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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 401, 413, and 414

[Docket No.: FAA–2015–1745; Amdt. Nos 413–11 and 414–3]

RIN 2120–AK58

Electronic Applications for Licenses, Permits, and Safety Approvals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date and response to public comments.

SUMMARY: This action confirms the effective date of the direct final rule, request for comments, published on May 27, 2015, and dispositions the one public comment received. The rule amends commercial space transportation regulations to allow an applicant for a license, experimental permit, or safety approval the option of submitting an application electronically.

DATES: The effective date of July 27, 2015, for the direct final rule published on May 27, 2015 (80 FR 30147), is confirmed.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this action, see ''How To Obtain Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Shirley McBride, Office of Commercial Space Transportation, Regulations and Analysis Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7470; email *Shirley.McBride@faa.gov.*

For legal questions concerning this action, contact Alex Zektser, Office of Chief Counsel, International Law, Legislation, and Regulations Division, AGC–250, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3073; email *Alex.Zektser@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Before publication of the direct final rule on May 27, 2015 (*Electronic Applications for Licenses, Permits, and Safety Approvals,* 80 FR 30147), applications for a license, an experimental permit, or a safety approval made under 14 CFR part 413 or 414 had to be submitted to the FAA in paper form. The FAA determined that this paper-based submission process was unduly burdensome because an electronically-submitted application would provide the FAA with the same information as a paper application. In addition, the Government Paperwork Elimination Act (GPEA) requires that, when practicable, a federal agency must provide the public with an option to transact with the agency electronically.[1] Accordingly, the FAA published a direct final rule, request for comments, amending the application process under 14 CFR part 413 for a license or experimental permit, and under part 414 for a safety approval to allow applicants to submit their applications electronically.

The comment period on the direct final rule closed on June 26, 2015. Only one commenter submitted a comment document.

Discussion of Comments

The FAA only received one comment on June 3, 2015, from an individual commenter supporting the final rule. The commenter also recommended that in addition to this rulemaking, the FAA also institute a practice of providing an electronic response acknowledging receipt of the application.

Conclusion

Because there were no adverse comments submitted on this rulemaking and the only comment submitted on the rule supported the agency action, the FAA has determined that no further rulemaking action is necessary. The direct final rule is effective on July 27, 2015. The FAA will consider the additional suggestion submitted by the individual commenter separately from this rulemaking action, as the suggestion was that the FAA institute a practice in addition to the one that is the subject of this rulemaking.

Issued under authority provided by 49 U.S.C. 160(f), and 51 U.S.C. 50901–50923 in Washington, DC, on July 23, 2015.

Lirio Liu,

Director, Office of Rulemaking.

[FR Doc. 2015–18502 Filed 7–28–15; 8:45 am]

BILLING CODE 4910–13–P

[1] Office of Management and Budget, *Implementation of the Government Paperwork Elimination Act, http://www.whitehouse.gov/omb/fedreg_gpea2* (explaining implementation of Pub. Law 105–277, sec. 1704).

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 5

[Docket No. MSHA–2014–0016]

RIN 1219–AB82

Fees for Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is revising the Agency's regulation for administering fees for testing, evaluation, and approval of products manufactured for use in mines. This final rule revises the fees charged for these services. The final rule also includes a fee for approval services that MSHA provides to applicants or approval holders under the existing rule, but for which the Agency currently does not charge a fee, and for other activities required to support the approval process. This change will allow MSHA to charge fees that reflect the full cost of the approval services provided.

DATES: The final rule is effective on October 1, 2015.

FOR FURTHER INFORMATION CONTACT: Sheila A. McConnell, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *mcconnell.sheila.a@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile). (These are not toll-free numbers).

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Availability of Information

Docket: Access rulemaking documents electronically at *http://www.msha.gov/regsinfo.htm* or *http://www.regulations.gov.* [Docket Number MSHA–2014–0016]. Obtain a copy of a rulemaking document from the Office of Standards, Regulations, and Variances, MSHA, by request to 202–693–9440 (voice) or 202–693–9441 (facsimile). (These are not toll-free numbers.)

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I. Executive Summary

A. Purpose of Regulatory Action

As part of the U.S. Department of Labor, under the Federal Mine Safety and Health Act of 1977 (Mine Act), as amended, MSHA's mission is to prevent death, disease, and injury from mining and promote safe and healthy workplaces for the Nation's miners. Since 1911, MSHA and its predecessor agencies have evaluated and tested products for use in mines to prevent fires, explosions, and accidents.

B. Summary of Major Provisions

Under the final rule, MSHA revises the hourly rate for the fees charged to applicants and approval holders to include all costs associated with the approval program. MSHA calculates the hourly rate by dividing the total approval program costs (direct and indirect) during a prior fiscal year, including internal quality control activities and post-approval product audits, by the number of total direct hours spent on approval program activities for the same period. These changes in how MSHA calculates fees increase the hourly rate to $121.

C. Costs and Benefits

This rule is not economically significant. The final rule will produce zero costs and zero benefits because the fees MSHA collects are transfer payments. MSHA discusses transfer payments in section IV of this preamble.

II. Background

Under various authorities,[1] MSHA historically has collected fees for its services in evaluating, testing, and approving products. Originally, the U.S. Bureau of Mines, an MSHA predecessor agency, billed applicants for approval services using published individual fee schedules, *e.g.,* each approval part in Title 30, Chapter I, included a list of flat fees for different tests, evaluations, and other services performed for approval activities (30 FR 3752–3757). On May 8, 1987 (52 FR 17506), MSHA eliminated the individual fee schedules and established part 5, which created an hourly rate for administration and calculation of fees for services in Title 30, Chapter I, Subchapter B, *Testing, Evaluation, and Approval of Mining Products.* On August 9, 2005 (70 FR 46336), MSHA revised part 5 and its fee procedures. That rule eliminated the application fee, allowed pre-authorization of expenditures for processing applications, and allowed outside organizations to set fees when conducting part 15 testing on MSHA's behalf.

Section 205 of the Chief Financial Officers Act of 1990 (CFO Act) and Office of Management and Budget (OMB) Circular No. A–25 Revised, User Charges (7/8/1993), require agencies to review the user charges in their programs to ensure that the charges reflect the full costs of the services provided. Traditionally, MSHA reviews its user charges annually; however, MSHA last revised its hourly rate under part 5 to $97.00 on December 29, 2010 (75 FR 82074).

Under 30 U.S.C. 966, MSHA may retain up to $2,499,000 of fees collected for the approval and certification of equipment, materials, and explosives for use in mines.

MSHA proposed revisions to its existing regulations on fees for testing, evaluation and approval of mining products on October 9, 2014 (79 FR 61035). This final rule addresses the comments received in response to the proposed rule.

[1] These authorities are: Public Law 61–525, Ch. 285, 36 Stat. 1419 (1911); Public Law 62–386, Ch. 72, Sec. 5, 37 Stat. 682 (1913); Public Law 72–212, Ch. 314, Sec. 311, 47 Stat. 410 (1932); 30 U.S.C. 961(c)(2); and Title V of the Independent Offices Appropriations Act of 1952, Public Law 82–137, 65 Stat. 290 (1951), as amended, 31 U.S.C. 9701.

III. Section-by-Section Analysis

In this final rule, the term ''approval'' includes approvals, certifications, acceptances, and evaluations MSHA issues under Title 30, Chapter I, Subchapter B, *Testing, Evaluation, and Approval of Mining Products.*

A. § 5.10 Purpose and Scope

Final § 5.10, like the proposal, provides the purpose and scope of the rule. It also establishes a system under which MSHA charges a fee for approval program services for products manufactured for use in mines. Like the proposal, the final rule identifies the activities in the approval program.

The approval program represents all the activities necessary for MSHA to assure that products approved for use in mines are designed, manufactured, and maintained in accordance with approval requirements. The approval program includes: (1) Application processing; (2) testing and evaluation; (3) approval decisions; (4) post-approval activities; and (5) the termination of approvals.

1. Application processing begins when an applicant files a new application for approval. MSHA administratively reviews each new application and, on determining that the application is complete, prepares a maximum fee estimate and sends it to the applicant. The applicant must agree to pay the estimated fee before MSHA will begin testing, as needed, and evaluating the product.

2. Testing and evaluation includes technical evaluation, analysis, test set up, testing, test tear down, any consultation on the application, and internal quality control activities. MSHA uses internal quality control programs to monitor and improve its testing and evaluation processes (*e.g.,* internal administrative and technical reviews; internal audits; and calibration, repair, and maintenance of test equipment).

3. Following testing and evaluating a product, MSHA makes an approval decision and notifies the applicant by letter of the Agency's findings and decision. If the product is approved, the letter identifies the approved specifications for the design, construction, maintenance, and conditions of use for the product. If the product is not approved or if the application is cancelled, the letter identifies the reasons for the decision. All approval documentation is kept on file at MSHA.

4. MSHA also conducts the following post-approval activities:

• Changing approvals (*e.g.,* extensions [2] of approvals, field modifications, and modification through the Revised Acceptance Modification Program (RAMP)).
• Conducting post-approval product audits and field audits.
• Responding to complaints.
• Investigating product failures.
• Monitoring regional or nationwide product recall or retrofit programs.
• Conducting administrative actions, such as transfer of approval numbers.

5. Termination of an approval may occur when an approval holder voluntarily requests termination of an approval, when MSHA revokes an approval because of compliance or safety issues, or when MSHA issues regulations that make an approval obsolete.

MSHA did not receive any comments on § 5.10 and it is finalized as proposed.

B. § 5.30 Fee Calculation

Final § 5.30, like the proposal, addresses the hourly rate calculation, the activities for which MSHA charges a fee, activities that are not subject to a fee, the fee estimate, and any changes to the fee estimate. Section 5.30 is finalized as proposed.

Under final § 5.30(a), like the proposal, MSHA will continue to charge a fee based on an hourly rate for approval program activities and other associated costs, such as travel expenses and part 15 fees. Part 15 fees for services provided to MSHA by other organizations will be set by those organizations.

Final paragraph § 5.30(b), like the proposal, is derived from existing § 5.30(a) and identifies the costs MSHA incurs in administering the approval program. Under the final rule, like the proposal, the hourly rate is calculated to reflect the costs of the overall approval program. Under the existing rule, the hourly rate includes only the application processing; testing and evaluation; and approval decision costs.

Also under the existing rule, some post-approval activities, such as changes to approvals, are included in the approval program costs used in calculating the hourly rate. Under the existing rule, however, MSHA had excluded the costs of monitoring to assure approved products continue to be manufactured and maintained as approved because MSHA considered these activities to be enforcement activities rather than approval program activities (52 FR 17507–17508). As stated previously, OMB Circular No. A–25 requires that agencies recover the full costs of services rendered. To more accurately account for costs, MSHA proposed to include the direct and indirect cost of these post-approval product activities in the hourly rate calculation because these activities are an important part of the approval program. These activities assure MSHA, operators, and miners that products continue to be designed, manufactured, and maintained in accordance with the approval requirements.

Under the final rule, like the proposal, MSHA will continue to determine an hourly rate to cover direct and indirect costs. MSHA bases the hourly rate on all approval program costs the Agency incurred during a prior fiscal year. The hourly rate is the total approval program costs (direct and indirect) divided by the number of direct hours spent on all approval program activities. Final paragraph § 5.30(b) lists the approval program costs that MSHA will include in the hourly rate calculation.

Final paragraph § 5.30(b)(1), like the proposal, defines direct costs as consisting of compensation and benefit costs for all hours worked in support of the approval program and is derived, in part, from existing § 5.10(b)(1) and (b)(2). These costs include approval program activities, such as testing and evaluation, including internal quality control; and post-approval activities, including post-approval product audits.

Final paragraph § 5.30(b)(2), like the proposal, defines indirect costs and is derived, in part, from existing § 5.10(b)(3) and (b)(4). Indirect costs include the approval program's proportionate share of the hours worked to manage and operate the Approval and Certification Center (A&CC). These costs are associated with activities required for information technology (IT) and A&CC management and administration. Indirect costs also include the approval program's proportionate share of depreciation for buildings, their improvements, and equipment; a proportionate share of utilities, equipment rental, facility and equipment maintenance, security, supplies and materials, and other costs necessary for the operation and maintenance of the A&CC; and a proportionate share of Department of Labor-provided services that would include financial systems, and audit and IT support.

A commenter asked what MSHA considers to be indirect costs. Section 5.30(b)(2) in this final rule and in the preamble to the proposed rule (79 FR 61037) defines indirect costs. MSHA's definition of indirect costs is consistent with OMB Circular No. A–25. MSHA determined that the definition in the final rule adequately addresses the commenter's question.

Final § 5.30(c), like the proposal, is derived from existing § 5.10(b) and includes activities for which MSHA charges a fee. These activities continue to include application processing (*e.g.,* administrative and technical review of applications, computer tracking, and status reporting); testing and evaluation (*e.g.,* analysis of drawings, technical evaluation, testing, test set up and test tear down, and internal quality control activities); approval decisions (*e.g.,* consultation on applications, records control and security, document preparation); and post-approval activities, such as changes to approvals. Like the proposal, final § 5.30(c) describes internal quality control activities and post-approval product audits as part of the approval program, as MSHA is required to recover costs associated with the approval program (OMB Circular No. A–25).

A commenter objected to MSHA charging for internal quality control. Under the final rule, like the proposal, MSHA will charge applicants and approval holders a fee for internal quality control activities. These activities are an integral part of the approval program. MSHA uses internal quality control activities to monitor and improve the Agency's testing and evaluation processes and for quality control. These internal quality control activities assure applicants and approval holders that consistent, accurate, and up-to-date scientific methods are used when MSHA is evaluating and testing products. For example, MSHA has standard procedures to repair, maintain, and calibrate laboratory equipment in accordance with the manufacturers' specifications. Each applicant and approval holder receives a benefit from these internal quality control activities.

MSHA will distribute the hours worked and costs of internal quality control activities, based on the hours worked on each application. Hours worked on specific internal quality control activities, however, are not charged to a particular application. Instead, MSHA will charge each applicant a prorated share. MSHA will calculate the prior year's internal quality control hours as a percentage of total hours, multiply that percentage by the number of direct hours worked on a particular application, and add the result to the number of direct hours worked on that application.

[2] An extension of the approval is a document MSHA issues that states that a change to the product previously approved by MSHA is approved and authorizes the continued use of the approval marking with the appropriate extension number for the change added.

A commenter objected to MSHA charging a fee for post-approval product audits stating that MSHA could charge for exaggerated paperwork evaluations and could audit the same company as often as they want. Under existing 30 CFR 7.8(b), 14.10(b), and 15.10(b), MSHA audits a specific product no more than once a year, except for cause, and the approval-holder may attend any testing MSHA conducts on their product. Post-approval product audits are part of the approval program (post-approval activities) because they are necessary to assure that products have been manufactured as approved.

Under the final rule, like the proposal, MSHA will charge approval holders for the Agency's post-approval product audits, but will not charge for investigations or audits based on complaints about the products.

Internal quality control activities and post-approval product audits assure MSHA, operators, and miners that products are and continue to be designed, manufactured, and maintained in accordance with the approval requirements to ensure the health and safety of miners. For these reasons, MSHA will charge a fee for these activities.

Existing § 5.10(c)(1), (c)(2), (c)(3), and (c)(4) are revised and redesignated, in part, as final § 5.30(d). Final § 5.30(d), like the proposal, addresses the activities for which MSHA will not charge a fee. These include technical assistance not related to approval applications; technical programs, including development of new technology programs; participation in research conducted by other government agencies or private organizations; and regulatory review activities, including participation in the development of health and safety standards, regulations, and legislation.

MSHA did not receive any comments on proposed § 5.30(d) and it is finalized as proposed.

Existing paragraphs § 5.30(b), (c), and (d) are redesignated as final paragraphs § 5.30(e), (f), and (g) under § 5.30 Fee Calculation.

Final paragraph § 5.30(e), like the proposal, is revised by renumbering existing paragraphs § 5.30(b)(1) and (b)(2) as § 5.30(e)(1) and (e)(2), respectively. Final paragraphs § 5.30(f) and (g) remain unchanged.

MSHA did not receive any comments on § 5.30(e), (f), and (g) and these sections are finalized as proposed.

C. § 5.40 Fee Administration

Final § 5.40, like the proposal, is revised by adding ''approval holders'' to entities to be billed and replacing ''processing of the application is completed'' with ''approval program activities are completed.'' MSHA will continue to charge applicants a fee for approvals and some post-approval activities (*e.g.,* modification to approvals), and will charge approval holders a fee for post-approval product audits when the approval program activities are completed.

MSHA received no comments on proposed § 5.40 and it is finalized as proposed.

D. § 5.50 Fee Revisions

Final § 5.50, like the proposal, replaces ''fee schedule'' with ''hourly rate'' because MSHA no longer has a fee schedule. A commenter questioned why MSHA has a scheduling fee. As discussed in this final rule and in the preamble to the proposed rule, MSHA eliminated the individual fee schedules in 1987 and created a single hourly rate for calculation of fees.

Like the proposal, MSHA is revising the hourly rate from $97 under the existing rule to $121 using fiscal year (FY) 2012 data. A commenter objected to MSHA raising the hourly rate, citing challenging times being faced by the coal industry. This commenter was particularly concerned about the impact of the increase in fees on a small manufacturing company in the coal service industry. In response to this comment, MSHA states below, in Section V. Feasibility, that the increase in the hourly rate is below one percent of the estimated annual revenues of the impacted industries. The final rule, like the proposal, removes the term ''fee schedule'' from § 5.50 and it is finalized as proposed.

E. Other Comments

MSHA received general comments that objected to the overall rulemaking and to MSHA collecting more money than the Agency has the authority to retain. Under OMB Circular No. A–25, MSHA is required to review the user fees in its programs to ensure that the charges reflect the full costs of the services provided. This action transfers the cost of MSHA approval program services from the taxpayer to the applicants or approval holders who benefit from these services. Fees collected in excess of those the Agency is authorized to retain are sent back to the U.S. Treasury.

IV. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Executive Orders (E.O.) 12866 and 13563 generally direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. To comply with these Executive Orders, MSHA has included the following impact analysis.

Section 3(f) of the E.O. 12866 defines a significant regulatory action as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of $100 million or more, or adversely and materially affects a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that this is a significant regulatory action.

The final rule would not have an annual effect of $100 million or more on the economy and, under E.O. 12866, is not considered economically significant. MSHA has not prepared a separate regulatory economic analysis for this rulemaking. Rather, the analysis is presented below.

A. Overview

MSHA will continue to charge a fee for approval services based on an hourly rate. As under the existing rule, MSHA's hourly rate will include direct costs and indirect costs. However, under the final rule, MSHA will calculate the hourly rate by dividing all approval program costs incurred by the Agency during a prior fiscal year by the number of direct hours spent on approval program activities for the same period.

The final rule will increase the hourly rate from $97 to $121, an increase of $24.

MSHA will also begin to charge a fee for internal quality control activities and post-approval product audits. In FY 2012, MSHA collected approximately $1.2 million in fees. Under this final rule, MSHA estimates that the Agency would have collected a total of $2.7 million in fees in FY 2012, an increase of $1.5 million.

The charges under the final rule are fees and are considered transfer payments, not costs, under OMB Circular No. A–4, Regulatory Analysis (09/17/2003). Transfer payments are payments from one group to another that do not affect total resources available to society. Under the final rule, the applicant or the approval holder pays for services for which they receive a benefit. These services are currently paid for by the taxpayer.

Because the fees MSHA collects are a transfer, there are zero costs and zero benefits regardless of the discount rate (OMB Circular No. A–4, Regulatory Analysis (09/17/2003) Section (G) Accounting Statement).

B. Benefits

The rule will not produce any quantifiable benefits because the only impact is the transfer payment.

C. Projected Impacts

MSHA analyzed A&CC invoice data from FY 2012. Using the U.S. Economic Census North American Industry Classification System (NAICS) data, MSHA estimated the impact of the final rule on mining and non-mining industries. NAICS is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy (*http://www.census.gov/eos/www/naics/*).

From the A&CC post-approval product audit data and FY 2012 invoices, MSHA identified 30 industries that received A&CC approval program services. MSHA grouped this data into three general industry categories: Coal Mining, Other Mining, and Non-Mining.

MSHA estimated the fees that will be collected under this final rule by summing the impact of the hourly rate increase and the increase from charging for internal quality control activities and post-approval product audits. Under this final rule, fees will increase by approximately $1.5 million annually ($0.3 million from the hourly rate increase + $1.1 million for internal quality control activities + $0.1 million for post-approval product audit activities). Of the $1.5 million, the increase in fees for the coal and other mining industries will total approximately $0.9 million annually. The remaining $0.6 million will be distributed among the non-mining industries that seek product approval from MSHA.

MSHA estimated the fee increase from the final hourly rate by multiplying the number of chargeable hours for FY 2012 (12,189 hours) by the final hourly rate of $121. In 2012, MSHA estimated that the final hourly rate would have resulted in approximately $1.5 million in fees collected, an increase of $300,000 (($121 new rate − $97 old rate) × 12,189 hours).

MSHA also estimated the fees from charging for internal quality control activities. MSHA uses internal quality control activities to monitor and improve the Agency's testing and evaluation processes. These activities include internal process reviews; maintaining laboratory equipment; and repairing, maintaining, and calibrating laboratory equipment to assure the equipment produces reliable and accurate results. In FY 2012, MSHA spent 9,015 hours on these activities. MSHA multiplied the 9,015 hours by the proposed $121 hourly rate. This results in an estimated annual impact of $1.1 million.

In addition, MSHA analyzed post-approval product audit data from 2008 to 2012 to estimate the increase in fees from charging for these services. In any given year, post-approval product audits are completed only on a subset of the total products approved by the A&CC. In 2012, MSHA spent approximately 1,000 hours on 125 post-approval product audits. Multiplying the 1,000 hours by the proposed $121 hourly rate results in an estimated annual impact of $121,000. The average estimated impact would have been $970 for each approval holder audited in 2012.

V. Feasibility

MSHA concludes that the final rule would be economically feasible.

MSHA has traditionally used a revenue screening test—whether the annualized compliance costs of a regulation are less than one percent of revenues (dollar change/revenue), or are negative (*i.e.,* provide net cost savings) to establish presumptively that compliance with the regulation is economically feasible. MSHA relies on Agency data to identify revenue for covered mining entities and the 2007 Economic Census data to identify revenue by NAICS industry categories for non-mining entities.

MSHA performed the revenue screening test comparing the annual impact to annual revenues for all three categories and found that the percentage impact rounds to zero percent of revenue in each case. Given the relatively small impact compared to industry total revenues, any further analysis would not be productive.

Because the estimated impacts are below one percent of estimated annual revenue of the impacted industries, MSHA concludes that compliance with the provisions of the final rule is economically feasible.

VI. Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

The Regulatory Flexibility Act of 1980 (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 and other statutes, and E.O. 13272 requires agencies to consider the effects of their final and existing regulations on small entities and to examine alternatives that would minimize the small entity impacts while still meeting the regulations' purposes. MSHA has reviewed the final rule to assess the potential impact on small businesses, small governmental jurisdictions, and small organizations.

The applicants who will be affected by the final rule represent 30 industries. The Small Business Administration's (SBA's) size standard for a small entity (13 CFR 121.201) differs by industry code. For mining, SBA defines a small entity as one with 500 or fewer employees. For non-mining industries that would be impacted by this rule, SBA defines a small entity as one that has revenues of $7.5 million or less. MSHA used the SBA's definitions for a small entity, FY 2012 invoice data, and NAICS industry data to evaluate the small business impact.

For the non-mining industries, the affected industries represent small business revenues of approximately $474 billion. The final rule will increase fees for non-mining industries by approximately $0.5 million. The impact from an increase in fees is essentially zero percent of revenue ($0.5 million/$474 billion).

For the mining industries, MSHA data shows small coal mine revenues of $30 billion. The final rule will increase fees for small coal mines by approximately $0.9 million. MSHA data shows other small mine revenues (not coal mines) of $57 billion. The final rule will increase fees for small mines other than coal by approximately $6,000. The impact from an increase in fees is zero percent for both mining categories.

Approximately $100,000 in increased fees is primarily attributable to foreign entities. MSHA concludes that the impact on the U.S. economy and its businesses would be *de minimis.*

Several commenters stated that large companies could absorb the increase in fees and that the small companies would be adversely affected. MSHA's analysis determined that the impact of the final rule for both small mining and small non-mining entities is essentially

zero percent of annual revenues. Additionally, considering MSHA's traditional definition of small mines (1–19 employees), the impact of the final rule is essentially zero percent. The Agency concludes that one rate is appropriate for all company sizes.

MSHA certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

VII. Paperwork Reduction Act of 1995

This final rule contains no information collections subject to review by OMB under the Paperwork Reduction Act of 1995. The paperwork associated with applications for approval are considered under the specific part in Title 30, Chapter 1, Subchapter B that contains the requirements for the specific product submitted for MSHA approval.

VIII. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995

MSHA has reviewed the final rule under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). MSHA has determined that this final rule does not include any federal mandate that may result in increased expenditures by State, local, or tribal governments; nor would it increase private sector expenditures by more than $100 million (adjusted for inflation) in any one year or significantly or uniquely affect small governments. Accordingly, under the Unfunded Mandates Reform Act, no further Agency action or analysis is required.

B. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note), as amended, requires agencies to assess the impact of agency action on family well-being. MSHA has determined that this final rule would have no effect on family stability or safety, marital commitment, parental rights and authority, or income or poverty of families and children. Accordingly, MSHA certifies that this final rule will not impact family well-being.

C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

Executive Order 12630 requires Federal agencies to ''identify the takings implications of final regulatory actions . . . .'' MSHA has determined that this final rule will not include a regulatory or policy action with takings implications. Accordingly, under E.O. 12630, no further Agency action or analysis is required.

D. Executive Order 12988: Civil Justice Reform

Executive Order 12988 contains requirements for Federal agencies promulgating new regulations or reviewing existing regulations to minimize litigation by eliminating drafting errors and ambiguity, providing a clear legal standard for affected conduct rather than a general standard, promoting simplification, and reducing burden. MSHA has reviewed this final rule and has determined that it would meet the applicable standards provided in E.O. 12988 to minimize litigation and undue burden on the Federal court system.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

MSHA has determined that this final rule will have no adverse impact on children. Accordingly, under E.O. 13045, no further Agency action or analysis is required.

F. Executive Order 13132: Federalism

MSHA has determined that this final rule does not have federalism implications because it would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, under E.O. 13132, no further Agency action or analysis is required.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

MSHA has determined that this final rule does not have tribal implications because it would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Accordingly, under E.O. 13175, no further Agency action or analysis is required.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

MSHA has reviewed this final rule for its impact on the supply, distribution, and use of energy because it applies to the coal mining industry. Insofar as the final rule would result in an increase to the yearly transfer of $0.9 million for the coal mining industry relative to annual revenues of $41 billion in 2012, it is not a ''significant energy action'' because it is not ''likely to have a significant adverse effect on the supply, distribution, or use of energy (including a shortfall in supply, price increases, and increased use of foreign supplies).'' Accordingly, under E.O. 13211, no further Agency action or analysis is required.

List of Subjects in 30 CFR Part 5

Mine safety and health.

Dated: July 23, 2015.

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, as amended, MSHA is revising 30 CFR part 5 to read as follows:

PART 5—FEES FOR TESTING, EVALUATION, AND APPROVAL OF MINING PRODUCTS

Sec.
5.10 Purpose and scope.
5.30 Fee calculation.
5.40 Fee administration.
5.50 Fee revisions.

Authority: 30 U.S.C. 957.

§ 5.10 Purpose and scope.

This part establishes a system under which MSHA charges a fee for services provided. This part includes the management and calculation of fees for the approval program, which includes: Application processing, testing and evaluation, approval decisions, post-approval activities, and termination of approvals.

§ 5.30 Fee calculation.

(a) *Fee calculation.* MSHA charges a fee based on an hourly rate for Approval and Certification Center (A&CC) approval program activities and other associated costs, such as travel expenses and part 15 fees. Part 15 fees for services provided to MSHA by other organizations may be set by those organizations.

(b) *Hourly rate calculation.* The hourly rate consists of direct and indirect costs of the A&CC's approval program divided by the number of direct hours worked on all approval program activities.

(1) Direct costs are compensation and benefit costs for hours worked on approval program activities.

(2) Indirect costs are a proportionate share of the following A&CC costs:

(i) Compensation and benefit hours worked in support of all A&CC activities;

(ii) A&CC building and equipment depreciation costs;

(iii) A&CC utilities, facility and equipment maintenance, and supplies and materials; and

(iv) Information Technology and other services the Department of Labor provides to the A&CC.

(c) *Fees are charged for*—

(1) Application processing (*e.g.*, administrative and technical review of applications, computer tracking, and status reporting);

(2) Testing and evaluation (*e.g.*, analysis of drawings, technical evaluation, testing, test set up and test tear down, and internal quality control activities);

(3) Approval decisions (*e.g.*, consultation on applications, records control and security, document preparation); and

(4) Two post-approval activities: changes to approvals and post-approval product audits.

(d) *Fees are not charged for*—

(1) Technical assistance not related to processing an approval application;

(2) Technical programs, including development of new technology programs;

(3) Participation in research conducted by other government agencies or private organizations; and

(4) Regulatory review activities, including participation in the development of health and safety standards, regulations, and legislation.

(e) *Fee estimate.* Except as provided in paragraphs (e)(1) and (2) of this section, on completion of an initial administrative review of the application, the A&CC will prepare a maximum fee estimate for each application. A&CC will begin the technical evaluation after the applicant authorizes the fee estimate.

(1) The applicant may pre-authorize an expenditure for services, and may further choose to pre-authorize either a maximum dollar amount or an expenditure without a specified maximum amount.

(i) All applications containing a pre-authorization statement will be put in the queue for the technical evaluation on completion of an initial administrative review.

(ii) MSHA will concurrently prepare a maximum fee estimate for applications containing a statement pre-authorizing a maximum dollar amount, and will provide the applicant with this estimate.

(2) Where MSHA's estimated maximum fee exceeds the pre-authorized maximum dollar amount, the applicant has the choice of cancelling the action and paying for all work done up to the time of the cancellation, or authorizing MSHA's estimate.

(3) Under the Revised Acceptance Modification Program (RAMP), MSHA expedites applications for acceptance of minor changes to previously approved, certified, accepted, or evaluated products. The applicant must pre-authorize a fixed dollar amount, set by MSHA, for processing the application.

(f) If unforeseen circumstances are discovered during the evaluation, and MSHA determines that these circumstances would result in the actual costs exceeding either the pre-authorized expenditure or the authorized maximum fee estimate, as appropriate, MSHA will prepare a revised maximum fee estimate for completing the evaluation. The applicant will have the option of either cancelling the action and paying for services rendered or authorizing MSHA's revised estimate, in which case MSHA will continue to test and evaluate the product.

(g) If the actual cost of processing the application is less than MSHA's maximum fee estimate, MSHA will charge the actual cost.

§ 5.40 Fee administration.

Applicants and approval holders will be billed for all fees, including actual travel expenses, if any, when approval program activities are completed. Invoices will contain specific payment instruction, including the address to mail payments and authorized methods of payment.

§ 5.50 Fee revisions.

The hourly rate will remain in effect for at least one year and be subject to revision at least once every three years.

[FR Doc. 2015–18617 Filed 7–28–15; 8:45 am]

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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506–AB27

Imposition of Special Measure Against FBME Bank Ltd., Formerly Known as the Federal Bank of the Middle East Ltd., as a Financial Institution of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: In a Notice of Finding (NOF) published in the **Federal Register** on July 22, 2014, the Director of FinCEN found that reasonable grounds exist for concluding that FBME Bank Ltd. (FBME), formerly known as the Federal Bank of the Middle East, Ltd., is a financial institution of primary money laundering concern pursuant to the United States Code (U.S.C.). On the same date, FinCEN also published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) to propose the imposition of a special measure authorized by the U.S.C. against FBME. FinCEN is issuing this final rule imposing the fifth special measure against FBME.

DATES: This final rule is effective August 28, 2015.

FOR FURTHER INFORMATION CONTACT: The FinCEN Resource Center at (800) 767–2825.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56 (the USA PATRIOT Act). Title III of the USA PATRIOT Act amends the anti-money laundering provisions of the Bank Secrecy Act (BSA), codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR chapter X. The authority of the Secretary of the Treasury (the Secretary) to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN.

Section 311 of the USA PATRIOT Act (Section 311), codified at 31 U.S.C. 5318A, grants the Director of FinCEN the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, financial institution, class of transaction, or type of account is of ''primary money laundering concern,'' to require domestic financial institutions and financial agencies to take certain ''special measures'' to address the primary money laundering concern. This rulemaking imposes the fifth special measure, codified at 31 U.S.C. 5318A(b)(5), against FBME. The fifth special measure allows the Director to prohibit or impose conditions on the opening or maintaining of

correspondent or payable-through accounts for the identified institution by U.S. financial institutions.

B. FBME

FBME was established in 1982 in Cyprus as the Federal Bank of the Middle East, Ltd., a subsidiary of the private Lebanese bank, the Federal Bank of Lebanon. Both FBME and the Federal Bank of Lebanon are owned by Ayoub-Farid M. Saab and Fadi M. Saab. In 1986, FBME changed its country of incorporation to the Cayman Islands, and its banking presence in Cyprus was re-registered as a branch of the Cayman Islands entity. In 2003, FBME left the Cayman Islands and incorporated and established its headquarters in Tanzania. At the same time, FBME's Cypriot operations became a branch of FBME Tanzania Ltd. In 2005, FBME changed its name from the Federal Bank of the Middle East, Ltd. to FBME Bank Ltd.

FBME's headquarters in Tanzania is widely regarded as the largest bank in Tanzania based on its $2 billion asset size, but it has only four Tanzania-based branches. While FBME is presently headquartered in Tanzania, FBME transacts over 90 percent of its global banking business and holds over 90 percent of its assets in its Cyprus branch. FBME has always maintained a significant presence in Cyprus. FBME has stated, however, that it is not in direct competition with local retail banks in Cyprus for several reasons, including that it does not issue checks, it has no retail counters there, and its Cypriot customers are limited mainly to staff, contractors, and professionals providing services to FBME.

II. The 2014 Finding and Subsequent Developments

A. The 2014 Finding

In a NOF published in the **Federal Register** on July 22, 2014, the Director of FinCEN explained her finding that reasonable grounds exist for concluding that FBME is a financial institution of primary money laundering concern pursuant to 31 U.S.C. 5318A.[1] FinCEN's NOF identified two main areas of concern: (1) FBME's facilitation of money laundering, terrorist financing, transnational organized crime, fraud schemes, sanctions evasion, weapons proliferation, corruption by politically-exposed persons, and other financial crime, and (2) FBME's weak anti-money laundering (AML) controls, which allow its customers to perform a significant volume of obscured transactions and activities through the U.S. financial system. In particular, the Director found that FBME is used to facilitate money laundering, terrorist financing, transnational organized crime, fraud, sanctions evasion, and other illicit activity internationally and through the U.S. financial system and has systemic failures in its AML controls that attract high-risk shell companies (*i.e.,* companies formed for the sole purpose of holding property or funds and that do not engage in any legitimate business activity). FBME performs a significant volume of transactions and activities that have little or no transparency and often no apparent legitimate business purpose.

As detailed in the NOF, these activities have included (1) an FBME customer receiving a deposit of hundreds of thousands of dollars from a financier for Lebanese Hezbollah; (2) providing financial services to a financial advisor for a major transnational organized crime figure; (3) FBME's facilitation of the transfers to an FBME account involved in fraud against a U.S. person, with the FBME customer operating the alleged fraud scheme later being indicted in the United States District Court for the Northern District of Ohio; and (4) FBME's facilitation of U.S. sanctions evasion through its extensive customer base of shell companies, including at least one FBME customer that was a front company for a U.S.-sanctioned Syrian entity, the Scientific Studies and Research Center (SSRC) and which used its FBME account to process transactions through the U.S. financial system.

On the same date it published the NOF, FinCEN also published in the **Federal Register** a related NPRM to propose the imposition of the fifth special measure against FBME and to seek comment.[2]

B. FBME Subsequent Developments

On July 21, 2014, the Central Bank of Cyprus (CBC) issued a decree announcing that it would formally place FBME's Cyprus branch ''under resolution,'' allowing the CBC to take numerous unilateral measures to protect FBME's depositors. On July 24, 2014, the Bank of Tanzania took over management of FBME's headquarters in Tanzania because of the potential effects of the CBC's actions on the Tanzanian banking system.

After considering all relevant comments and other information available to the agency, including both public and non-public reporting, FinCEN is issuing this final rule imposing the fifth special measure against FBME, which prohibits the opening or maintaining of correspondent or payable-through accounts for FBME by U.S. financial institutions. This information continues to provide reason to believe that FBME's AML compliance efforts are not adequate to address the risks faced by FBME, and that FBME facilitates illicit financial activity. As described below, audits performed by third parties in 2013 and 2014 that were provided to FinCEN by FBME to demonstrate the effectiveness of its AML compliance program instead identified significant, recurring weaknesses in FBME's compliance program. Several deficiencies were identified by one of the third party auditors as being of ''high or medium significance.'' These deficiencies, which FinCEN has reason to believe continue to exist following the issuance of the NOF, facilitate the illicit financial activities of FBME's customers.

III. FBME's September 22, 2014 Comment and Other Comments

FBME, through outside counsel, submitted comments, dated September 22, 2014, during the comment period. FBME made six additional submissions of information related to comments made during the comment period after the close of the comment period. FBME's September 22, 2014, comments were received during the comment period and accordingly made a part of the public record. The six additional submissions were not made a part of the public record, based in part on FBME's claim that these additional submissions contained sensitive commercial and business information and FBME's corresponding request that the additional submissions be afforded confidential treatment. However, FinCEN reviewed and considered each of these submissions in drafting this final rule.

FBME's September 22, 2014 comment consists of an introduction followed by two major sections. In its introduction, FBME makes six key points. First, FBME states that its AML compliance program policies are in line with applicable requirements, including the requirements of the European Union's Third Money Laundering Directive and the CBC's Fourth Directive. FBME contends that this alignment has been the case since at least 2013, according to third party audits. Second, FBME states that, in response to recommendations made as a result of audits conducted by Ernst & Young (EY) in 2011 and KPMG in 2013, FBME has

[1] *See* 79 FR 42639 (July 22, 2014).

[2] *See* 79 FR 42486 (July 22, 2014) (RIN 1506–AB27).

substantially strengthened its compliance program over the last two years. Third, FBME states that FBME and its officers and directors do not condone the use of FBME for illicit purposes and strive to prevent such misuse. Fourth, FBME contends that some of the statements made in the NOF are incorrect or are based on incomplete information, which FBME also describes in the second section of its comment. Fifth, FBME states that, in some cases, FBME filed Suspicious Transaction Reports (STRs) with the Cypriot Financial Intelligence Unit (MOKAS) on activity described in the NOF and NPRM. Sixth, FBME claims that the NOF and NPRM have had a significant adverse impact on FBME and its customers.

The first section of FBME's September 22, 2014 comment then describes aspects of its AML compliance program, and the second section responds to statements made in the NOF that FBME asserts are inaccurate or based on incomplete information.

In this final rule, FinCEN is focusing its response on the six points in the introduction, which summarize FBME's concerns with the NOF and the NPRM. In responding to the first three points of FBME's introduction, FinCEN also refutes the first section of FBME's comment because the first three points of FBME's introduction and the first section of FBME's comment all refer to FBME's AML compliance program, its policies, audits conducted by third parties, and FBME's management. In responding to the fourth point of FBME's introduction, FinCEN is also addressing the second section of FBME's comment because both the fourth point of the introduction and the second section of the comment refer to the same statements in the NOF that FBME asserts are inaccurate or based on incomplete information.

With regard to FBME's first and second points, the information provided by FBME on the audits conducted by KPMG and EY in 2013 and 2014, respectively, show a pattern of recurring AML deficiencies at the bank. These included failures to maintain adequate customer identification files, along with other customer due diligence weaknesses, failure to ensure that third parties the bank relied on to establish new customer relationships employed appropriate AML controls with regard to such persons, and issues with sanctions-related screening.

According to FBME's comment, EY conducted an audit in 2011 (the 2011 EY Audit). During that audit, according to FBME, EY found that FBME's due diligence procedures with respect to obtaining information from new clients met the requirements of the CBC Directive at the time, but also noted that some customer information requirements of the Directive had not been fully met by FBME in previous iterations of its AML procedures and policies. According to FBME's comment, EY subsequently conducted another audit in 2014 (the 2014 EY Audit), which found that, although FBME had an AML compliance program in place that incorporated the requirements of both the CBC Fourth Directive and the European Union Third Directive, FBME nevertheless had deficiencies in its customer due diligence, automated alerts system, and AML training areas.

According to FBME's September 22, 2014 comment, KPMG also conducted an audit in 2013 (the 2013 KPMG Audit) which found that FBME ''basically fulfills'' its AML regulatory requirements set forth by the CBC and the European Union, but also identified issues of ''high or medium'' significance with FBME's use of Approved Third Parties and FBME's sanction screening procedures. As FBME stated in its September 22, 2014 comment, FBME uses its relationships with Approved Third Parties, some of which are in foreign jurisdictions, to develop potential new customer relationships. According to the KPMG 2013 Audit, FBME had never attempted to ensure the adequacy of its Approved Third Parties' AML measures. In addition, the 2013 KPMG Audit found that FBME only screened the related parties of its Approved Third Parties when the customers were initially onboarded.

The 2013 KPMG Audit also found FBME's customer due diligence deficient. As FBME disclosed in its September 22, 2014 comment, in its 2013 audit, KPMG ''recommended better presentation of ownership information to demonstrate links between group entities for older customers, in line with a new structure that had been introduced for new customers. KPMG also found that certain customer files reviewed did not have sufficient information to gain a complete understanding of the customers' activities or business rationale.'' In its 2013 audit, KPMG further found that FBME's use of hold-mail accounts and post office boxes managed by Approved Third Parties should be reconsidered by FBME in order to ''avoid potential anonymisation.''

The 2014 EY Audit identified numerous deficiencies in FBME's compliance program. Specifically, the 2014 EY Audit found that the following recommendations were necessary for FBME's compliance program: Consistently documenting the efforts taken to verify the sources of funds and business purpose of accounts from prospective customers; more thoroughly investigating relationships among FBME customers, especially when inordinate volumes of internal transfers are identified; modifying FBME's periodic customer due diligence process to align with industry practices (*e.g.,* moving to a rolling 12 or 36-month review cycle, depending on the customer's risk); implementing an automated case management system to record the alerts generated, stage of investigation, and ultimate disposition of the alerts generated by FBME's screening software, as opposed to the current process of manually entering the alerts/outcome on several different spreadsheets; and more thoroughly documenting the AML/sanctions training given for new hires and providing general awareness training to all employees on an annual basis.

The numerous AML compliance program deficiencies described in the 2013 KPMG Audit and the 2014 EY Audit in particular are similar to AML deficiencies FinCEN identified in the NOF. All of these findings follow action against FBME by the CBC for similar issues. As FBME acknowledged in its September 22, 2014 comment, in 2010, the CBC fined FBME 80,000 euros for customer identification, due diligence, and automated monitoring deficiencies. According to the 2013 KPMG Audit, FBME also undertook an extensive Know Your Customer (KYC) remediation project from 2009 through 2011 that was ordered by the CBC and resulted in the closure of thousands of FBME accounts.

Finally, FBME's argument that its AML compliance program is now adequate is weakened by the list of illicit actors identified in the NOF that have continued to make use of FBME as recently as 2014, including narcotics traffickers, terrorist financiers, and organized crime figures.

With regard to FBME's third point, information available to FinCEN makes it reasonable to conclude that FBME's management facilitated, either actively or passively, the illicit activities of its customers, as FinCEN set forth in the NOF.

With regard to FBME's fourth point, in which FBME has argued that portions of the eight statements in the NOF were incorrect or based on incomplete information, FinCEN believes that it is appropriate in two cases to amend the NOF based on these comments. In the first case, FBME stated that it was not

fined by the CBC in 2008, but that the CBC imposed an administrative fine on FBME in 2010. FinCEN agrees that the fine in question was imposed in 2010, not in 2008.

In the second case, FBME argued that the report that FBME may be subject to a fine of up to 240 million euros is from a November 2013 article in the Cypriot press that relied on anonymous sources at the CBC. FinCEN agrees that the source of this statement was an article that appeared in the Cypriot press that referenced statements by a CBC official speaking anonymously. Neither these two cases nor any of FBME's remaining claims of incompleteness and factual inaccuracy presents any new information or in any way cause FinCEN to doubt the accuracy of the information presented in the NOF.

With regard to FBME's fifth point, FinCEN notes that the filing of STRs on suspicious activities or transactions by a financial institution is not, taken in isolation, an adequate indicator of the robustness and comprehensiveness of a compliance program. Although the filing of STRs is a critical component of any financial institution's AML compliance program, if STRs are filed in an incomplete, inaccurate, or untimely manner, their usefulness to authorities responsible for investigating money laundering and other illicit activities is greatly diminished. Moreover, filing STRs does not excuse a financial institution's failure to adequately implement other areas of its AML program, such as, for example, customer due diligence procedures.

With regard to FBME's sixth point, as part of FinCEN's consideration of the statutory factors supporting its selection of the fifth special measure, FinCEN has considered ''the extent to which the action or the timing of the action would have a significant adverse systemic impact on . . . legitimate business activities involving'' FBME. This is discussed in Part IV, section A below.[3]

In addition to its public comment, FBME has submitted a substantial volume of supplemental information regarding FBME's policies and procedures, and reports of the audits conducted by KPMG in 2013 and EY in 2014. FinCEN has carefully considered these materials, which outline some of the steps that FBME has taken to strengthen its compliance program. However, after a thorough review of these materials, FinCEN believes that, except as acknowledged above, the statements made in the NOF remain true and accurate, and that FBME is of ''primary money laundering concern.''

[3] 31 U.S.C. 5318A(a)(4)(B)(iii).

FinCEN continues to have serious concerns regarding FBME's potential to be used wittingly or unwittingly for illicit purposes. As FinCEN explained in its NOF, FBME customers continue to exhibit shell company attributes and many are located in high-risk jurisdictions. FinCEN continues to have concerns with FBME's AML compliance program, in particular with the aforementioned customer due diligence deficiencies, which were identified over a number of years and which enable FBME customers to conduct financial activity in relative obscurity.

FinCEN also considered a comment received from the American Bankers' Association (ABA), dated September 22, 2014; a joint comment received from the Securities Industry and Financial Markets Association (SIFMA) and The Clearing House (TCH), dated September 22, 2014; and a separate comment received from SIFMA, dated September 22, 2014. FinCEN notes that these comments were procedural in nature and did not address the underlying conclusion surrounding the risk of money laundering through FBME.

FinCEN appreciates the thoughtful comments that were submitted and has addressed these comments, as appropriate, in the section-by-section analysis below.

IV. Imposition of Special Measure Against FBME as a Financial Institution of Primary Money Laundering Concern

As described in the NOF and this final rule, the Director of FinCEN found that reasonable grounds exist for concluding that FBME is a financial institution of primary money laundering concern. Based upon that finding, the Director of FinCEN is authorized to impose one or more special measures. Following the required consultations and the consideration of all relevant factors discussed in the NOF, the Secretary, through the Director of FinCEN, proposed the imposition of the fifth special measure in an NPRM published on July 22, 2014. The fifth special measure authorizes a prohibition against the opening or maintaining of correspondent accounts by any domestic financial institution or agency for, or on behalf of, a financial institution found to be a primary money laundering concern.

Consistent with the finding that FBME is a financial institution of primary money laundering concern and in consideration of additional relevant factors, this final rule imposes the fifth special measure with regard to FBME. The prohibition on the maintenance of correspondent accounts imposed by the fifth special measure will help to guard against the money laundering risks that FBME presents to the U.S. financial system as identified in the NOF, NPRM, and this final rule.

A. Discussion of Section 311 Factors

In determining which special measure to implement to address the primary money laundering concern posed by FBME, FinCEN has considered the following factors.

1. Whether Similar Actions Have Been or Will Be Taken by Other Nations or Multilateral Groups Against FBME

Other countries or multilateral groups have not yet taken action similar to those proposed in this rulemaking that would prohibit domestic financial institutions and agencies from opening or maintaining a correspondent account for, or on behalf of, FBME and that would require those domestic financial institutions and agencies to screen their correspondents in a manner that is reasonably designed to guard against indirect use by FBME, including access through the use of nested correspondent accounts held by FBME.

2. Whether the Imposition of the Fifth Special Measure Would Create a Significant Competitive Disadvantage, Including Any Undue Cost or Burden Associated With Compliance, for Financial Institutions Organized or Licensed in the United States

The fifth special measure imposed by this rulemaking prohibits covered financial institutions from opening and maintaining correspondent accounts for, or on behalf of, FBME. As a corollary to this measure, covered financial institutions also are required to take reasonable steps to apply special due diligence, as set forth below, to all of their correspondent accounts to help ensure that no such account is being used indirectly to provide services to FBME. FinCEN does not expect the burden associated with these requirements to be significant. Additionally, there is only a minimal burden involved in transmitting a one-time notice to correspondent account holders concerning the prohibition on indirectly providing services to FBME. U.S. financial institutions generally apply some level of transaction and account screening, often through the use of commercially available software. As explained in more detail in the section-by-section analysis below, financial institutions should, if necessary, be able to easily adapt their current screening procedures to support compliance with this final rule. Thus, the prohibition on the maintenance of correspondent accounts that would be required by this

rulemaking is not expected to impose a significant additional burden upon U.S. financial institutions.

3. The Extent to Which the Action or Timing of the Action Will Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or on Legitimate Business Activities Involving FBME

FBME is not a major participant in the international payment system and is not relied upon by the international banking community for clearance or settlement services. Thus, the imposition of the fifth special measure against FBME will not have a significant adverse systemic impact on the international payment, clearance, and settlement system. In light of the underlying money laundering risks posed by FBME, FinCEN does not believe that the rule will impose an undue burden on legitimate business activities involving FBME. There are other banks in both Cyprus and Tanzania that could alleviate potential impact on legitimate business activities within those jurisdictions.[4] On July 21, 2014, the CBC, under the authority of the Cyprus Resolution Act, issued a decree announcing that it would formally place FBME's Cyprus branch ''under resolution,'' allowing the CBC to take numerous unilateral measures regarding FBME, including selling off Cyprus-based FBME branch locations, to protect FBME's depositors. On July 24, 2014, the Bank of Tanzania took over management of FBME's headquarters in Tanzania because of the potential effects of the CBC's actions on the Tanzanian banking system. The control of FBME branches by state authorities in both jurisdictions also offers a means to support legitimate business activity involving FBME. Finally, FinCEN anticipates that its identification of the money laundering risks associated with FBME will assist banks in appropriately policing legitimate business involving FBME to guard against the use of their institutions for financial crime.

4. The Effect of the Action on United States National Security and Foreign Policy

The exclusion from the U.S. financial system of banks that, like FBME, serve as conduits for money laundering activity and other financial crimes will enhance U.S. national security by making it more difficult for terrorists, sanctions evaders, and money launderers to access the substantial resources of the U.S. financial system. More generally, the imposition of the fifth special measure will complement the U.S. Government's worldwide foreign policy efforts to expose and disrupt international money laundering, and to encourage other nations to do the same. The United States has played a leadership role in combating money laundering and terrorist financing not only through action with regard to specific institutions but also through participation in international operational and standard-setting bodies such as the Egmont Group and the Financial Action Task Force.

V. Section-by-Section Analysis for Imposition of the Fifth Special Measure

A. 1010.658(a)—Definitions

1. FBME

Section 1010.658(a)(1) of the rule defines FBME to include all branches, offices, and subsidiaries of FBME operating in any jurisdiction, including Tanzania and Cyprus. Financial institutions should take commercially reasonable measures to determine whether a customer is a branch, office, or subsidiary of FBME. Currently, FBME's bank branches are located in Tanzania and Cyprus, with a representative office in Moscow, Russian Federation.

SIFMA, TCH, and the ABA noted that it would be useful for FinCEN to provide a list of FBME's subsidiaries; however, because subsidiary relationships can change frequently, covered financial institutions should use commercially-reasonable tools to determine the current subsidiaries of FBME.

2. Correspondent Account

Section 1010.658(a)(2) of the rule defines the term ''correspondent account'' by reference to the definition contained in 31 CFR 1010.605(c)(1)(ii). Section 1010.605(c)(1)(ii) defines a correspondent account to mean an account established to receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or to handle other financial transactions related to the foreign bank. Under this definition, ''payable through accounts'' are a type of correspondent account.

In the case of a U.S. depository institution, this broad definition includes most types of banking relationships between a U.S. depository institution and a foreign bank that are established to provide regular services, dealings, and other financial transactions, including a demand deposit, savings deposit, or other transaction or asset account, and a credit account or other extension of credit. FinCEN is using the same definition of ''account'' for purposes of this rule as was established for depository institutions in the final rule implementing the provisions of section 312 of the USA PATRIOT Act requiring enhanced due diligence for correspondent accounts maintained for certain foreign banks.[5]

In the case of securities broker-dealers, futures commission merchants, introducing brokers-commodities, and investment companies that are open-end companies (mutual funds), FinCEN is also using the same definition of ''account'' for purposes of this rule as was established for these entities in the final rule implementing the provisions of section 312 of the USA PATRIOT Act requiring enhanced due diligence for correspondent accounts maintained for certain foreign banks.[6]

3. Covered Financial Institution

Section 1010.658(a)(3) of the rule defines ''covered financial institution'' with the same definition used in the final rule implementing section 312 of the USA PATRIOT Act,[7] which, in general, includes the following:

- An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h));
- A commercial bank;
- An agency or branch of a foreign bank in the United States;
- A Federally insured credit union;
- A savings association;
- A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611);
- A trust bank or trust company;
- A broker or dealer in securities;
- A futures commission merchant or an introducing broker-commodities; and
- A mutual fund.

