economic expenditures. The estimated cost savings are $10.16 million annually.

The potential estimated benefits are detailed in the table below. The revised Office of Management and Budget (OMB) control numbers 2126–0006 and 2126–0011 Supporting Statements detail all revisions associated with the reduced annual paperwork burden hours.

SUMMARY OF QUANTIFIED BENEFITS

[in millions of dollars]

Motor carriers no longer verify ME National Registry number	$4.78
MEs no longer handwrite MECs for CLP/CDL applicants/holders	2.87
CLP/CDL applicants/holders no longer provide MEC to SDLA	1.05
SDLAs no longer manually record MEC information	1.46
Total Benefits	10.16

III. Abbreviations

AAMVA American Association of Motor Vehicle Administrators
AAMVAnet American Association of Motor Vehicle Administrators Network
Advocates Advocates for Highway and Auto Safety
ATA American Trucking Associations
CAA Clean Air Act
CE Categorical Exclusion
CDL Commercial Driver's License
CDLIS Commercial Driver's License Information System
CLP Commercial Leaner's Permit
CMV Commercial Motor Vehicle
DOT U.S. Department of Transportation
DQ Driver Qualification
FMCSA Federal Motor Carrier Safety Administration
FMCSRs Federal Motor Carrier Safety Regulations
IC Information Collection
ICC Interstate Commerce Commission
MAP–21 Moving Ahead for Progress in the 21st Century Act
ME Certified Medical Examiner
MEC Medical Examiner's Certificate
MER Medical Examination Report
MVR Motor Vehicle Record
NPRM Notice of Proposed Rulemaking
OMB Office of Management and Budget
PIA Privacy Impact Assessment
PII Personally Identifiable Information
PRA Paper Reduction Act
RFA Regulatory Flexibility Act
SAFETEA–LU Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
SDLA State Driver Licensing Agencies
SPE Skill Performance Evaluation

IV. Legal Basis for the Rulemaking

The purpose of this final rule is to modify the requirements adopted in two earlier final rules issued by FMCSA, 73 FR 73096 (Dec. 1, 2008) and 77 FR 24104 (April 20, 2012), so that the information from the MEC transmitted to FMCSA after the examination by MEs for drivers required to have a CDL is promptly and accurately transmitted to the SDLAs for entry into the appropriate driver record. In view of this purpose, the legal bases of the two previous final rules also serve as the legal basis for this final rule. The primary legal basis for the 2008 final rule, Medical Certification Requirements as Part of the Commercial Driver's License, is section 215 of Motor Carrier Safety Improvement Act [Pub. L. 106–159, 113 Stat. 1767 (Dec. 9, 1999)] (set out as a note to 49 U.S.C. 31305). The primary legal basis for the 2012 final rule, National Registry of Certified Medical Examiners (National Registry), is 49 U.S.C. 31149, enacted by section 4116(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59, 119 Stat. 1726 (Aug. 10, 2005) (SAFETEA–LU). Detailed discussions of the legal basis for the 2008 and 2012 final rules appear in their preambles, at 73 FR 73096–73097 and 77 FR 24105–24106, respectively.

A. Authority Over Drivers Affected

1. Drivers Required To Obtain an MEC

FMCSA is required by statute to establish standards for the physical qualifications of drivers who operate CMVs in interstate commerce [49 U.S.C. 31136(a)(3) and 31502(b)]. FMCSA has fulfilled the statutory mandate of 49 U.S.C. 31136(a)(3) by establishing physical qualification standards for all drivers covered by these provisions [49 CFR 391.11(b)(4)].[2] Such drivers must obtain from an ME a certification stating that the driver is physically qualified [49 CFR 391.41(a), 391.43(g) and (h)]. FMCSA is also required by statute to ensure that the operation of a CMV does not have a deleterious effect on the physical condition of the drivers [49 U.S.C. 31136(a)(4)].

Sec. 32911 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141, 126 Stat. 405, July 6, 2012) added an additional requirement to ensure that ''an operator of a CMV is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a CMV in violation of a regulation

[1] When medical variance information is referenced in this document it means exemptions, skills performance evaluation certificates and grandfathered exemptions issued by FMCSA.

[2] *There are a few limited exceptions of drivers in* 49 CFR 390.3(f) and 391.2.

promulgated under this section, or chapter 51 or chapter 313 of this title'' [49 U.S.C. 31136(a)(5)]. See the discussion below. FMCSA is also required to consider, to the extent practicable and consistent with the purposes of the statute, costs and benefits of the rule. 49 U.S.C. 31136(c)(2)(A).

2. Drivers Required To Obtain a CDL

The authority for FMCSA to require an operator of a CMV to obtain a CDL rests on the authority found in 49 U.S.C. 31302.

B. Authority To Regulate State CDL Programs

FMCSA, in accordance with 49 U.S.C. 31311 and 31314, has authority to prescribe procedures and requirements for the States to observe in order to issue CDLs [see, generally, 49 CFR part 384]. In particular, under section 31314, in order to avoid loss of funds apportioned from the Highway Trust Fund, each State shall comply with the requirement that the State shall adopt and carry out a program for testing and ensuring the fitness of individuals to operate commercial motor vehicles consistent with the minimum standards prescribed by FMCSA under section 31305(a) of Title 49 U.S.C. 49 U.S.C. 31311(a)(1). *See also* 49 CFR 384.201.

C. Authority To Require Reporting by MEs

FMCSA has authority under 49 U.S.C. 31133(a)(8) and 31149(c)(1)(E) to require MEs on the National Registry to obtain information from CMV drivers regarding their physical health, to record and retain the results of the physical examinations of CMV drivers and to require frequent reporting of the information contained on all of the MECs they issue. Section 31133(a)(8) gives the Agency broad administrative powers (specifically ''to prescribe recordkeeping and reporting requirements'') to assist in ensuring motor carrier safety and driver health. [Sen. Report No. 98–424 at 9 (May 2, 1984)]. Section 31149(c)(1)(E) authorizes a requirement for electronic reporting of certain specific information by MEs, including applicant names and numerical identifiers as determined by the FMCSA Administrator. Section 31149(c)(1)(E) sets minimum monthly reporting requirements for MEs and does not preclude the exercise by the Agency of its broad authority under section 31133(a)(8) to require more frequent and more inclusive reports. In addition to the general rulemaking authority in 49 U.S.C. 31136(a), the Secretary of Transportation is specifically authorized by section 31149(e) to ''issue such regulations as may be necessary to carry out this section.''

Authority to implement these various statutory provisions has been delegated to the Administrator of FMCSA [49 CFR 1.87(f)].

V. Background

On May 10, 2013, FMCSA published the Medical Examiner's Certification Integration notice of proposed rulemaking (NPRM) (78 FR 27343). The public comment period for the NPRM closed on July 9, 2013. This final rule, as stated in the Legal Basis section, is a follow-on rule to both the Medical Certification Requirements as Part of the CDL rule (Med-Cert) final rule published on December 1, 2008 (73 FR 73096) and the National Registry of Certified Medical Examiners (National Registry) final rule published on April 20, 2012 (77 FR 2410). It is the third rule of an initiative to improve the driver qualification and medical examiner's certification process.

A. Medical Certification Requirements as Part of the CDL

FMCSA's 2008 Med-Cert final rule, [73 FR 73096 (Dec. 1, 2008)] adopted a number of regulatory provisions designed to incorporate information from the MEC into CDLIS. Subsequent actions of the Agency modified some of the provisions adopted in the 2008 final rule [see Med-Cert; Technical, Organizational, and Conforming Amendments, 75 FR 28499 (May 21, 2010)]. Most of the requirements established by these actions took effect on January 30, 2012. But some requirements affecting CDL holders and their employers did not take effect until January 30, 2015.

In addition, FMCSA established new uniform requirements for CLPs in the final rule published May 9, 2011, Commercial Driver's License Testing and Commercial Learner's Permit Standards [76 FR 26854]. As a result, the medical certification requirements of the 2008 final rule will apply to applicants and holders of CLPs beginning on July 8, 2015 [78 FR 17875, 17882 (Mar. 25, 2013), amending 49 CFR 384.301(f)]. As modified by these actions, the essential elements of these CLP/CDL medical certification provisions for each of the affected groups are summarized below:

1. SDLAs

The Med-Cert rule mainly requires the States to modify their CDL procedures to: (1) Record a CLP/CDL applicant's/holder's self-certification regarding type of driving (*e.g.,* interstate (non-excepted or excepted) and intrastate (non-excepted or excepted) on the CDLIS driver record); (2) require submission of the original or copy of the MEC from a driver operating in non-excepted, interstate commerce who is required by 49 CFR part 391 to be medically certified; (3) post the required information from the certificate or a copy onto the CDLIS driver record within 10 calendar days; (4) update the medical certification status of the CDLIS driver record to show the driver as ''not-certified'' if the certification expires; and (5) downgrade the CLP/CDL within 60 days of the expiration of the driver's MEC. There are also requirements for posting certain information about any medical variances issued to the driver on the CDLIS driver record.

If the driver certifies that he or she expects to drive in interstate commerce and is not driving exclusively for one of the industries excepted from the requirements of 49 CFR part 391, the Med-Cert rule requires the State to post the driver's information, within 10 calendar days on the CDLIS driver record. In addition to the recordkeeping requirements, the SDLA must make the driver's medical certification status information electronically accessible to authorized State and Federal enforcement officials and to drivers and employers via CDLIS motor vehicle records (MVRs).

Today's final rule provides a cost-effective tool to support the States in implementing the Med-Cert rule and reduce to the greatest extent possible the need for State personnel to spend time manually entering information from paper copies of the medical certificates. The rule also helps ensure that the medical certificates being uploaded are valid.

2. Motor Carriers and Employers

Motor carriers who employ a CDL holder subject to the physical qualifications requirements under 49 CFR part 391 must place the driver's current CDLIS MVR documenting the driver's medical certification status in the driver's qualification (DQ) file before allowing the driver to operate a CMV. The MEC that the driver provided to the SDLA may be used for this purpose for up to 15 days from the date the certificate was issued by the ME. The CDLIS MVR will be used to verify the driver has the necessary medical certification and the results placed in the DQ file.

3. Drivers.

All interstate CDL holders subject to the physical qualifications standards of

49 CFR part 391 must meet the following requirements:

- All drivers applying for an initial, renewal, upgrade or transfer of a CDL must provide the MEC to the SDLA, and update that information whenever a new certificate is issued.
- All existing CDL holders who do not have a renewal, upgrade or transfer issuance must still provide the MEC to the SDLA. They must update that information with the SDLA whenever a new certificate is issued.
- Beginning on January 30, 2015, these drivers no longer have to use the MEC as proof of their medical certification to enforcement personnel or employers, except for the first 15 days after issuance.
- Beginning on January 30, 2015, these drivers are no longer required to carry the actual MEC after the first 15 days after issuance, but must continue to carry any Skills Performance Evaluation (SPE) certificate or medical exemption document while on duty.
- Beginning on July 8, 2015, the above requirements will also apply to CLP holders.

Non-CDL/CLP holders subject to the physical qualifications standards of 49 CFR part 391 will continue to be required to carry the original or a copy of the MEC and any SPE certificate or medical exemption document while on duty.

B. National Registry of Certified MEs

In 2012, FMCSA issued a final rule establishing the National Registry [77 FR 24104 (Apr. 20, 2012)]. This rule established training and testing requirements for medical professionals who conduct the medical certification examinations of interstate CMV drivers. The compliance date for the National Registry final rule was May 21, 2014. Therefore, as to medical certifications issued on or after that date, the Agency considers valid only those MECs that were issued by MEs listed on the National Registry on the date of issuance. MECs that were issued prior to the May 21, 2014 compliance date, however, are considered valid until the MECs expiration date provided by the ME.

The MEs who conduct medical examinations of CMV drivers must retain copies of the MER Forms of all drivers they examine and certify. The MER Form lists the specific results of the various medical tests and assessments used to determine if a driver meets the physical qualification standards set forth in 49 CFR part 391, subpart E.

One of the administrative requirements for being listed on the National Registry is for the ME to submit a CMV Driver Medical Examination Results Form, MCSA–5850, to FMCSA for each physical examination conducted on both CLP/CDL and non-CDL holders. MEs are required to submit this information monthly. The CMV Driver Medical Examination Results Form, MCSA–5850, has undergone minor editorial changes to be more user friendly and includes most of the information on the MEC.

C. MER

The current version of the MER Form and the instructions and requirements for its use have evolved over a number of years. In 2000, FMCSA issued a final rule adopting significant revisions to the instructions and MER Form, much as they appear today in 49 CFR 391.43(f). The purpose of the revisions was to organize the form to: ''(1) Gain simplicity and efficiency; (2) reflect current medical terminology and examination components; and (3) be a self-contained document. . . .'' [Physical Qualification of Drivers; Medical Examination; Certificate, 65 FR 59363 (Oct. 5, 2000)]. The MER Form also included a number of advisory criteria providing Agency guidelines to assist MEs in assessing a driver's physical qualifications. FMCSA noted that ''These guidelines are strictly advisory and were established after consultation with physicians, States and industry representatives.'' (65 FR 59364).

Since the 2000 revisions, the MER Form and the instructions have been revised only to reflect changes in the advisory guidelines relating to hypertension and standards for the use of Schedule I drugs [Motor Carrier Safety Regulations; Miscellaneous Technical Amendments, 68 FR 56199 (Sep. 30, 2003) and Harmonizing Schedule I Drug Requirements, 77 FR 4479 (Jan. 30, 2012) and 77 FR 10391 (Feb. 22, 2012)].

VI. Discussion of Comments Received on the Proposed Rule

A. Overview of Comments

In response to the May 2013 NPRM, FMCSA received 67 comments. The majority of the commenters were State agencies (from Alabama, California, Colorado, Delaware, Georgia, Illinois, Kentucky, Maryland, Missouri, Montana, Nebraska, New York, Ohio, Oregon, Utah, Virginia, and Wisconsin) and individuals, many of whom identified themselves as healthcare professionals. Among other commenters were the following: Five healthcare provider professional associations including the American Academy of Physician Assistants (AAPA) and the American College of Occupational and Environmental Medicine (ACOEM); four trucking/industry associations including the American Association of Motor Vehicle Administrators (AAMVA) and the American Trucking Associations, Inc. (ATA); seven motor carriers including Landstar Transportation Logistics, Inc.; Schneider National, Inc.; the County of Los Angeles, CA; Concentra Health Services jointly with U.S. HealthWorks Medical Group; and Advocates for Highway and Auto Safety (Advocates).

The first area of comment involved the proposal for electronic transmission of CMV drivers' MEC information to the SDLAs, and related issues. The second involved the proposed revisions and handling of the MER Form, MCSA–5875 and, to a lesser extent, the minor changes to the MEC, Form MCSA–5876. A third area of comment involved provisions that would invalidate a driver's current MEC when the driver fails a new physical examination. Lastly, a number of commenters raised issues that were beyond the scope of the proposals in the NPRM. These comments will be briefly summarized with an explanation as to why the issues raised are not within the scope of this proceeding.

Although no commenters explicitly expressed support for the proposed rule in its entirety, 17 were in support of various provisions of the rule. Five commenters explicitly opposed the proposed rule. Twenty-nine commenters provided recommendations, voiced concerns, or were opposed to specific parts of the proposed rule, such as identification of the system that will be used for the electronic transmission of MEC data to the SDLAs, transmission of data for all CMV drivers not just CLP/CDL applicants/holders, transmission of data for those drivers operating in intrastate commerce, daily reporting requirements for MEs, and new form requirements. Nine commenters expressed serious concerns over specific requirements that they believe would be detrimental to stakeholders, such as increased costs, creating potential shortages of certified MEs, prohibiting drivers from carrying their MEC as a means of proving their medical qualification, and the implementation date for SDLAs. Seven others commented on issues that are outside the scope of this rulemaking.

The following sections provide details regarding specific issues raised by the commenters.

B. Electronic Transmission and Access to MEC Information

1. System To Be Used for Data Transfer

FMCSA proposed to electronically transmit driver identification, examination results, and restriction information from the National Registry system to the SDLAs for CLP/CDL applicants/holders. Many commenters were concerned that the system FMCSA plans to use to transfer the MEC information electronically to the SDLAs was not identified. AAMVA, many States, and other commenters suggested FMCSA consider using the existing CDLIS platform because it is a proven, secure system that on a daily basis successfully moves large amounts of data between States. It is their opinion that it would be easier to create a new message type in CDLIS that allows the MEC information to be transmitted than it would be to develop a new system, and would not require manual entry of data. They recommended that all fields have defined formats/standards and, if standards already exist in CDLIS and are included in the CDLIS MVR that is available to carriers and drivers, FMCSA use those. Many of these commenters stated that without the system being identified, there was not enough information to make a full assessment of the technical and cost impact. Some commenters were also concerned about how information would be made available to employers, drivers and other users, such as enforcement personnel. The ATA suggested that FMCSA design the system so that, if a State consents, MEs can simultaneously and instantaneously report results to both the National Registry and the driver's MVR in CDLIS and other relevant systems.

There were also comments addressing the length of time that the SDLAs would have to update the records, ranging from real time updates to three days or longer. Werner Enterprises, Inc. expressed concern for how the proposed system would work on a practical level and suggested that the timeframe for FMCSA to transmit the MEC information to the SDLA be mandated as the next day.

FMCSA Response

Although the Agency had long recognized the benefits of using the CDLIS platform, the Agency did not discuss this plan in the preamble to the NPRM. The intent of the rulemaking was not to specify the platform, but to explain that the Agency made a preliminary determination that it was feasible to collect MEC information from MEs on a daily basis, and that the more frequent submission of the examination results would facilitate the timely transmission of information to the SDLAs. The Agency now agrees that CDLIS is the appropriate and most cost-effective means of implementing the requirements of this final rule, as many of the commenters urged. When it is implemented, FMCSA will receive and process the MEC information from the MEs, and then the data for CDL drivers will be electronically transmitted through the AAMVAnet communications system to the SDLAs. Once received, the SDLAs will be able to automatically populate the individual CDLIS driver records with the MEC information. The fields for this information have already been created and established in the CDLIS record as a result of the implementation of the 2008 Med-Cert final rule. The development of this electronic transfer of MEC information from the National Registry through the AAMVAnet communications system to the CDLIS driver records will be a joint effort of FMCSA, AAMVA and the SDLAs.

While there will be one-time costs incurred by the SDLAs to implement this secure transmission of MEC information, SDLAs should see a reduction in staff time and costs in the elimination of manual input of this MEC information over time.

2. Transmission of MEC Information for CLP/CDL Applicants/Holders Only

For applicants/holders of CLP/CDLs, FMCSA proposed to transmit driver identification, examination results, and restriction information electronically from the National Registry system to the SDLAs. Many commenters were opposed the continued use of paper MECs for non-CLP/CDL applicants/holders. Several commenters believe FMCSA should require the posting of the MEC for non-CLP/CDL applicants/holders to a database similar to CDLIS. For example, the ATA suggested that FMCSA examine the benefits of requiring SDLAs to furnish MEC information to all CMV drivers, including those who require medical certification but do not require a CDL.

The American College of Occupational and Environmental Medicine (ACOEM) indicated that placing the responsibility on the ME to keep track of whether they are required to submit the results of the examination (CLP/CDL applicants/holders) or issue a paper MEC (those who require the MEC but do not require a CDL) could be confusing, especially for the intrastate CLP/CDL holders. They also stated that the proposed rule extends the burden on the MEs with more frequent submissions and tracking of different requirements for inter/intrastate or CLP/CDL/non-CLP/CDL holders, not to mention the excepted or non-excepted drivers.

Oregon's Driver and Motor Vehicle Services expressed a similar concern that errors occurring in the transmission of the information to the National Registry will result in inaccuracies that will prevent the National Registry from transmitting the data successfully to the correct State. They suggested that a process be added for States to access the National Registry through a password-protected web account to locate the MEC for a particular driver. They stated that the ability to pull the MEC information could resolve the concerns for those States with statutes that require an MEC. They also suggested, as an alternative, that the National Registry provide a ''help desk'' function that would receive requests for MECs, search for a driver, and mark the record so the system can transmit the MEC information to a particular State.

FMCSA Response

FMCSA generally agrees with the suggestions. However, there are practical technical and statutory limitations that shaped the direction of the Agency's proposal.

FMCSA will electronically transmit MEC information from the National Registry to the SDLAs only for CLP/CDL applicants/holders because there is currently no IT system platform comparable to CDLIS for non-CLP/CDL applicants/holders, and the Agency does not have statutory authority to impose requirements on SDLAs concerning licensing of non-CLP/CDL applicants/holders. The 1986 legislation concerning the Federal CDL program does not provide the Agency with authority to cover non-CDL issues. Therefore, the Agency has no alternative but to focus on the electronic exchange of information between the National Registry and the SDLAs and retain requirements for paper MECs for non-CLP/CDL applicants/holders.

While some commenters expressed concern about placing a burden on MEs by having two different methods of processing MEC information for CLP/CDL applicants/holders versus non-CLP/CDL applicants/holders, FMCSA does not believe there is a burden on MEs. MEs need only focus on accurately documenting the results of the examination completely and accurately by completing the CMV Driver Medical Examination Results Form, MCSA–5850, via their individual password-protected National Registry account, following every examination. As long as

the information is complete and accurate, the FMCSA will take full responsibility for the electronic transmission of the MEC information to the SDLAs. Nothing in this rulemaking prohibits MEs from providing each driver with a copy of the MEC at the completion of the examination, so all drivers could carry a copy with them if the driver believes it is necessary. Drivers whose MEC information was transmitted electronically will have the added benefit of no longer being required to present proof directly to the SDLA. But the only *official* record of the CDL driver's physical qualifications will be the CDLIS driver record.

FMCSA acknowledges that there will be situations where the SDLA may need to pull MEC information from the National Registry for a driver, as indicated by the comments from Oregon's Driver and Motor Vehicle Services. The FMCSA is committed to putting into place a push-pull system for transmission of information between the National Registry and the SDLAs. Under this system the information could be loaded automatically onto drivers' records, but the SDLAs could also query the National Registry and pull or download the MEC information for drivers who had not yet obtained their CLP/CDL at the time of the medical examination.

3. Daily Submission of CMV Driver Medical Examination Results Form, MCSA–5850

FMCSA proposed that MEs be required to report results of all completed commercial drivers' physical examinations, including the results of examinations where the driver was found not to be physically qualified, to the National Registry system by close of business (COB) on the day of the examination.

Many commenters were opposed to the daily submission of the CMV Driver Medical Examination Results Form, MCSA–5850 because they believe that daily submission will place administrative and cost burdens on MEs and the medical practice that may result in fewer MEs willing to become certified. Some commenters believed that additional resources, technology, and staff may be required to meet this proposed requirement. Several commenters suggested that FMCSA allow significantly more time to report results and allow various methods of submission and a reduction in reporting requirements.

Southern Company believes that COB reporting is unrealistic and stated in detail how their MEs have estimated that the new requirements would increase their administrative costs by 20–25% per physical. Schneider National, Inc. would like FMCSA to reconsider the extent to which the cost of exams would increase with the daily reporting requirement. It asserts that the cost of this increase will be more than the $18.00 assumption used for additional administrative worker time.

The Owner Operated Independent Drivers Association (OOIDA) asks the Agency to take into account certain factors that will increase the costs of the medical certification process to drivers: The costs associated with there being fewer MEs under the new system due to daily reporting requirements and the increased costs of those MEs being passed on to the driver.

Werner Enterprises stated that they were concerned by the lack of a clearly defined deadline for FMCSA to deliver the information to the SDLA. They suggested it be defined as the next business day. ATA supports daily reporting, but suggested time zone considerations be made for downloads and batch submissions. Several commenters requested that FMCSA provide a means to allow the data to be automatically uploaded from a computer, stating that this would significantly improve their ability to meet the requirements and support FMCSA, the drivers, and the States.

On the other hand, AAMVA and its membership (some of whom commented separately) stated that it is imperative for the SDLA to receive the MEC information by no later than COB on the day of the exam. They stated that without this requirement, roadside inspectors would not be able to verify that a driver is medically certified and there would be a tremendous impact on the ability of the SDLA to make an informed and accurate determination on the medical status of their commercial driving constituency.

Many recommendations were made for modifying the reporting timeline, such as separate submission deadlines for those that are not qualified versus those that are qualified, a phase-in approach for all qualification statuses, and submission deadlines based on length of certification. One commenter, Southern Company, suggested that the current medical certification reporting process of the ME sending the MEC information to the SDLA be retained for efficiency purposes.

FMCSA Response

After careful consideration of the comments received on this issue, the Agency has modified the proposed daily reporting requirement. In this final rule, MEs will be required to report results of all CMV drivers' physical examinations performed, including the results of examinations where the driver was found not to be physically qualified, to FMCSA by midnight (local time) of the next calendar day following the examination, instead of the proposed same-day reporting requirement. FMCSA disagrees with commenters who claim that the requirement to report exam results more quickly will increase the cost of that task. This requirement will not increase the time needed to transmit the form. MEs are encouraged to allow drivers to review the information that will be transmitted to FMCSA so as to reduce data errors and to ensure that, for CLP/CDL applicants/holders, the information is promptly and accurately recorded on the driver record.

The current process requires the ME to provide the MEC to the CLP/CDL applicant/holder, who in turn must provide the information to the SDLA, a requirement that was adopted in 2008 and which became fully implemented on January 30, 2015. 79 FR 2377 (Jan. 14, 2014). The purpose of this final rule is to replace that procedure with a procedure for electronic transmission of the MEC information from the MEs to FMCSA and then from FMCSA to the SDLAs. FMCSA will develop its systems so that, when fully implemented in three years, they will ensure prompt transmission of the MEC information from FMCSA to the SDLAs for CLP/CDL applicants/holders. This should greatly improve the timeliness and accuracy of the CDLIS driver record. Even though the information for non-CDL holders will be reported to the National Registry, such drivers still need to be issued a paper MEC, Form MCSA–5876 by the ME if the driver is physically qualified. Contrary to Southern Company's comment, there is no national system for MEs to send MEC information to the SDLA.

Finally, FMCSA believes that concerns about the number of MEs listed on the National Registry are no longer warranted. As of January 5, 2015, there were more than 39,160 certified healthcare professionals on the National Registry, and the Agency had received the results concerning more than 2.8 million physical examinations conducted between May 21, 2014 and December 31, 2014.

4. Carrier To Obtain MEC as Part of MVR From SDLA

FMCSA proposed retaining the requirements for motor carriers to obtain the CLP/CDL holders' medical information as part of the CDLIS MVR from the SDLA originally imposed

through the 2008 Med-Cert final rule. Barton Solvents, Inc. pointed out that they currently request MVRs twice a year and review all drivers' records during those two periods. They stated that the proposed rule would break up the requests such that MVRs would be requested individually after the examination and annually thereafter and that the administration of this change will require several more hours of staff time for tracking and making the requests. They requested that FMCSA consider removing the proposed requirement for employers to obtain the MVR and have it placed into the driver qualification (DQ) file within 15 days, and return to the current requirement of an annual review. On the other hand, ATA fully supports FMCSA's proposed decision to allow motor carriers to use a driver's MVR containing medical qualification information to demonstrate compliance with the motor carrier's driver medical qualification monitoring requirement. Wisconsin's Department of Transportation recommended that the system allow the physician to print results of the exam and to email or eFax results to the driver. They questioned how the doctor would be notifying the driver that she/he has failed, how the driver/employer knows what that means, and if FMCSA is planning on notifying drivers when their medical certification is due to expire and/or expires.

FMCSA Response

FMCSA understands the concerns underlying Barton Solvents' request to modify the current requirement so that the MVR only be obtained and placed in the DQ file once a year at a time determined by the employer. But the current requirement under 49 CFR 391.25(a) was established because the MEC or medical variance provided by the driver may expire before a new MVR is obtained if it is only requested once a year. This would leave the employer without proof for the DQ file to verify the medical qualification of the driver. The employer's business practices need to be modified so that the MVR is obtained by the employer each time a new physical examination is taken and at least annually between examinations to be in compliance with the driver qualification requirements in 49 CFR 391.11(b)(4) and 391.41(a).

In response to Wisconsin's comments, the driver can request and receive any additional information and documents (including copies of the MER and the MEC). But the official record of the driver's qualifications (for CLP/CDL applicants/holders) will be the information transmitted to FMCSA by the ME and then transmitted by FMCSA to the SDLA for entry on the driver record. Non-CDL holders, of course, will still have to be provided a signed copy of the MEC in accordance with 49 CFR 391.43. Finally, it is the driver's responsibility to ensure that, if required to have a valid MEC, they obtain a new one before the previous one expires. FMCSA will not be providing any notice to drivers about upcoming expiration dates. A CLP/CDL holder who allows the MEC to expire without obtaining a new one will, in due course, be notified by the SDLA that the CLP/CDL will be downgraded.

5. Carrying a Paper MEC While on Duty

FMCSA proposed that CLP/CDL holders would no longer be required to carry a valid MEC while on duty operating a CMV, even during the first 15 days after it is issued because the MEC information would be electronically transmitted from the ME to the National Registry system by close of business on the day of the examination. FMCSA would then promptly transmit the information from the National Registry system to the SDLAs electronically for entry into the appropriate CDLIS driver record. The MEC information would be posted to the driver's record, by the SDLA, within one business day of receiving the information from FMCSA.

Several commenters were opposed to CLP/CDL holders no longer being allowed or required to carry a paper MEC. They suggested we use the language ''no longer required'' instead of ''not permitted.''

Some commenters were concerned about the effect of the length of time it might take for the information to be posted by the SDLAs on the CDLIS driver record, and urged that the Agency retain the current 15-day period during which the paper MEC would be valid. On the other hand, ATA supports use of the language ''no longer required to carry MEC.'' But it suggested FMCSA design the system to transmit to the National Registry and the driver's MVR at the same time.

Schneider National, Inc. pointed out that the MEC serves as the driver's reminder as to when his/her certification expires; without this they will need to call the ME, carrier or SLDA and ask when the physical expires. They expressed their concern for the administrative burden and costs this would cause. Schneider recommended any ''pending decision'' be sent to the SLDA as ''not certified,'' then if no action is taken, no additional transmission or change of status is needed. If the driver resolves the issue and is certified, then upon receipt of that status FMCSA would communicate a status of ''certified.'' Other commenters suggested we retain the ''temporarily disqualified'' as an outcome on the MER Form, MCSA–5875, and New York's Department of Motor Vehicles asked that FMCSA clarify the State's responsibility when the driver is reported by the ME as ''pending determination.''

FMCSA Response

FMCSA's intent in promulgating this final rule is to eliminate the need for CLP/CDL holders to carry a paper MEC as proof of being medically qualified and to reduce fraudulent activity involved in the issuance and forging of these documents in a paper format. For CDL holders (and later for CLP holders), this requirement was established in the Med-Cert final rule, although the requirement to have a paper MEC while on duty was extended to January 30, 2015 because a few States have not yet implemented the changes necessary to comply with that rule [Med-Cert, Extension of Certificate Retention Requirements, 76 FR 70661 (Nov. 15, 2011); and Med-Cert, Extension of Certificate Retention Requirements, 79 FR 2377 (Jan. 14, 2014)]. FMCSA acknowledges that giving the ME until midnight (local time) of the next calendar day to submit the MCSA–5850 to the National Registry will require extra outreach to the drivers to encourage them not to wait until the last minute to renew their medical certification. This outreach will be in addition to general outreach to and training for drivers, employers and law enforcement to become comfortable with this new method of proving medical qualification. The electronic record of the driver's medical certification will be the only valid evidence that the CLP/CDL holder was physically qualified. Therefore, even if the CLP/CDL holder chooses to carry a paper MEC, it will not be considered valid evidence of medical qualification. As first established by the Med-Cert final rule, the purpose of eliminating the paper MEC for CLP/CDL holders is to provide current and accurate information and to reduce fraud. Non-CLP/CDL holders will continue to be required to carry the original, or a copy, of the MEC while on duty. All CMV drivers will still be required to carry any relevant medical variance documents.

FMCSA disagrees with Schneider's recommendation to forward any pending determination to the SDLAs as not certified. The pending determination category represents a situation where the ME needs additional

medical information to determine if a driver is medically qualified. When pending determination is selected, the driver may still drive until his/her existing MEC expires or the ME makes a qualification decision. This information will be submitted and stored only in the National Registry system. It will not be transmitted to the SDLAs. In addition, it would not be appropriate to forward this information as ''not certified'' because a determination has not been made. If it was forwarded as ''not certified'', the SDLA will be required to enter ''not certified'' on the driver's CDL and to begin the process of downgrading. If the disposition of the pending determination is not updated by the ME before the 45 day expiration date, FMCSA will notify the ME and the driver in writing that the examination is no longer valid and that the driver is required to be re-examined. FMCSA will retain the incomplete examination information in the National Registry System. If the driver is not medically qualified at the time of the exam, ''not qualified'' should be selected by the ME. This will apply at all times when a driver is not medically qualified including when a driver has a temporary and/or treatable disqualifying condition that may later be resolved enabling the driver to again be medically qualified or when a driver has not completed the recommended waiting period. FMCSA will use this to audit/check for irregularities in information transmitted to the National Registry (*e.g.,* two or more conflicting certification statuses submitted).

It should also be pointed out that the CMV Driver Medical Examination Results Form, MCSA–5850 clearly states that the results of all examinations conducted by the ME, including incomplete and failed examinations must be reported to FMCSA. However, the Agency does not have the authority to require a driver to complete the physical examination by a certified ME. The driver is able to stop the exam at any time but all exams, including those that are incomplete will be reported by the certified ME to the National Registry.

6. Transmission of MEC Information for Interstate Drivers Only

FMCSA proposed to transfer MEC information to the SDLAs only for those CLP/CDL applicants/holders that are required to be medically certified to operate a CMV transporting property or passengers in interstate commerce.

Commenters objected to FMCSA transmitting MEC information for only interstate drivers and were concerned that no consideration has been given for intrastate drivers that are subject to the FMCSRs. Many, including 10 of the 17 States that commented, suggested that FMCSA electronically transmit MEC information for all CMV drivers, including those that drive exclusively in intrastate commerce. The Colorado Department of Revenue/CDL Unit and AAMVA, like many others, requested clarification on whether it is the intent of FMCSA to send MEC information for interstate CLP/CDL applicants/holders only. They strongly objected to the process excluding intrastate drivers and stated that this exclusion will require the SDLAs to develop two different processes for receiving and entering MEC information. They believe that having two separate processes will be confusing to those law enforcement agencies that do not deal with CDL issues on a regular basis. The Colorado Department of Revenue/CDL Unit pointed out that while they understand that FMCSA does not regulate intrastate drivers, Motor Carrier Safety Assistance Program (MCSAP) States are required to treat intrastate drivers the same as interstate and suggested that FMCSA do the same. The Colorado Department of Revenue/CDL Unit also requested clarification on the use of the ''intrastate-only flag'' on the CMV Driver Medical Examination Results Form, MCSA–5850, specifically whether the driver would be certifying to inter or intrastate driving, and whether MCSA–5850 forms marked intrastate-only would be transmitted from the National Registry to the SDLAs.

Georgia's Department of Driver Services recommended that FMCSA consider designating any driver whose medical certification is sent electronically from an ME to the SDLAs be designated by default to be self-certified as non-excepted interstate. Georgia's Department of Driver Services believes that this designation is logical because any driver who obtains a medical certification believes that he or she is non-excepted. They stated that each SDLA could impose intrastate-only restrictions if such are applicable to a specific driver. Oregon Driver and Motor Vehicle Services suggested that FMCSA develop a process that includes a way for each State to select which of its drivers should have MECs forwarded and have the ability to change that selection if necessary, send all MEC information regardless of driving type, or develop a way for States to access and retrieve the data directly from the National Registry.

ACOEM suggested that the final rule make it clear that the driver is responsible for correctly notifying the ME of the category into which the driver falls—interstate/intrastate and excepted/non-excepted. They stated that placing the responsibility on the ME to keep track of whether the ME is required to submit the results of the examination (for CDL holders) or to issue an MEC (for those who require an MEC but do not require a CDL) could be burdensome and confusing, especially as to intrastate CDL holders. In ACOEM's opinion, documentation requirements should not fall on the ME. ACOEM also suggested that FMCSA develop a process to address situations where a driver obtained an MEC prior to applying for a CDL, or where CDL was checked on the MER but the driver does not have a CDL. ATA suggested that FMCSA educate MEs about the differences between interstate and intrastate drivers, as well as those that are required to have a CDL and those that do not.

FMCSA Response

The NPRM proposed that FMCSA would send MEC information to the SDLAs only for those CLP/CDL applicants/holders who are required to be medically qualified to operate in interstate commerce. In response to the States' comments, however, the final rule has been expanded not just to include transmittal of MEC information from all examinations performed in accordance with the FMCSRs (49 CFR 391.41–49 CFR 391.49), but also to allow (but not require) MEs to transmit information about examinations performed in accordance with the FMCSRs with any applicable State variances. See 49 CFR 391.43(g)(5)(i)(B) below.

In general, States receiving MCSAP grants are required to adopt and apply to intrastate CMV drivers, physical qualification standards that are identical to or have the same effect as those applicable to interstate CMV drivers, (49 CFR 350.101, 350.105 (definition of compatible or compatibility) and 350.201(a)). A majority of States have adopted compatible physical qualification standards, and a certification that a driver has met those standards would be valid for both interstate and intrastate operations. But a minority of States, as permitted by the regulations governing MCSAP grants in 49 CFR 350.341(h)(1) and (2), have variances from the interstate standards that are only valid for drivers operating in intrastate commerce.

Moreover, States that have adopted such variances for intrastate drivers have the option of setting up their own registry of MEs qualified to apply those standards or to use MEs listed on the

National Registry who have knowledge of such variances. See 49 CFR 350.341(h)(3) and the explanation in the National Registry final rule at 77 FR at 24109–24110 and 24120. To the extent States with variances from the physical qualification standards choose to require examinations of intrastate drivers to be conducted by MEs on the National Registry, FMCSA is modifying the provisions of proposed 49 CFR 391.43(g)(5)(i)(B) to allow information about such examinations to be reported to the National Registry for transmission to the appropriate SDLA.

The FMCSA cannot take any responsibility for determining whether the MEC information for a driver who declares that he or she will operate a CMV only in intrastate commerce meets State medical qualification requirements. For this reason, FMCSA is modifying all of the medical forms to make it clear whether an ME is examining and issuing an MEC to a driver under the interstate physical qualification standards applicable to all interstate and most intrastate drivers, or under a set of standards that also includes applicable State variances from the interstate physical qualification standards. Ultimately, after the certification information for CLP/CDL holders has been transmitted to the SDLAs, it will be the responsibility of those States with variances to determine through their own procedures whether the State variances have been properly applied for drivers who have self-certified in accordance with 49 CFR 383.71(b)(1) that they are operating intrastate-only and are subject to the State standards.

As discussed in a previous response, MEs will be receiving training and outreach regarding non-CLP/CDL holders who will need a paper copy of the MEC, Form MCSA–5876. In regard to MEs having to make a decision on who is excepted from the MEC requirements, FMCSA does not believe this decision needs to be made by the ME. Anyone taking a physical examination will be assumed to be non-excepted and in need of an MEC. CMV drivers excepted from the physical qualification requirements will not need to obtain an MEC.

7. Transfer of Medical Variance Information

FMCSA proposed to electronically transmit medical variance information for all interstate CMV drivers to the SDLAs.

Commenters were concerned about the transmission of medical variance information for all CMV drivers. The Colorado Department of Revenue/CDL Unit and AAMVA requested that FMCSA clarify how the SDLAs will receive this information for non-CDL holders and what they would be expected to do with the information. The Nebraska Department of Motor Vehicles stated that specific transmission requirements should be identified and that currently the transmission of medical variance information is not always timely. They requested that medical variance information be transmitted through the National Driver Registry and that it be done by COB on the day of the exam. ATA suggested that FMCSA initiate a pilot project to examine whether medical variance information can also be transferred from paper certificates carried by a driver to electronic transmission. Oregon's Driver and Motor Vehicle Services questioned how, without knowing whether a variance might be approved, an ME knows whether a patient is physically qualified. They suggested instructions be provided for how to proceed when checking ''qualified . . . only when accompanied by.''

FMCSA Response

Medical variance information for all CLP/CDL holders will be electronically transmitted from the National Registry to the SDLAs. FMCSA will input approved exemption information and approved SPE certificates. This information will then be promptly transmitted to the appropriate SDLA. Because the status of a variance may or may not be known at the time of the medical examination, we cannot provide a specific timeframe in which the variance information will be transmitted to the SLDA. Non-CLP/CDL applicants/holders variance information will continue to be electronically transmitted through encrypted email to the SDLAs. The SDLAs will use medical variance information of non-CLP/CDL applicants/holders for verifying the validity of medical variance documents provided by drivers and for informational purposes.

For those CMV drivers who are applying for an exemption or SPE for the first time, the medical examination results will be held in the National Registry system until the variance is approved. At that time, the medical examination results and variance information will be promptly transmitted to the appropriate SDLA. Grandfathered exemption information will be inputted into the National Registry and promptly transmitted to the appropriate SDLA. However, FMCSA and the SDLAs will also be able to query the system to retrieve grandfathered exemption information. All CMV drivers are required to carry any relevant medical variance documents.

When MEs select the ''qualified . . . only when accompanied by . . .'' option on the CMV Driver Medical Examination Results Form, MCSA–5850; MER Form, MCSA–5875; and/or the MEC, Form MCSA–5876, they are certifying that the driver is physically qualified with the specified waiver/exemption or SPE. It is up to the driver to obtain the waiver/exemption or SPE. In this case, the MEC is not valid unless accompanied by the waiver/exemption or SPE.

8. Voiding the MEC

OOIDA pointed out that the NPRM did not elaborate on or provide regulatory language for the process of voiding an MEC and questioned the lack of detail for the procedures that FMCSA would use to void an MEC. OOIDA recommended that in order to protect drivers from having their MEC incorrectly voided and careers harmed, no final rule should be issued until such a procedure is proposed, the public is given an opportunity to comment, and provisions are written into the final rule. Schneider National, Inc. commented that FMCSA proposed a new requirement that the State must also update the medical status to ''not certified'' when the medical certification is voided by FMCSA. Schneider National, Inc. requested that this requirement be changed to require the State to post on the CDLIS driver record a status of ''invalid'' rather than ''not certified'' in the cases of an invalidated MEC. Schneider National, Inc. also requested more detail on the procedures that FMCSA would follow.

FMCSA Response

As explained in both the National Registry final rule (77 FR at 24108) and in the NPRM in this rulemaking (78 FR at 27348), under the authority granted by 49 U.S.C. 31149(c)(2), FMCSA may void an MEC issued to a CMV driver if it finds either that an ME has issued a certificate to a driver ''who fails to meet the applicable standards at the time of the examination'' or ''that a ME has falsely claimed to have completed training in physical and medical examination standards.'' FMCSA has implemented this authority on a case-by-case basis as appropriate to the circumstances. The Agency has developed internal processes for evaluating the validity of certificates in the wide variety of possible situations where such review appears to be appropriate under the statutory

standard. This will include review of the data submitted by MEs to the National Registry system, as well as complaints, field investigations, crash reports and other sources. FMCSA will provide the affected driver a notice of the proposed action and an opportunity either to obtain a new MEC, if appropriate, or to provide the Agency with any legal or factual reasons why a new medical certificate should not be required before voiding the MEC. If the decision is made to void the driver's certificate, FMCSA will notify the driver. If the driver holds a CLP/CDL, notification will be electronically transmitted by FMCSA to the driver's SDLA through the National Registry, and the SDLA will change the CLP/CDL holder's medical status to ''not certified'' within 10 days and notify the driver of the action taken.

C. Use of Revised MER Form and MEC

FMCSA proposed to require certified ME performing physical examinations of CMV drivers to use a newly developed MER Form, MCSA–5875, in place of the current MER Form and to use Form MCSA–5876 for the MEC. Both forms will be prescribed for mandatory use.

While many commenters supported the changes to the MER Form, MCSA–5875, many also raised a number of different issues related to this form. Each of those issues is discussed below. The only comments received regarding the revised and prescribed MEC, Form MCSA–5876, were suggestions to add a CLP indication and to remove the intrastate-only selection. Both issues are discussed below.

Collection of Driver Health Information

OOIDA stated that NPRM did not attempt either to make a connection between the new questions and the driver medical qualification requirements or to otherwise justify their adoption into the medical certification form. They stated that FMCSA does not have the authority to make such changes to the MER without describing its authority to do so, and without dealing with the privacy implications of the proposal.

Several other commenters raised questions about the need and relevance of some of the information about the drivers' health history requested on the revised MER. ATA expressed its concern about removing the instructions from the MER Form, MCSA–5875 without replacing them with documentation to distinguish between guidance and regulation and that removing the reference to guidance undermines the distinction between the two.

Many other commenters made recommendations for modifying the MER Form, MCSA–5875. For example, AAMVA and others suggested we include a CLP box in addition to the CDL box on the MER Form, MCSA–5875 for clarification purposes and to avoid the possibility of a driver applying for a CLP not checking the CDL box and their MEC information not being forwarded to the SDLA. The Delaware Division of Motor Vehicles and others suggested that we remove the intrastate-only option, contending that all MEC information should be submitted to the National Registry and sent to the SDLAs.

FMCSA Response

FMCSA believes its statutory authority for this rulemaking, as provided in the legal basis section, is clear. The Agency has ample legal authority to adopt recordkeeping requirements needed to implement the proposed rule, and it may adopt these ancillary provisions as part of the same rulemaking. The Agency does not believe it is necessary to articulate the separate statutory authority for each specific change to the form.

FMCSA notes that proposed changes to IC burdens are covered through its actions to comply with the Paperwork Reduction Act. To the extent that the proposed changes would affect the estimated paperwork burden, the Agency discusses those matters and seeks public comment on the burden and associated costs of the recordkeeping requirement.

With regard to privacy of medical information, FMCSA does not collect details of drivers' medical history. This information is collected to facilitate the completion of a thorough examination by the ME and an appropriate assessment whether the driver meets the physical qualifications standards. The MEs are responsible for maintaining the MER, but they are not required to submit those reports to FMCSA absent a request from the Agency or its State partners in association with an investigation or audit. FMCSA emphasizes that the driver health history questions, including those that have been added, are specifically linked to the physical qualification standards set out in 49 CFR 391.41(b).

The section for the driver's signature has been revised to read as follows in order to emphasize the importance of providing complete and accurate responses:

I certify that the above information is accurate and complete. I understand that inaccurate, false or missing information may invalidate the examination and my Medical Examiner's Certificate, that submission of fraudulent or intentionally false information is a violation of 49 CFR 390.35, and that submission of fraudulent or intentionally false information may subject me to civil or criminal penalties under 49 CFR 390.37 and 49 CFR 386 Appendices A and B.

The Agency proposed to remove the Instructions for Performing and Recording Physical Examinations from 49 CFR 391.43(f), because FMCSA recognizes that MEs, who have been licensed, certified, or registered in accordance with applicable State laws and regulations to perform physical examinations thereby possess the knowledge, skills, and abilities to perform physical examinations, and do not need general instructions in performing and recording physical examinations. The Agency proposed to publish new versions of the instructions in FMCSA guidance documents. To eliminate redundant or unnecessary requirements, the instructions have been removed from 49 CFR 391.43(f).

The Agency also proposed to remove the information about the driver's role, a listing of physical qualification standards for drivers, detailed instructions to the medical examiner, and the medical advisory criteria from the newly developed MER Form, MCSA–5875, and to publish them in FMCSA guidance documents. Because the majority is information that healthcare practitioners must be knowledgeable of in order to be licensed, registered or certified by their States to perform physical examinations, this material has been removed from the newly developed MER Form, MCSA–5875. The Agency recognizes that MEs frequently refer to the guidance in the medical advisory criteria when determining if a driver meets the physical qualification standards, however, is therefore publishing the medical advisory criteria without substantive change as an appendix to 49 CFR part 391, instead of in the MER Form, MCSA–5875. In addition, brief instructions for completing the MER Form, MCSA–5875, are included as part of the revised form.