4. Subsidiary

Section 1010.658(a)(4) of the rule defines ''subsidiary'' as a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

B. 1010.658(b)—Requirements for Covered Financial Institutions With Regard to the Fifth Special Measure

For purposes of complying with the final rule's prohibition on the opening or maintaining in the United States of correspondent accounts for, or on behalf of, FBME, covered financial institutions

[4] *See* Central Bank of Cyprus (Web site: *http://www.centralbank.gov.cy/*) and Bank of Tanzania (Web site: *http://www.bot-tz.org/*) for lists of banks in Cyprus and Tanzania, respectively.

[5] *See* 31 CFR 1010.605(c)(2)(i).

[6] *See* 31 CFR 1010.605(c)(2)(ii)–(iv).

[7] *See* 31 CFR 1010.605(e)(1).

should take such steps as a reasonable and prudent financial institution would take to protect itself from loan or other fraud or loss based on misidentification of a person's status.

1. Prohibition on Opening or Maintaining Correspondent Accounts

Section 1010.658(b)(1) of the rule imposing the fifth special measure prohibits all covered financial institutions from establishing, maintaining, administering, or managing a correspondent account in the United States for, or on behalf of, FBME. The prohibition requires all covered financial institutions to review their account records to ensure that they maintain no accounts directly for, or on behalf of, FBME.

2. Special Due Diligence of Correspondent Accounts To Prohibit Indirect Use

As a corollary to the prohibition on maintaining correspondent accounts directly for FBME, § 1010.658(b)(2) of the rule imposing the fifth special measure requires a covered financial institution to apply special due diligence to its correspondent accounts that is reasonably designed to guard against processing transactions involving FBME. As part of that special due diligence, covered financial institutions must notify those foreign correspondent account holders that covered financial institutions know or have reason to know provide services to FBME that such correspondents may not provide FBME with access to the correspondent account maintained at the covered financial institution. Covered financial institutions should implement appropriate risk-based procedures to identify transactions involving FBME.

A covered financial institution may satisfy the notification requirement by transmitting the following notice to its foreign correspondent account holders that it knows or has reason to know provide services to FBME:

Notice: Pursuant to U.S. regulations issued under Section 311 of the USA PATRIOT Act, *see* 31 CFR 1010.658, we are prohibited from establishing, maintaining, administering, or managing a correspondent account for, or on behalf of, FBME Bank, Ltd., or any of its branches, offices or subsidiaries. The regulations also require us to notify you that you may not provide FBME Bank, Ltd., or any of its branches, offices or subsidiaries with access to the correspondent account you hold at our financial institution. If we become aware that the correspondent account you hold at our financial institution has processed any transactions involving FBME Bank, Ltd., or any of its branches, offices or subsidiaries, we will be required to take appropriate steps to prevent such access, including terminating your account.

A covered financial institution may, for example, have knowledge through transaction screening software that a correspondent account processes transactions for FBME. The purpose of the notice requirement is to aid cooperation with correspondent account holders in preventing transactions involving FBME from accessing the U.S. financial system. However, FinCEN would not require or expect a covered financial institution to obtain a certification from any of its correspondent account holders that access will not be provided to comply with this notice requirement. Instead, methods of compliance with the notice requirement could include, for example, transmitting a one-time notice by mail, fax, or email to appropriate correspondent account holders of the covered financial institution, informing them that they may not provide FBME with access to the covered financial institution's correspondent account, or including such information in the next regularly occurring transmittal from the covered financial institution to those correspondent account holders.

In its comment to the NPRM, SIFMA requested reconsideration of the notice provision, specifically regarding the meaning of ''one-time notice,'' and further objected to the requirement to send such a notice as overly burdensome and possibly duplicative. SIFMA also requested further clarification with regard to the timing of the required notice. FinCEN emphasizes that the scope of notice requirement is targeted toward those correspondent account holders that the covered financial institution knows or has reason to know provide services to FBME, not to all correspondent account holders. The term ''one-time notice'' means that a financial institution should provide notice to all existing correspondent account holders who the covered financial institution knows or has reason to know provide services to FBME, within a reasonably short time after this final rule is published, and to new correspondent account holders during the account opening process who the covered financial institution knows or has reason to know provide services to FBME. It is not necessary for the notice to be provided in any particular form. It may be provided electronically, orally (with documentation), or as part of the standard paperwork involved in opening or maintaining a correspondent account. Given the limited nature of FBME's correspondent relationships, FinCEN does not expect this requirement to be burdensome.

A covered financial institution is also required to take reasonable steps to identify any indirect use of its correspondent accounts by FBME, to the extent that such indirect use can be determined from transactional records maintained by the covered financial institution in the normal course of business. Covered financial institutions are expected to apply an appropriate screening mechanism to be able to identify a funds transfer order that on its face lists FBME as the financial institution of the originator or beneficiary, or otherwise references FBME. An appropriate screening mechanism could be the mechanism used by a covered financial institution to comply with various legal requirements, such as the commercially available software programs used to comply with the economic sanctions programs administered by the Office of Foreign Assets Control (OFAC).

Notifying certain correspondent account holders and taking reasonable steps to identify any indirect use of its correspondent accounts by FBME in the manner discussed above are the minimum due diligence requirements under the rule imposing the fifth special measure. Beyond these minimum steps, a covered financial institution must adopt a risk-based approach for determining what, if any, additional due diligence measures are appropriate to guard against the risk of indirect use of its correspondent accounts by FBME, based on risk factors such as the type of services it offers and the geographic locations of its correspondent account holders.

Under this rule imposing the fifth special measure, a covered financial institution that obtains knowledge that a correspondent account is being used by a foreign bank to provide indirect access to FBME must take all appropriate steps to prevent such indirect access, including the notification of its correspondent account holder per § 1010.658(b)(2)(i)(A) and, where necessary, terminating the correspondent account. A covered financial institution may afford the foreign bank a reasonable opportunity to take corrective action prior to terminating the correspondent account. Should the foreign bank refuse to comply, or if the covered financial institution cannot obtain adequate assurances that the account will no longer be available to FBME, the covered financial institution must terminate the account within a commercially reasonable time. This means that the covered financial

institution may not permit the foreign bank to establish any new positions or execute any transactions through the account, other than those necessary to close the account. A covered financial institution may reestablish an account closed under the rule if it determines that the account will not be used to provide banking services indirectly to FBME.

3. Reporting Not Required

Section 1010.658(b)(3) of the rule imposing the fifth special measure clarifies that the rule does not impose any reporting requirement upon any covered financial institution that is not otherwise required by applicable law or regulation. A covered financial institution must, however, document its compliance with the requirement that it notify those correspondent account holders that the covered financial institution knows or has reason to know provide services to FBME, that such correspondents may not process any transaction involving FBME through the correspondent account maintained at the covered financial institution.

VI. Regulatory Flexibility Act

When an agency issues a final rule, the Regulatory Flexibility Act (RFA) requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' that will ''describe the impact of the Final Rule on small entities.'' (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the final rule is not expected to have a significant economic impact on a substantial number of small entities.

A. Proposal To Prohibit Covered Financial Institutions From Opening or Maintaining Correspondent Accounts With Certain Foreign Banks Under the Fifth Special Measure

1. Estimate of the Number of Small Entities to Whom the Proposed Fifth Special Measure Will Apply

For purposes of the RFA, both banks and credit unions are considered small entities if they have less than $500,000,000 in assets.[8] Of the estimated 7,000 banks, 80 percent have less than $500,000,000 in assets and are considered small entities.[9] Of the estimated 7,000 credit unions, 94 percent have less than $500,000,000 in assets.[10]

Broker-dealers are defined in 31 CFR 1010.100(h) as those broker-dealers required to register with the Securities and Exchange Commission (SEC). Because FinCEN and the SEC regulate substantially the same population, for the purposes of the RFA, FinCEN relies on the SEC's definition of small business as previously submitted to the Small Business Administration (SBA). The SEC has defined the term small entity to mean a broker or dealer that: (1) Had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements, were prepared pursuant to Rule 17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated debt) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this release.[11] Based on SEC estimates, 17 percent of broker-dealers are classified as small entities for purposes of the RFA.[12]

Futures commission merchants (FCMs) are defined in 31 CFR 1010.100(x) as those FCMs that are registered or required to be registered as a FCM with the Commodity Futures Trading Commission (CFTC) under the Commodity Exchange Act (CEA), except persons who register pursuant to section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2). Because FinCEN and the CFTC regulate substantially the same population, for the purposes of the RFA, FinCEN relies on the CFTC's definition of small business as previously submitted to the SBA. In the CFTC's ''Policy Statement and Establishment of Definitions of 'Small Entities' for Purposes of the Regulatory Flexibility Act,'' the CFTC concluded that registered FCMs should not be considered to be small entities for purposes of the RFA.[13] The CFTC's determination in this regard was based, in part, upon the obligation of registered FCMs to meet the capital requirements established by the CFTC.

For purposes of the RFA, an introducing broker-commodities dealer is considered small if it has less than $35,500,000 in gross receipts annually.[14] Based on information provided by the National Futures Association (NFA), 95 percent of introducing brokers-commodities dealers have less than $35.5 million in adjusted net capital and are considered to be small entities.

Mutual funds are defined in 31 CFR 1010.100(gg) as those investment companies that are open-end investment companies that are registered or are required to register with the SEC. Because FinCEN and the SEC regulate substantially the same population, for the purposes of the RFA, FinCEN relies on the SEC's definition of small business as previously submitted to the SBA. The SEC has defined the term ''small entity'' under the Investment Company Act to mean ''an investment company that, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.'' [15] Based on SEC estimates, seven percent of mutual funds are classified as ''small entities'' for purposes of the RFA under this definition.[16]

As noted above, 80 percent of banks, 94 percent of credit unions, 17 percent of broker-dealers, 95 percent of introducing brokers-commodities, no FCMs, and seven percent of mutual funds are small entities. The limited number of foreign banking institutions with which FBME maintains or will maintain accounts will likely limit the number of affected covered financial institutions to the largest U.S. banks, which actively engage in international transactions. Thus, the prohibition on maintaining correspondent accounts for foreign banking institutions that engage in transactions involving FBME under the fifth special measure would not impact a substantial number of small entities.

2. Description of the Projected Reporting and Recordkeeping Requirements of the Fifth Special Measure

The fifth special measure would require covered financial institutions to provide a notification intended to aid cooperation from foreign correspondent account holders in preventing transactions involving FBME from accessing the U.S. financial system.

[8] *Table of Small Business Size Standards Matched to North American Industry Classification System Codes,* Small Business Administration Size Standards (SBA Jan. 22, 2014) [hereinafter ''*SBA Size Standards*'']].

[9] Federal Deposit Insurance Corporation, *Find an Institution, http://www2.fdic.gov/idasp/main.asp; select* Size or Performance: Total Assets, *type* Equal or less than $: ''500000'' and *select* Find.

[10] National Credit Union Administration, *Credit Union Data, http://webapps.ncua.gov/customquery/; select* Search Fields: Total Assets, *select* Operator: Less than or equal to, *type* Field Values: ''500000000'' and *select* Go.

[11] 17 CFR 240.0–10(c).

[12] 76 FR 37572, 37602 (June 27, 2011) (the SEC estimates 871 small broker-dealers of the 5,063 total registered broker-dealers).

[13] 47 FR 18618, 18619 (Apr. 30, 1982).

[14] SBA Size Standards at 28.

[15] 17 CFR 270.0–10.

[16] 78 FR 23637, 23658 (April 19, 2013).

FinCEN estimates that the time it takes institutions to provide this notice is one hour. Covered financial institutions would also be required to take reasonable measures to detect use of their correspondent accounts to process transactions involving FBME. All U.S. persons, including U.S. financial institutions, currently must exercise some degree of due diligence to comply with OFAC sanctions and suspicious activity reporting requirements. The tools used for such purposes, including commercially available software used to comply with the economic sanctions programs administered by OFAC, can easily be modified to identify correspondent accounts with foreign banks that involve FBME. Thus, the special due diligence that would be required by the imposition of the fifth special measure—*i.e.,* the one-time transmittal of notice to certain correspondent account holders, the screening of transactions to identify any use of correspondent accounts, and the implementation of risk-based measures to detect use of correspondent accounts—would not impose a significant additional economic burden upon small U.S. financial institutions.

B. Certification

For these reasons, FinCEN certifies that this final rulemaking would not have a significant impact on a substantial number of small businesses.

VII. Paperwork Reduction Act

The collection of information contained in the final rule has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and has been assigned OMB Control Number 1506–AB19. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Description of Affected Financial Institutions: Banks, broker-dealers in securities, futures commission merchants and introducing brokers-commodities, and mutual funds.

Estimated Number of Affected Financial Institutions: 5,000.

Estimated Average Annual Burden in Hours per Affected Financial Institution: The estimated average burden associated with the collection of information in this rule is one hour per affected financial institution.

Estimated Total Annual Burden: 5,000 hours.

VIII. Executive Order 12866

Executive Orders 12866 and 13563 direct agencies to assess 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. It has been determined that the Final Rule is not a ''significant regulatory action'' for purposes of Executive Order 12866.

List of Subjects in 31 CFR Part 1010

Administrative practice and procedure, Banks and banking, Brokers, Counter-money laundering, Counter-terrorism, Foreign banking.

Authority and Issuance

For the reasons set forth in the preamble, chapter X of title 31 of the Code of Federal Regulations is amended as follows:

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307.

■ 2. Subpart F of chapter X is amended by adding § 1010.658 to read as follows:

§ 1010.658 Special measures against FBME Bank, Ltd.

(a) *Definitions.* For purposes of this section:

(1) *FBME Bank, Ltd.* means all branches, offices, and subsidiaries of FBME Bank, Ltd. operating in any jurisdiction.

(2) *Correspondent account* has the same meaning as provided in § 1010.605(c)(1)(ii).

(3) *Covered financial institution* has the same meaning as provided in § 1010.605(e)(1).

(4) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(b) *Prohibition on accounts and due diligence requirements for covered financial institutions*—(1) *Prohibition on use of correspondent accounts.* A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, FBME Bank, Ltd.

(2) *Special due diligence of correspondent accounts to prohibit use*—(i) A covered financial institution shall apply special due diligence to its foreign correspondent accounts that is reasonably designed to guard against their use to process transactions involving FBME Bank, Ltd. At a minimum, that special due diligence must include:

(A) Notifying those correspondent account holders that the covered financial institution knows or has reason to know provide services to FBME Bank, Ltd., that such correspondents may not provide FBME Bank, Ltd. with access to the correspondent account maintained at the covered financial institution; and

(B) Taking reasonable steps to identify any use of its foreign correspondent accounts by FBME Bank, Ltd., to the extent that such use can be determined from transactional records maintained in the covered financial institution's normal course of business.

(ii) A covered financial institution shall take a risk-based approach when deciding what, if any, other due diligence measures it reasonably must adopt to guard against the use of its foreign correspondent accounts to process transactions involving FBME Bank, Ltd.

(iii) A covered financial institution that obtains knowledge that a foreign correspondent account may be being used to process transactions involving FBME Bank, Ltd. shall take all appropriate steps to further investigate and prevent such access, including the notification of its correspondent account holder under paragraph (b)(2)(i)(A) of this section and, where necessary, termination of the correspondent account.

(iv) A covered financial institution required to terminate a correspondent account pursuant to paragraph (b)(2)(iii) of this section:

(A) Should do so within a commercially reasonable time, and should not permit the foreign bank to establish any new positions or execute any transaction through such correspondent account, other than those necessary to close the correspondent account; and

(B) May reestablish a correspondent account closed pursuant to this paragraph if it determines that the correspondent account will not be used to provide banking services indirectly to FBME Bank Ltd.

(3) *Recordkeeping and reporting.* (i) A covered financial institution is required to document its compliance with the

notice requirement set forth in paragraph (b)(2)(i)(A) of this section.

(ii) Nothing in this paragraph (b) shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

Dated: July 23, 2015.

Jennifer Shasky Calvery,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2015–18552 Filed 7–28–15; 8:45 am]

BILLING CODE 4810–2P–P

POSTAL SERVICE

39 CFR Parts 261, 262, and 265

Records and Information

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is amending its regulations concerning records and information management for administrative purposes, to clarify existing text, and to update and add definitions.

DATES: These regulations will be effective July 29, 2015.

FOR FURTHER INFORMATION CONTACT: Matthew J. Connolly, Chief Privacy Officer, 202–268–2608.

SUPPLEMENTARY INFORMATION:

Overview

The Postal Service is amending 39 CFR parts 261, 262, and 265 to delineate more clearly the responsibility for managing postal records and ensuring compliance with the Freedom of Information Act (FOIA). *See* 5 U.S.C. 552; 39 U.S.C. 410(c). In general, these modifications should promote the coordination of activities among the Officers, Public Liaisons, Coordinators, and Records Custodians tasked with FOIA compliance, and facilitate the response to information requests by FOIA Requester Service Centers (RSCs).

Records and Information Management (Part 261)

As required by 5 U.S.C. 552(a)(1), the amendments to part 261 provide descriptions of the Postal Service's central and field organization for FOIA processing. Specifically, the amendments clarify the position of the Postal Service's Privacy and Records Office within the General Counsel's Office. As further required by 5 U.S.C. 552(a)(6)(B)(ii), the amendments also describe the Postal Service's FOIA Public Liaisons and their responsibilities to requesters through the Postal Service's FOIA Requester Service Centers.

Records and Information Management Definitions (Part 262)

As required by 5 U.S.C. 552(a)(6)(B), the amendments to part 262 provide further descriptions of the Postal Service's central and field organization for FOIA processing. Specifically, the amendments describe various officials involved in FOIA processing and their responsibilities.

Release of Information (Part 265)

As required by 5 U.S.C. 552(a)(1), the amendments to part 265 provide descriptions of the established places at which, the employees from whom, and the methods whereby the public may obtain information, make submittals or requests, and obtain decisions regarding FOIA requests. Specifically, the amendments describe how and to whom a FOIA request must be submitted, and clarify that the regulations must be read in conjunction with the text of the FOIA, the Fee Schedule and Guidelines published by the Office of Management and Budget, and Postal Service Handbook AS–353, *Guide to Privacy, the Freedom of Information Act, and Records Management.* FOIA requests must now be sent to the appropriate FOIA Requester Service Center (RSC), as detailed in the regulations. A request that is not initially submitted to the appropriate FOIA RSC will be deemed to have been received by the Postal Service for purposes of computing the time for response at the time that it is actually received by the appropriate FOIA RSC or at the time the request is referred to the appropriate records custodians by a FOIA RSC, but in any case a request will be deemed to have been received no later than 10 days after the request is first received by a FOIA RSC.

List of Subjects

39 CFR Part 261

Archives and records.

39 CFR Part 262

Archives and records.

39 CFR Part 265

Administrative practice and procedure, Courts, Freedom of information, Government employees.

For the reasons stated in the preamble, the Postal Service amends 39 CFR chapter I, subchapter D as follows:

PART 261—[AMENDED]

■ 1. The authority citation for 39 CFR part 261 continues to read as follows:

Authority: 39 U.S.C. 401.

■ 2. Revise § 261.1 to read as follows:

§ 261.1 Purpose and scope.

Under 39 U.S.C. 410, as enacted by the Postal Reorganization Act, the U.S. Postal Service is not subject to the provisions of the Federal Records Act of 1950, or any of its supporting regulations which provide for the conduct of records management in Federal agencies. The objective of parts 261 through 268 of this chapter are to provide the basis for an organization-wide records and information management program affecting all Postal Service organizational components having the custody of any form of information and records.

■ 3. Revise § 261.2 to read as follows:

§ 261.2 Authority.

(a) As provided in 39 U.S.C. 401(5), the Postal Service has the power to acquire property it deems necessary or convenient in the transaction of its business and to hold, maintain, sell, lease or otherwise dispose of such property.

(b) Under § 262.2 of this chapter, the Postal Service Privacy and Records Office, located under the Associate General Counsel and Chief Ethics and Compliance Officer, is responsible for the retention, security, and privacy of Postal Service records and is empowered to authorize the disclosure of such records and to order their disposal by destruction or transfer. Included is the authority to issue records management policy and to delegate or take appropriate action if that policy is not adhered to or if questions of interpretation of procedure arise.

■ 4. Revise § 261.4 to read as follows:

§ 261.4 Responsibility.

(a) The Chief Freedom of Information Act (FOIA) Officer, whose duties are performed by the Associate General Counsel and Chief Ethics and Compliance Officer, is responsible for:

(1) Overseeing Postal Service compliance with the FOIA.

(2) Making recommendations to the Postmaster General regarding the Postal Service's FOIA program.

(3) Monitoring and reporting on FOIA implementation and performance for the Postal Service.

(b) The Chief Privacy Officer, under the Associate General Counsel and Chief Ethics and Compliance Officer, is responsible for administering records and information management policies, and the privacy of information programs, and for the compliance of all

handbooks, directives, and instructions in support of these policies and programs.

(c) The Deputy Chief FOIA Officer, under the Privacy and Records Office, administers the Postal Service release of information program with the assistance of FOIA Coordinators in Headquarters departments and area and district offices.

(d) Freedom of Information Act Public Liaisons are responsible for:

(1) Managing FOIA Requester Service Centers (RSCs).

(2) Receiving concerns of requesters about the service provided by the FOIA RSC following an initial response.

(3) Ensuring a service-oriented response to requests and FOIA-related inquiries.

(4) Reporting to the Chief FOIA Officer on their activities.

(e) Freedom of Information Act Requester Service Centers are responsible for:

(1) Facilitating communication between the Postal Service and FOIA requesters.

(2) Providing information to requesters concerning the status of FOIA requests and information about responses to such requests.

(f) Freedom of Information Act Coordinators fill an ad hoc position located within each Headquarters department, and Area and District office, and are responsible for:

(1) Coordinating and tracking FOIA requests referred to or received by their functional or geographical area.

(2) Providing procedural guidance, upon request, to records custodians.

(3) Assisting the Deputy Chief FOIA Officer with national reporting activities, such as annual reporting of local FOIA and Privacy Act activities.

(g) Records Custodians are responsible for ensuring that records within their facilities or organizations are managed according to Postal Service policies. Vice presidents or their designees are the custodians of records maintained at Headquarters. In the field, the Records Custodian is the head of a Postal Service facility such as an area, district, Post Office, or other Postal Service installation or designee that maintains Postal Service records. Senior medical personnel are the custodians of restricted medical records maintained within Postal Service facilities. The Custodian of Employee Assistance Program (EAP) records is the Postal Service counselor, a supplier, or the public health service, whichever provided the services.

(h) Postal Service managers are responsible for administering records and information management policies and for complying with all handbooks, directives, and instructions in support of this policy.

PART 262—[AMENDED]

■ 5. The authority citation for 39 CFR part 262 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 39 U.S.C. 401.

■ 6. Revise § 262.2 to read as follows:

§ 262.2 Officials.

(a) *Chief Privacy Officer.* The Chief Privacy Officer (CPO) is responsible for the issuance of policy on the protection of privacy and the release of Postal Service records. The CPO has the power to authorize the disclosure of such records. Additionally, the CPO is responsible for establishing procedures and guidelines to ensure that record management practices are in compliance with the Privacy Act and FOIA. The CPO directs the activities of the Privacy and Records Office and may also delegate or take appropriate action if policies are not adhered to or if questions of interpretation or procedures arise.

(b) *Deputy Chief FOIA Officer.* The Deputy Chief FOIA Officer, under the Privacy and Records Office, administers the Postal Service release of information program and has the power to authorize the disclosure of records. The Deputy Chief FOIA Officer oversees FOIA Requester Service Centers (RSCs).

(c) *Records Custodian.* The Records Custodian is the postmaster or other head of a facility such as an area vice president, district manager, or head of a postal installation or department who maintains Postal Service records. Vice presidents are the custodians of records maintained at Headquarters. Senior medical personnel are the custodians of restricted medical records maintained within postal facilities.

(d) *Information System Executive.* This is the Postal Service official, usually a vice president, who prescribes the existence of and the policies for an information system.

(e) *Records Office.* The Records Office is responsible for the issuance of policy on the maintenance and disposition of Postal Service records and information, and to delegate or take appropriate action if such policy is not adhered to or if questions of interpretation or procedure arise.

PART 265—[AMENDED]

■ 7. The authority citation for 39 CFR part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601.

■ 8. Revise § 265.1 to read as follows:

§ 265.1 Purpose and scope.

(a) This part contains the regulations of the Postal Service relating to the availability to the public of Postal Service records. Included in this part are the regulations which implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, insofar as it applies to the Postal Service. These rules should be read in conjunction with the text of the FOIA and the Fee Schedule and Guidelines published by the Office of Management and Budget. Additionally, Postal Service Handbook AS–353, *Guide to Privacy, the Freedom of Information, and Records Management,* contains information for the public about submitting FOIA requests and the specific procedures used by the Postal Service when responding to FOIA requests. This resource is available at *http://www.usps.com.*

(b) Official records of the Postal Service made available pursuant to the requirements of the Act shall be furnished to members of the public as prescribed by this part.

■ 9. Revise § 265.3 to read as follows:

§ 265.3 Responsibility.

(a) *Records custodian.* Official records are in the custody of the Postmaster or other head of a facility or department at which they are maintained, as defined at § 261.4(c) of this chapter. These custodians are responsible for responding in the first instance to requests from members of the public for Postal Service records.

(b) *Deputy Chief FOIA Officer.* The Deputy Chief FOIA Officer, under the Privacy and Records Office is responsible for the overall administration of this part, including the issuance of detailed instructions to custodians.

(c) *General Counsel.* The General Counsel decides timely appeals authorized by this part.

■ 10. Revise § 265.4 to read as follows:

§ 265.4 Inquiries.

Inquiries regarding the availability of Postal Service records must be directed to the appropriate Freedom of Information Act (FOIA) Requester Service Center (RSC). A description of FOIA RSCs is available at *http://www.usps.com.* If the appropriate FOIA RSC is not known, inquiries should be directed to the FOIA Requester Service Center, Privacy and Records Office, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260, telephone (202) 268–2608.

■ 11. In § 265.7, revise the section heading and paragraphs (a)(1) and (2) to read as follows:

§ 265.7 Procedure for submitting a FOIA request.

(a) *Submission of requests*—(1) *Form and content of request.* To permit expeditious handling and timely response in accordance with the provisions of this part, a request to inspect or to obtain a copy of an identifiable Postal Service record must be in writing and bear the caption ''Freedom of Information Act Request'' or otherwise be clearly and prominently identified as a request for records pursuant to the Freedom of Information Act. A request must be clearly and prominently identified as such on the envelope or other cover. Requests for records, submitted by the public that are not labeled as Freedom of Information Act requests will be handled as FOIA requests when received by the appropriate Requester Service Center in accordance with paragraph (b) of this section, but they may be delayed in reaching the appropriate Requester Service Center. A Freedom of Information Act request must identify the record sought as completely as possible, by name, description, or subject matter, and be sufficient to permit the custodian to locate it with a reasonable amount of effort. The request may state the maximum amount of fees for which the requester is willing to accept liability without prior notice. See paragraph (f)(2) of § 265.8. If no amount is stated, the requester will be deemed willing to accept liability for fees not to exceed $25.

(2) *To whom submitted.* A request must be submitted to the appropriate Freedom of Information Act (FOIA) Requester Service Center (RSC). If the FOIA RSC is not known, an inquiry should be directed to the FOIA Requester Service Center, Privacy and Records Office, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260, telephone (202) 268–2608. The FOIA RSC will either process the request or refer the request to the appropriate component or records custodians. The FOIA RSC will advise the requester of any such referral. A request that is not initially submitted to the appropriate FOIA RSC will be deemed to have been received by the Postal Service for purposes of computing the time for response in accordance with paragraph (b) of this section at the time that it is actually received by the appropriate FOIA RSC or at the time the request is referred to the appropriate records custodians by a FOIA RSC, but in any case a request will be deemed to have been received no later than 10 days after the request is first received by a FOIA RSC. If a request seeks records maintained at two or more facilities, the custodian shall be deemed to be the next senior common supervisor of the heads of the facilities, *e.g.,* district manager, area vice president. The Records Office is deemed to be the custodian, for purposes of this part, in all instances in which a request is for a listing of postal employees. See paragraph (a)(6) of § 265.6.

* * * * *

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–18557 Filed 7–28–15; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2015–0359; FRL–9929–97–OAR]

RIN 2060–AR95

Air Quality Designations for the 2006 24-hour Fine Particle National Ambient Air Quality Standards (2006 24-hour $PM_{2.5}$ NAAQS), 1997 Annual $PM_{2.5}$ NAAQS, and 1987 Annual Coarse Particle (PM_{10}) NAAQS; Technical Amendments to Inadvertent Errors

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Pursuant to its authority under the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is promulgating this final action to make technical amendments to address several minor, inadvertent and nonsubstantive errors in the regulatory text establishing the air quality designations for the 2006 24-hour fine particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS), 1997 annual $PM_{2.5}$ NAAQS, and 1987 annual coarse particle (PM_{10}) NAAQS. Consistent with the EPA's interpretation of the good cause exemption provisions outlined in the Administrative Procedure Act, this action is being taken without notice and comment. The states to which these amendments apply are New York and West Virginia.

DATES: The effective date of these technical amendments is August 28, 2015.

FOR FURTHER INFORMATION CONTACT: For general questions concerning this action, please contact Andy Chang, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Planning Division, C539–04, Research Triangle Park, NC 27711, telephone (919) 541–2416, email at *chang.andy@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What is the good cause exemption, and why is the EPA using it?

Section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because such notice and opportunity for comment is unnecessary. In this action, we are amending 40 CFR part 81, which contains the tables of area designations and boundaries for each NAAQS. Notice

and comment is unnecessary because the corrections made in this document were already the subject of prior notice and comment rulemakings; this action merely makes corrections to the tables in order to correctly align the information in the tables with those prior rulemakings.

II. What is the purpose of this action?

Whenever the EPA establishes a new NAAQS, section 107(d) of the CAA requires the EPA to designate all areas of the country as meeting or not meeting the new NAAQS, or as unclassifiable where available information does not support a determination whether an area is meeting the NAAQS. The area designations and boundaries for each NAAQS are set forth in tables at 40 CFR part 81.

This action makes technical amendments to minor, inadvertent and nonsubstantive errors in the 40 CFR part 81 regulatory text concerning the air quality designations for certain areas in two states for the 2006 24-hour $PM_{2.5}$ NAAQS, 1997 annual $PM_{2.5}$ NAAQS, and 1987 annual PM_{10} NAAQS. The states to which these technical amendments apply are New York and West Virginia.

Documents related to the affected designations are available in the following dockets: Docket ID No. EPA–HQ–OAR–2007–0562 (2006 24-hour $PM_{2.5}$ NAAQS), Docket ID No. EPA–HQ–OAR–2003–0061 (1997 annual $PM_{2.5}$ NAAQS), and Public Docket No. A–92–22 (1987 annual PM_{10} NAAQS). All documents in the dockets except for those for related to designations for the 1987 PM_{10} NAAQS, *i.e.,* Public Docket No. A–92–22, are listed in the *http://www.regulations.gov* index. All materials for Public Docket No. A–92–22 are located at the EPA Docket Center. In addition, the EPA has established a Web site for these rulemakings at: *http://www.epa.gov/pmdesignations/* and *http://www.epa.gov/airquality/greenbook/pindex.html.* These Web sites include the EPA's final $PM_{2.5}$ and PM_{10} designations, as well as state and tribal initial recommendation letters, the EPA's modification letters, technical support documents, responses to comments and other related technical information.

A discussion of these inadvertent errors and associated corrections follows in the next section. The revisions to the regulatory text, specifically as codified in 40 CFR part 81, are provided at the end of this preamble.

III. What are the technical amendments to inadvertent errors in prior designations?

A. Technical Amendments Concerning Designations for the 2006 24-hour $PM_{2.5}$ NAAQS

The EPA published its air quality designations for the 2006 24-hour $PM_{2.5}$ NAAQS on November 13, 2009 (74 FR 58688). In that action, two areas in West Virginia were designated as nonattainment for this NAAQS: Charleston, West Virginia (consisting of Kanawha County and Putnam County) and the Steubenville-Weirton, Ohio-West Virginia area (consisting of Brooke County and Hancock County in West Virginia and Jefferson County in Ohio). The EPA finalized approval of West Virginia's request to redesignate the Charleston, West Virginia area to attainment on March 31, 2014 (79 FR 17884), and finalized approval of West Virginia's request to redesignate the state's portion of the Steubenville-Weirton area to attainment on March 18, 2014 (79 FR 15019). Both of these final actions correctly revised West Virginia's entries in 40 CFR 81.349 to reflect that the areas are in attainment for the 2006 24-hour $PM_{2.5}$ NAAQS. However, a subsequent rulemaking finalized in the **Federal Register** on June 2, 2014, by the EPA titled, ''Identification of Nonattainment Classifications and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) and 2006 $PM_{2.5}$ NAAQS'' (79 FR 31566) inadvertently and erroneously recodified the Charleston, West Virginia area and the West Virginia portion of the Steubenville-Weirton, Ohio-West Virginia area as nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS. In this rulemaking, the EPA is correcting the 40 CFR 81.349 table for West Virginia with respect to the 2006 24-hour $PM_{2.5}$ NAAQS to reflect that both areas within West Virginia have been redesignated to attainment, consistent with our previous March 18, 2014, and March 31, 2014, final rulemakings.

B. Technical Amendments Concerning Designations for the 1997 Annual $PM_{2.5}$ NAAQS

The EPA published its air quality designations for the 1997 annual $PM_{2.5}$ NAAQS on January 5, 2005 (70 FR 944). In this action, two areas in West Virginia were designated as nonattainment for this NAAQS: Charleston, West Virginia (consisting of Kanawha County and Putnam County) and the Steubenville-Weirton, Ohio-West Virginia area (consisting of Brooke County and Hancock County in West Virginia and Jefferson County in Ohio). The EPA finalized approval of West Virginia's request to redesignate the Charleston, West Virginia area to attainment on March 31, 2014 (79 FR 17884), and finalized approval of West Virginia's request to redesignate the state's portion of the Steubenville-Weirton area to attainment on March 18, 2014 (79 FR 15019). Both of these final actions correctly revised West Virginia's entries in 40 CFR 81.349 to reflect that the areas are in attainment for the 1997 annual $PM_{2.5}$ NAAQS. However, a subsequent rulemaking finalized in the **Federal Register** on June 2, 2014, by the EPA titled, ''Identification of Nonattainment Classifications and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) and 2006 $PM_{2.5}$ NAAQS'' (79 FR 31566) inadvertently and erroneously recodified the Charleston, West Virginia area and the West Virginia portion of the Steubenville-Weirton, Ohio-West Virginia area as nonattainment for the 1997 annual $PM_{2.5}$ NAAQS. In this rulemaking, the EPA is correcting the 40 CFR 81.349 table for West Virginia with respect to the 1997 annual $PM_{2.5}$ NAAQS to reflect that both areas within West Virginia have been redesignated to attainment consistent with our previous March 18, 2014, and March 31, 2014, final rulemakings.

C. Technical Amendments Concerning Designations for the 1987 Annual PM_{10} NAAQS

The EPA redesignated New York County, New York as nonattainment for the 1987 annual PM_{10} NAAQS on January 20, 1994 (58 FR 67334).[1] However, the 40 CFR part 81 table for the state is unclear as to which 1987 PM_{10} NAAQS the nonattainment designation applies to, specifically because at the time of the January 20, 1994, designation, there were two forms of the NAAQS. The 1987 PM_{10} NAAQS included an annual standard of 50 micrograms per cubic meter (annual arithmetic mean averaged over 3 years) and a 24-hour standard of 150 micrograms per cubic meter (not to be exceeded more than once per year on average over a 3-year period). The 40 CFR part 81 table for PM_{10} does not distinguish between the two forms of the NAAQS, and therefore New York

[1] This area was originally designated as unclassifiable for the annual PM_{10} NAAQS by operation of law.

County is codified as nonattainment for a non-specified, *i.e.,* ambiguous form of the standard.

The EPA has confirmed that the Madison Avenue monitor in New York County (Air Quality Systems (AQS) Site ID 36–061–0077) recorded violations of the 1987 annual PM_{10} NAAQS and was the basis for the county's nonattainment designation for this NAAQS. This monitor continued to serve as the county's design value monitor until 1998; at this time the monitor underwent modifications that made it no longer valid for comparison to the NAAQS, *i.e.,* it no longer met the siting criteria for a Federal Reference Method (FRM) monitor. As a result, decisions regarding PM_{10} air quality since 1998 have been informed by ambient air quality data collected at other FRM monitoring sites in New York County, including the Post Office site (AQS ID 36–061–0062). None of the monitors in New York County have recorded violations of the annual PM_{10} NAAQS since 1998, and no violations of the 24-hour PM_{10} NAAQS have ever been recorded in the county. On December 2, 2013, the EPA finalized a clean data determination in the **Federal Register** for New York County (78 FR 72032), which determined that even though the annual form of the 1987 PM_{10} NAAQS had been revoked on October 17, 2006 (71 FR 61144), ambient air quality data collected in New York County indicated that this NAAQS had been attained. To clarify, New York County was designated as nonattainment for the 1987 annual PM_{10} NAAQS only; the area received a clean data determination from the EPA for the 1987 annual PM_{10} NAAQS; and the Agency has revoked the 1987 annual PM_{10} NAAQS. Therefore, the EPA is revising and clarifying the table for the PM_{10} NAAQS for the state to reflect the form of the standard, *i.e.,* the annual PM_{10} NAAQS, for which New York County was designated as nonattainment, and to reflect that that standard has been revoked.

IV. Environmental Justice Considerations

When the EPA establishes a new NAAQS, section 107(d) of the CAA requires the EPA to designate all areas of the country as meeting or not meeting the new NAAQS, or as unclassifiable where available information does not support a determination whether an area is meeting the NAAQS. The area designations and boundaries for each NAAQS are set forth in tables at 40 CFR part 81.This action makes technical amendments to minor, inadvertent and nonsubstantive errors in the 40 CFR part 81 regulatory text concerning the air quality designations for certain areas in two states for the 2006 24-hour $PM_{2.5}$ NAAQS, 1997 annual $PM_{2.5}$ NAAQS, and 1987 annual PM_{10} NAAQS. The amendments apply to the states of New York and West Virginia. This action continues to protect all those residing, working, attending school or otherwise present in those areas regardless of minority and economic status.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action makes technical amendments to correct minor, inadvertent and nonsubstantive errors in prior area designations. This type of action is exempt from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This action corrects minor, inadvertent and nonsubstantive errors in prior area designations and does not require any party to perform an information collection.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Because the EPA has made a good cause finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act.

D. Unfunded Mandates Reform Act (UMRA)

This action contains no federal mandate under the provisions of Title II of the UMRA of 1995, 2 U.S.C. 1531–1538 for state, local or tribal governments or the private sector. The action does not impose an enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action corrects minor, inadvertent and nonsubstantive errors in prior area designations.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action makes technical amendments to correct minor, inadvertent and nonsubstantive errors in prior area designations. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action only makes technical amendments to correct minor, inadvertent and nonsubstantive errors in prior area designations or redesignations. None of these technical amendments has a substantial direct effect on any tribal land; thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory

actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA of 1995, Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. VCS are technical standards (*e.g.,* materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by VCS bodies. The NTTAA directs the EPA to provide Congress, through the Office of Management and Budget, explanations when the agency decides not to use available and applicable VCS. This action does not involve technical standards. Therefore, the EPA did not consider the use of any VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the U.S.

The EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action makes technical amendments to correct minor, inadvertent, nonsubstantive errors in the designations for certain areas. The results are also contained in section IV titled, ''Environmental Justice Considerations'' of this preamble.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. However, section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, the EPA had made such a good cause finding, including the reasons therefore, and established an effective date of August 28, 2015. These technical amendments to inadvertent errors do not constitute a ''major rule'' as defined by 5 U.S.C. 804(2).

L. Judicial Review

In the final actions designating areas for the PM_{10} NAAQS, the EPA determined that the actions were ''nationally applicable'' within the meaning of CAA section 307(b)(1). Likewise, the EPA also determined that the final action identifying nonattainment classifications and deadlines for SIP provisions for the 1997 annual $PM_{2.5}$ NAAQS and 2006 24-hour $PM_{2.5}$ NAAQS was nationally applicable. Because this action is making corrections to those nationally applicable rules, we are determining that this action is also nationally applicable within the meaning of section 307(b)(1). Thus, petitions for review of this final action must be filed in the Court of Appeals for the District of Columbia Circuit. Section 307(b)(1) requires such petitions to be filed within 60 days from the date the final action is published in the **Federal Register**.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 21, 2015.

Gina McCarthy,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 81 is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

■ 2. Section 81.333 is amended by revising the table titled ''New York—PM–10'' to read as follows:

§ 81.333 New York.

* * * * *

NEW YORK—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
New York County	1/20/94	Nonattainment [1]	1/20/94	Moderate.

[1] This designation applied only to the annual form of the PM_{10} NAAQS. The annual PM_{10} NAAQS was revoked for all areas of the state on October 17, 2006.

* * * * *

■ 3. Section 81.349 is amended by revising the tables titled ''West Virginia—1997 Annual $PM_{2.5}$ NAAQS''

and "West Virginia—2006 24-Hour $PM_{2.5}$ NAAQS" to read as follows:

§ 81.349 West Virginia.

* * * * *

WEST VIRGINIA—1997 ANNUAL $PM_{2.5}$ NAAQS

[Primary and secondary]

Designated area [a]	Designation		Classification	
	Date [1]	Type	Date [2]	Type
Charleston, WV:				
Kanawha County	3/31/14	Attainment.		
Putnam County	3/31/14	Attainment.		
Huntington-Ashland, WV–KY–OH:				
Cabell County	12/28/12	Attainment.		
Mason County (part) Graham Tax District.	12/28/12	Attainment.		
Wayne County	12/28/12	Attainment.		
Martinsburg, WV-Hagerstown, MD:				
Berkeley County	11/25/14	Attainment.		
Parkersburg-Marietta, WV–OH:				
Pleasants County (part) Tax District of Grant.	9/12/13	Attainment.		
Wood County	9/12/13	Attainment.		
Steubenville-Weirton, OH–WV:				
Brooke County	3/18/14	Attainment.		
Hancock County	3/18/14	Attainment.		
Wheeling, WV–OH:				
Marshall County	9/30/13	Attainment.		
Ohio County	9/30/13	Attainment.		
Rest of State:				
Barbour County		Unclassifiable/Attainment.		
Boone County		Unclassifiable/Attainment.		
Braxton County		Unclassifiable/Attainment.		
Calhoun County		Unclassifiable/Attainment.		
Clay County		Unclassifiable/Attainment.		
Doddridge County		Unclassifiable/Attainment.		
Fayette County		Unclassifiable/Attainment.		
Gilmer County		Unclassifiable/Attainment.		
Grant County		Unclassifiable/Attainment.		
Greenbrier County		Unclassifiable/Attainment.		
Hampshire County		Unclassifiable/Attainment.		
Hardy County		Unclassifiable/Attainment.		
Harrison County		Unclassifiable/Attainment.		
Jackson County		Unclassifiable/Attainment.		
Jefferson County		Unclassifiable/Attainment.		
Lewis County		Unclassifiable/Attainment.		
Lincoln County		Unclassifiable/Attainment.		
Logan County		Unclassifiable/Attainment.		
McDowell County		Unclassifiable/Attainment.		
Marion County		Unclassifiable/Attainment.		
Mason County (remainder)		Unclassifiable/Attainment.		
Mercer County		Unclassifiable/Attainment.		
Mineral County		Unclassifiable/Attainment.		
Mingo County		Unclassifiable/Attainment.		
Monongalia County		Unclassifiable/Attainment.		
Monroe County		Unclassifiable/Attainment.		
Morgan County		Unclassifiable/Attainment.		
Nicholas County		Unclassifiable/Attainment.		
Pendleton County		Unclassifiable/Attainment.		
Pleasants County (remainder)		Unclassifiable/Attainment.		
Pocahontas County		Unclassifiable/Attainment.		
Preston County		Unclassifiable/Attainment.		
Raleigh County		Unclassifiable/Attainment.		
Randolph County		Unclassifiable/Attainment.		
Ritchie County		Unclassifiable/Attainment.		
Roane County		Unclassifiable/Attainment.		
Summers County		Unclassifiable/Attainment.		
Taylor County		Unclassifiable/Attainment.		
Tucker County		Unclassifiable/Attainment.		
Tyler County		Unclassifiable/Attainment.		
Upshur County		Unclassifiable/Attainment.		
Webster County		Unclassifiable/Attainment.		
Wetzel County		Unclassifiable/Attainment.		
Wirt County		Unclassifiable/Attainment.		

WEST VIRGINIA—1997 ANNUAL $PM_{2.5}$ NAAQS—Continued

[Primary and secondary]

Designated area [a]	Designation		Classification	
	Date [1]	Type	Date [2]	Type
Wyoming County		Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is July 2, 2014, unless otherwise noted.

* * * * *

WEST VIRGINIA—2006 24-HOUR $PM_{2.5}$ NAAQS

[Primary and secondary]

Designated area [a]	Designation		Classification	
	Date [1]	Type	Date [2]	Type
Charleston, WV:				
Kanawha County	3/31/14	Attainment.		
Putnam County	3/31/14	Attainment.		
Steubenville-Weirton, OH–WV:				
Brooke County	3/18/14	Attainment.		
Hancock County	3/18/14	Attainment.		
Rest of State:				
Barbour County		Unclassifiable/Attainment.		
Berkeley County		Unclassifiable/Attainment.		
Boone County		Unclassifiable/Attainment.		
Braxton County		Unclassifiable/Attainment.		
Cabell County		Unclassifiable/Attainment.		
Calhoun County		Unclassifiable/Attainment.		
Clay County		Unclassifiable/Attainment.		
Doddridge County		Unclassifiable/Attainment.		
Fayette County		Unclassifiable/Attainment.		
Gilmer County		Unclassifiable/Attainment.		
Grant County		Unclassifiable/Attainment.		
Greenbrier County		Unclassifiable/Attainment.		
Hampshire County		Unclassifiable/Attainment.		
Hardy County		Unclassifiable/Attainment.		
Harrison County		Unclassifiable/Attainment.		
Jackson County		Unclassifiable/Attainment.		
Jefferson County		Unclassifiable/Attainment.		
Lewis County		Unclassifiable/Attainment.		
Lincoln County		Unclassifiable/Attainment.		
Logan County		Unclassifiable/Attainment.		
McDowell County		Unclassifiable/Attainment.		
Marion County		Unclassifiable/Attainment.		
Marshall County		Unclassifiable/Attainment.		
Mason County		Unclassifiable/Attainment.		
Mercer County		Unclassifiable/Attainment.		
Mineral County		Unclassifiable/Attainment.		
Mingo County		Unclassifiable/Attainment.		
Monongalia County		Unclassifiable/Attainment.		
Monroe County		Unclassifiable/Attainment.		
Morgan County		Unclassifiable/Attainment.		
Nicholas County		Unclassifiable/Attainment.		
Ohio County		Unclassifiable/Attainment.		
Pendleton County		Unclassifiable/Attainment.		
Pleasants County		Unclassifiable/Attainment.		
Pocahontas County		Unclassifiable/Attainment.		
Preston County		Unclassifiable/Attainment.		
Raleigh County		Unclassifiable/Attainment.		
Randolph County		Unclassifiable/Attainment.		
Ritchie County		Unclassifiable/Attainment.		
Roane County		Unclassifiable/Attainment.		
Summers County		Unclassifiable/Attainment.		
Taylor County		Unclassifiable/Attainment.		
Tucker County		Unclassifiable/Attainment.		
Tyler County		Unclassifiable/Attainment.		
Upshur County		Unclassifiable/Attainment.		
Wayne County		Unclassifiable/Attainment.		

WEST VIRGINIA—2006 24-HOUR $PM_{2.5}$ NAAQS—Continued

[Primary and secondary]

Designated area [a]	Designation		Classification	
	Date [1]	Type	Date [2]	Type
Webster County		Unclassifiable/Attainment.		
Wetzel County		Unclassifiable/Attainment.		
Wirt County		Unclassifiable/Attainment.		
Wood County		Unclassifiable/Attainment.		
Wyoming County		Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 30 days after November 13, 2009, unless otherwise noted.
[2] This date is July 2, 2014, unless otherwise noted.

* * * * *

[FR Doc. 2015–18532 Filed 7–28–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0638; FRL–9930–73]

Fluxapyroxad; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fluxapyroxad in or on cotton, gin byproducts and cotton, undelinted seed. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 29, 2015. Objections and requests for hearings must be received on or before September 28, 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–2012–0638, 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 Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

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–2012–0638 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 September 28, 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–2012–0638, 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 December 17, 2014 (79 FR 75107) (FRL–9918–90),

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 4F8270) by BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.666 be amended by establishing tolerances for residues of the fungicide fluxapyroxad (BAS 700 F), 3-(difluoromethyl)-1-methyl-*N*-(3′,4′,5′-trifluoro[1,1′-biphenyl]-2-yl)-1*H*-pyrazole-4-carboxamide, its metabolites, and degradates, in or on cotton, gin byproducts at 20 parts per million (ppm); cotton undelinted seed at 0.30 ppm. That document referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing

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 fluxapyroxad including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fluxapyroxad 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.

Fluxapyroxad is of low acute toxicity by the oral, dermal and inhalation routes, is not irritating to the eyes and skin, and is not a dermal sensitizer. The primary target organ for fluxapyroxad exposure via the oral route is the liver with secondary toxicity in the thyroid for rats only. Liver toxicity was observed in rats, mice, and dogs, with rats as the most sensitive species for all durations of exposure. In rats, adaptive effects of hepatocellular hypertrophy and increased liver weights and changes in liver enzyme activities were first observed. As the dose or duration of exposure to fluxapyroxad increased, clinical chemistry changes related to liver function also occurred, followed by hepatocellular necrosis, neoplastic changes in the liver, and tumors. Thyroid effects were observed only in rats. These effects were secondary to changes in liver enzyme regulation, which increased metabolism of thyroid hormone, resulting in changes in thyroid hormones, thyroid follicular hypertrophy and hyperplasia, and thyroid tumor formation. Tumors were not observed in species other than rats or in organs other than the liver and thyroid.

Fluxapyroxad is classified as ''Not likely to be Carcinogenic to Humans'' based on convincing evidence that carcinogenic effects are not likely below a defined dose range. There is no mutagenicity concern from *in vivo* or *in vitro* assays. The hypothesized mode of action (*i.e.*, a non-genotoxic) for treatment related tumors (*i.e.*, the liver and thyroid) was supported by a full panel of *in vitro* and *in vivo* studies that showed no evidence of genotoxicity, together with mechanistic studies in the liver and thyroid of rats that satisfied stringent criteria for establishing tumorgenic modes of action. The studies clearly identified the sequence of key events, dose-response concordance and temporal relationship to the tumor types. The Agency has determined that the chronic population adjusted dose (PAD) will adequately account for all chronic effects, including carcinogenicity that could result from exposure to fluxapyroxad because the points of departure (POD) for the chronic population adjusted dose (cPAD) is based on the most sensitive endpoint, liver effects. Effects in the liver preceded liver tumors and the effects observed in the thyroid (in rats only) were believed to be secondary to the liver effects.

No evidence of neurotoxicity was observed in response to repeated administration of fluxapyroxad. An acute neurotoxicity study showed decreased rearing and motor activity. This occurred on the day of dosing only and in the absence of histopathological effects or alterations in brain weights. This indicated that any neurotoxic effects of fluxapyroxad are likely to be transient and reversible due to alterations in neuropharmacology and not from neuronal damage. There were no neurotoxic effects observed in the subchronic dietary toxicity study. No evidence of reproductive toxicity was observed. Developmental effects observed in both rats and mice (thyroid follicular hypertrophy and hyperplasia in rats and decreased defecation, food consumption, body weight/body weight gain, and increased litter loss in rabbits) occurred at the same doses as those that caused adverse effects in maternal animals, indicating no quantitative susceptibility. Since the maternal toxicities of thyroid hormone perturbation in rats and systemic toxicity in rabbits likely contributed to the observed developmental effects there is low concern for qualitative susceptibility. An immunotoxicity study in mice showed no evidence of immunotoxic effects from fluxapyroxad.

Subchronic oral toxicity studies in rats, developmental toxicity studies in rabbits, and *in vitro* and *in vivo* genotoxicity studies were performed for fluxapyroxad metabolites F700F001, M700F002, and M700F048. Like fluxapyroxad, no genotoxic effects were observed for any of these metabolites. All three metabolites displayed lower subchronic toxicity via the oral route than fluxapyroxad, with evidence of non-specific toxicity (decreased body weight) observed only for M700F0048 at the limit dose. Only M700F0048 exhibited developmental toxicity at doses similar to those that caused developmental effects in rabbits with fluxapyroxad treatment. However, these effects (abortions and resorptions) were of a different nature than for fluxapyroxad (paw hyperflexion) and are considered secondary to maternal toxicity. The Agency considers these studies sufficient for hazard identification and characterization and concludes that these metabolites do not have hazards that exceed those of fluxapyroxad in nature, severity, or potency.