For clarification purposes, an entry for CLP has been added with the entry for CDL on the CMV Driver Medical Examination Results Form, MCSA–5850; MER Form, MCSA–5875; and the MEC, Form MCSA–5876 has been changed from a box that reads ''CDL, YES or NO'' to a box that reads ''CLP/CDL Applicant/Holder, YES or NO.'' These changes should cover all possibilities for a person who is

applying for, or is a holder of, a CLP or CDL, and should eliminate the possibility that a driver who is applying for a CLP overlooks checking the CDL box, which could result in MEC information not being forwarded to the SDLA.

The intrastate-only option on the CMV Driver Medical Examination Results Form, MCSA–5850; MER Form, MCSA–5875; and the MEC, Form MCSA–5876 has been removed and replaced with two certification options (1) driver certified in accordance with the FMCSRs (49 CFR 391.41–391.49) and (2) driver certified in accordance with the FMCSRs with any applicable State variances (which will only be valid for intrastate operations). This has been done in order to implement the Agency's decision explained above to facilitate the transmission of driver information for both interstate and intrastate operations, while clearly differentiating on the relevant documentation which standards (interstate or intrastate) are involved.

1. Privacy Act Compliance and Privacy Impact Assessment (PIA)

OOIDA stated in its comments that the PIA was not published until July 2013 and contains no greater discussion concerning the content of the revised MER form than does the NPRM. OOIDA commented that the proposed expansion of the information about a driver's personal health history requested and recorded on a new MER greatly increases the opportunity for such personal information to be distributed and used by those without an interest in safety and for purposes other than driver safety. OOIDA stated that the NPRM described the Privacy Act requirements as not applicable to the MER because the proposed rule does not require the government's collection of personally identifiable information (PII). OOIDA explained that this is not exactly true because this rule greatly expands the amount of information that the government collects or otherwise has access to under existing rules, and that by changing the universe of MER information used by other rules, any privacy analysis performed when those rules were promulgated would be out-of-date under the proposed rule. OOIDA stated that FMCSA must now examine, under the Privacy Act, each of its rules that permit or require the government to obtain and review the new MERs. It asked if the answers to these questions will be stored and have some impact on the driver in the future.

FMCSA Response

There has been and will be adequate opportunity for public awareness of, and in some respects for public comment on, the privacy interests affected by this final rule. The Agency, in conjunction with the Department's Chief Information Office, has prepared and made available a PIA.[3] The PIA is prepared in accordance with Section 522(a)(5) of the Fiscal Year 2005 Omnibus Appropriations Act, Pub. L. 108–447, 118 Stat. 3268 (Dec. 8, 2004).[4] The PIA provides a detailed explanation of the privacy interests involved in the entire National Registry program. It sets out the careful and thorough steps FMCSA and the Department have taken and will take to protect those interests, while at the same time carrying out the statutory directives to ensure that CMV drivers are physically qualified and can operate safely and that operation of a CMV does not have a deleterious effect on their health.[5]

However, because of the unexpected delays in making the PIA available in the rulemaking docket in support of the NPRM, FMCSA published a Notice of Availability advising interested members of the public that there was an additional, limited opportunity for comment on the privacy issues involved in the proposed rules until June 11, 2014. 79 FR 30062 (May 27, 2014).[6]

The Agency provided this opportunity to comment on the possible impact of the rules proposed in the NPRM on the protection of privacy of information used in determining the physical qualifications of CMV drivers, in light of the evaluation by the Agency and the Department of the protection of privacy of information set out in the PIA. In response to the May 27, 2014, Notice of Availability, FMCSA received two comments. One comment was from a driver stating that the National Registry was making his job more difficult. The other comment was from a medical office commenting on the submission requirements and suggesting edits to the MER Form, MCSA–5875. Both comments received were considered to be outside the scope of the PIA because neither comment addressed the protection of privacy of information collected. They were nevertheless considered as late-filed comments to the NPRM, consistent with the Agency's policy to consider, to the extent practicable, comments received after the close of a routine comment period under 5 U.S.C. 553(c).

2. Paperwork Reduction Act Compliance

ATA suggested that FMCSA publish an IC request to examine the appropriateness of the amendments and investigate other potential additions or subtractions to the MER Form, MCSA–5875.

FMCSA Response

As required by the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3507(d)), FMCSA submitted the information collection requirements associated with the proposed rule, including the newly developed MER Form, MCSA–5875, to OMB for its review. The final rule has a decrease in annual paperwork burden hours (401,904 hours) as detailed in OMB control number 2126–0011 Commercial Driver Licensing and Test Standards and 2126–0006 Medical Qualification Requirements Supporting Statements in the docket. FMCSA analyzed this rule and determined that its implementation will decrease the currently approved IC burden hours covered by both of these control numbers. A detailed analysis of each IC activity can be found in the Supporting Statements attachments, which are in the public docket for this rulemaking. The Agency believes that the burden has not increased from what is currently being collected on the MER Form, MCSA–5875 and is not a new collection of information but is replacing the current MER being used by MEs. Much of the same information is being collected, just in a different format.

3. Cost Impacts of Revised Form

Southern Company stated that increasing reporting requirements on the MER Form, MCSA 5875, will have costly impacts and that form changes need to be evaluated in conjunction with the registration and certification of MEs on the National Registry and pending medical examination guideline changes for MEs. They indicated that together these rules will prove very costly, confusing, and disruptive to their company, the energy industry and the trucking industry. They stated that the expanded set of questions on medical history will increase direct and indirect costs of the exam because the driver will need 30–45 more minutes to complete the medical history and the ME will have to discuss the answers with the driver, increasing the total time for the

[3] Available at *http://www.regulations.gov/#!documentDetail;D=FMCSA-2012-0178-0039*.

[4] Set out as a note to 5 U.S.C. 552a, the Privacy Act, 5 U.S.C. 552a.

[5] 49 U.S.C. 31136(a)(3) and (4).

[6] *http://www.regulations.gov/#!documentDetail;D=FMCSA-2012-0178-0075*

office visit. They stated that this warrants more time to analyze the economic impact since this would potentially increase the trucking industry's costs significantly as well and negatively impact the nation's economy. They suggested that this regulatory action should be combined with the related rule changes as mentioned above and proposed for comments.

FMCSA Response

The newly developed MER Form, MCSA–5875, contains much of the same information being collected on the current MER, but in a different format, and thus is not considered a new collection of information. Therefore, the burden has not increased from what is currently being collected on the MER. In addition, all questions on the MER Form, MCSA–5875, can be specifically linked to provisions of 49 CFR 391.41, physical qualifications for drivers, or to ensuring that there is no negative or deleterious effect on the driver's health making it more difficult to drive a CMV safely. FMCSA does not consider the questions on the revised MER Form, MCSA–5875, to be long or onerous for the driver to complete. The time spent to fill out the form or to complete the exam will not increase to the extent that the commenter suggests.

D. Compliance Date for States

FMCSA proposed that beginning 3 years after the effective date of the final rule, FMCSA would electronically transmit all of the information on the MEC from the National Registry system to the SDLAs for CLP/CDL applicants/holders only. FMCSA proposed this date based on its estimate of when all States will have the information technology systems in place to receive the information from the National Registry.

Several commenters were concerned that three years is not enough time for the States to come into compliance. Oregon's Driver and Motor Vehicle Services (Oregon) stated that three years is not enough time for implementation because the mechanism for sending the information to the States has not yet been determined. Oregon commented that if FMCSA decides to use CDLIS, development of the system requirements will take at least a year, leaving two years or less for the States to do the work needed to comply. The State questioned why FMCSA would choose to build in guaranteed noncompliance by most, if not all by requiring the States to come into compliance within 3 years. They suggested that FMCSA delay the final rule until the technical details have been coordinated.

California's Department of Motor Vehicles (California) agreed that three years is not enough time to complete all necessary program changes. California pointed out that many States are not able to implement rules within three years of being published as final, due in part to receiving technical specifications 18–24 months after the effective date, leaving the States a year or less to perform system analysis and programming. They also pointed out that competing resources with existing State-mandated projects and laws is an issue for them. They suggested that FMCSA delay implementation for five years.

Delaware's Division of Motor Vehicles (Delaware) stated that shortening the proposed date would be problematic. Delaware explained that the State has to propose and pass legislation, fund programming, conduct examiner training, complete structured testing, etc., all while maintaining regular operations. The State indicated that changes are prioritized and must have established timelines. They stated that shortening the deadline will hinder an SDLA's ability to properly manage its priorities. They recommended FMCSA retain a hard date for implementation.

Schneider National, Inc. (Schneider) stated that without a consistent implementation date for all parties, the driver will be unsure as to whether the ME will submit the information on the MEC to the SDLA. If changes have not been implemented, drivers must continue to use a paper copy of the MEC to ensure they remain in compliance. Schneider pointed out that there is no language to hold the ME accountable to tell drivers if the information would be communicated electronically or if the driver needs to deliver a paper copy to the SDLA.

On the other hand, Advocates recommended that the Agency set an earlier date for compliance. They stated that one year should be sufficient but certainly no more than 18 months.

New York's Department of Motor Vehicles (New York) stated that another potential cost may be SDLA upgrades to connect to the National Registry database; however the Agency is unable to estimate and quantify at this time. New York asked if States would be able to apply for a CDLPI grant. Several commenters questioned the date beginning on July 8, 2014, if the driver has a CLP and has certified that he or she expects to operate in interstate commerce that the driver has a valid MEC and any required medical variances. They believe this date should be July 8, 2015, based on the extension granted for the Commercial Driver's License Testing and Commercial Learner's Permit Standards.

FMCSA Response

While several commenters voiced concern that three years is not enough time for States to come into compliance with these new requirements because the mechanism for sending the medical certification information to the States has yet to be determined, the Agency believes it is sufficient time because the decision has now been made that CDLIS will be the mechanism for sending the medical certification information from the National Registry to the SDLAs. California's Department of Motor Vehicles and several other commenters based their concern in part on the past history of receiving technical specifications 18–24 months after the effective date of the final rule, leaving the States a year or less to perform system analysis and programming. FMCSA is working to get these technical specifications to the States sooner than in the past. Therefore, FMCSA has decided to keep the State compliance date at three years from the effective date of the final rule, as proposed in the NPRM. Some commenters misunderstood the Agency's intent regarding the compliance date and thought that we were considering different dates for each State based on when they would have the information technology systems in place to receive the information from the National Registry. The Agency was simply pointing out that if all the States were ready earlier than three years from the effective date of the final rule that we would consider shortening the compliance date. The State compliance date will be unified as suggested by Schneider and will be three years from the effective date of the final rule.

E. Coercion

No comments were received suggesting that the proposed rule would result in any operator of a CMV being coerced to violate any of the safety regulations issued pursuant to 49 U.S.C. 31136. The rule is intended to enhance compliance with the physical qualification requirements applicable to all CMV drivers. As noted in the NPRM, by providing MEC information and medical variance information directly to the SDLAs, FMCSA will reduce to the greatest extent possible the coercion of drivers to operate with invalid or improper medical certificate.

F. Issues Outside of the Scope of This Rulemaking

A number of respondents submitted comments on topics that were either

outside the scope of what was proposed in the NPRM or were based on a misunderstanding of what the Agency proposed in this rulemaking. Most of these comments relate to the 2008 final rule, in Med-Cert and the 2012 final rule, in National Registry. Many comments raised issues that either were actually raised (and previously addressed) or should have been raised during the proceedings that resulted in the two previous final rules.

FMCSA Response

One comment outside the scope of what was proposed in the NPRM concerned the lost time and money associated with MEs being required to go through training and be tested to be listed on the National Registry. The training and testing that is required is part of the National Registry of Certified Medical Examiners final rule that was published on April 20, 2012. Full compliance with the National Registry final rule took effect on May 21, 2014. Therefore, all CMV drivers (both CDL and non-CDL) are now required to obtain an examination and MEC from an ME listed on the National Registry.

1. Fraud and How the SDLA Will Be Notified

The Colorado Department of Revenue/CDL Unit questioned whether FMCSA expects the SDLA to take a false statement disqualification action, assuredly as contained in 49 CFR 383.73(j), when FMCSA determines that an individual has falsified potentially disqualifying medical information. They also questioned how FMCSA would notify the SDLA of possible fraud and how much information will be disclosed to the SDLA to allow them to take the false statement disqualification.

FMCSA Response

Although this is not a matter within the scope of this rulemaking, it is an important point that needs explanation. As explained in the 2008 final rule and subsequent technical amendments in Med-Cert, the provisions of 49 CFR 383.73(j) regarding penalties for false information submitted by CLP/CDL applicants/holders require SDLAs—not FMCSA—to take the actions specified in section 383.73(j) when the State determines that an applicant has falsified medical information. If FMCSA review of MEC information finds a CLP/CDL holder has falsified information in the course of obtaining the MEC, FMCSA may void the MEC and will then notify the SDLA. The SDLA should then notify the CLP/CDL holder of the ''not certified' status and begin the process for the downgrading of the CLP/CDL as set out in 49 CFR 383.73(o)(4)(i). The SDLA can also take any of the actions set out in section 383.73(j).

2. Safety Benefits

One driver stated that there are no proven safety benefits to submitting private medical information to the Federal government and for making the medical doctors go through training on driver fitness and join another federally run program so they can be on the approved list.

FMCSA Response

FMCSA is required by statute to establish and maintain the National Registry, and it did so in the final rule published in 2012. 49 U.S.C. 31136(a)(3) and 31149. The benefits of that program were thoroughly discussed and explained in that final rule. Further consideration of them in this proceeding is not warranted. The Agency is not requiring the submission of private medical information, only the MEC, which serves as proof the driver meets the physical qualifications standards. Drivers have long been required to present the MEC during roadside inspections, and employers have long been required to maintain a copy of the MEC in DQ files. The private medical information is contained on the MER which continues to be maintained by the healthcare professional. While FMCSA and employers may request access to the MER, the Agency does not intend to request the document except as part of an investigation or audit.

3. MERs

ATA suggested that after a medical examiner uploads medical qualification information for a driver holding a medically downgraded CDL, FMCSA should require SDLAs to automatically return that driver's license to interstate status. ATA stated that they hope that any forthcoming employer notification system FMCSA might develop will account for this process by eliminating needless paperwork for carriers maintaining DQ files that must be renewed upon a medical certificate's expiration. They suggested that the Agency examine ways to incorporate medical status monitoring into any forthcoming employer notification system authorized under section 32303 of MAP–21 instead of forcing a carrier to request additional reports every time the date on a driver's medical qualification changes.

Schneider National, Inc. recommended that the language be changed to allow the motor carrier to continue to require drivers to provide a copy of their MEC and Form MCSA–5876. They stated that they have a third party vendor that ensures the drivers are disclosing all their known medical conditions and they also compare the prior physical (if available) to the new physical to identify any errors or issues. They pointed out that 15–20% of driver physicals require them to send the driver back to the clinic, either due to the driver failing to disclose all relevant medical information on the form or because of a clinic error.

FMCSA Response

This rule will not require MEs to inform drivers' employers and provide the motor carrier a copy of a driver's MER Form, MCSA–5875, when a driver completes a medical examination. For MEs to provide the motor carrier employer with a copy of the MER Form, MCSA–5875, there will need to be an agreement between the driver and employer, often as a condition of employment.

Under § 391.43(g)(2), if the ME finds that the person examined is physically qualified to operate a CMV in accordance with § 391.41(b), he or she must complete a certificate in the form prescribed in paragraph (h) of this section and furnish the original to the person who was examined. The examiner must provide a copy to a prospective or current employing motor carrier who requests it. Under § 391.43(i), each original (paper or electronic) completed MER Form, MCSA–5875 and a copy or electronic version of each MEC, Form MCSA–5876 must be retained on file at the office of the ME for at least 3 years from the date of examination. The ME must make all records and information in these files available to an authorized representative of FMCSA or an authorized Federal, State, or local enforcement agency representative, within 48 hours after the request is made.

When the SDLA receives notification of medical qualification information for a driver with a CDL downgraded for medical qualification reasons, the driver's medical status should be updated to ''certified'' and the CDL status updated to ''licensed.'' An SDLA may have additional requirements.

VII. Section-by-Section Explanation of Changes

This section includes a summary of the regulatory changes made in 49 CFR parts, 383, 384 and 391 organized by section number.

A. Changes to Part 383

Part 383 contains the requirements for CLP/CDLs. With certain exceptions, the rules in this part apply to every person

required to possess a CLP/CDL to operate a CMV in commerce, to all employers of such persons, and to all States.

Section 383.71(h). FMCSA changes the requirement of a CDL/CLP applicant/holder from providing the State with an original or copy of their MEC (previous edition) to FMCSA providing the State with the electronic MEC information beginning three years after the effective date of this final rule.

Section 383.73(a)–(b). Three years after the effective date of the final rule, FMCSA will change the requirement that the State must post the MEC (previous edition) received from the CLP/CDL applicant or holder to the CDLIS driver record to the State posting the electronic MEC information received from FMCSA.

Section 383.73(o). Three years after the effective date of the final rule, FMCSA will change the requirement that the State post the original or copy of the MEC (previous edition) information to the CDLIS driver record within 10 calendar days after receipt to a requirement that the State post the electronic MEC, Form MCSA–5876, information to the CDLIS driver record within 1 business day after receiving the electronic information from FMCSA. The final rule also adds a requirement that, when the SDLA receives information that a driver's MEC has been invalidated because the driver has been found to be not physically qualified in a subsequent examination by an ME on the National Registry, the SDLA must change the driver's status on the CDLIS record to ''not certified'' and begin the process for downgrading the CLP/CDL. FMCSA also changes the requirement that the State retain an original or copy of the MEC (previous edition) for 3 years to a requirement that it retain an electronic record of the MEC information, Form MCSA–5876, for 3 years.

Paragraph (o) also requires the States to post the medical variance information provided by FMCSA, including the dates of issuance and expiration, along with the MEC, Form MCSA–5876, information. This variance information posting requirement was previously incorporated by reference in § 384.107 of this chapter from AAMVA's ''Commercial Driver's License Information System State Procedures Manual,'' Release 5.3.2.1, August 2013. This requirement will be effective immediately because States are already required to post this information. FMCSA also reduces the time the State has to post the medical variance information received from FMCSA to the CDLIS driver record from within 10 calendar days to 1 business day from the date of receipt because the information will be sent and posted electronically. FMCSA also added a new requirement that the State must update the medical status to ''not certified' when the medical certification is voided by FMCSA.

B. Changes to Part 384

Part 384 contains the requirements that the States comply with the provisions of section 49 U.S.C. 31311(a). Part 384 includes the minimum standards for the actions States must take to be in substantial compliance with each of the 25 requirements of 49 U.S.C. 31311(a), establishes procedures for FMCSA determinations of State compliance, and specifies the consequences of State noncompliance.

Section 384.234. FMCSA added an administrative amendment to this section to include driver medical certification recordkeeping requirements for CLP applicants in Part 383.

Section 384.301. FMCSA amended this section by adding a new paragraph (i). FMCSA has always given the States 3 years after the effective date of any new rule to come into substantial compliance with new CDL requirements. This allows the States time to pass any necessary legislation and to modify State systems to comply with the new requirements, including CDLIS. New paragraph (i) would specify the 3 year compliance date for States.

C. Changes to Part 391

Part 391 establishes minimum qualifications for persons who drive CMVs. The requirements in this part also establish minimum duties of motor carriers with respect to the qualifications of their drivers.

Section 391.23(m)(2)(i)(A). FMCSA made an editorial change to eliminate an erroneous reference to § 383.71(a)(1)(ii) and to add a reference to 383.71(b)(1)(ii), which describes the four types of self-certifications.

Section 391.23(m)(2)(i)(B). Three years after the effective date of the final rule FMCSA will eliminate the requirement for the motor carrier to verify and document in the DQ file that a CDL holder was certified by an ME listed on the National Registry. Employers will no longer need to verify the examination and ME listing, because that information will be sent to the SDLAs through CDLIS from the National Registry. Motor carriers will still be required to meet this requirement for non-CDL holders.

Section 391.41(a)(2). Three years after the effective date of the final rule, FMCSA will eliminate the provision requiring drivers required to have a CLP/CDL to carry a current MEC (previous edition) for 15 days.

Section 391.43. FMCSA removed the Instructions for Performing and Recording Physical Examinations section in § 391.43(f) to eliminate redundant or unnecessary requirements.

Beginning 3 years after the effective date of the final rule, FMCSA will eliminate in § 391.43(g)(2) the requirement that MEs provide the MEC, Form MCSA–5876, to drivers required to have a CLP/CDL (and to their employers), because the MEC information will be promptly and accurately transmitted electronically to the SDLAs for entry on the CDLIS driver record. But the ME must still provide the MEC, Form MCSA–5876, to non-CDL drivers and requesting employers, as currently required.

FMCSA inserts two new paragraphs in § 391.43(g). The first, paragraph (g)(3), requires the ME to inform the driver if a determination has been made that the driver is not physically qualified, and that this information will be reported to FMCSA. Upon receiving this report, FMCSA will invalidate any MECs previously issued to the driver that are contained in the Agency's records and will electronically transmit this report to the appropriate SDLA. The second new paragraph, (g)(4), requires the ME to inform the driver if the determination of whether the driver is physically qualified requires additional information or further examination. This pending status will remain in effect for 45 days, and will be reported to FMCSA. If the examination is not completed within the 45-day period, the examination will be no longer be valid and the driver will be required to obtain a new examination in order to obtain a MEC, Form MCSA–5876.

In § 391.43(g)(5)(i)(B) (renumbered from (g)(3) because of the two new paragraphs above), FMCSA requires that, beginning 3 years after the effective date of the final rule, the ME must report results of all commercial drivers' physical examinations to FMCSA by completing a CMV Driver Medical Examination Results Form, MCSA–5850, via the ME's individual password-protected National Registry web account by midnight (local time) of the next calendar day. MEs are required to report the results of all examinations conducted in accordance with the physical qualification standards in 49 CFR part 391, subpart E that apply to CMV drivers engaged in interstate operations. In addition, as a convenience to those States that have variances from those standards for

drivers operating intrastate, the rule allows MEs to transmit such information to the National Registry, if required by the States involved, for eventual transmittal to the SDLAs.

In § 391.43(g)(5)(ii), FMCSA will require MEs to report to FMCSA whenever the ME does not complete any driver medical examinations during the preceding 30 days, beginning on the effective date of the final rule.

FMCSA revises § 391.43(h) to require MEs to use the MEC, Form MCSA–5876. The form has been modified to require the ME to indicate whether the driver is being certified as qualified in accordance with either the standards applicable to all interstate drivers or any State standards for intrastate drivers that have variances from the Federal standards in effect. This replaces the designation that the driver is either interstate or intrastate. Other minor editorial edits have been made to the form for clarity. The other information required to be entered on the certificate is unchanged from the information required under the current regulation.

Section 391.45. FMCSA has decided that when a driver has been determined to not be physically qualified, any previous MECs issued to a driver will be deemed invalid as explained above regarding § 391.43(g)(3). FMCSA has added a new paragraph at the end of this section that requires a driver to be medically examined and certified before operating a CMV after previous certifications have been invalidated because of a driver not being physically qualified under the provisions of proposed new § 391.43(g)(3).

Section 391.51. In § 391.51(b)(7), FMCSA has eliminated the exception that allows the motor carrier to use an MEC (previous edition) as proof of medical certification for CLP/CDL holders in the DQ file, because States will be required to record medical certification information in driver's record automatically upon receipt from FMCSA.

Appendix to Part 391. FMCSA has added medical advisory criteria as an Appendix at the end of this section. The advisory criteria (which are recommendations for use by MEs) are reproduced without substantive change from the advisory criteria currently included in the MER. FMCSA recognizes that some of these advisory criteria should be updated or revised. However, such substantive changes should not be made without notice and opportunity for public comment. FMCSA intends to seek public comment on revisions to the advisory criteria as promptly as feasible to bring them up to current standards.

D. Compliance Date

In order to allow sufficient time for the SDLAs and FMCSA to develop and implement necessary information system changes, most of the final rule provisions will take effect three years after the effective date of the final rule. The provisions requiring MEs to notify FMCSA if they have not performed any driver physical examinations during the previous month and the State to update the medical status to ''not certified' when the medical certification is voided by FMCSA under the authority of 49 U.S.C. 31149(c)(2) will go into effect on the effective date of the final rule. To allow sufficient time for the certified MEs to make the necessary adjustments to their business requirements, the provisions requiring MEs to use the new MER Form, MCSA–5875 and MEs to use the prescribed Form MCSA–5876 for the MEC will go into effect six months after the effective date of the final rule.

Beginning June 22, 2018, MEs will be required to report the results of all commercial drivers' physical examinations to FMCSA by midnight (local time) of the next calendar day following the examination, by completing a CMV Driver Medical Examination Results Form, MCSA–5850, via their individual password-protected National Registry web account. For CLP/CDL applicants/holders, FMCSA will electronically transmit driver identification, examination results, and restriction information from the National Registry system to the SDLAs, as well as information about MECs invalidated under new 49 CFR 391.43(g)(3) and 391.45(d). FMCSA will also electronically transmit medical variance information for all CMV drivers to the SDLAs. SDLAs will be required to post the medical variance information provided by FMCSA, including the dates of issuance and expiration, to the CDLIS driver record within 1 business day of receipt for CDL/CLP holders.

VIII. Regulatory Analyses and Notices

A. E.O. 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)

FMCSA has determined that this final rule is not a significant regulatory action within the meaning of Executive Order (E.O.) 12866, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), and is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) because it is not expected to generate substantial congressional or public interest. The impact of the final rule is estimated to be $12 million in up-front costs and $10.16 million in annual savings, so the rule's impact is not expected to exceed the $100 million annual threshold for economic significance. The purpose of the principal requirements established in the final rule is to modify the requirements adopted in two previous rules so that the driver identification, examination results, and restriction information for CLP/CDL holders is electronically transmitted by a certified ME listed on the National Registry to the FMCSA by midnight (local time) of the next calendar day after the examination, and then electronically transmitted by FMCSA within one business day to the SDLA for entry into the appropriate driver record.

1. Summary of Estimated Costs

FMCSA is not able to quantify the benefits of ensuring that CMV drivers are medically qualified and of reducing the falsification of medical certification by drivers. The revised medical forms will not take significantly longer to complete than the previous versions. They contain much of the same information being collected on the current MER, but in a different format. The requirement that CMV driver medical examination results be transmitted to FMCSA by midnight (local time) of the next calendar day following the exam is not expected to increase the burden on the ME or their staff, because the total time required to transmit each form does not increase based on when the form is completed and transmitted.

FMCSA expects there will be costs for the SDLAs to modify their systems to accept transmission of MEC and variance information from the National Registry system. FMCSA and the AAMVA, which facilitates the maintenance of driver data and communication with the SDLAs, also need to update their systems and test the connections between databases. FMCSA estimates the costs of these efforts by using estimates that were made for previous efforts. The SDLAs (51 separate entities) will perform tasks similar to (but likely smaller in scope than) their efforts to comply with FMCSA CDL records requirements. Estimates for that included $6,147,000 for input and inquiry screens, $1,564,000 for an expanded database, $1,665,000 for systems and user acceptance testing, and $590,000 for testing their links with AAMVA. This

totals $9,966,000 for all SDLAs [7]. Additionally, FMCSA and AAMVA must expend funds to connect and test the links between their databases—an estimated $1,000,000 will be necessary in each case. The total expenditures needed to create and test the links between databases will therefore be $11,966,000.

2. Summary of Estimated Benefits

Potential quantifiable estimated benefits, as detailed in the revised Medical Qualification Requirements (OMB control number 2126–0006) and the Commercial Driver Licensing and Test Standards (OMB control number 2126–0011) Supporting Statements, posted in the docket, include: (1) Employers of drivers will no longer be required to verify the ME's National Registry number for CDL holder examinations because only MEs listed on the National Registry will be able to forward MEC information to the National Registry. This will result in 251,695 fewer annual burden hours (from 308,200 hours to 56,505 hours) and an annual cost savings of $4.78 million (from $5,855,800 to $1,073,595); (2) ME's will no longer need to handwrite the MEC for CLP/CDL applicants/holders because the information will be electronically transmitted by the ME to the National Registry and from the National Registry to the SDLAs, resulting in an annual time savings of 32,303 hours (from 77,050 hours to 44,747 hours) and an annual cost savings of $2.87 million (from $6,857,450 to $3,982,483), while decreasing the MEs paperwork and administrative burdens; (3) CLP/CDL applicants/holders will save time because they are no longer required to provide their MEC to the SDLAs as proof of medical certification. By electronically transmitting the MEC information and variance information (as defined in the **SUMMARY** section), FMCSA is creating a cost savings for drivers of $1.05 million (1,940,000 MECs × $0.54 postage plus one copy to SDLAs); (4) SDLAs will save 81,000 annual burden hours of administrative time recording MEC information for not having to attend to the driver above, resulting in $1.46 million (81,000 annual burden hours × $18.00 per hour) in cost savings. As a result, this final rule will generate a maximum $10.16 million in overall annual cost savings. This estimate is the greatest possible amount, and includes the assumption that all intrastate drivers who can take advantage of using MEs on the National Registry will.

The Agency believes that the fraud prevention in electronic transmission of MEC and medical variance information will continue to improve safety on public roads. Currently, there is potential for fraud, as drivers have the opportunity to forge or alter the MEC or medical variance information. More frequent reporting of CMV driver medical examination results to FMCSA by the MEs will allow the information to be promptly transmitted to the SDLAs for posting on the CDLIS driver record for CLP/CDL applicants/holders. As a result, up-to-date and accurate information concerning the medical certification status of these drivers will be available to State and Federal enforcement personnel, SDLAs, employers, drivers, and others who rely on this information to determine whether a driver is in compliance with the applicable physical qualification standards.

Lastly, FMCSA believes that use of the revised MER Form, MCSA–5875, will assist MEs in accurately determining whether CMV drivers meet the physical qualification standards contained in 49 CFR 391.41(b). The MER Form, MCSA–5875, has been streamlined for efficiency and contains evaluation tools that more precisely align with the qualification standards and the Agency's advisory criteria, and the revised MER Form presents those tools using a systematic physical examination approach similar to standards of clinical practice. When combined with the expected improvement in ME qualifications and performance under the National Registry program, the new MER Form will help ensure that the physical condition of CMV drivers is adequate to enable them to safely operate a CMV. The National Registry has only recently reached its compliance date; therefore, FMCSA does not have sufficient data at this time to quantify the expected safety benefits from adoption of the revised MER Form, MCSA–5875.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), the final rule is not expected to have a significant economic impact on a substantial number of small entities. Consequently, I certify that the proposed action will not have a significant economic impact on a substantial number of small entities.

The NPRM for this rule contained a detailed Initial Regulatory Flexibility Analysis which described the reasons for this action and its objective. The 39,160 [8] MEs who are currently certified and will be impacted by this rule are considered to be small business entities. However, the changes to the requirements on those MEs are small and should not have any negative economic impact on them. The changes to the required medical forms (CMV Driver Medical Examination Results Form, MCSA–5850, MER Form, MCSA–5875 and the MEC, Form MCSA–5876) are not expected to increase the burden on any ME, nor is the requirement that the CMV driver medical examination results be submitted by midnight (local time) of the next calendar day following the exam.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding the effects of this final rule. While the Agency believes that the rule will adversely affect few, if any, small businesses, organizations, or governmental jurisdictions, any questions concerning its provisions or options for compliance should be directed to, the FMCSA personnel listed in the **FOR FURTHER INFORMATION CONTACT** section of the final rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by

[7] OMB Control Number 2126–0011 Supporting Statement: Commercial Driver Licensing and Testing Standards, approved 1/12/2015.

[8] 39,160 MEs certified and listed on the National Registry as of January 5, 2015.

employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy ensuring the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

D. Unfunded Mandates Reform Act of 1995

This final rule will impose costs that do not exceed the threshold nor impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $151 million (which is the value of $100 million in 2012 after adjusting for inflation) or more in any 1 year.

E. E.O. 13132 (Federalism)

A rule has implications for Federalism under Section 1(a) of Executive Order 13132 if it has ''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.'' FMCSA has determined that this final rule will not have substantial direct costs on or for States, nor will it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

F. E.O. 12988 (Civil Justice Reform)

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminates ambiguity, and reduce burden.

G. E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this final rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

H. E.O. 12630 (Taking of Private Property)

FMCSA reviewed this final rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

I. Privacy Impact Assessment

FMCSA conducted a PIA of this rule as required by section 522(a)(5) of division H of the FY 2005 Omnibus Appropriations Act, Public Law 108–447, 118 Stat. 3268 (Dec. 8, 2004). The assessment considered impacts of the final rule on the privacy of information in an identifiable form and related matters. The final rule would impact the handling of PII. FMCSA has evaluated the risks and effects the rulemaking might have on collecting, storing, and sharing PII and has evaluated protections and alternative information handling processes in developing the final rule in order to mitigate potential privacy risks. The supporting PIA, available for review in the docket, gives a full and complete explanation of FMCSA practices for protecting PII in general and specifically in relation to this final rule.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program. FMCSA and the Department will be publishing, with request for comment, a revised system of records notice that will cover the collections of information that are affected by this final rule and covered by the Privacy Act.

J. E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

K. Paperwork Reduction Act

This final rule contains the following new IC requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), FMCSA submitted the information requirements associated with the proposal to the OMB for its review. The Medical Qualification Requirements Supporting Statement, OMB control number 2126–0006 has been revised primarily due to the Agency's promulgation of this final rule. However, it has also been revised to provide new and updated data to the currently approved IC that is not a result of this final rule. As a result of this update which includes several IC program changes such as the inclusion of a time burden for the driver to complete the health history section of the MER, a correction to the calculation for the National Registry regarding the time for entering and submitting MCSA–5850s, and the Agency's decision to grant hearing and seizure exemptions, there is an increase from the current approved annual paperwork burden hours of 503,000 hours (2,130,702 hours to 2,633,702). As a result of this final rule, the annual burden hours will remain the same during the first 3 years of implementation of the final rule but will decrease by 283,998 hours (2,633,702 hours to 2,349,704 hours) during the 4th and subsequent years after the compliance date. Therefore, this rule has a decrease in annual paperwork burden hours of 364,998 hours (81,000 + 283,998) as detailed in OMB control number 2126–0011 Commercial Driver Licensing and Test Standards and 2126–0006 Medical Qualification Requirements Supporting Statements in the docket.

As discussed in the National Registry final rule (77 FR 24104; April 21, 2012), MEs have started to electronically submit MEC information to the National Registry on a monthly basis. The Medical Examiner's Certification Integration NPRM proposed that the information be submitted by the ME by close of business the day the examination is conducted, as opposed to submitting monthly. The final rule slightly relaxes that standard by requiring MEs to report results of all CMV drivers' physical examinations performed (including the results of examinations where the driver was found not to be qualified) to FMCSA by midnight (local time) of the next calendar day following the examination. The final rule requires FMCSA to electronically transmit driver identification, examination results, and restriction information for CLP/CDL applicants/holders, from the National Registry system to the SDLAs, providing more accurate and timely delivery of MEC information to update CDLIS driver records and for safety enforcement purposes. In addition, the final rule requires FMCSA to electronically transmit medical variance information for all CMV drivers electronically to the SDLAs.

Close tracking and monitoring of certification activities and medical results are crucial to reducing fraudulent efforts of a subset of CDL applicants. Some CDL drivers avoid following the proper guidelines to

become medically qualified, posing safety risks to the public.

While the NPRM proposed to send MEC information to the SDLAs only for CLP/CDL applicants/holders who are required to be medically qualified to operate in interstate commerce, the final rule has been expanded to include MEC information from examinations performed in accordance with the FMCSRs (49 CFR 391.41- 391.49), as well as allowing (but not requiring) to include those performed in accordance with applicable State standards. The National Registry final rule requires certified MEs to report to FMCSA the results of each medical examination of CMV drivers who are required to be medically qualified to operate in interstate commerce. If intrastate CMV drivers are subject to differing but compatible State regulations, the Agency anticipates that these drivers likely will use certified MEs on the National Registry for their medical qualification examinations. FMCSA recognizes that using the entire intrastate CMV driver population may be a high estimation, but we have used this conservatively high burden estimation since the Agency doesn't have an exact number, and there is nothing to preclude intrastate CMV drivers from being examined by a certified ME listed on the National Registry.

2126–0006 Medical Qualification Requirements

This IC is currently due to expire on July 31, 2015. On December 16, 2014, FMCSA published a **Federal Register** notice (79 FR 74804) requesting public comment to revisions made to this IC. The comment period closed on February 17, 2015. The publication of this IC as part of the Medical Examiner's Certification Integration final rule serves as a withdrawal of the notice for comment and replaces the previous ICR. This revision is primarily due to the Agency's promulgation of this final rule. However, as discussed above, this IC is also being revised to provide new and updated data to the currently approved IC and replaces the **Federal Register** notice that was previously published for comment. The principal purpose of this final rule is to modify the requirements adopted in two previous rules so that (1) the driver identification, examination results, and restriction information for CLP/CDL applicants/holders is electronically transmitted to the FMCSA by midnight (local time) of the next calendar day after the examination by a certified ME listed on the National Registry and (2) this information is then electronically transmitted to the SDLA for entry into the appropriate driver record within one business day of receipt from FMCSA. There are no additional burden hours and annual costs to respondents imposed by this final rule. Implementation of this final rule will result in time and cost savings to employers, however, because they will no longer be required to verify the ME's National Registry number for CLP/CDL driver examinations. Only certified MEs listed on the National Registry will be able to forward driver identification, examination results, and restriction information to the National Registry. MEs will no longer be required to complete and furnish a copy of the MEC to the driver examined when the driver is a CLP/CDL applicant/holder because this information will be electronically transmitted to the SDLA. The CLP/CDL applicants/holders will no longer be required to provide the SDLA with their MEC as proof of medical certification, and the SDLA will no longer be required to manually input the driver's MEC information.

On the effective date of this final rule, MEs must notify FMCSA if they have not performed any driver physical examinations during the previous month, and States must update the medical status to ''not certified' when the medical certification is voided by FMCSA. In addition, six months after the effective date of this final rule, MEs must use the new MER Form, MCSA–5875 and the prescribed Form MCSA–5876 for the MEC.

As discussed above, as a result of an update including several IC program changes not related to this final rule, there is an increase in the annual paperwork burden hours from the currently approved IC of 503,000 hours (2,130,702 hours to 2,633,702) during the first 3 years of the final rule after the compliance date. The IC activities imposed on the MEs, drivers, and motor carriers over the first 3 years of implementing this final rule will remain unchanged. This provides time for those States that need to pass legislation and for all States to make the necessary system upgrades prior to the effective date for updating the CDLIS driver's record. The table below shows the annual burden hours for the IC activities for the first three years.

ANNUAL BURDEN HOURS FOR FIRST 3 YEARS

IC Activities for MEs, drivers, and motor carriers	Annual burden hours for the IC activities in first 3 years
Physical Qualification Standards: Medical Examination Report Form and Medical Examiner's Certificate	2,080,350
Resolution of Medical Conflict	11
Diabetes Exemption Program	2,219
Vision Exemption Program	2,216
Hearing Exemptions	49
Seizure Exemptions	96
SPE	2,661
Medical Examiner Registration	5,000
Medical Examiner Test Results (upload)	1,667
Reporting CMV Driver Medical Examination Results and filing and providing MEC	231,150
Providing Medical Examination Report Copies to FMCSA	83
Verification of National Registry Number	308,200
Total	2,633,702

Three years after the effective date of this final rule the following will be required: (1) MEs must increase the frequency of submission of CMV driver medical examination results via Form, MCSA–5850, from once a month to as frequent as they conduct exams. They are required to submit the results of all CMV driver medical examinations

conducted by midnight (local time) of the next calendar day following the exam; (2) FMCSA must electronically transmit driver identification, examination results, and restriction information from the National Registry system to the SDLAs for CLP/CDL applicants/holders; (3) FMCSA will electronically transmit medical variance information for all CMV drivers to the SDLAs; and (4) States must post the medical variance information provided by FMCSA, including the dates of issuance and expiration, to the CDLIS driver record within 1 business day of receipt for CLP/CDL applicants/holders. These requirements do not impose any additional time or cost burdens on the MEs or their staff, drivers, or SDLAs. MEs will no longer be required to complete and furnish a written copy of the MEC to the driver examined when the driver is a CLP/CDL holder, because this information will be electronically transmitted to the SDLA. This provides a time savings of 32,303 hours and a cost savings of $2,874,967/year. Employers will no longer be required to verify the ME's national registry number for CLP/CDL applicants/holders examinations, because only certified MEs listed on the National Registry will be able to forward MEC information to the National Registry. This provides a time savings of 251,695 hours and a cost savings of $4,782,205. Therefore, as a result of this final rule, the annual burden hours during the 4th and subsequent years after the compliance date of the rule have decreased by 283,998 hours (2,633,702 hours to 2,349,704 hours) and the annual costs have decreased by $7,657,172 ($163,850,187 to $156,193,015). The table below shows the annual burden hours for the IC activities for the 4th and subsequent years following the effective date of this final rule.

ANNUAL BURDEN HOURS FOR 4TH AND SUBSEQUENT YEARS

IC Activities for MEs, drivers, and motor carriers	Annual burden hours for the IC activities in 4th year and subsequent years
FMCSA Physical Qualification Standards: Medical Examination Report Form and Medical Examiner's Certificate	2,048,047
Resolution of Medical Conflict	11
Diabetes Exemption Program	2,219
Vision Exemption Program	2,216
Hearing Exemptions	49
Seizure Exemptions	96
SPE	2,661
Medical Examiner Registration	5,000
Medical Examiner Test Results (upload)	1,667
Reporting CMV Driver Medical Examination Results and filing and providing MEC	231,150
Providing Medical Examination Report Copies to FMCSA	83
Verification of National Registry Number	56,505
Total	2,349,704

2126–0011 Commercial Driver Licensing and Test Standards. The renewal of this IC was approved by OMB on January 12, 2015. This IC supports the DOT Strategic Goal of Safety by requiring that CLP/CDL applicants/holders driving CMVs subject to part 391 to be properly licensed according to all applicable Federal requirements. The information being collected ensures that CLP/CDL applicants/holders are qualified to hold a CLP/CDL to operate CMVs, and that States are administering their CDL programs in compliance with the Federal requirements.

The rule requires the MEC and medical variance information for CLP/CDL applicants/holders to be transmitted electronically by FMCSA to the SDLA and posted to the CLP/CDL holder's CDLIS driver record. This eliminates the need for the driver to carry a paper copy of the MEC and to physically provide a copy to his/her SDLA. Therefore, there will be no change in the total annual burden hours during the first 3 years. However, during these 3 years there will be a one-time cost that each State and the District of Columbia will need to expend to make updates to their systems to accommodate the development of the capability to electronically receive and post medical certification and medical variance information from FMCSA and to the CDLIS driver record. While the information technology necessary to carry out these transactions is still in the early development stage, FMCSA estimates that the cost elements to implement these new requirements will not be greater than the estimated cost to implement the posting of the MEC and medical variance information manually to the driver's record. The FMCSA believes that additional costs to the SDLAs associated with this IC to be a one- time total of approximately $9,965,163 over the first 3 years or an annual cost of $3,321,721. The breakdown of the $9,965,163 by type of work activity by dollar totals for first 3 years is as follows:

Information technology	Total state costs [9]
Input and Inquiry Screens	$6,146,560
Expanded Database	1,563,932
Systems and User Acceptance Testing	1,664,850
AAMVA Testing	589,821
Total One-Time Costs	9,965,163

The FMCSA believes that additional costs to AAMVA to develop the communications link between CDLIS and the National Registry for this IC to be a one- time total of approximately $1,000,000 over the first 3 years or an annual cost of $333,333.

Starting in the 4th and subsequent years, there will be a decrease in total annual burden hours due to the implementation of the new program change. With medical certification and medical variance information being sent electronically to the SDLA by FMCSA to

[9] These costs are based on a sample of nine States conducted by an FMCSA contractor, representing three tiers of size and different regions of the country.

post to the CDLIS driver record, the annual burden hours for the SDLA to manually post the medical certification and medical variance information to the CDLIS driver record will be reduced from 81,000 hours to 0 hours based on the medical certification and variance information being electronically sent through the National Registry to the SDLA by FMCSA and electronically posted to the CDLIS driver record. The annual cost of interstate CDL holders providing the SDLA with an original or copy of the MEC will be eliminated. This is an annual cost savings of $1,047,600. The following table summarizes the annual IC burden hours for current and proposed IC activities for the first 3 years and the subsequent years. As discussed above, the currently approved total annual burden of 3,651,867 hours for the first 3 years remains unchanged. The decrease in proposed total annual burden of 81,000 hours in subsequent years is due to the program changes from implementing the new requirement.

Current and proposed IC activities for States and CLP/CDL holders	Currently approved annual burden hours	Proposed annual burden hours for the IC activities in first 3 years	Proposed annual burden hours for IC activities in 4th and subsequent years
State recording of medical examiner's certification and medical variance information	81,000	81,000	0
State recording of the self-certification of CMV operation	4,544	4,544	4,544
State verification of the medical certification status of all interstate CLP/CDL holders	901	901	901
Driver notification of convictions/disqualifications to employer	730,000	730,000	730,000
Driver providing previous employment history to new employer	459,950	459,950	459,950
Annual State certification of compliance	1,632	1,632	1,632
States preparing for and participating in Annual Program Review	10,200	10,200	10,200
CDLIS/PDPS/State Record Keeping	335,668	335,668	335,668
Drivers completion of the CLP/CDL application	59,130	59,130	59,130
CDL Knowledge and Skills tests recordkeeping	95,813	95,813	95,813
Knowledge and skills test examiner certification	25,216	25,216	25,216
Driver completion of knowledge and skills test	1,847,813	1,847,813	1,847,813
Total Burden Hours	3,651,867	3,651,867	3,570,867

FMCSA analyzed this rule and determined that its implementation will decrease the annual burden hours for IC activities covered by OMB Control No. 2126–006, titled ''Medical Qualification Requirements,'' and OMB Control No. 2126–0011, titled ''Commercial Driver Licensing and Test Standards'' during the 4th and subsequent years. The Table below captures the current and future paperwork burden hours associated with the two approved supporting statements. A detailed analysis of each IC activity can be found in the Supporting Statements, which are in the public docket for this rulemaking.

CURRENT AND FUTURE INFORMATION COLLECTION BURDENS

OMB Approval No.	Currently approved annual burden hours	Proposed annual burden hours as a result of update, not a result of final rule	Proposed annual burden hours for IC activities in 1st 3 years	Proposed annual burden hours for IC activities in 4th and subsequent years
2126–0006	2,130,702	2,633,702	2,633,702	2,349,704
2126–0011	3,651,867	N/A	3,651,867	3,570,867
Totals	5,782,569	N/A	6,285,569	5,920,571

L. National Environmental Policy Act and Clean Air Act

FMCSA analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraph (s)(7) and paragraph (t)(2). The Categorical Exclusion (CE) in paragraph (b) covers administrative or editorial changes; (s)(7) covers requirements for State-issued commercial license documentation; and paragraph (t)(2) addresses regulations that assure States have the appropriate information systems and procedures concerning CDL qualifications. The requirements in this rule are covered by these two CEs and this action does not have any effect on the quality of the environment. The CE determination is available for inspection or copying in the Regulations.gov Web site listed under **ADDRESSES**. FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

M. E.O. 12898 Environmental Justice

FMCSA evaluated the environmental effects of this final rule in accordance with Executive Order 12898 and determined that there are no environmental justice issues associated with its provisions nor any collective environmental impact resulting from its promulgation. Environmental justice issues would be raised if there were ''disproportionate'' and ''high and

adverse impact'' on minority or low-income populations.

N. E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this final rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

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

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

P. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

List of Subjects

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Incorporation by reference, Motor carriers.

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Incorporation by reference, Motor carriers.

49 CFR Part 391

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons stated in the preamble, FMCSA amends 49 CFR chapter III, to read as follows:

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 1. The authority citation for part 383 continues to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.,* and 31502; secs. 214 and 215, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 4140, Pub. L. 109–59, 119 Stat. 1144, 1746; and 49 CFR 1.87.

■ 2. Amend § 383.71 by revising paragraphs (h)(1) and (3) to read as follows:

§ 383.71 Driver application and certification procedures.

* * * * *

(h) * * *

(1) *New CLP and CDL applicants.* (i) Before June 22, 2018, a new CLP or CDL applicant who certifies that he/she will operate CMVs in non-excepted, interstate commerce must provide the State with an original or copy (as required by the State) of a medical examiner's certificate prepared by a medical examiner, as defined in 49 CFR 390.5, and the State will post a medical qualifications status of ''certified'' on the CDLIS driver record for the driver;

(ii) On or after June 22, 2018, a new CLP or CDL applicant who certifies that he/she will operate CMVs in non-excepted, interstate commerce must be medically examined and certified in accordance with 49 CFR 391.43 as medically qualified to operate a CMV by a medical examiner, as defined in 49 CFR 390.5. Upon receiving an electronic copy of the medical examiner's certificate from FMCSA, the State will post a medical qualifications status of ''certified'' on the CDLIS driver record for the driver;

* * * * *

(3) *Maintaining the medical certification status of ''certified.''* (i) In order to maintain a medical certification status of ''certified,'' before June 22, 2018, a CLP or CDL holder who certifies that he/she will operate CMVs in non-excepted, interstate commerce must provide the State with an original or copy (as required by the State) of each subsequently issued medical examiner's certificate;

(ii) In order to maintain a medical certification status of ''certified,'' on or after June 22, 2018, a CLP or CDL holder who certifies that he/she will operate CMVs in non-excepted, interstate commerce must continue to be medically examined and certified in accordance with 49 CFR 391.43 as physically qualified to operate a commercial motor vehicle by a medical examiner, as defined in 49 CFR 390.5. FMCSA will provide the State with an electronic copy of the medical examiner's certificate information for all subsequent medical examinations in which the driver has been deemed qualified.

■ 3. Amend § 383.73 by revising paragraphs (a)(2)(vii), (b)(5), (o)(1), (o)(2), (o)(3) and (o)(4) to read as follows:

§ 383.73 State procedures.

(a) * * *

(2) * * *

(vii)(A) Before June 22, 2018, for drivers who certified their type of driving according to § 383.71(b)(1)(ii)(A) (non-excepted interstate) and, if the CLP applicant submits a current medical examiner's certificate, date-stamp the medical examiner's certificate, and post all required information from the medical examiner's certificate to the CDLIS driver record in accordance with paragraph (o) of this section.

(B) On or after June 22, 2018, for drivers who certified their type of driving according to § 383.71(b)(1)(ii)(A) (non-excepted interstate) and, if FMCSA provides current medical examiner's certificate information electronically, post all required information matching the medical examiner's certificate to the CDLIS driver record in accordance with paragraph (o) of this section.

(b) * * *

(5)(i) Before June 22, 2018, for drivers who certified their type of driving according to § 383.71(b)(1)(ii)(A) (non-excepted interstate) and, if the CDL holder submits a current medical examiner's certificate, date-stamp the medical examiner's certificate and post all required information from the medical examiner's certificate to the CDLIS driver record in accordance with paragraph (o) of this section.

(ii) On or after June 22, 2018, for drivers who certified their type of driving according to § 383.71(b)(1)(ii)(A) (non-excepted interstate) and, if FMCSA provides current medical examiner's certificate information electronically, post all required information matching the medical examiner's certificate to the CDLIS driver record in accordance with paragraph (o) of this section.

* * * * *

(o) *Medical recordkeeping*—(1)(i) *Status of CLP or CDL holder.* Before

June 22, 2018, for each operator of a commercial motor vehicle required to have a CLP or CDL, the current licensing State must:

(A) Post the driver's self-certification of type of driving under § 383.71(b)(1)(ii) to the CDLIS driver record;

(B) Post the information from the medical examiner's certificate within 10 calendar days to the CDLIS driver record, including:

(*1*) Medical examiner's name;

(*2*) Medical examiner's telephone number;

(*3*) Date of medical examiner's certificate issuance;

(*4*) Medical examiner's license number and the State that issued it;

(*5*) Medical examiner's National Registry identification number;

(*6*) The indicator of medical certification status, *i.e.,* ''certified'' or ''not-certified'';

(*7*) Expiration date of the medical examiner's certificate;

(*8*) Existence of any medical variance on the medical examiner's certificate, such as an exemption, SPE certification, or grandfather provisions;

(*9*) Any restrictions (*e.g.,* corrective lenses, hearing aid, required to have possession of an exemption letter or SPE certificate while on-duty, etc.); and

(*10*) Date the medical examiner's certificate information was posted to the CDLIS driver record; and

(C) Post the medical variance information within 10 calendar days to the CDLIS driver record, including:

(*1*) Date of medical variance issuance; and

(*2*) Expiration date of medical variance;

(D) Retain the original or a copy of the medical examiner's certificate of any driver required to provide documentation of physical qualification for 3 years beyond the date the certificate was issued.

(ii) *Status of CLP or CDL holder.* On or after June 22, 2018, for each operator of a commercial motor vehicle required to have a CLP or CDL, the current licensing State must:

(A) Post the driver's self-certification of type of driving under § 383.71(b)(1)(ii) to the CDLIS driver record;

(B) Post the information from the medical examiner's certificate received from FMCSA to the CDLIS driver record, including:

(*1*) Medical examiner's name;

(*2*) Medical examiner's telephone number;

(*3*) Date of medical examiner's certificate issuance;

(*4*) Medical examiner's license number and the State that issued it;

(*5*) Medical examiner's National Registry identification number;

(*6*) The indicator of medical certification status, *i.e.,* ''certified'' or ''not-certified'';

(*7*) Expiration date of the medical examiner's certificate;

(*8*) Existence of any medical variance on the medical examiner's certificate, such as an exemption, Skill Performance Evaluation (SPE) certification, or grandfather provisions;

(*9*) Any restrictions (*e.g.,* corrective lenses, hearing aid, required to have possession of an exemption letter or SPE certificate while on-duty, etc.); and

(*10*) Date the medical examiner's certificate information was posted to the CDLIS driver record;

(C) Post the medical variance information received from FMCSA within 1 business day to the CDLIS driver record, including:

(*1*) Date of medical variance issuance; and

(*2*) Expiration date of medical variance;

(D) Retain the electronic record of the medical examiner's certificate information for any driver required to have documentation of physical qualification for 3 years beyond the date the certificate was issued.

(2) *Status update.* (i) Before June 22, 2018, the State must, within 10 calendar days of the driver's medical examiner's certificate or medical variance expiring, the medical variance being rescinded or the medical examiner's certificate being voided by FMCSA, update the medical certification status of that driver as ''not certified.''

(ii) Beginning June 22, 2018, the State must, within 10 calendar days of the driver's medical examiner's certificate or medical variance expiring, the medical examiner's certificate becoming invalid, the medical variance being rescinded or the medical examiner's certificate being voided by FMCSA, update the medical certification status of that driver as ''not certified.''

(3) *Variance update.* (i) Before June 22, 2018, within 10 calendar days of receiving information from FMCSA regarding issuance or renewal of a medical variance for a driver, the State must update the CDLIS driver record to include the medical variance information provided by FMCSA.

(ii) Beginning June 22, 2018, within 1 business day of electronically receiving medical variance information from FMCSA regarding the issuance or renewal of a medical variance for a driver, the State must update the CDLIS driver record to include the medical variance information provided by FMCSA.

(4) *Downgrade.* (i) If a driver's medical certification or medical variance expires, or FMCSA notifies the State that a medical certification was invalidated or voided or a medical variance was removed or rescinded, the State must:

(A)(*1*) Before June 22, 2018 notify the CLP or CDL holder of his/her CLP or CDL ''not-certified'' medical certification status and that the CMV privileges will be removed from the CLP or CDL unless the driver submits a current medical examiner's certificate and/or medical variance, or changes his/her self-certification to driving only in excepted or intrastate commerce (if permitted by the State);

(*2*) On or after June 22, 2018 notify the CLP or CDL holder of his/her CLP or CDL ''not-certified'' medical certification status and that the CMV privileges will be removed from the CLP or CDL unless the driver has been medically examined and certified in accordance with 49 CFR 391.43 as physically qualified to operate a commercial motor vehicle by a medical examiner, as defined in 49 CFR 390.5, or the driver changes his/her self-certification to driving only in excepted or intrastate commerce (if permitted by the State).

(B) Initiate established State procedures for downgrading the CLP or CDL. The CLP or CDL downgrade must be completed and recorded within 60 days of the driver's medical certification status becoming ''not-certified'' to operate a CMV.

(ii)(A) Before June 22, 2018, if a driver fails to provide the State with the certification contained in § 383.71(b)(1), or a current medical examiner's certificate if the driver self-certifies according to § 383.71(b)(1)(i) that he/she is operating in non-excepted interstate commerce as required by § 383.71(h), the State must mark that CDLIS driver record as ''not-certified'' and initiate a CLP or CDL downgrade following State procedures in accordance with paragraph (o)(4)(i)(B) of this section.

(B) On or after June 22, 2018 if a driver fails to provide the State with the certification contained in § 383.71(b)(1), or, if the driver self-certifies according to § 383.71(b)(1)(i) that he/she is operating in non-excepted interstate commerce as required by § 383.71(h) and the information required by paragraph (o)(2)(ii) of this section is not received and posted, the State must mark that CDLIS driver record as ''not-certified'' and initiate a CLP or CDL downgrade following State procedures in accordance with paragraph (o)(4)(i)(B) of this section.

* * * * *

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

■ 4. The authority citation for part 384 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301, *et seq.,* and 31502; secs. 103 and 215, Pub. L. 106–159, 113 Stat. 1748, 1753, 1767; and 49 CFR 1.87.

■ 5. Revise § 384.234 to read as follows:

§ 384.234 Driver medical certification recordkeeping.

The State must meet the medical certification recordkeeping requirements of § 383.73(a)(2)(vii), (b)(5), (c)(8), (d)(8), (e)(6) and (o).

■ 6. Amend § 384.301 by adding a new paragraph (i) to read as follows:

§ 384.301 Substantial compliance—general requirements.

* * * * *

(i) A State must come into substantial compliance with the requirements of subpart B of this part and part 383 of this chapter in effect as of June 22, 2015 as soon as practical, but, unless otherwise specifically provided in this part, not later than June 22, 2018.

PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION (LCV) DRIVER INSTRUCTORS

■ 7. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504, 508, 31133, 31136, and 31502; sec. 4007(b), Pub. L. 102–240, 105 Stat, 1914, 2152; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215, Pub. L. 106–159, 113 Stat. 1748, 1767; and 49 CFR 1.87.

■ 8. Amend § 391.23 by revising paragraphs (m)(2) and (3) to read as follows:

§ 391.23 Investigation and inquiries.

* * * * *

(m) * * *

(2) *Exception.* For drivers required to have a commercial driver's license under part 383 of this chapter:

(i) Beginning January 30, 2015, using the CDLIS motor vehicle record obtained from the current licensing State, the motor carrier must verify and document in the driver qualification file the following information before allowing the driver to operate a CMV:

(A) The type of operation the driver self-certified that he or she will perform in accordance with § 383.71(b)(1)(ii) of this chapter.

(B)(*1*) Beginning on May 21, 2014, and ending on June 22, 2015, that the driver was certified by a medical examiner listed on the National Registry of Certified Medical Examiners as of the date of medical examiner's certificate issuance.

(*2*) Beginning on June 22, 2015, if the driver has certified under paragraph (m)(2)(i)(A) of this section that he or she expects to operate in interstate commerce, that the driver has a valid medical examiner's certificate and any required medical variances.

(*3*) Beginning on July 8, 2015, if the driver has a commercial learner's permit and has certified under paragraph (m)(2)(i)(A) of this section that he or she expects to operate in interstate commerce that the driver has a valid medical examiner's certificate and any required medical variances.

(C) *Exception.* Beginning on January 30, 2015 and until June 22, 2018, if the driver provided the motor carrier with a copy of the current medical examiner's certificate that was submitted to the State in accordance with § 383.73(a)(5) of this chapter, the motor carrier may use a copy of that medical examiner's certificate as proof of the driver's medical certification for up to 15 days after the date it was issued.

(ii) Until January 30, 2015, if a driver operating in non-excepted, interstate commerce has no medical certification status information on the CDLIS MVR obtained from the current State driver licensing agency, the employing motor carrier may accept a medical examiner's certificate issued to that driver, and place a copy of it in the driver qualification file before allowing the driver to operate a CMV in interstate commerce.

(3) *Exception.* For drivers required to have a commercial driver's license under part 383 of this chapter:

(i) Beginning July 8, 2015, using the CDLIS motor vehicle record obtained from the current licensing State, the motor carrier must verify and document in the driver qualification file the following information before allowing the driver to operate a CMV:

(A) The type of operation the driver self-certified that he or she will perform in accordance with § 383.71(a)(1)(ii) and (g) of this chapter.

(B) That the driver was certified by a medical examiner listed on the National Registry of Certified Medical Examiners as of the date of medical examiner's certificate issuance.

* * * * *

■ 9. Amend § 391.41 by revising paragraph (a)(2)(i) to read as follows:

§ 391.41 Physical qualifications for drivers.

(a) * * *

(2) *CDL exception.* (i)(A) Beginning on January 30, 2015 and ending on the day before June 22, 2018, a driver required to have a commercial driver's license under part 383 of this chapter, and who submitted a current medical examiner's certificate to the State in accordance with 49 CFR 383.71(h) documenting that he or she meets the physical qualification requirements of this part, no longer needs to carry on his or her person the medical examiner's certificate specified at § 391.43(h), or a copy, for more than 15 days after the date it was issued as valid proof of medical certification.

(B) Beginning on June 22, 2018, a driver required to have a commercial driver's license or a commercial learner's permit under 49 CFR part 383, and who has a current medical examiner's certificate documenting that he or she meets the physical qualification requirements of this part, is no longer needs to carry on his or her person the medical examiner's certificate specified at § 391.43(h).

* * * * *

■ 10. Amend § 391.43 by revising paragraphs (f), (g)(2), (g)(3) and (h), and adding paragraph (g)(4) and (g)(5), to read as follows:

§ 391.43 Medical examination; certificate of physical examination.

* * * * *

(f) The medical examination shall be performed, and its results shall be recorded on the Medical Examination Report set out below:

BILLING CODE 4910–EX–P

Form MCSA-5875 (Revised: 12/08/2014) OMB No. 2126-0006 Expiration Date:

Public Burden Statement
A Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2126-0006. Public reporting for this collection of information is estimated to be approximately 25 minutes per response, including the time for reviewing instructions, gathering the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Motor Carrier Safety Administration, MC-RRA, 1200 New Jersey Avenue, SE, Washington, D.C. 20590.

U.S. Department of Transportation
Federal Motor Carrier
Safety Administration

Medical Examination Report Form

(for Commercial Driver Medical Certification)

PRIVACY ACT STATEMENT: ***This statement is provided pursuant to the Privacy Act of 1974, 5 USC § 552a.***

AUTHORITY: Title 49, United States Code (USC), 49 USC 31133(a)(8) and 31149(c)(1)(E).

PURPOSE: To record results of a driver's physical examination, to determine qualification to operate a commercial motor vehicle (CMV), and to promote driver health in interstate commerce according to the requirements in 49 CFR 391.41-49. Providing this information is mandatory. If this information is not provided, the medical examiner will not be able to determine qualification to operate a CMV in interstate commerce according to the requirements in 49 CFR 391.41-49. To record results of a driver's physical examination and to determine qualification to operate a CMV in intrastate commerce when the driver is required by a State to be examined by a medical examiner listed on the National Registry of Certified Medical Examiners in accordance with the provisions of 49 CFR 391.41-49 and any variances from the physical qualification standards adopted by such State.

MEDICAL RECORD #

_____

(or sticker)

Medical examiners are required to complete the Medical Examination Report Form for every driver physical examination performed in accordance with 49 CFR 391.41. Each original (paper or electronic) completed Medical Examination Report Form must be retained on file at the office of the medical examiner for at least 3 years from the date of examination. The medical examiner must make all records and information in these files available to an authorized representative of FMCSA or an authorized Federal, State, or local enforcement agency representative, within 48 hours after the request is made [49 CFR 391.43(j)].

ROUTINE USES: The information is used for the purpose set forth above and may be forwarded to Federal, State, or local law enforcement agencies for their use. Medical Examination Report Forms collected by FMCSA will be stored in FMCSA's automated National Registry of Certified Medical Examiners System and will be used to monitor the performance of medical examiners listed on the National Registry.

In addition to those disclosures permitted under 5 USC 552a(b) of the Privacy Act of 1974, additional disclosures may be made in accordance with the U.S. Department of Transportation (DOT) Prefatory Statement of General Routine Uses published in the Federal Register on December 29, 2010 (75 FR 82132), under "Prefatory Statement of General Routine Uses" (available at http://www.dot.gov/privacy/privacyactnotices).

ACKNOWLEDGMENT: ***I understand the provisions of the Privacy Act of 1974 as related to me through the above-mentioned statement.***

CMV Driver Signature: _____ Date: _____

SECTION 1. Driver Information *(to be filled out by the driver)*

PERSONAL INFORMATION

Last Name: _____ First Name: _____ Middle Initial: ____ Date of Birth: _____ Age: ___

Address: _____ City: _____ State/Province: _____ Zip Code: _____

Driver's License Number: _____ Issuing State/Province: _____ Phone: _____ Gender: ◯ M ◯ F

CLP/CDL Applicant/Holder*? ◯ Yes ◯ No Driver ID Verified By**: _____

Has your USDOT/FMCSA medical certificate ever been denied or issued for less than 2 years? ◯ Yes ◯ No ◯ Not Sure

*CLP/CDL Applicant/Holder Yes/No: See instructions for definitions.

**Driver ID Verified By: Record what type of photo ID was used to verify the identity of the driver, e.g., CDL, driver's license, passport.

DRIVER HEALTH HISTORY

Have you ever had surgery? If "yes," please list and explain below. ◯ **Yes** ◯ **No** ◯ **Not Sure**

Are you currently taking medications *(prescription, over-the-counter, herbal remedies, diet supplements)*? ◯ **Yes** ◯ **No** ◯ **Not Sure**
If "yes," please describe below.

(Attach additional sheets if necessary)

Form MCSA-5875 (Revised: 12/08/2014) OMB No. 2126-0006 Expiration Date:

Last Name: _____ First Name: _____ Middle Initial: ____ DOB: _____ Exam Date: _____

DRIVER HEALTH HISTORY *(continued)*

Do you have or have your ever had:	Yes	No	Not Sure
1. Head/brain injuries or illnesses *(e.g., concussion)*	○	○	○
2. Seizures, epilepsy	○	○	○
3. Eye problems *(except glasses or contacts)*	○	○	○
4. Ear and/or hearing problems	○	○	○
5. Heart disease, heart attack, bypass, or other heart problems	○	○	○
6. Pacemaker, stents, implantable devices, or other heart procedures	○	○	○
7. High blood pressure	○	○	○
8. High cholesterol	○	○	○
9. Chronic (long-term) cough, shortness of breath, or other breathing problems	○	○	○
10. Lung disease *(e.g., asthma)*	○	○	○
11. Kidney problems, kidney stones, or pain/problems with urination	○	○	○
12. Stomach, liver, or digestive problems	○	○	○
13. Diabetes or blood sugar problems	○	○	○
Insulin used	○	○	○
14. Anxiety, depression, nervousness, other mental health problems	○	○	○
15. Fainting or passing out	○	○	○
16. Dizziness, headaches, numbness, tingling, or memory loss	○	○	○
17. Unexplained weight loss	○	○	○
18. Stroke, mini-stroke (TIA), paralysis, or weakness	○	○	○
19. Missing or limited use of arm, hand, finger, leg, foot, toe	○	○	○
20. Neck or back problems	○	○	○
21. Bone, muscle, joint, or nerve problems	○	○	○
22. Blood clots or bleeding problems	○	○	○
23. Cancer	○	○	○
24. Chronic (long-term) infection or other chronic diseases	○	○	○
25. Sleep disorders, pauses in breathing while asleep, daytime sleepiness, loud snoring	○	○	○
26. Have you ever had a sleep test *(e.g., sleep apnea)*?	○	○	○
27. Have you ever spent a night in the hospital?	○	○	○
28. Have you ever had a broken bone?	○	○	○
29. Have you ever used or do you now use tobacco?	○	○	○
30. Do you currently drink alcohol?	○	○	○
31. Have you used an illegal substance within the past two years?	○	○	○
32. Have you ever failed a drug test or been dependent on an illegal substance?	○	○	○

Other health condition(s) not described above: ○ **Yes** ○ **No** ○ **Not Sure**

Did you answer "yes" to any of questions 1-32? If so, please comment further on those health conditions below. ○ **Yes** ○ **No** ○ **Not Sure**

(Attach additional sheets if necessary)

CMV DRIVER SIGNATURE

I certify that the above information is accurate and complete. I understand that inaccurate, false or missing information may invalidate the examination and my Medical Examiner's Certificate, that submission of fraudulent or intentionally false information is a violation of 49 CFR 390.35, and that submission of fraudulent or intentionally false information may subject me to civil or criminal penalties under 49 CFR 390.37 and 49 CFR 386 Appendices A and B.

CMV Driver Signature: _____ Date: _____

SECTION 2. Examination Report *(to be filled out by the medical examiner)*

DRIVER HEALTH HISTORY REVIEW

Review and discuss pertinent driver answers and any available medical records. Comment on the driver's responses to the "health history" questions that may affect the driver's safe operation of a commercial motor vehicle (CMV).

(Attach additional sheets if necessary)

Form MCSA-5875 (Revised: 12/08/2014) OMB No. 2126-0006 Expiration Date:

Last Name: _____ First Name: _____ Middle Initial: ____ DOB: _____ Exam Date: _____

TESTING

Pulse rate: _____ Pulse rhythm regular: ◯ Yes ◯ No Height: __ *feet* __ *inches* Weight: ____ *pounds*

Blood Pressure	Systolic	Diastolic
Sitting		
Second reading (optional)		

Other testing if indicated

Urinalysis	Sp. Gr.	Protein	Blood	Sugar
Urinalysis is required. Numerical readings must be recorded.				

Protein, blood, or sugar in the urine may be an indication for further testing to rule out any underlying medical problem.

Vision

Standard is at least 20/40 acuity (Snellen) in each eye with or without correction. At least 70° field of vision in horizontal meridian measured in each eye. The use of corrective lenses should be noted on the Medical Examiner's Certificate.

Acuity	Uncorrected	Corrected	Horizontal Field of Vision
Right Eye:	20/____	20/____	Right Eye: ____ degrees
Left Eye:	20/____	20/____	Left Eye: ____ degrees
Both Eyes:	20/____	20/____	

	Yes	No
Applicant can recognize and distinguish among traffic control signals and devices showing red, green, and amber colors	◯	◯
Monocular vision	◯	◯
Referred to ophthalmologist or optometrist?	◯	◯
Received documentation from ophthalmologist or optometrist?	◯	◯

Hearing

Standard: Must first perceive whispered voice at not less than 5 feet (with or without hearing aid ***OR*** *average hearing loss in better ear at less than 40 dB.*

Check if hearing aid used for test: ◯ Right Ear ◯ Left Ear ◯ Neither

Whisper Test Results

Record distance *(in feet)* from driver at which a forced whispered voice can first be heard — Right Ear _____ Left Ear _____

OR

Audiometric Test Results

Right Ear 500 Hz	1000 Hz	2000 Hz	Left Ear 500 Hz	1000 Hz	2000 Hz

Average (right): _____ Average (left): _____

PHYSICAL EXAMINATION

The presence of a certain condition may not necessarily disqualify a driver, particularly if the condition is controlled adequately, is not likely to worsen, or is readily amenable to treatment. Even if a condition does not disqualify a driver, the Medical Examiner may consider deferring the driver temporarily. Also, the driver should be advised to take the necessary steps to correct the condition as soon as possible, particularly if neglecting the condition could result in a more serious illness that might affect driving.

Check the body systems for abnormalities.

Body System	Normal	Abnormal	Body System	Normal	Abnormal
1. General	◯	◯	8. Abdomen	◯	◯
2. Skin	◯	◯	9. Genito-urinary system including hernias	◯	◯
3. Eyes	◯	◯	10. Back/Spine	◯	◯
4. Ears	◯	◯	11. Extremities/joints	◯	◯
5. Mouth/throat	◯	◯	12. Neurological system including reflexes	◯	◯
6. Cardiovascular	◯	◯	13. Gait	◯	◯
7. Lungs/chest	◯	◯	14. Vascular system	◯	◯

Discuss any abnormal answers in detail in the space below and indicate whether it would affect the driver's ability to operate a CMV. Enter applicable item number before each comment.

(Attach additional sheets if necessary)

Form MCSA-5875 (Revised: 12/08/2014) OMB No. 2126-0006 Expiration Date:

Last Name: _____ First Name: _____ Middle Initial: ____ DOB: _____ Exam Date: _____

Please complete only one of the Medical Examiner Determination sections below:

MEDICAL EXAMINER DETERMINATION (Federal)

Use this section for examinations performed in accordance with the Federal Motor Carrier Safety Regulations (49 CFR 391.41-391.49):

◯ Does not meet standards *(specify reason)*: _____

◯ Meets standards in 49 CFR 391.41; qualifies for 2-year certificate

◯ Meets standards, but periodic monitoring required *(specify reason)*: _____

Driver qualified for: ◯ 3 months ◯ 6 months ◯ 1 year ◯ other: _____

☐ Wearing corrective lenses ☐ Wearing hearing aid ☐ Accompanied by a waiver/exemption *(specify type)*: _____

☐ Accompanied by a Skill Performance Evaluation (SPE) certificate ☐ Qualified by operation of 49 CFR 391.64

☐ Driving within an exempt intracity zone *(see 49 CFR 391.62)*

◯ Determination pending *(specify reason)*: _____

☐ Return to medical exam office for follow-up on *(must be 45 days or less)*: _____

☐ Medical Examination Report amended *(specify reason)*: _____

(if amended) Medical Examiner Signature: _____ Date: _____

◯ Incomplete examination *(specify reason)*: _____

If the driver meets the standards outlined in 49 CFR 391.41, then complete a Medical Examiner's Certificate as stated in 49 CFR 391.43(h), as appropriate.

I have performed this evaluation for certification. I have personally reviewed all available records and recorded information pertaining to this evaluation, and attest that to the best of my knowledge, I believe it to be true and correct.

Medical Examiner Signature: _____ Medical Examiner Name: _____

Address: _____ City: _____ State: ____ Zip Code: _____ Phone: _____ Date: _____

Examiner's State License, Certificate, or Registration Number: _____ Issuing State: ____

☐ MD ☐ DO ☐ Physician Assistant ☐ Chiropractor ☐ Advanced Practice Nurse ☐ Other Practitioner

National Registry Number: _____ Medical Examiner's Certificate Expiration Date: _____

MEDICAL EXAMINER DETERMINATION (State)

Use this section for examinations performed in accordance with the Federal Motor Carrier Safety Regulations (49 CFR 391.41-391.49) with any applicable State variances (which will only be valid for intrastate operations):

◯ Meets standards in 49 CFR 391.41 with any applicable State variances

◯ Meets standards, but periodic monitoring required *(specify reason)*: _____

Driver qualified for: ◯ 3 months ◯ 6 months ◯ 1 year ◯ other: _____

☐ Wearing corrective lenses ☐ Wearing hearing aid ☐ Accompanied by a waiver/exemption *(specify type)*: _____

☐ Accompanied by a Skill Performance Evaluation (SPE) certificate ☐ Grandfathered from State requirements

If the driver meets the standards outlined in 49 CFR 391.41, with applicable State variances, then complete a Medical Examiner's Certificate, as appropriate.

I have performed this evaluation for certification. I have personally reviewed all available records and recorded information pertaining to this evaluation, and attest that to the best of my knowledge, I believe it to be true and correct.

Medical Examiner Signature: _____ Medical Examiner Name: _____

Address: _____ City: _____ State: ____ Zip Code: _____ Phone: _____ Date: _____

Examiner's State License, Certificate, or Registration Number: _____ Issuing State: ____

☐ MD ☐ DO ☐ Physician Assistant ☐ Chiropractor ☐ Advanced Practice Nurse ☐ Other Practitioner

National Registry Number: _____ Medical Examiner's Certificate Expiration Date: _____

Instructions for Completing the Medical Examination Report Form (MCSA-5875)

I. Step-By-Step Instructions

Driver:

Privacy Act Statement - Please read, sign and date the Statement acknowledging that you understand the provisions of the Privacy Act of 1974 as written.

Section 1: Driver information

- **Personal Information**: Please complete this section using your name as written on your driver's license, your current address and phone number, your date of birth, age, gender, driver's license number and issuing state.
  - **CDL/CLP Applicant/Holder**: Check "yes" if you are a commercial driver's license or commercial learner's permit holder, or are applying for a CDL or CLP. Commercial driver's license (**CDL**) means a license issued by a State or the District of Columbia which authorizes the individual to operate a class of a commercial motor vehicle (CMV). A CMV that requires a CDL is one that: (1) has a gross combination weight rating or gross combination weight of 26,001 pounds or more inclusive of a towed unit with a gross vehicle weight rating (GVWR) or gross vehicle weight (GVW) of more than 10,000 pounds; or (2) has a GVWR or GVW of 26,001 pounds or more; or (3) is designed to transport 16 or more passengers, including the driver; or (4) is used to transport either hazardous materials requiring hazardous materials placards on the vehicle or any quantity of a select agent or toxin.
  - **Driver ID Verified By**: The Medical Examiner/staff completes this item and notes the type of photo ID used to verify the driver's identity such as, commercial driver's license, driver's license, or passport, etc.
  - **Question: Has your USDOT/FMCSA medical certificate ever been denied or issued for less than two years?** Please check the correct box "yes" or "no" and if you aren't sure check the "not sure" box.
- **Driver Health History**:
  - **Have you ever had surgery:** Please check "yes" if you have ever had surgery and provide a written explanation of the details (type of surgery, date of surgery, etc.)
  - **Are you currently taking medications (prescription, over-the-counter, herbal remedies, diet supplements):** Please check "yes" if you are taking any diet supplements, herbal remedies, or prescription or over the counter medications. In the box below the question, indicate the name of the medication and the dosage.
  - **#1-32:** Please complete this section by checking the "yes" box to indicate that you have, or have ever had, the health condition listed or the "No" box if you have not. Check the "not sure" box if you are unsure.
  - **Other Health Conditions not described above**: If you have, or have had, any other health conditions not listed in the section above, check "Yes" and in the box provided and list those condition(s).
  - **Any yes answers to questions #1-32 above:** If you have answered "yes" to any of the questions in the Driver Health History section above, please explain your answers further in the box below the question. For example, if you answered "yes" to question #5 regarding heart disease, heart attack, bypass, or other heart problem, indicate which type of heart condition. If you checked "yes" to question #23 regarding cancer, indicate the type of cancer. Please add any information that will be helpful to the Medical Examiner.
- **CMV Driver Signature and Date:** Please read the certification statement, sign and date it, indicating that the information you provided in Section 1 is accurate and complete.

Medical Examiner:

Section 2: Examination Report

- **Driver Health History Review:** Review answers provided by the driver in the driver health history section and discuss any "yes" and "not sure" responses. In addition, be sure to compare the medication list to the health history responses ensuring that the medication list matches the medical conditions noted. Explore with the driver any answers that seem unclear. Record any information that the driver omitted. As the Medical Examiner conducting the driver's physical examination you are required to complete the entire medical examination even if you detect a medical condition that you consider disqualifying, such as deafness. Medical Examiners are expected to determine the driver's physical qualification for operating a commercial vehicle safely. Thus, if you find a disqualifying condition for which a driver may receive a Federal Motor Carrier Safety Administration medical exemption, please record that on the driver's Medical Examiner's Certificate, Form MCSA-5876, as well as on the Medical Examination Report Form, MCSA-5875.
- **Testing:**
  - **Pulse rate and rhythm, height, and weight:** record these as indicated on the form.
  - **Blood Pressure:** record the blood pressure (systolic and diastolic) of the driver being examined. A second reading is optional and should be recorded if found to be necessary.
  - **Urinalysis:** record the numerical readings for the specific gravity, protein, blood and sugar.
  - **Vision:** The current vision standard is provided on the form. When other than the Snellen chart is used, give test results in Snellen-comparable values. When recording distance vision, use 20 feet as normal. Record the vision acuity results and indicate if the driver can recognize and distinguish among traffic control signals and devices showing red, green, and amber colors; has monocular vision; has been referred to an ophthalmologist or optometrist; and if documentation has been received from an ophthalmologist or optometrist.
  - **Hearing:** The current hearing standard is provided on the form. Hearing can be tested using either a whisper test or audiometric test. Record the test results in the corresponding section for the test used.
- **Physical Examination:** Check the body systems for abnormalities and indicate normal or abnormal for each body system listed. Discuss any abnormal answers in detail in the space provided and indicate whether it would affect the driver's ability to safely operate a commercial motor vehicle.

In this next section, you will be completing either the Federal or State determination, not both.

- **Medical Examiner Determination (Federal):** Use this section for examinations performed in accordance with the FMCSRs (49 CFR 391.41-391.49). Complete the medical examiner determination section completely. When determining a driver's physical qualification, please note that English language proficiency (49 CFR part 391.11, General qualifications of drivers) is not factored into that determination.
  - **Does not meet standards:** Select this option when a driver is determined to be not qualified and provide an explanation of why the driver does not meet the standards in 49 CFR 391.41.
  - **Meets standards in 49 CFR 391.41; qualifies for 2-year certification:** Select this option when a driver is determined to be qualified and will be issued a 2-year Medical Examiner's Certificate.

- **Meets standards, but periodic monitoring is required:** Select this option when a driver is determined to be qualified but needs periodic monitoring and provide an explanation of why periodic monitoring is required. Select the corresponding time frame that the driver is qualified and if selecting other, specify the time frame.
  - **Determination that driver meets standards:** Select all categories that apply to the driver's certification (e.g., wearing corrective lenses, accompanied by a waiver/exemption, driving within an exempt intracity zone, etc.).
- **Determination pending:** Select this option when more information is needed to make a qualification decision and specify a date, prior to the 45 day expiration date, for the driver to return to the medical exam office for follow-up. This will allow for a delay of the qualification decision for up to 45 days. If the disposition of the pending examination is not updated via the National Registry before the 45 day expiration date, FMCSA will notify the examining medical examiner and the driver in writing that the examination is no longer valid and that the driver is required to be re-examined.
  - **MER amended:** A Medical Examination Report Form (MER), MCSA-5875, may only be amended while in determination pending status for situations where new information (e.g., test results, etc.) has been received or there has been a change in the driver's medical status since the initial examination, but prior to a final qualification determination. Select this option when a Medical Examination Report Form, MCSA-5875, is being amended; provide the reason for the amendment, sign and date. In addition, initial and date any changes made on the Medical Examination Report Form, MCSA-5875. A Medical Examination Report Form, MCSA-5875, cannot be amended after an examination has been in determination pending status for more than 45 days or after a final qualification determination has been made. The driver is required to obtain a new physical examination and a new Medical Examination Report Form, MCSA-5875, should be completed.
- **Incomplete examination:** Select this when the physical examination is not completed for any reason (e.g., driver decides they do not want to continue with the examination and leaves) other than situations outlined under determination pending.
- **Medical Examiner information, signature and date:** Provide your name, address, phone number, occupation, license, certificate, or registration number and issuing state, national registry number, Medical Examiner's Certificate expiration date, signature and date.

- **Medical Examiner Determination (State):** Use this section for examinations performed in accordance with the FMCSRs (49 CFR 391.41-391.49) with any applicable State variances (which will only be valid for intrastate operations). Complete the medical examiner determination section completely.
  - **Meets standards in 49 CFR 391.41 with any applicable State variances:** Select this option when a driver is determined to be qualified and will be issued a 2-year Medical Examiner's Certificate.
  - **Meets standards, but periodic monitoring is required:** Select this option when a driver is determined to be qualified but needs periodic monitoring and provide an explanation of why periodic monitoring is required. Select the corresponding time frame that the driver is qualified and if selecting other, specify the time frame.
    - **Determination that driver meets standards:** Select all categories that apply to the driver's certification (e.g., wearing corrective lenses, accompanied by a waiver/exemption, etc.).
  - **Incomplete examination:** Select this when the physical examination is not completed for any reason (e.g., driver decides they do not want to continue with the examination and leaves).
  - **Medical Examiner information, signature and date:** Provide your name, address, phone number, occupation, license, certificate, or registration number and issuing state, national registry number, Medical Examiner's Certificate expiration date, signature and date.

Instructions MCSA-5875 (Revised: 02/18/2014)

II. If updating an existing exam, you must resubmit the new exam results, via the Medical Examination Results Form, MCSA-5850 to the National Registry, and the most recent dated exam will take precedence.

III. To obtain additional information regarding this form go to the Medical Program's page on the Federal Motor Carrier Safety Administration's website at http://www.fmcsa.dot.gov/regulations/medical.

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BILLING CODE 4910–EX–C

(g) * * *

(2)(i) Before June 22, 2018, if the medical examiner finds that the person examined is physically qualified to operate a commercial motor vehicle in accordance with § 391.41(b), he or she must complete a certificate in the form prescribed in paragraph (h) of this section and furnish the original to the person who was examined. The examiner must provide a copy to a prospective or current employing motor carrier who requests it.

(ii) Beginning June 22, 2018, if the medical examiner identifies that the person examined will not be operating a commercial motor vehicle that requires a commercial driver's license or a commercial learner's permit and finds that the driver is physically qualified to operate a commercial motor vehicle in accordance with § 391.41(b), he or she must complete a certificate in the form prescribed in paragraph (h) of this section and furnish the original to the person who was examined. The examiner must provide a copy to a prospective or current employing motor carrier who requests it.

(3) Beginning June 22, 2018, if the medical examiner finds that the person examined is not physically qualified to operate a commercial motor vehicle in accordance with § 391.41(b), he or she must inform the person examined that

he or she is not physically qualified, and that this information will be reported to FMCSA. All medical examiner's certificates previously issued to the person are not valid and no longer satisfy the requirements of § 391.41(a).

(4) Beginning June 22, 2018, if the medical examiner finds that the determination of whether the person examined is physically qualified to operate a commercial motor vehicle in accordance with § 391.41(b) should be delayed pending the receipt of additional information or the conduct of further examination in order for the medical examiner to make such determination, he or she must inform the person examined that the additional information must be provided or the further examination completed within 45 days, and that the pending status of the examination will be reported to FMCSA.

(5)(i)(A) Once every calendar month, beginning May 21, 2014 and ending on June 22, 2018, the medical examiner must electronically transmit to the Director, Office of Carrier, Driver and Vehicle Safety Standards, via a secure Web account on the National Registry, a completed CMV Driver Medical Examination Results Form, MCSA–5850. The Form must include all information specified for each medical examination conducted during the previous month for any driver who is required to be examined by a medical examiner listed on the National Registry of Certified Medical Examiners.

(B) Beginning June 22, 2018 by midnight (local time) of the next calendar day after the medical examiner completes a medical examination for any driver who is required to be examined by a medical examiner listed on the National Registry of Certified Medical Examiners, the medical examiner must electronically transmit to the Director, Office of Carrier, Driver and Vehicle Safety Standards, via a secure FMCSA-designated Web site, a completed CMV Driver Medical Examination Results Form, MCSA–5850. The Form must include all information specified for each medical examination conducted for each driver who is required to be examined by a medical examiner listed on the National Registry of Certified Medical Examiners in accordance with the provisions of this subpart E, and should also include information for each driver who is required by a State to be examined by a medical examiner listed on the National Registry of Certified Medical Examiners in accordance with the provisions of this subpart E and any variances from those provisions adopted by such State.

(ii) Beginning on May 21, 2014, if the medical examiner does not perform a medical examination of any driver who is required to be examined by a medical examiner listed on the National Registry of Certified Medical Examiners during any calendar month, the medical examiner must report that fact to FMCSA, via a secure FMCSA-designated Web site, by the close of business on the last day of such month.

(h) The medical examiner's certificate shall be completed in accordance with the following Form MCSA–5876, Medical Examiner's Certificate.

Form MCSA-5876 (Revised: 08/26/2014) OMB No. 2126-0006 Expiration Date: 07/31/2015

Public Burden Statement
A Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2126-0006. Public reporting for this collection of information is estimated to be approximately 1 minute per response, including the time for reviewing instructions, gathering the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Motor Carrier Safety Administration, MC-RRA, 1200 New Jersey Avenue, SE, Washington, D.C. 20590.

U.S. Department of Transportation
Federal Motor Carrier
Safety Administration

Medical Examiner's Certificate
(for Commercial Driver Medical Certification)

I certify that I have examined **Last Name:** _____ **First Name:** _____ in accordance with *(please check only one)*:

◯ the Federal Motor Carrier Safety Regulations (49 CFR 391.41-391.49) and, with knowledge of the driving duties, I find this person is qualified, and, if applicable, only when *(check all that apply)* ***OR***

◯ the Federal Motor Carrier Safety Regulations (49 CFR 391.41-391.49) with any applicable State variances (which will only be valid for intrastate operations), and, with knowledge of the driving duties, I find this person is qualified, and, if applicable, only when *(check all that apply)*:

☐ Wearing corrective lenses ☐ Accompanied by a _____ waiver/exemption ☐ Driving within an exempt intracity zone (49 CFR 391.62) *(Federal)*
☐ Wearing hearing aid ☐ Accompanied by a Skill Performance Evaluation (SPE) Certificate ☐ Qualified by operation of 49 CFR 391.64 *(Federal)*
☐ Grandfathered from State requirements *(State)*

The information I have provided regarding this physical examination is true and complete.
A complete examination form with any attachment embodies my findings completely and correctly, and is on file in my office.

Medical Examiner's Certificate Expiration Date

Signature of Medical Examiner | **Medical Examiner's Telephone Number** | **Date Certificate Signed**

Medical Examiner Name *(please print or type)*

◯ MD ◯ Physician Assistant ◯ Advanced Practice Nurse
◯ DO ◯ Chiropractor ◯ Other Practitioner *(specify)* _____

Medical Examiner's State License, Certificate, or Registration Number | **Issuing State** | **National Registry Number**

Signature of Driver | **Driver's License Number** | **Issuing State/Province**

Address of Driver
Street: _____ City: _____ State/Province: _____ Zip Code: _____

CLP/CDL Applicant/Holder
◯ Yes ◯ No

* * * * *

■ 11. Amend § 391.45 by revising paragraphs (b)(2) and (c), and adding new paragraph (d) to read as follows:

§ 391.45 Persons who must be medically examined and certified.

* * * * *

(b) * * *

(2) Any driver authorized to operate a commercial motor vehicle only with an exempt intracity zone pursuant to § 391.62, or only by operation of the exemption in § 391.64, if such driver has not been medically examined and certified as qualified to drive in such zone during the preceding 12 months;

(c) Any driver whose ability to perform his/her normal duties has been

impaired by a physical or mental injury or disease; and

(d) Beginning June 22, 2018, any person found by a medical examiner not to be physically qualified to operate a commercial motor vehicle under the provisions of paragraph (g)(3) of § 391.43.

■ 12. Amend § 391.51 by revising paragraphs (b)(7)(i) and (ii), and (b)(9) to read as follows:

§ 391.51 General requirements for driver qualification files.

* * * * *

(b) * * *

(7)(i) The medical examiner's certificate as required by § 391.43(g) or a legible copy of the certificate.

(ii) *Exception.* For CDL holders, beginning January 30, 2012, if the CDLIS motor vehicle record contains medical certification status information, the motor carrier employer must meet this requirement by obtaining the CDLIS motor vehicle record defined at § 384.105 of this chapter. That record must be obtained from the current licensing State and placed in the driver qualification file. After January 30, 2015 a non-excepted, interstate CDL holder without medical certification status information on the CDLIS motor vehicle record is designated ''not-certified'' to operate a CMV in interstate commerce. After January 30, 2015 and until June 22, 2018, a motor carrier may use a copy of the driver's current medical examiner's certificate that was submitted to the State for up to 15 days from the date it was issued as proof of medical certification.

* * * * *

(9)(i) For drivers not required to have a CDL, a note relating to verification of medical examiner listing on the National Registry of Certified Medical Examiners required by § 391.23(m)(1).

(ii) Until June 22, 2018, for drivers required to have a CDL, a note relating to verification of medical examiner listing on the National Registry of Certified Medical Examiners required by § 391.23(m)(2).

* * * * *

■ 13. Add Appendix A to Part 391 to read as follows:

Appendix A to Part 391—Medical Advisory Criteria

I. Introduction

This appendix contains the Agency's guidelines in the form of Medical Advisory Criteria to help medical examiners assess a driver's physical qualification. These guidelines are strictly advisory and were established after consultation with physicians, States, and industry representatives, and, in some areas, after consideration of recommendations from the Federal Motor Carrier Safety Administration's Medical Review Board and Medical Expert Panels.

II. Interpretation of Medical Standards

Since the issuance of the regulations for physical qualifications of commercial motor vehicle drivers, the Federal Motor Carrier Safety Administration has published recommendations called Advisory Criteria to help medical examiners in determining whether a driver meets the physical qualifications for commercial driving. These recommendations have been condensed to provide information to medical examiners that is directly relevant to the physical examination and is not already included in the Medical Examination Report Form.

A. Loss of Limb: § 391.41(b)(1)

A person is physically qualified to drive a commercial motor vehicle if that person: Has no loss of a foot, leg, hand or an arm, or has been granted a Skills Performance Evaluation certificate pursuant to § 391.49.

B. Limb Impairment: § 391.41(b)(2)

1. A person is physically qualified to drive a commercial motor vehicle if that person: Has no impairment of:

(i) A hand or finger which interferes with prehension or power grasping; or

(ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or

(iii) Any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or

(iv) Has been granted a Skills Performance Evaluation certificate pursuant to § 391.49.

2. A person who suffers loss of a foot, leg, hand or arm or whose limb impairment in any way interferes with the safe performance of normal tasks associated with operating a commercial motor vehicle is subject to the Skills Performance Evaluation Certificate Program pursuant to § 391.49, assuming the person is otherwise qualified.

3. With the advancement of technology, medical aids and equipment modifications have been developed to compensate for certain disabilities. The Skills Performance Evaluation Certificate Program (formerly the Limb Waiver Program) was designed to allow persons with the loss of a foot or limb or with functional impairment to qualify under the Federal Motor Carrier Safety Regulations by use of prosthetic devices or equipment modifications which enable them to safely operate a commercial motor vehicle. Since there are no medical aids equivalent to the original body or limb, certain risks are still present, and thus restrictions may be included on individual Skills Performance Evaluation certificates when a State Director for the Federal Motor Carrier Safety Administration determines they are necessary to be consistent with safety and public interest.

4. If the driver is found otherwise medically qualified (§ 391.41(b)(3) through (13)), the medical examiner must check on the Medical Examiner's Certificate that the driver is qualified only if accompanied by a Skills Performance Evaluation certificate. The driver and the employing motor carrier are subject to appropriate penalty if the driver operates a motor vehicle in interstate or foreign commerce without a current Skill Performance Evaluation certificate for his/her physical disability.

C. Diabetes: § 391.41(b)(3)

1. A person is physically qualified to drive a commercial motor vehicle if that person: Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control.

2. Diabetes mellitus is a disease which, on occasion, can result in a loss of consciousness or disorientation in time and space. Individuals who require insulin for control have conditions which can get out of control by the use of too much or too little insulin, or food intake not consistent with the insulin dosage. Incapacitation may occur from symptoms of hyperglycemic or hypoglycemic reactions (drowsiness, semi consciousness, diabetic coma or insulin shock).

3. The administration of insulin is, within itself, a complicated process requiring insulin, syringe, needle, alcohol sponge and a sterile technique. Factors related to long-haul commercial motor vehicle operations, such as fatigue, lack of sleep, poor diet, emotional conditions, stress, and concomitant illness, compound the dangers, the Federal Motor Carrier Safety Administration has consistently held that a diabetic who uses insulin for control does not meet the minimum physical requirements of the Federal Motor Carrier Safety Regulations.

4. Hypoglycemic drugs, taken orally, are sometimes prescribed for diabetic individuals to help stimulate natural body production of insulin. If the condition can be controlled by the use of oral medication and diet, then an individual may be qualified under the present rule. Commercial motor vehicle drivers who do not meet the Federal diabetes standard may call (202) 366–4001 for an application for a diabetes exemption.