Specific information on the studies received and the nature of the adverse effects caused by fluxapyroxad as well as the no-observed-adverse-effect-level

(NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document, ''Human Health Risk Assessment for Use of Fluxapyroxad on Numerous Crops'' at pp. 52 in docket ID number EPA–HQ–OPP–2012–0638.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological 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 the NOAEL and the LOAEL are identified. Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a 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 chemical name used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLUXAPYROXAD 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 (General population including infants and children, and females 13–49 years of age).	NOAEL = 125 mg/kg/day. UF_A = 10× ..... UF_H = 10× ..... FQPA SF = 1×	Acute RfD = 1.25 mg/kg/day. aPAD = 1.25 mg/kg/day.	Acute neurotoxicity study in rats LOAEL = 500 mg/kg/day based on decreased motor activity and decreased rearing.
Chronic dietary (All populations)	NOAEL = 2.1 mg/kg/day. UF_A = 10× ..... UF_H = 10× ..... FQPA SF = 1×	Chronic RfD = 0.021 mg/kg/day. cPAD = 0.021 mg/kg/day.	Chronic toxicity/carcinogenicity study in rats LOAEL = 11 mg/kg/day based on non-neoplastic changes in the liver (foci, masses).
Incidental oral short-term (1 to 30 days).	NOAEL = 9 mg/kg/day. UF_A = 10× ..... UF_H = 10× ..... FQPA SF = 1×	LOC for MOE = 100	28-day oral toxicity study in rats LOAEL = 176 mg/kg/day based on changes in thyroid hormones and thyroid follicular hypertrophy/hyperplasia.
Inhalation short-term (1 to 30 days).	NOAEL= 9 mg/kg/day. UF_A = 10× ..... UF_H = 10× ..... FQPA SF = 1×	LOC for MOE = 100	28-day oral toxicity study in rats LOAEL = 176 mg/kg/day based on changes in thyroid hormones and thyroid follicular hypertrophy/hyperplasia.
Cancer (Oral, dermal, inhalation).	Classification: Not likely to be carcinogenic to humans at doses sufficient to induce liver and/or thyroid tumors. Quantification of risk using a non-linear approach (i.e., RfD) will adequately account for all chronic toxicity, including carcinogenicity.		

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. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_{DB} = to account for the absence of data or other data deficiency. UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL. UF_S = use of a short-term study for long-term risk assessment.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fluxapyroxad, EPA considered exposure under the petitioned-for tolerances as well as all existing fluxapyroxad tolerances in 40 CFR 180.666. EPA assessed dietary exposures from fluxapyroxad 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 fluxapyroxad. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA used tolerance-level residues adjusted upward to account for metabolites of concern not included in the tolerance expression, 100 percent crop treated (PCT) assumptions, and dietary exposure evaluation model (DEEM) default and empirical processing factors.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 2003–2008 NHANES/WWEIA. As to residue levels in food, a moderately refined chronic dietary exposure analysis was performed. An assumption of 100 PCT and DEEM default and empirical processing factors were used for the chronic dietary analysis. Combined average field-trial residues for parent and highest field-trial residues for metabolites of concern were used for all plant commodities. For livestock commodities tolerance-level residues adjusted upward to account for

metabolites of concern not included in the tolerance expression were used.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to fluxapyroxad. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii., chronic exposure.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for fluxapyroxad in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fluxapyroxad. 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.*

Based on the Tier 1 Rice Model and the Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of fluxapyroxad for acute exposures are estimated to be 127 parts per billion (ppb) for surface water and 203 ppb for ground water. The EDWCs for chronic exposures for non-cancer assessments are estimated to be 127 ppb for surface water and 184 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 203 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 184 ppb was used to assess the contribution to drinking water.

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). Fluxapyroxad is currently registered for the following uses that could result in residential exposures: Residential turf. EPA assessed residential exposure using the following assumptions: Residential handler exposures are expected to be short-term (1 to 30 days) via either the dermal or inhalation routes of exposures. Intermediate-term exposures are not likely because of the intermittent nature of applications by homeowners. Since no dermal hazard was identified for fluxapyroxad, MOEs were calculated for the inhalation route of exposure only.

Both adults and children may be exposed to fluxapyroxad residues from contact with treated lawns. Adult post-application exposures were not quantitatively assessed since no dermal hazard was identified for fluxapyroxad and inhalation exposures are typically negligible in outdoor settings. The exposure assessment for children included incidental oral exposure resulting from transfer of residues from the hands or objects to the mouth, and from incidental ingestion of soil. Post-application hand-to-mouth and object-to-mouth exposures are expected to be short-term (1 to 30 days) in duration due to the intermittent nature of applications in residential environments. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

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.''

EPA has not found fluxapyroxad to share a common mechanism of toxicity with any other substances, and fluxapyroxad does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fluxapyroxad does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

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 Food Quality Protection Act Safety Factor (FQPA 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. *Prenatal and postnatal sensitivity.* No evidence of quantitative susceptibility was observed in a reproductive and developmental toxicity study in rats or in developmental toxicity studies in rats and rabbits. Developmental toxicity data in rats showed decreased body weight and body weight gain in the offspring at the same dose levels that caused thyroid follicular hypertrophy/hyperplasia in parental animals. Effects in rabbits were limited to paw hyperflexion, a malformation that is not considered to result from a single exposure and that usually reverses as the animal matures. Developmental effects observed in both rats and rabbits occurred at the same doses as those that caused adverse effects in maternal animals, indicating no quantitative susceptibility. The Agency has low concern for developmental toxicity because the observed effects were of low severity, were likely secondary to maternal toxicity, and demonstrated clear NOAELs. Further, the NOAELs for these effects were at dose levels higher than the points of departure selected for risk assessment for repeat-exposure scenarios. Therefore, based on the available data and the selection of risk assessment endpoints that are protective of developmental effects, there are no residual uncertainties with regard to pre- and/or postnatal toxicity.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for fluxapyroxad is complete. Although no subchronic inhalation data is available,

EPA has waived that data requirement based on, among other things, its conclusion that even if an additional 10X safety factor was applied, inhalation exposure would not raise a risk of concern.

ii. There is no indication that fluxapyroxad is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity. Neither the acute nor the subchronic neurotoxicity studies indicated specific neurotoxicity responses to fluxapyroxad. Because fluxapyroxad can disrupt thyroid hormone levels, the Agency considered the potential for fluxapyroxad to cause developmental neurotoxicity as a result of thyroid hormone disruption, which is more sensitive endpoint than the endpoints used in a developmental neurotoxicity study. Based on its evaluation of thyroid hormone data submitted for fluxapyroxad and the ontogeny of thyroid hormone metabolism, the Agency has determined that adverse thyroid hormone disruptions in the young are unlikely to occur at dose levels as low as the points of departure chosen for risk assessment. The Agency has low concern for neurotoxic effects of fluxapyroxad at any life stage.

iii. Based on the developmental and reproductive toxicity studies discussed in Unit III.D.2., there are no residual uncertainties with regard to prenatal and/or postnatal toxicity.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues or field trial residue data. The dietary risk assessment is based on reliable data, is conservative and will not underestimate dietary exposure to fluxapyroxad. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to fluxapyroxad in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by fluxapyroxad.

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.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to fluxapyroxad will occupy 12% of the aPAD for children 3–5 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 fluxapyroxad from food and water will utilize 64% of the cPAD for infants (< 1 year old). Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of fluxapyroxad is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Fluxapyroxad is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to fluxapyroxad. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 320 for adults and 560 for children. Because EPA's level of concern for fluxapyroxad is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, fluxapyroxad 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 fluxapyroxad.

5. *Aggregate cancer risk for U.S. population.* As discussed in Unit III.A., EPA has classified fluxapyroxad as ''Not likely to be Carcinogenic to Humans'' based on convincing evidence that carcinogenic effects are not likely below a defined dose range. The Agency has determined that the quantification of risk using the cPAD for fluxapyroxad will adequately account for all chronic toxicity, including carcinogenicity that could result from exposure to fluxapyroxad. As noted above, chronic exposure to fluxapyroxad from food and water will utilize 64% of the cPAD for infants (< 1year old) the population group receiving the greatest exposure.

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 fluxapyroxad residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

A Liquid Chromatography-Mass Spectrometer/Mass Spectrometer (LC/MS/MS) method is available as an enforcement method. This method uses reversed-phase High Pressure Liquid Chromatography (HPLC) with gradient elution, and includes 2 ion transitions to be monitored for the parent fluxapyroxad.

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.

There is a Codex MRL for cotton, undelinted seed at 0.01 ppm. However, this MRL is based on seed treatment of cotton, and not foliar applications (which is the proposed use for the U.S. registration and which results in higher residues). Therefore, there is no ground for harmonization of U.S. tolerance and Codex MRL.

V. Conclusion

Therefore, tolerances are established for residues of fluxapyroxad [3-(difluoromethyl)-1-methyl-*N*-(3′,4′,5′-trifluoro[1,1′-biphenyl]-2-yl)-1*H*-pyrazole-4-carboxamide], including its metabolites and degradates, in or on cotton, gin byproducts at 20 ppm and cotton undelinted seed at 0.30 ppm.

VI. Statutory and Executive Order Reviews

This action amends existing 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 tolerances 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: July 22, 2015.

Susan Lewis,

Director, Registration Division, 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. In § 180.666, revise the entries for ''Cotton, gin byproducts'' and ''Cotton, undelinted seed'' in the table in paragraph (a) to read as follows:

§ 180.666 Fluxapyroxad; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * * * *	
Cotton, gin byproducts	20
Cotton, undelinted seed	0.30
* * * * * * *	

* * * * *

[FR Doc. 2015–18544 Filed 7–28–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0325; FRL–9930–22]

Ethanesulfonic Acid, 2-hydroxy and the Corresponding Ammonium, Sodium, Potassium, Calcium, Magnesium, and Zinc Salts; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of ethanesulfonic acid, 2-hydroxy- (CAS Reg. No. 107–36–8); ethanesulfonic acid, 2-hydroxy-, ammonium salt (CAS Reg. No. 57267–78–4); ethanesulfonic acid, 2-hydroxy-, sodium salt (CAS Reg. No. 1562–00–1); ethanesulfonic acid, 2-hydroxy-, potassium salt (CAS Reg. No. 1561–99–5); ethanesulfonic acid, 2-hydroxy-, calcium salt (CAS Reg. No. 10550–47–7); ethanesulfonic acid, 2-hydroxy-, magnesium salt (CAS Reg. No. 17345–56–1), and ethanesulfonic acid, 2-hydroxy-, zinc salt (CAS Reg. No. 129756–32–7) when used as inert ingredients (chelator, sequestrant and conditioning agent) in pesticide formulations applied to growing crops and raw agricultural commodities after harvest and applied to animals. Technology Sciences Group Inc. (1150 18th St. NW., Suite 1000 Washington, DC 20036) on behalf of Huntsman Corporation (8600 Gosling Rd., The Woodlands, TX 77381) submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of ethanesulfonic acid, 2-hydroxy- and its corresponding ammonium, sodium, potassium, calcium, magnesium, and zinc salts.

DATES: This regulation is effective July 29, 2015. Objections and requests for hearings must be received on or before September 28, 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–2014–0325, 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 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

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–2014–0325 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 September 28, 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–2014–0325, 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. Petition for Exemption

In the **Federal Register** of August 1, 2014 (79 FR 44729) (FRL–9911–67), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–10684) by Technology Sciences Group Inc. (1150 18th St. NW., Suite 1000, Washington, DC 20036) on behalf of Huntsman Corporation (8600 Gosling Rd., The Woodlands, TX 77381). The petition requested that 40 CFR 180.910 and 40 CFR 180.930 be amended by establishing an exemption from the requirement of a tolerance for residues of ethanesulfonic acid, 2-hydroxy- (CAS Reg. No. 107–36–8); ethanesulfonic acid, 2-hydroxy-, ammonium salt (CAS Reg. No. 57267–78–4); ethanesulfonic acid, 2-hydroxy-, sodium salt (CAS Reg. No. 1562–00–1);

ethanesulfonic acid, 2-hydroxy-, potassium salt (CAS Reg. No. 1561–99–5); ethanesulfonic acid, 2-hydroxy-, calcium salt (CAS Reg. No. 10550–47–7); ethanesulfonic acid, 2-hydroxy-, magnesium salt (CAS Reg. No. 17345–56–1), and ethanesulfonic acid, 2-hydroxy-, zinc salt (CAS Reg. No. 129756–32–7) when used as inert ingredients (chelator, sequestrant, and conditioning agent) in pesticide formulations applied to growing crops and raw agricultural commodities after harvest and applied to animals in accordance with 40 CFR 180.910 and 180.930, respectively. That document referenced a summary of the petition prepared by Technology Sciences Group Inc., the petitioner, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the 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 . . . .''

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), 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 ethanesulfonic acid, 2-hydroxy and the corresponding ammonium, sodium, potassium, calcium, magnesium, and zinc salts (also referred to as isethionic acid and its salts) including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with isethionic acid and its salts follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their 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. Specific information on the studies received and the nature of the adverse effects caused by isethionic acid and its salts as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

Isethionate salts are expected to metabolize and dissociate into isethionic acid in the body. Therefore, toxicity for each of the isethionate salt forms are expected to have equal toxicity and share similar physical and chemical characteristics. Studies on isethionic acid or any one of its salt can be considered relevant for the entire group.

The acute oral toxicity of isethionic acid ammonium salt is low. The acute oral lethal dose $(LD)_{50}$ in rats were > 1,000 milligram/kilogram/body weight (mg/kg-bw). The acute dermal toxicity in rats was > 1,000 mg/kg-bw. Ammonium isethionate is a minimal eye irritant based on a primary eye irritation study in rabbits. Ammonium isethionate is not dermally irritating based on a primary skin irritation study in rabbits. Ammonium isethionate has an acute inhalation lethal concentration $(LC)_{50}$ > 6.295 milligram/liter (mg/L) and is not a dermal sensitizer.

In a 90-day oral toxicity study on rats via gavage with sodium isethionate, decreased mean corpuscular hemoglobin concentration, increased mean absolute and relative reticulocyte counts, increased spleen weights and microscopic changes in the liver, bile duct, and spleen were observed at 1,000 milligram/kilogram/day (mg/kg/day) (LOAEL). Effects showed complete reversal after exposure was discontinued. The NOAEL for sodium isethionate was identified in this study as 200 mg/kg/day.

In an OSCPP Harmonized Test Guideline 870.3650 combined repeated dose toxicity study with the reproduction/developmental toxicity screening test, ammonium isethionate was administered to rats by gavage. The parental systemic LOAEL for ammonium isethionate is 500 mg/kg/day based on absolute and relative kidney weights and relative adrenal weights, and the parental systemic NOAEL is 250 mg/kg/day. The reproductive/developmental LOAEL for ammonium isethionate in rats was not identified, and the reproductive/developmental NOAEL is greater than or equal to 500 mg/kg/day.

Ammonium isethionate was negative for mutagenicity or chromosomal aberrations in a battery of tests of genotoxicity including a reverse gene mutation assay in bacteria, an *in vitro* mammalian cell gene mutation test using mouse lymphoma cells and an *in vitro* mammalian cell micronucleus test.

The OncoLogic™ structure-activity model was used to evaluate the likelihood that isethionic acid and its salts may cause cancer. Structure-activity modeling using Oncologic

indicates that isethionic acid does not contain structural alerts of potential concern for carcinogenicity. Based on the negative results for genotoxicity as well as the structure-activity model for carcinogenicity there is a low concern for isethionic acid and its salts as potential carcinogens.

No neurotoxicity studies were available in the database for isethionic acid and its salts. However, a functional observational battery (FOB) and locomotor activity patterns were evaluated in the combined reproduction/developmental toxicity screening test and 90-day oral toxicity study. No alterations in the FOB or locomotor activity patterns were observed.

No Immunotoxicity studies on isethionic acid and its salts were available in the database. Increased spleen weights and microscopic changes in the spleen were observed in the 90-day toxicity study in rats; however, the chronic reference dose (cRfD) is based on this study and is protective of these effects.

No metabolism studies were available in the database for isethionic acid and its salts.

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 the NOAEL and the LOAEL are identified. 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 isethionic acid and its salts used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ISETHIONIC ACID AND ITS SALTS FOR USE IN HUMAN RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–50 years of age).	An acute effect was not found in the database therefore an acute dietary assessment is not necessary.		
Acute dietary (General population including infants and children).	An acute effect was not found in the database therefore an acute dietary assessment is not necessary.		
Chronic dietary (All populations)	NOAEL = 200 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 200 mg/kg/day. cPAD = 2.0 mg/kg/day.	90-day oral toxicity-rat LOAEL = 1,000 mg/kg/day based on decreased body weight, changes in hematology parameters, increased spleen weights, macroscopic changes in the liver and microscopic changes in the liver, bile duct and spleen.
Incidental oral short-term (1 to 30 days).	NOAEL = 200 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	90-day oral toxicity-rat LOAEL = 1,000 mg/kg/day based on decreased body weight, changes in hematology parameters, increased spleen weights, macroscopic changes in the liver and microscopic changes in the liver, bile duct and spleen.
Incidental oral intermediate-term (1 to 6 months).	NOAEL = 200 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	90-day oral toxicity-rat LOAEL = 1,000 mg/kg/day based on decreased body weight, changes in hematology parameters, increased spleen weights, macroscopic changes in the liver and microscopic changes in the liver, bile duct and spleen.
Dermal short-term (1 to 30 days).	Dermal (or oral) study NOAEL = 200 mg/kg/day (dermal absorption rate = 100%. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	90-day oral toxicity-rat LOAEL = 1,000 mg/kg/day based on decreased body weight, changes in hematology parameters, increased spleen weights, macroscopic changes in the liver and microscopic changes in the liver, bile duct and spleen.
Dermal intermediate-term (1 to 6 months).	Dermal (or oral) study NOAEL = 200 mg/kg/day (dermal absorption rate = 100%. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	90-day oral toxicity-rat LOAEL = 1,000 mg/kg/day based on decreased body weight, changes in hematology parameters, increased spleen weights, macroscopic changes in the liver and microscopic changes in the liver, bile duct and spleen.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ISETHIONIC ACID AND ITS SALTS FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Inhalation short-term (1 to 30 days).	Inhalation (or oral) study NOAEL = 200 mg/kg/day (inhalation absorption rate = 100%). UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	90-day oral toxicity-rat LOAEL = 1,000 mg/kg/day based on decreased body weight, changes in hematology parameters, increased spleen weights, macroscopic changes in the liver and microscopic changes in the liver, bile duct and spleen.
Inhalation (1 to 6 months)	Inhalation (or oral) study NOAEL = 200 mg/kg/day (inhalation absorption rate = 100%). UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	90-day oral toxicity-rat LOAEL = 1,000 mg/kg/day based on decreased body weight, changes in hematology parameters, increased spleen weights, macroscopic changes in the liver and microscopic changes in the liver, bile duct and spleen.
Cancer (Oral, dermal, inhalation).	Based on structural activity analysis, lack of effects suggestive of potential carcinogenicity in subchronic studies and negative results for genotoxicity in bacterial and mammalian cell assays, there is a low concern for the salts of isethionate and isethionic acid as potential carcinogens.		

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. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to isethionic acid and its salts, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from isethionic acid and its salts in food as follows:

An acute dietary risk assessment was not conducted because no endpoint of concern following a single exposure was identified in the available studies. A chronic dietary exposure assessment was completed and performed using the Dietary Exposure Evaluation Model DEEM–FCID™, Version 3.16 which includes food consumption information from the U.S. Department of Agriculture's National Health and Nutrition Examination Survey, ''What We Eat In America'', (NHANES/WWEIA). This dietary survey was conducted from 2003 to 2008. In the absence of actual residue data, the inert ingredient evaluation is based on a highly conservative model that assumes that the residue level of the inert ingredient would be no higher than the highest established tolerance for an active ingredient on a given commodity. Implicit in this assumption is that there would be similar rates of degradation between the active and inert ingredient (if any) and that the concentration of inert ingredient in the scenarios leading to these highest of tolerances would be no higher than the concentration of the active ingredient. The model assumes 100 percent crop treated (PCT) for all crops and that every food eaten by a person each day has tolerance-level residues. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data is contained in the memorandum entitled ''Alkyl Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts'' (D361707, S. Piper, 2/25/09) and can be found at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2008–0738.

2. *Dietary exposure from drinking water.* For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for isethionic acid and its salts, a conservative drinking water concentration value of 100 parts per billion (ppb) based on screening level modeling was used to assess the contribution to drinking water for the chronic dietary risk assessments for parent compound. These values were directly entered into the dietary exposure model.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

Isethionic acid and its salts may be used as inert ingredients in pesticide products that are registered for specific uses that may result in indoor or outdoor residential inhalation and dermal exposures. A screening level residential exposure and risk assessment was completed utilizing conservative residential exposure assumptions. The Agency assessed short- and intermediate-term dermal and inhalation exposures for residential handlers that would result from low pressure hand wand, hose end sprayer and trigger sprayer for each pesticide type, herbicide, insecticide, and fungicide. The Agency assessed post-application short-term dermal exposure for children short-term hand-to-mouth and dermal exposure for children and adults from contact with treated lawns.

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.''

EPA has not found isethionic acid and its salts to share a common mechanism

of toxicity with any other substances, and isethionic acid and its salts does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that isethionic acid and its salts does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

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 Food Quality Protection Act (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. *Prenatal and postnatal sensitivity.* Fetal susceptibility was not observed in the combined developmental/reproduction toxicity screening test in rats. Neither offspring nor reproduction toxicity was observed in this study at dose levels up to 500 mg/kg/day in rats, the highest dose tested.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for isethionic acid and its salts contains the following acceptable studies: Subchronic, reproduction/developmental screening study, and a mutagenicity study. The database is considered to be adequate to assess prenatal and postnatal toxicity.

ii. There is no indication that isethionic acid and its salts are neurotoxic chemicals and there is no need for a developmental neurotoxicity study or additional uncertainty factors (UF) to account for neurotoxicity.

iii. There is no indication that isethionic acid and its salts are immunotoxic chemicals. Although increased spleen weights and microscopic changes in the spleen were observed in the 90-day toxicity study in rats those effects were due to red blood cell destruction and therefore not considered an immuno toxic effect. In any event, the cRfD is based on this study and is protective of these effects. Therefore, there is no need for an Immunotoxicity study or additional UFs to account for Immunotoxicity.

iv. There is no evidence that isethionic acid and its salts result in increased susceptibility for infants and children.

v. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to isethionic acid and its salts in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by isethionic acid and its salts.

E. Aggregate Risks and Determination of Safety

1. *Determination of safety section.* 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.

2. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, isethionic acid and its salts is not expected to pose an acute risk.

3. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to isethionic acid and its salts from food and water will utilize 9.5% of the cPAD for the U.S. population and 35.3% of the cPAD for children 1–2 yrs. old, the population group receiving the greatest exposure.

4. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Isethionic acid and its salts may be used as an inert ingredient in pesticide products that are registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to isethionic acid and its salts.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 187 for adults and 123 for children. Because EPA's level of concern for isethionic acid and its salts are MOEs of 100 or below, these MOEs are not of concern.

5. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Isethionic acid and its salts are currently used as an inert ingredient in pesticide products that are registered for uses that could result in intermediate-term residential exposure. The endpoint of concern selected for short- and intermediate-term exposure assessment is the same NOAEL, therefore intermediate term exposure is not expected to exceed short term aggregate exposure and therefore there are no concerns for intermediate-term aggregate exposure.

6. *Aggregate cancer risk for U.S. population.* The Agency has not identified any concerns for carcinogenicity relating to isethionic acid and its salts; therefore, a cancer dietary exposure assessment was not performed and an aggregate risk and aggregate cancer risk assessment is not a concern.

7. *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 isethionic acid and its salt residues.

V. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

VI. Conclusions

Therefore, exemptions from the requirement of a tolerance are

established under 40 CFR 180.910 and 40 CFR 180.930 for ethanesulfonic acid, 2-hydroxy- (CAS Reg. No. 107–36–8); ethanesulfonic acid, 2-hydroxy-, ammonium salt (CAS Reg. No. 57267–78–4); ethanesulfonic acid, 2-hydroxy-, sodium salt (CAS Reg. No. 1562–00–1); ethanesulfonic acid, 2-hydroxy-, potassium salt (CAS Reg. No. 1561–99–5); ethanesulfonic acid, 2-hydroxy-, calcium salt (CAS Reg. No. 10550–47–7); ethanesulfonic acid, 2-hydroxy-, magnesium salt (CAS Reg. No. 17345–56–1), and ethanesulfonic acid, 2-hydroxy-, zinc salt (CAS Reg. No. 129756–32–7) when used as inert ingredients (chelators, sequestrants, and conditioning agents) in pesticide formulations applied to growing crops and raw agricultural commodities after harvest and applied to animals.

VII. Statutory and Executive Order Reviews

This action establishes exemptions from the requirement of a tolerance 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 exemptions 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).

VIII. 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: July 21, 2015.

Susan Lewis,

Director, Registration Division, 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. In § 180.910, add alphabetically the inert ingredients to the table to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* *	* * *	* *
Ethanesulfonic acid, 2-hydroxy- (CAS Reg. No. 107–36–8).	.....	Chelator, sequestrant, or conditioning agent.
Ethanesulfonic acid, 2-hydroxy-, ammonium salts (CAS Reg. No. 57267–78–4).	.....	Chelator, sequestrant, or conditioning agent.
Ethanesulfonic acid, 2-hydroxy-, calcium salts (CAS Reg. No. 10550–47–7).	.....	Chelator, sequestrant, or conditioning agent.
Ethanesulfonic acid, 2-hydroxy-, magnesium salts (CAS Reg. No. 17345–56–1).	.....	Chelator, sequestrant, or conditioning agent.
Ethanesulfonic acid, 2-hydroxy-, potassium salts (CAS Reg. No. 1561–99–5).	.....	Chelator, sequestrant, or conditioning agent.
Ethanesulfonic acid, 2-hydroxy-, sodium salts (CAS Reg. No. 1562–00–1).	.....	Chelator, sequestrant, or conditioning agent.
Ethanesulfonic acid, 2-hydroxy-, zinc salts (CAS Reg. No. 129756–32–7).	.....	Chelator, sequestrant, or conditioning agent.
* *	* * *	* *

■ 3. In § 180.930, add alphabetically the inert ingredients to the table to read as follows:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* *	* * *	* *
Ethanesulfonic acid, 2-hydroxy- (CAS Reg. No. 107–36–8).	.....	Chelator, sequestrant, or conditioning agent.
Ethanesulfonic acid, 2-hydroxy-, ammonium salts (CAS Reg. No. 57267–78–4).	.....	Chelator, sequestrant, or conditioning agent.
Ethanesulfonic acid, 2-hydroxy-, calcium salts (CAS Reg. No. 10550–47–7).	.....	Chelator, sequestrant, or conditioning agent.
Ethanesulfonic acid, 2-hydroxy-, magnesium salts (CAS Reg. No. 17345–56–1).	.....	Chelator, sequestrant, or conditioning agent.
Ethanesulfonic acid, 2-hydroxy-, potassium salts (CAS Reg. No. 1561–99–5).	.....	Chelator, sequestrant, or conditioning agent.
Ethanesulfonic acid, 2-hydroxy-, sodium salts (CAS Reg. No. 1562–00–1).	.....	Chelator, sequestrant, or conditioning agent.
Ethanesulfonic acid, 2-hydroxy-, zinc salts (CAS Reg. No. 129756–32–7).	.....	Chelator, sequestrant, or conditioning agent.
* *	* * *	* *

[FR Doc. 2015–18610 Filed 7–28–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2005–0002; FRL–9931–47–Region 2]

National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List: Deletion of the Crown Vantage Landfill Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 2 announces the deletion of the Crown Vantage Landfill Superfund Site (Site), located in Alexandria Township, Hunterdon County, New Jersey, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA and the State of New Jersey, through the New Jersey Department of Environmental Protection, have determined that all appropriate response actions under CERCLA, other than long-term maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This action is effective August 28, 2015.

ADDRESSES: *Docket:* EPA has established a docket for this action under Docket Identification No. EPA–HQ–SFUND–2005–0002. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Site Information repositories. Locations, contacts, telephone numbers and viewing hours are:

U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, Room 1828, New York, NY 10007–1866, *Telephone:* 212–637–4308, *Hours:* Monday through Friday from 9:00 a.m. to 5:00 p.m. and

Milford Public Library, Crown Vantage Landfill Site Repository File, 40 Frenchtown Road, Milford, NJ 08848, *Telephone:* 908–995–4072, *Hours:* Monday 12:00 p.m. to 7:00 p.m., Tuesday 11 a.m. to 5:00 p.m., Wednesday 12 p.m. to 8:00 p.m., Thursday 11 a.m. to 8:00 p.m., Friday 10:00 a.m. to 1:00 p.m. and 5:00 p.m. to 8:00 p.m., and Saturday 10:00 a.m. to 1:00 p.m.

FOR FURTHER INFORMATION CONTACT: Alison Hess, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 19th Floor, New York, NY 10007–1866; *Telephone* 212–637–3959; or *Email hess.alison@epa.gov.*

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Crown Vantage Landfill Superfund Site, Alexandria Township, New Jersey. A Notice of Intent to Delete for this Site was published in the **Federal Register** (80 FR 23757) on April 29, 2015. The closing date for comments on the Notice of Intent to Delete was May 29, 2015. No comments were received and therefore no response to comments was required. The deletion action is appropriate.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazards ranking system. Deletion of a site from the NPL does not affect the responsible party liability in the unlikely event that future conditions warrant further actions.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 6, 2015.

Judith A. Enck,

Regional Administrator, Region 2.

For reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B to Part 300—[Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing ''NJ'', ''Crown Vantage Landfill'', ''Alexandria Township''.

[FR Doc. 2015–18607 Filed 7–28–15; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–11

[FTR Amendment 2015–05; FTR Case 2015–302; Docket No. 2015–0012; Sequence No. 1]

RIN 3090–AJ62

Federal Travel Regulation; Temporary Duty (TDY) Travel Allowances

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is amending the Federal Travel Regulation (FTR) by removing the meals and incidental expenses (M&IE) breakdown table from the regulation. The table will continue to be published on GSA's Web site at *www.gsa.gov/mie* and any changes to the breakdown of M&IE reimbursement rates will be publicized via FTR Bulletins.

DATES: *Effective:* This rule is effective on July 29, 2015.

Applicability date: This rule is applicable beginning October 1, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Marcerto Barr, Office of Government-wide Policy (MAE), General Services Administration, at 202–208–7654 or email at *marcerto.barr@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FTR Amendment 2015–05, FTR case 2015–302.

SUPPLEMENTARY INFORMATION:

A. Background

In order to be more efficient and consistent, and in an effort to eliminate duplication, GSA is removing the M&IE breakdown table from the FTR and solely maintaining it on GSA's Web site at *www.gsa.gov/mie.* The table has been on this Web site for several years and can be updated quickly and efficiently. Changes to per diem reimbursement rates for lodging and M&IE are currently publicized by FTR bulletins and rates are published solely on GSA Web site's. Similarly, any future changes to the M&IE breakdown table will also be publicized in FTR Bulletins notifying agencies of updates to the per diem rates for lodging and M&IE.

B. Executive Orders 12866 and 13563

Executive Orders (E.O.s.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives, and if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a ''significant regulatory action,'' and therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. The final rule has been reviewed by the Office of Management and Budget. This final rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This final rule is also exempt from Administrative Procedure Act per 5 U.S.C. 553(a)(2), because it applies to agency management or personnel.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the Federal Travel Regulation do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 301–11

Government employees, per diem reimbursement, M&IE allowance, Travel and transportation.

Dated: July 9, 2015.

Denise Turner Roth,

Acting Administrator of General Services.

For the reasons set forth in the preamble, under 5 U.S.C. 5701–5707, GSA is amending 41 CFR part 301–11, as set forth below:

PART 301–11—PER DIEM EXPENSES

■ 1. The authority for part 301–11 continues to read as follows:

Authority: 5 U.S.C. 5707.

§ 301–11.18 [Amended]

■ 2. Amend § 301–11.18 by:

■ A. Removing from paragraph (a) the phrase ''in the chart in this section'' and adding the phrase ''at *www.gsa.gov/mie''* in its place; and

■ B. Removing the table ''Total M&IE'' at the end of paragraph (a).

[FR Doc. 2015–18289 Filed 7–28–15; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–ES–2009–0094; 450 003 0115]

RIN 1018–AY64

Endangered and Threatened Wildlife and Plants; Listing the Honduran Emerald Hummingbird (Amazilia luciae)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are listing the Honduran emerald hummingbird (*Amazilia luciae*) as endangered under the Endangered Species Act of 1973, as amended (Act). This species is endemic to Honduras, and the population is estimated to be between 5,000 and 10,000 breeding pairs. Its suitable habitat has decreased significantly in the past 100 years; habitat degradation, fragmentation, and loss have been identified as the primary threats to the continued survival of this species.

DATES: This final rule is effective August 28, 2015.

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of

Foreign Species, Ecological Services Program, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171. 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

I. Purpose of the Regulatory Action

We are listing the Honduran emerald hummingbird as endangered under the Endangered Species Act (ESA or Act) (16 U.S.C. 1531 *et seq.*) as habitat degradation, fragmentation, and loss have been identified as primary threats to the continued survival of this species.

II. Major Provisions of the Regulatory Action

This action lists the Honduran emerald hummingbird as endangered on the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h).

Background

The ESA was passed to prevent extinction of species by providing measures to help alleviate the loss of species and their habitats. Before a plant or animal species can receive the protection provided by the ESA, it must first be added to one of the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4 of the ESA and its implementing regulations at part 424 of title 50 of the Code of Federal Regulations (CFR) set forth the procedures for adding species to these lists.

Previous Federal Actions

On June 23, 2010, we published a 90-day finding (75 FR 35746) on the petition announcing that we would initiate a status review to determine if listing this species is warranted. On January 2, 2013, we published a 12-month finding and proposed rule (78 FR 59) to list this species as endangered under the Act.

Summary of Comments

We base this final rule on a review of the best scientific and commercial information available, including all information we received during the public comment period. In the January 2, 2013, proposed rule (78 FR 59), we requested that all interested parties submit information that might contribute to development of a final rule. The public comment period was open for 60 days, ending March 4, 2013. We also contacted appropriate scientific experts and organizations, and invited them to comment on the proposed listing in accordance with our peer review policy, described in the section below. We received five (5) comments during the comment period including two from peer reviewers, one comment from the Petitioner, one comment containing three reports, and one non-substantial comment. These comments are available at *http://www.regulations.gov* in Docket No. FWS–R9–ES–2009–0094. The information in the comments provided updated life history information about the species, documented where this species has been recently observed, and provided an updated population estimate (5,000–10,000 breeding pairs). This information is described in the Summary of Changes from Proposed Rule section below as well as incorporated into the rule.

Peer Review

In accordance with our policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' that was published on July 1, 1994 (59 FR 34270), we sought the expert opinion of three appropriate independent specialists regarding this rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analysis. We sent copies of the proposed rule to the peer reviewers immediately following publication in the **Federal Register**. We invited these peer reviewers to comment, during the public comment period, on the specific assumptions and the data that were the basis for our conclusions regarding the proposal to list this species as endangered under the Act. We received comments from two peer reviewers.

We reviewed all comments we received for substantive issues and new information regarding the proposed listing of this species; we address those comments in the section that follows. Comments that provided support or opposition without substantive information were noted, but not addressed in this final rule.

Summary of Changes From Proposed Rule

This final rule incorporates the comments we received on our proposed listing and newly available scientific and commercial information. Peer reviewers generally commented that the proposed rule was thorough and comprehensive. New reports relevant to the Honduran emerald hummingbird and its habitat were submitted during the comment period. Two resources were provided which provided new population estimates. The estimated number of Honduran emerald hummingbirds in one study (INGTELSIG 2013) was estimated to be larger than other estimates; however, there were several aspects of the methodology, assumptions, and study design that were questioned by other scientists to the extent that we did not have confidence in the population estimate provided in the study (Anderson *et al.* 2013, pp. 9–14). The second resource provided the most significant change; based on recent surveys, the population of this species appears to be greater than was previously believed. At the time our proposed rule published, the most current population estimate was 200–1,000 individuals; new information provided during the public comment period indicates that the population of the Honduran emerald hummingbird is likely between 5,000 to 10,000 pairs (Anderson *et al.* 2013, p. 10). The new information is incorporated into this final listing determination. There are very few individuals studying and working closely with this species, and future studies are needed to obtain more precise estimates of the Honduran emerald hummingbird population. Our determinations were based on the best available scientific and commercial information. None of the information obtained during the comment period changed our final listing determination. A list of literature used in finalizing this determination and comments we received are available at *http://www.regulations.gov* under Docket No. FWS–R9–ES–2009–0094.

Species Information

Taxonomy

This hummingbird species was first taxonomically described by Lawrence in 1867, and placed in the Trochilidae family as *Amazilia luciae* (BLI 2013, p. 1; Sibley and Monroe 1993, 1990). Common names for the species include Honduran emerald hummingbird, Ariane De Lucy (French), and in Honduras it is commonly known as the colibrí esmeralda Hondureño (Spanish). BLI and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) both recognize the species as *Amazilia luciae* (BLI 2008, p. 1). We recognize this species as *Amazilia luciae,* which also follows the Integrated Taxonomic Information System (ITIS 2013). ITIS is a database maintained by a partnership of U.S., Canadian, and Mexican federal government agencies, other organizations, and taxonomic specialists to provide taxonomic information.

Description

The Honduran emerald hummingbird is one of more than 325 hummingbird species. Hummingbirds exhibit a wide range of flight-related morphology and behavior based on ecological factors (Altshuler and Dudley 2002, p. 2,325). As do all hummingbirds, the Honduran emerald hummingbird exhibits slight sexual dimorphism (physical differences between the females and males), which is demonstrated in the coloring of its plumage. This species is a medium-sized hummingbird with an average length of 9.5 centimeters (3.7 inches) (BLI 2008, p. 2). The male has an iridescent blue-green throat and upper chest and occasionally has a grey mottled coloring. Its back is an emerald green color, the ventral (underneath) side of the bird is pale grey with mottled green sides, and the tail is bright green with a bronze hint on the upper tail coverts (BLI 2008, p. 1). The plumage of the female is less brilliant (BLI 2008, p. 2). The tail of the female contains a grey tip, and the band of distinctive color on the throat of the female hummingbird is narrower, with pale edges (BLI 2008, p. 2; Monroe 1968, p. 183). Juveniles have grayish throats spotted with turquoise (BLI 2008, p. 2).

Hummingbird bills vary among species and are adapted for specialized feeding. The bill of the Honduran emerald hummingbird is black and slightly curved with a red mandible and dark tip and is slightly longer and more decurved (downward curving) bill than the closely related species *A. candida* (Monroe 1968, p. 182). The curvature of its bill is associated with foraging for nectar in plant species within its habitat (Gill 1987, p. 780).

Biology

The Honduran emerald hummingbird historically has preferred arid interior valleys of thorn forest and shrubs. The Aguán River Valley area rarely receives more than 76 centimeters (30 inches) of rain per year (Perez and Thorn 2012, pers. comm.; Gallardo 2010, *http://www.birdsofhonduras.com*). Due to the arid climate, many of the plant species are adapted to retain water and are succulents or contain spines as protection from herbivores. Many of the plants lose all their leaves in the dry season, and Honduran emerald hummingbird habitat may appear almost lifeless. Typical plants within its habitat include cacti, acacias, and other succulents. Three species of arborescent (tree-like) cacti have been associated with the Honduran emerald hummingbird's habitat: *Pilosocereus maxonii, Stenocereus yunckeri* (endemic), and *Opuntia hondurensis* (endemic) (House 2004, p. 15). The flowering of *Opuntia hondurensis* coincides with the nesting period of the Honduran emerald hummingbird (House 2004, p. 23). Large clusters of three species of orchids, *Myrmecophila wendlandii, Laelia rubescens,* and *Encyclia nematocaulon,* were found growing on cacti within the habitat (House 2004, p. 16). The trees and shrubs found in one study of its habitat were almost 100 percent deciduous (House 2004, p. 15). In larger, more mature trees, some bromeliads (when blooming are sources of nectar and energy) were found. Although epiphytes (plants that grow non-parasitically on another plant, such as a tree) are usually rare in this habitat type, some epiphytes are well adapted to the extremes of this environment.

In Honduras, this habitat occurs primarily along the Gulf of Fonseca, in the Agalta Valley in the Olancho Department, and in the Aguán Valley in the Yoro Department (for a map of the Honduran emerald populations, see our proposed rule, 78 FR 63). This species tends to be found in similar altitudes, although it has recently been observed at higher elevations (Germer 2013, pp. 1–2). Most of the hummingbird's occurrences have been noted at elevations between 150 and 600 meters (492 and 1,968.5 feet (ft)) above sea level; however, other observations were recorded at 845 and 1,220 meters (2,772 and 4,003 ft) (Germer 2012; pp. 55–56; Sanchez et al. 2011, p. 69).

The Honduran emerald hummingbird nests in March and April, and its nest has been observed in a Guayabillo tree (*Eugenia lempana*) (Espinal and Marineros 2008, p. 1). Its nests are made of cobwebs, lichens, and mosses, and it usually lays two eggs which hatch in 2½ weeks (Germer 2011, p. 52).

Emerald hummingbirds are somewhat aggressive and territorial (Collar et al. 1992, p. 493; Howell and Webb 1989, p. 643), due to competition with other hummingbird species for resources. This species has been observed feeding at heights between 0.5 to 10 meters (2 to 32 ft) (Howell and Webb 1989, p. 643). Some aspects of this species' behavior remain unclear, such as how far individuals disperse, what habitats are important for dispersal, and how the populations are linked genetically (Perez and Thorn 2012 pers. comm.; Anderson et al. 2010, p. 7).

As with all hummingbird species, the Honduran emerald hummingbird relies on nectar-producing flowers for food and energy, and relies on insects and spiders as sources of protein (Germer 2012, p. 2; Collar et al. 1992, p. 494). Thorn et al. (2000, p. 23) observed that habitat with abundant flowers, red in particular, appeared to be a critical characteristic for suitable habitat. Additionally, suitable habitat requirements include similar ecological conditions such as access to nectar and insects, rainfall, humidity and temperature. During one field study in Santa Barbara, Honduran emerald hummingbirds were observed hunting arthropods about 50 percent of their time (Stiles 1985).

Hummingbirds are known to ''disperse'' rather than ''migrate'' in the sense that they do not follow routine, standard, round-trip movements; they follow sources of food availability (Berthold et al. 2003, pp. 40–41). Hummingbirds are the most specialized nectar-feeding birds in the New World (Graham et al. 2009, p. 19,673). Hummingbirds quickly shift to the best available sources of nectar; their choice of habitat may change concurrent with loss of their preferred food sources (Gill 1987, p. 785; Montgomerie et al. 1984). When a hummingbird's habitat does not provide its required resources, research indicates that they tend to abandon a territory and move to more productive areas (Feinsinger and Colwell 1978; Kodric-Brown and Brown 1978 in Justino et al. 2012, p. 194). Emerald hummingbirds are habitat generalists in the sense that they do not rely exclusively on a single species of plant for nourishment; rather, they utilize a wide variety of nectar-producing plants to meet their nutritional requirements (Graham et al. 2009, p. 19,675). *Helicteres guazumaefolia,* which produces nectar all year (as opposed to seasonally), was observed to be a preferred food source for the Honduran emerald hummingbird in Santa Barbara (Komar et al. 2013, pp. 25–26). This species has been observed actively foraging mid-morning, concurrent with the time during the day when nectar is most plentiful. For example, energy present in *Heliconia stilesii* flowers averaged 200 to 300 joules per flower in the early morning and 300 to 500 joules per flower by midmorning (Gill 1987, pp. 781–782).

Germer (2011) found that during the dry season, the Honduran emerald hummingbird can be found in gallery forests (forests that grow in corridors along wetlands or rivers, projecting into sparsely treed areas), or near bodies of water where humidity and abundance of small arthropods is greater. Its use of these areas is believed to reduce its metabolic cost and escape heat during the driest seasons (pp. 52–53). High variability between detections was observed, which could imply that the

species is not evenly distributed across the available habitat (Germer 2011, pp. 52–53); it may move seasonally in search of food sources.

In Yoro, the Honduran emerald hummingbird uses the species Pedilanthus camporum, which produces flowers year-round, and Nopalea hondurensis, which flowers generally between February and April, 90 percent of the time observed. In the Coyoles area in the Aguán Valley, the thorn forest is primarily comprised of Mimosaceae (herbaceous and woody species), Cactaceae (cactus species), and Euphorbiaceae (herbs, shrubs, trees, and some succulent species) (Collar et al. 1992, p. 494). In western Honduras, 90 percent of foraging observations were on Aphelandra scabra and Helicteres guazaumifolia. A list of plant species utilized by Honduran emerald hummingbirds is available in our proposed rule, 78 FR 63.

Population

In our proposed rule (78 FR 59), we noted that several attempts have been made to estimate the population status of the Honduran emerald. In 2007, the total population was estimated to be between 200 and 1,000 individuals (Anderson *et al.* 2007, p. 1). At the time of the publication of our proposed rule, the best estimate suggested a population of approximately 200–1000 individuals (BLI 2012, unpaginated; Perez and Thorn pers. comm. 2012).

During the public comment period, we received additional information indicating that the total population estimate for Honduran emerald may be higher than previously believed. One study, published in 2013, suggested that the population of Honduran emerald hummingbirds was significantly larger, estimated to be between 50,000 and 106,000 individuals (INGTELSIG 2013). We find this to be an overestimate due to several erroneous assumptions in the study design and sampling methodology, which were described in Anderson *et al.* (2013, pp. 10–12). More recent studies and research suggests that there are between 5,000 and 10,000 breeding pairs spread across seven separate populations (Anderson et al. 2013, p. 2). Table 1 provides the current population estimate for each of the populations based upon the best available scientific and commercial information submitted by researchers working with the species.

TABLE 1—POPULATION ESTIMATES BY VALLEY

[Anderson 2013, pp. 2, 14]

Honduran department	Location of population	Population estimate
Santa Barbara Department	Tencoa Valley	2,500–5,000 breeding pairs.
	Jicatuyo Valley	
	Quimistán Valley	
Yoro Department	Aguán Valley	1,000–2,000 breeding pairs.
Olancho Department	Agalta Valley	1,000–2,000 breeding pairs.
	Telica Valley	500–1,000 breeding pairs.
	Guayape Valley (Valle de Olancho)	Extirpated.

Historic Distribution

The Honduran emerald hummingbird is the only known endemic bird species in Honduras (Anderson and Devenish 2009, p. 258; Portillo 2007, p. 17; Thorn *et al.* 2000, p. 3; Collar *et al.* 1992, p. 493; Monroe 1968, p. 182). Based on specimen data, the species was originally known to occur in four departments (which are similar to ''states'' in the United States): Cortés and Santa Barbara in the west and Yoro and Olancho in the northeast. The Honduran emerald hummingbird was likely a forest inhabitant and described as locally common (Howell 1989, p. 642). The locations and dates where this species has been documented are as follows:

- Catacamas, Olancho (1937 and 1991) (Howell and Webb 1992, pp. 46–47; Monroe 1968, p. 182).
- Cofradía, Cortes (1933) (Monroe 1968, p. 182).
- Coyoles, Yoro (1948 and 1950) (Monroe 1968, p. 182).
- El Boquerón, Olancho (recorded September 1937) (Monroe 1968, p. 182).
- Olanchito, Yoro (1988) (Howell and Webb 1989, pp. 642–643).
- Santa Bárbara, Santa Bárbara (1935) (Monroe 1968, p. 182).

Between 1950 and 1988 there were no recorded observations of the Honduran emerald hummingbird. In 1988, the species was described as common in Olanchito and Coyoles, which are located 16 km (9 miles) apart (BLI 2008, p. 2). In 1991, between 22 and 28 individuals were found in a patch of habitat measuring 500 by 50 meters (1,640 x 164 ft) near Olanchito (Howell and Webb 1992, pp. 46–47). In 1996, the bird was found in the Agalta Valley on less than 1 km^2 (247 acres or .39 square miles (mi^2)) of suitable habitat (BLI 2008, p. 3).

Current Distribution

Prior to its 1988 rediscovery in Olanchito and Coyoles, it was thought that habitat loss had restricted the Honduran emerald hummingbird to isolated patches of arid thorn-forest and scrub of the interior valleys of northern Honduras. Between 2007 and 2013, this species was documented in seven valleys in Honduras (Anderson *et al.* 2013, p. 2; Germer 2012, pp. 52–60; Anderson 2010, p. 4) (see Fig. 1). In the Tencoa Valley (Santa Barbara), researchers found individuals in five habitat patches, each separated by at least 5 km (3 miles). These habitat fragments were between 5 and 60 hectares (ha) (12 and 148 acres) each. It is estimated that the population in the Santa Barbara Department is approximately 200 km (124 miles) west of the nearest known population in the Aguán Valley (Anderson 2010, p. 5). The Honduran emerald hummingbird density within the Santa Barbara Department has been estimated to be between 76 and 167 individuals per km^2 (29–64 mi^2) (Sanchez *et al.* 2011, p. 5), but its density varies based on food availability. BLI reports that its range is 400 km^2 (154 mi^2). However, local experts believe its actual extent of occurrence may be closer to 150 km^2 (58 mi^2) (Perez and Thorn pers. comm. 2012). Observations of the Honduran emerald hummingbird have been recently reported in western Honduras in the Quimistán Valley (in the Río Chamelecón watershed) and Tencoa Valley (Río Ulúa watershed), in the Santa Barbara Department where it had not been recorded since 1935. The westernmost occurrence of the species is in the Oro River Valley, near Sula in the municipality of Macuelizo. The northernmost site is in the Valley of Azacualpa, also in the municipality of Macuelizo.

Agalta Valley (Olancho Department)

In 2007, this species was observed in the Agalta Valley and in the Telica Valley, both in the Olancho Department (Anderson and Hyman 2007, p. 6). The Agalta Valley is described as a remote region in the mountains of eastern Honduras containing over 1,000,000 ha (2,471,054 acres) of land characterized as dry basin. Here, the Honduran emerald hummingbird's habitat primarily is on large, privately owned cattle ranches that have restricted access (Anderson *et al.* 2010, p. 3). The species has been known to occur in this valley since the mid-1990s (Anderson *et al.* 1998, p. 181). Although this species exists in the Agalta Valley, very little information regarding the factors affecting this species in this area are known. Reports indicate that areas that contain suitable habitat characteristics for the Honduran emerald hummingbird are being cleared for rice cultivation (Hyman 2012, pers. comm.; Bonta 2011, pers. comm.). Several of the remaining habitat patches are connected by narrow corridors of habitat along property lines and waterways, but most of the patches of remaining habitat are ''islands'' within cattle pasture, which comprises approximately 90 percent of the Valley's area (Bonta 2011, pers. comm.).

Aguán Valley (Yoro Department)

This hummingbird species is known in the Aguán Valley, Yoro Department, in the areas of Olanchito and Coyoles, and is reported as relatively common, but only within its remaining suitable habitat (Gallardo 2010, p. 186; Thorn *et al.* 2000, pp. 22–23). This species has also been observed in New Valle del Rio de Oro, Valle de Azacualpa, and Rio Jicatuyo in the vicinity of San Luis. The Honduran emerald hummingbird's habitat formerly encompassed a large extent of the Aguán Valley, a once pristine plain of nearly 4,662 km^2 (1,800 mi^2). Ninety percent of its original habitat no longer exists in its original form due to the conversion of its habitat to banana plantations and cattle pasture. Much of the Honduran emerald hummingbird's habitat is on privately owned land and is often planted with nonnative grasses for cattle grazing (Perez and Thorn 2012, pers. comm.; Anderson pers. comm. 2008 in Petition 2008, p. 11). In some cases, it is planted with invasive grass species (*http://www.birdlist.org/cam/honduras/hn_ecosystems.htm,* accessed May 22, 2012). Today, due to decades of unregulated and expanding cattle ranching, the hummingbird's dry forest range is limited to a few small, isolated islands of habitat. Its increasingly smaller ecosystems are surrounded by human-dominated landscapes. One estimate indicated that between 2,428 and 3,237 ha (6,000–8,000 acres) of suitable habitat remains in the Aguán Valley, most of which is privately owned (Gallardo 2010, p. 186); however, other estimates indicate that the species has even less suitable habitat available than the above estimate (Perez and Thorn 2012 pers. comm.).

The lands along the Aguán River have periodically been devastated by banana diseases, floods, and hurricanes, particularly Hurricane Fifi in 1974 and Hurricane Mitch in 1998 (NOAA 2012, p. 2; Winograd 2006; USGS 2002, p. 5). This valley is on the south side of the Nombre de Dios Mountain Range, primarily in the Yoro Department (Gallardo 2010, p. 185). The Aguán River Watershed is 10,546 km^2 (4,072 mi^2 or 2,605,973 acres), is delimited by the tributaries of the Aguán River, and extends across the departments of Yoro, Colon, Atlántida, and Olancho (WWF 2008, p. 12; see Map 5, Map of Honduras, Aguán Valley at *http://www.regulations.gov* under Docket No. FWS–R9–ES–2009–0094). This valley experiences a unique microclimate in which most of the rain falls between June and November (Gallardo 2010, p. 185). The land in the Aguán Valley is rich and fertile, and therefore, highly likely to be converted into agricultural lands fields, particularly in a country with a high poverty index that relies strongly on its land for agriculture (WWF 2008, p. 2).

Western Honduras

In 2000, a survey was conducted for the Honduran emerald hummingbird and concluded that it occurs in dry tropical forest (Anderson and Hyman 2007, pp. 1–4; Thorn *et al.* 2000, pp. 1–5). Upon the recent rediscovery of the species in western Honduras, researchers determined that the species was also residing in areas with different ecological characteristics (Anderson *et al.* 2010). Sites occupied by the Honduran emerald hummingbird in western Honduras are best described as semi-deciduous woodland, a habitat that has not previously been associated with the species. Canopy height in this area averages 15 meters (49 ft), dominated by semi-deciduous broad-leaved tree species, principally *Eugenia oerstediana, Bursera simaruba,* and *Tabebuia rosea,* that form a relatively closed tree canopy. Common understory species are *Agave parvidentata, Tillandsia fasciculata, Bromelia pinguin, Bromelia plumieri,* and *Acanthocereus pentagonus* (Anderson 2010, p. 5). According to Komar *et al.* 2013, this species has been observed utilizing four habitats (dry forest, dry scrubland, wooded pasture, and lowland pine/oak forest).