D. Cardiovascular Condition: § 391.41(b)(4)

1. A person is physically qualified to drive a commercial motor vehicle if that person: Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse or congestive cardiac failure.

2. The term ''has no current clinical diagnosis of'' is specifically designed to encompass: ''a clinical diagnosis of'' a current cardiovascular condition, or a cardiovascular condition which has not fully stabilized regardless of the time limit. The term ''known to be accompanied by'' is designed to include a clinical diagnosis of a cardiovascular disease which is accompanied by symptoms of syncope, dyspnea, collapse or congestive cardiac failure; and/or which is s likely to cause syncope, dyspnea, collapse or congestive cardiac failure.

3. It is the intent of the Federal Motor Carrier Safety Regulations to render

unqualified, a driver who has a current cardiovascular disease which is accompanied by and/or likely to cause symptoms of syncope, dyspnea, collapse, or congestive cardiac failure. However, the subjective decision of whether the nature and severity of an individual's condition will likely cause symptoms of cardiovascular insufficiency is on an individual basis and qualification rests with the medical examiner and the motor carrier. In those cases where there is an occurrence of cardiovascular insufficiency (myocardial infarction, thrombosis, etc.), it is suggested before a driver is certified that he or she have a normal resting and stress electrocardiogram, no residual complications and no physical limitations, and is taking no medication likely to interfere with safe driving.

4. Coronary artery bypass surgery and pacemaker implantation are remedial procedures and thus, not medically disqualifying. Implantable cardioverter defibrillators are disqualifying due to risk of syncope. Coumadin is a medical treatment which can improve the health and safety of the driver and should not, by its use, medically disqualify the commercial motor vehicle driver. The emphasis should be on the underlying medical condition(s) which require treatment and the general health of the driver. The Federal Motor Carrier Safety Administration should be contacted at (202) 366–4001 for additional recommendations regarding the physical qualification of drivers on coumadin.

E. Respiratory Dysfunction: § 391.41(b)(5)

1. A person is physically qualified to drive a commercial motor vehicle if that person: Has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with ability to control and drive a commercial motor vehicle safely.

2. Since a driver must be alert at all times, any change in his or her mental state is in direct conflict with highway safety. Even the slightest impairment in respiratory function under emergency conditions (when greater oxygen supply is necessary for performance) may be detrimental to safe driving.

3. There are many conditions that interfere with oxygen exchange and may result in incapacitation, including emphysema, chronic asthma, carcinoma, tuberculosis, chronic bronchitis and sleep apnea. If the medical examiner detects a respiratory dysfunction, that in any way is likely to interfere with the driver's ability to safely control and drive a commercial motor vehicle, the driver must be referred to a specialist for further evaluation and therapy. Anticoagulation therapy for deep vein thrombosis and/or pulmonary thromboembolism is not medically disqualifying once optimum dose is achieved, provided lower extremity venous examinations remain normal and the treating physician gives a favorable recommendation.

F. Hypertension: § 391.41(b)(6)

1. A person is physically qualified to drive a commercial motor vehicle if that person: Has no current clinical diagnosis of high blood pressure likely to interfere with ability to operate a commercial motor vehicle safely.

2. Hypertension alone is unlikely to cause sudden collapse; however, the likelihood increases when target organ damage, particularly cerebral vascular disease, is present. This regulatory criteria is based on the Federal Motor Carrier Safety Administration's Cardiovascular Advisory Guidelines for the Examination of commercial motor vehicle Drivers, which used the Sixth Report of the Joint National Committee on Detection, Evaluation, and Treatment of High Blood Pressure (1997).

3. Stage 1 hypertension corresponds to a systolic blood pressure of 140–159 mmHg and/or a diastolic blood pressure of 90–99 mmHg. The driver with a blood pressure in this range is at low risk for hypertension-related acute incapacitation and may be medically certified to drive for a one-year period. Certification examinations should be done annually thereafter and should be at or less than 140/90. If less than 160/100, certification may be extended one time for 3 months.

4. A blood pressure of 160–179 systolic and/or 100–109 diastolic is considered Stage 2 hypertension, and the driver is not necessarily unqualified during evaluation and institution of treatment. The driver is given a one-time certification of three months to reduce his or her blood pressure to less than or equal to 140/90. A blood pressure in this range is an absolute indication for anti-hypertensive drug therapy. Provided treatment is well tolerated and the driver demonstrates a blood pressure value of 140/90 or less, he or she may be certified for one year from date of the initial exam. The driver is certified annually thereafter.

5. A blood pressure at or greater than 180 (systolic) and 110 (diastolic) is considered Stage 3, high risk for an acute blood pressure-related event. The driver may not be qualified, even temporarily, until reduced to 140/90 or less and treatment is well tolerated. The driver may be certified for 6 months and biannually (every 6 months) thereafter if at recheck blood pressure is 140/90 or less.

6. Annual recertification is recommended if the medical examiner does not know the severity of hypertension prior to treatment. An elevated blood pressure finding should be confirmed by at least two subsequent measurements on different days.

7. Treatment includes nonpharmacologic and pharmacologic modalities as well as counseling to reduce other risk factors. Most antihypertensive medications also have side effects, the importance of which must be judged on an individual basis. Individuals must be alerted to the hazards of these medications while driving. Side effects of somnolence or syncope are particularly undesirable in commercial motor vehicle drivers.

8. Secondary hypertension is based on the above stages. Evaluation is warranted if patient is persistently hypertensive on maximal or near-maximal doses of 2–3 pharmacologic agents. Some causes of secondary hypertension may be amenable to surgical intervention or specific pharmacologic disease.

G. Rheumatic, Arthritic, Orthopedic, Muscular, Neuromuscular or Vascular Disease: § 391.41(b)(7)

1. A person is physically qualified to drive a commercial motor vehicle if that person: Has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular or vascular disease which interferes with the ability to control and operate a commercial motor vehicle safely.

2. Certain diseases are known to have acute episodes of transient muscle weakness, poor muscular coordination (ataxia), abnormal sensations (paresthesia), decreased muscular tone (hypotonia), visual disturbances and pain which may be suddenly incapacitating. With each recurring episode, these symptoms may become more pronounced and remain for longer periods of time. Other diseases have more insidious onsets and display symptoms of muscle wasting (atrophy), swelling and paresthesia which may not suddenly incapacitate a person but may restrict his/her movements and eventually interfere with the ability to safely operate a motor vehicle. In many instances these diseases are degenerative in nature or may result in deterioration of the involved area.

3. Once the individual has been diagnosed as having a rheumatic, arthritic, orthopedic, muscular, neuromuscular or vascular disease, then he/she has an established history of that disease. The physician, when examining an individual, should consider the following: The nature and severity of the individual's condition (such as sensory loss or loss of strength); the degree of limitation present (such as range of motion); the likelihood of progressive limitation (not always present initially but may manifest itself over time); and the likelihood of sudden incapacitation. If severe functional impairment exists, the driver does not qualify. In cases where more frequent monitoring is required, a certificate for a shorter period of time may be issued.

H. Epilepsy: § 391.41(b)(8)

1. A person is physically qualified to drive a commercial motor vehicle if that person: Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a motor vehicle.

2. Epilepsy is a chronic functional disease characterized by seizures or episodes that occur without warning, resulting in loss of voluntary control which may lead to loss of consciousness and/or seizures. Therefore, the following drivers cannot be qualified:

(i) A driver who has a medical history of epilepsy;

(ii) A driver who has a current clinical diagnosis of epilepsy; or

(ii) A driver who is taking antiseizure medication.

3. If an individual has had a sudden episode of a nonepileptic seizure or loss of consciousness of unknown cause which did not require antiseizure medication, the decision as to whether that person's condition will likely cause loss of consciousness or loss of ability to control a motor vehicle is made on an individual basis by the medical examiner in consultation with

the treating physician. Before certification is considered, it is suggested that a 6 month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and antiseizure medication is not required, then the driver may be qualified.

4. In those individual cases where a driver has a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.,* drug reaction, high temperature, acute infectious disease, dehydration or acute metabolic disturbance), certification should be deferred until the driver has fully recovered from that condition and has no existing residual complications, and not taking antiseizure medication.

5. Drivers with a history of epilepsy/seizures off antiseizure medication and seizure-free for 10 years may be qualified to drive a commercial motor vehicle in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a commercial motor vehicle in interstate commerce if seizure-free and off antiseizure medication for a 5-year period or more.

I. Mental Disorders: § 391.41(b)(9)

1. A person is physically qualified to drive a commercial motor vehicle if that person: Has no mental, nervous, organic or functional disease or psychiatric disorder likely to interfere with ability to drive a motor vehicle safely.

2. Emotional or adjustment problems contribute directly to an individual's level of memory, reasoning, attention, and judgment. These problems often underlie physical disorders. A variety of functional disorders can cause drowsiness, dizziness, confusion, weakness or paralysis that may lead to incoordination, inattention, loss of functional control and susceptibility to accidents while driving. Physical fatigue, headache, impaired coordination, recurring physical ailments and chronic ''nagging'' pain may be present to such a degree that certification for commercial driving is inadvisable. Somatic and psychosomatic complaints should be thoroughly examined when determining an individual's overall fitness to drive. Disorders of a periodically incapacitating nature, even in the early stages of development, may warrant disqualification.

3. Many bus and truck drivers have documented that ''nervous trouble'' related to neurotic, personality, or emotional or adjustment problems is responsible for a significant fraction of their preventable accidents. The degree to which an individual is able to appreciate, evaluate and adequately respond to environmental strain and emotional stress is critical when assessing an individual's mental alertness and flexibility to cope with the stresses of commercial motor vehicle driving.

4. When examining the driver, it should be kept in mind that individuals who live under chronic emotional upsets may have deeply ingrained maladaptive or erratic behavior patterns. Excessively antagonistic, instinctive, impulsive, openly aggressive, paranoid or severely depressed behavior greatly interfere with the driver's ability to drive safely. Those individuals who are highly susceptible to frequent states of emotional instability (schizophrenia, affective psychoses, paranoia, anxiety or depressive neuroses) may warrant disqualification. Careful consideration should be given to the side effects and interactions of medications in the overall qualification determination.

J. Vision: § 391.41(b)(10)

1. A person is physically qualified to drive a commercial motor vehicle if that person: Has distant visual acuity of at least 20/40 (Snellen) in each eye with or without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70 degrees in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

2. The term ''ability to recognize the colors of'' is interpreted to mean if a person can recognize and distinguish among traffic control signals and devices showing standard red, green and amber, he or she meets the minimum standard, even though he or she may have some type of color perception deficiency. If certain color perception tests are administered, (such as Ishihara, Pseudoisochromatic, Yarn) and doubtful findings are discovered, a controlled test using signal red, green and amber may be employed to determine the driver's ability to recognize these colors.

3. Contact lenses are permissible if there is sufficient evidence to indicate that the driver has good tolerance and is well adapted to their use. Use of a contact lens in one eye for distance visual acuity and another lens in the other eye for near vision is not acceptable, nor telescopic lenses acceptable for the driving of commercial motor vehicles.

4. If an individual meets the criteria by the use of glasses or contact lenses, the following statement shall appear on the Medical Examiner's Certificate: ''Qualified only if wearing corrective lenses.'' commercial motor vehicle drivers who do not meet the Federal vision standard may call (202) 366–4001 for an application for a vision exemption.

K. Hearing: § 391.41(b)(11)

1. A person is physically qualified to drive a commercial motor vehicle if that person: First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid, or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ADA Standard) Z24.5–1951.

2. Since the prescribed standard under the Federal Motor Carrier Safety Regulations is from the American National Standards Institute, formerly the American Standards Association, it may be necessary to convert the audiometric results from the International Organization for Standardization standard to the American National Standards Institute standard. Instructions are included on the Medical Examination Report Form.

3. If an individual meets the criteria by using a hearing aid, the driver must wear that hearing aid and have it in operation at all times while driving. Also, the driver must be in possession of a spare power source for the hearing aid.

4. For the whispered voice test, the individual should be stationed at least 5 feet from the medical examiner with the ear being tested turned toward the medical examiner. The other ear is covered. Using the breath which remains after a normal expiration, the medical examiner whispers words or random numbers such as 66, 18, 3, etc. The medical examiner should not use only sibilants (s sounding materials). The opposite ear should be tested in the same manner.

5. If the individual fails the whispered voice test, the audiometric test should be administered. If an individual meets the criteria by the use of a hearing aid, the following statement must appear on the Medical Examiner's Certificate ''Qualified only when wearing a hearing aid.''

L. Drug Use: § 391.41(b)(12)

1. A person is physically qualified to drive a commercial motor vehicle if that person does not use any drug or substance identified in 21 CFR 1308.11, an amphetamine, a narcotic, or other habit-forming drug. A driver may use a non-Schedule I drug or substance that is identified in the other Schedules in 21 CFR part 1308 if the substance or drug is prescribed by a licensed medical practitioner who:

(i) Is familiar with the driver's medical history, and assigned duties; and

(ii) Has advised the driver that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

2. This exception does not apply to methadone. The intent of the medical certification process is to medically evaluate a driver to ensure that the driver has no medical condition which interferes with the safe performance of driving tasks on a public road. If a driver uses an amphetamine, a narcotic or any other habit-forming drug, it may be cause for the driver to be found medically unqualified. If a driver uses a Schedule I drug or substance, it will be cause for the driver to be found medically unqualified. Motor carriers are encouraged to obtain a practitioner's written statement about the effects on transportation safety of the use of a particular drug.

3. A test for controlled substances is not required as part of this biennial certification process. The Federal Motor Carrier Safety Administration or the driver's employer should be contacted directly for information on controlled substances and alcohol testing under Part 382 of the FMCSRs.

4. The term ''uses'' is designed to encompass instances of prohibited drug use determined by a physician through established medical means. This may or may not involve body fluid testing. If body fluid testing takes place, positive test results

should be confirmed by a second test of greater specificity. The term ''habit-forming'' is intended to include any drug or medication generally recognized as capable of becoming habitual, and which may impair the user's ability to operate a commercial motor vehicle safely.

5. The driver is medically unqualified for the duration of the prohibited drug(s) use and until a second examination shows the driver is free from the prohibited drug(s) use. Recertification may involve a substance abuse evaluation, the successful completion of a drug rehabilitation program, and a negative drug test result. Additionally, given that the certification period is normally two years, the medical examiner has the option to certify for a period of less than 2 years if this medical examiner determines more frequent monitoring is required.

M. Alcoholism: § 391.41(b)(13)

1. A person is physically qualified to drive a commercial motor vehicle if that person: Has no current clinical diagnosis of alcoholism.

2. The term ''current clinical diagnosis of'' is specifically designed to encompass a current alcoholic illness or those instances where the individual's physical condition has not fully stabilized, regardless of the time element. If an individual shows signs of having an alcohol-use problem, he or she should be referred to a specialist. After counseling and/or treatment, he or she may be considered for certification.

Issued under the authority delegated in 49 CFR 1.87 on: April 15, 2015.

T.F. Scott Darling, III,

Chief Counsel.

[FR Doc. 2015–09053 Filed 4–22–15; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule To List the Bi-State Distinct Population Segment of Greater Sage-Grouse and Designate Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2013–0072; Docket No. FWS–R8–ES–2013–0042; 4500030113; 4500030114]

RIN 1018–AY10; RIN 1018–AZ70

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule To List the Bi-State Distinct Population Segment of Greater Sage-Grouse and Designate Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), withdraw the proposed rule to list the bi-State distinct population segment (DPS) of greater sage-grouse (*Centrocercus urophasianus*) in California and Nevada as threatened under the Endangered Species Act of 1973, as amended (Act), as well as the proposed rules under section 4(d) of the Act and to designate critical habitat for the bi-State DPS of greater sage-grouse. These withdrawals are based on our conclusion that the threats to the DPS as identified in the proposed listing rule no longer are as significant as believed at the time of publication of the proposed rule. We find the best scientific and commercial data available indicate that the threats to the DPS and its habitat, given current and future conservation efforts, are reduced below the statutory definition of threatened or endangered. Therefore, we are withdrawing our proposal to list the bi-State DPS of greater sage-grouse as threatened with critical habitat.

DATES: The October 28, 2013, proposed rule (78 FR 64358) to list the bi-State DPS of greater sage-grouse as a threatened species and the October 28, 2013, proposed rule (78 FR 64328) to designate critical habitat for the bi-State DPS of greater sage-grouse are withdrawn as of April 23, 2015.

ADDRESSES: The withdrawal of our proposed rule, comments, and supplementary documents are available on the Internet at *http://www.regulations.gov* at Docket Nos. FWS–R8–ES–2013–0072 and FWS–R8–ES–2013–0042. Comments and materials received, as well as supporting documentation used in the preparation of this withdrawal, are also available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Reno Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502; telephone 775–861–6300; or facsimile 775–861–6301.

FOR FURTHER INFORMATION CONTACT: Edward D. Koch, Field Supervisor, Reno Fish and Wildlife Office (see **ADDRESSES**). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish this document. Under the Endangered Species Act, a species may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. Listing a species as an endangered or threatened species can only be completed by issuing a rule. We issued a proposed rule to list a distinct population segment (DPS) of greater sage-grouse in California and Nevada (known as the bi-State DPS) in 2013. However, this document withdraws that proposed rule because we now determine that threats identified in the proposed rule have been reduced such that listing is not necessary for this DPS. Accordingly, we also withdraw the proposed rule under section 4(d) of the Act and proposed critical habitat designation.

The basis for our action. Under the Endangered Species Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We now determine that threats have been reduced such that listing is not necessary for this DPS.

Peer review and public comment. We sought comments from independent specialists to ensure that our consideration of the status of the species is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on our listing proposal. We also considered all comments and information received during the comment periods. Public comments and peer reviewer comments are addressed at the end of this **Federal Register** document.

Acronyms and Abbreviations Used in This Document

We use many acronyms and abbreviations throughout this document. To assist the reader, we provide a list of these here for easy reference:

Act = Endangered Species Act of 1973, as amended
BLM = Bureau of Land Management
BSAP = Bi-State Action Plan
CDFG = California Department of Fish and Game (see below)
CDFW = California Department of Fish and Wildlife (formerly CDFG)
CFR = Code of Federal Regulations
COT = Conservation Objectives Team
CPT = Conservation Planning Tool
DPS = Bi-State Distinct Population Segment of the Greater Sage-Grouse
EOC = Executive Oversight Committee
FR = Federal Register
GIS = Geographic Information System
GPS = Global Positioning System
LADWP = Los Angeles Department of Water and Power
LAWG = Local Area Working Group
LRMP = Land Resource Management Plan
MDL = Multi-District Litigation
NDOW = Nevada Department of Wildlife
NRCS = Natural Resources Conservation Service
OHV = Off-highway Vehicle
PECE = Policy for Evaluation of Conservation Efforts When Making Listing Decisions
PMU = Population Management Unit
RHA = Rangeland Health Assessment
RMP = Resource Management Plan
RSF = Resource Selection Function
Service = U.S. Fish and Wildlife Service
TAC = Technical Advisory Committee
USDA = U.S. Department of Agriculture
USDI = U.S. Department of the Interior
USFS = U.S. Forest Service
USGS = U.S. Geological Survey
WNv = West Nile Virus

Previous Federal Actions

Please refer to the proposed listing rule for the bi-State DPS (78 FR 64358; October 28, 2013) of greater sage-grouse for a detailed description of the Federal actions concerning this DPS that occurred prior to publication of the proposed listing rule. We concurrently published a proposed rule to designate critical habitat for the bi-State DPS of greater sage-grouse (78 FR 64328; October 28, 2013). We received requests to extend the public comment periods on the rules beyond the December 27, 2013, due date. In order to ensure that the public had an adequate opportunity to review and comment on our proposed rules, we extended the comment periods for an additional 45 days to February 10, 2014 (78 FR 77087; December 20, 2013).

On April 8, 2014, we reopened the comment period on our October 28, 2013, proposed rule to list the bi-State DPS and the proposed critical habitat rule (79 FR 19314). We also announced

two public hearings: (1) April 29, 2014, in Minden, Nevada; and (2) April 30, 2014, in Bishop, California. These meetings were subsequently cancelled for unrelated reasons. On May 9, 2014, we published a notice announcing the rescheduled hearings to take place on May 28, 2014, and May 29, 2014, respectively (79 FR 26684). The April 8, 2014, notice also announced a 6-month extension of the final determination of whether or not to list the bi-State DPS as a threatened species, which would automatically delay any decision regarding critical habitat for the bi-State DPS. The comment period was reopened (until June 9, 2014), and our determination on the final listing action was delayed based on substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the proposed listing, making it necessary to solicit additional information. Thus, we announced that we would publish a listing determination on or before April 28, 2015.

On June 3, 2014, we announced an extension of the comment period on the proposed critical habitat rule (79 FR 31901), the availability of a draft economic analysis of the proposed designation of critical habitat for the bi-State DPS, and an amended required determinations section of the proposed critical habitat rule (available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2013–0042).

On August 5, 2014, we provided an additional comment period on our October 28, 2013, proposed rule to list the bi-State DPS (79 FR 45420) based on new information received regarding population trends and recent State and Federal agency funding and staffing commitments for various conservation efforts associated with the Bi-State Action Plan (BSAP; Bi-State Technical Advisory Committee (TAC) 2012, entire). The comment period closed on September 4, 2014.

Background

In our 12-month finding on petitions to list three entities of sage-grouse (75 FR 13910; March 23, 2010), we found that the bi-State population of greater sage-grouse in California and Nevada meets our criteria as a DPS of the greater sage-grouse under Service policy (61 FR 4722; February 7, 1996). We reaffirmed this finding in the proposed listing rule and do so again here in this document. This determination was based principally on genetic information (Benedict *et al.* 2003, p. 308; Oyler-McCance *et al.* 2005, p. 1,307), where the DPS was found to be both markedly separated and significant to the remainder of the greater sage-grouse taxon. The bi-State DPS defines the far southwestern limit of the species' range along the border of eastern California and western Nevada (Stiver *et al.* 2006, pp. 1–11; 71 FR 76058).

Although the bi-State DPS is a genetically unique and markedly separate population from the rest of the greater sage-grouse's range, the DPS has similar life-history and habitat requirements. In the proposed rule and this document, we use information specific to the bi-State DPS where available but still apply scientific management principles for greater sage-grouse that are relevant to the bi-State DPS's management needs and strategies, which is a practice followed by the wildlife and land management agencies that have responsibility for management of both the DPS and its habitat.

A detailed discussion of the bi-State DPS's description, taxonomy, habitat (sagebrush ecosystem), seasonal habitat selection, life-history characteristics, home range, life expectancy and survival rates, historical and current range distribution, population estimates and lek (sage-grouse breeding complex) counts, population trends, and land ownership information is available in the Species Report (Service 2015a, entire). A team of Service biologists prepared this status review for the bi-State DPS. The team included biologists from the Service's Reno Fish and Wildlife Office, Pacific Southwest Regional Office, Mountain-Prairie Regional Office, and national Headquarters Office. The Species Report represents a compilation of the best scientific and commercial data available concerning the status of the bi-State DPS, including the past, present, and future threats to this DPS. The Species Report and other materials relating to this final agency action can be found at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2013–0072.

Summary of Changes From the Proposed Rule

Based upon our review of the public comments, Federal and State agency comments, peer review comments, issues addressed at the public hearings, and any new relevant information that became available since the publication of the proposal, we reevaluated our proposed listing rule and made changes as appropriate. Other than minor clarifications and incorporation of additional information on the species' biology and populations, this determination differs from the proposal in the following ways:

(1) Based on our analyses of the potential threats to the species, and our consideration of partially completed, ongoing and future conservation efforts (as outlined in the Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) section of this document), we have determined that the bi-State DPS should not be listed as a threatened species. Specifically, we have determined that conservation efforts (as outlined in the BSAP, Agency commitment letters, and our detailed PECE analysis (all of which are available at *http://www.regulations.gov* (Docket No. FWS–R8–ES–2013–0072)), as well as the TAC comprehensive project database) will continue to be implemented because (to date) we have a documented track record of active participation and implementation by the signatory agencies, and commitments to continue implementation into the future. Conservation measures, such as (but not limited to) pinyon-juniper removal, establishment of conservation easements for critical brood-rearing habitat, cheatgrass removal, permanent and seasonal closure of roads near leks, removal and marking of fencing, and restoration of riparian/meadow habitat have been occurring over the past decade, are currently occurring, and have been prioritized and placed on the agencies' implementation schedules for future implementation. Agencies have committed to remain participants in the BSAP and continue conservation of the DPS and its habitat. Additionally, the BSAP has sufficient methods for determining the type and location of the most beneficial conservation actions to be implemented, including continued development of new population and threats information in the future that will guide conservation efforts. As a result of these actions, this document withdraws the proposed rule as published on October 28, 2013 (78 FR 64358).

(2) The addition of the Ongoing and Future Conservation Efforts section, which includes some information presented in the Available Conservation Measures section of the proposed listing rule and the Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) section following the Summary of Factors Affecting the Species section, below.

(3) The addition of a discussion under the Small Population Size and Population Structure section that synthesizes information to evaluate resiliency, redundancy, and representation as they relate to the bi-State DPS.

(4) New information was received following publication of the proposed listing rule. Some of the information was in response to our request for

scientific peer review of the proposed listing rule, while other information was a result of new literature now available, or updated regulations. We incorporated all new information into the Species Report (Service 2015a, entire), which is available on the Internet at *www.regulations.gov* (Docket No. FWS–R8–ES–2013–0072), as well as within this **Federal Register** document where appropriate. New information includes (but is not limited to):

- A variety of biological or habitat clarifications, such as hen movement distances, nesting success, and invasive plant species influence on sagebrush-habitat dynamics.
- A recent trend analysis conducted by Coates *et al.* (2014, entire) examined six populations (*i.e.,* Pine Nut, Desert Creek, Fales, Bodie Hills, Parker Meadows, and Long Valley) over a 10-year period between 2003 and 2012. The results suggest that four of the six populations (*i.e.,* Pine Nut, Desert Creek, Bodie Hills, and Long Valley) are stable. Population growth was variable among the populations, and results for the Pine Nut population are not considered to be reliable due to the small sample size associated with a single active lek (see Species Information above).
- Two genetic evaluations, one of which concluded there are between three and four unique genetic clusters within the bi-State area (Oyler-McCance *et al.* (2014, p. 8), and a second that concluded there were five unique genetic clusters (Tebbenkamp 2014, p. 18). Tebbenkamp (2014) did not evaluate the Pine Nut population; thus, six populations may have been identified by Tebbenkamp (2014) had the Pine Nut population data been available.

Species Information

As stated above, the bi-State DPS of greater sage-grouse is genetically unique and markedly separate from the rest of the species' range. The species as a whole is long-lived, reliant on sagebrush, highly traditional in areas of seasonal habitat use, and particularly susceptible to habitat fragmentation and alterations in its environment (see the *Seasonal Habitat Selection and Life History Characteristics* section of the Species Report (Service 2015a, pp. 11–15)). Sage-grouse annually exploit numerous habitat types in the sagebrush ecosystem across broad landscapes to successfully complete their life cycle, thus spanning ecological and political boundaries. Populations are slow-growing due to low reproductive rates (Schroeder *et al.* 1999 pp. 11, 14; Connelly *et al.* 2000a, pp. 969–970), and they exhibit natural, cyclical variability in abundance (see *Current Range/Distribution and Population Estimates/Annual Lek Counts* section of the Species Report (Service 2015a, pp. 17–31)).

For the purposes of this document, we discuss the bi-State DPS populations, threats to those populations, and associated management needs or conservation actions as they relate to population management units (PMUs). Six PMUs were established in 2001 as management tools for defining and monitoring sage-grouse distribution in the bi-State area (Sage-Grouse Conservation Planning Team 2001, p. 31). The PMU boundaries are based on aggregations of leks, known seasonal habitats, and telemetry data, which represent generalized subpopulations or local breeding complexes. The six PMUs include: Pine Nut, Desert Creek-Fales, Bodie, Mount Grant, South Mono, and White Mountains PMUs. These six PMUs represent a total of three to six demographically independent populations with a combined total of approximately 43 active leks (see Table 1 below; Service 2015a, pp. 17–31). Leks are considered either active (*e.g.,* two or more strutting males during at least 2 years in a 5-year period), inactive (*e.g.,* surveyed three or more times during one breeding season with no birds detected and no sign (*e.g.,* droppings) observed), historical (*e.g.,* no strutting activity for 20 years and have been checked according to State protocol at least intermittently), or unknown/pending (*e.g.,* sign was observed, and one or no strutting males observed, or a lek that had activity the prior year but was not surveyed or surveyed under unsuitable conditions during the current year and reported one or no strutting males).

TABLE 1—BI-STATE DPS POPULATION MANAGEMENT UNITS (PMUS), PMU SIZE, ESTIMATED SUITABLE SAGE-GROUSE HABITAT, ESTIMATED RANGE IN POPULATION SIZE, NUMBER OF ACTIVE LEKS, AND REPORTED RANGE IN TOTAL MALES COUNTED ON ALL LEKS WITHIN EACH PMU

PMU	Total size hectares (acres) *	Estimated suitable habitat hectares (acres) **	Estimated population size range (2004–2014) ***	Current number of active leks ***†	Lek count (number of males) range (2004–2014) ***
Pine Nut	232,440 (574,373)	77,848 (192,367)	<100–608	1	0–38
Desert Creek-Fales	229,858 (567,992)	105,281 (260,155)	638–2,061	10	78–220
Mount Grant	282,907 (699,079)	45,786 (113,139)	171–3,058	6	12–215
Bodie	141,490 (349,630)	105,698 (261,187)	640–2,466	12	136–524
South Mono	234,508 (579,483)	138,123 (341,311)	965–2,005	11	205–426
White Mountains	709,768 (1,753,875)	53,452 (132,083)	Data not available	3+	5–14
Total (all PMUs combined)	1,830,972 (4,524,432)	526,188 (1,300,238)	2,497–9,828	43	427–1,404

* Bi-State Local Planning Group (2004, pp. 11, 32, 63, 102, 127, 153).
** Bi-State TAC (2012, unpublished data); Bureau of Land Management (BLM 2014a, unpublished data).
*** California Department of Wildlife (CDFW 2014a, unpublished data), Nevada Department of Wildlife (NDOW 2014a, unpublished data).
† Active—two or more strutting males during at least 2 years in a 5-year period.
NOTE—Area values for "Total Size" and "Estimated Suitable Habitat" may not sum due to rounding.
NOTE—Estimated population and lek count totals are not a sum of the PMU cells. Totals represent minimum and maximum estimates between 2004 and 2014. Minimum numbers were documented in 2008 and maximum in 2012.

Each sage-grouse population in the bi-State area is relatively small, as is the entire DPS on average, which is estimated at 2,497 to 9,828 individuals (CDFW 2014a, unpublished data; NDOW 2014a, unpublished data). Based on the maximum number of males counted on leks, the two largest populations exist in the Bodie (Bodie Hills population) and South Mono (Long Valley population) PMUs. The remaining PMUs contain smaller populations. Although population estimates derived from lek surveys (and presented in Table 1, above) suggest the Mount Grant and Desert Creek-Fales PMUs rival populations in the Bodie and South Mono PMUs, we consider population estimates for the two former PMUs to be inflated due to differences in survey method (helicopter versus on-the-ground) as well as differences in the specific estimator formula used by the NDOW versus the CDFW.

In 2014, the U.S. Geological Survey (USGS) completed an analysis of population trends in the bi-State area between 2003 to 2012 (Coates *et al.* 2014, entire). This analysis, termed an Integrated Population Model, integrates a variety of data such as lek counts and vital rate information to inform an estimate of population growth within the DPS. This analysis evaluated several populations in the bi-State area including the Pine Nut (Pine Nut PMU), Fales (California portion of the Desert Creek-Fales PMU), Desert Creek (Nevada Portion of the Desert Creek-Fales PMU), Bodie Hills (Bodie PMU), Parker Meadows (South Mono PMU), and Long Valley (South Mono PMU) populations. It did not evaluate the Mount Grant (Mount Grant PMU) or White Mountains (White Mountains PMU) populations due to data limitations. Results suggest the evaluated populations, in their entirety, are stable (both growing and declining) between 2003 and 2012 (Coates *et al.* 2014, p. 19). However, the trend in population growth was variable among populations (Coates *et al.* 2014, pp. 14–15). Details pertaining to specific population and PMUs are provided below.

Two recent and independent genetic evaluations have been conducted in the bi-State area. Oyler-McCance *et al.* (2014, p. 8) concluded there are between three and four unique genetic clusters within the bi-State area, while Tebbenkamp (2014, p. 18) concluded there were five unique genetic clusters. In addition, Tebbenkamp (2014, p. 12) did not evaluate the Pine Nut population, which Oyler-McCance *et al.* (2014, p. 8) found to be unique. Thus, presumably Tebbenkamp (2014, entire) would have differentiated six populations had these data been available. Based on this information, we presume that there are likely three to six populations or groups of birds in the bi-State area that largely operate demographically independent of one another.

Overall, the remaining habitat is reduced in quality from what we currently consider high-quality habitat for the bi-State DPS (see various Impact Analysis discussions in the Species Report including, but not limited to, the *Infrastructure, Nonnative, Invasive and Native Increasing Plants,* and *Wildfires and Altered Fire Regime* sections (Service 2015a, pp. 45–91)) and, thereby, sage-grouse carrying capacity likely also is reduced. Additionally, the best available data indicate that reductions in sage-grouse abundance proportionally exceed habitat loss (in other words, because sage-grouse habitat abundance has been reduced on the order of 50 percent over the past 150 years, the expected sage-grouse population numbers (or abundance) are reduced by more than 50 percent over the same time period). The residual limited connectivity of populations and habitats within and among the PMUs also continues to slowly erode (Service 2015a, pp. 16–33, 45–52, 57, 58, 61, 63–65, 67, 69, 82–84, 86, 121–122, 124, 143, 144–150). However, as discussed in the Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) section (below), conservation efforts are effectively reducing the risk of further habitat loss and helping maintain connectivity.

At the time of the proposed listing rule, we stated that declining bi-State DPS population trends were continuing for the Pine Nut, Desert Creek-Fales, and Mount Grant PMUs, with an unknown trend for the White Mountains PMU (Service 2013a, pp. 21–29). However, a more recent trend analysis conducted by Coates *et al.* (2014, p. 19) examining six populations (*i.e.,* Pine Nut, Desert Creek, Fales, Bodie Hills, Parker Meadows, and Long Valley) over a 10-year period between 2003 to 2012 estimated these populations to be stable (not growing or declining) (see *Current Range/Distribution and Population Estimates/Annual Lek Counts* section of the Species Report). Specifically, this analysis characterized population growth rates as positive for four of the six populations analyzed (*i.e.,* Pine Nut, Desert Creek, Bodie Hills, and Long Valley), and negative for the remaining two populations (*i.e.,* Fales, Parker Meadows). We note, however, that although this model projected a positive growth rate for the Pine Nut population, the single active lek used to partially inform the Pine Nut PMU model for this trend analysis had zero males strutting in 2013 and a single male in 2014. Therefore, we interpret these model results, particularly for this population, with caution.

The Bodie and South Mono PMUs form the central core of the bi-State DPS. The Bodie Hills and Long Valley populations within these two PMUs are the largest sage-grouse populations in the bi-State area. These PMUs encompass between approximately 45 and 64 percent of existing bi-State DPS individuals (Service 2015a, p. 20). These PMUs are relatively stable at present (estimates range from approximately 640 to 2,466 individuals in the Bodie PMU and 965 to 2,005 individuals in the South Mono PMU (CDFW 2014a, unpublished data; NDOW 2014a, unpublished data; Coates *et al.* 2014, p. 15)), and the scope and severity of known impacts are comparatively less than in other PMUs. These PMUs currently are relatively stable with overall fewer impacts as compared to the other four PMUs, despite having experienced prior habitat losses, population declines, and internal habitat fragmentation. Significant connectivity between these two PMUs is currently lacking (Service 2015a, pp. 121–122, 143), and like many areas in the Great Basin both PMUs (as well as the other four PMUs) are vulnerable to the effects of *Bromus tectorum* cheatgrass invasion (Service 2015a, pp. 79–81) and wildfire impacts (Service 2015a, pp. 86–91).

Together, the Bodie and South Mono PMUs represent less than 20 percent of the historical range for the bi-State DPS. Historically, the DPS occurred throughout most of Mono, eastern Alpine, and northern Inyo Counties, California (Hall *et al.* 2008, p. 97), and portions of Carson City, Douglas, Esmeralda, Lyon, and Mineral Counties, Nevada (Gullion and Christensen 1957, pp. 131–132; Espinosa 2006, pers. comm.). While the Bodie PMU is expected to fall below 500 breeding adults within the next 30 years (Garton *et al.* 2011, p. 310), both the Bodie and South Mono PMUs (which harbor the two largest populations) are projected by sage-grouse experts to have moderate to high probabilities of persistence into the future (Aldridge *et al.* 2008, entire; Wisdom *et al.* 2011, entire). The Bodie PMU has fluctuated with positive and negative population growth over the past 40 years with no discernible long-term trend (Service 2013a, pp. 24–26). The long-term population trend for the South Mono PMU has been stable (Service 2015a, pp. 26–27). As with the Bodie PMU, some sage-grouse experts

estimate an 80 percent chance of the population declining to fewer than 500 breeding adults in 30 years (Garton *et al.* 2011, p. 310). Both the Bodie and South Mono PMU populations have fallen below 500 breeding individuals in the past and then have returned to higher numbers. Thus, while sage-grouse experts predict these populations could again fall below 500 breeding individuals in the future, we conclude it is likely that these populations will continue to fluctuate in size but persist, particularly given the conservation efforts occurring currently and into the future as a result of implementation and effectiveness of the BSAP (see Policy for Evaluation of Conservation Efforts When Makin Listing Decisions (PECE), below).

Fluctuations in population size in the relatively small Pine Nut, Fales, and Parker Meadows populations (within the Pine Nut, Desert Creek-Fales, and south Mono PMUs) could result in extirpation of one or more of these populations, and thereby reduce population redundancy within the DPS. Historical extirpations outside the existing boundaries of the six PMUs present a similar pattern of lost peripheral populations (see *Historical Range/Distribution and Population Estimates* section of the Species Report) (Service 2015a, pp. 16–17)). Two range-wide assessments investigating patterns of sage-grouse population persistence confirm that PMUs on the northern and southern extents of the bi-State DPS (*i.e.,* Pine Nut, Desert Creek-Fales, and White Mountains PMUs) are similar to extirpated sites elsewhere within the range of greater sage-grouse, while the central PMUs (*i.e.,* South Mono, Bodie, and Mount Grant PMUs) are similar to extant sites (Aldridge *et al.* 2008, entire; Wisdom *et al.* 2011, entire).

In summary, we anticipate the greatest risk of PMU loss for three of the six PMUs in the bi-State DPS (*i.e.,* Pine Nut, Mount Grant, and White Mountains PMUs) as compared to the PMUs that harbor more sage-grouse individuals (*i.e.,* Desert Creek-Fales PMU) and the central core (or largest) populations (*i.e.,* Bodie and South Mono PMUs).

Following are brief accounts of each PMU. Primary threats are introduced in these summaries and described in more detail in the Summary of Factors Affecting the Species section below, and fully evaluated and described in the Impact Analysis section of the Species Report (Service 2015a, pp. 45–129).

(1) The Pine Nut PMU has the fewest sage-grouse of all bi-State DPS PMUs (*i.e.,* one population ranging in size from less than 100 to 608 birds based on data collected between 2004 and 2014 (Table 1, above)). Telemetry research in the Pine Nut Mountains suggests the potential for additional undocumented leks in the south-central portion of the PMU (USGS 2013a, p. 2). Most recently in 2014, eight males were documented strutting on Bald Mountain in close proximity to the inactive lek site in the southern extent of the Pine Nut Mountains (USGS 2014a, p. 1). A recent 10-year trend analysis between 2003 and 2012 suggests the population in the Pine Nut PMU has been stable (Coates *et al.* 2014, p. 14). However, in 2013, no birds were documented at the Mill Canyon Dry Lake lek and in 2014 one male was seen strutting, even though the lek sites were surveyed intensely in both years (USGS 2013b, p. 25; USGS 2014b, p. 1).

Overall, this population represents approximately 6 percent of the DPS. The population in the Pine Nut PMU has some level of connectivity with the Desert Creek-Fales PMU and potentially also with the Bodie and Mount Grant PMUs. Urbanization, grazing management, wildfire, invasive species, infrastructure, and mineral development are affecting this population, and the scope and severity of most of these impacts are likely to increase into the future based on the proximity of the PMU to expanding urban areas, agricultural operations, road networks, and power lines; altered fire regimes; new mineral entry proposals; and increasing recreational off-highway vehicle (OHV) use on public lands. Because of the current small population size and the ongoing and potential future magnitude of habitat impacts if left unchecked, the sage-grouse population in the Pine Nut PMU (*i.e.,* the northernmost population within the range of the bi-State DPS) is at a greater risk of extirpation than populations in other PMUs within the bi-State area.

Threats to the Pine Nut PMU and risk of extirpation are reduced as a result of effective ongoing and future conservation efforts associated with the BSAP that are occurring within this PMU, such as (but not limited to): restoring habitat (*e.g.,* reducing pinyon-juniper encroachment, reducing the spread of cheatgrass, improving brood-rearing habitat) reducing wild horse grazing impacts, reducing infrastructure impacts (*e.g.,* temporary or permanent road closures, fencing maintenance or marking), and potentially conducting future translocation of sage-grouse from stable populations. Discussion of the various conservation efforts that are partially completed and planned for the future can be found in our detailed PECE analysis (available at *www.regulations.gov,* Docket No. FWS–R8–ES–2013–0072) and the Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) section of this document.

(2) The Desert Creek-Fales PMU straddles the Nevada-California border and contains two populations, one in each State. The two populations (including the Desert Creek breeding complex and the Fales breeding complex) have ranged in size from approximately 638 to 2,061 birds between 2004 and 2014 (Table 1, above). A recent analysis suggests population growth was slightly positive in the Desert Creek breeding complex between 2003 and 2012 (Coates *et. al.* 2014a, p. 14). The Fales breeding complex has remained small since 1981, and a recent analysis suggests population growth was slightly negative between 2003 and 2012 (Coates *et. al.* 2014a, p. 14).

The populations in the Desert Creek-Fales PMU have some level of connectivity with the Pine Nut PMU and potentially also with the Bodie and Mount Grant PMUs. The most significant impacts in this PMU are wildfire, invasive species (specifically conifer encroachment), infrastructure, and urbanization. Private-land acquisitions in California and conifer removal in Nevada and California have mitigated some of the impacts within this PMU. However, urbanization and woodland succession remain a concern based on the lack of permanent protection for important brood-rearing (summer) habitat that occurs primarily on irrigated private pasture lands and continued *Pinus monophylla* (pinyon pine) and various *Juniperus* (juniper) species encroachment that is contracting distribution of the populations and connectivity between populations. While some of these impacts are more easily alleviated than others (*e.g.,* conifer encroachment), the existing condition would likely worsen in the future (Bi-State TAC 2012a, pp. 24–25) if conservation efforts were not conducted. However, impacts to populations within this PMU are reduced as a result of effective ongoing and future conservation efforts that are associated with the BSAP, such as (but not limited to): restoring habitat (*e.g.,* reducing pinyon-juniper encroachment, reducing the spread of cheatgrass (which in turn is reducing the threat of wildfire), improving brood-rearing habitat, establishing conservation easements in critical brood-rearing habitat areas, improving grazing management conditions, and reducing infrastructure impacts (*e.g.,* permanent road closures). Discussion of the various conservation efforts that are partially

completed or proposed for the future can be found in our detailed PECE analysis (available at *www.regulations.gov,* Docket No. FWS–R8–ES–2013–0072) and the Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) section of this document.

(3) The Mount Grant PMU contains one population, with population estimates between 2004 and 2014 ranging from approximately 171 to 3,058 birds (Table 1, above). The population in the Mount Grant PMU has some level of connectivity with the Bodie PMU and potentially also with the Desert Creek-Fales and Pine Nut PMUs. Habitat impact sources in this PMU include woodland encroachment, renewable energy and mineral development, infrastructure, and the potential for wildfire. Woodland encroachment, mineral development, and infrastructure currently fragment habitat in this PMU and, in the future, these as well as wildfire (if it occurs) may reduce or eliminate connectivity to the sage-grouse population in the adjacent Bodie PMU. Long-term persistence of the sage-grouse population in the Mount Grant PMU is less likely than in the other PMUs that currently harbor larger populations of sage-grouse in the bi-State area without successful implementation of additional conservation measures.

Population estimates for the Mount Grant PMU (Service 2015a, Table 1) are highly uncertain due to survey methodology and inconsistencies. Thus, while the PMU appears to harbor a significant number of birds, we consider this estimate to be biased significantly high (albeit to an unknown degree), and further, it appears the PMU is experiencing negative growth (NDOW 2014a, unpublished data). Long-term persistence of the sage-grouse population in the Mount Grant PMU is uncertain, particularly if conservation efforts are not conducted. However, impacts to populations within this PMU are reduced as a result of effective ongoing and future conservation efforts that are associated with the BSAP, such as (but not limited to): restoring habitat (*e.g.,* reducing pinyon-juniper encroachment, improving brood-rearing habitat), reducing direct and indirect potential energy development and mining impacts, establishing conservation easements in critical brood-rearing habitat areas, reducing grazing impacts through wild horse management, implementing wildfire prevention and suppression strategies, and reducing infrastructure impacts (*e.g.,* permanent road closures). Discussion of the various conservation efforts that are partially completed or proposed for the future can be found in our detailed PECE analysis (available at *www.regulations.gov,* Docket No. FWS–R8–ES–2013–0072) and the Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) section of this document.

(4) The Bodie PMU contains one population (Bodie Hills), which is one of the two core (largest) populations for the bi-State DPS. Population estimates for this PMU between 2004 and 2014 range from 640 to 2,466 individuals (Table 1, above). This PMU typically has the highest number of active leks (*i.e.,* 13) of all the PMUs. The population in the Bodie PMU has some level of connectivity with the Mount Grant PMU and potentially also with the Desert Creek-Fales and Pine Nut PMUs.

Woodland succession is estimated to have caused a 40 percent reduction in sagebrush habitat throughout the Bodie PMU, and encroachment into sagebrush habitat is expected to continue to some degree both from woodland edge expansion and infilling. The potential of future wildfire and subsequent habitat loss by conversion to annual grasses is of greatest concern based on the increased understory presence of cheatgrass, specifically in Wyoming big sagebrush (*Artemisia tridentata* spp. *wyomingensis*) communities within the Bodie PMU (*e.g.,* Bodie Hills). In addition, the potential for loss (largely restricted to date) of sage-grouse habitat to exurban development (small, usually prosperous community situated beyond the suburbs of a city) on unprotected private lands in the Bodie PMU is also a concern because these lands provide summer- and winter-use areas and connectivity for sage-grouse among the Bodie, Mount Grant, and Desert Creek-Fales PMUs. Current impacts posed by infrastructure, grazing, and mineral extraction are of minimal severity in the Bodie PMU. However, impacts to populations within this PMU are reduced as a result of effective ongoing and future conservation efforts that are associated with the BSAP, such as (but not limited to): restoring habitat (*e.g.,* reducing pinyon-juniper encroachment, improving brood-rearing habitat, restoration of areas invaded by cheatgrass), reducing direct and indirect potential energy development and mining impacts; establishing conservation easements in critical brood-rearing habitat areas, reducing grazing impacts through wild horse management, implementing wildfire prevention and suppression strategies, and reducing infrastructure impacts (*e.g.,* permanent road closures). Discussion of the various conservation efforts that are partially completed or proposed for the future can be found in our detailed PECE analysis (available at *www.regulations.gov,* Docket No. FWS–R8–ES–2013–0072) and the Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) section of this document.

(5) The South Mono PMU contains three populations (Long Valley, Granite Mountain, and Parker Meadows). The Long Valley population is one of the two largest (core) populations for the bi-State DPS. Population estimates for this PMU between 2004 and 2014 range from 965 to 2,005 individuals (Table 1). The South Mono PMU typically has had the highest estimated population size of all the PMUs. This PMU is considered to be largely isolated from the other PMUs.

Currently, the most significant impacts in the South Mono PMU are infrastructure and recreation, with the potential for increased wildfire. An indirect impact of infrastructure to the sage-grouse population in Long Valley is predation, likely associated with the local landfill. Predation (primarily from ravens) appears to reduce sage-grouse nest success in Long Valley, but the population nevertheless appears stable. The Parker Meadows population currently has one active lek and is quite small; from 2002 to 2014, male sage-grouse counts have ranged between 3 and 17 (CDFW 2014a, *in litt.*). This population has the lowest reported genetic diversity in the bi-State area, and it is experiencing high nest failure rates due to nonviable eggs (Gardner 2009, pers. comm.), potentially indicative of genetic challenges. The Granite Mountain population consists of two leks (''Adobe'' and ''Gaspipe'') and is also quite small. The Adobe lek averaged 11 males between 1984 and 1994 before numbers began to decline in 1995, and subsequently the site became inactive in 2001 (CDFW 2014a, *in litt.*). The Gaspipe lek averaged seven males between 1990 and 2008, and the site became inactive in 2009 (CDFW 2014a, *in litt.*). However, in 2013 and 2014 four and seven males were counted, respectively.

Impacts to populations within this PMU are reduced as a result of effective ongoing and future conservation efforts that are associated with the BSAP, such as (but not limited to): restoring habitat (*e.g.,* reducing pinyon-juniper encroachment, improving brood-rearing habitat), reducing direct and indirect human disturbance related to recreation or activities associated with potential development, reducing predation impacts (*e.g.,* removing a landfill), establishing conservation easements in critical brood-rearing habitat areas, and

reducing infrastructure impacts (*e.g.,* seasonal or permanent road closures, maintenance and/or removal of fencing). Discussion of the various conservation efforts that are partially completed or proposed for the future can be found in our detailed PECE analysis (available at *www.regulations.gov,* Docket No. FWS–R8–ES–2013–0072) and the Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) section of this document.

(6) The White Mountains PMU contains one population. No recent population estimate for this southernmost PMU is available, and, overall, information on population status and impacts is limited. The area is remote and difficult to access, and most data are from periodic observations rather than comprehensive surveys. The population in the White Mountains PMU is considered to be largely isolated from the other PMUs. Current impacts such as exurban development (*e.g.,* Chiatovich Creek area (Bi-State Lek Surveillance Program 2012, p. 38)), grazing, recreation, and invasive species may be influencing portions of the population and are likely to increase in the future, but current impacts are considered minimal due to the remote locations of most known sage-grouse use areas. Potential future impacts from infrastructure (power lines, roads) and mineral developments could lead to the loss of the remote, contiguous nature of the habitat if conservation efforts were not conducted.

As stated above, while some of the impacts occurring in the six PMUs are more easily alleviated than others (*e.g.,* conifer encroachment), the existing condition (without intervention) would likely worsen in the future (Bi-State TAC 2012a, pp. 24–25) if conservation efforts were not conducted. As a result, significant conservation efforts that are associated with the BSAP are currently under way (partially completed) or are planned for the future that are reducing or eliminating impacts, including (but not limited to): reducing infrastructure impacts (*e.g.,* permanent road closures), reducing human disturbance associated with urbanization, restoring habitat (*e.g.,* reducing pinyon-juniper encroachment, improving brood-rearing habitat), and reducing grazing impacts through wild horse management. Discussion of the various conservation efforts that are partially completed or proposed for the future can be found in our detailed PECE analysis (available at *www.regulations.gov,* Docket No. FWS–R8–ES–2013–0072) and the Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) section of this document.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

A threats analysis for the bi-State DPS is included in the Species Report (Service 2015a, entire) associated with this document (and available at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2013–0072). All potential threats of which we are aware that are acting upon the bi-State DPS currently or in the future (and consistent with the five listing factors identified above) were evaluated and addressed in the Species Report, and are summarized in the following paragraphs.

Many of the impacts to sage-grouse populations and sagebrush habitats in the bi-State DPS are present throughout the DPS's range, although they (at the time of the proposed listing and currently) affect the DPS to varying degrees. Specifically, the populations and habitat in the northern extent of the bi-State area, including the Pine Nut, Desert Creek-Fales, and Mount Grant PMUs, are now and will likely continue to be most at risk from the various threats acting upon the bi-State DPS and its habitat. Without future conservation efforts (*i.e.,* the partially completed and future actions summarized in the Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) section below), we would anticipate loss of some populations and contraction of the ranges of others in these three PMUs (see *Species Information* section above and *Bi-State DPS Population Trends* section of the Species Report (Service 2015a, pp. 31–33)), which will leave them more susceptible to extirpation from stochastic events such as wildfire, drought, and disease. We would expect (again, assuming no interventions or increased protections) that two populations in the Bodie and South Mono PMUs (*i.e.,* the Bodie Hills and Long Valley populations, respectively) will persist into the future (Aldridge *et al.* 2008, entire; Wisdom *et al.* 2011, entire). Significant ongoing and future conservation efforts are reducing or eliminating impacts; discussion of these conservation efforts can be found in our detailed PECE analysis (available at *www.regulations.gov,* Docket No. FWS–R8–ES–2013–0072) and the Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) section of this document.

If left unchecked, the impacts that are of high current or future scope and severity within the DPS (*i.e.,* the most significant threats overall across the range of the bi-State DPS) include those that are resulting in the present or threatened destruction, modification, or curtailment of its habitat or range, and other natural or manmade threats affecting the DPS's continued existence. These more significant threats include infrastructure (*i.e.,* fences, power lines, and roads) (Factors A and E); urbanization and human disturbance (Factors A, B, C, and E); the spread of nonnative, invasive and native plants (*e.g.,* pinyon-juniper encroachment, cheatgrass) (Factors A and E); wildfires and altered fire regime (Factors A and E); and the small size of the DPS (both the number of individual populations and their size), which generally makes such species more susceptible to extirpation (Factor E). These impacts, along with those that are currently considered minor, have the potential to act together to negatively affect the bi-State DPS. However, completed, ongoing and planned conservation actions have reduced the scope and severity of these impacts. Following a thorough analysis of the best available information, we determined that hunting, scientific and educational uses, pesticides and herbicides, and contaminants have negligible impacts to the bi-State DPS at this time.

The bi-State DPS is experiencing multiple impacts to individual populations and sagebrush habitats that are ongoing (and expected to continue into the future) in many areas throughout the DPS's range. Individually, each of these impacts is unlikely to affect persistence across the entire bi-State DPS, but each may act independently to affect persistence of individual populations. However, we note that the level of impact these threats may have on the DPS's habitat are lessened overall today as compared to the time of the proposed listing rule due to the continued implementation of

the BSAP. We believe the future impacts of these threats are significantly reduced due to the expected implementation and effectiveness of the partially completed and future conservation efforts associated with the BSAP (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) below).

Additional, less significant impacts to the bi-State DPS or its habitat may be occurring, but not everywhere across the DPS at this time (such as, but not limited to, grazing and rangeland management; mining; renewable energy development; or West Nile virus (WNv) infections). We do not consider these impacts to have serious consequences for the bi-State DPS or its habitat. Moreover, these less-significant impacts to the bi-State DPS are reduced overall today and into the future as compared to the time of the proposed listing rule due the continued implementation of the BSAP, and the expected implementation and effectiveness of the partially completed and future conservation efforts associated with the BSAP (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) below).

Following are summary evaluations of 16 potential threats to the bi-State DPS, including: Invasive nonnative and native plants (Factor A and E); wildfires and altered fire regime (Factors A and E); infrastructure, including roads, power lines, fences, communication towers, and landfills (Factors A and E); grazing and rangeland management (Factors A, C, and E); small population size and population structure (Factor E); urbanization and habitat conversion (Factor A); mining (Factors A and E); renewable energy development and associated infrastructure (Factors A and E); disease or predation (Factor C); climate change, including drought (Factors A and E); recreation (Factors A and E); overutilization (including commercial and recreational hunting) (Factor B); scientific and educational uses (Factor B); pesticides and herbicides (Factor E); and contaminants (Factor E). The inadequacy of existing regulatory mechanisms was also evaluated (Factor D). Please see the Species Report (Service 2015a, pp. 45–142) for a full evaluation, including but not limited to, an evaluation of the scope, severity, and timing of each potential threat (including many literature citations).

Invasive Nonnative and Native Plants

Nonnative, invasive plants negatively impact sagebrush ecosystems by altering plant community structure and composition, productivity, nutrient cycling, and hydrology (Vitousek 1990, p. 7) (Factor A), and may cause declines in native plant populations through competitive exclusion and niche displacement, among other mechanisms (Mooney and Cleland 2001, p. 5446) (Factor E). They can create long-term changes in ecosystem processes (Factor A), such as fire cycles (see *Wildfires and Altered Fire Regime* section below, and in the Species Report (Service 2015a, pp. 84–91)) and other disturbance regimes that persist even after an invasive plant is removed (Zouhar *et al.* 2008, p. 33). A variety of nonnative annuals and perennials are invasive to sagebrush ecosystems (Connelly *et al.* 2004, pp. 7–107 to 7–108; Zouhar *et al.* 2008, p. 144). Cheatgrass is considered most invasive in Wyoming sagebrush communities (which is a subspecies of sagebrush that occurs in the bi-State area), while medusahead rye (*Taeniatherum caput-medusae* (L.) Nevski) fills a similar niche in more mesic communities with heavier clay soils (Connelly *et al.* 2004, p. 5–9).

Some native tree species are also invading sagebrush habitat and affect the suitability of the habitat for the various life processes of the bi-State DPS. Pinyon-juniper woodlands are a native vegetation community dominated by pinyon pine and various juniper species that can encroach upon, infill, and eventually replace sagebrush habitat (Factors A and E). Some portions of the bi-State DPS's range are also being adversely affected by *Pinus jeffreyi* (Jeffrey pine) encroachment. Woodland encroachment has caused significant, measurable habitat loss throughout the range of the bi-State DPS. However, techniques to address this habitat impact are available and being implemented. Woodlands have expanded by an estimated 20,234 to 60,703 hectares (ha) (50,000 to 150,000 acres (ac)) over the past decade in the bi-State area, but woodland treatments have been implemented on 7,904 ha (19,533 ac) (Service 2013b, unpublished data; Bi-State TAC 2014a, *in litt.*), and continued treatments are one of the keystone conservation measures of the BSAP and will continue to reduce the impact of woodland encroachment.

In general, nonnative plants are not abundant in the bi-State area, with the exception of cheatgrass, which occurs in all PMUs throughout the range of the DPS (although it is currently most extensive in the Pine Nut PMU). Alteration of the fire ecology of the bi-State area is of concern. Land managers have had little success preventing cheatgrass invasion in the West, and elevational barriers to occurrence are becoming less restrictive (Miller *et al.* 2011, p. 161; Brown and Rowe 2004, *in litt.,* entire). The best available data suggest that future conditions, mostly influenced by precipitation and winter temperatures, will remain hospitable for cheatgrass (Bradley 2009, p. 201). Cheatgrass is a challenge to the sagebrush shrub community and its spread would be detrimental to sage-grouse in the bi-State area. However, these impacts can be offset through a reduction of other threats, such as reducing the likelihood of wildfires that can result in shortened fire frequency intervals (favorable to cheatgrass) by removing source material, such as pinyon-juniper woodlands (see *Wildfires and Altered Fire Regime* section below). Through ongoing and planned implementation of the BSAP removal of pinyon-juniper woodlands will remove source materials for fires and help reduce the threat of cheatgrass expansion.

In addition, the encroachment of native woodlands (particularly pinyon-juniper) into sagebrush habitats is occurring throughout the bi-State area. We predict that future woodland encroachment will continue across the entire bi-State area, but recognize this is a potentially manageable threat through treatment and management actions, such as those included in the BSAP.

Overall, invasive nonnative and native plants occur throughout the entire bi-State DPS's range. We concluded in the proposed listing rule that their spread was a significant factor for proposing to list the DPS as a threatened species based on the extensive amount of pinyon-juniper encroachment and cheatgrass invasion that is occurring throughout the DPS's range, and the interacting impact these invasions have on habitat quality (*e.g.,* reduces foraging habitat, increases likelihood of wildfire) and habitat fragmentation. Conservation efforts that address the impacts from increasing nonnative, invasive and native plants have continued to be implemented since publication of the proposed listing rule, including (but not limited to): conducting conifer (pinyon-juniper) removal; restoring critical meadow/riparian habitat areas; and conducting weed treatments for invasive, nonnative plants such as cheatgrass. With continued implementation of conservation actions associated with the BSAP (Bi-State TAC 2012a, entire), impacts from increasing nonnative, invasive and native plants are significantly reduced. See the *Nonnative, Invasive and Native Increasing Plants* section of the Species Report for further discussion (Service 2015a, pp. 78–84).

The BSAP (Bi-State TAC 2012a, entire) was designed to counter effects such as (but not limited to) the spread of nonnative, invasive and native plants. Because we have determined that the partially completed and future conservation efforts will be implemented and effective (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) below), we find the spread of nonnative, invasive and native plants is no longer a significant impact into the future.

Wildfires and Altered Fire Regime

Wildfire is the principle disturbance mechanism affecting sagebrush communities, although the nature of historical fire patterns, particularly in Wyoming big sagebrush vegetation communities, is not well-understood and historically infrequent (Miller and Eddleman 2000, p. 16; Zouhar *et al.* 2008, p. 154; Baker 2011, pp. 189, 196). The historical sagebrush systems likely consisted of extensive sagebrush habitat dotted by small areas of grassland that were maintained by numerous small fires with long interludes between fires, which accounted for little burned area, and that were punctuated by large fire events (Baker 2011, p. 197). In general, fire extensively reduces sagebrush within burned areas, and the most widespread species of sagebrush can take decades to reestablish and much longer to return to pre-burn conditions (Braun 1998, p. 147; Cooper *et al.* 2007, p. 13; Lesica *et al.* 2007, p. 264; Baker 2011, pp. 194–195).

When intervals between wildfire events become unnaturally long in sagebrush communities, woodlands have the ability to expand (allowing seedlings to establish and trees to mature (Miller *et al.* 2011, p. 167)) when they are adjacent to or are present (in small quantities) within sagebrush habitat. Conifer woodlands have expanded into sagebrush ecosystems throughout the sage-grouse's range over the last century (Miller *et al.* 2011, p. 162). Alternatively, a shortened fire frequency interval within sagebrush habitat can result in the invasion of nonnative, invasive, annual grasses, such as cheatgrass and medusahead rye; once these nonnatives are established, wildfire frequency within sagebrush ecosystems can increase (Zouhar *et al.* 2008, p. 41; Miller *et al.* 2011, p. 167; Balch *et al.* 2013, p. 178).

While multiple factors can influence sagebrush persistence, wildfire can cause large-scale habitat losses that lead to fragmentation and isolation of sage-grouse populations (Factors A and E). In addition to loss of habitat, wildfire can fragment sage-grouse habitat and contribute to isolation of populations, making them more susceptible to extirpation from other threats (Knick and Hanser 2011, p. 395; Wisdom *et al.* 2011, p. 469). Thus, while direct loss of habitat due to wildfire is a significant factor associated with population persistence for sage-grouse (Beck *et al.* 2012, p. 452), the indirect effect from loss of connectivity among populations may expand the influence of this threat beyond the physical fire perimeter.

Wildfire is considered a relatively high risk across all the PMUs in the bi-State area due to its ability to affect large landscapes in a short period of time (Bi-State TAC 2012a, pp. 19, 26, 32, 37, 41, 49). Furthermore, the future risk of wildfire is exacerbated by the presence of people, invasive species, and climate change. While dozens of wildfires have occurred in the Pine Nut, Desert Creek-Fales, Bodie, and South Mono PMUs (fewer in the Mount Grant and White Mountains PMUs) over the past 20 years, to date there have been relatively few large-scale events. In general, although current data do not indicate an increase of wildfires in the bi-State DPS, based on likely future habitat conditions, we predict an increase in wildfires over time.

Changes in fire ecology over time have resulted in an altered fire regime in the bi-State area, presenting future wildfire risk in all PMUs (Bi-State TAC 2012a, pp. 19, 26, 32, 37, 41, 49). On one hand, a reduction in fire occurrence has facilitated the expansion of woodlands into montane sagebrush communities in all PMUs (see *Nonnative, Invasive and Native Plants,* above). Meanwhile, a pattern of increased wildfire occurrence in sagebrush communities is apparent in the Pine Nut PMU. Each of these alterations to wildfire regimes has contributed to fragmentation of habitat and the isolation of the sage-grouse populations (Bi-State Local Planning Group 2004, pp. 95–96, 133).

Fire is one of the primary factors linked to population declines of sage-grouse across the West because of long-term loss of sagebrush and frequent conversion to monocultures of nonnative, invasive grasses (Connelly and Braun 1997, p. 7; Johnson *et al.* 2011, p. 424; Knick and Hanser 2011, p. 395). Within the bi-State area, the BLM and U.S. Forest Service (USFS) currently manage the area to limit the loss of sagebrush habitat (BLM 2012, entire; USFS 2012, entire). Based on the best available information, historical wildfire events have not removed a significant amount of sagebrush habitat across the bi-State area, and conversion of sagebrush habitat to a nonnative, invasive vegetation community has been restricted (except for the Pine Nut PMU).

Restoration of altered sagebrush communities following fire can be difficult, requires many years, and may be ineffective in the presence of nonnative, invasive grass species. Additionally, sage-grouse are slow to recolonize burned areas even if structural features of the shrub community have recovered (Knick *et al.* 2011, p. 233). However, impacts from wildfire are addressed through restoration actions outlined in the BSAP, including fuels reduction and rehabilitation efforts, which require long-term monitoring to assure conservation objectives are met for restoring potential habitats post-wildfire (Arkle *et al.* 2014).

While it is not currently possible to predict the extent or location of future fire events in the bi-State area, and historical wildfire events have not removed a significant amount of sagebrush habitat across the bi-State area to date, we anticipated in the proposed listing rule and reconfirm here that fire frequency may increase in the future due to the increasing presence of cheatgrass and people, and the projected effects of climate change. If offsetting conservation measures are not implemented, increasing wildfires in sagebrush habitats could adversely affect the DPS.

Overall, the potential threat of wildfire and the existing altered fire regime occurs throughout the bi-State DPS's range. We concluded in the proposed listing rule that significant impacts would be expected to continue or increase in the future based on a continued fire frequency pattern that exacerbates pinyon-juniper encroachment into sagebrush habitat in some locations, but also an increased fire frequency in other locations that promotes the spread of cheatgrass and other invasive species that in turn can hamper recovery of sagebrush habitat.

Conservation efforts that address the impacts from the threat of wildfire and the existing altered fire regime have continued to be implemented since publication of the proposed listing rule, including (but not limited to): conducting conifer (pinyon-juniper) removal; and conducting weed treatments for invasive, nonnative plants such as cheat grass. With continued implementation of conservation actions associated with the BSAP (Bi-State TAC 2012a, entire), impacts from wildfire are significantly reduced. See the *Wildfires and Altered Fire Regime* section of the Species

Report for further discussion (Service 2015a, pp. 84–91).

The BSAP (Bi-State TAC 2012a, entire) was designed to counter effects such as (but not limited to) wildfire ignition risks and catastrophic fire. Therefore, fuels reduction projects and rehabilitation efforts post-wildfire have been and will continue to be implemented into the future to address the potential impacts from wildfire. Because we have determined that the partially completed and future conservation efforts will be implemented and effective (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) below), we conclude that wildfires and altered fire regime are no longer a significant impact into the future.

Infrastructure

Infrastructure is described in the Species Report (Service 2015a, pp. 51–65) to include features that assist or are required for the pursuit of human-initiated development or an associated action. Five infrastructure features are impacting the bi-State DPS: three linear features (roads, power lines, and fences) and two site-specific features (landfills and communication towers). While there may be other features that could be characterized as infrastructure (such as railroads or pipelines), these are not present in the bi-State area, and we are unaware of any information suggesting they would impact the bi-State DPS in the future.

In the bi-State area, linear infrastructure impacts each PMU both directly and indirectly to varying degrees. Existing roads, power lines, and fences degrade and potentially fragment sage-grouse habitat (such as Braun 1998, pp. 145, 146) (Factor A), and contribute to direct mortality through collisions (such as Patterson 1952, p. 81) (Factor E). In addition, roads, power lines, and fences deter the sage-grouse's use of otherwise suitable habitats adjacent to current active areas, and increase predators (by providing additional perches) and invasive plants (through increased traffic volume to facilitate spread of invasive plants) (such as Forman and Alexander 1998, pp. 207–231 and Connelly *et al.* 2000a, p. 974).

Given current and future development (based on known energy resources), the Mount Grant, Desert Creek-Fales, Pine Nut, and South Mono PMUs are most likely to be impacted by new power lines and associated infrastructure. Wisdom *et al.* (2011, p. 463) reported that across the entire range of the greater sage-grouse, the mean distance to highways and transmission lines for extirpated populations was approximately 5 kilometers (km) (3.1 miles (mi)) or less. In the bi-State area, 64 percent of annually occupied leks are within 5 km (3.1 mi) of paved secondary highways, and 38 percent are within this distance to existing transmission lines (Service 2013b, unpublished data). Therefore, the apparent similarity between existing bi-State conditions and extirpated populations elsewhere suggests that persistence of substantial numbers of leks within the bi-State DPS would likely be negatively influenced by these anthropogenic features if it were not for the ongoing and planned implementation of measures included in the BSAP to reduce impacts of these features.

The geographic extent, density, type, and frequency of linear infrastructure disturbance in the bi-State area have changed over time. While substantial new development of some of these features (*e.g.,* highways) is unlikely, other infrastructure features may increase (unimproved roads, power lines, fencing, and communication towers), at least until such time as the BLM and USFS updated Land Use Plans are fully implemented. With the increase of OHV usage within the range of the bi-State DPS, the potential impact to the sage-grouse and its habitat caused by continued use of secondary or unimproved roads may become of greater importance as traffic volume increases rates of disturbance and the spread of nonnative invasive plants in areas that traditionally have been traveled relatively sporadically.

Other types of non-road infrastructure (*e.g.,* cellular towers and landfills) also appear to be adversely impacting the bi-State DPS. At least eight cellular tower locations are currently known to exist in occupied habitat (all PMUs) in the bi-State area. Wisdom *et al.* (2011, p. 463) determined that cellular towers likely contribute to population extirpation, and additional tower installations may occur in the near future as development continues. The landfill facility in Long Valley (within the South Mono PMU) may be influencing sage-grouse population demography in the area, as nest success is comparatively low and subsidized avian nest predator numbers are high (Kolada *et al.* 2009a, p. 1,344). This large population of sage-grouse (*i.e.,* one of two core populations in the bi-State area) currently appears stable. Recovery following any potential future perturbations affecting other vital rates (*i.e.,* brood survival and adult survival) could be limited by nesting success if offsetting conservation measures (such as the planned removal of the landfill in Long Valley) are not implemented.

Overall, infrastructure occurs in various forms throughout the bi-State DPS's range and has adversely impacted the DPS. We concluded in the proposed listing rule that infrastructure impacts (particularly fencing, power lines, and roads) were a significant factor for proposing to list the DPS as a threatened species. If left unchecked, these impacts would be expected to continue or increase in the future and result in habitat fragmentation; limitations for sage-grouse recovery actions due to an extensive road network, power lines, and fencing; and a variety of direct and indirect impacts, such as loss of individuals from collisions or structures that promote increased potential for predation. Collectively, these threats may result in perturbations that influence both demographic vital rates of sage-grouse (*e.g.,* reproductive success and adult sage-grouse survival) and habitat suitability in the bi-State area.

Importantly, conservation efforts that address infrastructure impacts have continued to be implemented since publication of the proposed listing rule, including (but not limited to): removing power lines; implementing both permanent and seasonal road closures; removing racetrack fencing; and conducting initial procedures to remove the landfill in Long Valley. With continued implementation of conservation actions associated with the BSAP (Bi-State TAC 2012a, entire), infrastructure-related impacts are significantly reduced. See the *Infrastructure* section of the Species Report for further discussion (Service 2015a, pp. 51–65).

The BSAP (Bi-State TAC 2012a, entire) was designed to counter effects such as (but not limited to) infrastructure. Because we have determined that the partially completed and future conservation efforts will be implemented and effective (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) below), we believe impacts associated with infrastructure may no longer be considered a significant impact into the future.

Grazing and Rangeland Management

Livestock grazing continues to be the most widespread land use across the sagebrush biome (Knick *et al.* 2003, p. 616; Connelly *et al.* 2004, p. 7–29; Knick *et al.* 2011, p. 219), including within the bi-State area. However, links between grazing practices and population levels of sage-grouse are not well-studied (Braun 1987, p. 137; Connelly and Braun 1997, p. 231). Improperly managed domestic livestock

management has the potential to result in sage-grouse habitat degradation (Factor A). Grazing can adversely impact nesting and brood-rearing habitat by decreasing vegetation used for concealment from predators (Factors A and C). If improperly managed, grazing also compacts soils; decreases herbaceous vegetation abundance; alters soil characteristics and increases soil erosion; and increases the probability of invasion of nonnative, invasive plant species (Factor A). Livestock management and associated infrastructure (such as water developments and fencing) can degrade important nesting and brood-rearing habitat, reduce nesting success, and facilitate the spread of WNv (Factors A, C, and E). However, despite numerous documented negative impacts, some research suggests that, under specific conditions, grazing domestic livestock can benefit sage-grouse (Klebenow 1981, p. 121). Other research conducted in Nevada found that cattle grazing can be used to stimulate forbs important as sage-grouse food (Neel 1980, entire; Klebenow 1981, entire; Evans 1986, entire).

Similar to domestic livestock, grazing and management of feral horses have the potential to negatively affect sage-grouse habitats by decreasing grass cover, fragmenting shrub canopies, altering soil characteristics, decreasing plant diversity, and increasing the abundance of invasive cheatgrass (Factor A). Native ungulates (mule deer (*Odocoileus hemionus*) and pronghorn antelope (*Antilocapra americana*)) co-exist with sage-grouse in the bi-State area, but we are not aware of significant impacts from these species on sage-grouse populations or sage-grouse habitat. However, the impacts from different ungulate taxa may have an additive negative influence on sage-grouse habitats (Beever and Aldridge 2011, p. 286) if offsetting conservation measures are not implemented. Cattle, horses, mule deer, and pronghorn antelope each use the sagebrush ecosystem somewhat differently, and the combination of multiple ungulate species may produce a different result than a single species.

There are localized areas of habitat degradation in the bi-State area attributable to past grazing practices that indirectly and, combined with other impacts, cumulatively affect sage-grouse habitat. In general, upland sagebrush communities in the Pine Nut and Mount Grant PMUs deviate from desired conditions for sage-grouse due to lack of understory plant species, while across the remainder of the PMUs localized areas of meadow degradation are apparent, and these conditions may influence sage-grouse populations through altering nesting and brood-rearing success. Currently, there is little direct evidence linking grazing effects and sage-grouse population responses. Analyses for grazing impacts at the landscape scales important to sage-grouse are confounded by the fact that almost all sage-grouse habitat has at one time been grazed, and thus, no ungrazed control areas exist for comparisons (Knick *et al.* 2011, p. 232). Across the bi-State area, we anticipate rangeland management will continue into the future, and some aspects (such as feral horses) will remain difficult to manage. Currently, livestock management in the bi-State area meets desired BLM Rangeland Health Standards or their equivalent (*i.e.,* the standards used by Federal agencies to assess habitat condition; BLM 2014b, *in litt.*). Remaining impacts caused by historical practices will linger as vegetation communities and disturbance regimes recover.

Overall, impacts from past grazing and rangeland management occur within localized areas throughout the bi-State DPS's range (*i.e.,* all PMUs, although impacts are more pronounced in some PMUs than others). We concluded in the proposed listing rule that grazing and rangeland management was a factor (albeit not significant) for proposing to list the DPS as a threatened species as a result of ongoing habitat degradation impacts that may affect sage-grouse habitat indirectly and cumulatively in the bi-State area, resulting in an overall reduction in aspects of habitat quality (*e.g.,* fragmentation, lack of understory plants, increased presence of nonnative plant species), especially in the Pine Nut and Mount Grant PMUs.

Importantly, conservation efforts that address the impacts from grazing and rangeland management have continued to be implemented since publication of the proposed listing rule, including (but not limited to): (1) Completing drafts and beginning to implement the new BLM and Forest Service Land Use Plan amendments (USDI and USDA 2015, entire), which are a considerable improvement for conservation of the bi-State DPS and its habitat; repairing watering facilities, irrigation structures, and fencing around natural riparian areas to control grazing activity; increasing monitoring and management of horse and burrow herds; and restoring meadow/riparian habitat in critical brood-rearing habitat areas. With continued implementation of conservation actions associated with the BSAP (Bi-State TAC 2012a, entire), impacts from grazing and rangeland management are significantly reduced. See the *Grazing and Rangeland Management* section of the Species Report for further discussion (Service 2015a, pp. 71–78).

The BSAP (Bi-State TAC 2012a, entire) was designed to counter effects such as (but not limited to) livestock and wild horse grazing. Because we have determined that the partially completed and future conservation efforts will be implemented and effective (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) below), we believe impacts associated with grazing and rangeland management are no longer be a concern into the future.

Small Population Size and Population Structure

Sage-grouse have low reproductive rates and high annual survival (Schroeder *et al.* 1999, pp. 11, 14; Connelly *et al.* 2000a, pp. 969–970), resulting in slower potential or intrinsic population growth rates than is typical of other game birds. Also, as a consequence of their site fidelity to seasonal habitats (Lyon and Anderson 2003, p. 489), measurable population effects may lag behind negative habitat impacts (Wiens and Rotenberry 1985, p. 666). Sage-grouse populations have been described as exhibiting multi-annual fluctuations, meaning that some mechanism or combination of mechanisms is causing populations to fluctuate through time

The bi-State DPS comprises approximately 43 active leks representing 3 to 6 relatively discrete populations (see *Species Information,* above, and the *Current Range/ Distribution and Population Estimates/ Annual Lek Counts* section of the Species Report (Service 2015a, pp. 17–31)). Fitness and population size, across a variety of taxa, are strongly correlated, and smaller populations are more challenged by stochastic environmental and demographic events (Keller and Waller 2002, pp. 239–240; Reed 2005, p. 566). When coupled with mortality stressors related to human activity (*e.g.,* infrastructure, recreation) and significant fluctuations in annual population size, long-term persistence of small populations is uncertain (Traill *et al.* 2010, entire). The Pine Nut PMU has the smallest number of sage-grouse of all bi-State area PMUs (usually fewer than 100 individuals, and ranging from less than 100 to 608 individuals as observed from data collected between 2004 and 2014 (Table 1, above), representing approximately 5 percent of the DPS). However, each population in

the bi-State DPS is relatively small and may be below the theoretical minimum threshold (as interpreted by sage-grouse experts and not statistically proven (Aldridge and Brigham 2003, p. 30; Garton *et al.* 2011, pp. 310, 374)) for long-term persistence, as is the entire DPS on average (estimated 2,497 to 9,828 individuals). Nonetheless, the populations comprising the bi-State DPS have continued to persist despite relatively small numbers of birds and annual fluctuations.

Overall, small population size and a discontinuous population structure occur throughout the bi-State DPS's range, which could make the bi-State DPS more susceptible to threats described herein both currently and likely in the future if offsetting conservation measures are not implemented. Some literature (*i.e.,* Franklin and Frankham 1998, entire; Traill *et al.* 2010, entire) suggest that greater than 5,000 individuals are required for any species' populations to have an acceptable degree of resilience in the face of environmental fluctuations and catastrophic events, and for the continuation of evolutionary processes. This conservation biology rule-of-thumb (that more than 5,000 individuals are required to provide ample resiliency) may be useful as a general guideline when assessing a species' resiliency, but should not be applied without consideration of a particular species' life history and specific population-level stressors to determine its status. In this context, conservation efforts addressing the threats acting upon these small populations have been implemented since publication of the proposed listing rule, including (but not limited to) restoring critical brood-rearing habitat areas and addressing invasive nonnative and native plants. Because we expect conservation implementation to continue under the BSAP (Bi-State TAC 2012a, entire), impacts affecting small populations are significantly reduced.

Resiliency, Redundancy, and Representation

In this section, we synthesize the information above to evaluate resiliency, redundancy, and representation as they relate to the bi-State DPS. *Resiliency* refers to the capacity of an ecosystem, population, or organism to recover quickly from disturbance by tolerating or adapting to changes or effects caused by a disturbance or a combination of disturbances. *Redundancy,* in this context, refers to the ability of a species to compensate for fluctuations in or loss of populations across the species' range such that the loss of a single population has little or no lasting effect on the structure and functioning of the species as a whole. *Representation* refers to the conservation of the diversity of a species, including genetic makeup.

The degree of resiliency of a species is influenced by both the degree of genetic diversity across the species, and the number of individuals. Resiliency increases with increasing genetic diversity and/or a higher number of individuals; it decreases when the species has less genetic diversity and/or fewer individuals. In the case of the bi-State DPS resiliency may be lower to some degree because the total population size is relatively small (*e.g.,* compared to the population size of many upland game birds), with some populations having low numbers or negative population trends. From a genetics standpoint, sage-grouse in the bi-State area contain a large number of unique genetic haplotypes not found elsewhere within the range of the species (Benedict *et al.* 2003, p. 306; Oyler-McCance *et al.* 2005, p. 1,300; Oyler-McCance and Quinn 2011, p. 92; Oyler-McCance *et al.* 2014, p. 5), and genetic diversity of the bi-State DPS does not appear to be low. The genetic diversity present in the bi-State area population is comparable to other populations of sage-grouse, suggesting that the differences are not due to a genetic bottleneck or founder event (Oyler-McCance and Quinn 2011, p. 91). These studies provide evidence of geographic isolation from the remainder of the species, as the present genetic uniqueness exhibited by bi-State area sage-grouse developed over thousands and perhaps tens of thousands of years, hence, prior to the Euro-American settlement (Benedict *et al.* 2003, p. 308; Oyler-McCance *et al.* 2005, p. 1,307).

This information suggests that while resiliency of the bi-State DPS may be reduced to some degree as a result of relatively small total population size, the genetic diversity in the bi-State area improves the capacity of the DPS to recover from disturbance, or adapt to changes or effects caused by a disturbance or a combination of disturbances. Moreover, conservation actions already completed, underway, and planned for the future pursuant to the BSAP have reduced threats to the DPS now and into the future, and thus have reduced the likelihood of future significant disturbances to the bi-State DPS.

Multiple, interacting populations across a broad geographic area provide insurance against the risk of extinction caused by catastrophic events (redundancy). Population redundancy currently exists across the bi-State DPS, but could be a concern into the future. The most recent genetic data analyses (Oyler-McCance *et al.* 2014; Tebbenkamp 2014) support our determination that there are between three and six populations (or groups of birds) in the bi-State area that largely operate demographically independent of each other. Long-term projections (30 years) suggest that the two core populations (Bodie Hills (Bodie PMU) and Long Valley (South Mono PMU)) have a relative high probability of maintaining long-term genetic and demographic viability (Garton *et al.* 2011, p. 310). However, the viability of the smaller populations, such as Pine Nut or Parker Meadows, is less certain (Lande 1988, pp. 1456–1457; Stephens *et al.* 1999, p. 186; Frankham *et al.* 2002, pp. 312–317; Coates *et al.* 2014, p. 15). If a population is permanently lost, the DPS' population redundancy would be lowered, thereby decreasing the DPS' chances of survival in the face of potential environmental, demographic, and genetic stochastic factors and catastrophic events (extreme drought, wildfire, disease, etc.). However, conservation measures included in the BSAP which are ongoing and planned for the future have reduced the level of threats faced by the population that make up the bi-State DPS and have thus decreased the probability that any of the smaller populations will be extirpated.

The aggregate number of individuals across multiple populations increases the probability of demographic persistence and preservation of overall genetic diversity by providing an important genetic reservoir (representation). Representation across the bi-State DPS is moderate to high, with three to six genetically different groups across the bi-State area (Oyler-McCance *et al.* 2014; Tebbenkamp 2014). In general, genetic diversity in the bi-State area is comparable to the levels of genetic diversity found elsewhere across the greater sage-grouse range (Oyler–McCance and Quinn 2011, p. 91). Among populations in the bi-State area genetic diversity varies with the lowest diversity apparent in the White Mountains (White Mountain PMU) and Parker Meadows (South Mono PMU) populations. We expect the risks associated with reduced genetic diversity to be moderated by the ongoing and continued restoration of habitat, which will improve connectivity and minimize habitat fragmentation, thereby potentially increasing gene flow and improving genetic diversity. There is some risk that one or more of the smaller, less secure

populations (*e.g.,* Pine Nut, Fales, and Parker Meadows) could become extirpated in the future, but the moderate to high level of representation across the bi-State DPS, and ongoing and planned conservation actions in the BSAP reduces the likelihood of future extirpations.

Small population size is not a threat to a species by itself. A species with a relatively small number of small populations may be a concern when there are significant threats to the species such that one or more populations could be permanently lost. The bi-State sage-grouse is comprised of a relatively few number of populations of various sizes but with most being considered small in size. By addressing the most significant stressors on the bi-State DPS, ongoing and planned implementation of the BSAP has ameliorated threats to this species to the point where our previous concerns about the DPS' resiliency, redundancy and representation have been significantly reduced. Therefore, we conclude loss of representation is not a significant threat to the bi-State DPS now or into the future.

Summary of Small Population Size and Population Structure

Overall, small population size and a discontinuous population structure occur throughout the bi-State DPS's range. We concluded in the proposed listing rule that impacts associated with small population size are a concern both currently and likely in the future based on our understanding of the overall DPS population size and the apparent isolation among subpopulations contained within the DPS. Conservation efforts that address various impacts acting upon these small populations have continued to be implemented since publication of the proposed listing rule, including (but not limited to) restoring critical brood-rearing habitat areas and addressing invasive nonnative and native plants. With continued implementation of conservation actions associated with the BSAP (Bi-State TAC 2012a, entire), impacts affecting small populations are significantly reduced. See the *Small Population Size and Population Structure* section of the Species Report for further discussion (Service 2015a, pp. 120–126).

The BSAP (Bi-State TAC 2012a, entire) was designed to counter effects including (but not limited to) small and isolated populations. Because we have determined that the partially completed and future conservation efforts will be implemented and effective (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) below), we believe impacts associated with small population size within the bi-State area may no longer be considered a significant impact into the future.

Urbanization and Habitat Conversion

Historical and recent conversion of sagebrush habitat on private lands for agriculture, housing, and associated infrastructure (Factor A) within the bi-State area has negatively affected sage-grouse distribution and population extent in the bi-State DPS. These alterations to habitat have been most pronounced in the Pine Nut and Desert Creek-Fales PMUs and to a lesser extent the Bodie, Mount Grant, South Mono, and White Mountains PMUs. Although only 11 percent of suitable sage-grouse habitat occurs on private lands in the bi-State area, and only a subset of that could potentially be developed, conservation actions on adjacent public lands could be compromised due to the significant percentage (up to approximately 40 percent (Casazza *et al.* 2009, pp. 19, 27, 35; NDOW 2011, *in litt.*)) of late brood-rearing habitat that occurs on the private lands. Sage-grouse display strong site-fidelity to traditional seasonal habitats and loss of specific sites (such as mesic meadow or spring habitats that frequently occur on potentially developable private lands in the bi-State area) can have pronounced population impacts (Connelly *et al.* 2000a, p. 970; Atamian *et al.* 2010, p. 1533). The influence of land development and habitat conversion on the population dynamics of sage-grouse is greater than a simple measure of spatial extent because of the indirect effects from the associated increases in human activity, as well as the disproportionate importance of some seasonal habitat areas, such as mesic areas for brood-rearing.

Although not considered a significant threat at the time of the proposed rule nor currently, urbanization and habitat conversion is not universal across the bi-State area, but localized areas of impacts have been realized throughout the DPS's range, and additional future impacts would be expected if left unchecked. It is important to note that conservation efforts that address the impacts associated with urbanization and human disturbance have continued to be implemented since publication of the proposed listing rule, including (but not limited to): acquisition and permanent protection of critical sage-grouse brood-rearing habitat, and implementing new sage-grouse policies in applicable Mono County plans and programs. With continued implementation of conservation actions associated with the BSAP (Bi-State TAC 2012a, entire), impacts from urbanization and habitat conversion are significantly reduced. See the *Urbanization and Habitat Conversion* section of the Species Report for further discussion (Service 2015a, pp. 45–51).

The BSAP (Bi-State TAC 2012a, entire) was designed to counter effects such as (but not limited to) urbanization and human disturbance. Because we have determined that the partially completed and future conservation efforts will be implemented and effective (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) below), we believe that urbanization and human disturbance is not a significant impact into the future.

Mining

Surface and subsurface mining for mineral resources (gold, silver, aggregate, and others) results in direct loss of habitat when it occurs in sagebrush habitats (Factor A). The direct impact from surface mining is usually greater than it is from subsurface mining, and habitat loss from both types of mining can be exacerbated by the storage of overburden (soil removed to reach subsurface resource) in otherwise undisturbed habitat. Sage-grouse and nests with eggs could be directly affected by crushing or vehicle collision (Factor E). Sage-grouse also could be impacted indirectly from an increase in human presence, land use practices, ground shock, noise, dust, reduced air quality, degradation of water quality and quantity, and changes in vegetation and topography (Moore and Mills 1977, entire; Brown and Clayton 2004, p. 2) (Factor E). Although potential effects are many, information relating actual sage-grouse response to mineral developments is not extensive, and information available to us does not lead us to conclude that mining is a significant threat in the bi-State population area.

Currently, operational surface and subsurface mining activities are not impacting the two largest (core) populations within the bi-State DPS. Areas in multiple PMUs are open to mineral development, and mining operations are currently active in the Mount Grant, Bodie, South Mono, and Pine Nut PMUs, including some occupied habitat areas. There is potential for additional mineral developments to occur in the bi-State area in the future based on known existing mineral resources and recent permit request inquiries with local land managers. We are aware of four active Plans of Operations for mining that

overlap bi-State DPS habitat and on the order of 20,000 active mine claims (USFS and BLM 2014, pp. 112–113; USDI and USDA 2015, pp. 117–129). We note, however, that a mining claim does not equate to an actual mining proposal. While all six PMUs have the potential for mineral development, based on current land designations and past activity, the Pine Nut and Mount Grant PMUs are most likely to see new and additional activity.

Overall, mining currently occurs in limited locations within four PMUs, including small-scale activities such as gold and silver exploration (Pine Nut, Bodie, and South Mono PMUs), and two open pit mines (Mount Grant PMU). Additionally, new proposals being considered for mining activity in the Pine Nut PMU could, if approved, impact the single active lek remaining in the north end of the Pine Nut PMU. In general, potential exists for mining operations to expand both currently and into the future, but the scope of impacts from these proposals and existing mining is not considered extensive. We concluded in the proposed listing rule, and reaffirm here, that by itself, mining is not considered a significant impact to the bi-State population. If left unchecked, impacts to sage-grouse and its habitat outside of the two largest (core) populations would be expected to continue or increase in the future. See the *Mining* section of the Species Report for further discussion (Service 2015a, pp. 65–68).

Conservation efforts that address the impacts from mining have continued to be implemented since publication of the proposed listing rule, such as reducing human-related disturbances (*e.g.,* road noise/traffic). The BSAP includes conservation actions targeting development and human distrubances that will reduce the the minor or potential impacts from mining (Bi-State TAC 2012a, entire). Because we have determined that the partially completed and future conservation efforts will be implemented and effective (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) below), we believe impacts associated with mining in the bi-State population area are not a concern into the future.

Renewable Energy Development

Renewable energy facilities (including geothermal facilities, wind power facilities, and solar arrays) require structures such as power lines and roads for construction and operation, and avoidance of such features by sage-grouse (Factor E) and other prairie grouse is documented (Holloran 2005, p. 1; Pruett *et al.* 2009, p. 6; see discussions regarding roads and power lines in the *Infrastructure* section of the Species Report (Service 2015a, pp. 52–60)). Assuming no intervention or increased protections, renewable energy development and expansion could result in direct loss of habitat and indirect impacts affecting sage-grouse and their habitat (*e.g.,* habitat degradation and population isolation) (Factor A).

Minimal direct habitat loss has occurred in the bi-State DPS due to renewable energy development, specifically from the only operational geothermal facility in the bi-State area, which is within the South Mono PMU. However, the likelihood of additional renewable energy facility development, especially geothermal, in the bi-State area is high based on current Federal leases. Inquiries by energy developers (geothermal, wind) have increased in the past several years (Dublino 2011, pers. comm.). There is strong political and public support for energy diversification in Nevada and California, and the energy industry considers the available resources in the bi-State area to warrant investment (Renewable Energy Transmission Access Advisory Committee 2007, p. 8). Based on our current assessment of development probability, the Mount Grant PMU and to a lesser degree the Desert Creek-Fales PMU are most likely to be negatively affected by renewable energy development. However, interest by developers of renewable energy changes rapidly, making it difficult to predict potential outcomes.

Overall, renewable energy development has minimally impacted one location in the South Mono PMU to date, and could potentially result in impacts in other parts of the bi-State DPS's range in the future based on current leases. The best available data indicate that several locations in the bi-State area (Pine Nut and South Mono PMUs) have suitable wind resources based on recent leasing and inquiries by facility developers (although no active leases currently occur), and it appears the Mount Grant PMU and to a lesser degree the Desert Creek–Fales PMU are likely to be most negatively affected. We are uncertain of the probability of future inquires or development of wind energy in the bi-State area. We concluded in the proposed listing rule, and reaffirm here, that by itself, renewable energy development is not considered a significant impact at this time.

The BSAP (Bi-State TAC 2012a, entire) was designed to counter effects to the bi-State DPS; although renewable energy development is not specifically addressed in the BSAP, as minimal habitat loss due to renewable energy projects has occurred historically (Service 2015a, pp. 68–71). The BSAP (Bi-State TAC 2012a, entire), contains conservation efforts that would address potential impacts from renewable energy if a project were to be proposed, such as reducing human-related disturbances (*e.g.,* road noise/traffic). With continued implementation of conservation actions associated with the BSAP, the potential impacts from renewable enegery are minimized. See the *Renewable Enegy* section of the Species Report for further discussion (Service 2015a, pp. 68–71). Further, the Bi-State TAC and LAWG (which includes Service participation) are examining all potential impacts to the bi-State DPS and its habitat, as demonstrated through the agencies implementation of an Adaptive Management Strategy (Bi-State EOC 2014, *in litt.*) and the CPT. Because we have determined that the partially completed and future conservation efforts will be implemented and effective (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) below), we believe impacts associated with renewable energy development may no longer be a concern into the future.

Disease

Sage-grouse are hosts for a variety of parasites and diseases (Factor C) including macroparasitic arthropods, helminths (worms), and microparasites (protozoa, bacteria, viruses, and fungi) (Thorne *et al.* 1982, p. 338; Connelly *et al.* 2004, pp. 10–4 to 10–7; Christiansen and Tate 2011, p. 114), which can have varying effects on populations. Connelly *et al.* (2004, p. 10–6) note that, while parasitic relationships may be important to the long-term ecology of sage-grouse, they have not been shown to be significant to the immediate population status across the range of the DPS. However, Connelly *et al.* (2004, p. 10–3) and Christiansen and Tate (2011, p. 126) suggest that diseases and parasites may limit isolated sage-grouse populations as they interact with other demographic parameters such as reproductive success and immigration, and thus, the effects of diseases require additional study.

Viruses (such as coronavirus and WNv) are serious diseases that are known to cause death in grouse species, potentially influencing population dynamics (Petersen 2004, p. 46) (Factor C). Efficacy and transmission of WNv in sagebrush habitats is primarily regulated by environmental factors including temperature, precipitation, and anthropogenic water sources, such as

stock ponds and coal-bed methane ponds that support mosquito vectors (Reisen *et al.* 2006, p. 309; Walker and Naugle 2011, pp. 131–132). WNv can be a threat to some sage-grouse populations, and its occurrence and impacts are likely underestimated due to lack of monitoring. The impact of this disease in the bi-State DPS is likely currently limited by ambient temperatures that do not allow consistent vector and virus maturation. As noted in the proposed listing rule, predicted temperature increases associated with climate change may result in this threat becoming more consistently prevalent. We have no indication that other diseases or parasites are impacting the bi-State DPS.