Conservation Status

The Honduran emerald hummingbird is listed as endangered by the IUCN (2012). The category of this species was reclassified as endangered from critically endangered following its recent discovery in the western part of Honduras, which increased its known range (BLI 2012, pp. 1–2). Its IUCN classification is based on its very small and severely fragmented range and population. However, this status under IUCN conveys no actual protections to the species. The Honduran emerald hummingbird has been listed in Appendix II of CITES since October 22, 1987, at which time all hummingbird species not previously listed in the Appendices were listed in Appendix II. Honduras and the United States are both Parties to CITES, an international treaty among 180 nations through which member countries, called Parties, work together to ensure that international trade in CITES-listed animals and plants is not detrimental to the survival of wild populations. This goal is achieved by regulating import, export, and re-export of CITES-listed animal and plant species and their parts and products through a permitting system (*http://www.cites.org*). Appendix II includes species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and other species which must be subject to regulation in order that trade in specimens of certain species threatened with extinction which are or may be affected by trade may be brought under effective control (CITES Article II(2)). International trade in specimens of Appendix II species may be authorized through a system of permits or certificates under certain circumstances, and must be in accordance with CITES Article IV. For example, export may only be authorized when: (1) The CITES Scientific Authority of the country of export has determined that the export will not be detrimental to the survival of the species; (2) the CITES Management Authority of the country of export has determined that the specimens to be exported were legally acquired; and (3) the CITES Management Authority of the country of export has determined that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel

treatment (CITES Article IV(2)). In the United States, CITES is implemented through the Act and implementing regulations at 50 CFR part 23.

Factors Affecting the Species

Introduction

The most serious threat affecting this species is the continued degradation and fragmentation of existing habitat, and the complete loss of habitat (estimated to be 90 percent) over the past 100 years due to land conversion from prime thorn forest habitat to banana plantations, agriculture, and cattle pastures (Komar *et al.* 2013, p. 28; Perez and Thorn 2012, pers. comm.). Studies published in 2013 indicate that in Santa Barbara, the area that contains the most suitable habitat for the Honduran emerald hummingbird, agriculture, cattle grazing, coffee cultivation, mining, dam construction, and fires are the primary factors contributing to the degradation, fragmentation and loss of habitat (Komar *et al.* 2013, p. 37; Anderson et al. 2013, pp. 1–3). This loss of habitat interacts with the ecologically deleterious factors associated with palm oil production, land ownership, pesticides and fertilizers, roads, hydroelectric and development projects, international trade, disease and predation, small and declining populations, and other factors in affecting the Honduran emerald hummingbird's habitat. These factors are discussed in detail below.

Habitat Degradation and Fragmentation

Honduras has been steadily losing thorn forest cover, particularly since the early 1960s, mostly due to the conversion of thorn forest areas to agricultural areas, such as cattle pastures and coffee, bean, corn, and banana plantations (World Wildlife Fund 2008, p. 11; Anderson pers. comm. 2008 in Petition 2008, p. 11; Portillo 2007, p. 75). In Yoro, there are only four large patches of suitable habitat for this species remaining (Perez and Thorn 2012, pers. comm.; Anderson 2010). The four largest fragments are between 360 and 476 ha (890 and 1,176 acres), for a combined total of 1,704 ha (4,210 acres) (Anderson 2010, p. 6). In the Aguán Valley, as of 2000, suitable habitat for the Honduran emerald had reduced in size to an estimated 8,495 ha (20,991 acres) from 16,000 ha (39,537 acres) in 1977, and 30,000 ha (74,132 acres) in 1938 (Thorn *et al.* 2000, p. 25). Even with the rediscovery of the species in Santa Barbara and the extension of its range in Olancho, the species' habitat has been reduced due to habitat conversion to plantations and cattle ranches (see Fig. 1; Perez and Thorn pers. comm. 2012). Due to habitat destruction/degradation rates in Santa Barbara, no suitable habitat for the Honduran emerald hummingbird may remain by the year 2025 (Anderson *et al.* 2013, p. 5).

In the last ~100 years, the Aguán region has experienced three periods of agricultural economic growth (WWF 2008, p. 11). Thorn forests were initially cleared in the Aguán Valley to create banana and plantain plantations and rice farms, as well as pasture for cattle (Stattersfield and Capper 2000, p. 311). However, after an outbreak of Panama disease occurred in bananas, the Aguán Valley was largely abandoned, and much of the land reverted to pasture or forest. As a result of the agricultural reforms of the 1960s and 1970s, Honduran campesinos (farmers) received farmland in the Aguán Valley and proceeded to clear and develop the Valley that was previously forested into an agricultural region. In the late 1970s, lands were again cultivated with disease-resistant varieties of bananas. In the Aguán Valley, 10,319 ha (25,500 ac) now consist of banana plantations in an area known as the Barisma farm (Dole 2011, p. 67). One of the best patches of optimal Honduran emerald hummingbird habitat in the Aguán Valley has practically disappeared due to its proximity to a nearby town (Thorn 2012, pers. comm.). Now, only a single forest remnant larger than 100 ha (247 ac) that is suitable for this species is known to exist in this valley (Anderson 2010, p. 6). Habitat suitable for Honduran emerald hummingbirds continues to be cleared by private landowners in order to plant pasture grass for grazing cattle (Hyman 2012 pers. comm.).

Several hummingbird species have persisted in fragmented tropical landscapes (Stouffer & Bierregaard 1995 in Hadley & Betts 2009, p. 207). However, hummingbird persistence at the landscape scale does not indicate that the population is at the same level it was prior to deforestation (Hadley & Betts 2009, p. 207). Flight paths used by the green hermit hummingbird (*Phaethornis guy*) indicate that gaps in suitable habitat alter hummingbird movement pathways (Hadley 2012, p. 48; Hadley & Betts 2009, p. 209). Due to the fragmentation of their habitat, Honduran emeralds and other hummingbird species are forced to expend more energy moving between suitable habitat patches to breed, feed, and nest; the flight of hummingbirds is one of the most energetically demanding forms of animal locomotion (Buermann *et al.* 2011, p. 1,671). In agricultural landscapes, hummingbirds were observed traveling longer distances and took more circuitous routes than in forested landscapes. Overall, movement paths were strongly linked to areas that contained higher forest cover (Hadley & Betts 2009, p. 209).

Nectar is the primary source of carbohydrates for hummingbirds, and insects or pollen is the primary sources of protein for hummingbirds (Araújo *et al.* 2011, p. 827; Hegland *et al.* 2009, p. 188). Although studies of nutritional requirements have been conducted with respect to other hummingbird species, the home range required to support the breeding, feeding, and nesting requirements for each pair of Honduran emerald hummingbirds is unknown. Hadley noted in 2012 that plant densities, flower abundance, and flower quality (*e.g.,* number of inflorescences, display size) can all be affected by landscape configuration such as edge effects (changes in population or community structures occurring at the boundaries of two habitats) due to factors such as light and humidity levels; therefore, hummingbird foraging behavior is likely sensitive to fragmentation (Hadley 2012, pp. 23–35). Efforts by Pico Bonito National Park Foundation (Fundación Parque Nacional Pico Bonito (FUPNAPIB)) and others have attempted to preserve important parts of this species' habitat; however, even the areas designated as protected are experiencing habitat degradation (Hyman 2013, pp. 1–2).

Land Ownership

Because approximately 84 percent of the Honduran emerald's suitable habitat is privately owned, it is difficult to provide protections to this species (Steiner 2012 pers. comm.; FAO 2010, p. 238). In many cases, the only sites in Honduras that have maintained a viable ecosystem in somewhat of a natural state are places with irregular topography. Subsequently, these areas have become protected or private nature reserves (Portillo 2007, p. 75). Much of this species' original habitat, thorn forest, has been cleared for housing, towns, agriculture, and cattle grazing (Stattersfield and Capper 2000, p. 311; Thorn *et al.* 2000, p. 4). This species' remaining habitat in the Aguán Valley (Yoro Department) and Agalta Valley (Olancho Department) is primarily privately owned as large *haciendas* (plantations or farms), where cattle grazing, clearing for cattle, and plantation agriculture continues to occur (Stattersfield and Capper 2000, p. 311). In the lower river valley, agricultural cooperatives are raising

citrus fruits, corn (maize), rice, and African palm for oil (WWF 2008, p. 12). Because most of this species' habitat is unprotected, the species is likely to continue to experience habitat degradation through conversion of its habitat to other uses such as cattle grazing and agricultural plantations.

Palm Oil Production

Although palm oil plantations in the Aguán River Basin have not been directly implicated as the cause of Honduran emerald habitat loss, palm oil plantations have replaced pasture lands that were left behind after the banana plantations diminished from their initial success during the first part of the 20th century (WWF 2008, p. 30). The palm oil production in the Aguán River Basin is concentrated between Sava and Tumbaderos (WWF 2008, p. 17) and covers 28,082 ha (69,392 ac.). The area includes plantations, processing plants, nurseries, palm oil collecting sites, and other infrastructure. Honduras' palm oil industry exported over $21 million U.S. dollars' worth of palm oil in 2004, and Honduras is expected to increase its production of palm oil for biofuel (Silvestri 2008, pp. ii–iii). Other countries are encouraging Honduras to increase production of palm oil, which would likely affect the Aguán River Basin (Silvestri 2008, pp. 47; WWF 2008, pp. 37–38). These changes in land use have had an environmental cost (WWF 2008, pp. 30, 53–54), such as land degradation through deforestation and exposure to fertilizers and pesticides, which are discussed below. Although the conversion to palm oil plantations may not be occurring directly in Honduran emerald hummingbird habitat, its effects may impact this species via the development of roads, habitat conversion, and settlements.

To provide perspective on the magnitude of the production in this valley, the Aguán Valley Palm Producers Association (APROVA) is a cooperative of 154 oil palm farmers (USDA 2012, pp. 1–3). In 2009, APROVA opened its first palm oil processing plant, which processes up to five tons of palm oil per day (USDA 2012, pp. 1–3); there are now five processing plants. As of 1938, within the Aguán Valley 30,000 ha (74,131 ac) were the arid, thorn forest preferred by the Honduran emerald (Tierra America 2012, pp. 1–2). By 1977, suitable habitat for the Honduran emerald hummingbird had been reduced to 16,000 ha (39,537 ac), and in 2000, only 8,495 ha (20,991 ac) remained. Of that area, only 3,900 ha (9,637 ac) can be considered preserved well enough to sustain significant populations of the Honduran emerald hummingbird (Mejía pers. comm. in Tierra America 2012).

TABLE 1—LAND REDUCTION IN THE AGUÁN VALLEY

Aguán Valley	Year	Hectares	Acres
Tropical Dry Forest	1938	30,000	74,131
Tropical Dry Forest	1977	16,000	39,537
Tropical Dry Forest	2000	8,495	20,991

Source: Thorn *et al.* 2000.

Pesticides and Fertilizers

The World Wide Fund for Nature (WWF) notes that agricultural production yield level can only be increased with the use of agrochemicals such as fertilizer and pesticides, which in turn all have an environmental impact. Before palm oil tree canopies fully develop, sunlight is able to penetrate the ground resulting in aggressive weed growth and frequent weed control is needed. Mechanical weed mowers hauled by agricultural tractors are used to keep weeds at a manageable height in between rows. Before the canopy is fully developed, areas around young plants are kept free of competing weeds mostly by chemical herbicides and by manually removing them (WWF 2008, pp. 24–25). However, these plantations are approximately 161 km (100 miles) north of the Honduran emerald hummingbird's habitat, and are not known to directly affect this species (Hyman 2012, pers. comm.). Therefore, we do not find pesticides and fertilizers to be a threat to the continued existence of this species.

Roads

Honduras is ranked among the countries with the lowest development of road networks in Central America (Acevedo *et al.* 2008, p. 1). The agricultural sector is the most important of the Honduran economy (Acevedo *et al.* 2008, p. 1); however, this sector is limited by difficulties of transportation and access to many of the productive areas of the country due to poor road infrastructure (Quintero *et al.* 2007, pp. 15–18; Winograd 2006, pp. 1–5).

Existing roads have been negatively impacted by hurricanes, flooding, and neglect after the crash of the banana industry. The Aguán and Agalta valleys, which contain this species' preferred habitat, are some of the most productive agricultural areas of the country, and this change in land use has decreased the available suitable habitat for the Honduran emerald hummingbird (Acevedo *et al.* 2008, p. 1). These agricultural areas of the country are in the departments of Atlantida (Aguán Valley) and Olancho (Agalta and Guayape valleys) and include bananas, coffee, palm oil, corn, beans, edible vegetables, fruits, and other crops. The improvement and development of roads to transport agricultural products to economic hubs is being considered by the Government of Honduras, which may affect the Honduran emerald hummingbird's habitat.

Growth in this economic sector is impeded by the lack of access to the most productive agricultural areas of the country due to poor road infrastructure. The road improvement project (Central Road, Route no. 23) is funded by the World Bank through the ''Second Reconstruction and Improvement Project Road'' (World Bank 2013, pp. 1–3; World Bank 2011, pp. 1–3; Proceso Digital 2010). The road improvement project will likely bring more traffic, which will increase land speculation and settlement of homes along the road, ultimately impacting surrounding Honduran emerald hummingbird habitat (Perez and Thorn 2012, pers. comm.; Steiner and Coto 2011, pp. 1–2). Roads through prime Honduran emerald hummingbird habitat, which is presently affected by cultivation of bananas and plantains, link the river valley to the ports at Tela, La Ceiba, Trujillo, and Puerto Cortés.

There are plans to pave the road between Olanchito (Yoro Department) and San Lorenzo (Valle Department (southcentral Honduras)), an approximately 57-km (35-mile) stretch that currently passes through the Aguán Valley, which will further impact this species' habitat (Hyman 2012; pers. comm.; World Bank 2011, pp. 1–3; Anderson pers. comm. 2008 in Petition 2008; Hyman 2007, p. 10). This project has been contingent on several factors,

such as a loan from the World Bank and implementation of measures to mitigate the impact on the environment. A 2007 World Bank report indicated that during the project planning stage, the scope of the project changed so that the road segment passing through vital habitat for the Honduran emerald hummingbird was not implemented (Quintero 2007, pp. 14–16). In this report, the World Bank indicated that payments for an environmental services plan, if successfully implemented, could lead to the long-term protection of an additional 1,000–2,000 ha (2,474–4,942 acres) of Honduran emerald hummingbird habitat on private lands. This, in turn, would address environmental concerns associated with the proposed paving of the Olanchito-San Lorenzo road (Quintero *et al.* 2007, p. 15). The original plans for this project included a target completion date of December 2014 (World Bank 2013, pp. 1–2); however, the best available information indicates that the closing date of the loan has been extended to May 31, 2015 and implementation progress on the proposed infrastructure was rated as moderately successful (World Bank 2015, unpaginated; World Bank 2014, p. 1–6).

The Agalta Valley is traversed by a highway that has been proposed to be repaved (Inter-American Development Bank 2013, pp. 1–2; Hyman 2012, pers. comm). This region is an area with a high rate of poverty, and this highway is, in part, intended to improve the economic conditions in this region. This region contains approximately 50,000 human inhabitants. The highway will complete the second paved transit route between the Pacific and Atlantic oceans in Honduras. The road is being improved in order to provide a better link between Tegucigalpa and the Atlantic coast of Honduras and will better connect the Departments of Francisco Morazán, Olancho, and Colón. It is unclear how this highway will affect the remaining 5,000 ha (12,355 ac) of this species' habitat (Bonta 2011, pers. comm.) in this valley.

Hydroelectric and Development Projects

The construction of several development projects could possibly affect this species' habitat (Bonta 2012, pers. comm.) in the Agalta Valley and the Tencoa Valley. At least two hydroelectric projects have become operational in recent years (Bonta 2012, pers. comm.). These projects could likely result in more infrastructure development in the Valley, which could also affect the Honduran emerald hummingbird's habitat. Additionally, several agricultural development projects may be underway in the Agalta Valley (Bonta 2012, pers. comm.). Bonta indicates that the following projects, which can be located at *http://www.hondurasopenforbusiness.com,* are likely to affect the Honduran emerald hummingbird's habitat.

- AGR112: Production of Transgenic Certified Maize,
- AGR126: Cultivation of Piñón, *Jatropha curcas,* for biodiesel (5,000 ha in the Agalta Valley),
- AGR401: Cultivation of Piñón (5,000 ha in the Agalta Valley),
- AGR402: Cultivation of Piñón,
- FOR204: Teak (*Tectona grandis*) plantation: 20,000 ha in three valleys; estimate of 4,000 to 8,000 ha in the Agalta Valley.

Although highway construction, agricultural development, and resulting infrastructure is likely to occur in the Agalta Valley, it is unclear how these activities would negatively affect the Honduran emerald hummingbird in this valley. To mitigate the effects of development in this area, a Honduran emerald hummingbird conservation strategy paper for the Agalta Valley was funded by the Inter-American Development Bank (IADB) and partially developed by the American Bird Conservancy. In the area of influence of IADB project HO–L1003, the strategy paper identified 20 remaining fragments of suitable Honduran emerald hummingbird habitat; all but one of these fragments is located on private land. The paper recommended development of a payments-for-ecosystem-services scheme (PES scheme) as the most viable conservation option. This concept would compensate landowners for conserving or restoring Honduran emerald hummingbird habitat found on their land in the Agalta Valley; however, it is unclear whether this has been implemented (IADB 2013, pp. 1–2).

International Trade

Data obtained from the United Nations Environment Programme—World Conservation Monitoring Center (UNEP–WCMC) show that, since its listing in CITES Appendix II in 1987, only two Honduran emerald hummingbird specimens have been recorded in international trade, involving two carcasses of unknown origin from Germany to the United States in 1996 (UNEP–WCMC 2009b). Therefore, international trade is not a factor influencing the species' status in the wild. We are not aware of any other information that indicates that collection or overutilization of the Honduran emerald hummingbird is affecting this species.

Disease and Predation

The Intergovernmental Panel on Climate Change (2014, pp. 1530–1532) suggests that the distribution of some disease vectors may change as a result of climate change. However, after conducting a status review of the Honduran emerald hummingbird and consulting with experts, we have no information at this time to suggest that any specific diseases are or may become problematic to this species.

Small and Declining Population

In our proposed rule (78 FR 59), we found that the species' small population size (at the time of our proposal, estimated to be 200–1,000 individuals) combined with its highly restricted and severely fragmented range, increased the species' vulnerability to adverse natural events. The species' potential exposure to extreme weather events such as hurricanes, extended periods of drought, or flooding, in combination with habitat loss and degradation was believed to be affecting the continued existence of the species throughout its range.

During the public comment period, we received new information indicating that the population estimates were much higher than previously believed (5,000–10,000 breeding pairs) (see Population Estimates). Based upon this updated estimate, we have re-evaluated whether the populations are susceptible to the risks associated with small and declining populations as described in detail below.

Endemic to Honduras, Honduran emeralds hummingbirds have been found in seven populations. In the Santa Barbara Department (western Honduras), they have been found in three separate valleys, Tencoa Valley, Jicatuyo/Ulua river valley, and the Quimistan Valley. Anderson et al. (2013, p. 14) estimates a combined population for these three valleys to be roughly 2,500–5,000 breeding pairs; however, the researcher notes that no comprehensive, peer-reviewed population estimate has been completed for this area and as such, there is no current information indicating how the populations are distributed between the three separate valleys. Anderson et al. (2010, p. 258) stated that during research in Tencoa Valley alone, they found individuals in five habitat fragments, each fragment measuring between 5 to 60 hectares (ha), separated from each other by at least 5 km. A single individual was found in a 40 ha forest fragment in Quimistan Valley (Anderson et al. 2010, p. 258). In the Yoro Department, a single population

exists in the Aguán Valley, a considerable distance from other known populations; Anderson et al. (2010, p. 259) estimates that the Santa Barbara populations are 200 km west of the population in the Aguán Valley. Anderson et al. (2013, p. 14) estimates a population of 1,000–2,000 breeding pairs within the Aguán Valley. In the Olancho Department, Honduran emeralds are found in three separate valleys, Agalta, Tilica, and Guayape. Anderson et al. (2013, p. 14) estimates a population of 1,000–2,000 breeding pairs within Agalta Valley. In Guayape, the species is believed to have been extirpated. In 2012 and 2013, researchers were unable to detect a single individual within this valley. Connected to Guayape Valley through a habitat corridor, it is believed the remaining population in the Tilica Valley may have historically been a part of the now-extirpated population (Anderson et al. 2013, p. 13). In Tilica, the population is estimated to be between 500–1,000 breeding pairs.

Despite the increased total population estimate of 5,000–10,000 breeding pairs, research suggests the individual populations are small, including one population that is presumably extirpated. Research illustrates that the populations are both geographically and genetically isolated from one another. According to Anderson *et al.* (2013, p. 3), there has been no evidence to date of Honduran emeralds being found between any of the seven valleys, indicating that while there is the potential for gene flow between the populations, the probability is minimal.

Species endemic to a few, widely dispersed locations are inherently more vulnerable to extinction than widespread species because of the higher risks from genetic bottlenecks, random demographic fluctuations, climate change, and localized catastrophes such as hurricanes, landslides, and drought (Lande 1988, p. 1,455; Mangel and Tier 1994, p. 607; Pimm *et al.* 1988, p. 757). Small populations can be more affected by factors such as demographic stochasticity (variability in population growth rates arising from random differences among individuals in survival and reproduction within a season), local catastrophes, and inbreeding (Pimm *et al.* 1988, pp. 757, 773–775). Due primarily to the current rate of habitat fragmentation, degradation, and loss, each Honduran emerald population is considered to be declining within their individual locales. Hummingbirds' flight and hovering abilities require a large amount of energy; this necessitates the utilization of foraging techniques that maximize the amount of nectar (energy) at a minimum cost. The degradation, fragmentation, and loss of habitat cause the species to expend more energy and resources in search of its basic nutritional requirements (Justino *et al.* 2012, pp. 194–195; Hadley and Betts 2009, p. 207). Habitat degradation, fragmentation, and loss can separate populations to the point where individuals can no longer disperse and breed among habitat patches, causing a shift in the demographic characteristics of a population and a reduction in genetic fitness (Gilpin and Soulé 1986, p. 31). A small, declining population makes the species vulnerable to genetic stochasticity (random changes in the genetic composition of a population) due to inbreeding depression and genetic drift (random changes in gene frequency). This, in turn, compromises a species' ability to adapt genetically to changing environments (Frankham 1996, p. 1,507), reduces fitness, and increases extinction risk (Reed and Frankham 2003, pp. 233–234).

Although new population estimates have increased the worldwide population estimate from 200–1,000 individuals to 5,000 to 10,000 breeding pairs, the individual populations of Honduran emerald are small and declining. Additionally, the species range is restricted within Honduras and the individual populations are geographically and genetically isolated from one another. The Honduran emeralds small and declining populations combined with their highly restricted and severely fragmented range increase the species' vulnerability to adverse natural events and are affecting the continuing existence of the species throughout its range.

Extreme Weather Events

Small, declining populations can also be especially vulnerable to environmental disturbances such as flooding, drought, or hurricanes (O'Grady 2004, pp. 513–514). The Honduran emerald relies on arid, thorn forest habitat to provide nectar-producing plant species for energy and insects for protein in order to meet the biological requirements for breeding, feeding, and nesting. In 2012, Honduras was determined to be one of the countries most affected by climate change due to its geographic location, which is in the direct path of many tropical storms and hurricanes (Harmeling 2012, pp. 5–6). Research and modeling have explored how changes in climate might affect areas such as Honduras (Gasner *et al.* 2010, p. 1,250; Winograd 2002, p. 11). The term ''climate change'' refers to a change in the mean, variability, or seasonality of climate variables over time periods of decades or hundreds of years (Intergovernmental Panel on Climate Change (IPCC) 2014b, p. 5). Forecasts of the rate and consequences of future climate change are based on the results of extensive modeling efforts conducted by scientists around the world (Solman 2011, p. 20; Laurance and Useche 2009, p. 1,432; Nuñez *et al.* 2008, p. 1; Margeno 2008, p. 1; Meehl *et al.* 2007, p. 753).

Climate change models, like all other scientific models, produce projections that have some uncertainty because of the assumptions used, the data available, and the specific model features. The science supporting climate model projections, as well as models assessing their impacts on species and habitats, will continue to be refined as more information becomes available. While projections from regional climate model simulations are informative, various methods to downscale projections to more localized areas in which the species lives are still imperfect and under development (Solman 2011, p. 20; Nuñez *et al.* 2008, p. 1; Marengo 2008, p. 1).

Honduras appears to have entered a more active period of hurricane activity (Pielke *et al.* 2003, p. 102). Studies of natural events in the last 100 years indicate that Honduras is highly vulnerable to an increase in frequency and intensity in the future not only hurricanes, but also landslides, flooding, and drought (Şekercioğlu *et al.* 2011; Gasner *et al.* 2010, p. 1250; Winograd 2006, p. 1). Due to its location and the biophysical traits of the region, Honduras is likely to be affected every 3 to 4 years by climate-related events, such as drought-related fires, floods, and landslides (Winograd 2006, p. 1). Winograd notes that 50 percent of Honduras is at risk of landslides, 30 percent is at risk of severe droughts, and 25 percent is at risk of flooding, particularly agricultural areas.

Arid-zone species are assumed to be more resilient to high temperatures and low humidity (Şekercioğlu *et al.* 2012, p. 5). However, species such as the Honduran emerald hummingbird are exposed to very dry conditions and are likely dependent on seasonal rains, as well as seasonal and permanent waterholes and rivers (Schneider and Griesser 2009 in Şekercioğlu *et al.* 2011, p. 5). Even small temperature increases can greatly increase the amount of birds' evaporative water loss (Şekercioğlu *et al.* 2011, p. 5). Warmer weather due to climate change is expected to impact the ability of birds in arid regions to sustain

their water balance; this species has been observed at higher elevations (Germer 2012); which may indicate a response to warmer temperatures.

Climate models are not always able to predict the possible effects of ecological interactions, adaptation, or how species, particularly pollinators, might disperse in response to climate change (Buermann *et al.* 2011, p. 1,671; Burkle and Alarcón 2011, p. 528; Pearson and Dawson 2003, p. 361). Honduras is clearly in the path of hurricanes (Winograd 2006, 2002; Pielke *et al.* 2003, pp. 101–103). While additional research is still needed to determine how changes in climate may affect species such as the Honduran emerald hummingbird, studies indicate that Honduras is highly vulnerable to an increase in frequency and intensity in hurricanes, landslides, flooding, and drought (Şekercioğlu *et al.* 2011; Gasner *et al.* 2010, p. 1250; Hegland *et al.* 2009, p. 184; Winograd 2006, p. 1). As the Honduran emerald has a restricted range within Honduras, and the seven remaining populations are small and declining, we find that that the Honduran emeralds potential exposure to extreme weather events, in combination with habitat loss and degradation, is affecting the continued existence of the species throughout its range.

Conservation Measures in Place

Several mechanisms are in place which are intended to provide protections to the Honduran emerald hummingbird. These protections include involvement by nongovernmental organizations (NGOs), wildlife protection laws, and a reserve designated to protect its habitat. These mechanisms are described below.

Laws and Regulatory Mechanisms

Honduras has made significant progress in conservation of its natural resources (Portillo 2007, p. 60; Vreugdenhil *et al.* 2002, pp. 6, 11, 20–25). In the past 30 years, protected areas have increased from fewer than 20 protected areas to approximately 600 areas with nationally protected status (Portillo 2007, p. 60). Between 1974 and 1987, meetings were held with regional authorities in order to promote the conservation of the natural and cultural heritage of Honduras (Portillo 2007, p. 60). In 2003, the First Mesoamerican Congress on Protected Areas was held in Managua, Nicaragua. In 2010, Honduras began an initiative to recover degraded areas and denuded forests (ECOLEX 2012). However, in some cases, these protected areas have not been managed effectively, as described below (Portillo 2007, p. 63; Vreugdenhil *et al.* 2002, pp. 6, 11, 20–25). Although the government of Honduras has shown initiative in protecting the species, implementation and enforcement seem to be lacking. Additionally, development projects are still occurring, such as the hydroelectric projects in Santa Barbara. Privately owned land continues to be sold to land speculators and converted from Honduran emerald hummingbird habitat to other uses, such as agriculture or cattle pastures.

NGO Involvement and the Honduran Emerald Reserve

In Honduras, several NGOs, such as The Nature Conservancy (TNC) and the Honduran Biodiversity Research Coalition, are participating in the conservation and management of this species. One protected area, the Honduran Emerald Reserve (Reserve), was established by the Honduran Government in 2005, with support from TNC. TNC has provided both technical and financial support to the government and local community groups to complete a 10-year management plan for the Reserve. This Reserve was established in connection with funding from the World Bank to finish building the main highway linking the capital with Olanchito, Yoro, via Cedros Francisco Morazán (Steiner and Coto 2011, pp. 1–2) (refer to *Roads,* above). Some aspects of TNC's involvement have included marking the official reserve boundaries and providing training to partners in the management of reserves and protected areas.

In 2009, the National Conservation and Forestry Institute (ICF) began a management plan for the protected area specifically for the Honduran emerald. This was with the participation of nearby municipalities, Arenal Olanchito, the department of Yoro, SOPTRAVI Honduras Armed Forces (HAF), the Ministry of Education through the Regional Environmental Education Center, CREATE, the Ministry of Tourism, and the Ministry of Environment and Natural Resources (Steiner and Coto 2011, pp. 1–2; Portillo 2007, p. 99). The Interagency Technical Committee for Monitoring and Honduran Emerald Hummingbird Habitat Management Area was formed. In 2010, the ICF, with financial support from TNC, finalized the management plan for the protected area (Resolution No. DE–MP–147–2010).

This reserve is located 34 km (21 miles) west of the city Olanchito in the Aguán Valley. The reserve encompasses 1,217 ha (3,007 ac) and spans elevations between 220 and 800 meters (722 and 2,625 ft). As of 2012, there were 651 ha (1,609 ac) of dry forest habitat remaining that is suitable for the Honduran emerald hummingbird (Perez and Thorn 2012, pers. comm.; Thorn et al. 2000 in Anderson 2010, p. 6). The Honduran Emerald Reserve is guarded by Honduran Air Force soldiers, who patrol the reserve and do not allow visitors into the protected area without prior permission (Hyman 2012 pers. comm.). However, cattle from neighboring land owners are frequently found grazing uncontrolled on the property within Honduran emerald habitat (Steiner 2011, p. 1; House 2004, p. 30). Despite conservation efforts, land owners around the protected area want to expand their properties and are cutting more suitable habitat in order to plant grass for cattle grazing (Hyman and Steiner 2012, pers. comm.). Because encroachment and livestock grazing continue to occur both around and in the protected area, and this species requires more suitable habitat than what exists in this protected area, this area is insufficient to provide adequate suitable habitat for this species.

Another entity working towards conservation of the Honduran emerald is the Honduran Biodiversity Research Coalition, which is a group of scientists and conservationists established in 2011 that undertakes and promotes biodiversity research and conservation in Honduras. The American Bird Conservancy is another NGO working to protect this species. One of its current goals is to work towards the development of a payment for ecosystems services project in the Agalta Valley to restore and protect Honduran emerald hummingbird habitat.

In conclusion, Honduras is improving its management of its resources (Food and Agriculture Organization of the United Nations 2010). However, most of the habitat required by the Honduran emerald hummingbird is privately owned, and the thorn forests are being converted to other uses that are not suitable for this species. Despite the progress made in Honduras with respect to laws and regulatory mechanisms in place to protect the Honduran emerald hummingbird, the species continues to face habitat degradation and fragmentation.

Finding (Listing Determination)

A species is ''endangered'' for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range. A species is ''threatened'' for purposes of the Act if it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of

its range. Thus, in the context of the Act, the Service interprets an ''endangered species'' to be one that is presently in danger of extinction. A ''threatened species,'' on the other hand, is not presently in danger of extinction, but is likely to become so in the foreseeable future. In other words, the primary statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either presently (endangered) or in the foreseeable future (threatened). The statute requires us to determine whether any species is endangered or threatened as a result of any one or combination of the following five factors 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. In considering what factors might constitute threats to a species, we must look beyond the mere exposure of the species to the factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species may warrant listing as endangered or threatened as those terms are defined in the Act. Section 4(b)(1)(A) of the Act requires us to make this determination based solely on the best available scientific and commercial data available after conducting a review of the status of the species and taking into account any efforts being made by States or foreign governments to protect the species.

In assessing whether the Honduran emerald hummingbird meets the definition of an endangered species or a threatened species, we considered the five factors in section 4(a)(1) of the Act. We conducted a review of the status of this species and assessed whether the Honduran emerald hummingbird is endangered or threatened throughout all or a significant portion of its range. We also reviewed all information we received during the public comment period. We have assessed the best scientific and commercial information available regarding the past, present, and future threats affecting this species.

This species requires a constant source of energy, primarily in the form of nectar and insects. In order to meet its energy and nutritional requirements, this species needs access to intact, suitable habitat with a diversity of plant species that contain abundant energy sources throughout the year.

We find that habitat loss due to conversion to agricultural development and cattle pastures is the main factor affecting the Honduran emerald hummingbird throughout its range (Factor A) (Komar et al. 2013, p. 40; Anderson et al. 2013, pp. 1–15; Bonta 2012 pers. comm.; Perez and Thorn 2012 pers. comm.). Habitat degradation and loss continue to occur and affect the species throughout its range. Uncontrolled clearing of the Honduran emerald's dry forest habitat for pastures or plantation agriculture has restricted the species to a few small, isolated ''islands'' of suitable dry forest habitat surrounded by banana plantations or cattle ranches (Perez and Thorn 2012, pers. comm.). Its current occupied and suitable range has been greatly reduced and is severely fragmented. This hummingbird species is expending more energy in order to find food sources to meet its nutritional needs, and as its suitable habitat becomes more scarce and fragmented, these habitat islands are growing farther apart.

Historically, the Honduran emerald hummingbird existed in more continuous, connected habitat. Its suitable habitat has become increasingly limited, and it is not likely to expand in the future. This species' population is estimated to be between 5,000 and 10,000 breeding pairs distributed over seven valleys in Honduras. A lack of a sufficient number of individuals in a local area or a decline in their individual or collective fitness may cause a decline in the population size, despite the presence of suitable habitat patches. In cases where populations are small, effects on the species are exacerbated. Any loss of potentially reproducing individuals could have a devastating effect on the ability of the population to increase.

A species may be affected by more than one factor, and these factors can act in combination. The most significant factor affecting the Honduran emerald hummingbird is the degradation, fragmentation, and loss of suitable habitat (Factor A). Fragmentation and isolation of populations can decrease the fitness and reproductive potential of the species, which exacerbate other threats. Changes in Honduras' climate are acting in combination with other factors to affect this species' habitat. Extreme weather events (an increase in the severity and frequency in hurricanes and increased periods of drought (Factor E)) are impacting this species' habitat.

The species' small population size (Factor E), combined with its restricted and severely fragmented range (factor A), increase the species' vulnerability to adverse natural events (Factor E) that destroy individuals and their habitat. The species' potential exposure to extreme weather events, such as hurricanes, extended periods of drought, or flooding, in combination with habitat degradation and fragmentation, is currently affecting the continued existence of the species throughout its range now and in the future.

In conclusion, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats affecting this species. We have identified multiple factors that have interrelated impacts on this species. These factors occur at a scale sufficient to affect the status of the species now and in the future. The most significant threat is habitat degradation and fragmentation due to conversion from thorn forest to agriculture and cattle pastures. Both biotic and abiotic ecological interactions influence species' distributions (Jankowski et al. 2010, pp. 1877–1883; Dunn et al. 2009, pp. 3037–3041). This species requires an environment that contains particular temperature and humidity levels, nectar, and insects. As a species' status continues to decline, the species becomes increasingly vulnerable to other impacts. The species' small population size, its reproductive and life-history traits, combined with its highly restricted and severely fragmented range, increases this species' vulnerability to one or more stochastic (random or unpredictable) events, such as hurricanes, drought, or flooding. These factors, in combination, are believed to be affecting the continued existence of the species throughout its range now and in the future.

Based on our evaluation of the best available scientific and commercial information and given the significant loss, degradation, and fragmentation of suitable habitat, we have determined the species is in danger of extinction throughout all of its range and thus meets the definition of an endangered species. Because the species is in danger of extinction now, as opposed to likely to become an endangered species within the foreseeable future, the Honduran emerald hummingbird meets the definition of an endangered species rather than a threatened species. Therefore, we are listing the Honduran

emerald hummingbird as endangered under the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and encourages and results in conservation actions by Federal and State governments, private agencies and interest groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions within the United States or on the high seas with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. However, given that the Honduran emerald hummingbird is not native to the United States, we are not designating critical habitat for this species under section 4 of the Act.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered and threatened species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species and to provide assistance for such programs in the form of personnel and the training of personnel.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, at 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to ''take'' (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt any of these) within the United States or upon the high seas; import or export; deliver, receive, carry, transport, or ship in interstate commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits for endangered species are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

National Environmental Policy Act (NEPA)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.gov* or upon request from the Branch of Foreign Species, Ecological Services Program, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this rule is the staff of the Branch of Foreign Species, Ecological Services Program, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by adding a new entry for ''Hummingbird, Honduran emerald'' in alphabetical order under BIRDS to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
BIRDS							
*	*	*	*	*	*		*
Hummingbird, Honduran emerald.	*Amazilia luciae*	Honduras	Entire	E	805	NA	NA
*	*	*	*	*	*		*

* * * * *

Dated: July 15, 2015.

James Kurth,

Acting Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 2015–18602 Filed 7–28–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120328229–4949–02]

RIN 0648–XE007

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason quota transfer.

SUMMARY: NMFS is transferring 34 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the Longline category for the remainder of the 2015 fishing year. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments, and applies to eligible Atlantic Tunas Longline category (commercial) permitted vessels. As a result of this transfer, current vessel accounts with IBQ will be distributed 0.25 mt of Individual Bluefin Quota (IBQ) allocation each.

DATES: Effective July 28, 2015 through December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Tom Warren or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014), and in accordance with implementing regulations.

The currently codified baseline U.S. quota is 923.7 mt (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). Among other things, Amendment 7 revised the allocations to all quota categories, implemented an IBQ system, and added additional regulatory determination criteria for inseason (or annual) adjustments to BFT quota (see § 635.27(a)(8), effective January 1, 2015).

The 2015 BFT fishing year, which is managed on a calendar-year basis and subject to an annual quota, began January 1, 2015. The Longline category was provided 137.3 mt of BFT quota, which was distributed among vessel accounts, (*i.e.* those which met the initial eligibility criteria implemented by Amendment 7). The Longline category season continues through December 31, 2015. On February 10, 2015, NMFS reallocated quota from the Purse Seine category to the Reserve category based on the amount of 2014 catch of BFT by Purse Seine vessels (80 FR 7547; February 11, 2015). Currently, the Reserve category quota is 108.8 mt.

Under § 635.15(b)(5)(ii), as implemented through Amendment 7, additional IBQ may be allocated to vessels with BFT quota share after the initial annual allocations if the U.S. baseline quota increases as a result of an ICCAT recommendation or as a result of a transfer of quota from the Reserve category to the Longline category, pursuant to criteria for quota adjustments. NMFS has considered those criteria in relation to the 2015 and 2016 Longline category fishery and have determined that a quota transfer is warranted, as explained below. Consistent with the criteria for quota adjustments, this action is intended to increase the amount of quota available to pelagic longline permitted vessels with IBQ, and therefore help vessel owners account for BFT landings and dead discards while fostering conditions in which permit holders become more willing to lease IBQ. The revised Longline category quota would support the broader objectives of Amendment 7, which include reducing BFT interactions and dead discards while maintaining an economically viable swordfish and yellowfin directed fishery.

Under Amendment 7, a vessel must have IBQ to account for its BFT landings and dead discards. If a vessel has insufficient IBQ to account for such landings and dead discards, it goes into ''quota debt.'' Starting in 2016, a permitted vessel will not be allowed to fish in the Longline category if it has outstanding quota debt. In 2015 only, however, the vessel may continue to fish but will accrue quota debt that must be accounted for at the end of the year. If by the end of 2015, a permitted vessel does not have adequate IBQ allocation to settle its debt, the allocation will be reduced in the subsequent year or years until the quota debt is fully resolved.

Approximately one-fifth of active pelagic longline vessels currently have outstanding quota debt, and quota leasing among fishery participants has been limited. NMFS suspects the reason for the limited quota leasing is because the leasing program is so new, and shareholders may be unwilling to lease quota to other shareholders because they do not know if they will have sufficient quota to account for any BFT they may catch. Thus, leasing may be perceived as relatively risky from a business perspective.

As of July 8, 2015, ten vessels are in quota debt, ranging from 108 lb (0.05 mt) to 2,912 lb (1.3 mt), with an average of 1,405 lb (0.64 mt) debt (and a total of 14,045 lb (6.4 mt)). Based on preliminary information, the ten vessels represent 22 percent of the active vessels (monthly average of 45 active vessels in 2015 to date). As of July 8, 2015, there were a total of 18 allocation leases (16 involving Longline category participants and two between Purse Seine category participants), however only four of those leases involved participants with quota debt. Some vessel owners have stated that they have been unable to lease quota from other IBQ shareholders, because of lack of willingness of those owners, and these small businesses face uncertainty in their operations because they do not know if they will have sufficient quota to account for BFT they may catch. Because the leasing program is so new, IBQ shareholders may be reluctant to lease quota to other vessels because they do not know if they will have sufficient quota to account for any bluefin tuna they may catch.

Any adjustments to quotas must be based on consideration of the relevant criteria provided under § 635.27(a)(8), which include: The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in

seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds; optimizing fishing opportunity; accounting for dead discards, facilitating quota monitoring, supporting other fishing monitoring programs through quota allocations and/or generation of revenue; and support of research through quota allocations and/or generation of revenue.

Regarding the determination criteria about accounting for dead discards and variations in seasonal distribution or abundance, a quota transfer from the Reserve category to the Longline category would contribute toward full accounting of BFT catch by vessels that have quota debt (*i.e.,* reduce quota debt), enhance the likelihood that shareholders will make the decision to lease IBQ to others, and reduce the uncertainty in the fishery as a whole.

With respect to the effects of the adjustment on rebuilding and overfishing and accomplishing the objectives of the fishery management plan, the fishery is a quota-managed fishery, a measure which supports objectives related to rebuilding and overfishing. The transfer of 34 mt of BFT quota from the Reserve category to the Longline category will result in an adjusted Longline quota of 171.3 mt, which remains within the ICCAT quota and is less than the historical average of landings and dead discards in the fishery (239 mt). The revised Longline category quota would support the broader objectives of Amendment 7, which include reducing BFT interactions and dead discards while maintaining an economically viable swordfish and yellowfin tuna directed fishery. As a result of this quota transfer, 0.25 mt (551 lb) of IBQ will be distributed to each of the 136 permit holders with IBQ shares, provided the permit is associated with a vessel. For those permits that qualified for IBQ shares and are not associated with a vessel at the time of the quota transfer, the IBQ will not be usable by the permit holder (*i.e.,* may not be leased or used to account for BFT) unless and until the eligible permit is associated with a vessel. Eligible permits will be allocated either Gulf of Mexico (GOM) IBQ, Atlantic (ATL) IBQ, or both GOM and ATL IBQ, according to the eligible permit initial share's regional designations (and totaling 0.25 mt).

Regarding the determination criteria ''optimizing fishing opportunity,'' the ability of pelagic longline vessel owners to account for BFT with allocated quota or lease IBQ at an affordable price is key to the success of the IBQ program. An inseason transfer of quota to the Longline category would facilitate accomplishing the objectives of the 2006 Consolidated HMS FMP by optimizing fishing opportunity, contributing to full accounting for landings and dead discards, and reducing uncertainty in the fishery as a whole. Where fishing opportunity for target species is constrained by BFT quota debt or a low IBQ balance, the additional quota will help reduce this effect. It will also reduce vessel owner uncertainty about whether a vessel owner will have sufficient quota to account for BFT they may catch in the future. Without this inseason quota transfer, it is more likely that permit holders will have difficulty leasing quota to account for BFT catch or reduce quota debt, permit holders may have a reduced ability to make business plans for the future, and a higher number of permitted vessels may be prohibited from fishing during 2016 as a result of quota debt accrued during 2015.

This action is consistent with the rebuilding goals of the 2006 Consolidated HMS FMP because NMFS does not anticipate that the overall U.S. BFT quota will be exceeded. Based on the considerations above, NMFS is transferring 34 mt of Reserve category quota to the Longline category. As a result of this quota transfer, the Reserve category quota will be reduced from 108.8 mt to 74.8 mt, and the Longline category quota will be increased from 137.3 to 171.3 mt. This inseason quota transfer does not preclude future inseason quota transfers to any of the quota categories. This action is supported by the Amendment 7 Final Environmental Impact Statement and final rule, which analyzed and anticipated such an action.

NMFS will continue to monitor the BFT fisheries, including the pelagic longline fishery, closely through the mandatory landings and catch reports. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Pelagic longline vessels are required to report BFT catch through Vessel Monitoring System, as well as through the online IBQ system.

Longline category permit holders are reminded that all BFT discarded dead must be reported through the Vessel Monitoring System, and accounted for in the on-line IBQ system, consistent with requirements at § 635.15(a).

Subsequent inseason actions, if any, will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access *hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP, as amended, provide for inseason adjustments to quota and other aspects of BFT fishery management, to respond to the diverse range of factors which may affect BFT fisheries, including ecological (*e.g,* rebuilding, or the migratory nature of HMS) and commercial (*e.g.,* optimizing fishing opportunity, or reducing bycatch). Specifically, Amendment 7 stated that NMFS may need to consider providing additional quota to the Longline category as a whole in order to increase the amount of quota available to eligible permitted vessels via the IBQ program, and balance the need to have an operational directed pelagic longline fishery with the need to reduce BFT bycatch.

Based on available BFT quota in the Reserve category, the amount of quota debt in the pelagic longline fishery, and the catch of BFT by pelagic longline vessels during 2015 to date, among other considerations, adjustment to the Reserve and Longline category BFT quotas is warranted. Analysis of available data shows that adjustment to the Longline category quota from the initial level would result in minimal risks of exceeding the ICCAT-allocated quota. The regulations implementing the 2006 Consolidated HMS FMP, as amended, provide the flexibility to provide additional quota to the Longline category in order to optimize fishing opportunity, account for dead discards, and accomplish the objectives of the fishery management plan. NMFS provides notification of quota adjustments by publishing the notice in the **Federal Register**, emailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the Atlantic Tunas Information Line and on *hmspermits.noaa.gov.*

Delays in adjusting the Reserve and Longline category quotas would adversely affect those Longline category vessels that would otherwise have an opportunity to reduce or resolve quota debt, lease quota to other vessels, as

well as delay potential beneficial effects on the ability for vessel operators to make business plans for their future. Due to the migratory nature of the target species, delaying inseason action may preclude fishing opportunities for some vessel operators. NMFS is trying to balance providing opportunity to the pelagic longline fishery, with the reduction of BFT bycatch, and delaying this action would be contrary to the public interest. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under §§ 635.15(b)(5)(ii), 635.15(f), 635.27(a)(8) and (9), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: July 24, 2015.

Emily H. Menashes

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

[FR Doc. 2015–18584 Filed 7–28–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 150105004–5355–01]

RIN 0648–XE073

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Trimester Total Allowable Catch Area Closure for the Common Pool Fishery

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

ACTION: Temporary rule; area closure.

SUMMARY: This action closes the Southern New England/Mid-Atlantic yellowtail flounder Trimester Total Allowable Catch Area to Northeast multispecies common pool trawl and gillnet vessels for the remainder of Trimester 1, through August 31, 2015. The closure is required by regulation because the common pool fishery has caught over 90 percent of its Trimester 1 quota for Southern New England/Mid-Atlantic yellowtail flounder. This closure is intended to prevent the overharvest of the common pool's allocation for this stock.

DATES: This action is effective July 29, 2015, through August 31, 2015.

FOR FURTHER INFORMATION CONTACT: Liz Sullivan, Fishery Management Specialist, (978) 282–8493.

SUPPLEMENTARY INFORMATION: Federal regulations at § 648.82(n)(2)(ii) require the Regional Administrator to close a common pool Trimester Total Allowable Catch (TAC) Area for a stock when 90 percent of the Trimester TAC is projected to be caught. The closure applies to all common pool vessels fishing with gear capable of catching that stock for the remainder of the trimester.

We have determined that 95 percent of the Trimester 1 TAC was caught as of July 21, 2015. The fishing year 2015 common pool sub-annual catch limit (sub-ACL) for Southern New England/Mid-Atlantic (SNE/MA) yellowtail flounder is 114.5 mt and the Trimester 1 TAC is 24 mt.

Effective July 29, 2015, the SNE/MA yellowtail flounder Trimester TAC Area is closed for the remainder of Trimester 1, through August 31, 2015, to all common pool vessels fishing with trawl and gillnet gear. The SNE/MA yellowtail flounder Trimester TAC Area consists of statistical areas 537, 538, 539, and 613. The area reopens at the beginning of Trimester 2 on September 1, 2015.

If a vessel declared its trip through the VMS or the interactive voice response system, and crossed the VMS demarcation line prior to July 29, 2015, it may complete its trip within the Trimester TAC Area.

Any overage of a Trimester TAC is deducted from the Trimester 3 TAC, and any overage of the common pool's sub-ACL at the end of the fishing year is deducted from the common pool's sub-ACL for fishing year 2016. Any uncaught portion of the Trimester 1 and Trimester 2 TACs is carried over into the next trimester. However, any uncaught portion of the common pool's sub-ACL may not be carried over into the following fishing year.

Weekly quota monitoring reports for the common pool fishery are on our Web site at: *http://www.greateratlantic.fisheries.noaa.gov/ro/fso/MultiMonReports.htm.* We will continue to monitor common pool catch through vessel trip reports, dealer-reported landings, VMS catch reports, and other available information and, if necessary, we will make additional adjustments to common pool management measures.

Classification

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

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3) to waive prior notice and the opportunity for public comment and the 30-day delayed effectiveness period because it would be impracticable and contrary to the public interest.

The regulations require the Regional Administrator to close a trimester TAC area to the common pool fishery when 90 percent of the Trimester TAC for a stock has been caught. Updated catch information only recently became available indicating that the common pool fishery has caught over 90 percent of its Trimester 1 TAC for SNE/MA yellowtail flounder as of July 21, 2015. The time necessary to provide for prior notice and comment, and a 30-day delay in effectiveness, prevents the immediate closure of the SNE/MA yellowtail flounder Trimester 1 TAC Area. This increases the likelihood that the common pool fishery exceeds its quota of SNE/MA yellowtail flounder to the detriment of this stock, which could undermine management objectives of the Northeast Multispecies Fishery Management Plan (FMP). Additionally, an overage of the common pool quota could cause negative economic impacts to the common pool fishery as a result of overage paybacks in a future trimester or fishing year.

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

Dated: July 24, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–18586 Filed 7–28–15; 8:45 am]

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Proposed Rules

Federal Register

Vol. 80, No. 145

Wednesday, July 29, 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 HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

U.S. Customs and Border Protection

19 CFR Part 103

Federal Emergency Management Agency

44 CFR Part 5

[Docket No. DHS–2009–0036]

RIN 1601–AA00

Freedom of Information Act Regulations

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to amend the Department of Homeland Security's (DHS) regulations under the Freedom of Information Act (FOIA). The Department (DHS) is proposing to update and streamline the language of several procedural provisions, and to incorporate changes brought about by the amendments to the FOIA under the OPEN Government Act of 2007, among other changes. DHS invites comment on all aspects of this proposal.

DATES: Comments and related material must be submitted to the docket for this rulemaking, DHS–2009–0036, on or before September 28, 2015.

ADDRESSES: You may submit comments, identified by docket number DHS–2009–0036, by one of the following methods:

(1) Federal eRulemaking Portal: *http://www.regulations.gov.*

(2) *Fax:* 202–343–4011.

(3) *Mail:* By mail to the Department of Homeland Security, Office of the Chief Privacy Officer, ATTN: James Holzer, 245 Murray Lane SW., STOP–0655, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change and may be read at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: James Holzer, Senior Director, FOIA Operations, Office of the Chief Privacy Officer, Department of Homeland Security, at 1–866–431–0486.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Homeland Security has authority under 5 U.S.C. 301, 552, and 552a, and 6 U.S.C. 112(e), to issue FOIA and Privacy Act regulations. On January 27, 2003, the Department of Homeland Security (Department or DHS) published an interim rule in the **Federal Register** (68 FR 4056) that established DHS procedures for obtaining agency records under the FOIA, 5 U.S.C. 552, or Privacy Act, 5 U.S.C. 552a. DHS solicited comments on this interim rule, but received none.[1]

In 2005, Executive Order 13392 called for the designation of a Chief FOIA Officer and FOIA Public Liaisons, along with the establishment of FOIA Requester Service Centers as appropriate. Subsequently, the Openness Promotes Effectiveness in our National Government Act of 2007 (OPEN Government Act), Public Law 110–175, required agencies to designate a Chief FOIA Officer who is then to designate one or more FOIA Public Liaisons (5 U.S.C. 552(j) and 552(k)(6)). Sections 6, 7, 9, and 10 of the OPEN Government Act amended provisions of the FOIA by setting time limits for agencies to act on misdirected requests and limiting the tolling of response times (5 U.S.C. 552(a)(6)(A)); requiring tracking numbers for requests that will take more than 10 days to process (5 U.S.C. 552 (a)(7)(A)); providing requesters a telephone line or Internet service to obtain information about the status of their requests, including an estimated date of completion (5 U.S.C. 552(a)(7)(B)); expanding the definition of ''record'' to include records ''maintained for an agency by an entity under Government contract, for the purposes of records management'' (5 U.S.C. 552(f)(2)); and introducing alternative dispute resolution to the FOIA process through FOIA Public Liaisons (5 U.S.C. 552(a)(6)(B)(ii) & (l)) and the Office of Government Information Services (5 U.S.C. 552(h)(3)).

DHS now proposes to revise its FOIA regulations at 6 CFR part 5, which apply to all components of DHS. This proposed rule would implement changes required by the OPEN Government Act and make other revisions to DHS FOIA regulations to improve access to Departmental records.

DHS describes the primary proposed changes in the section-by-section analysis below. DHS invites public comment on each of the proposed changes described, as well as any other matters within the scope of the rulemaking.

II. Section-by-Section Analysis

The proposed rules continue to inform the public of the responsibilities of DHS in conjunction with requests received under the Freedom of Information Act as well as the requirements for filing a proper FOIA request.

DHS is proposing to amend Subpart A to eliminate the provision for ''brick and mortar'' public reading rooms, amend DHS rules for third-party requests for records, and add information about proactive DHS disclosures.

Section 5.1 General Provisions

DHS is proposing to amend this part to incorporate reference to additional DHS policies and procedures relevant to the FOIA process. These resources, which are available at *http://www.dhs.gov/freedom-information-act-foia,* also include descriptions of the types of records maintained by different DHS components. DHS is also proposing to amend this section to clarify the definition of a component for purposes of this proposed rule. Component means each separate organizational entity within DHS that reports directly to the Office of the Secretary. A full list of all DHS components would be provided in appendix I of this proposed rule (as well

[1] This rule proposes revisions to DHS's FOIA regulations, but not its Privacy Act regulations. DHS intends to finalize its Privacy Act regulations by separate rulemaking.

as in the web resources described above) for informational purposes.

DHS is proposing to add paragraph (d) to section 5.1, ''Unofficial release of DHS information.'' This proposed paragraph seeks to inform the public about how information that is not released through official DHS channels will be treated in the FOIA process. DHS does not consider information that is either inadvertently or inappropriately released by means other than the official release process used by DHS, whether in FOIA or otherwise, to be a FOIA release and accordingly, DHS does not waive its ability to assert exemptions to withhold some or all of the same records in response to a FOIA request.

Finally, DHS is proposing to remove at least two additional portions of current section 5.1. First, current paragraph (a)(1) clarifies that ''[i]nformation routinely provided to the public as part of a regular DHS activity . . . may be provided to the public without following this subpart.'' Second, current paragraph (a)(2) provides that ''Departmental components may issue their own guidance under this subpart pursuant to approval by DHS.'' DHS considers each of these provisions to be self-evident, and therefore proposes to remove them from the regulation.

Section 5.2 Proactive Disclosures of DHS Records

DHS proposes to replace prior section 5.2, ''Public Reading Rooms,'' which was outdated, with a new section describing the proactive disclosure of DHS records. The FOIA requires DHS to make certain records available for public inspection and copying. Such records are available via the internet through the electronic reading rooms of each component. For those individuals with no access to the internet, the DHS Privacy Office or the component Public Liaison can provide assistance with access to records available in the electronic reading rooms. Contact information is provided in Appendix I to this subpart.

Section 5.3 Requirements for Making Requests

DHS proposes to amend paragraph 5.3(a) to eliminate the requirement that third-party requesters of records pertaining to an individual provide a written authorization from the individual that is the subject of the records (or proof of death of the individual) as a prerequisite to making such a request for records. As proposed, paragraph (a)(4) would inform third-party requesters that they may receive greater access if they provide written authorization from, or proof of death of, the subject of the records. In certain circumstances, they may in fact receive no access absent such authorization or proof. This paragraph would further advise that DHS may exercise its administrative discretion in seeking additional information from the requester to ensure that the proper consent has been received from the subject of the records.

DHS also proposes to amend paragraph (b) to direct requesters to contact the FOIA Public Liaison for each component if the requester has questions about how to describe the records that the requester seeks. DHS also proposes to amend this part to eliminate paragraph (c), which would be addressed under section 5.11, ''Fees.'' DHS proposes to insert a new paragraph (c), which describes the process under which DHS may administratively close a request if a requester fails to comply with a request for additional information.

Section 5.4 Responsibility for Responding to Requests

DHS proposes to insert a new paragraph (c), ''Re-routing of misdirected requests,'' to advise requesters that a component that is in receipt of a misdirected request within DHS will redirect such a request to the proper component without the need for further action from the requester. In the event that a component receives a request that should be directed outside DHS entirely, the component would inform the requester that DHS does not collect or retain the type of records requested. Proposed paragraph (c) would cover a different situation than current paragraph (c), which only applies ''[w]hen a component receives a request for a record in its possession.''

DHS proposes to combine paragraph 5.4(c), ''Consultations and referrals,'' with current paragraph (d), ''Law Enforcement Information,'' which covers consultation and referral of law enforcement records. Proposed paragraph (d) would describe the process of consultation, coordination, and referral of all records, to include law enforcement records, consistent with equities of components, agencies, or departments other than the responding component. Proposed paragraph (e) restates much of the current content of section 5.7, ''Classified information.''

DHS proposes to revise current paragraph (f), ''Notice of referral.'' Paragraph (f) currently provides that when a component refers a request to another component or agency, it ordinarily shall notify the requester of such referral. Consistent with current law, DHS proposes to insert an exception to this requirement, such that the component should not refer the records if disclosure of the identity of the component or agency would harm an interest protected by an applicable exemption. Instead, the component should coordinate the response with the other component or agency, as appropriate.

DHS proposes a new paragraph, paragraph 5.4(i), ''Electronic records and searches,'' to advise requesters of DHS's responsibilities under the FOIA with regard to conducting searches of electronic records and databases. DHS adheres to the requirement in 5 U.S.C. 552(a)(3)(C), which states that agencies will make reasonable efforts to search for records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information systems. Proposed paragraph 5.4(i) seeks to clarify to requesters the types of situations that would amount to ''significant interference'' with the operation of agency information systems such that DHS would not conduct a search for the requested records.

Section 5.5 Timing of Responses to Requests

DHS proposes to amend paragraph 5.5(a) to advise requesters that the response time for misdirected requests that are re-routed under paragraph 5.4(c) will commence on the date the request is received by the proper component, but in any event, no later than ten working days after the request is first received by any component. DHS proposes to amend paragraph (b), ''Multitrack Processing,'' to include a specific provision for a track for requests granted expedited processing.

DHS proposes to split current paragraph (c), ''Unusual Circumstances,'' into two separately designated paragraphs. As revised, the rule would include in paragraph 5.5(d) information on how DHS will aggregate multiple related requests submitted by a single requester or a group of requesters acting in concert.

DHS also proposes to redesignate current paragraph 5.5(d), ''Expedited Processing,'' as paragraph 5.5(e). DHS proposes in proposed paragraph 5.5(e) to amend text that describes the procedures for making a request for expedited processing of an initial request or an appeal (current paragraph (d)), to include two new available justifications for requesting expedited processing.

5.6 Responses to requests. DHS proposes to revise paragraph 5.6(a) to encourage components to communicate with FOIA requesters having access to the internet through electronic means, to the extent practicable. This new paragraph is intended to address the increasing number of FOIA requesters who are corresponding with DHS via electronic mail and web portals. DHS proposes to move paragraph (a) to paragraph (b), ''Acknowledgment of Requests.'' DHS proposes to amend this paragraph to specify that DHS and its components will acknowledge a request and assign the request an individualized tracking number if the request will take more than ten working days to process. DHS also proposes to require acknowledgment letters to contain a brief description of the request to allow requesters to more easily keep track of their requests. The provision in paragraph (a) referencing that the acknowledgment letter will confirm the requester's agreement to pay fees would be addressed in proposed section 5.11(e).

DHS proposes to move paragraph (b), ''Grants of requests,'' to paragraph (c). DHS proposes to amend paragraph (b) by removing the description of the treatment of information, both released and redacted in documents provided to the requester. Substantially the same information is now included in a new proposed paragraph, paragraph 5.6(f), ''Markings on Released Documents.'' DHS proposes to move the remainder of current paragraph 5.6(c), ''Adverse determinations of requests,'' to two paragraphs, (d) and (e), ''Adverse determinations of requests'' and ''Content of denial.'' The language regarding adverse determination of requests remains substantially the same. DHS proposes to describe the content and process for denial letters in the newly proposed paragraph (e), but does not intend this paragraph to significantly change the current regulatory requirements concerning denial letters.

DHS also proposes new paragraph (g), ''Use of record exclusions,'' which describes the DHS's use of exclusions under 5 U.S.C. 552(c). This paragraph proposes to incorporate the requirement set forth by the Department of Justice's Office of Information Policy (OIP) that all federal agencies obtain the approval of OIP prior to invoking an exclusion. This proposed paragraph also includes a requirement that DHS maintain an administrative record of the process of the invocation of the exclusion and approval by OIP.

5.7 Confidential commercial information. Proposed section 5.7, ''Confidential commercial information,'' would replace current section 5.8 of the current regulations, ''Business information.'' DHS proposes to reorder several paragraphs within this section. The changes are for clarity and to better advise requesters and providers of commercial information how DHS will treat requests for confidential commercial information, but the information contained in the proposed section remains substantively the same.

DHS proposes to amend the ''Notice of intent to disclose'' paragraph by splitting it into two paragraphs, proposed new paragraph (f), ''Analysis of objections'' and proposed new paragraph (g), ''Notice of intent to disclose.'' The proposed division of the information previously contained in a single paragraph is intended to improve clarity by highlighting in a separate paragraph that DHS will consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information. Otherwise, the information contained in the new proposed paragraphs remains substantively the same.

Finally, DHS proposes to include an exception to this section for commercial information provided to U.S. Customs and Border Protection (CBP) by a business submitter. Although CBP's FOIA regulations (located at 19 CFR part 103, subpart A) are displaced by the DHS FOIA regulations, this rule proposes to allow CBP to continue treating commercial information in the same manner as it has since the promulgation of current 19 CFR 103.35.

5.8 Administrative appeals. This section corresponds to section 5.9 of the current regulations. In the time following the publication of the interim regulations in January 2003, DHS has designated Appeals Officers for each component. As such, DHS proposes to amend paragraph (a) to direct requesters seeking to appeal adverse determinations to the DHS Web site or FOIA phone line for FOIA information to obtain the name and address of the appropriate appeals officer.

DHS proposes new paragraph (b) ''Adjudication of appeal,'' which replaces former paragraph (c) ''When appeal is required.'' The proposed new paragraph informs requesters that the DHS Office of the General Counsel or its designee component appeals officers are the authorized appeals authority for DHS. New proposed paragraph (b) also informs requesters about the treatment of appeals involving classified information. Finally, former paragraph (a)(3), which informs requesters that appeals will not normally be adjudicated if a FOIA lawsuit is filed, is incorporated into proposed paragraph (b).

DHS proposes to add a new paragraph (c), ''Appeal decisions,'' which is substantially similar to current paragraph 5.9(b). Proposed paragraph (c) would advise requesters that appeal decisions will be made in writing, and that decisions will inform requesters of their right to file a lawsuit and about mediation services offered by the Office of Government Information Services. Proposed paragraph (c) would also advise requesters of what to expect if the appeals officer reverses or modifies the original administrative decision on appeal. DHS also proposes to add a new paragraph (d), ''Time limit for issuing appeal decision,'' which advises requesters of the statutory 20-day time limit for responding to appeals, and also of the statutory 10-day extension of the 20-day limit available to the appeals officers in certain circumstances.

Finally, DHS proposes to add paragraph (e), ''Appeal necessary before seeking court review,'' which advises requesters that an administrative appeal is generally required before seeking judicial review of a component's adverse determination. This language is substantially similar to current paragraph 5.9(c). This proposed paragraph also advises requesters that there is no administrative appeal requirement prior to seeking judicial review of a denial of request for expedited processing.

5.9 Preservation of records. DHS proposes to redesignate current section 5.10 ''Preservation of records'' as section 5.9. There is no change to the substantive information in the section.

5.10 FOIA requests for information contained in a Privacy Act system of records. DHS proposes to add the new above-referenced section, to explain to requesters how DHS treats FOIA requests for information protected by the Privacy Act. When applicable, DHS analyzes all requests under both the FOIA and the Privacy Act to ensure that the requester receives the greatest amount of information possible under federal law. This proposed section also explains the circumstances under which a third-party requester can obtain access to information protected by the Privacy Act.

5.11 Fees. DHS proposes to address all fee issues in section 5.11. Most of this section remains essentially unchanged. Proposed changes to paragraph (b) would clarify some of the definitions used by DHS in determining a requester's fee category. For instance, paragraph (b)(1) ''Commercial use request,'' would clarify that components

will make determinations on commercial use on a case-by-case basis. Paragraph (b)(4) ''Educational institution,'' would add several examples to help requesters understand the analysis that DHS will apply to determine whether a requester meets the criteria to be considered an educational institution. Paragraph (b)(6), ''News media,'' clarifies the criteria used by DHS to determine whether a requester qualifies to be considered a member of the news media for fee purposes. Paragraph (b)(8) ''Search,'' would eliminate superfluous language that does not improve the comprehensibility of the paragraph. Because these and similar proposed changes are consistent with current regulations and describe current process, DHS does not expect that they will result in additional costs for the government or the public.

DHS also proposes to change paragraph (c)(1)(iii), which discusses direct costs associated with conducting any search that requires the creation of a new computer program, as discussed in new proposed paragraph 5.4(i), to locate the requested records. This change is intended to improve comprehension and to more accurately describe the circumstances under which a requester may be charged for a computerized search or a search of electronic records. It does not represent a change in practice, as DHS currently charges direct costs for specialized data searches. Again, because these proposed changes are consistent with current regulations and describe current process, DHS does not expect that they will result in additional costs for the government or the public.

DHS proposes to restructure paragraph (c)(3)(d), ''Restrictions on charging fees.'' Under this proposal, search fees, and in some cases, duplication fees may not be charged if a component fails to comply with the time limits in which to respond to a request provided no unusual or exceptional circumstances are present. This provision directly tracks a mandatory provision from section 6 of the OPEN Government Act of 2007, Public Law 110–175, 121 Stat. 2524, 5 U.S.C. 552(a)(4)(A)(viii).

In addition, DHS proposes to renumber former paragraph (d)(2) as paragraph (d)(3), and paragraph (d)(3) as (d)(4). DHS proposes minor changes in paragraph (d)(4) to improve clarity. Current paragraphs (d)(4) and (d)(5) would be combined into proposed paragraph (d)(5). DHS proposes changes to paragraphs (e) and (f) to improve clarity; no significant changes are intended with respect to those paragraphs. DHS proposes no major changes to paragraphs (g), (h), (i), or (j), but proposes to modify a number of procedural provisions consistent with the practices of other agencies in this area. DHS also proposes minor changes to paragraph (k) to improve clarity. DHS proposes to eliminate current paragraph (*l*), ''Payment of outstanding fees,'' as the information in that paragraph is largely duplicative of the information contained within proposed paragraph (i)(3)—although proposed paragraph (i)(3) is discretionary, DHS anticipates that the result will be substantially the same as under current paragraph (*l*). Except in extraordinary circumstances, DHS will not process a FOIA request from persons with an unpaid fee from any previous FOIA request to any Federal agency until that outstanding fee has been paid in full to the agency. Finally, DHS proposes to insert a chart showing fee applicability, for ease of reference.

5.12 Confidential commercial information; CBP procedures.

As noted above, DHS proposes to include an exception to proposed § 5.7 for commercial information provided to U.S. Customs and Border Protection (CBP) by a business submitter. Although CBP's FOIA regulations (located at 19 CFR part 103, subpart A) are displaced by the DHS FOIA regulations, because of the unique nature of CBP's mission, this rule proposes to allow CBP to continue treating commercial information in the same manner as it has since the promulgation of current 19 CFR 103.35. CBP's FOIA regulations, located at 19 CFR part 103, subpart A, will be removed no later than the effective date of the final rule for this rulemaking. CBP may, however, retain cCurrent 19 CFR 103.35 as an interim measure.

5.13 Other rights and services. DHS proposes no substantive changes to this section.

FEMA Regulations

DHS also proposes to remove FEMA's outdated FOIA regulations at 44 CFR part 5, subparts A through E. FEMA is currently operating under DHS's title 6 FOIA regulations for all purposes.

III. Regulatory Analyses

Executive Orders 12866 and 13563—Regulatory Review

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (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 not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget.

DHS has considered the costs and benefits of this proposed rule. Previously in this preamble, DHS has provided a section-by-section analysis of the provisions in this proposed rule and concludes this rule does not impose additional costs on the public or the government. This rule does not collect any additional fee revenues compared to current practices or otherwise introduce new regulatory mandates. The rule's benefits include additional clarity for the public and DHS personnel with respect to DHS's implementation of the FOIA and subsequent statutory amendments.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, and section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 note, agencies must consider the impact of their rulemakings on ''small entities'' (small businesses, small organizations and local governments). The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. DHS has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Based on the previous discussion in this preamble, DHS does not believe this rule imposes any additional direct costs on small entities.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small

Business Regulatory Enforcement Fairness Act of 1996 (as amended), 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects

6 CFR Part 5

Classified information, Courts, Freedom of information, Government employees, Privacy.

19 CFR Part 103

Administrative practice and procedure, Confidential business information, Courts, Freedom of information, Law enforcement, Privacy, Reporting and recordkeeping requirements.

44 CFR Part 5

Courts, Freedom of information, Government employees.

For the reasons stated in the preamble, the Department of Homeland Security proposes to amend 6 CFR chapter I, part 5, 19 CFR chapter I, part 103, and 44 CFR chapter I, part 5, as follows:

Title 6—Domestic Security

PART 5—DISCLOSURE OR PRODUCTION OF MATERIAL OR INFORMATION

■ 1. The authority citation for part 5 is revised to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 301; 6 U.S.C. 101 *et seq.;* E.O. 13392.

■ 2. In Chapter I, revise subpart A of part 5 to read as follows:

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

Sec.
5.1 General provisions.
5.2 Proactive disclosures of DHS records.
5.3 Requirements for making requests.
5.4 Responsibility for responding to requests.
5.5 Timing of responses to requests.
5.6 Responses to requests.
5.7 Confidential commercial information.
5.8 Administrative appeals.
5.9 Preservation of records.
5.10 FOIA requests for information contained in a Privacy Act system of records.
5.11 Fees.
5.12 Confidential commercial information; CBP procedures.
5.13 Other rights and services.
Appendix I to Subpart A—FOIA Contact Information

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

§ 5.1 General provisions.

(a)(1) This subpart contains the rules that the Department of Homeland Security follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552 as amended. The Freedom of Information Act applies to third-party requests for documents concerning the general activities of the government and of DHS in particular. When an individual requests access to his or her own records, it is considered a Privacy Act request. Such records are maintained by DHS under the individual's name or personal identifier. Although requests are considered either FOIA requests or Privacy Act requests, agencies process requests in accordance with both laws, which provides the greatest degree of lawful access while safeguarding an individual's personal privacy.

(2) These rules should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget at 52 FR 10012 (March 27, 1987) (hereinafter ''OMB Guidelines''). Additionally, DHS has additional policies and procedures relevant to the FOIA process. These resources are available at *http://www.dhs.gov/freedom-information-act-foia.* Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed under subpart B of part 5 as well as under this subpart. As a matter of policy, DHS makes discretionary disclosures of records or information exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.

(b) As referenced in this subpart, component means the FOIA office of each separate organizational entity within DHS that reports directly to the Office of the Secretary.

(c) DHS has a decentralized system for processing requests, with each component handling requests for its records.

(d) *Unofficial release of DHS information.* The disclosure of exempt records, without authorization by the appropriate DHS official, is not an official release of information; accordingly, it is not a FOIA release. Such a release does not waive the authority of the Department of Homeland Security to assert FOIA exemptions to withhold the same records in response to a FOIA request. In addition, while the authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks the records in a private or personal capacity.

§ 5.2 Proactive disclosure of DHS records.

Records that are required by the FOIA to be made available for public inspection and copying are accessible on DHS's Web site, *http://www.dhs.gov/freedom-information-act-foia-and-privacy-act.* Each component is responsible for determining which of its records are required to be made publicly available, as well as identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records. Each component shall ensure that posted records and indices are updated on an ongoing basis. Each component has a FOIA Public Liaison who can assist individuals in locating records particular to a component. A list of DHS's FOIA Public Liaisons is available at *http://www.dhs.gov/foia-contact-information* and in appendix I to this subpart. If you have no access to the internet, please contact the Public Liaison for the component from which you are seeking records for assistance with publicly available records.

§ 5.3 Requirements for making requests.

(a) *General information.* (1) DHS has a decentralized system for responding to FOIA requests, with each component designating a FOIA office to process records from that component. All components have the capability to receive requests electronically, either through email or a web portal. To make a request for DHS records, a requester should write directly to the FOIA office of the component that maintains the records being sought. A request will receive the quickest possible response if it is addressed to the FOIA office of the component that maintains the records sought. DHS's FOIA Reference Guide contains or refers the reader to descriptions of the functions of each component and provides other information that is helpful in determining where to make a request. Each component's FOIA office and any additional requirements for submitting a request to a given component are listed in Appendix I of this subpart. These references can all be used by requesters

to determine where to send their requests within DHS.

(2) A requester may also send his or her request to the Privacy Office, U.S. Department of Homeland Security, 245 Murray Lane SW STOP–0655, or via the internet at *http://www.dhs.gov/dhs-foia-request-submission-form,* or via fax to (202) 343–4011. The Privacy Office will forward the request to the component(s) that it determines to be most likely to maintain the records that are sought.

(3) A requester who is making a request for records about him or herself must comply with the verification of identity provision set forth in subpart B of this part.

(4) Where a request for records pertains to a third party, a requester may receive greater access by submitting either a notarized authorization signed by that individual, in compliance with the verification of identity provision set forth in subpart B of this part, or a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by that individual, authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased (*e.g.,* a copy of a death certificate or an obituary). As an exercise of its administrative discretion, each component can require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure.

(b) *Description of records sought.* Requesters must describe the records sought in sufficient detail to enable DHS personnel to locate them with a reasonable amount of effort. A reasonable description contains sufficient information to permit an organized, non-random search for the record based on the component's filing arrangements and existing retrieval systems. To the extent possible, requesters should include specific information that may assist a component in identifying the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number. Requesters should refer to Appendix I of this subpart for additional component-specific requirements. In general, requesters should include as much detail as possible about the specific records or the types of records that they are seeking. Before submitting their requests, requesters may contact the component's FOIA Officer or FOIA public liaison to discuss the records they are seeking and to receive assistance in describing the records. If after receiving a request, a component determines that it does not reasonably describe the records sought, the component should inform the requester what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the component's designated FOIA Officer, its FOIA Public Liaison, or a representative of the DHS Privacy Office, each of whom is available to assist the requester in reasonably describing the records sought. If a request does not reasonably describe the records sought, the agency's response to the request may be delayed.

(c) If a request does not adequately describe the records sought, DHS may seek additional information from the requester. If the requester does not respond to the request for additional information within thirty (30) days, the request may be administratively closed at DHS's discretion. This administrative closure does not prejudice the requester's ability to submit a new request for further consideration with additional information.

§ 5.4 Responsibility for responding to requests.

(a) *In general.* Except in the instances described in paragraphs (c) and (d) of this section, the component that first receives a request for a record and maintains that record is the component responsible for responding to the request. In determining which records are responsive to a request, a component ordinarily will include only records in its possession as of the date that it begins its search. If any other date is used, the component shall inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), shall not be considered responsive to a request.

(b) *Authority to grant or deny requests.* The head of a component, or designee, is authorized to grant or to deny any requests for records that are maintained by that component.

(c) *Re-routing of misdirected requests.* Where a component's FOIA office determines that a request was misdirected within DHS, the receiving component's FOIA office shall route the request to the FOIA office of the proper component(s).

(d) *Consultations, coordination and referrals.* When a component determines that it maintains responsive records that either originated with another component or agency, or which contains information provided by, or of substantial interest to, another component or agency, then it shall proceed in accordance with either paragraph (d)(1), (2), or (3) of this section, as appropriate:

(1) The component may respond to the request, after consulting with the component or the agency that originated or has a substantial interest in the records involved.

(2) The component may provide a combined or joint response to the request after coordinating with the other components or agencies that originated the record. This may include situations where the standard referral procedure is not appropriate where disclosure of the identity of the component or agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if a non-law enforcement component responding to a request for records on a living third party locates records within its files originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if a component locates material within its files originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the component that received the request should coordinate with the originating component or agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination should then be conveyed to the requester by the component that originally received the request.

(3) The component may refer the responsibility for responding to the request or portion of the request to the component or agency best able to determine whether to disclose the relevant records, or to the agency that created or initially acquired the record as long as that agency is subject to the FOIA. Ordinarily, the component or agency that created or initially acquired the record will be presumed to be best able to make the disclosure determination. The referring component shall document the referral and maintain a copy of the records that it refers.

(e) *Classified information.* On receipt of any request involving classified

information, the component shall determine whether information is currently and properly classified and take appropriate action to ensure compliance with 6 CFR part 7. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another component or agency under any applicable executive order concerning the classification of records, the receiving component shall refer the responsibility for responding to the request regarding that information to the component or agency that classified the information, or should consider the information for classification. Whenever a component's record contains information classified by another component or agency, the component shall coordinate with or refer the responsibility for responding to that portion of the request to the component or agency that classified the underlying information.

(f) *Notice of referral.* Whenever a component refers any part of the responsibility for responding to a request to another component or agency, it will notify the requester of the referral and inform the requester of the name of each component or agency to which the records were referred, unless disclosure of the identity of the component or agency would harm an interest protected by an applicable exemption, in which case the component should coordinate with the other component or agency, rather than refer the records.

(g) *Timing of responses to consultations and referrals.* All consultations and referrals received by DHS will be handled according to the date that the FOIA request initially was received by the first component or agency, not any later date.

(h) *Agreements regarding consultations and referrals.* Components may establish agreements with other components or agencies to eliminate the need for consultations or referrals with respect to particular types of records.

(i) *Electronic records and searches*—(1) *Significant interference.* The FOIA allows components to not conduct a search for responsive documents if the search would cause significant interference with the operation of the component's automated information system.

(2) *Business as usual approach.* A ''business as usual'' approach exists when the component has the capability to process a FOIA request for electronic records without a significant expenditure of monetary or personnel resources. Components are not required to conduct a search that does not meet this business as usual criterion.

(i) Creating computer programs or purchasing additional hardware to extract email that has been archived for emergency retrieval usually are not considered business as usual if extensive monetary or personnel resources are needed to complete the project.

(ii) Creating a computer program that produces specific requested fields or records contained within a well-defined database structure usually is considered business as usual. The time to create this program is considered as programmer or operator search time for fee assessment purposes and the FOIA requester may be assessed fees in accordance with 6 CFR 5.11(c)(1)(iii). However, creating a computer program to merge files with disparate data formats and extract specific elements from the resultant file is not considered business as usual, but a special service, for which additional fees may be imposed as specified in 6 CFR 5.11. Components are not required to perform special services and creation of a computer program for a fee is up to the discretion of the component and is dependent on component resources and expertise.

(3) *Data links.* Components are not required to expend DHS funds to establish data links that provide real time or near-real-time data to a FOIA requester.

§ 5.5 Timing of responses to requests.

(a) *In general.* Components ordinarily will respond to requests according to their order of receipt. Appendix I to this subpart contains the list of components that are designated to accept requests. In instances involving misdirected requests that are re-routed pursuant to 6 CFR 5.4(c), the response time will commence on the date that the request is received by the proper component, but in any event not later than ten working days after the request is first received by any DHS component designated in appendix I of this subpart.

(b) *Multitrack processing.* All components must designate a specific track for requests that are granted expedited processing, in accordance with the standards set forth in paragraph (e) of this section. A component may also designate additional processing tracks that distinguish between simple and more complex requests based on the estimated amount of work or time needed to process the request. Among the factors a component may consider are the number of pages involved in processing the request or the need for consultations or referrals. Components shall advise requesters of the track into which their request falls, and when appropriate, shall offer requesters an opportunity to narrow their request so that the request can be placed in a different processing track.

(c) *Unusual circumstances.* Whenever the statutory time limits for processing a request cannot be met because of ''unusual circumstances,'' as defined in the FOIA, and the component extends the time limits on that basis, the component shall, before expiration of the twenty-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed. Where the extension exceeds ten working days, the component shall, as described by the FOIA, provide the requester with an opportunity to modify the request or agree to an alternative time period for processing. The component shall make available its designated FOIA Officer and its FOIA Public Liaison for this purpose.

(d) *Aggregating requests.* For the purposes of satisfying unusual circumstances under the FOIA, components may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. Components will not aggregate multiple requests that involve unrelated matters.

(e) *Expedited processing.* (1) Requests and appeals will be processed on an expedited basis whenever the component determines that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person who is primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.

(2) A request for expedited processing may be made at any time. Requests based on paragraphs (e)(1)(i), (ii), and (iii) of this section must be submitted to the component that maintains the records requested. When making a request for expedited processing of an administrative appeal, the request should be submitted to the DHS Office

of General Counsel or the component Appeals Officer. Address information is available at the DHS Web site, *http://www.dhs.gov/freedom-information-act-foia,* or by contacting the component FOIA officers via the information listed in Appendix I. Requests for expedited processing that are based on paragraph (e)(1)(iv) of this section must be submitted to the Senior Director of FOIA Operations, the Privacy Office, U.S. Department of Homeland Security, 245 Murray Lane SW., STOP–0655, Washington, DC 20598–0655. A component that receives a misdirected request for expedited processing under the standard set forth in paragraph (e)(1)(iv) of this section shall forward it immediately to the DHS Senior Director of FOIA Operations, the Privacy Office, for determination. The time period for making the determination on the request for expedited processing under paragraph (e)(1)(iv) of this section shall commence on the date that the Privacy Office receives the request, provided that it is routed within ten working days, but in no event shall the time period for making a determination on the request commence any later than the eleventh working day after the request is received by any component designated in appendix I of this subpart.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, under paragraph (e)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that he or she is a person whose primary professional activity or occupation is information dissemination, though it need not be his or her sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful to establishing the requirement that there be an ''urgency to inform'' the public on the topic. As a matter of administrative discretion, a component may waive the formal certification requirement.

(4) A component shall notify the requester within ten calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request shall be given priority, placed in the processing track for expedited requests, and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

§ 5.6 Responses to requests.

(a) *In general.* Components should, to the extent practicable, communicate with requesters having access to the internet using electronic means, such as email or web portal.

(b) *Acknowledgments of requests.* A component shall acknowledge the request and assign it an individualized tracking number if it will take longer than ten working days to process. Components shall include in the acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their requests.

(c) *Grants of requests.* Ordinarily, a component shall have twenty (20) working days from when a request is received to determine whether to grant or deny the request unless there are unusual or exceptional circumstances. Once a component makes a determination to grant a request in full or in part, it shall notify the requester in writing. The component also shall inform the requester of any fees charged under 6 CFR 5.11 and shall disclose the requested records to the requester promptly upon payment of any applicable fees.

(d) *Adverse determinations of requests.* A component making an adverse determination denying a request in any respect shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees, including requester categories or fee waiver matters, or denials of requests for expedited processing.

(e) *Content of denial.* The denial shall be signed by the head of the component, or designee, and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including any FOIA exemption applied by the component in denying the request;

(3) An estimate of the volume of any records or information withheld, for example, by providing the number of pages or some other reasonable form of estimation. This estimation is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption; and

(4) A statement that the denial may be appealed under 6 CFR 5.8(a), and a description of the requirements set forth therein.

(f) *Markings on released documents.* Markings on released documents must be clearly visible to the requester. Records disclosed in part shall be marked to show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted also shall be indicated on the record, if technically feasible.

(g) *Use of record exclusions.* (1) In the event that a component identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), the head of the FOIA office of that component must confer with Department of Justice's Office of Information Policy (OIP) to obtain approval to apply the exclusion.

(2) Any component invoking an exclusion shall maintain an administrative record of the process of invocation and approval of the exclusion by OIP.

§ 5.7 Confidential commercial information.

(a) *Definitions.*

(1) *Confidential commercial information* means commercial or financial information obtained by DHS from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.

(2) *Submitter* means any person or entity from whom DHS obtains confidential commercial information, directly or indirectly.

(b) *Designation of confidential commercial information.* A submitter of confidential commercial information must use good faith efforts to designate by appropriate markings, either at the time of submission or within a reasonable time thereafter, any portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(c) *When notice to submitters is required.* (1) A component shall promptly provide written notice to a submitter whenever records containing such information are requested under the FOIA if, after reviewing the request,

the responsive records, and any appeal by the requester, the component determines that it may be required to disclose the records, provided:

(i) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(ii) The component has a reason to believe that the requested information may be protected from disclosure under Exemption 4.

(2) The notice shall either describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, notice may be made by posting or publishing the notice in a place or manner reasonably likely to accomplish it.

(d) *Exceptions to submitter notice requirements.* The notice requirements of paragraphs (c) and (g) of this section shall not apply if:

(1) The component determines that the information is exempt under the FOIA;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987; or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous, except that, in such a case, the component shall give the submitter written notice of any final decision to disclose the information and must provide that notice within a reasonable number of days prior to a specified disclosure date.

(e) *Opportunity to object to disclosure.* (1) A component will specify a reasonable time period within which the submitter must respond to the notice referenced above. If a submitter has any objections to disclosure, it should provide the component a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the submitter must explain why the information constitutes a trade secret, or commercial or financial information that is privileged or confidential.

(2) A submitter who fails to respond within the time period specified in the notice shall be considered to have no objection to disclosure of the information. Information received by the component after the date of any disclosure decision will not be considered by the component. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(f) *Analysis of objections.* A component shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(g) *Notice of intent to disclose.* Whenever a component decides to disclose information over the objection of a submitter, the component shall provide the submitter written notice, which shall include:

(1) A statement of the reasons why each of the submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the component shall promptly notify the submitter.

(i) *Requester notification.* The component shall notify a requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

(j) *Scope.* This section shall not apply to any confidential commercial information provided to CBP by a business submitter. 6 CFR 5.12 applies to such information. 6 CFR 5.12 also defines ''confidential commercial information'' as used in this paragraph.

§ 5.8 Administrative appeals

(a) *Requirements for filing an appeal.* (1) A requester may appeal adverse determinations denying his or her request or any part of the request to the appropriate Appeals Officer. A requester may also appeal if he or she questions the adequacy of the component's search for responsive records, or believes the component either misinterpreted the request or did not address all aspects of the request (*i.e.,* it issued an incomplete response), or if the requester believes there is a procedural deficiency (*e.g.,* fees were improperly calculated). For the address of the appropriate component Appeals Officer, contact the applicable component FOIA liaison using the information in appendix I to this subpart, visit *www.dhs.gov/foia,* or call 1–866–431–0486. An appeal must be in writing, and to be considered timely it must be postmarked or, in the case of electronic submissions, transmitted to the Appeals Officer within 60 business days after the date of the component's response. The appeal should clearly identify the component determination (including the assigned request number if the requester knows it) that is being appealed and should contain the reasons the requester believes the determination was erroneous. To facilitate handling, the requester should mark both the letter and the envelope, or the transmittal line in the case of electronic transmissions ''Freedom of Information Act Appeal.''

(2) An adverse determination by the component appeals officer will be the final action of DHS.

(b) *Adjudication of appeals.* (1) The DHS Office of the General Counsel or its designee (*e.g.,* component Appeals Officers) is the authorized appeals authority for DHS;

(2) On receipt of any appeal involving classified information, the Appeals Officer shall consult with the Chief Security Officer, and take appropriate action to ensure compliance with 6 CFR part 7;

(3) If the appeal becomes the subject of a lawsuit, the Appeals Officer is not required to act further on the appeal.

(c) *Appeal decisions.* The decision on the appeal will be made in writing. A decision that upholds a component's determination will contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision will provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the mediation services offered by the Office of Government Information Services, of the National Archives and Records Administration, as a non-exclusive alternative to litigation. If the adverse decision is reversed or modified on appeal, in whole or in part, the requester will be notified in a written decision and the request will be thereafter be further processed in accordance with that appeal decision.

(d) *Time limit for issuing appeal decision.* The statutory time limit for responding to appeals is generally 20 workdays after receipt. However, the Appeals Officer may extend the time limit for responding to an appeal provided the circumstances set forth in 5 U.S.C. 552(a)(6)(B)(i) are met.

(e) *Appeal necessary before seeking court review.* If a requester wishes to seek court review of a component's adverse determination on a matter appealable under subsection (a)(1) of this section, the requester must

generally first appeal it under this subpart. However, a requester is not required to first file an appeal of an adverse determination of a request for expedited processing prior to seeking court review.

§ 5.9 Preservation of records.

Each component shall preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 4.2 and/or 14 of the National Archives and Records Administration. Records will not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 5.10 FOIA requests for information contained in a Privacy Act system of records.

(a) *Information subject to Privacy Act.* (1) If a requester submits a FOIA request for information about him or herself that is contained in a Privacy Act system of records applicable to the requester (*i.e.,* the information contained in the system of records is retrieved by the component using the requester's name or other personal identifier, and the information pertains to an individual covered by the Privacy Act) the request will be processed under both the FOIA and the Privacy Act.

(2) If the information the requester is seeking is not subject to the Privacy Act (*e.g.,* the information is filed under another subject, such as an organization, activity, event, or an investigation not retrievable by the requester's name or personal identifier), the request, if otherwise properly made, will be treated only as a FOIA request. In addition, if the information is covered by the Privacy Act and the requester does not provide proper verification of the requester's identity, the request, if otherwise properly made, will be processed only under the FOIA.

(b) *When both Privacy Act and FOIA exemptions apply.* Only if both a Privacy Act exemption and a FOIA exemption apply can DHS withhold information from a requester if the information sought by the requester is about him or herself and is contained in a Privacy Act system of records applicable to the requester.

(c) *Conditions for release of Privacy Act information to third parties in response to a FOIA request.* If a requester submits a FOIA request for Privacy Act information about another individual, the information will not be disclosed without that person's prior written consent that provides the same verification information that the person would have been required to submit for information about him or herself, unless—

(1) The information is required to be released under the FOIA, as provided by 5 U.S.C. 552a (b)(2); or

(2) In most circumstances, if the individual is deceased.

(d) *Privacy Act requirements.* See DHS's Privacy Act regulations in 5 CFR part 5, subpart B for additional information regarding the requirements of the Privacy Act.

§ 5.11 Fees.

(a) *In general.* Components shall charge for processing requests under the FOIA in accordance with the provisions of this section and with the OMB Guidelines. Components will ordinarily use the most efficient and least expensive method for processing requested records. In order to resolve any fee issues that arise under this section, a component may contact a requester for additional information. A component ordinarily will collect all applicable fees before sending copies of records to a requester. If you make a FOIA request, it shall be considered a firm commitment by you to pay all applicable fees charged under § 5.11, up to $25.00, unless you seek a waiver of fees. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(b) *Definitions.* Generally, ''requester category'' means one of the three categories in which agencies place requesters for the purpose of determining whether a requester will be charged fees for search, review and duplication; categories include commercial requesters, noncommercial scientific or educational institutions or news media requesters, and all other requesters. The term ''fee waiver'' means that processing fees will be waived, or reduced, if a requester can demonstrate that certain statutory standards are satisfied including that the information is in the public interest and is not requested for a commercial interest. For purposes of this section:

(1) *Commercial use request* is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. A component's decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information.

(2) *Direct costs* are those expenses that an agency expends in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.,* the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

(3) *Duplication* is reproducing a copy of a record or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

(4) *Educational institution* is any school that operates a program of scholarly research. A requester in this fee category must show that the request is authorized by, and is made under the auspices of, an educational institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research. To fall within this fee category the request must serve the scholarly research goal of the institution rather than an individual research goal.

Example 1. A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution if the request adequately describes how the requested information would further a specific research goal of the educational institution.

Example 2. A request from the same professor of geology seeking immigration information from the U.S. Immigration and Customs Enforcement in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationery.

Example 3. A student who makes a request in furtherance of the completion of a course of instruction would be presumed to be carrying out an individual research goal, rather than a scholarly research goal of the institution, and would not qualify as part of this fee category.

Note: These examples are provided for guidance purposes only. Each individual request will be evaluated under the particular facts, circumstances, and information provided by the requester.

(5) *Noncommercial scientific institution* is an institution that is not operated on a ''commercial'' basis, as

defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and not for a commercial use.

(6) *Representative of the news media* is any person or entity organized and operated to publish or broadcast news to the public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast ''news'' to the public at large and publishers of periodicals that disseminate ''news'' and make their products available through a variety of means to the general public, including but not limited to, news organizations that disseminate solely on the Internet. A request for records that supports the news-dissemination function of the requester shall not be considered to be for a commercial use. In contrast, data brokers or others who merely compile and market government information for direct economic return shall not be presumed to be news media entities. ''Freelance'' journalists must demonstrate a solid basis for expecting publication through a news media entity in order to be considered as working for a news media entity. A publication contract would provide the clearest evidence that publication is expected; however, components shall also consider a requester's past publication record in making this determination.

(7) *Review* is the page-by-page, line-by-line examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under 6 CFR 5.7 or 6 CFR 5.12, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* is the process of looking for and retrieving records or information responsive to a request. Search time includes page-by-page or line-by-line identification of information within records; and the reasonable efforts expended to locate and retrieve information from electronic records. Components shall ensure that searches are done in the most efficient and least expensive manner reasonably possible by readily available means.

(c) *Charging fees.* In responding to FOIA requests, components shall charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section. Because the fee amounts provided below already account for the direct costs associated with a given fee type, unless otherwise stated in § 5.11, components should not add any additional costs to those charges.

(1) *Search.* (i) Search fees shall be charged for all requests subject to the restrictions of paragraph (d) of this section. Components may properly charge for time spent searching even if they do not locate any responsive records or if they determine that the records are entirely exempt from disclosure.

(ii) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees will be as follows: Managerial—$10.25; professional—$7.00; and clerical/administrative—$4.00.

(iii) Requesters will be charged the direct costs associated with conducting any search that requires the creation of a new computer program, as referenced in section 5.4, to locate the requested records. Requesters shall be notified of the costs associated with creating such a program and must agree to pay the associated costs before the costs may be incurred.

(iv) For requests that require the retrieval of records stored by an agency at a federal records center operated by the National Archives and Records Administration (NARA), additional costs shall be charged in accordance with the Transactional Billing Rate Schedule established by NARA.

(2) *Duplication.* Duplication fees will be charged to all requesters, subject to the restrictions of paragraph (d) of this section. A component shall honor a requester's preference for receiving a record in a particular form or format where it is readily reproducible by the component in the form or format requested. Where photocopies are supplied, the component will provide one copy per request at a cost of ten cents per page. For copies of records produced on tapes, disks, or other media, components will charge the direct costs of producing the copy, including operator time. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials. For other forms of duplication, components will charge the direct costs.

(3) *Review.* Review fees will be charged to requesters who make commercial use requests. Review fees will be assessed in connection with the initial review of the record, *i.e.,* the review conducted by a component to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, when the appellate authority determines that a particular exemption no longer applies, any costs associated with a component's re-review of the records in order to consider the use of other exemptions may be assessed as review fees. Review fees will be charged at the same rates as those charged for a search under paragraph (c)(1)(ii) of this section.

(d) *Restrictions on charging fees.* (1) No search fees will be charged for requests by educational institutions (unless the records are sought for a commercial use), noncommercial scientific institutions, or representatives of the news media.

(2) If a component fails to comply with the time limits in which to respond to a request, and if no unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (d)(1) of this section, may not charge duplication fees.

(3) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(4) Except for requesters seeking records for a commercial use, components will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first two hours of search.

(5) When, after first deducting the 100 free pages (or its cost equivalent) and the first two hours of search, a total fee calculated under paragraph (c) of this

section is $14.00 or less for any request, no fee will be charged.

(e) *Notice of anticipated fees in excess of $25.00.* (1) When a component determines or estimates that the fees to be assessed in accordance with this section will exceed $25.00, the component shall notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review and/or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the component shall advise the requester accordingly. If the requester is a noncommercial use requester, the notice will specify that the requester is entitled to his or her statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees, two hours of search time at no charge, and will advise the requester whether those entitlements have been provided.

(2) In cases in which a requester has been notified that the actual or estimated fees are in excess of $25.00, the request shall not be considered perfected and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, or designates some amount of fees he or she is willing to pay, or in the case of a noncommercial use requester who has not yet been provided with his or her statutory entitlements, designates that he or she seeks only that which can be provided by the statutory entitlements. The requester must provide the commitment or designation in writing, and must, when applicable, designate an exact dollar amount the requester is willing to pay. Components are not required to accept payments in installments.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but the component estimates that the total fee will exceed that amount, the component will toll the processing of the request while it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The component shall inquire whether the requester wishes to revise the amount of fees he or she is willing to pay and/or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(4) Components will make available their FOIA Public Liaison or other FOIA professional to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Although not required to provide special services, if a component chooses to do so as a matter of administrative discretion, the direct costs of providing the service will be charged. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(g) *Charging interest.* Components may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the component. Components will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* When a component reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, the component may aggregate those requests and charge accordingly. Components may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. For requests separated by a longer period, components will aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) and (3) of this section, a component shall not require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (*i.e.,* payment before copies are sent to a requester) is not an advance payment.

(2) When a component determines or estimates that a total fee to be charged under this section will exceed $250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. A component may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to any component or agency within 30 calendar days of the billing date, a component may require that the requester pay the full amount due, plus any applicable interest on that prior request and the component may require that the requester make an advance payment of the full amount of any anticipated fee, before the component begins to process a new request or continues to process a pending request or any pending appeal. Where a component has a reasonable basis to believe that a requester has misrepresented his or her identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which a component requires advance payment, the request shall not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 30 calendar days after the date of the component's fee determination, the request will be closed.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the component will inform the requester of the contact information for that source.

(k) *Requirements for waiver or reduction of fees.* (1) Records responsive to a request shall be furnished without charge or at a reduced rate below that established under paragraph (c) of this section, where a component determines, on a case-by-case basis, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) In deciding whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government, components will consider the following factors:

(i) The subject of the request must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested records must be meaningfully

informative about government operations or activities in order to be ''likely to contribute'' to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not contribute to such understanding where nothing new would be added to the public's understanding.

(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as his or her ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The public's understanding of the subject in question must be enhanced by the disclosure to a significant extent. However, components shall not make value judgments about whether the information at issue is ''important'' enough to be made public.

(3) To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, components will consider the following factors:

(i) Components shall identify any commercial interest of the requester, as defined in paragraph (b)(1) of this section, that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(ii) A waiver or reduction of fees is justified where the public interest is greater than any identified commercial interest in disclosure. Components ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(5) Requests for a waiver or reduction of fees should be made when the request is first submitted to the component and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester will be required to pay any costs incurred up to the date the fee waiver request was received.

(6) *Summary of fees.* The following table summarizes the chargeable fees (excluding direct fees identified in § 5.11) for each requester category.

Category	Search fees	Review fees	Duplication fees
Commercial-use	Yes	Yes	Yes.
Educational or Non-Commercial Scientific Institution	No	No	Yes (100 pages free).
News Media	No	No	Yes (100 pages free).
Other requesters	Yes (2 hours free)	No	Yes (100 pages free).

§ 5.12 Confidential commercial information; CBP procedures.

(a) *In general.* For purposes of this section, ''commercial information'' is defined as trade secret, commercial, or financial information obtained from a person. Commercial information provided to CBP by a business submitter and that CBP determines is privileged or confidential commercial or financial information will be treated as privileged or confidential and will not be disclosed pursuant to a Freedom of Information Act request or otherwise made known in any manner except as provided in this section.

(b) *Notice to business submitters of FOIA requests for disclosure.* Except as provided in paragraph (b)(2) of this section, CBP will provide business submitters with prompt written notice of receipt of FOIA requests or appeals that encompass their commercial information. The written notice will describe either the exact nature of the commercial information requested, or enclose copies of the records or those portions of the records that contain the commercial information. The written notice also will advise the business submitter of its right to file a disclosure objection statement as provided under paragraph (c)(1) of this section. CBP will provide notice to business submitters of FOIA requests for the business submitter's commercial information for a period of not more than 10 years after the date the business submitter provides CBP with the information, unless the business submitter requests, and provides acceptable justification for, a specific notice period of greater duration.

(1) *When notice is required.* CBP will provide business submitters with notice of receipt of a FOIA request or appeal whenever:

(i) The business submitter has in good faith designated the information as commercially- or financially-sensitive information. The business submitter's claim of confidentiality should be supported by a statement by an authorized representative of the business entity providing specific justification that the information in question is considered confidential commercial or financial information and that the information has not been disclosed to the public; or

(ii) CBP has reason to believe that disclosure of the commercial information could reasonably be expected to cause substantial competitive harm.

(2) *When notice is not required.* The notice requirements of this section will not apply if:

(i) CBP determines that the commercial information will not be disclosed;

(ii) The commercial information has been lawfully published or otherwise made available to the public; or

(iii) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(c) *Procedure when notice given.* (1) *Opportunity for business submitter to object to disclosure.* A business submitter receiving written notice from CBP of receipt of a FOIA request or appeal encompassing its commercial information may object to any disclosure of the commercial information by providing CBP with a detailed statement of reasons within 10 days of the date of the notice (exclusive of Saturdays, Sundays, and legal public holidays). The statement should specify all the grounds for withholding any of the commercial information under any exemption of the FOIA and, in the case of Exemption 4, should demonstrate why the information is considered to be a trade secret or commercial or financial information that is privileged or confidential. The disclosure objection

information provided by a person pursuant to this paragraph may be subject to disclosure under the FOIA.

(2) *Notice to FOIA requester.* When notice is given to a business submitter under paragraph (b)(1) of this section, notice will also be given to the FOIA requester that the business submitter has been given an opportunity to object to any disclosure of the requested commercial information.

(d) *Notice of intent to disclose.* CBP will consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose commercial information. Whenever CBP decides to disclose the requested commercial information over the objection of the business submitter, CBP will provide written notice to the business submitter of CBP's intent to disclose, which will include:

(1) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(2) A description of the commercial information to be disclosed; and

(3) A specified disclosure date which will not be less than 10 days (exclusive of Saturdays, Sundays, and legal public holidays) after the notice of intent to disclose the requested information has been issued to the business submitter. Except as otherwise prohibited by law, CBP will also provide a copy of the notice of intent to disclose to the FOIA requester at the same time.

(e) *Notice of FOIA lawsuit.* Whenever a FOIA requester brings suit seeking to compel the disclosure of commercial information covered by paragraph (b)(1) of this section, CBP will promptly notify the business submitter in writing.

§ 5.13 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Appendix I to Subpart A—FOIA Contact Information

Department of Homeland Security Chief FOIA Officer

Chief Privacy Officer/Chief FOIA Officer, The Privacy Office, U.S. Department of Homeland Security, 245 Murray Lane SW., STOP–0655, Washington, DC 20528–0655.

Department of Homeland Security Deputy Chief FOIA Officer

Deputy Chief FOIA Officer, The Privacy Office, U.S. Department of Homeland Security, 245 Murray Lane SW., STOP–0655, Washington, DC 20528–0655.

Senior Director, FOIA Operations

Sr. Director, FOIA Operations, The Privacy Office, U.S. Department of Homeland Security, 245 Murray Lane SW., STOP–0655, Washington, DC 20528–0655, Phone: 202–343–1743 or 866–431–0486, Fax: 202–343–4011, Email: *foia@hq.dhs.gov.*

Director, FOIA Production and Quality Assurance

Public Liaison, FOIA Production and Quality Assurance, The Privacy Office, U.S. Department of Homeland Security, 245 Murray Lane SW., STOP–0655, Washington, DC 20528–0655, Phone: 202–343–1743 or 866–431–0486, Fax: 202–343–4011, Email: *foia@hq.dhs.gov.*

U.S. Customs & Border Protection (CBP)

FOIA Officer/Public Liaison, 90 K Street NE., 9th Floor, Washington, DC 20229–1181, Phone: 202–325–0150, Fax: 202–325–0230.

Office of Civil Rights and Civil Liberties (CRCL)

FOIA Officer/Public Liaison, U.S. Department of Homeland Security, Washington, DC 20528, Phone: 202–357–1218, Email: *CRCL@dhs.gov.*

Federal Emergency Management Agency (FEMA)

FOIA Officer/Public Liaison, 500 C Street SW., Room 7NE, Washington, DC 20472, Phone: 202–646–3323, Email: *fema-foia@dhs.gov.*

Federal Law Enforcement Training Center (FLETC)

FOIA Officer/Public Liaison, Building #681, Suite 187B, Glynco, GA 31524, Phone: 912–267–3103, Fax: 912–267–3113, Email: *fletc-foia@dhs.gov.*

National Protection and Programs Directorate (NPPD)

FOIA Officer/Public Liaison, U.S. Department of Homeland Security, Washington, DC 20528, Phone: 703–235–2211, Fax: 703–235–2052, Email: *NPPD.FOIA@dhs.gov.*

Office of Biometric Identity Management (OBIM) FOIA Officer

Department of Homeland Security, Washington, DC 20598–0628, Phone: 202–298–5454, Fax: 202–298–5445, E-Mail: *OBIM–FOIA@ice.dhs.gov.*

Office of Intelligence & Analysis (I&A)

FOIA Officer/Public Liaison, U.S. Department of Homeland Security, Washington, DC 20528, Phone: 202–447–4883, Fax: 202–612–1936, Email: *I&AFOIA@hq.dhs.gov.*

Office of Inspector General (OIG)

FOIA Public Liaison, DHS–OIG Counsel, STOP 0305, 245 Murray Lane SW., Washington, DC 20528–0305, Phone: 202–254–4001, Fax: 202–254–4398, Email: *FOIA.OIG@oig.dhs.gov.*

Office of Operations Coordination and Planning (OPS)

FOIA Officer/Public Liaison, U.S. Department of Homeland Security, Washington, DC 20528, Phone: 202–447–4156, Fax: 202–282–9811, Email: *FOIAOPS@DHS.GOV.*

Science & Technology Directorate (S&T)

FOIA Officer/Public Liaison, U.S. Department of Homeland Security, Washington, DC 20528, Phone: 202–254–6342, Fax: 202–254–6739, Email: *stfoia@hq.dhs.gov.*

Transportation Security Administration (TSA)

FOIA Officer/Public Liaison, Freedom of Information Act Branch, 601 S. 12th Street, 11th Floor, East Tower, TSA–20, Arlington, VA 20598–6020, Phone: 1–866–FOIA–TSA or 571–227–2300, Fax: 571–227–1406, Email: *foia.tsa@dhs.gov.*

U.S. Citizenship & Immigration Services (USCIS)

FOIA Officer/Public Liaison, National Records Center, FOIA/PA Office, P.O. Box 648010, Lee's Summit, MO 64064–8010, Phone: 1–800–375–5283 (USCIS National Customer Service Unit), Fax: 816–350–5785, Email: *uscis.foia@uscis.dhs.gov.*

United States Coast Guard (USCG)

Commandant (CG–611), 2100 2nd St. SW., Attn: FOIA Officer/Public Liaison, Washington, DC 20593–0001, FOIA Requester Service Center Contact: Amanda Ackerson, Phone: 202–475–3522, Fax: 202–475–3927, Email: *efoia@uscg.mil.*

United States Immigration & Customs Enforcement (ICE)

Freedom of Information Act Office, FOIA Officer/Public Liaison, 500 12th Street SW., Stop 5009, Washington, DC 20536–5009.