Overall, multiple diseases have the potential to occur in the bi-State area, although WNv appears to be the only identified disease that warrants concern for sage-grouse in the bi-State area. We concluded in the proposed listing rule, and reaffirm here, that by itself, WNv is not considered a significant impact at this time because it is currently limited by ambient temperatures that do not allow consistent vector and virus maturation. However, WNv could be a concern for the future if predicted temperature increases associated with climate change result in this threat becoming more consistently prevalent. With continued implementation of conservation actions (WNv surveillance and mosquito abatement measures) associated with the BSAP (Bi-State TAC 2012a, entire), the minor or potential impacts from WNv are reduced to the point that we find disease is not a significant threat to the bi-State DPS.

Predation

Predation of sage-grouse is the most commonly identified cause of direct mortality during all life stages (Schroeder *et al.* 1999, p. 9; Connelly *et al.* 2000b, p. 228; Casazza *et al.* 2009, p. 45; Connelly *et al.* 2011, p. 65) (Factor C). However, sage-grouse have co-evolved with a variety of predators, and their cryptic plumage and behavioral adaptations have allowed them to persist (Schroeder *et al.* 1999, p. 10; Coates 2007, p. 69; Coates and Delehanty 2008, p. 635; Hagen 2011, p. 96). Within the bi-State DPS, predation facilitated by habitat fragmentation (fences, power lines, and roads) and other human activities may be altering natural population dynamics in specific areas of the bi-State DPS. Data suggest certain populations are exhibiting deviations in vital rates below those anticipated (Koloda *et al.* 2009, p. 1344; Sedinger *et al.* 2011. p. 324). For example, within the Long Valley population of the South Mono PMU, known nest predators associated with a county landfill may be the cause of the reportedly low nesting success. In addition, low adult survival estimates for the Desert Creek-Fales PMU suggest predators may be influencing population growth there. However, we generally consider habitat alteration as the root cause of these results; teasing apart the interaction between predation rate and habitat condition is difficult.

Overall, predation is currently known to occur throughout the bi-State DPS's range. It is facilitated by habitat fragmentation (fences, power lines, and roads) and other human activities that may be altering natural population dynamics in specific areas throughout the bi-State DPS's range. We concluded in the proposed listing rule, and reaffirm here, that by itself, predation is not considered a significant impact at this time. Conservation efforts that address the impacts from predation have continued to be implemented since publication of the proposed listing rule, including (but not limited to): removing structures that attract predators (*e.g.,* fencing, power lines), and conducting initial procedures to remove the landfill in Long Valley. With continued implementation of conservation actions associated with the BSAP (Bi-State TAC 2012a, entire), impacts from predation are significantly reduced. See the predation discussion under the *Disease or Predation* section of the Species Report for further discussion (Service 2015a, pp. 114–120).

The BSAP (Bi-State TAC 2012a, entire) was designed to counter effects such as (but not limited to) the extent of predation risks to the bi-State DPS. Because we have determined that the partially completed and future conservation efforts will be implemented and effective (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) below), we believe that the risk of predation is not a concern into the future.

Climate

Climate change projections in the Great Basin suggest a hotter and stable-to-declining level of precipitation and a shift in precipitation events to the summer months; fire frequency is expected to accelerate; fires may become larger and more severe; and fire seasons will be longer (Brown *et al.* 2004, pp. 382–383; Neilson *et al.* 2005, p. 150; Chambers and Pellant 2008, p. 31; Global Climate Change Impacts in the United States 2009, p. 83). With these projections, drought (which is a natural part of the sagebrush ecosystem) is likely to be exacerbated. Drought reduces vegetation cover (Milton *et al.* 1994, p. 75; Connelly *et al.* 2004, p. 7–18), potentially resulting in increased soil erosion and subsequent reduced soil depths, decreased water infiltration, and reduced water storage capacity (Factor A). Drought can also exacerbate other natural events such as defoliation of sagebrush by insects (Factor A). These habitat component losses can result in declining sage-grouse populations due to increased nest predation and early brood mortality (Factor E) associated with decreased nest cover and food availability (Braun 1998, p. 149; Moynahan *et al.* 2007, p. 1781).

In the bi-State area, drought is a natural part of the sagebrush ecosystem, and available information does not indicate that drought has influenced long-term population dynamics of sage-grouse under historical conditions. There are known occasions, however, where reduced brood-rearing habitat conditions due to drought have resulted in little to no recruitment within certain PMUs (Bodie and Pine Nut PMUs (Gardner 2009, pers. comm.)). If these conditions were to persist longer than the typical adult life-span, drought could have significant ramifications on population persistence. Further, drought impacts on the sage-grouse may be exacerbated when combined with other habitat impacts that reduce cover and food (Braun 1998, p. 148).

Based on the best available scientific and commercial information, the threat of climate change is not known to currently impact the bi-State DPS to such a degree that the viability of the DPS is at stake. A recent analysis conducted by NatureServe, which incorporates much of the information presented above, suggests a substantial contraction of both sagebrush and sage-grouse range in the bi-State area by 2060 (Comer *et al.* 2012, pp. 142, 145). Specifically (for example), this analysis suggests the current extent of suitable shrub habitat will decrease because of a less suitable climate condition for sagebrush and may improve suitability for woodland and drier vegetation communities, which are not favorable to the bi-State DPS. The NatureServe predictions notwithstanding, while it is reasonable to assume the bi-State area will experience vegetation changes into the future, we do not know with a reasonable degree of certainty the nature of these changes or ultimately the effect this will have on the bi-State DPS.

It is possible that changes in atmospheric carbon dioxide levels, temperature, precipitation, and timing of snowmelt could act synergistically

with other threats (such as wildfire and nonnative, invasive plant species) to produce yet unknown but likely negative effects to sage-grouse populations in the bi-State area. The overall impact of climate change to the bi-State DPS in the future could be moderate if existing threats (such as wildfire, and nonnative, invasive plant species) continue unabated, and climate changes exacerbate those threats.

By itself, climate change is not considered a significant impact at this time. We concluded in the proposed listing rule that climate change will potentially act in combination with other impacts to the bi-State DPS, further diminishing habitat (Factor A) and increasing isolation of populations (Factor E), making them more susceptible to demographic and genetic challenges or disease. Since the publication of the proposed rule, ongoing implementation of various conservation measures in the BSAP has reduced the significance of the threat of wildfire and invasive plants (*e.g.,* through removal of pinyon-juniper woodland). Continued implementation of the BSAP further reduces the impacts of these threats to the bi-State sage-grouse. Therefore, even should climate change increase the threat of wildfire and invasive plants to some degree, we no longer conclude that climate change acting in concert with these other threats constitutes a significant threat to the bi-State DPS. See the *Climate* section of the Species Report for further discussion (Service 2015a, pp. 91–99).

Recreation

Non-consumptive recreational activities (such as fishing, hiking, horseback riding, and camping as well as more recently popularized activities, such as OHV use and mountain biking) occur throughout the range of the greater sage-grouse, including throughout the bi-State DPS area. These activities can degrade wildlife resources, water, and land by distributing refuse, disturbing and displacing wildlife, increasing animal mortality, and simplifying plant communities (Boyle and Samson 1985, pp. 110–112) (Factor E). For example, disruption of sage-grouse during vulnerable periods at leks, or during nesting or early brood-rearing, could affect reproduction and survival (Baydack and Hein 1987, pp. 537–538). In addition, indirect effects to sage-grouse from recreational activities include impacts to vegetation and soils, and the facilitation of the spread of invasive species (Factor A). Impacts caused by recreational activities may be affecting sage-grouse populations in the bi-State area, and there are known localized habitat impacts.

Overall, recreation occurs throughout the bi-State DPS's range, although we do not have data that would indicate impacts to sage-grouse or their habitat are significant. We concluded in the proposed listing rule and reaffirm here that by itself, recreation is not considered a significant impact at this time. However, if left unchecked, some forms of recreation could become a concern based on anticipated increases of recreational use within the bi-State area in the future. Populations of sage-grouse in the South Mono PMU are exposed to the greatest degree of pedestrian recreational activity, although they appear relatively stable at present. Conservation efforts that address recreational impacts have continued to be implemented since publication of the proposed listing rule, including (but not limited to): reducing human-related disturbances in high-use recreation areas (*e.g.,* installing sage-grouse educational signs), conducting seasonal closures of lek viewing areas, and implementing both permanent and seasonal road closures. With continued implementation of conservation actions associated with the BSAP (Bi-State TAC 2012a, entire), impacts from recreation are significantly reduced. See the *Recreation* section of the Species Report for further discussion (Service 2015a, pp. 102–106).

The BSAP (Bi-State TAC 2012a, entire) was designed to counter effects such as (but not limited to) human disturbance to the bi-State DPS, including recreation-related impacts. Because we have determined that the partially completed and future conservation efforts will be implemented and effective (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) below), we believe impacts associated with recreation are no longer a concern into the future.

Overutilization Impacts

Potential overutilization impacts include recreational hunting (Factor B). Sage-grouse have not been commercially harvested in the bi-State area since the 1930s, and they are not expected to be commercially harvested in the future. Limited recreational hunting, based on the concept of compensatory mortality, was allowed across most of the DPS's range with the increase of sage-grouse populations by the 1950s (Patterson 1952, p. 242; Autenrieth 1981, p. 11). In recent years, hunting as a form of compensatory mortality for upland game birds (which includes sage-grouse) has been questioned (Connelly *et al.* 2005, pp. 660, 663; Reese and Connelly 2011, p. 111).

Recreational hunting is currently limited in the bi-State DPS and within generally accepted harvest guidelines. In the Nevada portion of the bi-State area, NDOW regulates hunting of sage-grouse. Most hunting of sage-grouse in the Nevada portion of the bi-State area is closed. NDOW closed the shotgun and archery seasons for sage-grouse in 1997, and the falconry season in 2003 (NDOW 2012, *in litt.,* p. 4). Hunting of sage-grouse may occur on tribal allotments located in the Pine Nut PMU where the Washoe Tribe of Nevada and California has authority. There are anecdotal reports of harvest by tribal members, but currently the Washoe Tribe Hunting and Fishing Commission does not issue harvest permits for greater sage-grouse (Warpeha 2009, pers. comm.). In the California portion of the bi-State area, CDFW regulates hunting of sage-grouse. Hunting historically occurred and continues to occur in the Long Valley (South Mono PMU) and Bodie Hills (Bodie PMU) areas (known as the South Mono and North Mono Hunt Units, respectively). As a result of work by Gibson (1998, entire) and documented population declines in the bi-State DPS, CDFW has significantly reduced the number of permits issued (Gardner 2008, pers. comm.).

As stated in the proposed listing rule and reaffirmed here, it is unlikely that the scope and severity of hunting impacts would act in an additive manner to natural mortality of the bi-State DPS across its range due to the conservative approach that the State agencies employ in the single location (Long Valley) where hunting is permitted (specifically, harvest levels are below 5 to 10 percent of the fall population). In the bi-State area, hunting is limited to such a degree that it is not apparently restrictive to overall population growth currently nor expected to become so in the future (CDFW 2012, *in litt.*). Furthermore, we are unaware of any information to indicate that poaching significantly impacts bi-State sage-grouse populations.

Overall, sport hunting is currently limited and within generally accepted harvest guidelines. We concluded in the proposed listing rule and reaffirm here that it is unlikely that hunting will ever again reach levels that would act in an additive manner to mortality. In the bi-State area, hunting is limited to such a degree that it is not apparently restrictive to overall population growth. Furthermore, we are unaware of any information indicating that overutilization is significantly

impacting sage-grouse populations in the bi-State area. Given the current level and location of harvest, and expected continued management into the future, we find the impact this factor has on population persistence is negligible. See the *Overutilization Impacts* section of the Species Report for further discussion (Service 2015a, pp. 99–105).

Scientific and Educational Uses

Mortality and behavioral impacts to sage-grouse may occur as a result of scientific research activities (Factor B). Sage-grouse in the bi-State area have been subject to several scientific research efforts over the past decade involving capture, handling, and subsequent banding or radio-marking. Much remains unknown about the impacts of research on sage-grouse population dynamics. However, the available information indicates that very few individuals are disturbed or die as a result of handling and marking. Therefore, we concluded in the proposed listing rule and reaffirm here that the potential impacts associated with scientific and educational uses are considered negligible to the bi-State DPS at this time and are expected to remain so into the future. See the *Scientific and Educational Uses* section of the Species Report for further discussion (Service 2015a, pp. 105–108).

Pesticides and Herbicides

Although few studies have examined the effects of pesticides to sage-grouse, direct mortality of sage-grouse as a result of pesticide applications (such as insecticides and pesticides applied via cropland spraying) has been documented (Blus *et al.* 1989, p. 1142; Blus and Connelly 1998, p. 23) (Factor E). In addition, herbicide applications can kill sagebrush and forbs important as food sources for sage-grouse (Carr 1968, as cited in Call and Maser 1985, p. 14) (Factor E). Although pesticides and herbicides can result in direct and indirect mortality of individual sage-grouse, we are unaware of information that would indicate that the current usage or residue from past applications in the bi-State area are having negative impacts on populations, nor do we have information that indicates levels of use will increase in the future. Therefore, we concluded in the proposed listing rule and reaffirm here that the potential impacts associated with pesticide and herbicide use are considered negligible to the bi-State DPS at this time, and are expected to remain so into the future. See the *Pesticides and Herbicides* section of the Species Report for further discussion (Service 2015a, pp. 126–128).

Contaminants

Sage-grouse exposure to various types of environmental contaminants (concentrated salts, petroleum products, or other industrial chemicals) may occur as a result of agricultural and rangeland management practices, mining, energy development and pipeline operations, and transportation of hazardous materials along highways and railroads. In the bi-State area, exposure to contaminants associated with mining is the most likely to occur (see *Mining,* above). Exposure to contaminated water in wastewater pits or evaporation ponds could cause mortalities or an increased incidence of sage-grouse disease (morbidity) (Factor E). Within the bi-State DPS, sage-grouse exposure to potential contaminants is currently limited and most likely associated with a few existing mining operations in the Pine Nut and Mount Grant PMUs. Future impacts from contaminants (if present) would most likely occur in these same PMUs due to their potential for future mineral development; however, at this time we are unaware of information to indicate that contaminants are a problem currently or in the future. Therefore, we concluded in the proposed listing rule and reaffirm here that the potential impacts associated with contaminants are considered negligible to the bi-State DPS at this time, and are expected to remain so into the future. See the *Contaminants* section of the Species Report for further discussion (Service 2015a, pp. 128–129).

Synergistic Impacts

Many of the impacts described here and in the accompanying Species Report may cumulatively or synergistically affect the bi-State DPS beyond the scope of each individual stressor. For example, the future loss of additional significant sagebrush habitat due to wildfire in the bi-State DPS is could occur because of the synergistic interactions among fire, people and infrastructure, invasive species, and climate change. Predation may also increase as a result of the increase in human disturbance and development. Conservation efforts that address the most significant threats to the bi-State DPS have continued to be implemented since publication of the proposed listing rule, including (but not limited to): removal of pinyon-juniper woodlands; reducing human-related disturbances in high-use recreation areas (*e.g.,* installing sage-grouse educational signs); weed treatments for nonnative, invasive species; removing power lines; fencing around riparian areas to minimize grazing impacts; and implementing both permanent and seasonal road closures. With continued implementation of conservation actions associated with the BSAP (Bi-State TAC 2012a, entire), impacts from threats to bi-State sage-grouse and their habitats are significantly reduced. Therefore, possible cumulative and/or synergistic effects of the various threats are also significantly reduced.

In summary, we have determined that the threats potentially causing the most significant impacts on the bi-State DPS currently and in the future are urbanization and habitat conversion (Factor A); infrastructure (Factors A and E); grazing (Factors A, C, and E); the increase of nonnative, invasive and native plants (*e.g.,* cheatgrass, pinyon-juniper encroachment) (Factors A and E); wildfires and altered fire regime (Factors A and E); and small population size and population structure (Factor E). Other threats impacting the DPS across its range currently and in the future, but to a lesser degree than those listed above, include renewable energy development and associated infrastructure (Factors A and E); climate change, including drought (Factors A and E); recreation (Factors A and E); and disease and predation (Factor B). Numerous threats may be acting synergistically and cumulatively to further contribute to the challenges faced by several bi-State DPS populations now and into the future. Since the publication of the proposed listing rule, implementation of many conservation measures included in the BSAP that target the most significant threats to the bi-State DPS have reduced significantly the severity of threats—individually, cumulatively, and synergistically.

Existing Regulatory Mechanisms

Bi-State sage-grouse conservation has been addressed in some local, State, and Federal plans, laws, regulations, and policies. An examination of regulatory mechanisms (Factor D) for both the bi-State DPS and sagebrush habitats in general reveals that some mechanisms exist that either provide or have the potential to provide a conservation benefit to the bi-State DPS, such as (but not limited to): Various county or city regulations outlined in general plans; Nevada State Executive Order, dated September 26, 2008; Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), which requires development of resource management plans for BLM lands; the National Forest Management Act (16 U.S.C. 1600 *et*

seq.), which requires Land and Resource Management Plans (LRMPs) for USFS lands; and the Sikes Act Improvement Act of 1997 (16 U.S.C. 670a *et seq.*), which requires integrated natural resources management plans for military installations (see *Existing Regulatory Mechanisms* section of the Species Report (Service 2015a, pp. 129–142)). However, supporting documents for some of these regulations are many years old and have not been updated, calling into question their consistency with our current understanding of the DPS's life-history requirements, and the DPS's conservation needs. In addition, the conservation actions that have been implemented to date according to the existing regulatory mechanisms vary across the bi-State area, although managing agencies are beginning to work more collaboratively across jurisdictional boundaries. The degree to which these existing regulatory mechanisms conserve the DPS is largely dependent on current and future implementation, which can vary depending on factors such as the availability of staff and funding.

Regulations in some counties identify the need for natural resource conservation and attempt to minimize impacts of development through zoning restrictions, but to our knowledge these regulations neither preclude development nor do they provide for monitoring of the loss of sage-grouse habitats. Similarly, State laws and regulations are general in nature and provide flexibility in implementation, and do not provide specific direction to State wildlife agencies, although they can occasionally afford regulatory authority over habitat preservation (*e.g.,* creation of habitat easements and land acquisitions).

The bi-State area is largely composed of federally managed lands. Historically, land use plans, as they pertain to sage-grouse, have been general in nature and afforded relatively broad latitude to land managers. The BLM (Carson City and Tonopah Field Offices) and USFS (Humboldt-Toiyabe National Forest) issued a Final Environmental Impact Statement in February, 2015 to support their respective proposed RMP and LRMP amendments. These proposed amendments include improved management direction that provide a conservation benefit for the bi-State DPS and its habitat (USDI and USDA 2015, entire). The proposed amendments identify goals for desired habitat condition at both the site and landscape scale. These goals and the specific direction needed to achieve them (*e.g.,* grazing allotment management plans) direct management focus and funding to address specific habitat threats affecting the bi-State DPS (*i.e.,* an increase in nonnative, invasive and native plants; wildfire and altered wildfire regime; and rangeland management) by improving habitat condition through increasing the resilience and resistance of the native sagebrush ecosystem. The proposed amendments also provide clear direction to managers faced with decisions on discretionary actions, such as infrastructure development projects, to consider the needs of sage-grouse in the decision making process. The proposed amendments restrict the development of anthropogenic features in bi-State DPS habitat and thereby the potential risk these features can exert on sage-grouse in the future. We would like to further note that land use plan revisions are called for in the BSAP to improve regulatory effectiveness and consistency for discretionary agency actions affecting the bi-State DPS. The proposed amendments will make the plan language consistent with the BSAP goals, further reinforcing the commitments by the agencies to implement the plans, however we do not rely on the draft plans when analyzing the BSAP. See the discussion about the proposed Land Use Plan amendments in the detailed PECE analysis available on the Internet at *http://www.regulations.gov* (Docket No. FWS–R8–ES–2013–0072).

In our proposed rule, we stated that the existing regulatory mechanisms (Factor D) were not considered adequate to remove the threats such that listing under the Act would not be necessary. However, since that proposal, we have fully evaluated the BSAP and determined that it ameolirates threats to the species, lessening the need for regulatory mechanisms to manage stressors. The currently proposed BLM and Forest Service Land Use Plan amendments will provide more specificity and certainty with regard to the conservation of the bi-State DPS and its habitat. We mention the draft plans in this document to recognize that the BLM and the USFS have taken steps to draft such plans, which will make their language consistent with the actions being undertaken in the BSAP. However, we are not relying on them as part of this review because they are not finalized and would require speculation on the Service's part as to the final outcomes of the plans. Since we have determined that the ongoing and future conservation efforts under the BSAP are removing the threats to the bi-State DPS as discussed above, we find that the currently existing regulatory mechanisms are adequate.

Ongoing and Future Conservation Efforts

Below we summarize the current plan that provides conservation benefit to the bi-State DPS, *i.e.,* the BSAP (Bi-State TAC 2012a, entire). We describe the significant conservation efforts that are already occurring and those that are expected to occur in the future. For future conservation efforts (*i.e.,* projects that have been initiated but are not yet complete or have not yet been shown to be effective or projects that are proposed for the future), we present an analysis pursuant to our Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) (68 FR 15100; March 28, 2003).

Prior to the bi-State DPS becoming a candidate species in 2010, a variety of conservation initiatives were put in place to conserve the DPS and its habitat. The most significant initiative was the creation of the *Nevada Governor's Sage Grouse Conservation Team* in June 2002 who, in cooperation with local stakeholders (*i.e.,* the Bi-State Local Area Working Group (LAWG)), developed the first edition of the Greater Sage Grouse Conservation Plan for the bi-State area in 2004 (Bi-State Local Planning Group 2004, entire) to begin a cooperative effort to address threats to the bi-State DPS and its habitat. The 2004 Action Plan served as the foundation for the conservation of the bi-State DPS and its habitat. These efforts were later enhanced by both local- and national-level conservation strategies for sage-grouse conservation (including in the Bi-State area) associated with organizations including the Sage Grouse Initiative, and the Bi-State LAWG, the latter of which is specifically focused on bi-State DPS conservation.

In December 2011, the Bi-State Executive Oversight Committee (EOC) was formed (as recommended at that time by Ken Mayer (NDOW) and Raul Moralez (BLM)) to leverage collective resources and assemble the best technical support to achieve long-term conservation of the bi-State DPS and its habitat. The EOC comprises resource agency representatives from the Service, BLM, USFS, Natural Resources Conservation Service (NRCS), USGS, NDOW, and CDFW. Recognizing that conservation efforts were already underway by this point in time, the EOC directed a bi-State TAC, comprising technical experts/members from each agency, to summarize the conservation actions completed since 2004, and to develop a comprehensive set of strategies, objectives, and actions that would be effective for the long-term

conservation of the bi-State DPS and its habitat. These strategies, objectives, and actions comprise the 2012 BSAP (Bi-State TAC 2012a, entire), which is actively being implemented by the signatory agencies identified above, as well as Mono County, who is committed to implementing all relevant actions within the county (which harbors the two core populations of the bi-State DPS). Numerous conservation efforts outlined in the BSAP have already been implemented (see the proposed listing rule (78 FR 64358) and sections 2.2 and 2.3 of the Action Plan (Bi-State TAC 2012a, pp. 4–13)). Additional conservation actions have been implemented since the plan was signed between 2012 and the present. For a comprehensive discussion of past and ongoing management efforts implemented according to the BSAP, see the *Past and Ongoing Management Efforts* discussion in the Species Report (Service 2015a, pp. 36–43), and available on the Internet at *http://www.regulations.gov* (Docket No. FWS–R8–ES–2013–0072).

Despite the positive accomplishments of various entities implementing the 2012 BSAP, the proposed rule (78 FR 64358; October 28, 2013) described several threats that were identified as interacting synergistically on the bi-State DPS and its habitat and resulting in increasingly fragmented habitat for this long-lived habitat specialist, specifically: urbanization and habitat conversion (Factor A); infrastructure (Factors A and E); mining (Factors A and E); renewable energy development and associated infrastructure (Factors A and E); grazing (Factors A, C, and E); the increase of nonnative, invasive and native plants (*e.g.,* cheatgrass, pinyon-juniper encroachment) (Factors A and E); wildfires and altered fire regime (Factors A and E); and small population size and population structure (Factor E). Other threats described in the proposed listing rule that impact the DPS across its range to a lesser degree than those listed above included: climate change, including drought (Factors A and E); recreation (Factors A and E); and disease and predation (Factor B) (78 FR 64358). Synergistic, cumulative impacts identified in the proposed rule primarily involved: (1) Woodland encroachment; (2) existing and potential near-term impacts of cheatgrass and wildfire that will likely escalate further with climate change; and (3) impacts from infrastructure, urbanization, and recreation on already fragmented habitat and small populations (78 FR 64358).

Based on information provided in the proposed rule and discussions with the EOC, TAC, and LAWG, signatory agencies provided a package of information examining their commitments, including staffing and funding, to implement the actions needed for conservation of the bi-State DPS and its habitat, as outlined in the BSAP. They also provided an updated prioritization of various conservation actions and site-specific locations in which to implement such actions, as needed, based on utilization of the CPT (*i.e.,* linked, data-driven predictive models and interactive maps that identify and rank areas for management actions and provide a basis to evaluate those actions) and the BSAP's Adaptive Management Strategy (Bi-State EOC 2014, *in litt.*). The agency commitment letters (which were one component of the information provided by the EOC, *i.e.* BLM 2014c, *in litt.;* CDFW 2014b, *in litt.;* Mono County 2014, *in litt.;* NDOW 2014b, *in litt.;* USDA 2014, *in litt.;* and USGS 2014c, *in litt.*) outlined many partially completed or new conservation actions that will be implemented and completed to address the threats that were identified in our October 28, 2013, proposed rule (78 FR 64538).

The EOC evaluated the [then current] bi-State DPS survey and trend information and concluded that their unified and collaborative approach addresses the conservation needs of the bi-State DPS (Bi-State EOC 2014, *in litt.*). Additionally, the EOC concluded that each partner agency is committed to implementing the BSAP and providing the necessary resources to do so regardless of the outcome of the Service's listing decision (Bi-State EOC 2014, *in litt.*).

The information provided by the EOC indicates significant conservation efforts are currently being implemented and further actions are proposed for implementation in the future. These combined actions address the threats that (synergistically) are resulting in the most severe impacts on the DPS and its habitat now and into the future. These conservation actions are described in our detailed PECE analysis that is available on the Internet at *http://www.regulations.gov* (Docket No. FWS–R8–ES–2013–0072) and summarized below.

Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE)

The purpose of PECE (68 FR 15100; March 28, 2003) is to ensure consistent and adequate evaluation of recently formalized conservation efforts when making listing decisions. The policy provides guidance on how to evaluate conservation efforts that have not yet been implemented or have not yet demonstrated effectiveness. The evaluation focuses on the certainty that the conservation efforts will be implemented and the effectiveness of the conservation efforts to contribute to make listing a species unnecessary. The policy presents nine criteria for evaluating the certainty of implementation and six criteria for evaluating the certainty of effectiveness for conservation efforts. These criteria are not considered comprehensive evaluation criteria. The certainty of implementation and the effectiveness of a formalized conservation effort may also depend on species-specific, habitat-specific, location-specific, and effort-specific factors. We consider all appropriate factors in evaluating formalized conservation efforts. The specific circumstances will also determine the amount of information necessary to satisfy these criteria.

To consider that a formalized conservation effort contributes to forming a basis for not listing a species, or listing a species as threatened rather than endangered, we must find that the conservation effort is sufficiently certain to be (1) implemented, and (2) effective, so as to have contributed to the elimination or adequate reduction of one or more threats to the species identified through section 4(a)(1) analysis under the Act. The elimination or adequate reduction of section 4(a)(1) threats may lead to a determination that the species does not meet the definition of threatened or endangered, or is threatened rather than endangered.

An agreement or plan may contain numerous conservation efforts, not all of which are sufficiently certain to be implemented and effective. Those conservation efforts that are not sufficiently certain to be implemented and effective cannot contribute to a determination that listing is unnecessary, or a determination to list as threatened rather than endangered. Regardless of the adoption of a conservation agreement or plan, however, if the best available scientific and commercial data indicate that the species meets the definition of ''endangered species'' or ''threatened species'' on the day of the listing decision, then we must proceed with appropriate rulemaking activity under section 4 of the Act. Further, it is important to note that a conservation plan is not required to have absolute certainty of implementation and effectiveness in order to contribute to a listing determination. Rather, we need to be reasonably certain that the conservation efforts will be implemented and effective such that the

threats to the species are reduced or eliminated.

Using the criteria in PECE (68 FR 15100, March 28, 2003), we evaluated the certainty of implementation (for those measures not already implemented) and effectiveness of conservation measures in the BSAP. Below is a summary of our full PECE analysis, which can be found at *http://www.regulations.gov* (Docket No. FWS–R8–ES–2013–0072).

We have determined that the conservation efforts in the BSAP meet the PECE criteria with regard to certainty of implementation because of (but not limited to): (1) The agency commitments of staffing and significant funding (*i.e.,* over $45 million over the next 10 years); and (2) continued participation on the Bi-State EOC, TAC, and LAWG to ensure the most important conservation efforts are occurring at any given time considering ongoing research and monitoring that may influence changes in management strategies, as outlined in the BSAP's Science-based Adaptive Management Plan and through use of the CPT. Additionally, we have certainty of implementation by the various agencies for conservation efforts that address many different impacts. In particular, we have certainty of implementation for those conservation efforts expected to provide the most significant conservation value to the bi-State DPS and its habitat, including actions (as outlined in the agencies 2014 commitment letters and work plans, and the comprehensive project database (Bi-State TAC 2014a, *in litt.*) that:

(1) Protect and restore critical brood-rearing habitat (reduces impacts from development/habitat conversion, grazing and rangeland management, and effects resulting from climate change). Lead agencies under the BSAP implementing conservation actions to reduce these impacts are NRCS (*e.g.,* conservation easements, riparian/meadow restoration), USFS (*e.g.,* private-public land exchanges, riparian/meadow restoration or improvement, grazing management, wild horse management), BLM (*e.g.,* riparian/meadow restoration, meadow irrigation and structure repair, racetrack fence removal, wild horse management), and Mono County (*e.g.,* fencing modification).

(2) Restore habitat impacted by the spread of invasive, nonnative plants and pinyon-juniper encroachment (reduces impacts from nonnative, invasive and certain native plants, wildfire, predation, and effects resulting from climate change). Lead agencies under the BSAP implementing conservation actions to reduce these impacts are NRCS (*e.g.,* pinyon-juniper removal), USFS (*e.g.,* pinyon-juniper removal, riparian/meadow restoration, invasive weed treatments), BLM (*e.g.,* pinyon-juniper removal, riparian/meadow restoration, invasive weed treatments, wildfire fuel break treatments, fencing removal), and Mono County (*e.g.,* closure and relocation of the Long Valley landfill, predator deterrents and reduction of attractants).

(3) Ensure stable or increasing sage-grouse populations and structure, etc., to (a) Prioritize management actions related to synergistic impacts on already fragmented habitat, such that management efforts occur in locations that benefit the DPS the most (reducing impacts such as infrastructure, urbanization, and recreation), and (b) develop and implement sage-grouse translocation from stable subpopulations to other small subpopulations that may be experiencing a high risk of extirpation (reduces impacts from small population size and population structure). Lead agencies under the BSAP implementing conservation actions to reduce these impacts are USGS, NDOW, and CDFW (*e.g.,* conducting telemetry, research, or monitoring surveys that inform the CPT of adjustments to the BSAP conservation strategy that provide the greatest benefit to the DPS or its habitat (see section 6.5 in the BSAP (Bi-State TAC 2012a, pp. 75–76); implementing translocation programs from stable subpopulations to subpopulations that may be at high risk of extinction), BLM (*e.g.,* permanent and seasonal road closures, nesting habitat seasonal closures, fencing removal or marking), USFS (*e.g.,* permanent and seasonal road closures, power line removal), and Mono County (coordinate with private landowners to encourage reduced infrastructure).

We also note that BLM, USFS, NRCS, and Mono County have provided specific plans and timetables laying out various conservation efforts for implementation over the next 10 years (BLM 2014c, *in litt.;* Mono County 2014, *in litt.;* USDA 2014, *in litt.*), while CDFW, NDOW, and USGS have provided textual descriptions of their intended actions and contributions over the next 10 years (CDFW 2014b, *in litt.;* NDOW 2014b, *in litt.;* USGS 2014c, *in litt.*). Additionally, the collaboration between the Service, BLM, USFS, NRCS, Mono County, USGS, NDOW, and CDFW requires regular meetings and involvement from the parties, whether at the level of the Bi-State EOC, TAC, or LAWG, in order to implement the BSAP fully.

We are confident that the conservation efforts (as outlined in the BSAP, Agency commitment letters, and our detailed PECE analysis (all of which are available at *http://www.regulations.gov* (Docket No. FWS–R8–ES–2013–0072)), as well as the TAC comprehensive project database) will continue to be implemented because (to date) we have a documented track record of active participation and implementation by the signatory agencies, and commitments to continue implementation into the future. Conservation measures, such as (but not limited to) pinyon-juniper removal, establishment of conservation easements for critical brood-rearing habitat, cheatgrass removal, permanent and seasonal closure of roads near leks, removal and marking of fencing, and restoration of riparian/meadow habitat have been occurring over the past decade, are currently occurring, and have been prioritized and placed on the agency's implementation schedules for future implementation. Agencies have committed to remain participants and continue conservation of the DPS and its habitat. The BSAP has sufficient methods (*i.e.,* science advisors, the CPT, and a Science-based Adaptive Management Strategy) for determining the type and location of the most beneficial conservation actions to be implemented, including continued receipt of new population and threats information in the future that will guide conservation efforts.

We have determined that the conservation efforts in the BSAP meet the PECE criteria with regard to certainty of effectiveness to remove or reduce threats facing the bi-State DPS because of, but not limited to, past project effectiveness within the bi-State area or within sagebrush habitat areas across the range of the greater sage-grouse, and documented effective methodologies for addressing the threats identified as impacting the bi-State DPS. For example (Bi-State EOC 2014, *in litt.;* Espinosa 2014, *in litt.*):

(1) Development and Habitat Conversion—Conservation efforts to reduce development and habitat conversion are anticipated to occur in critical brood-rearing habitats across five PMUs, including through conservation easements and land exchanges (see detailed PECE analysis, Section 3.0). These areas include high-priority targets identified in the BSAP, and are consistent with the Conservation Objectives Team (COT) Report's ex-urban conservation objective to limit urban and exurban development in sage-grouse habitats (Service 2013c, p. 50). These actions are considered

effective at reducing impacts from development and habitat conversion because conserving and managing lands in perpetuity are the most successful tools for permanent protection of critical sage-grouse habitat (as demonstrated by Pocewicz *et al.* (2011) in Wyoming).

(2) Invasive Nonnative and Native Plants—Because both invasive plants and particularly native plants (pinyon-juniper encroachment) displace the sagebrush ecosystem that the bi-State DPS relies on, significant conservation efforts are being and will continue to be implemented to address these problems. With regard to invasive, nonnative plants, the Bi-State EOC and TAC recognize that effective control programs can be labor intensive and costly; however, the Bi-State EOC and TAC believes there is value for the bi-State DPS in being strategic in implementing the conservation efforts that potentially reduce the impact these plants have on the DPS's habitat (*e.g.,* treating nonnative, invasive plants in strategic areas to potentially reduce the likelihood of an outbreak or improve a priority habitat area) (Espinosa 2014, *in litt.*). Six BLM and USFS projects are either partially completed or planned for the future that target invasive, nonnative plants on more than 257 ha (634 ac) in the Desert Creek-Fales, Mount Grant, and Pine Nut PMUs, the latter two of which cheatgrass is considered a moderate and high threat, respectively, compared to other PMUs. The USFS will control at least 40.5 ha (100 ac) of cheatgrass each year over the next 10 years in the Pine Nut PMU (USDA 2014, *in litt.*). Finally, adjustments to grazing and upland habitats, when necessary, can reduce the risk of cheatgrass dominance on a site.

With regard to pinyon-juniper encroachment, ecologists have developed clear and effective recommendations to target appropriate phases of encroachment (*i.e.,* specific age and density structure) to ensure restoration occurs in sagebrush and sage-grouse habitat areas that are most meaningful (*e.g.,* critical brood-rearing habitat, corridors in fragmented areas) (*e.g.,* Bates *et al.* 2011, pp. 476–479; Davies *et al.* 2011, pp. 2577–2578). Accordingly, BLM, USFS, and NRCS are strategically targeting phase I and II pinyon-juniper encroachment in the bi-State area, which is supported by literature as effective with careful planning and execution (*e.g.,* Bates *et al.* 2011, pp. 476–479; Davies *et al.* 2011, pp. 2577–2578). At this time, approximately 82,284 ha (203,329 ac) across all PMUs are identified by the Bi-State TAC to be examined and treated for pinyon-juniper encroachment (Bi-State TAC 2014a, *in litt.*).

(3) Infrastructure—Conservation efforts to reduce infrastructure are focused on roads, power lines, fencing, and a landfill. Permanent road closures over a minimum of 1,339 km (832 mi) in the Bodie, Desert Creek-Fales, Mount Grant, and Pine Nut PMUs and seasonal road closures over approximately 1,429 km (888 mi) in the South Mono PMU will reduce the likelihood of mortality and improve vital rates for sage-grouse near leks, including nesting and brood-rearing areas (Bi-State TAC 2014a, *in litt.*). Power line and fencing removal projects will occur at three sites in the Bodie or South Mono PMUs, in addition to three projects that will mark and modify fencing in the Pine Nut or South Mono PMUs (Bi-State TAC 2014a, *in litt.*). A landfill in the Long Valley area of the South Mono PMU is a significant source of predators for one of the two core populations of the bi-State DPS; Mono County is currently undergoing the initial stages of closing and relocating this landfill (Bi-State TAC 2014a, *in litt.;* Mono County 2014, *in litt.*).

Removing or modifying the types of infrastructure described above will be effective at reducing the amount of invasive plants present along or around developed areas (Manier *et al.* 2014, pp. 167–170), reducing existing habitat fragmentation and potential vectors for invasive plants (Gelbard and Belnap 2003, pp. 424–431); removing some edge effects that can lead to avoidance of nesting in suitable habitat areas (Aldridge and Boyce 2007, pp. 516–523); reducing or removing anthropogenic noise that disturbs normal behavior patterns of sage-grouse (Blickley 2013, pp. 54–65); reducing collision-related mortalities (associated specifically with fencing) (Stevens *et al.* 2012, pp. 299–302); and making currently undesirable habitat areas (that attract predators) favorable by sage-grouse as nest and brood sites by reducing predator attractants (*e.g.,* power lines, landfill) (Dinkins *et al.* 2012, pp. 605–608).

(4) Wildfire—Fires have consumed some important habitat areas within the range of the bi-State DPS, primarily within the Pine Nut PMU, but also recently as a result of the Spring Peak fire within the Bodie and Mount Grant PMUs (Espinosa 2014, *in litt.*). Site restoration activities are planned to be implemented following wildfires by utilizing the CPT to identify sites that are the best candidates for enhancing or returning sagebrush habitats to conditions that benefit sage-grouse (Espinosa 2014, *in litt.*). Restoration efforts will be tracked for success, noting that some actions (*e.g.,* seeding) vary in success rate, given variables such as elevation, precipitation, and site-conditions prior to a fire (Espinosa 2014, *in litt.*). Recovery of functional sagebrush habitats following wildfire and restoration actions can take decades (potentially several sage-grouse generations) to be realized, and requires monitoring to assure conservation objectives are met (such as ensuring appropriate levels of sagebrush and native herbs are established, and reducing nonnative plant dominance) (Arkle *et al.* 2014, p. 17). Additionally, the Bi-State TAC currently utilizes the CPT and field reconnaissance to maximize the likelihood of enhancing the desired sagebrush community composition post-fuels reduction treatment activities (Espinosa 2014, *in litt.*). See the discussion above regarding ''Nonnative, Invasive and Native Plants'' for activities currently occurring or planned for the future to help reduce the existing fuel loads that promote wildfires.

(5) Small Population Size and Population Structure—The BSAP specifically identifies a strategy (MER7) to address small population size issues in the bi-State area, by identifying potential sage-grouse population augmentation and reintroduction sites, developing translocation guidelines, and potentially implementing augmentation and reintroduction efforts (Bi-State TAC 2012a, p. 93). Specific actions include developing contingency plans for the Parker Meadows and Gaspipe Spring subpopulations in the South Mono PMU, and populations in the Pine Nut PMU; and evaluating the need for augmentation for the Fales population of the Desert Creek-Fales PMU, the Powel Mountain area of the Mount Grant PMU, the McBride Flat/Sagehen Spring area in the Truman Meadows portion of the White Mountains PMU, and Coyote Flat of the South Mono PMU.

Prior to conducting translocation efforts, the Bi-State TAC and LAWG must concentrate significant efforts in conducting lek counts and surveys, and developing a standardized sage-grouse monitoring program throughout the bi-State area (CDFW 2014b, *in litt.*). These initial activities do not directly reduce any threats, although they are important to ensure effectiveness of many conservation efforts, particularly translocation efforts. Currently, CDFW is developing a plan to translocate sage-grouse from stable subpopulations in the bi-State area to the Parker Meadows subpopulation (Bi-State TAC 2014a, *in litt.;* CDFW 2014b, *in litt.*). Efforts on

this current action are directly relevant to future conservation efforts for other unstable subpopulations. It is reasonable to assume future translocations in the bi-State area have a high likelihood of effectiveness given careful consideration to all the variables (including translocation that would occur concurrent with other threat reduction activities, such as predator control), and published literature that indicates success of translocated sage-grouse when successful translocation methodology is followed (Musil *et al.* 1993, pp. 89–90; Reese and Connelly 1997, pp. 239–240; Hennefer 2007, pp. 33–37; Baxter *et al.* 2008, pp. 184–185).

We will have an ongoing role in monitoring the implementation and effectiveness of the partially completed and future conservation efforts given our regular participation with the Bi-State EOC, TAC, and LAWG, participation in providing updated versions of the BSAP, and by reviewing any monitoring and research reports. We are satisfied that the conservation efforts evaluated will be effective in reducing threats to the bi-State DPS and its habitat; however, in order to do so they do not need to be applied on every acre of suitable and unsuitable sage-grouse habitat. For instance, not all of the native pinyon-juniper vegetation needs to be removed, such as in areas within the range of the bi-State DPS where pinyon-juniper historically occurred. Rather the effort needs, and is expected, to be implemented in areas that are most likely to support sage-grouse (post-removal) and critical areas that address habitat fragmentation or reduced-connectivity issues. These efforts need to occur at a rate that significantly reduces further habitat losses, which is consistent with the objective to address pinyon-juniper expansion provided in the March 22, 2013, COT Report for conservation of the greater sage-grouse (Service 2013c, pp. 47–48), including the bi-State DPS.

We have determined that the agencies resource commitments (*e.g.,* staffing and funding, including more than $45 million over the next 10 years), and a demonstrated record of implementation will ensure continued conservation of habitat for the bi-State DPS. The BSAP has sufficient monitoring and reporting requirements to ensure that the proposed future conservation measures are implemented as planned, and are effective at removing threats to the DPS and its habitat. The collaboration between the Service, BLM, USFS, NRCS, Mono County, USGS, and the States of Nevada and California requires regular team meetings (Bi-State EOC, TAC, and EOC), and continued involvement of all parties will occur (Bi-State EOC 2014, *in litt.*) in order to implement the BSAP fully. We find that the future conservation efforts in the BSAP meet the PECE criteria for certainty of implementation and effectiveness, and can be considered as part of the basis for our final listing determination for the bi-State DPS.

In conclusion, we find that the conservation efforts in the BSAP, and as outlined in the agencies' June 2014 commitment letters, meet the PECE criteria with regard to certainty of implementation (for those measures not already implemented) and effectiveness and can be considered as part of the basis for our final listing determination for the bi-State DPS. Our full analysis of the 2012 BSAP, and additional materials submitted to the Service as mentioned above, pursuant to PECE can be found at *http://www.regulations.gov* (Docket No. FWS–R8–ES–2013–0072).

Determination

As required by the Act, we considered the five factors listed in section 4(a)(1)(b) of the Act in assessing whether the bi-State DPS of greater sage-grouse meets the definition of a threatened or endangered species. We examined the best scientific and commercial information available regarding the past, present, and foreseeable future threats faced by the DPS. For the purposes of this determination, we consider foreseeable future to be 30 years based on the probability of population persistence analyzed and described by Garton *et al.* (2011, entire), and based on the time horizons for which the various threats can be reliably projected into the future (as described under the various threats analysis discussions in the Species Report (Service 2015a, pp. 45–142)).

Based on our review of the best available scientific and commercial information, we find that the current threats are not of sufficient imminence, intensity, or magnitude to indicate that the bi-State DPS is in danger of extinction (endangered). In our proposed listing rule we determined that the bi-State DPS is likely to become endangered within the foreseeable future (threatened). However, after consideration of new information regarding partially completed and ongoing conservation measures and planned future conservation efforts that we conclude will be implemented and effective (as described in our detailed PECE analysis available at *www.regulations.gov,* Docket No. FWS–R8–ES–2013–0072), we now conclude that the bi-State DPS is not likely to become endangered within the foreseeable future (threatened), throughout all or a significant portion of its range (see Significant Portion of the Range, below). Therefore, the bi-State DPS of greater sage-grouse does not meet the definition of a threatened or endangered species, and we are withdrawing the proposed rule to list the DPS as a threatened species. Our rationale for this finding is outlined below.

The best available information indicates that the current overall sage-grouse population trend across the DPS is stable, and likely to improve based on the implementation and effectiveness of ongoing and future conservation actions associated with the BSAP. The likelihood of persistence of viable populations of both core PMUs (according to species experts) is considered high for the two largest (core) populations that comprise greater than 67 percent of all strutting males (Service 2015a, Table 1; CDFW 2014a, unpublished data; NDOW 2014a, unpublished data). Additionally, all populations or subpopulations across the six PMUs have persisted as viable populations in their current distribution in spite of many stressors.

Ongoing and future conservation efforts are likely to increase habitat quantity, quality, and connectivity. This will likely increase the number of sage-grouse and resilience of the bi-State DPS overall. These efforts to stop and reverse habitat loss and fragmentation will make small populations of bi-State sage-grouse less susceptible to the effects of habitat loss, degradation, and fragmentation. These efforts will expand the amount of protected habitat in critical brood-rearing habitat areas as well as restore currently unsuitable habitat in areas utilized for dispersal and colonization. These measures are expected to increase resilience to possible future random, stochastic events or impacts. Further, the DPS's current distribution encompasses and is representative of the genetic diversity known to exist across the range of the DPS. As such, the sage-grouse within this DPS: (1) Are widely distributed such that the DPS as a whole is well-protected from stochastic events, and (2) the DPS spans the known genetic diversity such that the populations are not in danger of a genetic bottleneck. We expect the DPS to continue to remain viable throughout its current overall distribution. We also expect that ongoing and planned conservation efforts will improve habitat quality and quantity and allow the populations to expand. Thus, we conclude that the bi-State DPS will have sufficient resiliency, redundancy, and

representation such that it does not meet the definition of a threatened or endangered species under the Act.

Since publication of our proposed listing rule (78 FR 64358; October 28, 2014), new information (*e.g.,* survey data, habitat conditions, trends analysis, and Bi-State EOC commitments) has become available and additional conservation efforts have been implemented to help further our understanding of the DPS's abundance, habitat trends, and overall status across its range. New information received has resulted in:

(1) Corrections or clarifications of miscellaneous life-history information (see *Species Information* above and the Biological Information section of the Species Report (Service 2015a, pp. 7–33)).

(2) A more accurate assessment of suitable habitat throughout the bi-State area (see Service 2015a, p. 18).

(3) A more accurate assessment of population trends in the bi-State area (see *Species Information* above and *Current Range/Distribution and Population Estimates/Annual Lek Counts* section of the Species Report (Service 2015a, pp. 17–31)).

Without the conservation measures being implemented now and planned for the future as described in the BSAP, the stressors that rise to a level of being a threat as identified in the proposed rule to the bi-State DPS would remain at a level that would warrant listing of the DPS as a threatened species. However, based primarily on information received from the action agencies implementing the BSAP, including commitments of funding and other resources, we are able to utilize the PECE policy to evaluate conservation actions that are either implemented and not yet shown to be effective and those proposed for the future.

As outlined in the Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) section above, we evaluated the certainty of implementation and effectiveness of the BSAP's ongoing and future conservation efforts pertaining to the bi-State DPS. We have determined that the agencies implementing this plan (*i.e.,* the BLM, USFS, NRCS, USGS, Mono County, NDOW, and CDFW) are committed to and will continue conservation efforts into the future to benefit the bi-State DPS and its habitat. The BSAP also has sufficient monitoring and reporting requirements to ensure that the proposed future conservation measures are implemented as planned, and are effective at reducing or ameliorating stressors such that they are no longer a threat to the DPS and its habitat. As a result, we find that the future conservation efforts in the BSAP meet the PECE criteria for certainty of implementation and effectiveness, and can be considered as part of the basis for our final listing determination for the bi-State DPS.

Since the time of our proposed listing, the BSAP signatory agencies, in cooperation with the Bi-State EOC, TAC, and LAWG, have made significant efforts to develop and refine (through adaptive management and utilization of the CPT) work plans for the next 10 years to implement conservation efforts targeted at the most important current and future conservation needs within the DPS (BLM 2014c, *in litt.;* CDFW 2014b, *in litt.;* Espinosa 2014, *in litt.;* Mono County 2014, *in litt.;* NDOW 2014b, *in litt.;* USDA 2014, *in litt.;* USGS 2014c, *in litt.*). These conservation efforts are focused on:

(1) Protecting and restoring critical brood-rearing habitat (reduces impacts from development/habitat conversion, grazing and rangeland management, and effects resulting from climate change).

(2) Restoring habitat impacted by nonnative, invasive species (*e.g.,* cheatgrass) and pinyon-juniper encroachment (reduces impacts from nonnative, invasive and certain native plants, wildfire, predation, and effects resulting from climate change).

(3) Improving our understanding of sage-grouse populations, structure, etc., to: (a) Prioritize management actions related to synergistic impacts on already fragmented habitat (reduced impacts such as infrastructure, urbanization, and recreation), such that management efforts occur in locations that benefit the DPS the most; and (b) develop and implement sage-grouse translocations from stable subpopulations to other small subpopulations that may be experiencing a high risk of extirpation (reduces impacts from small population size and population structure).

We find that by concentrating BSAP conservation efforts on the threats that are cumulatively and synergistically having the greatest impact on the bi-State DPS and its habitat, these efforts have reduced impacts, and will continue to reduce the magnitude of impacts in the foreseeable future such that the DPS no longer meets the definition of a threatened or endangered species. Some of the conservation efforts that will be implemented to address these most significant concerns include (but are not limited to):

(1) Establishing conservation easements, private-public land exchanges, or land acquisitions within the Pine Nut, Bodie, Desert Creek-Fales, Mt. Grant, and South Mono PMUs, including a minimum of approximately 3,875 ha (9,576 ac) of conservation easements containing critical sage-grouse brood-rearing habitat, and a minimum of approximately 1,325 ha (3,274 ac) of private-public land exchanges (Bi-State TAC 2014a, *in litt.;* CDFW 2014b, *in litt.;* Mono County 2014, *in litt.;* USDA 2014, *in litt.*).

(2) Evaluating 82,284 (ha) (203,329 ac) of habitat throughout all six PMUs for potential treatment to reduce pinyon-juniper encroachment (Bi-State TAC 2014a, *in litt.*). This is being accomplished by using the CPT, thereby concentrating habitat restoration efforts in areas throughout the DPS's range that would be most beneficial to the DPS and most effective on-the-ground (*e.g.,* avoiding areas that birds are not likely to utilize, focusing on areas that reduce habitat fragmentation in corridor areas). These conservation efforts not only address encroachment of pinyon-juniper (and loss of sagebrush habitat), but they also reduce predation impacts (*i.e.,* removal of predator perches) and wildfire impacts associated with fuels accumulation (given that infrequent fires facilitate conifer encroachment and too frequent fires promote invasive, nonnative annual grasses).

(3) Implementing new grazing standards on all allotments that address grazing and wild horse management issues (BLM 2014c, *in litt.;* USDA 2014, *in litt.;* Bi-State TAC 2014a, *in litt.*). Conservation efforts include (but are not limited to) improving water facilities, restoring meadow habitat, and improving fence conditions across multiple PMUs.

(4) Identifying and implementing sage-grouse population augmentation and reintroduction sites, developing translocation guidelines, and potentially implementing augmentation and reintroduction efforts (Bi-State TAC 2012a, p. 93). Specific actions include developing contingency plans for the Parker Meadows and Gaspipe Spring subpopulations in the South Mono PMU, and populations in the Pine Nut PMU; and evaluating the need for augmentation for the Fales population of the Desert Creek-Fales PMU, the Powel Mountain area of the Mount Grant PMU, the McBride Flat/Sagehen Spring area in the Truman Meadows portion of the White Mountains PMU, and Coyote Flat of the South Mono PMU. At this time, efforts are specifically under way and focused on developing a translocation plan for the Parker Meadows subpopulation (CDFG 2014, *in litt.;* Bi-State TAC 2014a, *in litt.*).

Additional details on partially completed projects and future conservation efforts are outlined in the Agency's June 2014 commitment letters and workplans (BLM 2014c, *in litt.;* CDFW 2014b, *in litt.;* Mono County 2014, *in litt.;* NDOW 2014b, *in litt.;* USDA 2014, *in litt.;* USGS 2014c, *in litt.*), the Bi-State TAC comprehensive project database (Bi-State TAC 2014a, *in litt.*), and our detailed PECE analysis, all of which are available at *http://www.regulations.gov,* Docket No. FWS–R8–ES–2013–0072.

Of greatest significance and note (since publication of the proposed listing rule), the BSAP recognized 79 projects and the need for $38 million over a 10-year period to address immediate conservation needs of the bi-State DPS and its habitat (Bi-State TAC 2014b, *in litt.*). At this time, all of those projects are either being implemented (currently underway) or will be implemented in the future. A total of $45 million has been pledged by the agencies with a high level of certainty of both implementation and effectiveness, which exceeds the $38 million estimated/called for by the BSAP.

Overall, the partially completed and future conservation efforts (*i.e.,* those identified in the 10-year work plans and utilized in the Bi-State TAC's comprehensive project database (Bi-State TAC 2014a, *in litt.*)) have been designed to address current and expected future synergistic impacts. Although the majority of the conservation efforts will address the most significant impacts synergistically impacting the DPS (*i.e.,* woodland encroachment, infrastructure, urbanization, recreation, and existing and potential near-term impacts of cheatgrass and wildfire that may potentially escalate climate change in the future), some of the partially completed and future conservation efforts are addressing less significant (overall) impacts (*e.g.,* WNv surveillance and mosquito abatement (disease), human disturbance to leks associated with existing renewable energy and geothermal sites). Examples of how the partially completed and future conservation actions will continue to reduce threats include:

(1) Permanent protection (primarily through NRCS efforts) of sage-grouse habitat within the Pine Nut, Bodie, Desert Creek-Fales, Mt. Grant, and South Mono PMUs, including at least approximately 3,875 ha (9,576 ac) of conservation easements containing critical sage-grouse brood-rearing habitat, and at least approximately 1,325 ha (3,274 ac) of private-public land exchanges (Bi-State TAC 2014a, *in litt.*). These conservation measures reduce the threat of losing this important habitat to urbanization and development, and any associated infrastructure (Factor A).

(2) Reduction of grazing impacts by BLM and USFS, such as repairing watering sites in the Bodie PMU, maintaining or restoring riparian/meadow sites impacted by grazing animals across multiple PMUs, and removing racetrack fencing or marking/modifying fencing (Bi-State TAC 2014a, *in litt.*). These conservation measures reduce the threats of grazing-related impacts, including (but not limited to) reduced sage-brush habitat quality, reduced nesting and reproductive success, and reduced food availability (Factor A). Conservation efforts focused on water development can also reduce facilitating the spread of WNv (Factor C).

(3) Reduction of pinyon-juniper encroachment by BLM, USFS, and NRCS, including current evaluation of approximately 82,284 ha (203,329 ac) of Phase I or II areas (using the CPT) across all PMUs for prioritizing treatment areas (Bi-State TAC 2014a, *in litt.*). These conservation measures reduce the threat of habitat loss and fragmentation (Factor A), facilitated woodland encroachment (Factor A), and predation risks (Factor C).

(4) Implementation of six BLM and USFS projects that target invasive, nonnative plants on more than 257 ha (634 ac) in the Desert Creek-Fales, Mount Grant, and Pine Nut PMUs, the latter two of which cheatgrass is considered a moderate and high threat, respectively, compared to other PMUs. Additionally, the USFS will control at least 40.5 ha (100 ac) of cheatgrass each year over the next 10 years in the Pine Nut PMU (USDA 2014, *in litt.*). Adjustments to grazing in upland habitats, when necessary, are also likely to reduce the risk of cheatgrass dominance on sites. These conservation measures reduce the threat of habitat loss and fragmentation, and potentially the increased frequency of wildfires associated with cheatgrass and other invasives that can hamper recovery of sagebrush habitat (Factor A).

(5) Removal of a landfill in the Long Valley area of the South Mono PMU, which is a significant source of predators for one of the two core populations of the bi-State DPS. Mono County is currently undergoing the initial stages of relocating this landfill (Bi-State TAC 2014a, *in litt.;* Mono County 2014, *in litt.*). This conservation measure reduces the threat of predation (Factor C).

(6) Permanent BLM and USFS road closures over a minimum of 1,339 km (832 mi) in the Bodie, Desert Creek-Fales, Mount Grant, and Pine Nut PMUs, and seasonal road closures over approximately 1,429 km (888 mi) in the South Mono PMU, which will reduce the likelihood of mortality and improve vital rates for sage-grouse near leks, including nesting and brood-rearing areas (Bi-State TAC 2014a, *in litt.*). These conservation measures reduce the threats of predation (Factor C) and loss of individuals associated with collisions (Factor E).

Please see our PECE analysis (section 3.0) for a detailed discussion of the nature and extent of threats addressed by the BSAP, which is available on the Internet at *www.regulations.gov* (Docket No. FWS–R8–ES–2013–0072).

An important aspect of the BSAP for reducing threats to the bi-State DPS and its habitat is the development and implementation of a Science-Based Adaptive Management Plan that includes the CPT, which: (1) Includes data-driven predictive models and interactive maps that identify and rank areas that necessitate management action; and (2) provides a basis to evaluate those actions, all of which are focused on areas that are most meaningful for the bi-State DPS populations. The CPT is currently being used to inform which actions are most beneficial and in the best targeted locations (thus linking the outcome of management actions to the response of sage-grouse populations).

In summary, we conclude that the BSAP conservation efforts have sufficient certainty of implementation and effectiveness that they can be relied upon in this final listing determination. Further, we conclude that the BSAP reduces or eliminates current and future threats to the bi-State DPS and its habitat to the point that the species is no longer in danger of extinction now or in the foreseeable future. We conclude that the conservation efforts (including funding and staffing commitments) that are currently partially completed and those proposed for the future (as outlined in the agency's commitment letters (BLM 2014c, *in litt.;* CDFW 2014b, *in litt.;* Mono County 2014, *in litt.;* NDOW 2014b, *in litt.;* UDSA 2014, *in litt.;* USGS 2014c, *in litt.*) and the Bi-State TAC's active project database (Bi-State TAC 2014a, *in litt.*)) improve the status of the DPS and its habitat conditions to such a degree that the current level of impacts are significantly reduced (in other words, the DPS is not likely to be in danger of extinction in the foreseeable future). Therefore, we are withdrawing our proposed rule to

list the bi-State DPS as a threatened species, and consequently, we are also withdrawing the associated proposed 4(d) and critical habitat rules.

We will continue to monitor the status of the bi-State DPS through monitoring requirements in the BSAP, and our evaluation of any other information we receive. These monitoring requirements will not only inform us of the amount of bi-State DPS habitat conserved and reclaimed, but will also help inform us of the status of the populations. Additional information will continue to be accepted on all aspects of the bi-State DPS and its habitat. If at any time new information indicates that the provisions of the Act may be necessary to conserve the bi-State sage-grouse, we can initiate listing procedures, including, if appropriate, emergency listing pursuant to section 4(b)(7) of the Act. For example, we could initiate listing procedures if we become aware of declining implementation or participation in the BSAP, or noncompliance with the conservation measures, or if there are new threats or increasing stressors that rise to the level of a threat.

Significant Portion of the Range

Under the Act and our implementing regulations, a species may warrant listing if it is an endangered or a threatened species throughout all or a significant portion of its range. The Act defines ''endangered species'' as any species which is ''in danger of extinction throughout all or a significant portion of its range,'' and ''threatened species'' as any species which is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The term ''species'' includes ''any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature.'' We published a final policy interpreting the phrase ''Significant Portion of its Range'' (SPR) (79 FR 37578). The final policy states that (1) if a species is found to be an endangered or a threatened species throughout a significant portion of its range, the entire species is listed as an endangered or a threatened species, respectively, and the Act's protections apply to all individuals of the species wherever found; (2) a portion of the range of a species is ''significant'' if the species is not currently an endangered or a threatened species throughout all of its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range; (3) the range of a species is considered to be the general geographical area within which that species can be found at the time FWS or NMFS makes any particular status determination; and (4) if a vertebrate species is an endangered or a threatened species throughout an SPR, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies.

The SPR policy is applied to all status determinations, including analyses for the purposes of making listing, delisting, and reclassification determinations. The procedure for analyzing whether any portion is an SPR is similar, regardless of the type of status determination we are making. The first step in our analysis of the status of a species is to determine its status throughout all of its range. If we determine that the species is in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range, we list the species as an endangered (or threatened) species and no SPR analysis will be required. If the species is neither an endangered nor a threatened species throughout all of its range, we determine whether the species is an endangered or a threatened species throughout a significant portion of its range. If it is, we list the species as an endangered or a threatened species, respectively; if it is not, we conclude that listing the species is not warranted.

When we conduct an SPR analysis, we first identify any portions of the species' range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and either an endangered or a threatened species. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (1) the portions may be significant and (2) the species may be in danger of extinction in those portions or likely to become so within the foreseeable future. We emphasize that answering these questions in the affirmative is not a determination that the species is an endangered or a threatened species throughout a significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are affecting it uniformly throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats apply only to portions of the range that clearly do not meet the biologically based definition of ''significant'' (*i.e.,* the loss of that portion clearly would not be expected to increase the vulnerability to extinction of the entire species), those portions will not warrant further consideration.

If we identify any portions that may be both (1) significant and (2) endangered or threatened, we engage in a more detailed analysis to determine whether these standards are indeed met. The identification of an SPR does not create a presumption, prejudgment, or other determination as to whether the species in that identified SPR is an endangered or a threatened species. We must go through a separate analysis to determine whether the species is an endangered or a threatened species in the SPR. While some of these impacts are more easily alleviated than others (*e.g.,* conifer encroachment), the existing condition, if left unchecked, is likely to worsen in the future (Bi-State TAC 2012a, pp. 24–25).

Depending on the biology of the species, its range, and the threats it faces, it may be more efficient to address the ''significant'' question first, or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is an endangered or a threatened species there; if we determine that the species is not an endangered or a threatened species in a portion of its range, we do not need to determine if that portion is ''significant.''

Because we determined that the bi-State DPS is neither endangered nor threatened throughout all of its range following application of the PECE policy and as described above in the Determination section, we must next determine whether the bi-State DPS may be endangered or threatened in a significant portion of its range. To do this, we must first identify any portion of the DPS's range that may warrant consideration by determining whether there is *substantial information* indicating that: (1) The portions *may be* significant, and (2) the DPS *may be* in danger of extinction in those portions or is likely to become so within the foreseeable future. We note that a positive answer to these questions is not a determination that the DPS is endangered or threatened within a significant portion of its range, but rather a positive answer to these

questions confirms whether a more detailed analysis is necessary.

Given the Pine Nut, Mount Grant, and White Mountains PMUs are now and will continue to be most at risk from the various stressors acting upon the birds and their habitat (see the foreseeable future discussion above in the Determination section), we identify this portion of the range for further consideration. The Pine Nut, Mount Grant, and (to the extent known) White Mountains PMUs comprise the fewest numbers of birds and leks within the range of the bi-State DPS, with the Pine Nut PMU harboring the fewest number of birds and leks overall (the majority (67 percent) of the sage-grouse in the bi-State area occur within the Bodie and South Mono PMUs).

We analyzed whether stressors in these three PMUs (*i.e.,* Pine Nut, Mount Grant, and White Mountains PMUs) rise to the level such that the sage-grouse is likely to become an endangered species in the foreseeable future (threatened) in these three PMUs combined. We determined that none of the stressors within these three PMUs either independently or collectively is believed to have reduced, destroyed, or fragmented sagebrush habitat such that the DPS is not in danger of extinction or likely to become so in the foreseeable future. We note that data do indicate that impacts from nonnative, invasive and certain native plants, and thus the threat of wildfire, in the Pine Nut PMU are more extensive than in the Mount Grant and White Mountains PMUs. While these stressors continue in the Pine Nut PMU and may increase, monitoring continues to document sage-grouse in some historically occupied areas within the PMU. Also, the Pine Nut PMU currently holds the fewest number of birds and leks of all populations, and the potential loss of this already small population is not expected to impact the bi-State DPS to the extent that the remaining two PMUs with the smallest populations (*i.e.,* Mount Grant and White Mountains PMUs) or the DPS as a whole is in danger of extinction or likely to become so in the foreseeable future.

In general, the combination of the bi-State DPS small population size, isolation due to fragmented habitat, peripheral locations, and the presence of several stresors to the sage-grouse in the Pine Nut, Mount Grant, and White Mountains PMUs makes these PMUs more vulnerable than the Bodie, Desert Creek-Fales, and South Mono PMUs, but not to the degree that sage-grouse are in danger of extinction or likely to become so in the foreseeable future in these PMUs. This is demonstrated by population data from each of these three smaller PMUs (*i.e.,* the Pine Nut, Mount Grant, and White Mountains PMUs) indicating that: (1) Multiple sage-grouse are still observed through monitoring activities, (2) one to eight active leks are present within each PMU, (3) stresors acting upon these small populations are not geographically concentrated and exist in all six PMUs throughout the range of the bi-State DPS; and (4) a recent 10-year trend analysis by Coates *et al.* (2014a, entire) between 2003 and 2012 found that several of the populations in the bi-State area (including but not limited to the core populations) are stable (as opposed to declining).

Even though we have determined that this portion of the bi-State DPS's range (*i.e.,* the Pine Nut, Mount Grant, and White Mountains PMUs) is not in danger of extinction or likely to become so in the foreseeable future, there is information available that may lead some to believe that the populations in these three PMUs are at risk of becoming endangered in the foreseeable future. However, the best available information currently indicates that a substantial amount of conservation effort is currently being applied (and will be carried out in the future) within the Pine Nut, Mount Grant, and White Mountains PMUs, as well as throughout the entire range of the DPS. These conservation efforts are targeted at the stressors that are resulting in the greatest synergistic impacts on the populations (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE), above) both currently and in the future. Significant efforts are being applied in these three PMUs including (but not limited to) reducing impacts from: (1) Infrastructure (permanent road closures, fence maintenance/marking), pinyon-juniper encroachment (pine burn and conifer removal), invasive plants (weed management, including livestock control; cheatgrass removal), urbanization and habitat conversion (riparian/meadow restoration of brood-rearing habitat, establishment of conservation easements), and grazing management (management of wild horse herds, establishing/repairing riparian exclosures). Application of these conservation efforts across the range of the DPS over the next 10 years that we determine to have both certainty of implementation and effectiveness, as described in our detailed PECE analysis (available at *www.regulations.gov,* Docket No. FWS–R8–ES–2013–0072), changes the trajectory from a point where the DPS was previously considered to be a threatened species, to a point where the best available information related to current and future conservation efforts indicates the entire range of the DPS, including the specific portion of the DPS's range in the Pine Nut, Mount Grant, and White Mountains PMUs, does not meet the definition of a threatened species or an endangered species.

In conclusion, we find that substantial information indicates that: (1) There are no portions of the bi-State DPS that may be significant, and (2) the DPS is not likely to become an endangered species in the foreseeable future in the portion of its range that harbors the least number of birds (*i.e.,* the Pine Nut, Mount Grant, and White Mountains PMUs). Therefore, we find that listing the bi-State DPS is not warranted.

Summary of Comments and Recommendations

In the proposed rule published on October 28, 2013 (78 FR 64358), we requested that all interested parties submit written comments on the proposal by December 27, 2013. This comment period was subsequently extended an additional 45 days, as announced on December 20, 2013 (78 FR 77087), and closed on February 10, 2014. The comment period was reopened on April 8, 2014 (79 FR 19314), announcing two public hearings and a 6-month extension of the final determination of whether or not to list the bi-State DPS due to substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the proposed listing, making it necessary to solicit additional information. This second comment period on the proposed listing rule closed on June 9, 2013. Finally, a third and final comment period was opened on August 5, 2014 (79 FR 45420), and closed on September 4, 2014, to give the public the opportunity to review and provide comments on new information received regarding population trends as well as State and Federal agency funding and staffing commitments for various conservation efforts associated with the BSAP.

We contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. We also received requests for public hearings. We held one public hearing in Minden, Nevada on May 28, 2014, and one public hearing held in Bishop, California, on May 29, 2014. Newspaper notices inviting general public comment and advertisement of the information and public hearings was published in The Inyo Register, The

Record Courier, and the Reno-Gazette Journal.

During the three comment periods, we received more than 6,400 comment letters directly addressing the proposed listing of the bi-State DPS. Submitted comments were both for and against listing the DPS with designated critical habitat. During the May 28 and 29, 2014, public hearings, 11 individuals or organizations commented on the proposed rules; 3 were opposed to the proposed listing, and the remaining individuals or organizations did not express an explicit opinion on the listing proposal, but articulated issues they considered to need more attention (*e.g.,* economic impacts associated with the proposed critical habitat). All substantive information provided during the comment periods has either been incorporated directly into this withdrawal or addressed below. We also received a few comments related to the proposed 4(d) rule, and more than 200 comment letters both in support of and opposition to the proposed critical habitat designation; however, given the decision to withdraw the listing proposal (see Determination above), no further assessment of the proposed 4(d) rule and critical habitat designation is necessary at this time.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from five appropriate and independent specialists with scientific expertise that included familiarity with sage-grouse, the bi-State DPS and their habitat, including biological needs and threats. We received responses from four of the peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding the listing of the bi-State DPS. Peer reviewer comments are addressed in the following summary and incorporated into this withdrawal document as appropriate.

Peer Review Comments Received

(1) Comment: One peer reviewer requested clarification on our assumption that there are ''four to eight demographically independent populations'' in the bi-State area.

Our Response: Our understanding of the population structure of sage-grouse in the bi-State area is evolving and primarily informed by telemetry and genetic research. However, even with these data available, there remains uncertainty in our understanding. There is likely a continuum across the bi-State area in the degree of isolation among populations and not a simple connected versus non-connected status that can be assigned to a group of birds. Over the past decade, traditional VHF telemetry approaches suggested little bird movement among populations in the bi-State area, leading to our assumption that there was on the order of eight generally discrete populations of birds. While these studies were not designed to address bird movement among populations and ultimately were likely biased because mostly adult birds were marked (as opposed to juvenile birds that are more likely to disperse) and limited searching for ''lost'' birds (VHF receivers have a restricted detection distance) occurred, they have demonstrated differing vital rates (e.g, adult and nest survival) among populations in the bi-State area suggesting some degree of demographic independence. More recently, limited GPS telemetry has demonstrated movements between the Pine Nut population and the Desert Creek-Fales population, which previously were assumed to be isolated from one another. Furthermore, two recent and independent genetic evaluations have concluded there are between three and four (Oyler-McCance *et al.* (2014, p. 8) or five (Tebbenkamp 2014, p. 18) unique genetic clusters in the bi-State area. In addition, Tebbenkamp (2014, p. 12) did not evaluate the Pine Nut population, which Oyler-McCance *et al.* (2014, p. 8) found to be unique. Thus, presumably Tebbenkamp (2014, entire) would have differentiated six populations had these data been available. Based on this information, we presume that there are likely three to six populations or groups of birds in the bi-State area that largely operate demographically independent of one another. We have refined our Species Report to reflect these new data.

(2) Comment: One peer reviewer requested clarification on how lek counts were used to derive the population size estimates we report in Table 1 of our proposed rule.

Our Response: We relied on the lek count data and population estimators provided by NDOW and CDFW; both agencies use the estimator described in Connelly *et al.* (2003, p. 22), whereby they adjust the maximum number of males counted by dividing by 0.75 (to account for unseen males) and then multiply this number by 2.0 (assuming 2:1 sex ratio of females to males) to derive total birds. NDOW then adjusts this number to account for undetected leks by dividing the total bird estimate by varying ratios (from 0.75 to 0.90) depending on specific knowledge (or lack of knowledge) of the population of interest. Similarly, CDFW adjusts the total bird estimate to account for undetected leks but uses a ratio between 0.85 and 0.95.

We recognize that there is uncertainty in translating counts of males displaying on breeding grounds (lek counts) into estimates of population size (Connelly *et al.* 2003, p. 22; Walsh *et al.* 2004, entire). Nevertheless, we believe these data can provide a general context to the bi-State DPS in the absence of more precise information.

(3) Comment: One peer reviewer asked how we concluded that there was a reduction in available sage-grouse habitat in the bi-State area by 50 percent.

Our Response: Based on a Geographic Information System (GIS) modelling approach that was informed by research on woodland succession in the Great Basin, an estimated 390,000 ha (963,000 ac) of sagebrush habitat has converted to woodland vegetation over the past 150 years, resulting in a reduction of sagebrush habitat from slightly over 1,044,000 ha (2,580,000 ac) in 1850 to approximately 664,890 ha (1,643,000 ac) today across the range of the bi-State DPS (USGS 2012, unpublished data). Additionally, a resource selection function (RSF) model was developed to estimate currently suitable sage-grouse habitat across the bi-State area (Bi-State TAC 2012b, unpublished data). The RSF model included a combination of biotic, abiotic, and anthropogenic features that best explain sage-grouse selection or avoidance of a specific area. The RSF model predicated that suitable sage-grouse habitat in the bi-State area amounted to slightly less than 435,440 ha (1,076,000 ac). Taking the average of these two quotients (*i.e.,* 664,890 ha (1,643,000 ac) and 435,440 ha (1,044,000 ac)) led us to the conclusion that sage-grouse habitat availability in the bi-State area has been reduced by approximately 50 percent. We recognize that there are uncertainties associated with these data and that the amount of uncertainty is not known. However, we note that our assumption of a 50 percent decline can be either an overestimate or an underestimate. Despite the uncertainty, we believe this is a reasonable estimate of habitat loss based on the best available scientific and commercial information.

(4) Comment: One peer reviewer asked how we concluded that there has been a reduction in the overall sage-grouse *population* in the bi-State area by more than 50 percent.

Our Response: Based on our analysis of historical habitat loss (see our response to *Comment 3*), we assumed a 1:1 ratio of bird loss to habitat loss. We also considered the remaining sagebrush

habitat in the bi-State area to be variously compromised by a variety of stressors, thereby reducing the suitability of these habitats for sage-grouse and ultimately the habitats carrying capacity for sage-grouse. Furthermore, there are documented accounts of population extirpation or population reductions in the bi-State area (USFS 1966, p. 4; Hall *et al.* 2008, p. 96; Bi-State TAC 2012a, p. 24). Therefore, we assumed that population loss exceeded habitat loss and concluded that population loss was likely greater than 50 percent.

(5) Comment: One peer reviewer stated that higher-elevation mountain sagebrush communities are generally more resilient than lower-elevation Wyoming big sagebrush communities and as such are more likely to persist. Further, they stated that each of these community types differ in their susceptibility to invasive and increasing species (*i.e.,* cheatgrass and woodland succession). They requested an evaluation as to the proportion of the bi-State DPS existing within each of these general sagebrush systems.

Our Response: We utilized a base vegetation layer developed by the Bi-State TAC, which also informed the RSF modeling effort, to inform this discussion (Bi-State TAC 2012b, unpublished data). Additional detail on this product is available in the Species Report (see Appendix B).

Across the entire bi-State area (delineated by PMU boundaries), approximately 664,944 ha (1,643,114 ac) (36 percent of the bi-State area) are composed of sagebrush communities. Additionally, there are approximately 26,870 ha (66,399 acres) (1.5 percent) of higher-elevation mountain shrub communities, which includes other shrub species besides sagebrush such as bitterbrush (*Purshia tridentata*), snowberry (*Symphoricarpos* sp.), and desert peach (*Prunus anersonii*), among others. We included this additional shrub community as part of the mountain big sagebrush evaluation because these other species have been shown to be important to sage-grouse in the bi-State area (Kolada *et al.* 2009b, p. 1,336) and they often co-occur with mountain big sagebrush; therefore, we anticipate they will respond to invasive or increasing species in a similar manner. Partitioning these communities further, there are approximately 183,860 ha (454,330 ac) (27 percent of available sagebrush) of higher-elevation mountain big sagebrush (including mountain shrub community), 373,747 ha (923,550 ac) (54 percent) of lower-elevation Wyoming big sagebrush, and 134,207 ha (331,633 ac) (19 percent) of low sagebrush, such as black sagebrush (*Artemisia nova*) and little sagebrush (*Artemisia arbuscula*). We recognize the importance of this information to the discussion and have added information to the Species Report (see *Sagebrush Ecosystem* section), specifically the proportion of these communities contained within individual PMUs.

(6) Comment: One peer reviewer asked how the BLM RMPs, the BSAP, and the plans developed by the Los Angeles Department of Water and Power (LADWP) are used in evaluating existing regulatory mechanisms.

Our Response: Section 4 of the Act stipulates that one of the factors the Secretary shall use to determine whether any species is an endangered or threatened species is the inadequacy of existing regulatory mechanisms. In addition to those identified above, existing regulatory mechanisms that could provide some protection for greater sage-grouse in the bi-State area include: (1) Local land use laws, processes, and ordinances; (2) State laws and regulations; and (3) Federal laws and regulations. Regulatory mechanisms, if they exist, may preclude the need for listing if such mechanisms are judged to adequately address the threats to the species such that listing is not warranted. Conversely, threats on the landscape continue to affect the species and may be exacerbated when not addressed by existing regulatory mechanisms, or when the existing mechanisms are not adequate (or not adequately implemented or enforced).

We use an inherently qualitative approach to evaluate existing regulatory mechanisms. In general, this means that we assess language in an existing plan as well as any pertinent decisions based on such language (track record) and evaluate it against the best available science informing species conservation. Regulations in some counties identify the need for natural resource conservation and attempt to minimize impacts of development through zoning restrictions, but to our knowledge neither preclude development nor do they provide for monitoring of the loss of sage-grouse habitats. Similarly, State laws and regulations are general in nature and provide flexibility in implementation, and do not provide specific direction to State wildlife agencies relative to sage-grouse conservation, although they can occasionally afford regulatory authority over habitat preservation (*e.g.,* creation of habitat easements and land acquisitions).

In the proposed rule, we found that most existing Federal regulatory mechanisms (not including the BLM and USFS Land Use Plan amendments) were sufficiently vague as to offer limited certainty as to managerial direction pertaining to sage-grouse conservation, particularly as they relate to addressing the threats that are significantly impacting the bi-State DPS (*e.g.,* nonnative, invasive and certain native plants; wildfire and altered wildfire regime; infrastructure). However, we have determined that the BSAP ameloriates the threats to the Bi-State DPS and its habitat (see additional Land Use Plan amendment discussion in the Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) section above, and our detailed PECE analysis available on the Internet at *http://www.regulations.gov,* Docket No. FWS–R8–ES–2013–0042). In addition, the proposed BLM and USFS Land Use Plan amendments (USDI and USDA 2015, entire) will reinforce the conservation commitments made in the BSAP; however, we note that we do not rely on them for our determination. We also note that the BLM Bishop Field Office's RMP has proven to be an effective regulatory mechanism for the bi-State DPS and its habitat. For additional detail, see the *Existing Regulatory Mechanisms* section in the Species Report (Service 2015a, pp. 153–154).

State Comments Received

(7) Comment: The State of Nevada questioned how the Service could list the bi-State DPS given that more than a decade of conservation and restoration initiatives have been implemented or initiated, particularly given that over the past 12 years sage-grouse populations have been stable-to-increasing.

Our Response: We recognize the significant efforts of all of our partners in the conservation of the bi-State DPS, and these conservation efforts and the manner in which they are helping to ameliorate threats to the DPS are considered in our final agency action. Section 4(b)(1)(A) of the Act requires us to take into account those efforts being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, within any area under its jurisdiction. However, the Act requires us to make determinations based on the best scientific and commercial data available ''at the time of listing'' after conducting a review of the status of the species and after taking into account those efforts, if any, being made to protect such species. Furthermore, we are encouraged by the recent information provided by the U.S. Geological Survey (Coates *et al.* 2014, p. 19), which generally concludes that populations with the bi-State area have

been stable between 2003 and 2012. Additionally, these data predict that over the next 5 years the majority of populations are anticipated to grow. We do note, however, that the Parker Meadows and Fales populations are projected to decline and further that the White Mountains and Mount Grant populations were not analyzed due to lack of data. The Nevada Department of Wildlife reports the latter population has been in decline. Also, while we place a high degree of confidence in the USGS analysis, within the Pine Nuts PMU, a population projected to increase, the sole lek site used to partially inform the model has been largely inactive in the last 2 years, and these data were not incorporated into the USGS analysis.

While the bi-State DPS's population trend information is highly informative and can assist us in informing our listing decision, the Act stipulates that the Secretary shall make a decision to list a species as an endangered or threatened species based on any one or more of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Assuming current conditions continue into the future in the bi-State area, we have identified the threats across the range of the bi-State DPS that are resulting in the present or threatened destruction, modification, or curtailment of its habitat or range, and other natural or manmade threats affecting the DPS's continued existence. Many of these impacts are cumulatively acting upon the bi-State DPS and, therefore, increase the risk of extinction. However, after consideration of partially completed projects and future conservation efforts that we conclude will be implemented and effective (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) section, above), we believe the bi-State DPS is not likely to become endangered within the foreseeable future (threatened), throughout all or a significant portion of its range. Therefore, the bi-State DPS of greater sage-grouse does not meet the definition of a threatened or endangered species, and we are withdrawing the proposed rule to list the DPS as a threatened species.

(8) Comment: The listing of the bi-State DPS will not enhance or expedite conservation as it will call for the same conservation measures already identified by the BSAP. Further, the listing action would alienate groups working on bi-State sage-grouse conservation.

Our Response: The Act mandates that the Secretary shall determine whether any species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Therefore, the Service does not have the ability to consider public perception when evaluating a listing decision. We remain committed to ensure conservation of the bi-State DPS through continued cooperation with our partners currently and into the future. We recognize the significant efforts of all of our partners in the conservation of the bi-State DPS. While we would be disappointed by a reduction in participation and commitment of resources for various conservation efforts, we also recognize that there is a potential for this result to be realized regardless of the outcome of our final agency action as outlined within this document.

Other Comments Received

(9) Comment: A few commenters suggest that the bi-State DPS is not a genetically unique subspecies or that this population does not meet our standard for recognition as a DPS.

Our Response: In our 12-month finding on petitions to list three entities of sage-grouse (75 FR 13910), we found that the bi-State population of sage-grouse meets our criteria as a DPS of the greater sage-grouse under Service policy (61 FR 4722). This determination was based principally on genetic information, where the DPS was found to be both discrete, and significant to the remainder of the sage-grouse taxon. The bi-State DPS defines the far southwestern limit of the species' range along the border of eastern California and western Nevada (Stiver *et al.* 2006, pp. 1–11). Sage-grouse in the bi-State area contain a large number of unique genetic haplotypes not found elsewhere within the range of the species (Benedict *et al.* 2003, p. 306; Oyler-McCance *et al.* 2005, p. 1,300; Oyler-McCance and Quinn 2011, p. 92, Oyler-McCance *et al.* 2014, p. 7). The genetic diversity present in the bi-State area population is comparable to other populations, suggesting that the differences are not due to a genetic bottleneck or founder event (Oyler-McCance and Quinn 2011, p. 91; Oyler-McCance *et al.* 2014, p. 8). These studies provide evidence that the present genetic uniqueness exhibited by bi-State area sage-grouse developed over thousands and perhaps tens of thousands of years, hence, prior to the Euro-American settlement (Benedict *et al.* 2003, p. 308; Oyler-McCance *et al.* 2005, p. 1,307; Oyler-McCance *et al.* 2014, p. 9). The available genetic information demonstrates that the bi-State sage-grouse are both discrete from other greater sage-grouse populations, and are genetically unique. Therefore, we believe the best scientific and commercial data available clearly demonstrate that the bi-State sage-grouse meet both the discreteness and significance criteria to be designated as a distinct population segment.

(10) Comment: Several commenters expressed concern that habitat conservation efforts may be hampered due to potential additional regulatory requirements and uncertainty as to which activities would require consultation with the Service under the Act, as it pertains to take of the species and adverse modification or destruction of critical habitat. Specifically, commenters were concerned that funding for on-the-ground activities could be reduced due to additional costs associated with consultation under the Act.

Our Response: Section 7 of the Act states that each Federal agency shall consult with the Secretary of the Interior to insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of delineated critical habitat. The duty to consult under Section 7 includes all actions that may affect a listed species, even those that may improve habitat condition and ultimately positively influence species conservation. We recognize that the mandate of the Act, may at times, divert funding and effort away from on-the-ground activities. However, our responsibility is to ensure, through consultation, that activities which may affect listed species are not likely to jeopardize the continued existence of endangered and threatened species. With regard to the bi-State DPS, no additional regulatory requirements will occur because we have determined the DPS does not meet the definition of a threatened or endangered species.

(11) Comment: Several commenters indicated that the proposed listing of the bi-State DPS was premature. These commenters submit that adequate time

should be provided to determine if conservation efforts, such as those identified in the 2012 BSAP, are sufficient to maintain a viable sage-grouse population in the bi-State area.

Our Response: We recognize the significant efforts of all of our partners in the conservation of the bi-State DPS, and these conservation efforts and the manner in which they are helping to ameliorate threats to the DPS are considered in our final agency action. Section 4(b)(1)(A) of the Act requires us to take into account those efforts being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, within any area under its jurisdiction. However, the Act requires us to make determinations based on the best scientific and commercial data available ''at the time of listing'' after conducting a review of the status of the species and after taking into account those efforts, if any, being made to protect such species.

Concern from a variety of private, Tribal, industry, State, Federal, and non-governmental entities over the conservation of the bi-State DPS has been apparent since the late 1990's (Bi-State Local Planning Group 2004, p. 1). This is reflected by the NDOW decision to suspend hunting in the area in 1999 (Bi-State Local Planning Group 2004, p. 59). Significant effort was expended in the early 2000's and culminated in 2004 with the first edition of a greater sage-grouse conservation plan for the bi-State area of Nevada and eastern California (Bi-State Local Planning Group 2004). Since this time, many conservation efforts have been completed, while many others are in progress. After consideration of partially completed projects and future conservation efforts that we have found to be sufficiently certain to be implemented and effective (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) section, above), we believe the bi-State DPS is not in danger of becoming extinct throughout all or a significant portion of its range, and is not likely to become endangered within the foreseeable future (threatened), throughout all or a significant portion of its range. Therefore, we are withdrawing the proposed rule to list the DPS as a threatened species.

(12) Comment: Several commenters stated that listing the bi-State DPS would be counterproductive to ongoing Bi-State LAWG conservation efforts by affecting participation and funding.

Our Response: We recognize the significant efforts of all of our partners in the conservation of the bi-State DPS. While we would be disappointed by a reduction in participation and commitment of resources for various conservation efforts, we also recognize that there is a potential for this result to be realized regardless of the outcome of our final agency action as outlined within this document. The Act mandates that the Secretary shall determine whether any species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Therefore, the Service does not have the ability to consider public perception when evaluating a listing decision. However, after consideration of partially completed projects and future conservation efforts that we have found to be sufficiently certain to be implemented and effective (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) section, above), including efforts that involve the LAWG, we find the DPS is not in danger of becoming extinct throughout all or a significant portion of its range, and is not likely to become endangered within the foreseeable future (threatened), throughout all or a significant portion of its range. Therefore, we are withdrawing the proposed rule to list the DPS as a threatened species. We remain committed to ensure conservation of the bi-State DPS through continued cooperation with our partners currently and into the future.

(13) Comment: Several commenters stated that the proposal for listing should better recognize current and ongoing voluntary conservation efforts in addition to conservation measures that are in place to minimize potential adverse effects resulting from activities including livestock grazing, mineral development, and recreation and fire management.

Our Response: We analyzed the best scientific and commercial information available on both current and future conservation efforts, and conservation measures intended to minimize potential adverse effects to the bi-State DPS and its habitat (see *Existing Regulatory Mechanisms,* Ongoing and Future Conservation Efforts, and Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) sections). Any conservation-related actions, protection measures, and commitments provided by partners and commenters were taken into consideration for this final agency action.

(14) Comment: Several commenters stated that the proposed rule dismisses past conservation measures without fairly addressing their breadth, effectiveness, and chance of success. Further they submit the Service must evaluate the conservation measures through (at minimum) an analysis consistent with PECE, and must fully consider how conservation measures will reduce or remove threats. The commenters believe that a fair evaluation of the past conservation efforts would demonstrate that they are sufficient to protect the bi-State DPS.

Alternatively, several commenters argue that past conservation efforts, while well-intended, have been inadequate to provide sufficient conservation for the DPS. Further, the commenters contend that the 2012 BSAP is voluntary in nature and does not meet the PECE standard.

Our Response: We acknowledge and commend the commitment of many partners in implementing numerous conservation actions within the range of the bi-State DPS. The PECE policy applies to formalized conservation efforts that have not yet been implemented or those that have been implemented, but have not yet demonstrated whether they are effective at the time of listing. Our analysis of all conservation efforts currently in place and under development for the future is described in detail in the *Existing Regulatory Mechanisms,* Ongoing and Future Conservation Efforts, and Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) sections of this document. The effect of such conservation efforts on the status of a species is considered under the Summary of Factors Affecting the Species section of this document.

In this document, we considered whether formalized conservation efforts are included as part of the baseline through the analysis of the five listing factors, or are appropriate for consideration. After consideration of partially completed projects and future conservation efforts that we have found to be sufficiently certain to be implemented and effective (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) section, above), we find the bi-State DPS is not in danger of becoming extinct throughout all or a significant portion of its range, and is not likely to become endangered within the foreseeable future (threatened), throughout all or a significant portion of its range. Therefore, we are withdrawing the

proposed rule to list the DPS as a threatened species.

(15) Comment: Several commenters expressed concern that economic development will be negatively impacted by listing and suggested that it is necessary for the Service to conduct an analysis of the impacts that listing a species may have on local economies prior to issuance of a final rule. Alternatively, one commenter submitted that the local economy will be positively benefited.

Our Response: Under the Act, the Secretary shall make determinations whether any species is an endangered species or a threatened species solely on the basis of the best scientific and commercial data available. Thus, the Service is not allowed to conduct an analysis regarding the economic impact of listing endangered or threatened species. However, the Act does require that the Service consider the economic impacts of a proposed designation of critical habitat. A draft of the economic analysis for the now withdrawn proposed critical habitat is available to the public for informational purposes on the Internet at *www.regulations.gov,* Docket No. FWS–R8–ES–2013–0042. As for the Service's proposal to list the bi-State DPS, after consideration of partially completed projects and future conservation efforts that we have found to be sufficiently certain to be implemented and effective (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) section, above), we find the bi-State DPS is not in danger of becoming extinct throughout all or a significant portion of its range, and is not likely to become endangered within the foreseeable future (threatened), throughout all or a significant portion of its range. Therefore, we are withdrawing the proposed rule to list the DPS as a threatened species, and critical habitat will not be designated.

(16) Comment: Several commenters stated that potential impacts to the bi-State DPS and its habitat caused by roads will vary by road type. Specifically, the commenters asserted that small, unimproved dirt roads such as those typically associated with transmission line rights-of-ways have no impact. Therefore, the commenters believe that extrapolating research findings such as Forman and Alexander (1998), Gelbard and Belnap (2003), and Connelly *et al.* (2000a) to all roads is not appropriate.

Our Response: We agree that road type, the level and timing of traffic activity, and associated extent of road maintenance appear to influence the degree to which a road may affect sage-grouse and adjacent sagebrush habitat. Where appropriate (*e.g., Roads* sections of the Species Report and *Infrastructure* section of this document), we clarified our analysis of potential road impacts to more explicitly differentiate between road types. There is little direct evidence regarding impacts caused by small, unimproved roads such as dirt two tracks. Consequently, we cannot provide more definitive information with regards to these road types.

We maintain that the literature identified above as well as additional referenced material including Bui (2009) and Forman (2000) are the best available information relative to potential impacts caused by roads. We believe these sources are informative because the types of roads investigated are present in the bi-State area. Our GIS analysis (Service 2014, unpublished data) revealed that out of 55 leks sites assessed in the bi-State area, 35 are currently within 5 km (3.1 mi) of paved, secondary roads and therefore could potentially be impacted. Analyses of road impacts to greater sage-grouse leks documented decreasing lek counts and population trends (Johnson *et al.* 2011, p. 449). The actual mechanism for these declines remain elusive (Manier *et al.* 2014, p. 50) but declining habitat condition and use from the impacts described in Blickley *et al.* (2012, pp. 467–469; *i.e.,* noise), Gelbard and Belnap (2003, p. 426; *i.e.,* invasive species), and Connelly *et al.* (2000a, p. 974) have been implicated in declines from other activities, such as energy development. Therefore, we anticipate similar responses from the same impacts introduced by roads. For further information, a detailed analysis of the potential impacts of roads is provided in the Species Report (available at *http://www.regulations.gov,* Docket No. FWS–R8–ES–2013–0072) and summarized under in this document.

(17) Comment: Two commenters question our conclusion that the number of roads in the bi-State area are likely to increase in the future. Alternatively, one commenter stated that roads are likely to increase.

Our Response: As stated in our proposed rule, we consider substantial new development of improved (*i.e.,* paved) roads unlikely in the bi-State area (see section *Infrastructure* in the proposed rule). With regards to the potential development of small, unimproved secondary roads within the bi-State area, we stated in our proposed rule (and reaffirm here; see *Infrastructure,* above) that development of small, unimproved roads is likely, although we do not attempt to quantify the extent of potential new road development.

As stated in our proposed rule, both the Inyo and Humboldt-Toiyabe National Forests have recently completed Travel Management Plans (USFS 2009, entire; USFS 2010, entire). During these planning processes, nearly 2,000 km (1,225 mi) of previously unauthorized routes were adopted into the National Forest System (USFS 2009, p. 3; USFS 2010, p. 5). While some of these routes have been in place for many years, others were reported to be recent developments. We believe this suggests a history of unauthorized road development, apparently due to enforcement challenges, and to some extent is suggestive of future activity. In addition, the BSAP (Bi-State TAC 2012a, pp. 18, 31, 36, 41) identifies the recent or potential future development of unimproved roads as a concern in four of the six PMUs. Further, we know of one recent project proposal to add a paved road segment to the Mammoth-Yosemite Airport in Long Valley (Perloff 2014, pers. comm.) and additional projects to improve/realign Highway 395 near Bridgeport, California (Cornwell 2014, pers. comm.). Thus, we consider this information, collectively, is an indication that additional development of unimproved roads is foreseeable. While we remain challenged to accurately quantify the extent of future unimproved road development, or quantify potential road improvements, we maintain that the potential exists and that it is likely to continue to occur.