FOIA Requester Service Center Contact, Phone: 866–633–1182, Fax: 202–732–4265, Email: *ice-foia@dhs.gov.*

United States Secret Service (USSS)

Freedom of Information and Privacy Acts Branch, FOIA Officer/Public Liaison, 245 Murray Drive, Building 410, Washington, DC 20223, Phone: 202–406–6370, Fax: 202–406–5586, Email: *FOIA@usss.dhs.gov.*

Please direct all requests for information from the Office of the Secretary, Citizenship and Immigration Services Ombudsman, Domestic Nuclear Detection Office, Office of the Executive Secretary, Office of Intergovernmental Affairs, Management Directorate, Office of Policy, Office of the General Counsel, Office of Health Affairs, Office of Legislative Affairs, Office of Public Affairs and the Privacy Office, to the DHS Privacy Office at: The Privacy Office, U.S. Department of Homeland Security, 245 Murray Lane SW., STOP–0655, Washington, DC 20528–0655, Phone: 202–343–1743 or 866–431–0486, Fax: 202–343–4011, Email: *foia@hq.dhs.gov.*

Appendix B to Part 5—[Removed]

■ 3. Remove appendix B to part 5.

Title 19—Customs Duties

PART 103—AVAILABILITY OF INFORMATION

■ 4. The authority citation for part 103 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

Section 103.31 also issued under 19 U.S.C. 1431; Section 103.31a also issued under 19 U.S.C. 2071 note and 6 U.S.C. 943; Section 103.33 also issued under 19 U.S.C. 1628; Section 103.34 also issued under 18 U.S.C. 1905.

§ 103.35 [Removed]

■ 5. Remove § 103.35.

Title 44—Emergency Management and Assistance

PART 5—PRODUCTION OR DISCLOSURE OF INFORMATION

■ 6. The authority citation for part 5 is revised to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301.

Subparts A Through E—[Removed and Reserved]

■ 7. Remove and reserve subparts A through E of part 5.

■ 8. In § 5.86, revise the section to read as follows:

§ 5.86 Records involved in litigation or other judicial process.

Subpoenas duces tecum issued pursuant to litigation or any other adjudicatory proceeding in which the United States is a party shall be referred to the Chief Counsel.

Jeh Charles Johnson,

Secretary.

[FR Doc. 2015–18388 Filed 7–28–15; 8:45 am]

BILLING CODE 9110–9L–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 102, 104, 110

[Notice 2015–10]

Rulemaking Petition: Contributions From Corporations and Other Organizations to Political Committees

AGENCY: Federal Election Commission.

ACTION: Rulemaking petition; notice of availability.

SUMMARY: On May 14, 2015, the Federal Election Commission received a Petition for Rulemaking that asks the Commission to revise existing rules concerning the reporting of contributions to political committees from corporations and other organizations. The Commission seeks comments on this petition.

DATES: Comments must be submitted on or before October 27, 2015.

ADDRESSES: All comments must be in writing. Commenters are encouraged to submit comments electronically via the Commission's Web site at *http://www.fec.gov/fosers*, reference REG 2015–03, or by email to *ContributionPetition2015@fec.gov*. Alternatively, commenters may submit comments in paper form, addressed to the Federal Election Commission, Attn.: Robert M. Knop, Assistant General Counsel, 999 E Street NW., Washington, DC 20463.

Each commenter must provide, at a minimum, his or her first name, last name, city, state, and zip code. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission's Web site and in the Commission's Public Records room. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver's license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Mr. Sean J. Wright, Attorney, Office of General Counsel, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On May 14, 2015, the Federal Election Commission received a Petition for Rulemaking from Make Your Laws PAC, Inc. and Make Your Laws Advocacy, Inc. The petition asks the Commission to modify its regulations requiring disclosure of contributions from corporations and other organizations to political committees.

The Federal Election Campaign Act, 52 U.S.C. 30101–46 (the ''Act''), and Commission regulations require all political committees to abide by certain organizational, record-keeping, and reporting requirements. *See* 52 U.S.C. 30102, 30103, 30104; 11 CFR 102.1, 102.2, 102.7, 104.3. This includes maintaining records of contribution receipts and disbursements, reporting independent expenditures, and filing periodic disclosure reports that identify the source of each contribution exceeding $200. *See* 11 CFR 104.3(a)(4)(i), 104.4, 104.5(c). Commission regulations also require every person who makes electioneering communications aggregating in excess of $10,000 in a calendar year and every person (other than a political committee) that makes independent expenditures in excess of $250 with respect to a given election in a calendar year to report certain information to the Commission. 11 CFR 104.20(b) and (c), 109.10(b) and (e); 52 U.S.C. 30104(c)(1) and (2), (f).

The petition asks the Commission to establish a new rule requiring that ''any person, other than a natural person, contributing an aggregate of more than $1,000 in any calendar year to any political committee, whether directly or indirectly'' (emphasis omitted), must do so from an account subject to certain reporting requirements. Specifically, the petition asks the Commission to require that these accounts disclose ''the original source of all election-related contributions and expenditures, traceable through all intermediary entities to a natural person, regardless of the amounts or entities involved'' (emphasis omitted). The petition also asks the Commission to apply to these accounts the identification requirements of 11 CFR 100.12; the Act's prohibition on foreign national contributions, 52 U.S.C. 30121; allocation rules for administrative expenses; and, in some circumstances, the Act's limitations on contributions to political committees.

The Commission seeks comments on the petition. The public may inspect the petition on the Commission's Web site at *http://www.fec.gov/fosers*, or in the Commission's Public Records Office, 999 E Street NW., Washington, DC 20463, Monday through Friday, from 9 a.m. to 5 p.m. Interested persons may also obtain a copy of the petition by dialing the Commission's Faxline service at (202) 501–3413 and following its instructions. Request document #279.

The Commission will not consider the petition's merits until after the comment period closes. If the Commission decides that the petition has merit, it may begin a rulemaking proceeding. The Commission will announce any action that it takes in the **Federal Register**.

On behalf of the Commission,

Dated: July 16, 2015.

Ann M. Ravel,

Chair, Federal Election Commission.

[FR Doc. 2015–18495 Filed 7–28–15; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 104, 109, 110, 114

[Notice 2015–09]

Rulemaking Petition: Independent Spending by Corporations, Labor Organizations, Foreign Nationals, and Certain Political Committees (Citizens United)

AGENCY: Federal Election Commission, Energy.

ACTION: Rulemaking petition; notice of availability.

SUMMARY: On June 19 and June 22, 2015, the Federal Election Commission received two Petitions for Rulemaking that ask the Commission to issue new rules and revise existing rules concerning: (1) The disclosure of certain financing information regarding independent expenditures and electioneering communications; (2) election-related spending by foreign nationals; (3) solicitations of corporate and labor organization employees and members; and (4) the independence of expenditures made by independent-expenditure-only political committees and accounts. The Commission seeks comments on these petitions.

DATES: Comments must be submitted on or before October 27, 2015.

ADDRESSES: All comments must be in writing. Commenters are encouraged to submit comments electronically via the Commission's Web site at *http://www.fec.gov/fosers*, reference REG 2015–04, or by email to *IndependentSpending@fec.gov.* Alternatively, commenters may submit comments in paper form, addressed to the Federal Election Commission, Attn.: Amy L. Rothstein, Assistant General Counsel, 999 E Street NW., Washington, DC 20463.

Each commenter must provide, at a minimum, his or her first name, last name, city, state, and zip code. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission's Web site and in the Commission's Public Records Office. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver's license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, or Ms. Esther D. Gyory, Attorney, Office of General Counsel, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On June 19, 2015, the Federal Election Commission received a Petition for Rulemaking from Make Your Laws PAC, Inc. and Make Your Laws Advocacy, Inc. On June 22, 2015, the Commission received a Petition for Rulemaking from Craig Holman and Public Citizen. Both petitions, citing *Citizens United* v. *FEC*, 558 U.S. 310 (2010), ask the Commission to modify its regulations in four respects.

First, the Federal Election Campaign Act, 52 U.S.C. 30101–46 (the ''Act''), and Commission regulations require every person who makes an electioneering communication aggregating in excess of $10,000 in a calendar year and every person (other than a political committee) that makes independent expenditures in excess of $250 with respect to a given election in a calendar year to report certain information to the Commission. 11 CFR 104.20(b) and (c), 109.10(b), (e); 52 U.S.C. 30104(c)(1) and (2), (f). The petitions ask the Commission to ''[e]nsure full public disclosure of corporate and labor organization independent spending'' by ''requir[ing] that outside spending groups disclose their donors.''

Second, the Act and Commission regulations prohibit foreign nationals from ''directly or indirectly'' making contributions, expenditures, and electioneering communications. 11 CFR 110.20; 52 U.S.C. 30121(a). The petitions ask the Commission to ''[c]larify that th[is] prohibition on foreign national campaign-related spending restricts such spending by U.S. corporations owned or controlled by a foreign national.''

Third, Commission regulations prohibit corporations and labor organizations from ''using coercion . . . to urge any individual to make a contribution or engage in fundraising activities on behalf of a candidate or political committee,'' 11 CFR 114.2(f)(2)(iv), and restrict how corporations and labor organizations may solicit contributions to their separate segregated funds from employees and members. 11 CFR 114.5(a)(2) through (5); *see also* 52 U.S.C. 30118(b)(3). The petitions ask the Commission to ''[c]larify that corporations and labor organizations are prohibited from coercing their employees and members into providing financial or other support for the corporation's or labor organization's independent political activities.''

Finally, the petitions ask the Commission to ''[e]nsure that the expenditures made by'' independent-expenditure-only political committees and accounts, *see, e.g., SpeechNow.org* v. *FEC*, 599 F.3d. 686 (D.C. Cir. 2010), ''are truly independent of federal candidates.''

The Commission seeks comments on the petitions. The public may inspect the petitions on the Commission's Web site at *http://www.fec.gov/fosers*, or in the Commission's Public Records Office, 999 E Street NW., Washington, DC 20463, Monday through Friday, from 9 a.m. to 5 p.m. Interested persons may also obtain copies of the petitions by dialing the Commission's Faxline service at (202) 501–3413 and following its instructions. Request document #280.

The Commission will not consider the petitions' merits until after the comment period closes. If the Commission decides that the petitions have merit, it may begin a rulemaking proceeding. The Commission will announce any action that it takes in the **Federal Register**.

Dated: July 16, 2015.

On behalf of the Commission,

Ann M. Ravel,

Chair, Federal Election Commission.

[FR Doc. 2015–18494 Filed 7–28–15; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR part 1904

[Docket No. OSHA–2015–0006]

RIN 1218–AC84

Clarification of Employer's Continuing Obligation To Make and Maintain an Accurate Record of Each Recordable Injury and Illness

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of proposed rule.

SUMMARY: OSHA is proposing to amend its recordkeeping regulations to clarify that the duty to make and maintain accurate records of work-related injuries and illnesses is an ongoing obligation. The duty to record an injury or illness continues for as long as the employer must keep records of the recordable injury or illness; the duty does not

expire just because the employer fails to create the necessary records when first required to do so. The proposed amendments consist of revisions to the titles of some existing sections and subparts, and changes to the text of some existing provisions. The proposed amendments add no new compliance obligations; the proposal would not require employers to make records of any injuries or illnesses for which records are not currently required to be made.

DATES: Written comments to this proposed rule must be submitted (postmarked, sent or received) by September 28, 2015. All submissions must bear a postmark or provide other evidence of the submission date.

ADDRESSES: You may submit comments, identified by Docket No. OSHA–2015–0006, by any of the following methods:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal e-Rulemaking Portal. Follow the instructions on the Web site for making electronic submissions.

Fax: If your submission, including attachments, does not exceed ten pages, you may fax it to the OSHA Docket Office at (202) 693–1648. OSHA does not require hard copies of documents transmitted by facsimile. However, if you have supplemental attachments that are *not* delivered by facsimile, you must submit those attachments, by the applicable deadline, to the OSHA Docket Office, Technical Data Center, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210. Any such attachment must clearly identify the sender's name, the date of submission, the title of the rulemaking (Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness), and the docket number (OSHA–2015–0006) so that the Docket Office can add the attachment(s) to the appropriate facsimile submission.

Mail, express mail, hand delivery, messenger, or courier service: You may submit comments to the OSHA Docket Office, Docket Number OSHA–2015–0006, Technical Data Center, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210; telephone: (202) 693–2350. (OSHA's TTY number is (877) 889–5627). Please contact the OSHA Docket Office for information about Department of Labor security procedures that could affect the delivery of materials by express mail, hand delivery, and messenger or courier service. Also note that security-related procedures may delay the Agency's receipt of comments submitted by regular mail. The Docket Office will accept deliveries by hand, express mail, or messenger and courier service during the Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m.

Instructions for submitting comments: All submissions must include the Agency's name (OSHA), the title of the rulemaking (Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness), and the docket number (OSHA–2015–0006). OSHA will place comments and other material, including any personal information you provide, in the public docket without revision, and the comments and other materials will be available online at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting statements and information that you do not want made available to the public or that contain personal information (about yourself or others) such as Social Security numbers, birthdates, and medical data. For further information on submitting comments, plus additional information on the rulemaking process, see the Public Participation heading in the **SUPPLEMENTARY INFORMATION** part of this document.

Docket: To read or download comments or other material in the docket, go to Docket Number OSHA–2015–0006 at *http://www.regulations.gov* or to the OSHA Docket Office at the address provided previously. The electronic docket for this proposed rule, established at *http://www.regulations.gov,* lists all of the documents in the docket. However, some information (*e.g.,* copyrighted material) is not publicly available to read or download through that Web site. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT: General information and press inquiries: *Press inquiries:* Mr. Frank Meilinger, Director, Office of Communications, OSHA, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *meilinger.francis2@dol.gov.*

Technical inquiries: Mr. William Perry, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3718, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1950; email *perry.bill@dol.gov.*

Copies of this **Federal Register** notice and news releases: Electronic copies of these documents are available at OSHA's Web page at *http://www.osha.gov.*

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II. Background

A. The OSH Act and OSH Act Violations

The Occupational Safety and Health Act of 1970 (OSH Act or Act) arose out of a Congressional finding that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments. See 29 U.S.C. 651(a). Accordingly, the purpose of the statute is to assure so far as possible every working man and woman in the Nation safe and healthful working conditions. See 29 U.S.C. 651(b).

To effectuate the Act's purpose, Congress authorized the Secretary of Labor to promulgate occupational safety and health standards (29 U.S.C. 655); a standard, as defined in the Act, requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment. See 29 U.S.C. 652(8). The Act also grants broad authority to the Secretary to promulgate regulations related to recordkeeping, employer self-inspections, and keeping employees informed of matters related to occupational safety and health. 29 U.S.C. 657(c). OSHA issues citations and assesses monetary penalties when it finds that employers are not complying with applicable standards and regulations. 29 U.S.C. 658, 659, 666.

Section 9(c) of the OSH Act contains a statute of limitations providing that no citation may be issued after the expiration of six months following ''the occurrence of any violation.'' 29 U.S.C. 658(c). Generally, OSH Act violations continue to occur for as long as employees are exposed to the hazard posed by the non-compliant workplace. *See Sec'y of Labor* v. *Cent. of Georgia R.R. Co.,* 5 BNA OSHC 1209, 1211 (Rev. Comm'n 1977) (explaining that a violation occurs ''whenever . . . [a] standard is not complied with and an employee has access to the resulting zone of danger''). Thus, employers have an ongoing obligation to correct conditions that violate OSHA standards and regulations, and under section 9(c), violations are subject to citations and penalties for up to six months after the last instance of employee exposure to the relevant hazard.

B. The History and Importance of OSHA's Recordkeeping Regulations

The OSH Act requires the Secretary of Labor to promulgate regulations requiring employers to make and maintain accurate records of work-related injuries and illnesses. 29 U.S.C. 657(c)(1) and (2), 673(a); *see also* 651(b)(12), 657(g)(2), 673(e). In 1971, the Secretary (via OSHA) issued the first recordkeeping regulations at 29 CFR part 1904. The Agency promulgated revisions to these regulations in 2001 in an effort to improve the quality of workplace injury and illness records by making OSHA's recordkeeping system easier to use and understand. *See* 66 FR 5916 (January 19, 2001).

OSHA's recordkeeping regulations require employers to record information about certain injuries and illnesses occurring in their workplaces, and to make that information available to employees, OSHA, and the Bureau of Labor Statistics (BLS). Employers must record work-related injuries and illnesses that meet one or more recording criteria, including injuries and illnesses resulting in death, loss of consciousness, days away from work, restricted work activity or job transfer, medical treatment beyond first aid, or a diagnosis of a significant injury or illness by a physician or other licensed health care professional. 29 CFR 1904.7. Employers must document each recordable injury or illness on an ''OSHA 300'' form, which is a log of all work-related injuries and illnesses. 29 CFR 1904.29(a) through (b)(1). Employers also must prepare a supplementary ''OSHA 301 Incident Report'' or equivalent form for each recordable injury and illness; the Incident Reports provide additional details about the injuries and illnesses recorded in the 300 Log. 29 CFR 1904.29(b)(2).

At the end of each calendar year, employers must review their 300 Logs to verify that the entries are complete and accurate. 29 CFR 1904.32(a)(1). Employers also must correct any deficiencies identified during the annual review. *Id.* By February 1 of each year, employers must create, certify, and post annual summaries of the cases listed on their 300 Logs for the prior calendar year. 29 CFR 1904.32(a)(2) through (4) and (b)(6). Annual summaries must remain posted until April 30 each year. 29 CFR 1904.32(b)(6). Employers must retain their OSHA Logs, Incident Reports, and annual summaries for five years following the end of the calendar year that they cover. 29 CFR 1904.33(a). During the retention period, employers must update their 300 Logs to include newly discovered recordable cases and to show any changes in the classification, description, or outcome of previously-recorded cases. 29 CFR 1904.33(b)(1). The regulations do not require employers to update Incident Reports or annual summaries during the retention period. 29 CFR 1904.33(b)(2) and (3).

Accurate injury and illness records serve several important purposes. *See* 66 FR at 5916–17, January 19, 2001. One purpose is to provide information to employers. The information in the OSHA-required records makes employers more aware of the kinds of injuries and illnesses occurring and the hazards that cause or contribute to them. When employers analyze and review the information in their records, they can identify and correct hazardous workplace conditions. Injury and illness records are essential for employers to effectively manage their safety and health programs; these records permit employers to track injuries and illnesses over time so they can evaluate the effectiveness of protective measures implemented in response to identified hazards.

Similarly, employees—who have access to OSHA injury and illness records throughout the five-year retention period (*see* 29 CFR 1904.35)—can use information about the occupational injuries and illnesses occurring in their workplaces to become better informed about, and more alert to, the hazards they face. Employees who are aware of the hazards around them may be more likely to follow safe work practices and to report workplace hazards to their employers. When

employees are aware of workplace hazards, and participate in the identification and control of those hazards, the overall level of safety and health in the workplace can improve.

OSHA also has access to employer injury and illness records during the retention period (*see* 29 CFR 1904.40 and 1904.41), and these records are an important source of information for the Agency and enhance the Agency's enforcement efforts. During the initial stages of an inspection, an OSHA representative reviews the employer's injury and illness data so that the Agency can focus its inspection on the hazards revealed by the records. In some years, OSHA has also surveyed a subset of employers covered by the OSH Act for their injury and illness data, and used that information to help identify the most dangerous types of worksites and the most prevalent types of safety and health hazards.

Additionally, BLS uses data derived from employers' injury and illness records to develop national statistics on workplace injuries and illnesses. These statistics include information about the source, nature, and type of the injuries and illnesses that are occurring in the nation's workplaces. To obtain the data to develop national statistics, BLS and participating State agencies conduct an annual survey of employers in almost all sectors of private industry. BLS makes the aggregate survey results available for research purposes and for public information. This data provides information about the incidence of workplace injuries and illnesses and the nature and magnitude of workplace safety and health problems. Congress, OSHA, and safety and health policymakers in Federal, State, and local governments use BLS statistics to make decisions concerning safety and health legislation, programs, and standards. And employers and employees can use BLS statistics to compare the injury and illness data from their workplaces with data from the nation as a whole.

C. A Failure To Record a Recordable Illness or Injury is a Continuing Violation

A continuing violation exists when there is noncompliance with ''the text of . . . [a] pertinent law [that] imposes a continuing obligation to act or refrain from acting.'' *Earle* v. *Dist. of Columbia,* 707 F.3d 299, 307 (D.C. Cir. 2012). Where there is an ongoing obligation to act, each day the action is not taken results in a continuing, ongoing violation. In other words, ''a new claim accrues each day the violation is extant.'' *Interamericas Inv., Ltd.* v. *Fed. Reserve Sys.,* 111 F.3d 376, 382 (5th Cir. 1997). For example, in *United States* v. *Edelkind,* 525 F.3d 388 (5th Cir. 2008), the Fifth Circuit found that the crime of willfully failing to pay child support as required by federal law was a continuing offense because ''each day's acts . . . [brought] a renewed threat of the substantive evil Congress sought to prevent.'' *Id.* at 394–95 (internal quotation marks and citations omitted). And in *Postow* v. *OBA Federal Savings & Loan Association,* 627 F.2d 1370 (D.C. Cir. 1980), the D.C. Circuit held that a lender's failure to provide required disclosures to borrowers was a continuing violation of the Truth-in-Lending Act because the violation subverted the goals of the statute every day the borrowers did not have the information. *Id.* at 1379–80. *See, also, e.g., United States* v. *Bailey,* 444 U.S. 394, 413 (1980) (escape from federal custody is a continuing offense in light of ''the continuing threat to society posed by an escaped prisoner''); *United States* v. *George,* 625 F.3d 1124 (9th Cir. 2010) (failure to comply with statute requiring registration as a sex offender is a continuing offense), *vacated on other grounds,* 672 F.3d 1126 (9th Cir. 2012); *United States* v. *Franklin,* 188 F.2d 182 (7th Cir. 1951) (Alien Registration Act imposes ongoing registration obligation; failure to register is a continuing violation).

Recordkeeping violations under the OSH Act are likewise continuing violations. OSHA's longstanding position is that an employer's duty to record an injury or illness continues for the full duration of the record-retention-and-access period, *i.e.,* for five years after the end of the calendar year in which the injury or illness became recordable. This means that if an employer initially fails to record a recordable injury or illness, the employer still has an ongoing duty to record that case; the recording obligation does not expire simply because the employer failed to record the case when it was first required to do so. As long as an employer fails to comply with its ongoing duty to record an injury or illness, there is an ongoing violation of OSHA's recordkeeping requirements that continues to occur every day employees work at the site. Therefore, OSHA can cite employers for such recordkeeping violations for up to six months after the five-year retention period expires without running afoul of the OSH Act's statute of limitations.[1]

The Occupational Safety and Health Review Commission has upheld OSHA's position on the continuing nature of recordkeeping violations. *See, e.g., Sec'y of Labor* v. *Gen. Dynamics,* 15 BNA OSHC 2122 (Rev. Comm'n 1993) (recordkeeping violations ''occur'' at any point during the retention period when records are inaccurate, so citations for those violations are not barred simply because they are issued more than six months after the obligation to record first arose); *Sec'y of Labor* v. *Johnson Controls, Inc.,* 15 BNA OSHC 2132 (Rev. Comm'n 1993) (recordkeeping violations continue until correction or expiration of the retention period). The Commission addressed this issue most recently in *Secretary of Labor* v. *AKM LLC (Volks I),* 23 BNA OSHC 1414 (Rev. Comm'n 2011), confirming that an employer's failure to make a required OSHA record is a continuing violation, and that an uncorrected violation continues until the employer is no longer required to keep OSHA records for the year at issue.

D. The D.C. Circuit's Decision in Volks II

A panel of the D.C. Circuit reviewed the Commission's *Volks I* decision, and on April 6, 2012, issued a decision—*Volks II*—reversing the Commission. *AKM LLC* v. *Sec'y of Labor (Volks II),* 675 F.3d 752 (D.C. Cir. 2012). The majority opinion in *Volks II* disagreed with the Commission and held that ''the . . . language in [the OSH Act] . . . which deals with record-keeping is not authorization for OSHA to cite the employer for a record-making violation more than six months after the recording failure.'' *Id.* at 758. According to the majority opinion, OSHA must cite an employer for failing to record an injury or illness within six months of the first day on which the regulations require the recording; a citation issued later than that is barred by the OSH Act's statute of limitations. *Id.* at 753–59.

In a separate concurring opinion in *Volks II,* Judge Garland recognized that the OSH Act allows for continuing violations of recordkeeping requirements. He concluded, however, that the specific language in OSHA's existing recordkeeping regulations does not implement this statutory authority and does not create continuing recordkeeping obligations. *Id.* at 759–64. No other appellate court has ruled on these issues.

[1] Of course, OSHA may not issue a citation more than six months after the employer corrects the violation. *See, e.g., Sec'y of Labor* v. *Manganas Painting Co.,* 21 BNA OSHC 2043, 2048 (Rev. Comm'n 2007) (citation was time-barred where the employer abated the violation more than six months prior to the issuance date).

The *Volks II* decision has led to a need for OSHA to clarify employers' obligations under its recordkeeping regulations and to elaborate on its understanding of the statutory basis for those obligations. The Agency is proposing changes to its recordkeeping regulations to clarify that the duty to make and maintain an accurate record of a work-related illness or injury is an ongoing obligation that continues until the required record is made or until the end of the record-retention-and-access period prescribed by the regulations. To that end, OSHA is proposing revisions to the titles of some existing sections and subparts in part 1904, and changes to the text of some existing recordkeeping requirements. The Agency describes the proposed changes in **SUPPLEMENTARY INFORMATION**, Section IV, later in this notice.

E. Advisory Committee on Construction Safety and Health

OSHA consulted with the Advisory Committee on Construction Safety and Health (ACCSH) on this rulemaking. The Agency provided ACCSH with a summary and explanation of this proposal and a statement regarding the need for the proposed revisions to 29 CFR part 1904. On December 4, 2014, ACCSH voted to recommend that OSHA proceed with this proposal.

III. Legal Authority

A. Overview

As explained previously, in **SUPPLEMENTARY INFORMATION**, Section II.A, the OSH Act authorizes the Secretary of Labor to issue ''standards'' and other ''regulations.'' *See, e.g.,* 29 U.S.C. 655, 657. An occupational safety and health standard, issued pursuant to section 6 of the Act, prescribes measures to be taken to remedy an identified occupational hazard. Other regulations, issued pursuant to general rulemaking authority found, *inter alia,* in section 8 of the Act, establish enforcement or detection procedures designed to further the goals of the Act generally. 29 U.S.C. 657(c); *Workplace Health and Safety Council* v. *Reich,* 56 F. 3d 1465, 1468 (D.C. Cir. 1995). The proposed amendments are to a regulation issued pursuant to authority expressly granted by sections 8 and 24 of the Act. 29 U.S.C. 657, 673. They simply clarify existing duties under part 1904, and do not impose any new substantive recordkeeping requirements. Numerous provisions of the OSH Act both underscore Congress' acknowledgement that accurate injury and illness records are a critical component of the national occupational safety and health program and give the Secretary broad authority to enact recordkeeping regulations that create a continuing obligation for employers to make and maintain accurate records of work-related illnesses and injuries. Section 2(b)(12) of the Act states that one of the purposes of the OSH Act is to assure, so far as possible, safe and healthful working conditions by providing for appropriate reporting procedures that will help achieve the objectives of the Act and ''accurately describe'' the nature of the occupational safety and health problem. See 29 U.S.C. 651(b)(12). Section 8(c)(1) requires each employer to ''make, keep and preserve'' and ''make available'' to the Secretary such records prescribed by regulation as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational accidents and illnesses. See 29 U.S.C. 657(c)(1). Section 8(c)(2) requires the Secretary to prescribe regulations requiring employers to ''maintain accurate records'' of, and to make periodic reports on, work-related deaths, injuries and illnesses. See 29 U.S.C. 657(c)(2). Section 8(g)(2) of the Act generally empowers the Secretary to prescribe such rules and regulations as he may deem necessary to carry out his responsibilities under the Act. See 29 U.S.C. 657(g)(2). Section 24(a) requires the Secretary to develop and maintain an effective program of collection, compilation and analysis of occupational safety and health statistics and to compile accurate statistics on work injuries and illnesses. See 29 U.S.C. 673(a). Section 24(e) provides that on the basis of the records made and kept pursuant to section 8(c) of the Act, employers must file such reports with the Secretary that the Secretary prescribes by regulation as necessary to carry out his functions under the Act. See 29 U.S.C. 673(e). Some of these provisions will be addressed more thoroughly in **SUPPLEMENTARY INFORMATION**, Section III.B, later in this notice.

B. The OSH Act Authorizes the Secretary To Impose a Continuing Obligation on Employers To Make and Maintain Accurate Records of Work-Related Injuries and Illnesses, and Incomplete or Otherwise Inaccurate Records Create Ongoing, Citable Conditions

1. Section 8(c) of the Act Governs Employers' Recordkeeping Obligations, and That Provision Imposes Continuing Obligations on Employers To Make and Maintain Accurate Records of Work-Related Illnesses and Injuries

''Whether [an] . . . obligation is continuing is a question of statutory construction,'' *Earle,* 707 F.3d at 307. The express language of the OSH Act readily supports a continuing violation theory in recordkeeping cases. And, section 8(c) grants the Secretary broad authority to issue requirements he considers ''necessary or appropriate,'' including recordkeeping regulations that provide that an employer's duty to make records of injuries and illnesses is an ongoing obligation. 29 U.S.C. 657(c).

Section 8(c)(2) requires the Secretary to prescribe regulations requiring employers to ''*maintain accurate records*'' of work-related deaths, injuries and illnesses. See 29 U.S.C. 657(c)(2) (emphasis added). And section 8(c)(1) requires employers to ''*make, keep and preserve*'' and to ''*make available*'' records that the Secretary identifies as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational accidents and illnesses. See 29 U.S.C. 657(c)(1) (emphasis added). The language Congress used in these provisions therefore authorizes the Secretary to require employers to have on hand and make available records that accurately reflect *all* of the recordable injuries and illnesses that occurred during the years for which the Agency requires the keeping of records. And this statutory language also is inconsistent with any suggestion that Congress intended the duty to record an injury or illness to be a discrete obligation that expires if the employer fails to comply on the first day the Agency's regulations require recording.

Moreover, the words ''accurate'' and ''maintain'' in section 8(c)(2) of the Act connote a continued course of conduct that includes an ongoing obligation to create records. The word ''maintain'' means to ''[c]ause or enable (a condition or state of affairs) to continue,'' an example being when one works to ensure that something stays ''in good condition or in working order by checking or repairing it regularly.''

http://www.oxforddictionaries.com/us/definition/american_english/maintain?searchDictCode=all. ''Maintain'' is also synonymous with ''keep.'' *http://thesaurus.com/browse/maintain.* In ordinary speech, an instruction to ''keep records'' of something requires both creating and preserving the records, and may include organizing and managing them as well. Therefore, ''maintain'' plainly implies an ongoing action. *See, e.g., Carey* v. *Shiley, Inc.,* 32 F.Supp.2d 1093, 1103 (S.D. Iowa 1998) (''continuing duty to maintain records for'' the Food and Drug Administration). And ''accurate'' means ''conforming exactly to truth,'' and is synonymous with ''exact.'' *http://www.meriam-webster.com/dictionary/accurate. See also, e.g., Huntington Sec. Corp.* v. *Busey,* 112 F.2d 368, 370 (6th Cir. 1940) (noting that the term '' 'accurately' . . . in its ordinary use[ ] means precisely, exactly correctly, without error or defect''). Therefore, the OSH Act's call for regulations requiring employers to ''maintain accurate [injury and illness] records'' is a mandate for the Secretary to impose an ongoing or continuing duty on employers to have (or keep) true or exact documentation of recordable incidents. An employer cannot be said to have (or to be keeping or maintaining) accurate (or true or exact) records of injuries and illnesses for a particular calendar year if there are recordable injuries or illnesses that occurred during that year that are missing from those records. Put simply, the Secretary cannot fulfill the statutory obligation of ensuring that employers ''maintain'' (or keep) ''accurate records'' without imposing on employers an ongoing duty to create records for injuries and illnesses in the first place; a duty to make and maintain accurate records inherently implies an ongoing obligation to create the records that must be maintained.

The Fourth Circuit recognized as much in *Sierra Club* v. *Simkins Industries,* 847 F.2d 1109, 1115 (4th Cir. 1988), a Clean Water Act case, when it refused to allow a company to defend against its failure to file and retain water sampling records on the grounds that it never collected the data it needed to create the records in the first place. The court ruled that an ongoing duty to maintain records implies a corresponding, and continuing, duty to have those records, explaining that it would not allow the company ''to escape liability . . . by failing at the outset to sample and to create and retain the necessary . . . records.'' *Id. See also, e.g., Big Bear Super Mkt. No. 3* v. *INS,* 913 F.2d 754, 757 (9th Cir. 1990) (per curiam) (statutory and regulatory scheme described by the court as requiring companies to ''maintain'' documents is interpreted to impose a ''continuing duty'' on those companies ''to prepare and make'' the documents in the first instance); *Park* v. *Comm'r of Internal Revenue,* 136 T.C. 569, 574 (U.S. Tax Ct. 2011) (noting that a party that did not create required records thereby failed to ''keep'' those records), *rev'd and remanded on other grounds,* 722 F.3d 384 (D.C. Cir. 2013).

The ''make, keep, and preserve'' and ''make available'' language in section 8(c)(1) similarly envisions a continuing duty to record and provides additional support for the Agency's interpretation of the ''maintain accurate records'' language in section 8(c)(2). The corresponding authorization to the Secretary to prescribe such recordkeeping regulations as he considers ''necessary or appropriate'' emphasizes the breadth of the Secretary's discretion in implementing the statute. As mentioned previously, ''keep'' is a synonym for ''maintain,'' and both words imply a continued course of conduct, as of course does ''preserve.''[2] *See e.g., Powerstein* v. *Comm'r of Internal Revenue,* T.C. Memo 2011–271, 2011 WL 5572600, at *13 (U.S. Tax Ct. Nov. 16, 2011) (interpreting statutory and regulatory requirements to ''keep'' tax records to mean that taxpayers must ''maintain'' such records); *Freedman* v. *Comm'r of Internal Revenue,* T.C. Memo 2010–155, 2010 WL 2942167, at *1 (U.S. Tax Ct. July 21, 2010) (same).

The fact that Congress included the word ''make'' in a phrase with two other terms that both call for a continuing action suggests that ''make'' was also intended to signify a continuing course of conduct in the recordkeeping context. The most reasonable reading of section 8(c)(1), particularly in light of the ''maintain accurate records'' language in section 8(c)(2), is that the phrase ''make, keep, and preserve'' authorizes one continuous recordkeeping requirement that includes both the creation and the keeping of records. *See, e.g., Davis* v. *Michigan Dep't of Treasury,* 489 U.S. 803, 809 (1989) (noting a ''fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme'').

Thus, the Secretary does not believe that section 8(c) authorizes two and only two discrete duties: A duty to create a record that can arise at only one moment in time, and a duty to preserve that record, if it should be created. Such a view would be inconsistent with the most relevant provision of the Act, section 8(c)(2), which is the provision that specifically addresses the Secretary's authority to prescribe regulations for injury and illness recordkeeping, *i.e.,* to prescribe regulations that require employers to ''maintain accurate records'' of workplace illnesses and injuries. Nothing about the Congressional direction to ''maintain accurate records'' is naturally read as creating two entirely discrete obligations, or as conveying Congressional intent to limit the duty to make a required record to a single point in time. Records that omit work-related injuries and illnesses are not accurate, and no purpose is served by maintaining inaccurate records. Instead, Congress intended employees, and the Secretary, to have access to accurate information about injuries and illnesses occurring in workplaces.

The requirement in section 8(c)(1) that employers ''make available'' such records as the Secretary prescribes regarding accidents and illnesses further illustrates that section 9(c)'s statute of limitations does not limit the Secretary to acquiring only six months of injury and illness data. A regulation requiring employers, if requested, to make available accurate records showing injuries and illness that have occurred within the past few years is on its face well within the OSH Act's grant of authority. Nothing in the statutory language suggests that the Secretary can only require employers to provide information regarding work-related injuries and illnesses that have occurred within the past six months. Such a limitation would cripple the Agency's ability to gather complete information and to improve understanding of safety and health issues, contrary to Congressional intent. Furthermore, the duty to make accurate multi-year records available upon request arises when the request is made, and the statute of limitations therefore does not begin to run until the request is made and the employer fails to comply.[3]

[2] The legislative history of the OSH Act shows that Congress used ''keep'' and ''maintain'' synonymously. In a Senate Report, Congress described section 8(c)(2)—which talks about ''maintaining'' records—as ''requiring employers to *keep* records of all work-related injuries and diseases.'' S. Rep. No. 91–1282, at 31 (1970), *reprinted in* Subcomm. on Labor of the Comm. on Labor and Public Welfare, Legislative History of the Occupational Safety and Health Act of 1970, at 171 (1971) (emphasis added).

[3] This does not mean that the Secretary's authority is unconstrained. Under section 8(c)(1), the records the Secretary requires must be ''necessary or appropriate'' to enforcement of the Act or to gathering information regarding the causes

Continued

It therefore follows that section 8(c) of the Act authorizes the Secretary to enact regulations that impose a continuing obligation on employers to make and maintain accurate records of work-related illnesses and injuries. Not only are such recordkeeping regulations expressly called for by the language of section 8(c), but they are also consistent with Congressional intent and the purpose of the OSH Act. The Supreme Court recognizes a ''familiar canon of statutory construction that remedial legislation should be construed broadly to effectuate its purposes.'' *Tcherepnin* v. *Knight,* 389 U.S. 332, 336 (1967). And reading the statute in light of its protective purposes further supports the Secretary's interpretation that the Act calls for treating the duty to record injuries and illnesses as a continuing obligation. *See, e.g., United States* v. *Advance Mach. Co.,* 547 F.Supp. 1085, 1090–91 (D.Minn. 1982) (requirement in Consumer Product Safety Act to ''immediately inform'' the government of product defects is read as creating a continuing obligation to report because any other reading would frustrate the statute's goal of protecting the public from hazards).

Finally, the legislative history of the OSH Act also demonstrates that Congress wanted employers to have accurate injury and illness records both for the purpose of making workplaces safer and healthier, and for the purpose of allowing the Agency to study the nation's occupational safety and health problems. As the House Committee on Education and Labor noted, before passage of the OSH Act it was impossible to know the extent of national occupational safety and health issues due to variability in state reporting measures; thus, Congress viewed it as an ''evident Federal responsibility'' to provide for ''[a]ccurate, uniform reporting standards.'' H.R. Rep. No. 91–1291, at 15 (1970), *reprinted in* Subcomm. on Labor of the Comm. on Labor and Public Welfare, Legislative History of the Occupational Safety and Health Act of 1970, at 845 (1971). *See also* 29 U.S.C. 673(a) (''The Secretary shall compile accurate statistics on work injuries and illnesses . . . .''); *Sec'y of Labor* v. *Gen. Motors Corp.,* 8 BNA OSHC 2036, 2039 (Rev. Comm'n 1980) (''Examination of the legislative history of [sections 8(c)(1) and 8(c)(2)] . . . shows a clear congressional intent that th[e] reporting requirement be interpreted broadly in order to develop information for future scientific use.'').

2. The OSH Act's Statute of limitations Does Not Define OSHA Violations, or Address When Violations Occur, Nor Does the Language in Section 9(c) Preclude Continuing Recordkeeping Violations

As explained previously, it is section 8(c) of the OSH Act that determines the nature and scope of employers' recordkeeping obligations. The statute of limitations in section 9(c) deals only with the question of *when* OSHA can cite a violation; it says nothing about what *constitutes* a violation, or when a violation *occurs.* A violation is a breach of a duty, and the question of what duties the Secretary may prescribe must logically be dealt with prior to addressing the statute of limitations. Section 9(c) cannot be read as prohibiting the Secretary from imposing continuing recordkeeping obligations on employers covered by the OSH Act, when the text and legislative history of the Act show that section 8(c) authorizes the Secretary to create such obligations. Thus, the OSH Act's statute of limitations simply sets the period within which legal action must be taken *after* the obligation ceases to continue or the employer comes into compliance. *See, e.g., Inst. For Wildlife Prot.* v. *United States Fish & Wildlife Serv.,* No. 07–CV–358–PK, 2007 WL 4117978, at *6 (D.Or. Nov. 16, 2007) (declining to apply applicable statute of limitations to ''nullify . . . [the government's] ongoing duty to designate critical habitat'' for an endangered species ''and . . . insulate the agency from challenges to any continued inaction'').

In any event, ''statutes of limitation in the civil context are to be strictly construed in favor of the Government against repose,'' *Interamericas,* 111 F.3d at 382 (citing *Badaracco* v. *Comm'r of Internal Revenue,* 464 U.S. 386 (1984) and *E.I. Dupont De Nemours & Co.* v. *Davis,* 264 U.S. 456 (1924)), and nothing in section 9(c) precludes continuing violations in recordkeeping cases. To the contrary, the language in section 9(c) is very broad, providing only that ''[n]o citation may be issued . . . after the expiration of six months following the occurrence of any violation.'' 29 U.S.C. 658(c). The ''occurrence'' of something is not necessarily a discrete event; it can encompass actions or events that continue over time. For example, one dictionary defines ''occurrence'' as ''the existence or presence of something.'' *http://dictionary.cambridge.org/dictionary/american-english/occurrence_2. See also, e.g., PECO Energy Co.* v. *Boden,* 64 F.3d 852, 856–57 (3d Cir. 1995) (scheme of repeated thefts over the span of six years constituted a single ''occurrence'' such that only one insurance deductible applied to the resulting loss). Similarly, the term ''occurrence of any violation'' in section 9(c) does not mean that an OSHA violation is necessarily a discrete event that takes place at one, and only one, point in time.

Had Congress wanted the statute of limitations to run from the time a violation *first* occurred, it could have used language so stating. Indeed, Congress has used language more readily susceptible to that interpretation in other statutes. *See, e.g.,* the Multiemployer Pension Plans Amendments Act, 29 U.S.C. 1451(f)(1) (statute of limitations runs from ''the date on which the cause of action arose''); the Federal Employers' Liability Act, 45 U.S.C. 56 (statute of limitations runs from ''the day the cause of action accrued''); the general statute of limitations governing civil actions against the United States, 28 U.S.C. 2401(a) (claims barred unless ''filed within six years after the right of action first accrues'').

Neither OSHA nor the Commission has ever treated section 9(c) as precluding continuing violations. Indeed, continuing violations are common in the OSHA context, with the Commission taking the position that violations of OSHA requirements, including recordkeeping violations, generally continue as long as employees are exposed to the non-complying conditions. *See, e.g., Sec'y of Labor* v. *Arcadian Corp.,* 20 BNA OSHC 2001 (Rev. Comm'n 2004) (violation of the OSH Act's general duty clause stemming from the unsafe operation of a urea reactor); *Johnson Controls,* 15 BNA OSHC 2132 (recordkeeping); *Sec'y of Labor* v. *Safeway Store No. 914,* 16 BNA OSHC 1504 (Rev. Comm'n 1993) (hazard communication program and material safety data sheets); *Sec'y of Labor* v. *Yelvington Welding Serv.,* 6 BNA OSHC 2013 (Rev. Comm'n 1978) (fatality reporting); *Cent. of Georgia R.R.,* 5 BNA OSHC 1209 (housekeeping). Indeed, the *Volks II* panel also acknowledged that the duties to preserve records, to train employees, and to correct unsafe machines may continue. 675 F.3d 756, at 758. The OSH Act simply would not achieve Congress' fundamental objectives if basic employer obligations were not continuing.

or prevention of occupational accidents or illnesses. 29 U.S.C. 657(c)(1). Under section 8(d), the Secretary must obtain information with a minimum burden on employers, especially small businesses, and reduce unnecessary duplication to the maximum extent feasible. 29 U.S.C. 657(d). Moreover, under the Paperwork Reduction Act, the Secretary and the Office of Management and Budget must determine that a recordkeeping requirement will have practical utility and will not be unduly burdensome. 44 U.S.C. 3506(c)(3).

These cases reflect fundamental OSH Act principles. Safety and health standards are rules that require, *inter alia,* ''conditions.'' 29 U.S.C. 652(8). The absence of a required condition violates the standard. It does not matter when the absence first arose or how long it has persisted. If a condition is required and is not present (*e.g.,* a machine is not guarded or a hazardous materials container is not labeled), a violation occurs and a citation requiring abatement may be issued within six months of the observed noncompliance. This construction follows from the language of the Act and is essential to the Secretary's ability to enforce compliance. Accordingly, continuing obligations and violations are a regular occurrence under the OSH Act. Nothing in section 9(c), which applies equally to standards and recordkeeping violations, bars them.

In addition, continuing violations have been found to exist under other laws with statutes of limitations that contain language similar to that in section 9(c) of the OSH Act. For example, in *National Railroad Passenger Corporation* v. *Morgan,* 536 U.S. 101 (2002), the Supreme Court addressed the statute of limitations in Title VII of the Civil Rights Act of 1964, which precludes the filing of claims a certain number of days after the alleged unlawful employment practice ''occurred.'' See 42 U.S.C. 2000e–5(e)(1). The Court concluded that the statute authorized application of a continuing violations doctrine in hostile work environment cases, holding that in such cases, an unlawful employment action can ''occur'' over a series of days or even years. *Morgan,* 536 U.S. at 116–20. Similarly, in *Havens Realty Corporation* v. *Coleman,* 455 U.S. 363 (1982), the Supreme Court found continuing violations of the Fair Housing Act, which at the time required the commencement of civil actions within 180 days ''after the alleged discriminatory housing practice *occurred.*'' And in *Postow,* 627 F.2d 1370, the D.C. Circuit found a continuing violation of the Truth-in-Lending Act, which, at 15 U.S.C. 1640(e), provides that actions must be brought within one year from the date of the ''occurrence'' of the violation. The language of section 9(c) of the OSH Act is at least equally receptive to continuing violations, since it allows citation within six months of ''the occurrence of any violation.'' ''Occurrence'' of ''any'' violation is open-ended language that does not suggest that a violation can exist at only one moment of time.

Notably, even the *Volks II* panel appeared to recognize that the word ''occurrence'' does not necessarily have a single fixed meaning, stating that ''[o]f course, where . . . a company continues to subject its employees to unsafe machines . . . or continues to send its employees into dangerous situations without appropriate training . . . OSHA may be able to toll the statute of limitations on a continuing violations theory since the dangers created by the violations persist.'' 675 F.3d at 758. The court also stated that a violation of the record-retention requirement—through the loss or destruction of a previously-created record—is a violation that continues from the time of the loss or destruction until the conclusion of the five-year retention period. *Id.* at 756.

Moreover, continuing violations have been found even under statutes of limitations that contain language that is arguably *less* receptive to continuing violations than section 9(c); courts implicitly recognize that the underlying legal requirement, not the statute of limitations, determines whether there is a continuing legal obligation. For example, courts have found continuing violations of various laws that are governed by the general five-year statute of limitations for criminal cases in 18 U.S.C. 3282(a), which requires initiation of an action ''within five years . . . after . . . [the] offense shall have been committed.'' *See, e.g., United States* v. *Bell,* 598 F.3d 366, 368–69 (7th Cir. 2010) (continuing violation of child support payment requirements), *overruled on other grounds, United States* v. *Vizcarra,* 668 F.3d 516 (7th Cir. 2012); *Edelkind,* 525 F.3d 388 (same); *United States* v. *Are,* 498 F.3d 460 (7th Cir. 2007) (crime of being found in the United States after deportation is a continuing violation).

The D.C. Circuit has suggested that suits alleging a continuing failure to act are permissible even under the general statute of limitations governing civil actions against the United States (28 U.S.C. 2401(a)), which provides that claims are barred unless ''filed within six years after the right of action first accrues.'' *Wilderness Soc'y* v. *Norton,* 434 F.3d 584 (D.C. Cir. 2006). In *Wilderness Society,* the court intimated, but did not decide, that an agency's failure to act in accordance with a statutory deadline for action was a continuing violation, such that a lawsuit to compel agency action would not be time barred just because it was filed more than six years after the agency first missed the statutory deadline. The court explained that because the suit '' 'does not complain about what the agency has done but rather about what the agency has yet to do,' '' it likely would not be time-barred. *Id.* at 589 (quoting *In re United Mine Workers of America Int'l Union,* 190 F.3d 545, 549 (D.C. Cir. 1999)). *See also, e.g., Padres Hacia Una Vida Mejor* v. *Jackson,* No. 1:11–CV–1094 AWI DLB, 2012 WL 1158753 (E.D. Cal. April 6, 2012) (28 U.S.C. 2401(a) did not bar a claim based on EPA's ongoing failure to act on complaints of discrimination within regulatory deadlines). And the Fifth Circuit found continuing violations of the Bank Holding Company Act in a case governed by the general statute of limitations in 28 U.S.C. 2462, which requires actions to enforce civil fines, penalties, or forfeitures to be ''commenced within five years from the date when the claim first accrued.'' *Interamericas,* 111 F.3d 376. *See also, e.g., Newell Recycling Co.* v. *EPA,* 231 F.3d 204 (5th Cir. 2000) (finding a continuing violation of disposal requirements for polychlorinated biphenyls under the Toxic Substances Control Act in a case involving the general statute of limitations at 28 U.S.C. 2462); *Advance Mach Co.,* 547 F.Supp. 1085 (finding a continuing violation of the Consumer Product Safety Act in a case governed by 28 U.S.C. 2462);[4] *cf. Capital Tel. Co* v. *FCC,* 777 F.2d 868, 871 (2d Cir. 1985) (per curiam) (deferring to FCC determination that company's ''actions constituted a 'continuing violation' '' despite an applicable statute of limitations (47 U.S.C. 415(b)) requiring the filing of complaints ''within two years from the time the cause of action accrues'').

Finally, concerns about stale claims have little bearing on OSHA recordkeeping cases. The Agency recognizes that statutes of limitations are designed to ''keep stale claims out of the courts.'' *Havens Realty,* 455 U.S. at 380. They protect parties from having to defend against stale claims and ensure that courts are not faced with ''adjudicat[ing] claims that because of their staleness may be impossible to resolve with even minimum accuracy.'' *Stephan* v. *Goldinger,* 325 F.3d 874, 876 (7th Cir. 2003). Claims generally are considered stale when so much time has passed that relevant evidence has been

[4] In *Gabelli* v. *SEC,* 133 S.Ct. 1216 (2013)—a case involving a civil enforcement action under the Investment Advisers Act—the Supreme Court held that the five-year statute of limitations in 28 U.S.C. 2462 ran from the date a fraud was complete, not from the date the government discovered the fraud. *Gabelli* does not, however, stand for the proposition that the language in 28 U.S.C. 2462 precludes application of a continuing violation theory. In *Gabelli,* the government agreed that the alleged illegal activity ended more than five years prior to the filing of the complaint, so there was no issue about the duration of the violative conduct.

lost and witnesses are no longer available or do not have reliable memories of the relevant occurrence. *Id.* But ''[w]here the challenged violation is a continuing one, the staleness concern disappears.'' *Havens Realty,* 455 U.S. at 380. And nothing about continuing violations in the context of OSHA recordkeeping violations undermines this general principle.

In the vast majority of OSHA cases stemming from an employer's failure to record an injury or illness, the issues will be very straightforward. The first question will be whether a work-related injury or illness occurred that required more than a minimum level of treatment. And the second question will be whether the employer recorded the injury or illness as required by the OSHA regulations. The availability of evidence and witnesses should not be a problem on either question—especially given that even under a continuing violation theory, OSHA must cite the recordkeeping violation within six months after the end of the five-year retention period for injury and illness records.

One can ordinarily ascertain whether an injury or illness occurred, and what treatment was necessary, by looking at medical reports, workers' compensation documents, and other relevant records, even if the affected employee or other witnesses are no longer available. In fact, OSHA's Recordkeeping Policies and Procedure Manual, CPL 02–00–135 (Dec. 30, 2004), directs compliance officers to review medical records to determine whether an employer has failed to enter recordable injuries and illnesses on the OSHA forms. And with respect to whether the employer recorded the injury or illness, the only evidence the parties and the court will need are the employer's OSHA Log and Incident Report Forms, which existing regulations require employers to maintain for five years. Furthermore, given that OSHA ultimately bears the burden of proving that an injury or illness occurred and the employer did not record it, the absence of documents and witnesses generally will be more prejudicial to OSHA's case than to the employer's defense. And, any limited staleness concerns that exist are outweighed by the fact that ongoing recordkeeping requirements are essential to fulfilling the purposes of the OSH Act. *See generally Connecticut Light & Power Co.* v. *Sec'y of Labor,* 85 F.3d 89, 96 (2d Cir. 1996) (''Consideration of limitations periods requires a fair and reasonable weighing of the conflicting concerns of the remedial intent of the [statute] . . . and the desire to keep stale claims out of the courts.'').

3. Incomplete or Otherwise Inaccurate Records of Work-Related Illnesses and Injuries Create an Ongoing Condition Detrimental to Full Enforcement of the Act

OSHA records ''are a cornerstone of the Act and play a crucial role in providing the information necessary to make workplaces safer and healthier.'' *Gen. Motors Corp.,* 8 BNA OSHC at 2041. As explained previously, in **SUPPLEMENTARY INFORMATION**, Section II.B, employers must give employees (as well as OSHA and BLS) access to injury and illness records. OSHA injury and illness records are designed to be used by employers, employees, and the government to learn about the injuries and illnesses that are occurring in American workplaces. Accurate OSHA injury and illness records enable employers to identify, and correct, hazardous conditions, allow employees to learn about the hazards they face, and permit the government to determine where and why injuries are occurring so that appropriate regulatory or enforcement measures can be taken. (*See* **SUPPLEMENTARY INFORMATION**, Section II.B, earlier in this preamble, for a full discussion of the purposes served by OSHA injury and illness records.) Thus, Congress viewed accurate records as necessary for the enforcement of the Act. 29 U.S.C. 657(c). Inaccurate or incomplete injury and illness records, however, will leave all of the relevant parties underinformed, and thereby create an ongoing condition detrimental to full enforcement of the Act. The Commission has recognized as much. *See, e.g., Gen. Dynamics,* 15 BNA OSHC at 2131 n. 17 (recordkeeping regulations ''clearly are safety- and health-related''); *Johnson Controls,* 15 BNA OSHC at 2135–36 (''[A] failure to record an occupational injury or illness . . . does not differ in substance from any other condition that must be abated pursuant to . . . occupational safety and health standards . . . .'').

Nor is there any meaningful distinction to be drawn between cases involving inadequate training or unsafe machines (which may be seen as involving repeated affirmative acts, for example, sending untrained employees to work in hazardous conditions) and recordkeeping cases (which may be seen as failures to right past wrongs). The lack of access—by employers, employees and OSHA—to accurate records is as much an ongoing non-complying condition under the Act as is an untrained employee or an unguarded machine. Whether the condition was created by an act of omission or of commission, the condition is one that continues to violate the Act until it is abated.

Moreover, under the scheme Congress established in the OSH Act, any distinction that can be drawn between overt action and inaction lacks legal significance. As the Commission recognizes, ''unlike other federal statutes in which an overt act is needed to show *any* violation, the OSH Act penalizes both overt acts *and* failures to act in the face of an ongoing, affirmative duty to perform prescribed obligations.'' *Volks I,* 23 BNA OSHC at 1417 n.3 (emphasis in original). *See also, e.g., Gen. Dynamics,* 15 BNA OSHC at 2130 (''[T]he Act penalizes the occurrence of noncomplying conditions which are accessible to employees and of which the employer knew or reasonably could have known. That is the only 'act' that the Secretary must show to prove a violation.''). That is why it is still a citable violation if an employer has left a hazardous machine unguarded for years—even though the employer has not done anything to the machine since first removing the guard. That is why it is a violation if an employer fails to label containers of hazardous chemicals or have safety data sheets on hand, regardless how long the inaction persists. And courts regularly find that a failure to act in accordance with an ongoing legal obligation constitutes a continuing violation. Such cases have included a lender's failure to make required disclosures to a borrower (*Postow,* 627 F.2d 1370), a sex offender's failure to register with authorities (*George,* 625 F.3d 1124), a parent's failure to pay child support (*Edelkind,* 525 F.3d 388), an agency's failure to comply with statutory mandates and deadlines (*Wilderness Soc'y,* 434 F.3d 584), a company's failure to create and maintain water sampling records (*Sierra Club,* 847 F.2d 1109), and a failure on the part of the government to act on complaints of discrimination (*Padres Hacia Una Vida Mejor,* 2012 WL 1158753).

Additionally, the legislative history of the Act reflects Congress' concern about harm resulting to employees in workplaces with incomplete records of occupational injuries and illnesses. Most notably, a report of the Senate Committee on Labor and Public welfare stated that ''*[f]ull and accurate information is a fundamental precondition* for meaningful administration of an occupational safety and health program.'' S. Rep. No. 91–1282, at 16 (1970), *reprinted in* Subcomm. on Labor of the Comm. on Labor and Public Welfare, Legislative

History of the Occupational Safety and Health Act of 1970, at 156 (1971) (emphasis added). Additionally, a report from the House of Representatives shows that Congress recognized ''comprehensive [injury and illness] reporting'' as playing a key role in ''effective safety programs.'' H.R. Rep. No. 91–1291, at 15 (1970), *reprinted in* Subcomm. on Labor of the Comm. on Labor and Public Welfare, Legislative History of the Occupational Safety and Health Act of 1970, at 845 (1971).

Incomplete and inaccurate OSHA records therefore result in an *ongoing non-complying condition*—namely employers, employees, and the government, being denied access to information necessary to full enforcement of the Act. And this non-complying condition continues every day that the records are inaccurate.

4. Interpreting the Duty To Record as a Continuing One Under the Act's Civil, Remedial Scheme Is Entirely Consistent With the General Case Law

As touched upon previously in this notice, general case law on continuing violations also supports a continuing violation theory for OSHA recordkeeping violations. The *Volks II* majority stated that recordkeeping violations are not ''the sort of conduct we generally view as giving rise to a continuing violation[,]'' *i.e.,* the kind of violation ''whose 'character as a violation . . . [does] not become clear until . . . repeated during the limitations period . . . because it is . . . [the] cumulative impact . . . that reveals . . . illegality.' '' *Volks II,* 675 F.3d at 757 (quoting *Taylor* v. *FDIC,* 132 F.3d 753, 765 (D.C. Cir. 1997)). On the other hand, all OSHA violations—including recordkeeping violations—''continue'' only insofar as non-compliant conditions exist and employees are exposed to the relevant hazards. While the ''cumulative impact'' theory is one way to establish a continuing violation (*see, e.g., Morgan,* 536 U.S. 101 (hostile environment claims under Title VII)), established precedent recognizes an additional type of continuing violation—a violation that continues to occur on a day-by-day (or act-by-act) basis and whose illegality was clear from the beginning. *See, e.g., Edelkind,* 525 F.3d 388 (failure to pay child support is a continuing offense); *Sierra Club,* 847 F.2d 1109 (finding continuing violations of the Clean Water Act where the company failed to comply with permit requirements for reporting and record retention); *Postow,* 627 F.2d 1370 (violation of Truth-in-Lending Act's disclosure requirements is a continuing violation).

The DC Circuit explicitly recognized the existence of these two types of continuing violation cases in *Earle,* 707 F.3d 299. The court explained that where a statute '' 'imposes a continuing obligation to act, a party can continue to violate it until that obligation is satisfied and the statute of limitations will not begin to run until it does.' '' *Id.* at 307 (quoting Judge Garland's concurring opinion in *Volks II,* 675 F.3d at 763). And ''[w]hether the obligation is continuing is a question of statutory construction.'' *Earle,* 707 F.3d at 307. The court explained that *Postow* had found a continuing violation of the Truth-in-Lending Act because the ''goals of the Act'' required construing the obligation to be continuing. *Id.* So too, the goals of the OSH Act require construing the recordkeeping obligation to be continuing. The purpose of recording injuries is so that the recorded information can be used thereafter, throughout the retention and access period. Accurate and complete OSHA records enable employers, employees, and the Government to understand the hazards present in the workplace, so that corrective measures can be taken. Inaccurate and incomplete records, by contrast, are likely to be misleading.

The Secretary recognizes that one court has said that: ''The Supreme Court has made clear . . . that the application of the continuing violations doctrine should be the exception, rather than the rule.'' *Cherosky* v. *Henderson,* 330 F.3d 1243, 1248 (9th Cir. 2003) (not referring to any specific decision) (quoted in *Volks II,* 675 F.3d at 757). Even so, the Secretary believes that the language and purposes of the OSH Act make it clear that the duty to maintain and make available records is a continuing obligation for all the reasons set forth previously.[5]

[5] In *Toussie* v. *United States,* 397 U.S. 112 (1970), the Supreme Court stated that ''the doctrine of continuing offenses should be applied in only limited circumstances since . . . 'the tension between the purpose of a statute of limitations and the continuing offense doctrine is apparent.' '' *Id.* at 115 (citations omitted). But *Toussie* was a criminal case subject to the general principle that ''*criminal* limitations statutes are 'to be liberally interpreted in favor of repose.' '' *Id.* (emphasis added and citations omitted). *See also Diamond* v. *United States,* 427 F.2d 1246, 1247 (Ct. Cl. 1970) (per curiam) (''[T]he considerations moving the Court to decide [in *Toussie*] that the offense was not a continuing one were entwined with the criminal aspects of the matter, and the holding was limited to criminal statutes of limitations.''). In contrast, as noted previously, in **SUPPLEMENTARY INFORMATION,** Section III.B.2, OSHA civil enforcement cases are subject to the opposing principle that ''statutes of limitation in the civil context are to be strictly construed in favor of the Government against repose.'' *Interamericas,* 111 F.3d at 382.

IV. Summary and Explanation of the Proposed Rule

OSHA is proposing to amend its recordkeeping regulations, 29 CFR part 1904, to clarify that employers covered by the recordkeeping requirements have a continuing obligation to make and maintain accurate records of all recordable injuries and illnesses. This obligation continues for as long as the employer must maintain records for the year in which an injury or illness became recordable, and it does not expire if the employer fails to create a record when first required to do so.

The continuing obligation to make and maintain accurate records of work-related illnesses and injuries is in accord with longstanding OSHA policy. Thus, this proposal is not meant to impose new or additional obligations on employers covered by part 1904. Employers will not be required to make records of any injuries or illnesses for which records are not currently required; nor are the recording requirements themselves changing. As discussed at length previously, the amendments are meant simply to clarify employers' obligations in the wake of the *Volks II* decision. The amendments being proposed consist of revisions to various sections of the regulatory text as well as changes to the titles of some sections and subparts.

As discussed in more detail later in this notice, the amendments clarify the following: (1) *OSHA 300 Log.* Employers must record every recordable injury or illness on the Log. This obligation continues through the five-year record retention-and-access period. In addition, during that period, employers must update the Log by adding cases not previously recorded and by showing changes to previously recorded cases. (2) *OSHA 301 Incident Report.* Employers must prepare a Form 301 Incident Report for each recordable illness or injury. This obligation continues throughout the five-year retention-and-access period. Employers are not required to update the form to show changes to the case that occur after the form is initially prepared. (3) *Year-end records review; preparation certification, and posting of the Form 300A annual summary.* These ancillary tasks are intended to be performed at particular times during each year. They are not continuing obligations.

A. Description of Proposed Revisions

1. Section 1904.0—Purpose

OSHA is proposing to revise this section to clarify and emphasize employers' ongoing duties to make and maintain accurate records of each and

every recordable injury and illness under part 1904. The proposed new language reflects the existing requirement for employers to provide their injury and illness records to certain government representatives, and to employees and former employees and their representatives. The proposed additions to the regulatory text include language reiterating that these recordkeeping requirements are important in helping the Agency achieve its mission of providing safe and healthful working conditions for the nation's workers.

OSHA is proposing to add a new sentence at the end of this section to explain what the Agency deems to be an ''accurate'' record. Records will be considered ''accurate'' if correct and complete records are made and maintained for each and every recordable injury and illness in accordance with the provisions of part 1904. This concept is not new, as the requirement for employers to maintain accurate records is derived directly from the OSH Act, 29 U.S.C. 657(c)(2).

2. Subpart C—Making and Maintaining Accurate Records, Recordkeeping Forms, and Recording Criteria

OSHA is proposing to amend the title of this Subpart to better reflect the content of revised §§ 1904.4 and 1904.29, which address employers' duties to make and maintain accurate records, as well as recordkeeping forms and criteria.

3. Paragraph (a) of § 1904.4—Basic Requirement

OSHA is proposing to revise this paragraph to reiterate the requirement that employers make and maintain accurate records of every injury and illness that meets the recording criteria in paragraphs (a)(1) through (3) of § 1904.4. The current version of paragraph (a), which requires employers to ''record'' injuries and illnesses, is less explicit in expressing OSHA's intent that employers both create and keep accurate records. The proposed language is intended to express that an employer's duty includes both creating and preserving accurate records of recordable injuries and illnesses. To be accurate, these records must be correct and complete. The proposed language is also meant to reflect more closely the language of the OSH Act at 29 U.S.C. 657(c)(1) and (2). OSHA is not proposing to change the recording criteria in paragraphs (a)(1) through (3) of existing § 1904.4.

4. Note to Paragraph (a) of § 1904.4

OSHA is proposing to add this note to § 1904.4(a) to clarify the Agency's longstanding position that the duty to make and maintain accurate injury and illness records continues throughout the entire record-retention period set out in § 1904.33(a). This retention period runs for five years from the end of the calendar year that the records cover. An employer who fails to create a required record during the seven-day period provided for in § 1904.29(b)(3) must still create the record so long as the retention period has not elapsed. Given this ongoing duty, OSHA may issue recordkeeping citations to employers that have incomplete or otherwise inaccurate records at any point during the retention period, and, under the six-month statute of limitations set out in 29 U.S.C. 658(c), for up to six months thereafter.

5. Paragraph (b)(3) of § 1904.29—How quickly must each injury or illness be recorded?

Proposed paragraph (b)(3) of § 1904.29 states the Agency's long-standing requirement that each and every recordable injury and illness must be recorded on both the OSHA 300 Log for that year and a 301 Incident Report within seven calendar days of when the employer gets information that the injury or illness occurred. OSHA is proposing minor wording changes to the first sentence of existing paragraph (b)(3). The remainder of proposed paragraph (b)(3) is designed to make clear that employers that miss this seven-day recording deadline are not excused from the recording obligations after the seven-day period expires. Thus the obligation to record continues until the five-year retention period in § 1904.33(a) has run.

OSHA has always interpreted the seven-day recording period in the existing recordkeeping rules as a grace period when an employer can gather information on an injury or illness without fear of being cited by OSHA for a failure to record. Similarly, OSHA has always interpreted the obligation to record as continuing throughout the record retention period. The amendments to this paragraph simply clarify OSHA's long-held positions.

6. Section 1904.32—Year-End Review and Annual Summary

OSHA is proposing to amend the title of this section to more accurately describe the topics covered by § 1904.32, which include an employer's year-end review of records.

7. Paragraph (a) of § 1904.32—Basic Requirement

OSHA is proposing revisions to paragraph (a)(1) of § 1904.32 to make clear that employers must examine each year's OSHA 300 Log at the end of the year to ensure that each and every recordable injury and illness is recorded on the Log, and that each entry is accurate. If an employer discovers, during this review, that an injury or illness is missing or that any aspect of an entry is inaccurate, the employer must correct the deficiency.

The Agency is also proposing a new paragraph (a)(2) for § 1904.32. This proposed paragraph provides that after reviewing and verifying the Log entries under § 1904.32(a)(1), employers must verify that all entries on the Log are accurately recorded on OSHA 301 Incident Reports. Proposed paragraph (a)(2) clarifies that if an employer discovers, during the § 1904.32(a)(1) review, that an injury or illness was initially left off of the OSHA 300 Log, the employer must both add it to the log and create an accurate Incident Report for that injury or illness.

OSHA is proposing to move the language from existing paragraph (a)(2) in § 1904.32 to proposed paragraph (a)(3) in the same section. The Agency is proposing to add a clause to that paragraph to explain that the annual summary should be created only after an employer verifies the accuracy of the Log. This language is for clarification purposes only and does not add any new compliance requirements. OSHA is also proposing to renumber existing paragraphs (a)(3) and (4) of § 1904.32 as paragraphs (a)(4) and (5), respectively. The Agency is not proposing any substantive changes to these provisions.

The specific tasks required of employers under § 1904.32(a)—to conduct a year-end review of the Log, and to prepare, certify and post the annual summary—are in addition to the duties described elsewhere in part 1904, and do not supersede or modify them. These other duties include the fundamental continuing obligation for employers to ensure that Logs are accurate and complete and that all recordable cases are included on them. The specific steps required under § 1904.32(a) are supplementary tasks designed to help ensure that employers are maintaining accurate records. These supplementary tasks are to be performed at specified times (at the end of each calendar year, and from February 1 to April 30 for posting). Failure to perform one of these supplementary tasks by the required deadline or during the required time period is a violation of § 1904.32

that may be cited during the following six months. *See Volks II,* 675 F.3d at 761–62 (concurring opinion).

8. Paragraph (b)(1) of § 1904.32—How extensively do I have to review the OSHA 300 Log at the end of the year?

OSHA is proposing to amend paragraph (b)(1) of § 1904.32 to reflect the proposed revisions to § 1904.32(a)(1). The proposed changes to paragraph (b)(1) reiterate that employers must review the Log and its entries sufficiently to verify that all recordable injuries and illnesses for the relevant year are entered, and that those entries are accurate. In addition, OSHA is proposing one minor, non-substantive change to the heading of existing paragraph (b)(1).

9. Section 1904.33—Retention and Maintenance of Accurate Records

OSHA is proposing to update the title of this section to more accurately reflect the obligations described in proposed § 1904.33.

10. Paragraph (b)(1) of § 1904.33—Other than the obligation identified in § 1904.32, do I have further recording duties with respect to OSHA 300 Logs and 301 Incident Reports during the five-year retention period?

OSHA is proposing to amend the heading for this paragraph to reflect that employers have recording duties with respect to Incident Reports, as well as OSHA 300 Logs, during the five-year retention period. The Agency is also proposing to amend the text of paragraph (b)(1) of § 1904.33 to provide an introduction to the paragraphs that follow.

OSHA is proposing to add paragraphs (b)(1)(i) through (iii) to § 1904.33 to provide further guidance to employers on the existing duties to update Log entries and Incident Reports. Proposed paragraph (b)(1)(i) clarifies employers' duties to make and keep OSHA 300 Log entries for each and every recordable injury and illness that occurs during the year to which the Log relates. There must also be an associated Incident Report for each illness and injury recorded on the Log. As the proposed language makes explicit, these duties continue until the five-year retention period ends; thus, an employer may be required to make an entry on the OSHA Log or fill out an Incident Report for an illness or injury that occurred several years ago.

Proposed paragraph (b)(1)(ii) addresses changes that must be made to OSHA Logs throughout the retention period. As emphasized throughout this proposed rule, employers' OSHA 300 Logs must be accurate. This means that if an employer discovers that any aspect of a previously-recorded case (such as the classification, description, or outcome of the case) has changed, or that a case was recorded incorrectly at the outset, the employer must amend the entry to reflect the new or corrected information.

Proposed paragraph (b)(1)(iii) reiterates the requirement in proposed paragraph (b)(1)(i) that there must be an Incident Report for each and every recordable injury and illness. The primary purpose of proposed paragraph (b)(1)(iii) is to explain that employers are not required to update or correct existing Incident Reports during the retention period. This principle is currently stated in existing § 1904.33(b)(3).

These proposed requirements are not intended to change, but rather to state more clearly, what is required under the existing rule. The existing rule provides that during the five-year retention period, the employer must update the Logs to include newly discovered recordable injuries and illnesses and to show changes that have occurred in previously recorded cases. It does not explicitly state the employer's continuing duty to record cases it had previously learned about. Judge Garland's concurring opinion in *Volks II* drew the inference that the regulation does not create a continuing obligation to record such cases, as compared with newly discovered cases. *Volks II,* 675 F.3d at 760–61. This was not the Secretary's intention. At the time the current regulation was issued in 2001, it was well-established law in the Commission that employers had a continuing duty to record these older cases on their Logs. *See Gen. Dynamics,* 15 BNA OSHC 2122; *Johnson Controls,* 15 BNA OSHC 2132. Nothing in the 2001 rulemaking suggested that the Agency had any intention of changing this fundamental requirement.

The existing recordkeeping regulations explain that the employer must promptly record cases on the 300 Log, and that, throughout the five-year retention period, if the employer discovers a case that occurred previously, it must record that case on the applicable Log. As with nearly all rules, this rule is written to describe compliance. As with other rules, it does not assume noncompliance, in other words, it does not explicitly state what an employer must do if it fails to record a case it knows about. By stating that newly discovered cases should be recorded, the Secretary did not intend to signify that other cases the employer had learned about need not be recorded. The command to update was not intended to signify permission to ignore knowledge that had been acquired earlier.

The current regulations also state that the employer is *not* required to ''update'' Form 301 Incident Reports. In *Volks II,* Judge Garland read this to mean that employers do not have to create a form at all, once the initial seven-day recording period is over. *See Volks II,* 675 F.3d at 760–61 (concurring opinion). That was not the Secretary's intention. The intent was to distinguish between the Log, which employers must update to reflect new and changed information, and the 301 Form, which employers do not need to update. (The Secretary explained that although updating the Log would provide useful, accurate information, updating Incident Reports would not enhance the information in the employer's records sufficiently to warrant the additional burden that would be associated with such a requirement. See 66 FR at 6050, January 19, 2001.) The fact that the Agency does not require employers to update Incident Reports does not mean that the Agency does not require employers to create the forms in the first place. The language in the proposed rule clarifies this.

11. Paragraph (b)(2) of § 1904.33—Do I have to make additions or corrections to the annual summary during the five-year retention period?

OSHA is proposing minor changes to paragraph (b)(2) of § 1904.33. These changes are not substantive. Neither the proposed nor the existing rules require employers to update or make changes to annual summaries during the five-year retention period.

12. Paragraph (b)(3) of § 1904.33

OSHA is proposing to delete existing paragraph (b)(3). In the proposal, this paragraph has been moved, in slightly modified form, to paragraph (b)(1)(iii) in § 1904.33.

13. Paragraph (b)(2) of § 1904.35—Do I have to give my employees and their representatives access to the OSHA injury and illness records?

Paragraph (b)(2) of existing § 1904.35 addresses employee access to records created under part 1904. OSHA is proposing only one minor change to this paragraph—the addition of the word ''accurate'' to describe the records to which employees, former employees, and their representatives must be given access. Accurate records are described in proposed § 1904.0.

14. Paragraph (b)(2)(iii) of § 1904.35—If an employee or representative asks for access to the OSHA 300 Log, when do I have to provide it?

In proposed paragraph (b)(2)(iii) of § 1904.35, OSHA is simply adding the term ''accurate'' to describe the OSHA 300 Logs to which employees, former employees, and their representatives must be given access. Accurate records are described in proposed § 1904.0. Records are required so they can be used, and records must be accurate if they are to serve this purpose. The duty to provide an accurate record upon request arises when the request is made, not before, so the six-month statute of limitations cannot begin to run until the request is made.

15. Subpart E—Reporting Accurate Fatality, Injury, and Illness Information to the Government

OSHA is proposing to revise the title of Subpart E to more precisely reflect the requirement in the Subpart that government representatives be given access to *accurate* fatality, injury, and illness information.

16. Section 1904.40—Providing Accurate Records to Government Representatives

OSHA is proposing to revise the title of § 1904.40 to reflect the proposed changes to paragraph (a) of that section.

17. Paragraph (a) of § 1904.40—Basic Requirement

OSHA is proposing to add the term ''accurate'' to paragraph (a) of § 1904.40(a) to reflect OSHA's long-standing expectation that employers provide government representatives with *accurate* records upon request. OSHA is also proposing some non-substantive wording changes to this paragraph.

V. State Plans

The 27 States and U.S. Territories with their own OSHA-approved occupational safety and health plans must adopt a rule comparable to any amendments that Federal OSHA ultimately promulgates to 29 CFR part 1904. The States and U.S. Territories with OSHA-approved occupational safety and health plans covering private employers and State and local government employees are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. In addition, five States and U.S. Territories have OSHA-approved State plans that apply to State and local government employees only: Connecticut, Illinois, New Jersey, New York, and the Virgin Islands.

Under 29 CFR 1952.4(a), States with approved occupational safety and health plans under section 18 of the OSH Act (29 U.S.C. 667) must adopt recordkeeping and reporting regulations that are ''substantially identical'' to those set forth in 29 CFR part 1904. State plans' recording and reporting requirements for determining which injuries and illnesses must be recorded, and how they will be recorded, must be the same as the Federal requirements. 29 CFR 1952.4(a). Otherwise, State plans may promulgate injury or illness recording and reporting requirements that are more stringent than, or supplemental to, 29 CFR part 1904, after consulting with, and obtaining approval from, Federal OSHA. *Id.*

State plans may not grant variances from injury and illness recording and reporting requirements for private sector employers; any such variances must be granted by Federal OSHA. 29 CFR 1952.4(b). And a State may grant such a variance for a State or local government entity only after obtaining Federal OSHA approval. *Id.*

VI. Preliminary Economic Analysis

The proposed revisions to OSHA's recordkeeping rules do not constitute an economically significant regulatory action under Executive Order 12866. (See 58 FR 51735, September 30, 1993). Executive Order 12866 requires regulatory agencies to conduct an economic analysis for significant rules. A rule is economically significant under Executive Order 12866 if it will have an annual effect on the economy of $100 million or more. This proposal does not satisfy that criterion; as explained later in this notice, neither the benefits nor the costs of the proposal equal or exceed $100 million. OSHA has also determined that this proposal does not meet the definition of a major rule under the Congressional Review provisions of the Small Business Regulatory Enforcement Fairness Act (SBREFA). See 5 U.S.C. 804(2).

The Regulatory Flexibility Act of 1980, as amended by SBREFA in 1996, requires OSHA to determine whether the Agency's regulatory actions will have a significant impact on a substantial number of small entities. See 5 U.S.C. 601 *et seq.* OSHA's analysis indicates that the proposed rule will not have such an impact.

This proposal simply reiterates and clarifies employers' existing obligations to record work-related injuries and illnesses. This proposal would not require employers to make records of any injuries or illnesses for which records are not currently required. OSHA estimated the costs to employers of these requirements when the existing regulations were promulgated in 2001, *see* 66 FR 6081–6120, January 19, 2001. The proposed revisions impose no new cost burden.

Moreover, even if the proposed revisions to OSHA's recordkeeping rules would result in some costs beyond those the Agency estimated in 2001, any such costs would be nominal. According to OSHA's 2014 request to the Office of Management and Budget for an extension of the approval of the information collection requirements in the recordkeeping rules, an estimated 2.44 million injuries and illnesses must be recorded on OSHA logs each year. See *http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201405-1218-003.* Although OSHA accounted for the costs associated with full recordkeeping compliance as part of the 2001 rulemaking, the Agency assumes, for the sake of this analysis, a non-compliance rate under the current rule of 1 percent of recordable injuries and illnesses, or an additional 24,400 injuries and illnesses that would be recorded as a result of the proposal. (In OSHA's view, this is a high, or conservative, estimate.)

In 2014, OSHA prepared a Final Economic Analysis for a final rule addressing the industries entitled to a partial exemption from recordkeeping requirements and the reporting of injuries and fatalities to the Agency. In that analysis, OSHA estimated that it takes .38 of an hour to record an injury or illness on all required OSHA forms, taking into account requirements for providing access to records. *See* 79 FR 56130, 56165 (September 18, 2014). And according to the 2014 ICR, the average hourly rate for an Occupational Health and Safety Specialist (Standard Occupational Classification code 29–9011) is estimated to be $46.72 (which includes a 43% addition for benefits). *See http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201405-1218-003.* This means that the total estimated cost of preparing OSHA records is $17.75 per injury or illness.

Thus, if 24,400 cases would be newly recorded as a result of the proposal, the total cost associated with this regulatory action would be 24,400 times $17.75, or approximately $433,100 per year. (The Agency notes that if it makes the even more conservative assumption that 5 percent of 2.44 million injuries and illnesses (122,000) would be newly recorded as a result of the proposal, the total estimated cost of the proposed

rule, across all affected employers, would be under $2.2 million per year.)

Just as there are no (or minimal) new costs associated with this proposal, the proposal will result in no new economic benefits. OSHA believes the proposed revisions to the recordkeeping rules are technologically feasible because they do not require employers to perform any actions that they are not performing under existing requirements. And because the proposal does not impose any significant new compliance costs, the Agency deems it economically feasible.

VII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (as amended), OSHA examined the regulatory requirements of the proposed rule to determine if they would have a significant economic impact on a substantial number of small entities. As indicated in Section VI, Preliminary Economic Analysis, earlier in this notice, the proposed rule is expected to have no effect, or at most a nominal effect, on compliance costs and regulatory burden for employers, whether large or small. Accordingly, the Agency certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

VIII. Environmental Impact Assessment

OSHA has reviewed the proposed rule in accordance with the requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR parts 1500 through 1508), and the Department of Labor's NEPA procedures (29 CFR part 11). The Agency finds that the revisions included in the proposal would have no major negative impact on air, water, or soil quality, plant or animal life, the use of land or other aspects of the environment. And recordkeeping and reporting requirements normally qualify for categorical exclusion from NEPA requirements in any event. *See* 29 CFR 11.10(a).

IX. Federalism

OSHA reviewed this proposed rule in accordance with the most recent Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999). This Executive Order requires that Federal agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when clear constitutional authority exists and the problem is national in scope. Executive Order 13132 provides for preemption of State law only with the expressed consent of Congress. Any such preemption must be limited to the extent possible. Because this proposed rulemaking action involves a regulation that is not an occupational safety and health standard under section 6 of the OSH Act, it does not preempt State law. *See* 29 U.S.C. 667(a). The effect of a final rule on states and territories with OSHA-approved occupational safety and health plans is discussed previously in Section V, State Plans.

X. Unfunded Mandates

OSHA cannot enforce compliance with its regulations or standards on ''any State or political subdivision of a State.'' 29 U.S.C. 652(5). Under voluntary agreement with OSHA, some States enforce compliance with their State standards on public sector entities, and these agreements specify that these State standards must be equivalent to OSHA standards. But the proposed rule does not involve any unfunded mandates being imposed on any State or local government entity. Moreover, as discussed previously, OSHA estimates that that there are no, or minimal, compliance costs associated with the proposed rule. Therefore, this proposed rule would not impose a Federal mandate on the private sector in excess of $100 million in expenditures in any one year. Thus, OSHA certifies that this proposed rule is not a significant regulatory action within the meaning of Section 202 of the Unfunded Mandates Reform Act (2 U.S.C. 1532).

XI. Consultation and Coordination With Indian Tribal Governments

OSHA reviewed this proposed rule in accordance with Executive Order 13175 (65 FR 67249, November 6, 2000) and determined that it does not have ''tribal implications'' as defined in that order. The proposed rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

XII. Public Participation

Recordkeeping requirements promulgated under the Occupational Safety and Health Act of 1970 (OSH Act) are regulations, not standards. Therefore, this rulemaking is governed by the notice and comment requirements in the Administrative Procedure Act (APA), 5 U.S.C. 553, rather than by section 6(b) of the OSH Act (29 U.S.C. 655(b)) and 29 CFR part 1911 (both of which apply only to promulgating, modifying or revoking occupational safety or health standards). The OSH Act requirement for the Agency to hold an informal public hearing on a proposed rule, when requested, does not apply to this rulemaking. *See* 29 U.S.C. 655(b)(3).

The APA, which governs this rulemaking, does not require a public hearing; instead, it states that the agency must ''give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation.'' 5 U.S.C. 553(c). To promulgate a proposed regulation, the APA requires the Agency to provide the terms of the proposed rule (or a description of those terms) and specify the time, place, and manner of rulemaking proceedings. *See* 5 U.S.C. 553(b). The APA does not specify a minimum period for submitting comments. In accordance with the goals of Executive Order 12866, OSHA is providing 60 days for public comment (*see* section 6(a)(1) of Executive Order 12866).

Public Submissions*:* OSHA invites comments on all aspects of the proposed rule. OSHA will carefully review and evaluate any comments, information, or data received, as well as all other information in the rulemaking record, to determine how to proceed.

When submitting comments, please follow the procedures specified in the sections titled **DATES** and **ADDRESSES** of this document. The comments should clearly identify the provision of the proposal being addressed, the position taken with respect to each issue, and the basis for that position. Comments, along with supporting data and references, submitted by the end of the specified comment period will become part of the rulemaking record, and will be available for public inspection at the Federal eRulemaking Portal (*http://www.regulations.gov*) and at the OSHA Docket Office, 200 Constitution Avenue NW.—Room N–2625, Washington, DC 20210. (See the section titled **ADDRESSES** of this document for additional information on how to access these documents.)

XIII. The Paperwork Reduction Act of 1995

The information collection requirements contained in 29 CFR part 1904 Recording and Reporting Occupational Injuries and Illnesses have been approved by OMB and have been assigned OMB control number 1218–0176. This proposal simply reiterates

and clarifies employers' existing obligations to record and maintain work-related injuries and illnesses and does not add any new collection of information requirements. Therefore, there are no increases or decreases to the Recording and Reporting Occupational Injuries and Illnesses burden hour and cost estimates. The Agency solicits comments on this determination, and on the following items:

- Whether the revised collection of information requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility and clarity of the information collected; and
- Ways to minimize the compliance burden on employers, for example, by using automated or other technological techniques for collecting and transmitting information.

As required by 5 CFR 1320.5(a)(1)(iv) and 1320.8(d)(2), the following paragraphs provide information about this ICR:

Title: 29 CFR part 1904 Recordkeeping and Reporting Occupational Injuries and Illnesses (29 CFR part 1904).

Description of the ICR: The Occupational Safety and Health Act and 29 CFR part 1904 require that certain employers generate, maintain, and post records of job-related injuries and illnesses; and report to OSHA any work-related incident resulting in the death of the worker and work-related incidents resulting in in-patient hospitalization, amputation or loss of an eye.

Summary of the Collections of Information: Completion of the OSHA Forms 300 and 301; Entry on privacy concern case confidential list; Complete, certify and post OSHA Form 300A, Employee access to OSHA Forms 300 and 301; Reporting fatalities/catastrophes to OSHA; Requests for variances.

Number of respondents: 1,594,040.

Frequency of responses: Frequency of response varies depending on the specific collection of information.

Number of responses: 6,312,003.

Average time per response: Ranges from 58 minutes to complete, certify and post Form 300A to five minutes for employers to allow employees, former employees, or employee representatives access to records being maintained by 29 CFR part 1904.

Estimated total burden hours: 2,881,842.

Estimated costs (capital-operation and maintenance): 0.

Members of the public who wish to comment on the Agency's revised collection of information must send their written comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, OSHA (please reference control number 1218–0176 in order to help ensure proper consideration), Office of Management and Budget, Room 10235, Washington, DC 20503, Fax: 202–395–5806 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.* The Agency encourages commenters also to submit their comments related to the Agency's clarification of the collection of information requirements to the rulemaking docket (Docket Number OSHA–2015–0006) along with their comments on other parts of the proposed rule. For instructions on submitting these comments to the rulemaking docket, see the sections of this **Federal Register** document titled **DATES** and **ADDRESSES**. You also may obtain an electronic copy of the complete ICR by visiting the Web page at *http://www.reginfo.gov/public/do/PRAMain* and scrolling under ''Currently Under Review'' to ''Department of Labor (DOL)'' to view all of the DOL's ICRs, including those ICRs submitted for proposed rulemakings. To make inquiries, or to request other information, contact Mr. Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

OSHA notes that a federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless the collection of information displays a currently valid OMB control number. Also, notwithstanding any other provision of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number.

List of Subjects in 29 CFR Part 1904

Health statistics, Occupational safety and health, Safety, Reporting and recordkeeping requirements, State plans.

Authority and Signature

This document was prepared under the direction of David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor. It is issued pursuant to 29 U.S.C. 657, 673; 5 U.S.C. 553; and Secretary of Labor's Order No. 1–2012 (77 FR 3912, January 25, 2012).

Signed at Washington, DC, on July 16, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

Accordingly, the Occupational Safety and Health Administration proposes that part 1904 of title 29 of the Code of Federal Regulations be amended as follows:

PART 1904—RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

■ 1. Revise the authority citation for part 1904 to read as follows:

Authority: 29 U.S.C. 657, 658, 660, 666, 669, 673, Secretary of Labor's Order No. 3–2000 (65 FR 50017), or 1–2012 (77 FR 3912), and 5 U.S.C. 553.

■ 2. Revise § 1904.0 to read as follows:

§ 1904.0 Purpose.

The purpose of this rule (part 1904) is to require employers to make and maintain accurate records of and report work-related fatalities, injuries, and illnesses, and to make such records available to the Government and to employees and their representatives so that they can be used to secure safe and healthful working conditions. For purposes of this part, accurate records are records of each and every recordable injury and illness that are made and maintained in accordance with the requirements of this part.

Note to § 1904.0: Recording or reporting a work-related injury, illness, or fatality does not mean that the employer or employee was at fault, that an OSHA rule has been violated, or that the employee is eligible for workers' compensation or other benefits.

Subpart C—Making and Maintaining Accurate Records, Recordkeeping Forms, and Recording Criteria

■ 3. Revise the heading of subpart C as set forth above.

■ 4. In § 1904.4, revise paragraph (a) introductory text and add a note to § 1904.4(a) to read as follows:

§ 1904.4 Recording criteria.

(a) *Basic requirement.* Each employer required by this part to keep records of fatalities, injuries, and illnesses must, in accordance with the requirements of

this part, make and maintain an accurate record of each and every fatality, injury, and illness that:

* * * * *

Note to § 1904.4(a): This obligation to make and maintain an accurate record of each and every recordable fatality, injury, and illness continues throughout the entire record retention period described in § 1904.33.

* * * * *

■ 5. Revise § 1904.29(b)(3) to read as follows:

§ 1904.29 Forms.

* * * * *

(b) * * *

(3) *How quickly must each injury or illness be recorded?* You must enter each and every recordable injury or illness on the OSHA 300 Log and on a 301 Incident Report within seven (7) calendar days of receiving information that the recordable injury or illness occurred. A failure to meet this deadline does not extinguish your continuing obligation to make a record of the injury or illness and to maintain accurate records of all recordable injuries and illnesses in accordance with the requirements of this part. This obligation continues throughout the entire record retention period described in § 1904.33. See §§ 1904.4(a); 1904.32(a)(1); 1904.33(b)(1); and 1904.40(a).

* * * * *

■ 6. Revise the heading and paragraphs (a) and (b)(1) of § 1904.32 to read as follows:

§ 1904.32 Year-end review and annual summary.

(a) *Basic requirement.* At the end of each calendar year, you must:

(1) Review that year's OSHA 300 Log to verify that it contains accurate entries for all recordable injuries and illnesses that occurred during the year, and make any additions or corrections necessary to ensure its accuracy;

(2) Verify that each injury and illness recorded on the 300 Log, including any injuries and illnesses added to the Log following your year-end review pursuant to § 1904.32(a)(1), is accurately recorded on a corresponding 301 Incident Report form;

(3) After you have verified the accuracy of the Log, create an annual summary of injuries and illnesses recorded on the Log;

(4) Certify the summary; and

(5) Post the summary.

(b) * * *

(1) *How extensively do I have to review the OSHA 300 Log at the end of the year?* You must review the Log and its entries as extensively as necessary to verify that all recordable injuries and illnesses that occurred during the year are entered and that the Log and its entries are accurate.

* * * * *

■ 7. Revise the heading and paragraph (b) of § 1904.33 to read as follows:

§ 1904.33 Retention and maintenance of accurate records.

* * * * *

(b) *Implementation*—(1) *Other than the obligation identified in § 1904.32, do I have further recording duties with respect to the OSHA 300 Logs and 301 Incident Reports during the five-year retention period?* You must make the following additions and corrections to the OSHA Log and Incident Reports during the five-year retention period:

(i) The OSHA Logs must contain entries for all recordable injuries and illnesses that occurred during the calendar year to which each Log relates. In addition, each and every recordable injury and illness must be recorded on an Incident Report. This means that if a recordable case occurred and you failed to record it on the Log for the year in which the injury or illness occurred, and/or on an Incident Report, you are under a continuing obligation to record the case on the Log and/or Incident Report during the five-year retention period for that Log and/or Incident Report;

(ii) You must also make any additions and corrections to the OSHA Log that are necessary to accurately reflect any changes that have occurred with respect to previously recorded injuries and illnesses. Thus, if the classification, description, or outcome of a previously recorded case changes, you must remove or line out the original entry and enter the new information; and

(iii) You must have an Incident Report for each and every recordable injury and illness; however, you are not required to make additions or corrections to Incident Reports during the five-year retention period.

(2) *Do I have to make additions or corrections to the annual summary during the five-year retention period?* You are not required to make additions or corrections to the annual summaries during the five-year retention period.

■ 8. Revise paragraphs (b)(2) introductory text and (b)(2)(iii) of § 1904.35 to read as follows:

§ 1904.35 Employee involvement.

* * * * *

(b) * * *

(2) *Do I have to give my employees and their representatives access to the OSHA injury and illness records?* Yes, your employees, former employees, their personal representatives, and their authorized employee representatives have the right to access accurate OSHA injury and illness records, with some limitations, as discussed below.

* * * * *

(iii) *If an employee or representative asks for access to the OSHA 300 Log, when do I have to provide it?* When an employee, former employee, personal representative, or authorized employee representative asks for copies of your current or stored OSHA 300 Log(s) for an establishment the employee or former employee has worked in, you must give the requester a copy of the relevant and accurate OSHA 300 Log(s) by the end of the next business day.

* * * * *

Subpart E—Reporting Accurate Fatality, Injury, and Illness Information to the Government

■ 9. Revise the heading of subpart E as set forth above.

■ 10. Revise the heading and paragraph (a) of § 1904.40 to read as follows:

§ 1904.40 Providing accurate records to government representatives.

(a) *Basic requirement.* When an authorized government representative requests the records you keep under part 1904, you must provide accurate records, or copies thereof, within four (4) business hours of the request.

* * * * *

[FR Doc. 2015–18003 Filed 7–28–15; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 87 and 1068

[EPA–HQ–OAR–2014–0828; FRL–9931–43–OAR]

RIN 2060–AS31

Proposed Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute to Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare and Advance Notice of Proposed Rulemaking; Notice of Updates to Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Updates to public hearing.

SUMMARY: The Environmental Protection Agency (EPA) published the *Proposed Finding that Greenhouse Gas Emissions from Aircraft Cause or Contribute to Air Pollution that May Reasonably Be Anticipated to Endanger Public Health*

and Welfare and Advance Notice of Proposed Rulemaking in the **Federal Register** on July 1, 2015. This action provides notice of three updates regarding the public hearing.

DATES: The EPA will hold a public hearing on August 11, 2015 in Washington, DC starting at 10 a.m. local time.

ADDRESSES: The hearing will be held at the Headquarters office of the US EPA, the William Jefferson Clinton East Building, Room 1153, 1201 Constitution Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Ms. JoNell Iffland, Office of Transportation and Air Quality, Assessment and Standards Division (ASD), Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, Michigan 48105, telephone number: (734) 214–4454, fax number: (734) 214–4816, email address: *Iffland.jonell@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA published a proposed finding that greenhouse gas emissions from aircraft cause or contribute to air pollution that may reasonably be anticipated to endanger public health and welfare and an advance notice of proposed rulemaking regarding aircraft engine greenhouse gas emissions on July 1, 2015 (80 FR 37758). This action corrects a typographical error in the street address for the public hearing and provides notice of availability of a conference call-in number for the public to listen to the hearing. Additionally, this action provides notice that video recording will be allowed in the hearing room provided that it does not interfere with or interrupt the public hearing.

Updates

The **DATES** section of the proposed finding and advance notice of proposed rulemaking published in the **Federal Register** on July 1, 2015 (78 FR 37758), provided information on the public hearing. This action updates that information.

The EPA will hold a public hearing on August 11, 2015 in Washington, DC, at the William Jefferson Clinton East Building, Room 1153, 1201 Constitution Avenue NW., Washington, DC 20004. The EPA will provide the opportunity for the public to listen to the hearing through the following conference call-in line: 1–866–299–3188, conference code 1433527160. Please note that this conference line will allow the public to listen only; persons listening will not be able to give an oral presentation via the conference line.

Additionally, the proposed finding and advance notice of proposed rulemaking stated that no large signs will be allowed in the building, cameras may only be used outside of the building and demonstrations will not be allowed on federal property for security reasons. This update confirms that video recording will be allowed in the hearing room provided that it does not interfere with or interrupt the public hearing.

Dated: July 21, 2015.

Christopher Grundler,

Director, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2015–18518 Filed 7–28–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 100

RIN 0906–AB01

National Vaccine Injury Compensation Program: Revisions to the Vaccine Injury Table

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Secretary proposes to amend the Vaccine Injury Table (Table) by regulation. These proposed regulations will have effect only for petitions for compensation under the National Vaccine Injury Compensation Program (VICP) filed after the final regulations become effective. The Secretary is seeking public comment on the proposed revisions to the Table.

DATES: Written comments must be submitted on or before January 25, 2016.

ADDRESSES: You may submit comments, identified by the Regulatory Information Number (RIN) 0906–AB01 in one of three ways, as listed below. The first is the preferred method. Please submit your comments in only *one* of these ways to minimize the receipt of duplicate submissions.

1. *Federal eRulemaking Portal.* You may submit comments electronically to *http://www.regulations.gov.* Click on the link ''Submit electronic comments on HRSA regulations with an open comment period.'' Submit your comments as an attachment to your message or cover letter. (Attachments should be in Microsoft Word or WordPerfect; however, Microsoft Word is preferred).

2. *By regular, express or overnight mail.* You may mail written comments to the following address only: Health Resources and Services Administration, Department of Health and Human Services, Attention: HRSA Regulations Officer, Parklawn Building, Room 14–101, 5600 Fishers Lane, Rockville, MD 20857. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *Delivery by hand (in person or by courier).* If you prefer, you may deliver your written comments before the close of the comment period to the same address: Parklawn Building Room 14–101, 5600 Fishers Lane, Rockville, MD 20857. Please call in advance to schedule your arrival with one of our HRSA Regulations Office staff members at telephone number (301) 443–1785. This is not a toll-free number.

Because of staffing and resource limitations, and to ensure that no comments are misplaced, Program cannot accept comments by facsimile (FAX) transmission. In commenting, by any of the above methods, please refer to file code (#HRSA–0906–AB01). All comments received on a timely basis will be available for public inspection without change, including any personal information provided, in Room 14–101 of the Health Resources and Services Administration's offices at 5600 Fishers Lane, Rockville, MD, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (excluding Federal holidays). Phone: (301) 443–1785. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: Please visit the National Vaccine Injury Compensation Program's Web site, *http://www.hrsa.gov/vaccinecompensation/*, or contact Dr. Avril Melissa Houston, Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, Health Resources and Services Administration, Parklawn Building, Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857. Phone calls can be directed to (301) 443–6593.

SUPPLEMENTARY INFORMATION: The President encourages Federal agencies through Executive Order 13563 to develop balanced regulations by encouraging broad public participation in the regulatory process and an open exchange of ideas. The Department of Health and Human Services (HHS) accordingly urges all interested parties to examine this regulatory proposal carefully and to share your views with us, including any data to support your positions. If you have questions before submitting comments, please see the ''For Further Information'' box below for the name and contact information of the subject-matter expert involved in this proposal's development. We must consider all written comments received

during the comment period before issuing a final rule.

If you are a person with a disability and/or a user of assistive technology who has difficulty accessing this document, please contact HRSA's Regulations Officer at Parklawn Building, Room 14–101, 5600 Fishers Lane, Rockville, MD 20857; or by telephone at 301–443–1785, to obtain this information in an accessible format. This is not a toll free telephone number. Please visit *http://www.HHS.gov/regulations* for more information on HHS rulemaking and opportunities to comment on proposed and existing rules.

A public hearing on this proposed rule will be held before the end of the public comment period. A separate notice will be published in the **Federal Register** providing details of this hearing. Subject to consideration of the comments received, the Secretary intends to publish a final regulation.

Background

The National Childhood Vaccine Injury Act of 1986, title III of Public Law 99–660 (42 U.S.C. 300aa–10 *et seq.*), established a Federal compensation program for persons thought to be injured by vaccines. The statute governing the program has been amended several times since 1986 and is hereinafter referred to as ''the Act.'' Petitions for compensation under this Program are filed in the United States Court of Federal Claims, with a copy served on the Secretary, who is denominated the ''Respondent.'' The Court, acting through judicial officers called Special Masters, makes findings as to eligibility for, and amount of, compensation.

In order to receive an award under this Program, a petitioner must establish a vaccine-related injury or death, either by proving that a vaccine actually caused or significantly aggravated an injury (causation-in-fact) or by demonstrating the occurrence of what has been referred to as a ''Table Injury.'' That is, a petitioner may show that the vaccine recipient suffered an injury of the type enumerated in the regulations at 42 CFR 100.3—the ''Vaccine Injury Table''—corresponding to the vaccination in question, and that the onset of such injury took place within a time period also specified in the Table. If so, the injury is presumed to have been caused by the vaccination, and the petitioner is entitled to compensation (assuming that other requirements are satisfied), unless the respondent affirmatively shows that the injury was caused by some factor other than the vaccination (see sections 300aa–11(c)(1)(C)(i), 300aa–13(a)(1)(B)), and 300aa–14(a) of the Act). Currently, cases are often resolved by settlements reached by both parties and approved by the Court.

When Congress first enacted the Act, it mandated reviews by the Institute of Medicine (IOM) of the National Academy of Sciences with the express purpose of providing a better scientific rationale for any presumptions of vaccine causation. Under sections 312 and 313 of Public Law 99–660, Congress mandated that the IOM review the scientific literature and other information on specific adverse consequences of vaccines covered by the Program. Congress enacted a mechanism for modification of the statutory Table, through the promulgation of regulatory changes by the Secretary, after consultation with the Advisory Commission on Childhood Vaccines (ACCV). By statutory directive, the membership of the ACCV reflects a variety of stakeholders with different perspectives (42 U.S.C. 300aa–19).

Efforts by the Secretary to modify the initial statutory Table, and its definitional counterpart, the Qualifications and Aids to Interpretation (QAI) began with publication of the two congressionally mandated IOM reviews in 1991 and 1994, respectively. With a few exceptions, the approach by the Secretary was straightforward: If the IOM concluded that there was evidence that a condition was ''causally related,'' it was added to or left on the Table. However, if there was no proven scientific evidence of an association, it was not added to the Table or it was removed. The entire process, from publication of the IOM reports, to promulgation of final rules in 1995 and 1997 took approximately 3 to 4 years.

The IOM has analyzed numerous possible vaccine injury connections over the years and after conducting a third comprehensive review of the scientific literature on vaccines and adverse events, released a report entitled, *Adverse Effects of Vaccines: Evidence and Causality* (2012). This third IOM report was conducted under the Department's initiative and was not statutorily mandated. The committee charged with undertaking this review consisted of 16 members with expertise in the following fields: Pediatrics, internal medicine, neurology, immunology, immunotoxicology, neurobiology, rheumatology, epidemiology, biostatistics, and law (*http://www.iom.edu/reports/2011/Adverse-Effects-of-Vaccines-Evidence-and-Causality.aspx*). The members of the review committee are subject to the stringent conflict of interest criteria imposed by the IOM. The committee met eight times over the course of 35 months, surveying more than 11,000 abstracts and reviewing in-depth 1,487 scientific and medical studies. The committee did not perform any original research.

The IOM Committee undertook the task of judging whether, based on available scientific evidence, a causal relationship exists between each adverse event examined and exposure to the following eight vaccines: Measles-mumps-rubella vaccine, varicella virus vaccine, seasonal influenza vaccines (which did not include the H1N1 influenza vaccine distributed in 2009), hepatitis A vaccine, hepatitis B vaccine, human papillomavirus vaccine, diphtheria tetanus toxoid and acellular pertussis-containing vaccines, and meningococcal vaccine. The charge to the Committee involved these eight vaccines because they are the vaccines with the vast majority of alleged adverse events in the claims for compensation filed under the Program. In addition, some of these vaccines had not been reviewed previously by the IOM.

Two types of evidence were utilized by the IOM in determining the strength of a causal association: Epidemiologic evidence from studies of populations and mechanistic evidence derived primarily from biological and clinical studies in animals and humans such as case reports. To determine the weight of the evidence, the IOM used a summary classification scheme that incorporated both the quality and quantity of the individual articles and the consistency of the group of articles in terms of direction of effect. Four weight-of-evidence categories were utilized, with epidemiologic evidence assessed to be high, moderate, limited or insufficient, and mechanistic evidence assessments of strong, intermediate, weak or lacking.

The IOM started each adverse event assessment from a position of neutrality, moving in either direction (*i.e.,* evidence favoring or rejecting causation) only when the epidemiologic and/or mechanistic evidence suggested a more definitive assessment. As with the previous IOM studies, a classification system was used to categorize the IOM's conclusions about the strength of a causal association. These categories are as follows:

1. Evidence convincingly supports a causal relationship;
2. Evidence favors acceptance of a causal relationship;
3. Evidence favors rejection of a causal relationship; or
4. Evidence is inadequate to accept or reject a causal relationship.

The IOM Committee concluded in certain circumstances that the evidence convincingly supports, or favors acceptance of, a causal relationship based only on a mechanistic assessment, even when the epidemiological evidence was inconclusive or absent. The 2012 IOM Report, on pages 17–18 explains that strong mechanistic evidence ''always carries sufficient weight for the committee to conclude the evidence convincingly supports a causal relationship. . .This conclusion [attributing the disease to the vaccine and not to other etiologies] can be reached even if the epidemiologic evidence is rated high in the direction of no increased risk or even decreased risk.''

The IOM concluded the evidence convincingly supports 14 specific vaccine-adverse event relationships, with all but one based on strong mechanistic evidence, and the epidemiologic evidence rated as either having limited confidence or being insufficient. Four vaccine adverse events judged to have either epidemiologic evidence of moderate certainty or mechanistic evidence of intermediate weight were placed in the ''evidence favors acceptance of a causal relationship'' category, while five other vaccine adverse events were placed in the ''evidence favors rejection'' category. A finding against a causal relationship required high or moderate epidemiologic evidence in the direction of no effect or decreased risk along with the absence of strong or intermediate mechanistic evidence supporting a causal relationship. The vast majority (135 vaccine-adverse event combinations) were placed in the ''evidence is inadequate to accept or reject a causal relationship'' category.

After release of the report, nine HHS workgroups including HRSA and the Centers for Disease Control and Prevention (CDC) medical staff reviewed the IOM conclusions on 158 vaccine-adverse events, as well as any newly published scientific literature not contained in the IOM report, and developed a set of proposed changes to the Table and QAI. The work of the HHS workgroups ended and HRSA continued to monitor the literature.