Finally, there appears to be substantial and increasing interest among recreational users of unimproved roads in the bi-State area, as well as an increase in road traffic associated with a mine site in the Mount Grant PMU (Bi-State TAC 2012a, p. 36). As a result, we anticipate that recreational and mining vehicle traffic will continue to increase, especially in the Mount Grant and Pine Nut PMUs (see the roads discussion under the *Infrastructure* section of the Species Report). Based on the best available literature regarding potential impacts of road activity on sage-grouse and their habitat (such as declines in lek attendance, and alterations to predator or invasive species occurrence (Gelbard and Belnap 2003, p. 426; Holloran 2005, p. 40; Bui 2009, p. 31; Blickley *et al.* 2012, p. 467)), traffic volume may be more influential on habitat use by sage-grouse than mere road presence (Gillan *et al.* 2013, p. 307), especially as it pertains to unimproved dirt roads. Therefore, we consider roads to be a potential ongoing impact and not merely a historic one, and as a result,

conservation efforts are being implemented currently and in the future (*e.g.,* temporary and permanent road closures) to reduce potential road impacts (Bi-State TAC 2014a, *in litt.*). The BSAP contains a number of provisions to eliminate or reduce impacts assocaited with infrasturcutre and human disturbance (Bi-State TAC 2012a), including roads, that we have found to be sufficiently certain to be implemented and effective in ameliorating this threat (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) section, above).

(18) Comment: Several commenters submit that feral horses pose an impact to sagebrush habitat and are a threat to sage-grouse conservation.

Our Response: We agree with the commenters that feral horses can degrade sagebrush habitat and in turn can have negative impacts on sage-grouse populations in the bi-State area. As stated in our proposed rule, there are seven Wild Horse Territories or Herd Management Areas, as well as one Wild Horse Unit, which overlap sage-grouse habitat in the bi-State area (see *Grazing and Rangeland Management,* above). The most significant impacts are apparent in the Pine Nut, Mount Grant, and White Mountains PMUs, where associated horse numbers are currently above the targeted management levels (Bi-State TAC 2012a, pp. 19, 37, 41). However, we have limited data to infer the degree of impact to sage-grouse populations caused by apparent habitat degradation, and no new information was received to further inform our understanding of this potential impact. Management of herd size by Federal agencies is an ongoing challenge as horses reproduce rapidly and management is expensive and politically sensitive. Therefore, based on the current known impacts from feral horses, we anticipate impacts from wild horse management could continue into the future and as a result, conservation efforts are being implemented currently and in the future (*e.g.,* evaluate and manage wild horse herds throughout the bi-State DPS range) to reduce potential impacts (Bi-State TAC 2014a, *in litt.*).

(19) Comment: Several commenters suggest that impacts caused by hunting are more severe than we conclude in the proposed rule. Alternatively, several other commenters generally agreed with our conclusions on harvest but submit that we should consider the confusion in public perception that is created by not more fully recognizing an intentional and controllable form of mortality.

Our Response: The allowance of recreational sage-grouse hunting in the bi-State area is based on the concepts of compensatory and additive mortality. The compensatory mortality hypothesis contends that populations compensate for harvest mortality by reducing rates of natural mortality (*e.g.,* starvation, predation, or disease); thereby, overall mortality remains unchanged (Anderson and Burnham 1976, pp. 5–10). Additive mortality results in an increase in total mortality with increasing harvest mortality.

Results of studies to determine whether hunting mortality in sage-grouse is compensatory or additive have been contradictory (Crawford 1982, p. 376; Crawford and Lutz 1985, p. 72; Braun 1987, p. 139; Johnson and Braun 1999, p. 83; Connelly *et al.* 2003, p. 337; Sedinger *et al.* 2010, p. 329). Thus, an appropriate harvest level has not been determined for sage-grouse populations, including for the bi-State area. Currently, State wildlife agencies across the range of the greater sage-grouse attempt to keep harvest levels below 5 to 10 percent of the fall population based on recommendations in Connelly *et al.* (2000a, p. 976). This harvest level of the fall populations appears to be the adopted standard among States and, in general, species experts agree this level is compatible with conservation (Reese and Connelly 2011, entire).

In 1997, NDOW closed the hunting season for sage-grouse in the bi-State area (NDOW 2012, *in litt.,* p. 4); thus, sage-grouse in the bi-State area can only be harvested in two select locations (i.e, the North and South Mono Hunt Units, or the Bodie Hills and Long Valley areas in Bodie and South Mono PMUs) in California. Since 1998, CDFW has annually issued between 20 and 35 single-bird hunting permits for each of these areas (Bi-State Local Planning Group 2004, p. 173; CDFW 2012, *in litt.*). The estimated harvest from these permits averages approximately 40 total birds annually: 20 birds for the North Mono and 20 birds for the South Mono Hunt Units (CDFW 2012, *in litt.*).

Comparing the recent (2011 and 2012) estimated harvest levels to the estimated fall population in the California portion of the DPS over the past decade, harvest has been on the order of 2 to 4 percent of the estimated fall population in each of the Bodie and South Mono PMUs (CDFW 2012, *in litt.*). As currently instituted, the permit system employed by CDFW is keeping the estimated harvest rate below the currently accepted harvest rate of 5 to 10 percent of the fall population. We believe this harvest rate is compatible with a compensatory mortality paradigm and, therefore, likely has a negligible impact on the population.

We recognize that the public may be confused by our conclusion that limited hunting (as described above and in the *Overutilization Impacts* section) is not currently considered an impact to the DPS and that this activity has the potential to lead to an individual's perception that we are not fully recognizing an intentional and controllable form of mortality. However, we note that according to section 4(b) of the Act, we are required to make a listing determination based on the best scientific and commercial data available, which as stated above, indicates that the existing limited hunting is not an impact to the DPS at this time.

(20) Comment: One commenter provided information that a 1,537-ha (3,800-ac) conservation easement was recently completed near the West Fork Walker River along the boundary delineating the Desert Creek-Fales and Pine Nut PMUs.

Our Response: We are aware of this conservation easement, and (along with other known conservation easements) this information was taken into account during our evaluation of current conservation efforts and their value at reducing potential impacts posed by urbanization and habitat conversion (see *Conservation Efforts* section of the Species Report and the Ongoing and Future Conservation Efforts section of this document.

(21) Comment: One commenter requested clarification as to why we identified urbanization as a threat in the White Mountains PMU.

Our Response: Approximately 688,474 ha (1,701,258 ac) or 97 percent of the White Mountains PMU is publicly owned. However, there is potential for future urban development on the limited private lands present in this PMU, as demonstrated by the recently expanded housing developments near Chiatovich Creek in Nevada (Bi-State Lek Surveillance Program 2012, p. 38; Bi-State TAC 2012a, p. 41) that are approximately 8 km (5 mi) south of two recently identified leks. The best available data for this area indicate direct loss of sagebrush habitat, as well as the potential that this activity may be influencing connectivity between the northern and southern portions of this PMU (Bi-State TAC 2012a, p. 41). Without implementation of conservation actions, further, additional habitat loss or fragmentation of this corridor area could occur, potentially limiting connectivity between the White Mountains PMU and Adobe Valley in the South Mono PMU and leading to

further isolation of the White Mountains population. See *Urbanization and Habitat Conversion* above for further discussion of the potential impacts of urbanization and resulting sagebrush habitat fragmentation concerns and the conservation actions being implanted to address those impacts.

(22) Comment: One commenter stated that additional discussion is needed to address how urbanization is often driven by generational tax issues influenced by increased regulation and uncertainty of business operation.

Our Response: We recognize that many factors may influence a private land owner's decision to sell or retain his or her property, including the potential listing of federally endangered or threatened species. Further, we also have concern that the subdivision of currently intact parcels of private land may negatively affect sage-grouse conservation in the bi-State area (Bi-State TAC 2012a, pp. 18, 24, 31, 41), thus potentially contributing to additional loss and fragmentation of existing sagebrush habitat and reducing connectivity among populations. However, we believe that quantifying the likelihood of a private parcel being subdivided as a result of our listing action is speculative. We are unaware of specific information nor was any information provided by the commenter regarding how generational taxes or the perception of potential increased regulation as a result of listing the bi-State DPS might affect a landowner's plans for the disposition of his or her property.

(23) Comment: Numerous commenters suggested that predators are a significant threat and that we did not account for this impact accurately. Further, many commenters suggested predator removal programs should be implemented. Alternatively, several commenters suggested that predator control is not sustainable and may have negative and unintended consequences.

Our Response: We recognize that predation of sage-grouse is the most commonly identified cause of direct mortality during all life stages (Schroeder *et al.* 1999, p. 9; Connelly *et al.* 2000b, p. 228; Casazza *et al.* 2009, p. 45; Connelly *et al.* 2011, p. 65). However, we note that sage-grouse have coevolved with a suite of predators (Schroeder *et al.* 1999, pp. 9–10), yet the species has persisted. Thus, this form of mortality is apparently offset by other aspects of the species life-history under ''normal'' conditions. However, when non-endemic predators are introduced into a system (one with which the prey species did not evolve (*e.g.,* domestic cats and dogs)), or when other factors influence the balance between endemic predator and prey interactions, such that a predator gains a competitive advantage, predation may overwhelm a prey species life-history strategy and ultimately influence population growth and persistence (Braun 1998, pp. 145–146; Holloran 2005, p. 58; Coates 2007, p. 155; Bui 2009, p. 2; Coates and Delehanty 2010, p. 243; Howe *et al.* 2014, p. 41). Therefore, we agree that increases in sage-grouse predator abundance and predation rates are a concern by potentially negatively affecting population growth. However, we maintain that predation is a proximal cause of mortality and increases in predator abundance and predation rates are ultimately caused by changes in habitat conditions, which positively influence predator occurrence or efficiency. See sections *Urbanization and Habitat Conversion, Infrastructure,* and *Predation* sections in the associated Species Report for a detailed analysis on the impacts of predation.

As a point of clarification, we agree that targeted, short-term predator removal programs may be warranted in instances where habitat restoration cannot be achieved in a timely manner. In these instances, predation rates and predator abundance may be artificially high and high sage-grouse mortality may be a concern. However, data do not appear to suggest that removal programs are sustainable or that they result in increased sage-grouse numbers (Hagen 2011, pp. 98–99). We intend to explore the potential benefits and negative ramifications caused by predator control through our continued coordination efforts with the Bi-State TAC and LAWG for continued conservation of the bi-State DPS.

(24) Comment: Several commenters questioned our conclusion that there has been a reduction in occupied sage-grouse habitat in the bi-State area.

Our Response: In the proposed rule, we described that range loss occurred due to woodland succession, urbanization and habitat conversion, infrastructure, and more recently to fire (see *Nonnative, Invasive and Native Plants, Urbanization and Habitat Conversion, Infrastructure,* and *Wildfire and Altered Fire Regimes* sections of the Species Report (Service 2015a)). Based solely on woodland succession (see our response to *Comment 3* above), we conclude that the loss of sagebrush habitat in the bi-State area has been on the order of 50 percent. Further, we note that this estimate does not include approximately 52,439 ha (129,582 ac) of habitat altered by fire over the past 20 years nor areas that were known or could be anticipated to have supported sage-grouse historically such as Minden/Gardnerville, Nevada, Smith Valley, Nevada, Adobe Valley, California, and northern Inyo County, California (USFS 1966, p. 4).

We recognize there will remain uncertainty concerning historical occurrence of sage-grouse in the bi-State area; however, commenters did not provide any additional information to demonstrate that the habitat loss did not occur. Therefore, we reaffirm our conclusion, based on the best available scientific and commercial information, that the occupied habitat for the bi-State DPS was reduced as a result of habitat alterations and possibly other mechanisms (such as local extirpations of sage-grouse caused by harvest) that will remain unknown.

(25) Comment: Numerous commenters suggested that the degree of impact we assign to specific threat factors is not accurate. Many of these commenters provided opinions as to appropriate revisions. Further, several commenters identified inconsistencies in our proposed rule associated with our assignment of significance level to specific threats.

Our Response: The threats analysis and associated discussion of the degree of impact that is described in the Species Report (2013 and 2014 versions), our proposed listing rule, and this document is based upon the best available scientific and commercial information. No additional information or assessments were provided by the commenters to support their claim that the analysis and conclusions in our proposed listing rule were inaccurate. However, where applicable in our revised Species Report (Service 2015a) and this document, we have updated these threats analysis discussions based on new information received since the proposed rule published on October 28, 2013 (78 FR 64358). With regard to potential inconsistencies in the threats analysis in the proposed rule, we made corrections to any inconsistencies identified and as applicable in both the revised Species Report (Service 2015a) and this document.

(26) Comment: Numerous commenters stated that OHV recreation is not an impact on sage-grouse or sagebrush habitat, especially in light of specific modern management practices such as sound restrictions, timing restrictions, and weed awareness programs.

Our Response: OHV recreation occurs on an extensive network of roads in the bi-State area. The activity is generally difficult to measure and we have little information to infer the amount of public participation in OHV recreation.

Further, specific work assessing effects of OHV use on sagebrush and sage-grouse have not been conducted. Therefore, in this document and associated Species Report, we do not draw firm conclusions with respect to the impact this recreational activity may have on the species. However, we contend that it is reasonable to extrapolate relevant research on roads and vehicle traffic to understand and anticipate potential impacts from OHV activity. Potential impacts may include noise disturbance, spread of invasive plants that degrades sage-grouse habitat, sage-grouse displacement or avoidance behavior, effects to predator and prey dynamics, collisions with vehicles, and habitat loss, among others (Bui 2009, p. 31; Knick *et al.* 2011, p. 219; Blickley *et al.* 2012, p. 467).

Therefore, we disagree with the commenter's assertion that OHV use has no impact on sage-grouse or sagebrush habitats but recognize the level of impact is more likely influenced by the degree and timing of the activity. Thus, specific locations, due to proximity to roads or extent of use, are likely to be more negatively influenced as compared to sites that do not share these characteristics. In the bi-State area, impacts appear most apparent in the Pine Nut PMU, especially on the west side of the Pine Nut Range, where bird occurrence is now rare (Bi-State TAC 2012a, pp. 18–19). Whether this localized reduction in sage-grouse was the direct result of any single form of human activity is not known, but it is likely it was caused by a combination of factors related to human development. We note that on the edges of the residential developments in this area, an extensive network of user-created roads has been established and this has extended the impact beyond the physical footprint of residential development.

We appreciate and agree that minimizing noise associated with vehicles, establishing timing restrictions on OHV activity, and educating users about weeds and the need to minimize their spread is beneficial for sage-grouse conservation. The commenters did not provide specific evidence as to how these management practices ameliorate potential impacts to the DPS, nor the degree to which these recommendations are embraced by the broader OHV community. Thus, we could not evaluate these efforts more thoroughly. Therefore, while these management practices have helped address some of the effects of OHV activity on the bi-State DPS and its habitat, they have not eliminated the impacts to the DPS and its habitat.

(27) Comment: One commenter suggested that the potential threat to sage-grouse posed by fencing can be mitigated. Alternatively, another commenter stated that fencing is a major threat and expressed concern that there are no programs in place to require fencing to be removed.

Our Response: We agree that certain practices, such as making fences more visible to sage-grouse through the use of visual markers or employing the use of alternative fence designs (*i.e.,* let-down fencing), can reduce certain impacts to the bi-State DPS caused by fencing, specifically collision. However, we do not anticipate that these efforts will completely ameliorate the threat of collision. For example, Stevens *et al.* (2012, p. 301) found that marking fences reduced the fence collision rate during the sage-grouse breeding season by 83 percent. Nevertheless, collisions still occurred at marked fences, especially those in close proximity to spring breeding sites, suggesting marking alone did not completely resolve the concern. Furthermore, while direct mortality through collision may be minimized by these approaches, indirect impacts caused by predation and other forms of habitat degradation may remain (see the Fencing discussion under the *Infrastructure* section of the Species Report (Service 2015a, pp. 60–62)). Therefore, a combination of approaches to managing fences and their impacts needs to be applied, which may include removal. These efforts are currently ongoing in the bi-State area (Bi-State TAC 2012a, p. 5) as part of the BSAP.

With regards to the comment that fencing may be considered a major threat, we have described the impacts that may occur from fencing based on the best scientific and commercial information available. We found that fencing impacts are widespread but generally minor. In addition, management actions are being undertaken to further ameliorate this threat. For example, approximately 12 km (8 mi) of fencing has been removed or modified in the bi-State area affecting nearly 36 ha (90 ac) of habitat, and approximately 29 km (18 mi) of fencing has been marked with visual flight diverters. Furthermore, the BLM Resource Management Plan (RMP) and USFS LRMP draft amendments prepared by the Humboldt-Toiyabe National Forest, and the Carson City District and Tonopah Field Office of the BLM, specifically identify restrictions on new fence installation and removal or marking of fences already in place within 3.2 km (2 mi) of an active lek (USDI and USDA 2015, entire). Although these draft plans contain the mentioned provisions for fencing, we do not rely on them for our determination.

We note that there is no requirement for Federal or non-Federal landowners to develop a program that would require fencing to be removed from the bi-State area. We also believe that the removal of fencing throughout the bi-State area is not a reasonable consideration for land managers. However, consideration of alternative approaches to traditional fencing would help reduce impacts of fencing to sage-grouse (for example, use of let-down fence designs), and we will continue to work with partners to encourage implementation of reduced or alternative approaches to fencing in areas that are most important to the bi-State DPS. Conservation efforts that either underway currently or planned forin the future can reduce fencing impacts in priority areas (*e.g.,* BLM's removal of racetrack fencing in Bodie PMU, marking or modifying fencing in Pine Nut and South Mono PMUs) (Bi-State TAC 2014a, *in litt.*).

(28) Comment: One commenter disagreed with our characterization of pinyon-juniper woodlands as a ''native invasive species.'' Two additional commenters suggested woodlands and woodland expansion is natural and should be left alone. Specifically, commenters speculated that forest occurrence is a reestablishment of sites that were harvested during historic mining in the later part of the 1800's.

Our Response: We agree that the term ''native invasive species'' is inappropriately applied to characterize the current expansion of native tree species into sagebrush habitats. Executive Order 13112 defined an invasive species as an exotic or native species that is nonnative to the specific ecosystem under consideration and whose introduction causes or is likely to cause economic environmental harm or harm to human health (64 FR 6183, February 8, 1999). This definition includes species native to other parts of North America; however, Miller *et al.* (2011, p. 157) defined ''increasers'' as species that occur within the region of interest. Therefore, we have modified our language where appropriate in this document and our revised Species Report (Service 2015a, entire).

Across the bi-State area, approximately 40 percent of the historically available sagebrush habitat has been usurped by woodland succession over the past 150 years (USGS 2012, unpublished data). As described in the *Nonnative Invasive and Native Increasing Plants* section of the Species Report, the cause of this increase is likely multifaceted but most certainly includes recovery from past

disturbances such as mining. However, the support for this single mechanism is not apparent. For example, there are locations within the bi-State area where there are stumps from harvested trees that are attributable to the mining era; however most locations do not contain evidence of past tree cutting. Furthermore, genetic evidence suggests that sage-grouse populations contained within the bi-State area were historically more connected and not until relatively recently have these connections begun to erode (Oyler-McCance *et al.* 2014, pp. 10–11). Thus, this suggests that barriers to movement, such as trees, were less restrictive historically as compared to today.

Ultimately, the cause of woodland encroachment becomes less relevant in light of its implications as the response to tree presence by sage-grouse is uniformly negative (Commons *et al.* 1999, p. 238; Doherty *et al.* 2008, p. 187; Freese 2009, pp. 84–85, 89–90; Casazza *et al.* 2011, p. 159; Baruch-Mordo *et al.* 2013, p. 237). Therefore, management of pinyon-juniper encroachment in specific areas that would most benefit the bi-State DPS (*e.g.,* lek sites, migration corridors, brood-rearing habitat), and is consistent with our understanding of a specific site's vegetation potential, is an important consideration by land managers (as described in the BSAP) to reduce this impact on the bi-State DPS and its habitat.

(29) Comment: One commenter disagreed with our conclusion that cheatgrass is a significant threat to the bi-State DPS, which the commenter believes was a departure from the BSAP (Bi-State TAC 2012a).

Our Response: We identified cheatgrass as an impact to the bi-State DPS and its habitat because it can replace vegetation essential to sage-grouse and negatively impact sagebrush ecosystems by altering plant community structure and composition, productivity, nutrient cycling, and hydrology (Vitousek 1990, p. 7; Miller *et al.* 2011, pp. 160–164). We maintain that our assessment and that of the BSAP (Bi-State TAC 2012a) are largely congruent. The BSAP recognizes cheatgrass as a threat in each of the six PMUs, considering it a low-severity threat in four PMUs, a moderate threat in one PMU, and a high-level threat in one PMU (Bi-State TAC 2012a, pp. 19, 26, 32, 37, 41, 49). We relied significantly on the assessment in the BSAP to inform our analysis and discussion in the Species Report (Service 2013a, 2015a), the proposed listing rule, and this document. However, we note that climate change and the interaction between this change agent and other stressors (such as cheatgrass) were not evaluated during the BSAP assessment. Thus, our evaluation in the Species Report (Service 2013a, 2015a), the proposed listing rule, and in this document includes an assessment of the potential influence climate change may have on cheatgrass occurrence.

Available climate data suggest that future cheatgrass conditions will be most influenced by precipitation and winter temperatures (Bradley 2009, p. 200). Predictions on the timing, type, and amount of precipitation contain the greatest uncertainty. In the bi-State area, model scenarios that result in the greatest expansion of cheatgrass suggest much of the area remains suitable to cheatgrass presence with some additional high-elevation sites in the Bodie Hills, White Mountains, and Long Valley becoming more suitable than they are today (Bradley 2009, p. 204). On the opposite end of the spectrum, model scenarios that result in the greatest contraction in cheatgrass range suggest low-elevation sites such as Desert Creek-Fales and Mount Grant PMUs become less suitable for this invasive species, but high-elevation sites (*i.e.,* Bodie and White Mountains PMUs) where habitat conditions are generally marginal today become more suitable in the future. Therefore, similar to the BSAP, we recognize that cheatgrass impacts today vary across the bi-State region. However, in contrast to the BSAP, we consider future impacts will influence this threat and even the best-case scenario suggests challenges will persist, although the location of these challenges may shift. Conservation efforts that are either currenly under way or planned for in the future can reduce potential cheatgrass impacts in priority areas (*e.g.,* multiple BLM and USFS invasive weed management treatments in multiple PMUs) (Bi-State TAC 2014a, *in litt.*).

(30) Comment: One commenter suggested our estimate of woodland expansion in the bi-State area is an overestimate.

Our Response: We stated in our proposed listing rule that across the bi-State area approximately 40 percent of the historically available sagebrush habitat has been usurped by woodland succession over the past 150 years (USGS 2012, unpublished data). No additional information was received by the commenter or others since the proposed rule published that would modify our understanding of this threat. Therefore, based on the best available information, we conclude that woodland expansion is a potential threat in the bi-State area as it has reduced habitat availability and negatively influenced population connectivity. As a result, conservation efforts that are currently underway or planned for in the future can reduce potential woodland succession impacts in priority areas (*e.g.,* BLM, USFS, and NRCS treatments of Phase I and II pinyon-juniper encroachment in all six PMUs) (Bi-State TAC 2014a, *in litt.*).

(31) Comment: One commenter expressed concern that listing the bi-State DPS would impact culturally significant resources, specifically referring to pinyon pine seed collection.

Our Response: We recognize that many Native American Tribes consider pinyon pine seed collection to be a culturally significant resource. Under the Act, we are required to use the best available scientific and commercial information to assess the factors affecting a species in order to make a status determination. The Act requires us to consider all threats and impacts that may be responsible for declines as potential listing factors. The evidence presented in the proposed rule suggests that pinyon-juniper forest encroachment is impacting the bi-State DPS and its habitat to a certain degree (see our response to *Comments 30 and 32* above, and the *Native Increasing Plants* section of the Species Report (Service 2015a, pp. 78–84)). Furthermore, we do not believe that it is reasonable (both ecologically and practicably) that all pinyon-juniper woodlands will be removed from the bi-State area. Ecologists have developed clear recommendations for targeting woodland sites amenable to restoration (based on age class, tree density, soil type, etc.) and in general these locations comprise younger age classes of trees, which do not produce significant seed crops. Although the Act does not allow us the discretion to consider culturally significant resources to inform a listing decision, there does not appear to be a remaining concern given our proposed listing action is being withdrawn.

(32) Comment: Several commenters suggest that fire is the most significant threat to the bi-State DPS and post-fire restoration is difficult. Alternatively, several other commenters suggest that fire is a natural process and does not constitute a complete loss of habitat for the bi-State DPS because sage-grouse will use burned areas.

Our Response: In this document, we address potential habitat changes that may be related to wildland fires and post-fire restoration activities. We agree that fire is a natural process on the landscape within the bi-State area; however, we also note that we found that the ''too-little'' and ''too-much'' fire

scenarios present challenges for the bi-State DPS. In other words, in some locations, the lack of fire has facilitated the expansion of woodlands, especially into montane shrub communities. In other locations, recent fires have been followed by invasive-weed establishment facilitating a reoccurring fire cycle that restricts sagebrush restoration. These scenarios present challenges for the species, as habitat losses outpace habitat gains. Although fires have occurred across the range of the bi-State DPS historically and recently, we acknowledge that suitable habitat remains for sage-grouse use. However, in some cases, remaining suitable habitat is threatened by additional fire because of adjacent invasive annual plants and woodland establishment, which can influence the frequency and intensity of future fire events. Further, impacts to remaining sagebrush habitat may be exacerbated due to other additive threats that are acting in the bi-State area (see *Synergistic ImpactsCumulative Effects* section above). To reduce impacts associated with nonnative, invasive plants and woodland succession, conservation efforts are currently underway and planned for in the future (*e.g.,* multiple BLM and USFS invasive weed management treatments in multiple PMUs), (*e.g.,* BLM, USFS, and NRCS treatments of Phase I and II pinyon-juniper encroachment in all six PMUs) (Bi-State TAC 2014a, *in litt.*).

Additionally, while short-term (and potentially long-term) impacts from fire events to sage-grouse are known to occur, including but not limited to habitat loss and population declines (Beck *et al.* 2012, p. 452; Knick *et al.* 2011, p. 233; Wisdom *et al.* 2011, p. 469), we agree that some information suggests sage-grouse use of burned habitat. Small fires may maintain a suitable habitat mosaic by reducing shrub encroachment and encouraging understory growth. However, without available nearby sagebrush cover, the broad utility of these sites is questionable (Woodward 2006, p. 65). For example, Slater (2003, p. 63) reported that sage-grouse using burned areas were rarely found more than 60 m (200 ft) from the edge of the burn and may preferentially use the burned and unburned edge habitat.

In summary, we recognize that fire is natural and the primary disturbance mechanism in the sagebrush ecosystem. We also recognize that sage-grouse will selectively utilize portions of burned habitat. However, the challenge remains that the sustainability of this system is questionable where habitat loss outpaces habitat gain, especially given the currently limited and fragmented suitable sagebrush habitat in the bi-State area. Therefore, land managers within the range of the bi-State DPS are currently and will continue to implement conservation efforts into the future that are expected to reduce the potential impacts of wildfire as it relates to nonnative, invasive plants and pinyon-juniper encroachment (Bi-State TAC 2014a, *in litt.*).

(33) Comment: One commenter stated that the Benton County landfill will close in 2023. Another commenter stated that there is no guarantee that the landfill will close.

Our Response: We identified the Benton County landfill (located in Long Valley, California) as a potential threat factor to the bi-State DPS because the landfill helps support a significant population of common ravens and *Larus californicus* (California gulls). Common ravens (and possibly California gulls) can potentially affect population growth in sage-grouse by negatively impacting nesting and brood-rearing success (Coates *et al.* 2008, pp. 425–426). While predation has not been studied explicitly, data do demonstrate that nest success in Long Valley (South Mono PMU) is significantly lower as compared to other sage-grouse populations within the bi-State area (Kolada *et al.* 2009a, p. 1,344) and this result may be attributable to an increased number of sage-grouse predators (*i.e.,* ravens and gulls) subsidized by landfill operations (Casazza 2008, pers. comm.).

The Benton County landfill is located on private property owned by the LADWP and leased by Mono County, California. The lease is set to expire in 2023 and both the LADWP and Mono County state the lease will not be renewed (Weiche 2013, pers. comm.; Johnston 2014, *in litt.*).

(34) Comment: One commenter stated that impacts to the bi-State DPS caused by cellular towers can be mitigated by installing anti-perching devices to prevent perching by avian predators.

Our Response: We identified cellular towers as an impact to the bi-State DPS and its habitat because the presence of this form of infrastructure has been shown to be correlated with extirpated range (Wisdom *et al.* 2011, p. 463). Furthermore, distance to cellular towers appeared to be a highly discriminatory variable explaining extirpation. The mechanism by which this feature may lead to sage-grouse extirpation has not been studied. Thus, whether cellular towers function in a cause and effect manner (such as facilitating predation) or simply are aligned with other detrimental factors (such as being an indicator of intense human development) is not known.

The Service acknowledges that installation of anti-perching devices on tall structures (such as cellular towers) may influence predation rates. However, the efficacy of this practice to discourage raptor and corvid perching is debatable (Prather and Messmer 2010, p. 798), and increased predation may not be the mechanism leading to extirpation. Thus, while we generally agree that perch deterrents may ameliorate any increased predation impacts caused by cellular towers on sage-grouse, available data do not support the idea that these devices (currently) can eliminate the threat entirely. We will continue to work with landowners and partners to remove or reduce impacts from existing or potential future cellular towers, especially in proximity to breeding, nesting, and brood-rearing habitats.

(35) Comment: Several commenters suggested that climate change poses a significant impact to the bi-State DPS and its habitat, including one commenter that stated we underestimated the impact that climate change may have on the DPS.

Our Response: In this document under Factors A and E, we address potential impacts associated with climate change. We found that projected climate change and its associated consequences have the potential to affect sage-grouse, and sagebrush habitat in the bi-State area. The impacts of climate change interact with other stressors such as disease, invasive species, prey availability, moisture, vegetation community dynamics, disturbance regimes, and other habitat degradations and loss that are already affecting the species (Global Climate Change Impacts in the United States 2009, p. 81; Miller *et al.* 2011, pp. 174–179; Walker and Naugle 2011, entire; Finch 2012, pp. 60, 80). We concluded that without consideration of conservation actions, the overall impact of climate change to the bi-State DPS at this time is moderate. Neither the commenters nor others provided new information related to climate change that would result in a change in our analysis. However, since the publication of the proposed rule, ongoing implementation of various conservation measures in the BSAP has reduced the significance of the threat of wildfire and invasive plants, which could work synergistically with climate to impact sage grouse. Continued implementation of the BSAP further reduces the impacts of these threats to the bi-State sage-grouse. Therefore, even should climate change increase the threat of wildfire

and invasive plants to some degree, we no longer conclude that climate change acting in concert with these other threats constitutes a significant threat to the bi-State DPS. See the *Climate* section of the Species Report for further discussion (Service 2015a, pp. 91–99).

(36) Comment: One commenter stated that the proposed listing rule violates Executive Order 13563, as the Service fails to identify a recovery goal.

Our Response: We disagree that Executive Order 13563 (76 FR 3821) should be interpreted to require the Service to identify a recovery goal when proposing a listing rule under the ESA. The ESA requires the Service to create recovery plans for all listed species that contain objective, measurable criteria that, when met, would lead to removal of the species from the list. These recovery plans are created following a final determination to list a species as threatened or endangered. In this case, we are withdrawing our proposal to list the bi-state DPS of greater sage-grouse.

(37) Comment: Several commenters stated that the court-mandated timeline for making a final listing determination is too short and does not allow adequate time to determine if conservation efforts, such as those identified in the 2012 BSAP, are sufficient to maintain a viable sage-grouse population in the bi-State area.

Our Response: In 2011, we reached, and the court accepted, a stipulated settlement agreement with several plaintiffs in *Endangered Species Act Section 4 Deadline Litig.,* Misc. Action No. 10–377 (EGS), Multi-District Litigation (MDL) Docket No. 2165 (D. DC) (known as the ''MDL case''). This settlement established a multiyear workplan, whereby we committed to publish proposed rules or not-warranted findings on 251 species designated as candidates as of 2010 no later than September 30, 2016. Our time line associated with the bi-State DPS reflects this workplan.

(38) Comment: Several commenters stated that we should have proposed listing the bi-State DPS of greater sage-grouse as an endangered species as opposed to a threatened species.

Our Response: Section 3 of the Act defines an endangered species as any species that is in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Endangered species are at the brink of extinction today, while threatened species are likely to be at the brink in the foreseeable future if their status does not improve or at least stabilize.

With regard to the bi-State DPS, we have identified potential threats across the range of the bi-State DPS that are synergistically resulting in the present or threatened destruction, modification, or curtailment of its habitat or range, and other natural or manmade threats affecting the DPS's continued existence. We have determined that, in the absence of any conservation efforts, these impacts are such that the DPS is likely to become an endangered species within the foreseeable future (*i.e.,* the definition of a threatened species). Many of these impacts could act cumulatively upon the bi-State DPS and increase the risk of extinction, but not to such a degree that the DPS is in danger of extinction today (see Determination, above). However, after consideration of partially completed projects and future conservation efforts that we have found to be highly certain to be implemented and effective (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) section, above), we believe the bi-State DPS is not in danger of becoming extinct throughout all or a significant portion of its range, and is not likely to become endangered within the foreseeable future (threatened), throughout all or a significant portion of its range. Therefore, the bi-State DPS of greater sage-grouse does not meet the definition of a threatened or endangered species, and we are withdrawing the proposed rule to list the DPS as a threatened species.

(39) Comment: Several commenters suggested that the decline of the bi-State DPS is a natural evolutionary process, and that the presence of environmental stressors is a normal driver of evolution and extinction.

Our Response: Under the Act, we are required to use the best available scientific and commercial information to assess the factors affecting a species in order to make a status determination. The Act requires the Service to consider all threats and impacts that may be responsible for declines as potential listing factors. The evidence presented suggests that the threats to the species are both natural and manmade (see impacts associated with Factor E, including (but not limited to) infrastructure, wildfire, small population size, urbanization, and recreation).

(40) Comment: A few commenters were concerned about the effects of listing on mining and associated activities conducted under the General Mining Law of 1872. One commenter suggested that listing did not take into consideration Federal mining law and recognition of valid existing rights. Another commenter was concerned that there would be no assurances that development of a mining claim will result in the ability to mine it.

Our Response: In the proposed listing rule, we identified mining and associated activities to be a threat to the bi-State DPS; however, we consider it a less significant impact and one that does not occur across the entire bi-State area. On federally managed land outside of designated wilderness, new mining may occur pursuant to the Mining Law of 1872 (30 U.S.C. 21 *et seq.*), which was enacted to promote exploration and development of domestic mineral resources, as well as the settlement of the western United States. It permits U.S. citizens and businesses to prospect hardrock (locatable) minerals and, if a valuable deposit is found, file a claim giving them the right to use the land for mining activities and sell the minerals extracted. Gold and other minerals are frequently mined as locatable minerals, and, as such, mining is subject to the Mining Law of 1872. Authorization of mining under the Mining Law of 1872 is a discretionary agency action pursuant to section 7 of the Act. Therefore, Federal agencies with jurisdiction over land where mining occurs will review mining and other actions that they fund, authorize, or carry out to determine if listed species may be affected in accordance with section 7 of the Act. Because we have withdrawn our proposed rule to list the bi-State DPS and it will not be placed on the list of federally endangered or threatened species, consultations under section 7 of the Act will not be required specific to the bi-State DPS.

(41) Comment: Several commenters stated that conservation efforts to date have not been adequate to address known threats.

Our Response: While considerable effort has been expended over the past several years to address some of the known threats throughout portions or all of the bi-State DPS's estimated occupied range, without implementation of conservation actions, threats to the continued viability of the DPS into the future would remain. The development of the 2012 BSAP (Bi-State TAC 2012a, entire) has highlighted the importance of not only habitat restoration and enhancement but also the role of the States and other partners in reducing many of the known threats to the bi-State DPS. Cooperative, committed efforts by Federal and State agencies, as well as Mono County will result in full implementation of the BSAP, including funding and staffing

commitments over the next 10 years to address the most significant impacts to the DPS and its habitat (BLM 2014c, *in litt.;* CDFW 2014b, *in litt.;* Mono County 2014, *in litt.;* NDOW 2014b, *in litt.;* USDA 2014, *in litt.;* USGS 2014c, *in litt.*). Such plans provide the ongoing, targeted implementation of effective conservation actions that are essential for the conservation of the bi-State DPS and its habitat into the future. We discuss the various conservation efforts that are currently ongoing and planned for in the future within the estimated occupied range of the bi-State DPS of greater sage-grouse in more detail in the Ongoing and Future Conservation Efforts section and the Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE)) sections of this document.

(42) Comment: Numerous commenters questioned our conclusion that sage-grouse populations in the bi-State area have declined. Further, several commenters stated that listing is not warranted because recent data suggest stable to increasing population trends.

Our Response: Our analysis in the proposed rule and presented in this document was based upon the best available scientific and commercial information, and constitutes our final determination, in accordance with section 4(b)(6)(A) of the Act. Based on our analysis of the five factors identified in section 4(a)(1) of the Act, and as explained further in the published finding, we have concluded that population declines have been on par with reductions in sagebrush extent (see our response to *Comment 3* above).

Further, as discussed above (see our response to *Comment 7*), we determined in the *Species Information* section of the proposed rule and *Bi-State DPS Population Trends* section of the Species Report that declining population trends were apparent in the Pine Nut, Desert Creek–Fales, and Mount Grant PMUs. Further, we concluded that the South Mono and Bodie PMUs appeared stable and the population trend in the White Mountains PMU was unknown. In this final analysis and the *Bi-State DPS Population Trends* section of the updated Species Report, we describe new information received related to populations and trends. In summary, these new data estimate that population growth has been stable across the bi-State area between 2003 and 2012 (Coates *et al.* 2014, entire). Specifically, estimated population growth was positive for four of the six populations analyzed (Pine Nut, Desert Creek, Bodie Hills, Long Valley) and negative for the remaining two populations analyzed (Fales, Parker Meadows) over this time period. A population trend assessment was not conducted for the Mount Grant and White Mountains PMUs due to lack of data.

Based on our analysis of the five factors identified in section 4(a)(1) of the Act, and after consideration of partially completed and future conservation efforts that we have found to be certain of implementation and effectiveness (as described in our detailed PECE analysis available at *www.regulations.gov,* Docket No. FWS–R8–ES–2013–0072), we believe the bi-State DPS is not likely to become endangered within the foreseeable future (threatened).

(43) Comment: Numerous commenters suggested that our grazing and rangeland management assessment in the proposed rule is not accurate and requires additional clarification. Specifically, they suggested that: (1) Current livestock grazing is compatible with sage-grouse conservation in the bi-State area, (2) a more clearly defined delineation is needed between past and present grazing impacts, and (3) additional delineation is needed among grazing animals (*i.e.,* cattle, horses, sheep, insects, etc.). Alternatively, several other commenters suggested that grazing and rangeland management are a significant threat to the bi-State DPS's conservation, and this threat is not adequately controlled by existing management programs.

Our Response: In this document we present a summary of the *Grazing and Rangeland Management* section of the Species Report (Service 2015a, pp. 71–77), in which we found that the majority of allotments in the bi-State area are not significantly impacted by livestock grazing. Specifically, Rangeland Health Assessments (RHAs) or their equivalents (*i.e.,* the standard used by Federal agencies to assess habitat condition) have been completed on allotments covering approximately 81 percent of suitable sage-grouse habitat in the bi-State area. Of the allotments with RHAs completed, 81 percent (n=97) are meeting upland vegetation standards, suggesting that approximately 352,249 ha (870,427 ac) out of approximately 563,941 ha (1,393,529 ac) of suitable sage-grouse habitat are known to be in a condition compatible with sagebrush community maintenance. Furthermore, of the allotments with RHA completed, 45 percent are meeting riparian standards and 27 percent are not, with the remainder being unknown or the allotment does not contain riparian habitat. Of those not meeting riparian standards, approximately 15 percent, livestock were a significant or partially significant cause for the allotment failing to meet identified standards while the remainders were attributed to other causes such as past mining activity or road presence. In each instance (upland or riparian) of an allotment not meeting standards due to livestock, remedial actions have been taken by the representative land managing agency (such as changes in intensity, duration, or season of use by livestock). Therefore, we concluded that modern livestock grazing is not a significant impact on sage-grouse habitat.

Furthermore, we note that historical impacts from livestock grazing and impacts caused by feral horses are apparent, but data to assess these impacts are largely limited. None of the commenters provided additional data to assist with this assessment. In total, we believe that historical impacts (past grazing and other land uses) and impacts from feral horse use is apparent in local areas, but we consider current management to be sufficient to address these issues.

(44) Comment: Several commenters suggested that existing regulatory mechanisms are insufficient to affect conservation of the bi-State DPS. Alternatively, several other commenters suggested that existing regulatory mechanisms are adequate.

Our Response: Under the Act, we determine that a species is endangered or threatened based on our analysis of the five listing factors, which includes the inadequacy of existing regulatory mechanisms. For the bi-State DPS, we must evaluate the adequacy of existing regulatory mechanisms from the baseline of the DPS not being federally listed under the Act.

In the proposed listing rule, we concluded that most existing regulatory mechanisms are sufficiently vague as to offer limited certainty as to managerial direction pertaining to sage-grouse conservation, particularly as they relate to addressing the threats that are significantly impacting the bi-State DPS (*i.e.,* nonnative, invasive and certain native plants; wildfire and altered wildfire regime; infrastructure; and rangeland management). However, we note one exception: Our support for the BLM Bishop Field Office's 1993 RMP, which precludes any discretionary action that may adversely affect sage-grouse or sage-grouse habitat (BLM 1993, p. 18). Furthermore, we recognize that some County policies and ordinances while not precluding development have, at times, limited development (Service 2015a, pp. 129–

130); thus, these efforts also need to be recognized.

Since that proposal, we have fully evaluated the BSAP and determined that it ameolirates threats to the species, lessening the need for regulatory mechanisms to manage stressors. The currently proposed BLM and Forest Service Land Use Plan amendments will provide additional specificity and certainty that compliment the BSAP conservation of the bi-State DPS and its habitat. We mention the draft plans in this document to recognize that the BLM and the USFS have taken steps to draft such plans, which will make their language consistent with the actions being undertaken in the BSAP. However, we are not relying on them as part of this review because they are not finalized and would require speculation on the Service's part as to the final outcomes of the plans. Since we have determined that the ongoing and future conservation efforts under the BSAP are removing the threats to the bi-State DPS as discussed above, we find that the currently existing regulatory mecanisms are adequate.

(45) Comment: Two commenters suggested that our conclusion in the proposed rule about the potential impacts to the bi-State DPS caused by transmission lines is incorrect. Additionally, other commenters disagree with our conclusion that the number of transmission lines may increase.

Our Response: In the *Infrastructure* section of this document and the *Power Lines* section of the Species Report (Service 2015a, pp. 56–60), we address potential impacts associated with transmission lines. We found that a variety of power lines (transmission and distribution) currently occur throughout the range of the bi-State DPS. While we recognize that the potential impact caused by power line presence remains debatable in the scientific community (Johnson *et al.* 2011, p. 440; Wisdom *et al.* 2011, p. 463; Messmer *et al.* 2013, entire), the best available information infers that power line presence negatively impacts sage-grouse. Since the proposed rule published, we received additional information on transmission lines that further supports our conclusion (Gibson *et al.* 2013, p. 23; Gillan *et al.* 2013, p. 307). Therefore, we maintain that power line presence negatively affects the DPS.

Also, in our proposed rule, we stated that ''infrastructure features are likely to increase (secondary roads, power lines, fencing, and communication towers).'' While this forecast remains uncertain, it is logical that power line development will occur to some unknown degree in light of potential future energy, mineral, and housing development in the bi-State area. As a result, land managers implement conservation efforts that reduce potential infrastructure-related impacts, including (but not limited to) reducing human disturbance, development, and associated infrastructure (*e.g.,* power lines) in Mono County (*e.g.,* Mono County 2014, *in litt.*), or in some cases removing power lines in critical sage-grouse areas (*e.g.,* the BLM's removal of the Bodie-sub to Fletcher-sub power line in the Bodie PMU) (Bi-State TAC 2014a, *in litt.*)

(46) Comment: Several commenters stated that they believe mining is not a threat to the bi-State DPS. Alternatively, another commenter suggested impacts from mining are significant.

Our Response: In the *Mining* section of this document, we address potential impacts associated with mining activities. We found that sage-grouse could be impacted directly or indirectly from an increase in human presence, land use practices, ground shock, noise, dust, reduced air quality, degradation of water quality and quantity, and changes in vegetation and topography (Moore and Mills 1977, entire; Brown and Clayton 2004, p. 2) (Factor E). However, we recognize that while theoretical effects are clear and logical, information relating sage-grouse response to mineral developments is not extensive. Neither the commenters nor others provided new information related to this threat. While we maintain that it is reasonable to assume a negative impact from mining on sage-grouse, based on the current extent and location of mineral developments in the bi-State area we conclude that by itself, mining is not considered a significant impact at this time. However, mining is a potential concern for the future based on the potential for mining activities to impact important lek complexes and population connectivity, and the likely synergistic effects occurring when this threat is combined with other threats acting on the bi-State DPS currently and in the future. See the *Mining* section of the Species Report for a complete discussion of the potential effects of mining activities on the bi-State DPS and its habitat (Service 2015a, pp. 65–68).

References Cited

A complete list of all references cited in this document is available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2013–0072 or upon request from the Field Supervisor, Reno Fish and Wildlife Office (see **ADDRESSES** section).

Authors

The primary authors of this document are the staff members of the Pacific Southwest Regional Office and Reno Fish and Wildlife Office (see **ADDRESSES**).

Authority

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

Dated: April 13, 2015.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2015–09417 Filed 4–21–15; 4:15 pm]

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Part IV

The President

Proclamation 9258—National Park Week, 2015

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Presidential Documents

Title 3—

The President

Proclamation 9258 of April 20, 2015

National Park Week, 2015

By the President of the United States of America

A Proclamation

America's grandeur and God-given bounty are the birthright of all our people. Our national parks, monuments, lands, and waters belong to us all, and every person should be able to use and enjoy these unparalleled public lands. To celebrate the places that make America great—the treasures that writer and conservationist Wallace Stegner once called ''the geography of hope''—and to kick off National Park Week, this weekend the National Park Service is offering free admission. I encourage all people to explore our natural wonders and rediscover the essential part of the American spirit they reflect.

As our Nation prepares to celebrate the centennial of the National Park Service next year, my Administration is encouraging Americans to ''Find Your Park'' all year long. America's public lands and waters are living classrooms, active laboratories, and vast playgrounds, offering space to get outside and be active. These places reflect our heritage and help tell the stories about giants of our history and extraordinary chapters of our past. They teach us about ourselves, rejuvenate our spirit, and keep us connected to what it means to be American. They offer something for everyone, and chances are, there is a National Park closer to you than you think. To learn more, visit *www.FindYourPark.com.*

As President, I am committed to ensuring every child in America—regardless of who they are or where they live—has this opportunity to discover the great outdoor spaces that have inspired women and men for generations. That is why earlier this year I launched the Every Kid in a Park initiative, which will provide all fourth graders and their families with free admission to our National Parks and other Federal lands and waters for a full year. My Administration will also work to make it easier for schools and families to plan trips to visit these places of natural splendor, helping to ensure all our young people have the chance to experience for themselves some of our Nation's greatest assets.

Americans are heirs to an extraordinary legacy of conservation and environmental stewardship that has protected our great outdoors for the use and benefit of all. We are blessed with the most beautiful landscapes and waterscapes in the world, and it is our obligation to make sure the next generation is able to enjoy that same bounty. I am proud to have protected more than 260 million additional acres of public lands and waters—more than any other President—which includes the establishment or expansion of 16 National Monuments through my Executive authority. And my Administration continues to take action to protect our lands and waters from the impacts of climate change, and to support important programs like the Land and Water Conservation Fund that make the outdoors easier to access for all people.

This week, we embrace our cherished lands and waters, and celebrate the ways they enrich our Nation. Let us seize this opportunity to experience all our great outdoors has to offer, and let us recommit to doing our part to preserve these majestic places for all our children and grandchildren.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 18 through April 26, 2015, as National Park Week. I encourage all Americans to visit their National Parks and be reminded of these unique blessings we share as a Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of April, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2015–09641
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