In 2006, the ACCV established ''Guiding Principles for Recommending Changes to the Vaccine Injury Table'' (Guiding Principles) to assist the ACCV in evaluating proposed Table revisions and determining whether to recommend changes to the Table to the Secretary. The Guiding Principles consist of two overarching principles: (1) The Table should be scientifically and medically credible; and (2) where there is credible scientific and medical evidence both to support and to reject a proposed change (addition or deletion) to the Table, the change should, whenever possible, be made to the benefit of petitioners. The Guiding Principles also state, among other factors, that ''[t]o the extent that the [IOM] has studied the possible association between a vaccine and an adverse effect, the conclusions of the IOM should be considered by the ACCV and deemed credible but those conclusions should not limit the deliberations of the ACCV.'' Although not binding on the Secretary, the ACCV Guiding Principles were utilized by the nine HHS workgroups in the development of the proposed changes to the Table. In particular, recommendations regarding appropriate time intervals for the onset of a Table injury, or diagnostic criteria in the QAI were influenced by the Guiding Principles. As part of its mandate under the Act, the ACCV considered the proposed changes set forth in this NPRM in its quarterly meetings on March 8, 2012, September 5, 2013, December 5, 2013, June 5, 2014, and September 4, 2014. The ACCV deliberations included scientific and public policy considerations, and were also influenced by the 2006 Guiding Principles. For each proposed change by the Secretary, the ACCV voted for one of three options:

1. ACCV concurs with the proposed change(s) to the Table (and QAI) and would like the Secretary to move forward (with or without comments);
2. ACCV does not concur with the proposed change(s) to the Table (and QAI) and would not like the Secretary to move forward; or
3. ACCV would like to defer a recommendation on the proposed change(s) to the Table (and QAI) pending further review at a future ACCV meeting.

Findings

In prior Table revisions, the Secretary determined that the appropriate framework for making changes to the Table is to make specific findings as to the illnesses or conditions that can reasonably be determined in some circumstances to be caused or significantly aggravated by the vaccines under review and the circumstances under which such causation or aggravation can reasonably be determined to occur. The Secretary continues this approach based on the 2012 IOM report, the work of the nine workgroups that reviewed the IOM findings, and after giving due consideration to the ACCV's recommendations.

For the vast majority of the vaccine adverse event pairs that were reviewed by the IOM (135), the IOM determined that the evidence is inadequate to accept or reject a causal relationship. With the exception of seasonal influenza vaccine and Guillain-Barré Syndrome (GBS), unless the IOM findings addressed a condition that was already on the Table, the Secretary makes no additional findings and proposes no change to the Table with regard to the vaccine adverse event pairs in this category. For seasonal influenza vaccines, the Secretary proposes to add the injury of GBS to the Table for the policy reasons discussed in this NPRM. For any vaccine adverse event pairs for which future scientific evidence develops to support a finding of a causal relationship, the Secretary will consider future rulemaking to revise the Table accordingly.

Applying the remaining IOM conclusions, with the Guiding Principles, the Secretary intends to make certain changes to the Table, and also intends to leave certain items already on the Table unchanged. In so doing, the Secretary makes the following findings:

Findings That Result in Additions or Changes to the Table

1. The scientific evidence convincingly supports a causal relationship between measles-mumps-rubella (MMR) vaccine and measles inclusion body encephalitis.
2. The scientific evidence convincingly supports a causal relationship between varicella vaccine and vaccine disseminated varicella infection (widespread chickenpox rash shortly after vaccination).
3. The scientific evidence convincingly supports a causal relationship between varicella vaccine and disseminated varicella infection with subsequent infection resulting in pneumonia, meningitis, or hepatitis in individuals with demonstrated immunodeficiencies.
4. The scientific evidence convincingly supports a causal relationship between varicella vaccine and vaccine strain viral reactivation.
5. The scientific evidence convincingly supports a causal relationship between varicella vaccine and vaccine strain viral reactivation with subsequent infection resulting in meningitis or encephalitis.
6. The scientific evidence convincingly supports a causal relationship between varicella vaccine and anaphylaxis.
7. The scientific evidence convincingly supports a causal

relationship between influenza vaccines and anaphylaxis.

8. The scientific evidence convincingly supports a causal relationship between meningococcal vaccines and anaphylaxis.

9. The scientific evidence favors acceptance of a causal relationship between human papillomavirus vaccines and anaphylaxis.

10. The scientific evidence convincingly supports a causal relationship between an injection-related event and deltoid bursitis. For reasons detailed below, the Secretary proposed adding a more expansive injury of Shoulder Injury Related to Vaccine Administration (SIRVA) to the Table.

11. The scientific evidence convincingly supports a causal relationship between an injection-related event and syncope.

12. The scientific evidence is inadequate to accept or reject a causal relationship between seasonal influenza vaccines and GBS. However, the Secretary proposes a Table change for the reasons discussed in this NPRM.

Findings That Do Not Result in Changes to the Table Because the Injury Is Already on the Table

1. The scientific evidence convincingly supports a causal relationship between MMR vaccine and anaphylaxis.

2. The scientific evidence convincingly supports a causal relationship between Hepatitis B vaccine and anaphylaxis.

3. The scientific evidence convincingly supports a causal relationship between tetanus toxoid vaccine and anaphylaxis.

4. The scientific evidence is inadequate to accept or reject a causal relationship between tetanus toxoid-containing vaccines (including those containing the acellular pertussis component but not the whole cell pertussis component) and encephalopathy and encephalitis.

5. The scientific evidence is inadequate to accept or reject a causal relationship between MMR vaccine and chronic arthritis in women.

6. The scientific evidence is inadequate to accept or reject a causal relationship between MMR vaccine and chronic arthritis in children.

7. The scientific evidence is inadequate to accept or reject a causal relationship between MMR vaccine and encephalopathy or encephalitis.

Findings That Do Not Result in Changes to the Table Because the Injury Is Transient in Nature

1. The scientific evidence convincingly supports a causal relationship between MMR vaccine and febrile seizures.

2. The scientific evidence favors acceptance of a causal relationship between MMR vaccine and transient arthralgia in women.

3. The scientific evidence favors acceptance of a causal relationship between MMR vaccine and transient arthralgia in children.

Findings That Do Not Result in Changes to the Table Because the Evidence Favors Rejection of a Causal Relationship

1. The scientific evidence favors a rejection of a causal relationship between MMR vaccine and autism.

2. The scientific evidence favors a rejection of a causal relationship between MMR vaccine and type 1diabetes.

3. The scientific evidence favors a rejection of a causal relationship between DTaP (tetanus) vaccine and type 1diabetes.

4. The scientific evidence favors a rejection of a causal relationship between inactivated (as opposed to the live intranasal) influenza vaccine and Bell's palsy.

5. The scientific evidence favors a rejection of a causal relationship between inactivated influenza vaccine and exacerbation of asthma or reactive airway disease episodes in children and adults.

Discussion of Proposed Table Changes

The Secretary has examined the recommendations of the ACCV and proposes that the Table set forth at 42 CFR 100.3 be revised as described below. Following each vaccine and adverse event there is a discussion of the IOM conclusion and, where applicable, other relevant conclusions, as well as the Department's proposal. It should be noted that the ACCV concurred with all of the proposals regarding the Table and QAI. Each of the changes proposed by the Department and the rationale for the proposal is described in detail. An important consideration in proposing changes to the Table is the need to make the Table as easy to understand and as clear as possible. With this goal in mind, the Secretary has proposed new language and clarified certain sections of the QAI which must be used by the Special Masters and the parties in understanding when a particular set of symptoms is consistent with a particular Table injury.

As provided in 42 U.S.C. 300aa–14(c)(4), the modified Table will apply only to petitions filed under the Program after the effective date of the final regulation. Petitions must also be filed within the applicable statute of limitations. The general statute of limitations applicable to petitions filed with the VICP, set forth in 42 U.S.C. 300aa–16(a), continues to apply. In addition, the statute identifies a specific exception to this statute of limitations that applies when the effect of a revision to the Table makes a previously ineligible person eligible to receive compensation or when an eligible person's likelihood of obtaining compensation significantly increases. Under this section, an individual who may be eligible to file a petition based on the revised Table may file the petition for compensation not later than 2 years after the effective date of the revision if the injury or death occurred not more than 8 years before the effective date of the revision of the Table (42 U.S.C. 300aa–16(b)). This is true even if such individual previously filed a petition for compensation, and is thus an exception to the ''one petition per injury'' limitation of 42 U.S.C. 300aa–11(b)(2).

Based on the requirements of the Administrative Procedure Act, the Department publishes a Notice of Proposed Rulemaking in the **Federal Register** before a regulation is promulgated. The public is invited to submit comments on the proposed rule. In addition, a public hearing will be held for this proposed rule. After the public comment period has expired, the comments received and the Department's responses to the comments will be addressed in the preamble to the final regulation. The Department will publish the final rule in the **Federal Register**.

In the following sections, background information on different categories of vaccines as well as the Secretary's rationale for any proposed Table change is provided. It should also be noted that the proposed QAIs are designed to define the conditions covered on the Table and to rule out other conditions that are not covered on the Table (and for which there has been no finding of a causal relation to the vaccines). In addition, the QAIs make clear that if certain other circumstances exist that do not, in the Secretary's view, warrant a presumption of causation, the Table presumption will not be apply.

I. Vaccines Containing Tetanus Toxoid

Currently there are four tetanus-diptheria (Td) vaccines licensed in the United States, two of which also contain acellular pertussis vaccines (Tdap and DTap); a diphtheria-tetanus (DT) vaccine for children younger than age 7 years; and one tetanus toxoid vaccine (TT). In addition, there are three combination vaccines approved for use in children, including (DTaP–IPV–HepB), (DTaP–IPV–Hib), and (DTaP–IPV). Immunity to tetanus wanes over time, so booster doses are needed. According to the CDC recommended schedule of immunizations for children, an infant and child should receive four doses of DTaP in the first 18 months of life and a booster dose between 4 to 6 years. Tdap is recommended at age 11 to 12 years.

Since 2005, the Advisory Committee on Immunization Practices (ACIP) and the CDC have recommended a Tdap vaccine booster dose for all adolescents aged 11 through 18 years of age and for adults aged 19 through 64 years who have not received a dose. A Td booster is recommended every 10 years thereafter. As part of wound management care to prevent tetanus, a tetanus toxoid-containing vaccine is recommended for wound management in anyone who has not received a tetanus-containing vaccine for 5 years or more. The CDC recommends that one dose of Tdap be administered to pregnant women during each pregnancy regardless of the interval since the prior Td or Tdap vaccination.

A. Shoulder Injury Related to Vaccination

Shoulder Injury Related to Vaccine Administration (SIRVA) is an adverse event following vaccination thought to be related to the technique of intramuscular percutaneous injection (the procedure where access to a muscle is obtained by using a needle to puncture the skin) into an arm resulting in trauma from the needle and/or the unintentional injection of a vaccine into tissues and structures lying underneath the deltoid muscle of the shoulder. As the proposed definition indicates, SIRVA is an injury related to the intramuscular injection of a vaccine. Consequently, by definition, a Table injury of SIRVA will not result for those vaccines that are not administered by intramuscular injection, including oral polio and rotavirus; subcutaneous MMR, MMRV, varicella, and meningococcal-polysaccharide; intranasal influenza; and intradermal influenza. In addition, a Table injury of SIRVA will not result for those vaccines that are administered via a needleless jet device. Jet injectors are needleless systems for vaccine or medication administration that utilize a high-pressure jet of liquid to penetrate the skin. During administration, the needleless syringe is placed against the injection site and as the medication or vaccine passes through the injector under high pressure it forms a jet of fluid that penetrates the skin. These devices do not penetrate the skin to a degree that would result in SIRVA. Current information regarding routes of administration for various vaccine formulations is available on the Centers for Disease Control and Prevention's Web site: *http://www.cdc.gov/vaccines/recs/vac-admin/default.htm?s_cid=.*

Clinical signs of shoulder pain and restricted motion in the affected shoulder appear shortly after vaccination. Medical review of VICP claims shows more than 30 cases of severe, persistent shoulder pain beginning shortly after vaccination and resulting in prolonged restriction of function. Often these cases were diagnosed as deltoid bursitis. [Atanasoff S, Ryan T, Lightfoot R, and Johann-Liang R, 2010, Shoulder injury related to vaccine administration (SIRVA), *Vaccine* 28(51):8049–8052.]

The IOM reviewed the scientific and medical literature finding evidence that convincingly supports a causal relationship between vaccine injection (with a needle) into an arm and deltoid bursitis. The report noted that the published VICP case series (Atanasoff et al.), as described, were clinically consistent with deltoid bursitis. The VICP case series found that 93 percent of patients had the onset of shoulder pain within 24 hours of vaccine administration and 54 percent had immediate pain following vaccine injection. The VICP case series found several diagnoses, beyond deltoid bursitis, that resulted in shoulder pain following vaccination, including tendonitis, impingement syndrome, frozen shoulder syndrome, and adhesive capsulitis. Another case series reported two cases of shoulder pain, weakness and reduced range of motion following vaccination with onset of symptoms within 48 hours of vaccination. [Bodor M, Montalvo E, Vaccination related shoulder dysfunction, Vaccine 25(2007) 585–587.]

In order to capture the broader array of potential injuries, the Secretary proposes to add SIRVA for all tetanus toxoid-containing vaccines that are administered intramuscularly through percutaneous injection into the upper arm. The interval of onset will be less than or equal to 48 hours.

While the Secretary proposes adding SIRVA to the Table for the MMR and Varicella vaccines, to meet the proposed QAI for SIRVA, the vaccine must be one intended for intramuscular administration in the upper arm. The Secretary acknowledges that currently there are no MMR or Varicella vaccines that are administered by intramuscular injection. However, the Secretary proposes that the Table include SIRVA as an injury for those vaccines, recognizing that, presently, the absence of an intramuscular formulation of the vaccines will prevent petitioners from meeting the Table QAI for SIRVA with respect to those vaccines. The advantage of such proposal is that the Table would not require modification should an intramuscular formulation of those vaccines develop. The disadvantage of this proposal could be confusion about whether a Table injury for SIRVA may be satisfied for those vaccines, despite the QAI's requirement that the associated vaccine be intended for intramuscular administration. Accordingly, the Secretary specifically seeks the public's views on her proposal to include SIRVA as a Table injury for the MMR and varicella vaccines notwithstanding the fact that there currently is not an intramuscular formulation. Consequently, by definition, a Table injury of SIRVA will not result for those vaccines that are not administered by intramuscular injection, including oral polio and rotavirus; subcutaneous MMR, MMRV, varicella, and meningococcal-polysaccharide; intranasal influenza; and intradermal influenza.

B. Vasovagal Syncope

Vasovagal syncope is the loss of consciousness (fainting) caused by a transient decrease in blood flow to the brain. Vasovagal syncope is usually a benign condition but may result in falling and injury. Vaccination is known to be one cause of vasovagal syncope. Both serious and non-serious injuries can occur as a result of syncope. The types of serious injuries that may occur following a syncopal episode include, but are not limited to, skin lacerations, bone fractures, dental injuries, traumatic brain injuries, and death. Other injuries include traumatic injuries sustained from automobile accidents that occurred due to a vaccinee experiencing syncope while driving within a short time period after vaccine receipt.

The IOM reviewed the literature concerning a possible link between the injection of a vaccine and syncope. Although the Committee found the epidemiologic evidence was insufficient or absent to assess an association

between the injection of a vaccine (with a needle) and syncope, the Committee concluded the mechanistic evidence was strong based on 35 cases presenting definitive clinical evidence. In addition, the HHS's Division of Injury Compensation Programs (DICP) has identified eight cases from its database alleging syncope as a vaccine injury (unpublished data). All had six months of residual symptoms as a result of syncope. In all eight cases, DICP found that syncope was directly related to vaccine administration.

The IOM concluded that the evidence convincingly supports a causal relationship between the injection of a vaccine (with a needle) and syncope. It did not limit this conclusion to a particular vaccine and explained that the evidence from one case report it examined as part of the mechanistic evidence it reviewed suggested ''that the injection, and not the contents of the vaccine, contributed to the development of syncope.''

In order to be eligible for compensation, the Act requires that the residual effects of the alleged vaccine injury must have continued for a period of at least 6 months (unless the injury results in in-patient hospitalization and surgery, or death). The Secretary recognizes that in many instances cases involving syncope will not meet the statutory severity criteria, as the reaction can be short-lived and treated effectively. However, there is a known risk of serious residual injury or of death from syncope.

Although syncope typically has no long term consequences, the Program has found that not infrequently, syncope is associated with residual effects lasting more than 6 months. Therefore, the Secretary proposes to add vasovagal syncope to the Table for all tetanus toxoid containing vaccines that are administered through percutaneous injection to permit an award of compensation in serious cases meeting the severity criteria. The proposed time interval of onset is less than or equal to 1 hour following vaccination. Syncope is an injury related to the injection of a vaccine. Consequently, the Secretary does not propose adding syncope as a Table injury for those vaccines that are not administered by injection, including oral polio and rotavirus vaccine. With respect to other vaccines, such as the intranasal influenza vaccine, while syncope is proposed as an injury for the general category of vaccines (*i.e.*, seasonal influenza vaccines), the specific formulation will not result in a Table injury of syncope by definition because it is not administered by injection. The Secretary is not aware of any reliable and persuasive evidence demonstrating that syncope occurs following administration of a vaccine via a needleless jet device; however, it may be plausible for syncope to occur with this route of administration. Therefore, the Secretary seeks the public's views as to whether the Secretary should include syncope as a Table injury for those vaccines that are administered via a needleless jet device. The Secretary also seeks the public's views as to whether syncope should be a Table injury for other categories of vaccines (*e.g.*, rotavirus) notwithstanding the fact that there currently is not a formulation that is administered by injection in order to encompass future formulations that may be administered by injection.

II. Vaccines Containing Extracted or Partial Cell Pertussis Bacteria, or Specific Pertussis Antigen(s)

Diphtheria, tetanus, and whole cell pertussis (DTwP) vaccines were used for much of the 20th century to control pertussis (whooping cough) disease. Concerns about the safety of DTwP (also referred to as DTP) vaccine prompted development of vaccines with an acellular pertussis component. With data showing fewer local, systemic, and more serious adverse events after acellular (DTaP) vaccine when compared to whole cell DTwP vaccine, the FDA licensed diphtheria and tetanus toxoids and acellular pertussis (DTaP) vaccines in 1991 for use in children aged 15 months to 6 years, and in 1996 for use in infants and children aged 6 weeks to 6 years. By 2000, DTaP had replaced DTwP and, like the whole cell pertussis vaccine, was subsequently licensed in combination with other vaccines for routine use in children. Further, in 2005, FDA licensed tetanus and diphtheria toxoid (Td) and, acellular pertussis (Tdap) vaccine, for use in persons 10 years of age and older, as this vaccine is thought to decrease the number of pertussis carriers in the population, which would lead to a decrease in the number of pertussis outbreaks.

The Secretary notes that there are significant differences between whole cell and acellular pertussis vaccines. Although both vaccine types were developed for the same purpose (*i.e.*, immunization against pertussis), they have significantly different compositions, and different effects on biological systems (*e.g.*, the immune and nervous systems). DTwP is distinct from DTaP because the former contains many bacterial proteins, including endotoxins (some of which are known neurotoxins) and the latter does not. These neurotoxins are thought to possibly act synergistically to cause adverse neurologic events in susceptible DTwP vaccine recipients. To date, no adequate study has been published that demonstrates a causal relationship between acellular pertussis vaccines and encephalopathy/encephalitis. Furthermore, studies have demonstrated a significant reduction in the number of common adverse events with acellular pertussis, such as crying and fevers, and less common ones, such as febrile seizures. [Pertussis vaccination: use of acellular pertussis vaccines among infants and young children recommendations of the advisory committee on immunization practices (ACIP), MMWR, 1997; 46(RR–7):1–25.] [Le Saux N, et al. Health Canada Immunization Monitoring Program–Active (IMPACT)] [Decrease in hospital admissions for febrile seizures and reports of hypotonic-hyporesponsive episodes presenting to hospital emergency departments since switching to acellular pertussis vaccine in Canada: A report from IMPACT. Pediatrics. 2003; 112(5):e348.] Pertussis antigen-containing vaccines were included in the original statutory Table.

A. Encephalopathy/Encephalitis

The initial Table and QAI set forth in the 1986 statute reflected Congress' initial legislative determinations on vaccine-related injuries for DTwP vaccine. Further, modifications to the Table and QAI promulgated by the Secretary in 1995 were based on the scientific findings related to DTwP vaccine, the key study being the British National Childhood Encephalopathy Study (NCES), which found some evidence of acute neurologic illness (encephalopathy) 1 to 7 days after vaccination with the whole cell pertussis vaccine. Similarly, a 10 year NCES follow-up found evidence of chronic nervous system effects. However, the evidence from this follow-up study remained insufficient to indicate the presence or absence of a causal relation between DTP and chronic nervous system dysfunction. On the other hand, a more recent epidemiologic study of whole cell pertussis-containing vaccines did not show a relationship with encephalopathy or encephalitis (Ray et al). The IOM conclusions in 1991 and 1994 were mixed regarding the statistically significant findings of encephalopathy in both the original NCES and its 10 year follow-up. [IOM, Adverse Effects of Pertussis and Rubella Vaccines, 1991. IOM, Adverse Events Associated with Childhood Vaccines, 1994.] In the end, the Secretary, with

unanimous support of the ACCV, retained encephalopathy on the Table, but clarified the definition of encephalopathy in the QAI to make it more clinically precise. [Miller D, Wadsworth J, Ross E, Severe neurological illness: Further analysis of the British National Childhood Encephalopathy Study. Tokai J Exp Clin Med. 1988; 13(suppl):145–155; Miller D, Madge N, Diamond J, Wadsworth J, and Ross E, Pertussis Immunization and Serious Acute Neurological Illnesses in Children, BMJ, 1993;307:1171–6; Ray P, Hayward J, Michelson D, Lewis E, Schwalbe J, Black S, Shinefield H, Marcy M, Huff K, Ward J, Mullooly J, Chen R, Davis R, and the Vaccine Safety Datalink Group, Encephalopathy After Whole-Cell Pertussis or Measles Vaccination: Lack of Evidence for a Causal Association in a Retrospective Case-Control Study. Ped Infec Dis J. 2006; 25(9):768–773.]

Acellular pertussis-containing vaccines were developed because of concerns about events due to whole cell pertussis. Toxicologists argue that components in these two types of pertussis vaccines differ greatly and should be treated as separate entities. Animal models have demonstrated that whole cell pertussis constituents have different effects than those with acellular pertussis. In one study, only whole cell pertussis vaccines caused seizure activity in mice. Levels of inflammatory markers were elevated in the whole cell pertussis group but not the acellular pertussis group. In another study, mice that received whole cell pertussis intravenously succumbed while those that received acellular pertussis did not. [Sato Y, Sato H, Comparison of Toxicities of Acellular Pertussis Vaccine with Whole Cell Pertussis Vaccine in Experimental Animals, *Dev Biol Stand*, 1991; 73:251–62; Donnelly S, Loscher CE, Lynch MA, Mills KH, Whole-cell but not Acellular Pertussis Vaccines Induce Convulsive Activity in Mice: evidence of a role for toxin-induced interleukin-1beta in a new murine model for analysis of neuronal side effects of vaccination. Infect Immun. 2001 July; 69(7):4217–4223.]

The 2012 IOM report on adverse events found that the evidence was inadequate to accept or reject a causal association between acellular pertussis-containing vaccines and encephalopathy and encephalitis. As previously stated, there is no credible evidence of a causal relationship between acellular pertussis vaccines and encephalopathy/encephalitis. Clinical studies have demonstrated a significant reduction in the number of common adverse events with acellular pertussis vaccine, as compared to whole cell pertussis vaccine, such as crying and fevers, and less common ones, such as febrile seizures. Although there have been large-scale surveillance studies conducted on the effects of acellular pertussis vaccines in infants and young children, such as those done in Canada and Australia, the study design used passive surveillance and therefore, the evidence is not as definitive as a controlled, well-designed epidemiologic study using a case control or cohort design [Le Saux N, et al. e348] [Lawrence G., Menzies R., Burgess M., McIntyre P., Wood N., Boyd I., Purcell P., Isaacs D. Surveillance of adverse events following immunization: Australia, 2000–2002. *Commun Dis Intell.* 2003; 27(3):307–23]. With regard to adolescents and adults, the Committee included a study by Yih (2009) which found that the number of encephalitis, encephalopathy or meningitis cases within 42 days of Tdap vaccination were less than a historical Td cohort with a relative risk of 0.84. [Yih W. K., Nordin J.D., Kulldorff M., Lewis E., Lieu T.A., Shi P., and Weintraub E. S., 2009, An assessment of the safety of adolescent and adult tetanus-diphtheria-acellular pertussis (Tdap) vaccine, using active surveillance for adverse events in the vaccine safety datalink, *Vaccine* 27(32):4257–4262]

In view of the limited epidemiological data, and as influenced by the Guiding Principles, the Secretary does not propose to make any changes to the Table, leaving intact the Table injury of encephalopathy/encephalitis for vaccines containing pertussis antigens, with an onset less than 72 hours from vaccination. However, the Secretary proposes to re-organize, clarify, and update the QAI for acute and chronic encephalopathy, and to include a new definition for acute encephalitis based on the Brighton Collaboration criteria and several other references. The Brighton Collaboration is an international voluntary collaboration that develops globally accepted and standardized case definitions of adverse events following immunizations. More information can be found at: *https://brightoncollaboration.org/public.*

B. Shoulder Injury Related to Vaccination

The Secretary proposes to add SIRVA for pertussis antigen-containing vaccines. [See I.A.] The interval of onset will be less than or equal to 48 hours.

C. Vasovagal Syncope

The Secretary proposes to add vasovagal syncope to the Table for pertussis antigen-containing vaccines. [See I.B.] The proposed time interval of onset is less than or equal to 1 hour following vaccination.

III. Vaccines Containing Measles, Mumps, and Rubella Vaccine or Any of Its Components

Since the 1960s, measles, mumps, and rubella (MMR), a live, attenuated virus vaccine, has been routinely administered to children in the U.S. In 2005, the tetravalent measles, mumps, rubella, and varicella (MMRV) vaccine was added to the immunization schedule. MMR vaccine was included in the original statutory Table.

A. Vaccine Strain Measles Viral Disease Including Measles Inclusion Body Encephalitis (MIBE)

Severe complications associated with the measles virus or a mutated form of the virus, such as measles inclusion body encephalitis (MIBE), can be broadly categorized as measles viral diseases. The Table currently lists ''vaccine-strain measles viral infection in an immunodeficient recipient'' as a Table injury for vaccines containing measles virus, with an onset of 6 months. This condition is defined in the QAI as ''a disease caused by the vaccine-strain that should be determined by vaccine-specific monoclonal antibody or polymerase chain reaction tests.''

MIBE is a rare, slow encephalitis caused by chronic with the measles virus, and is thus a subset of the condition already listed on the Table. MIBE is confined to immunodeficient individuals and is frequently fatal. MIBE occurs primarily in children and young adults, and typically occurs within 1 year of the initial infection or vaccination. A gradual decline in intellectual abilities and behavioral alterations are followed by progressive myoclonus; muscle spasticity; seizures; dementia; autonomic dysfunction; and ataxia. Death usually occurs 1 to 3 years after disease onset. Pathologic features include perivascular cuffing, eosinophilic cytoplasmic inclusions, neurophagia, and fibrous gliosis.

The IOM concluded that the evidence convincingly supports a causal relationship between MMR vaccine and MIBE in individuals with demonstrated immunodeficiencies. Out of the five case reports the IOM found, two had wild-type measles infection and these did not contribute to the weight of evidence. Only one out of the three

contributing case reports had vaccine-strain measles virus isolated. Because of limitations due to testing and viral properties, in most cases it is difficult to characterize wild-type versus vaccine-strain measles. [Bitnun A., Shannon P., Durward A., Rota P.A., Bellini W.J., Graham C., Wang E., Ford-Jones E.L., Cox P., Becker L., Fearon M., Petric M., and Tellier R.,. 1999. Measles inclusion-body encephalitis caused by the vaccine strain of measles virus. *Clinical Infectious Diseases* 29(4):855–861.] The current Table lists ''Vaccine-strain measles viral infection in an immunodeficient recipient'' for measles virus-containing vaccines with a time interval of onset of 6 months. Case reports of MIBE cited by the IOM showed a time interval of onset that varied from 8 days to 11 months.

For the reasons discussed above and in keeping with the spirit of the Guiding Principles, the Secretary proposes to change the injury of ''vaccine-strain measles viral infection in an immunodeficient recipient'' to ''vaccine-strain measles viral disease in an immunodeficient recipient.'' Because MIBE is a type of measles virus-associated disease occurring in immunodeficient individuals, the Secretary proposes a new time interval of onset of up to 12 months from the date of vaccination for those cases in which the typing of vaccine strain was not performed, because most cases of vaccine-strain disease occur within 1 year of vaccination. There is no time interval for onset proposed if the vaccine strain of the virus is identified, as it can be concluded that the vaccine was a contributing cause of the injury. Cases in which wild-type measles strain is isolated will be excluded. Revisions to the Table will distinguish between cases in which the measles vaccine strain is identified versus those cases in which laboratory testing was not done or the results were inconclusive. In addition, the Secretary proposes adding diagnostic criteria to the QAI.

B. Encephalopathy and Encephalitis

The IOM concluded that the evidence is inadequate to accept or reject a causal relationship between MMR vaccine and encephalopathy or encephalitis. Not only is there limited epidemiologic evidence on a possible causal association, the mechanistic evidence is weak, based on current knowledge about natural infection and few case reports. Natural (wild-type) infection (measles, mumps, and/or rubella virus) is thought to cause neurologic illness through damage to the neurons by direct viral invasion. This is thought to be either from direct viral infection and/or viral reactivation (particularly in immunocompromised patients). These same mechanisms may be responsible for vaccine-associated encephalopathy/encephalitis, but evidence linking these mechanisms directly to MMR vaccine strains (detection of viral antigens or antibodies) has not been shown. [Makela A., J. P. Nuorti, and H. Peltola. 2002. Neurologic disorders after measles-mumps-rubella vaccination. *Pediatrics* 110(5):957–963.] [Ray, P., J. Hayward, D. Michelson, E. Lewis, J. Schwalbe, S. Black, H. Shinefield, M. Marcy, K. Huff, J. Ward, J. Mullooly, R. Chen, and R. Davis. 2006. Encephalopathy after whole-cell pertussis or measles vaccination: Lack of evidence for a causal association in a retrospective case-control study. *Pediatric Infectious Disease Journal* 25(9):768–773.]

In view of the limited mechanistic data, and as influenced by the Guiding Principles, the Secretary does not propose to make any changes to the Table, leaving intact the Table injury of encephalopathy/encephalitis for MMR vaccines, with an onset not less than 5 days and no more than 15 days from vaccination. However, the Secretary proposes to re-organize, clarify, and update the QAI for acute and chronic encephalopathy and include a new definition for acute encephalitis based on the Brighton Collaboration criteria and several other references. [Ford-Jones L., MacGregor D., Richardson S., et al. Acute childhood encephalitis and meningoencephalitis: Diagnosis and management. Paediatr Child Health (1988). Jan–Feb;3(1):33–40] [Ball R., Halsey N., Braun M., et al. Development of case definitions for acute encephalopathy, encephalitis, and multiple sclerosis reports to the Vaccine Adverse Event Reporting System. Journal of Clinical Epidemiology (2002). 55:819–824.]

C. Febrile Seizures

Febrile seizures are a common cause of convulsions in young children. Generally viewed as benign and not indicative of brain disease, they occur in two to four percent of children up to age 5 years. Febrile seizures are often seen as the body temperature increases rapidly; but, may develop as the fever is declining. Most events last a minute or two, although some can be as brief as a few seconds. A family history of febrile seizures increases the child's risk of occurrence. Anything that causes fever, such as viral or bacterial infections, can bring on a febrile seizure.

The IOM Committee concluded that the evidence convincingly supports a causal relationship between MMR vaccine and febrile seizures. Based on seven epidemiologic studies, the Committee had a high degree of confidence that there is an increased risk of febrile seizures after receipt of MMR vaccine. The Committee assessed the mechanistic evidence regarding an association between MMR vaccine and febrile seizures as intermediate based on 12 cases presenting clinical evidence. [Farrington, P., S. Pugh, A. Colville, A. Flower, J. Nash, P. Morgan-Capner, M. Rush, and E. Miller. 1995. A new method for active surveillance of adverse events from diphtheria/tetanus/pertussis and measles/mumps/rubella vaccines. *Lancet* 345(8949):567–569.] [Miller, E., N. Andrews, J. Stowe, A. Grant, P. Waight, and B. Taylor. 2007. Risks of convulsion and aseptic meningitis following measles-mumps-rubella vaccination in the United Kingdom. *American Journal of Epidemiology* 165(6):704–709.] [Barlow, W. E., R. L. Davis, J. W. Glasser, P. H. Rhodes, R. S. Thompson, J. P. Mullooly, S. B. Black, H. R. Shinefield, J. I. Ward, S. M. Marcy, F. DeStefano, and R. T. Chen. 2001. The risk of seizures after receipt of whole-cell pertussis or measles, mumps, and rubella vaccine. *New England Journal of Medicine* 345(9):656–661.]

Patients who had post-MMR vaccination febrile seizures had no higher risk of subsequent seizure or neurodevelopmental disability than other children with febrile seizures in the absence of vaccine administration. The long-term rate of epilepsy was not increased in children who had febrile seizures following MMR vaccination compared with children who had febrile seizures of a different etiology [Vestergaard, M., A. Hviid, K. M. Madsen, J. Wohlfahrt, P. Thorsen, D. Schendel, M. Melbye, and J. Olsen. 2004. MMR vaccination and febrile seizures: Evaluation of susceptible subgroups and long-term prognosis. *Journal of the American Medical Association* 292(3):351–357.] [Barlow, W. E., R. L. Davis, J. W. Glasser, P. H. Rhodes, R. S. Thompson, J. P. Mullooly, S. B. Black, H. R. Shinefield, J. I. Ward, S. M. Marcy, F. DeStefano, and R. T. Chen. 2001. The risk of seizures after receipt of whole-cell pertussis or measles, mumps, and rubella vaccine. *New England Journal of Medicine* 345(9):656–661.]

Although febrile seizures can be alarming to parents and other family members, the overwhelming majority of children who have febrile seizures recover quickly and have no lasting effects. Only very rarely can febrile seizures lead to serious injury or disability.

The National Childhood Vaccine Injury Act of 1986 requires the effects of the alleged vaccine injury must have continued for at least 6 months (unless the injury results in in-patient hospitalization *and* surgery, or death). Because the current medical literature supports febrile seizures only very rarely have long term consequences this condition is not being proposed for inclusion on the Table. However, the Program will consider causation-in-fact claims for febrile seizures leading to serious injury or death on a case-by-case basis.

D. Transient Arthralgia in Women and Children

Arthralgia means joint pain without signs of inflammation (*e.g.* erythema, warmth, pallor, edema, or decreased range of movement). Arthritis is arthralgia with signs of inflammation. Arthropathy encompasses arthralgia or arthritis and refers to any joint disease. Unlike arthritis, arthralgia is a symptom and there may be no objective measures for confirmation. The IOM concluded that the evidence favors acceptance of a causal relationship between MMR vaccine (attributable to the rubella component) and transient arthralgia in women and children. The IOM had a moderate degree of confidence in the epidemiologic evidence for women (based on four studies) that consistently reported an increased risk of transient arthralgia after MMR vaccination. Similarly, the mechanistic evidence regarding an association between rubella vaccine and transient arthralgia in women was intermediate based on 13 case reports. Two-thirds of the studies involved post-partum women. [Slater, P. E., T. Ben-Zvi, A. Fogel, M. Ehrenfeld, and S. Ever-Hadani. 1995. Absence of an association between rubella vaccination and arthritis in underimmune postpartum women. *Vaccine* 13(16):1529–1532.] [Ray, P., S. Black, H. Shinefield, A. Dillon, J. Schwalbe, S. Holmes, S. Hadler, R. Chen, S. Cochi, and S. Wassilak. 1997. Risk of chronic arthropathy among women after rubella vaccination. *Journal of the American Medical Association* 278(7):551–556] [Tingle, A. J., L. A. Mitchell, M. Grace, P. Middleton, R. Mathias, L. MacWilliam, and A. Chalmers. 1997. Randomised double-blind placebo-controlled study on adverse effects of rubella immunisation in seronegative women. *Lancet* 349(9061):1277–1281.] [Mitchell, L. A., A. J. Tingle, L. MacWilliam, C. Home, P. Keown, L. K. Gaur, and G. T. Nepom. 1998. HLA–DR class II associations with rubella vaccine-induced joint manifestations. *Journal of Infectious Diseases* 177(1):5–12.]

There were seven epidemiologic studies of children that consistently reported an increased risk of arthralgia after MMR vaccination. The IOM had a moderate degree of confidence in the epidemiologic evidence based on the seven studies with sufficient validity and precision to assess an association between MMR vaccine and transient arthralgia in children. The mechanistic evidence was weak based on knowledge about natural rubella infection. [Peltola, H., and O. P. Heinonen. 1986. Frequency of true adverse reactions to measles-mumps-rubella vaccine. *Lancet* 327(8487):939–942.] [Virtanen, M., H. Peltola, M. Paunio, and O. P. Heinonen. 2000. Day-to-day reactogenicity and the healthy vaccinee effect of measles-mumps-rubella vaccination. *Pediatrics* 106(5):E62.] [Benjamin, C. M., G. C. Chew, and A. J. Silman. 1992. Joint and limb symptoms in children after immunization with measles, mumps, and rubella vaccine. *BMJ* 304(6834):1075–1078.] [Davis, R. L., E. Marcuse, S. Black, H. Shinefield, et al. 1997. MMR2 immunization at 4 to 5 years and 10 to 12 years of age: A comparison of adverse clinical events after immunization in the vaccine safety datalink project. *Pediatrics* 100(5):767–771] [dos Santos, B. A., T. S. Ranieri, M. Bercini, M. T. Schermann, S. Famer, R. Mohrdieck, T. Maraskin, and M. B. Wagner. 2002. An evaluation of the adverse reaction potential of three measles-mumps-rubella combination vaccines. *Revista Panamericana de Salud Publica/Pan American Journal of Public Health* 12(4):240–246.] [LeBaron, C. W., D. Bi, B. J. Sullivan, C. Beck, and P. Gargiullo. 2006. Evaluation of potentially common adverse events associated with the first and second doses of measles-mumps-rubella vaccine. *Pediatrics* 118(4):1422–143] [Heijstek, M. W., G. C. S. Pileggi, E. Zonneveld-Huijssoon, et al. 2007. Safety of measles, mumps and rubella vaccination in juvenile idiopathic arthritis. *Annals of the Rheumatic Diseases* 66(10):1384–1387.]

Because transient arthralgia is a subjective symptom that frequently lacks objective evidence for confirmation and has no long-term effects or consequences, this condition is not being proposed for inclusion on the Table.

E. Chronic Arthropathy in Women and Children and Arthropathy in Men

The IOM concluded that the evidence was inadequate to accept or reject a causal relationship between MMR vaccine and chronic arthropathy in women and children, as well as arthropathy in men. The committee had limited confidence in the epidemiologic evidence for rubella vaccine and chronic arthralgia or arthritis. The epidemiologic evidence was insufficient or absent to assess an association between measles or mumps vaccine and chronic arthralgia or chronic arthritis in women. The IOM assessed the mechanistic evidence regarding rubella vaccine and chronic arthralgia or chronic arthritis in women as low-intermediate; and as lacking between measles or mumps vaccine and chronic arthralgia or chronic arthritis in women. In children, the IOM found the epidemiologic evidence to be insufficient or absent for the association between MMR and chronic arthropathy. The IOM found the mechanistic evidence between rubella vaccine and chronic arthropathy to be weak and they found the evidence to be lacking for measles and mumps vaccines. The IOM had limited confidence in the epidemiologic evidence for an association between MMR vaccine and arthropathy in men. The IOM found the mechanistic evidence regarding the association between rubella vaccine and arthropathy in men to be weak. The IOM found the mechanistic evidence between measles or mumps vaccine and arthropathy in men as lacking. [Ray, P., S. Black, H. Shinefield, A. Dillon, J. Schwalbe, S. Holmes, S. Hadler, R. Chen, S. Cochi, and S. Wassilak. 1997. Risk of chronic arthropathy among women after rubella vaccination. *Journal of the American Medical Association* 278(7):551–556.] [Tingle, A. J., L. A. Mitchell, M. Grace, P. Middleton, R. Mathias, L. MacWilliam, and A. Chalmers. 1997. Randomised double-blind placebo-controlled study on adverse effects of rubella immunization in seronegative women. *Lancet* 349(9061):1277–1281.] Peters, M. E., and S. Horowitz. 1984. Bone changes after rubella vaccination. *American Journal of Roentgenology* 143(1):27–28. Geiger, R., F. M. Fink, B. Solder, M. Sailer, and G. Enders. 1995. Persistent rubella infection after erroneous vaccination in an immunocompromised patient with acute lymphoblastic-leukemia in remission. *Journal of Medical Virology* 47(4):442–444.]

In spite of the limited epidemiological and mechanistic data, based on the Guiding Principles, the Secretary does not propose to make any changes to the Table, leaving intact the Table injury of chronic arthritis for MMR vaccines, with an onset not less than 7 days and no more than 42 days from vaccination. However, the Secretary proposes to

provide a definition for chronic arthritis in the QAI, based on the Brighton Collaboration criteria and several other references.

F. Shoulder Injury Related to Vaccination

The Secretary proposes to add SIRVA to the Table for vaccines containing measles, mumps and/or rubella virus. [See section I.A above.] The interval of onset will be less than or equal to 48 hours. However, the Secretary recognizes that there currently is no intramuscular formulation of this vaccine available and therefore, petitioners alleging an injury of SIRVA associated with this vaccine presently cannot meet the QAI for SIRVA. Please see section I.A., above, for additional discussion on this point.

G. Vasovagal Syncope

The Secretary proposes to add vasovagal syncope to the Table for vaccines containing measles, mumps and/or rubella virus. [See section I.B above.] The proposed time interval of onset is less than or equal to 1 hour following vaccination.

IV. Vaccines Containing Polio Inactivated Virus

Since 2000, inactivated polio vaccine (IPV) has been the only polio vaccine used in the United States, although live virus oral polio vaccine (OPV) is still used in many parts of the world. The Secretary proposes changes to the Table related only to IPV, as an injected vaccine. OPV was included in the original statutory Table and remains on the regulatory Table.

A. Shoulder Injury Related to Vaccination

The Secretary proposes to add SIRVA as a Table injury for vaccines containing polio inactivated virus. [See Section I.A above.] The interval of onset will be less than or equal to 48 hours.

B. Vasovagal Syncope

The Secretary proposes to add vasovagal syncope to the Table for vaccines containing polio inactivated virus. [See Section I.B above.] The proposed time interval of onset is less than or equal to 1 hour following vaccination.

V. Hepatitis B Vaccines

The recombinant hepatitis B vaccine was first licensed by the FDA in 1986. Produced from cultured and purified yeast cells, it is the current form of vaccine used in the United States. Prior to 1991, the vaccine was recommended only for high risk individuals. However, the recommendation was extended to include all infants, since infected infants and children are at higher risk for developing chronic liver disease with subsequent liver cancer, and approximately one-third of those who acquire hepatitis B infection do not have any identified risk factors, and, therefore, were frequently not immunized. The effective date of coverage for hepatitis B vaccine is August 6, 1997.

A. Shoulder Injury Related to Vaccination

The Secretary proposes to add SIRVA as a Table injury for hepatitis B vaccines. [See section I.A above.] The interval of onset will be less than or equal to 48 hours.

B. Vasovagal Syncope

The Secretary proposes to add vasovagal syncope to the Table for hepatitis B vaccines. [See section I.B above.] The proposed time interval of onset is less than or equal to 1 hour following vaccination.

VI. Haemophilus Influenzae Type B Vaccines

Haemophilus influenzae type b (Hib) conjugate vaccines were first licensed by the FDA in 1987 and have been recommended by the CDC for routine use since 1991. The vaccine is given to infants and children up to the age of school entry. The effective date of coverage for Hib vaccines is August 6, 1997, with no injuries or conditions specified.

In order for a category of vaccines to be covered under the VICP, the category of vaccine must be recommended for routine administration to children by the Centers for Disease Control and Prevention (for example, vaccines that protect against seasonal influenza), subject to an excise tax by Federal law, and added to the Program by the Secretary of Health and Human Services. The Internal Revenue Code defines a ''taxable vaccine'' as including ''[a]ny HIB vaccine''. *See* 26 U.S.C. 4132(a)(1)(H). Thus, the Secretary proposes to modify category IX on the Table from ''Haemophilus influenzae type b polysaccharide conjugate vaccines'' to ''Haemophilus influenza type b vaccines,'' as a technical change in order to be most inclusive.

A. Shoulder Injury Related to Vaccination

The Secretary proposes to add SIRVA as a Table injury for Hib vaccines. [See section I.A above.] The interval of onset will be less than or equal to 48 hours.

B. Vasovagal Syncope

The Secretary proposes to add vasovagal syncope to the Table for Hib vaccines. [See I.B.] The proposed time interval of onset is less than or equal to 1 hour following vaccination.

VII. Varicella Vaccines

The varicella (chickenpox) virus vaccine, which was first licensed by the Food and Drug Administration in 1995, contains a live, attenuated strain of the varicella virus. Chickenpox is a highly contagious disease and although usually mild, infants, adolescents, adults, pregnant women, and immunocompromised individuals are at higher risk for serious complications. Since the introduction of the vaccine there has been a significant decrease in the number of cases of the disease with the greatest effect in states with the highest vaccination coverage. Varicella vaccine is listed on the Table, effective August 6, 1997, with no injuries or conditions specified.

A. Disseminated Vaccine-Strain Viral Disease

Disseminated varicella vaccine-strain viral disease is a condition in which the affected individual develops the varicella rash caused by the vaccine strain that spreads beyond the dermatome (an area of skin supplied by the nerve fibers of a single spinal root) involved in the vaccination and/or there is involvement of other organs such as the brain, lungs, and liver. For organs other than the skin, disease, not just mildly abnormal laboratory values, must be demonstrated in the involved organ. In this section, the word ''disseminated'' is defined by the IOM as the spreading of the rash (or the virus) beyond the dermatome involved in the vaccination.

The IOM reviewed the evidence for vaccine causation of disseminated varicella disease with and without involvement of organs beyond the skin. They found three case reports in which vaccinated individuals developed lesions confined to the skin after immunization, and in whose lesions the vaccine strain of the varicella virus was identified. In addition, the IOM identified 550 cases reported to passive surveillance systems in which an attempt was made to identify the virus from skin lesions in individuals who developed disseminated varicella disease after vaccination without involvement of another organ. The wild-type virus was identified in 210 cases; the vaccine-strain virus was identified in 125 cases; and in the remaining cases either the sample was inadequate, the virus could not be identified, or there

was no virus present. The committee also identified nine cases in which the vaccine strain of the virus was identified in individuals who had meningitis, pneumonia or hepatitis in addition to skin lesions. Cases of disseminated disease, which were reviewed by the IOM in individuals who were thought to be immunocompetent, all occurred within 42 days of immunization. The time of onset was not further specified. In many cases the timeframe from vaccination to onset of disseminated illness, without other organ involvement, was not provided for immunocompromised individuals, but in the cases for which there was data, there was a broad range of onset, spanning from 1 week in one case to ''up to 87 days'' in another. For four cases, in which onset was reported, the interval following vaccination was 18 days to 6 weeks. For disseminated disease with other organ involvement, onset was 13 days after vaccination in the only immunocompetent patient for whom data was available, and onset was between 10 and 35 days in eight immunocompromised individuals. [Wise, R. P., M. E. Salive, M. M. Braun, G. T. Mootrey, J. F. Seward, L. G. Rider, and P. R. Krause. 2000. Postlicensure safety surveillance for varicella vaccine. *Journal of the American Medical Association* 284(10):1271–1279.] [Goulleret, N., E. Mauvisseau, M. Essevaz-Roulet, M. Quinlivan, and J. Breuer. 2010. Safety profile of live varicella virus vaccine (Oka/Merck): Five-year results of the European varicella zoster virus identification program (EU VZVIP). *Vaccine* 28 (36):5878–5882.]

The IOM found the evidence convincingly supports a causal relationship between varicella vaccine and disseminated varicella disease, both for cases confined to the skin and for cases where the spread involves other organs. However, the IOM limited their finding of causation in cases in which organs beyond the skin were involved to those with demonstrated immunodeficiencies. The Secretary notes that there is a significant overlap in the time-frames involved in the onset of disseminated disease in both immunocompetent and immunocompromised individuals. The Secretary further notes that although the IOM found convincing support for disseminated disease with other organ involvement only in immunocompromised individuals, the Secretary proposes, in accordance with the ACCV Guiding Principles, that the Table injury apply to all individuals, regardless of the status of their immune system, because it is possible that an individual so affected may not have been completely evaluated for an existing immunodeficiency, or suffered from an immunodeficiency that is subtle and beyond our current ability to test.

The Secretary proposes to add disseminated vaccine-strain infection, both with and without other organ involvement, as a Table injury for varicella-containing vaccines. There is no time interval for onset if the vaccine strain of the virus is identified. However, if testing is not done or does not identify the virus, it is proposed that the injury qualify as a Table injury if the onset is 7 to 42 days following vaccination. If the wild-type virus or another non-vaccine-strain virus is identified, there will be no presumption of causation and it will not meet the Table criteria. If there is involvement of an organ beyond the skin, and no virus was identified in that organ, the involvement of all organs must occur as part of the same discrete illness.

B. Varicella Vaccine-Strain Viral Reactivation

Varicella vaccine-strain viral reactivation disease is defined as the presence of the rash of herpes zoster (shingles) with or without concurrent disease in another organ. Shingles is a painful, blistering skin rash due to the reactivation of varicella (chickenpox) virus that involves one or more sensory dermatomes. After natural varicella infection, the virus lies dormant in the spinal dorsal root ganglia. Shingles occurs after the virus becomes active again.

There is a significant body of literature showing that the vaccine-strain of the virus can cause shingles without other organ involvement. However, the wild-type chickenpox virus has been identified in many of the cases occurring after vaccination. The Committee reviewed 111 cases in which individuals who received a varicella-containing vaccine developed reactivated varicella disease without other organ involvement and in whom the vaccine-strain of the virus was identified. The IOM found six cases in which individuals who had received varicella vaccine developed reactivated disease in another organ, and in all the cases, the vaccine-strain of the virus was identified in the other organ. In four of those cases, the vaccine-strain of the virus was also identified in the skin. The findings for other organ involvement in these case reports were limited to the meninges and brain. The IOM concluded that the evidence convincingly supports a causal relationship between varicella vaccine and vaccine-strain viral reactivation, with or without involvement of an organ other than the skin. [Chaves, S. S., P. Haber, K. Walton, R. P. Wise, H. S. Izurieta, D. S. Schmid, and J. F. Seward. 2008. Safety of varicella vaccine after licensure in the United States: Experience from reports to the vaccine adverse event reporting system, 1995–2005. *Journal of Infectious Diseases* 197(SUPPL. 2):S170–S177.] [Iyer, S., M. K. Mittal, and R. L. Hodinka. 2009. Herpes zoster and meningitis resulting from reactivation of varicella vaccine virus in an immunocompetent child. *Annals of Emergency Medicine* 53(6):792–795.] [Levin, M. J., R. L. DeBiasi, V. Bostik, and D. S. Schmid. 2008. Herpes zoster with skin lesions and meningitis caused by two different genotypes of the Oka varicella-zoster virus vaccine. *Journal of Infectious Diseases* 198(10):1444–1447.]

The Secretary proposes to add vaccine-strain viral reactivation, both with and without other organ involvement, as a Table injury for varicella-containing vaccines. Although the IOM specified whether they considered immunocompetent or immunocompromised individuals, their causality conclusions for vaccine-strain reactivation, with and without other organ involvement, did not differentiate between these two groups. Because disease caused by varicella virus reactivation can occur many years, or even decades, after the initial disease or vaccination, the Secretary proposes that the QAI require laboratory confirmation of the presence of the vaccine-strain of the virus. With such confirmation, the status of the affected individual's immune system is not relevant. In addition, there is no proposed time interval for this injury, as laboratory confirmation of vaccine-strain virus obviates the need for such a proposal. Since petitioners must demonstrate the presence of vaccine-strain varicella infection, the presumption includes the involvement of skin and other organs.

C. Anaphylaxis

Anaphylaxis is a single discrete event that presents as a severe and potentially life threatening multi-organ reaction, particularly affecting the skin, respiratory tract, cardiovascular system, and the gastrointestinal tract. The diagnosis of anaphylaxis requires the simultaneous involvement of two or more organ systems. In an anaphylactic reaction, an immediate reaction generally occurs within minutes after exposure, and in most cases, the individual develops signs and symptoms within 4 hours after exposure to the antigen. The immediate reaction

leads to a combination of skin rash, mucus membrane swelling, leakage of fluid from the blood into surrounding tissues, tightening of the air passages in the lungs with tissue swelling, and gastrointestinal symptoms that can lead to shock, organ damage, and death if not promptly treated.

Symptoms may include swelling, itching, rash, trouble breathing, chest tightness, and/or dizziness. Death, if it occurs, usually results from airway obstruction caused by laryngeal edema (throat swelling) or bronchospasm and may be associated with cardiovascular collapse.

Other significant clinical signs and symptoms may include the following: cyanosis (bluish coloration in the skin due to low blood oxygen levels), hypotension (low blood pressure), bradycardia (slow heart rate), tachycardia (fast heart rate), arrhythmia (irregular heart rhythm), edema (swelling) of the pharynx and/or larynx (throat or upper airway) with stridor (noisy breathing on inspiration), dyspnea (shortness of breath), diarrhea, vomiting, and abdominal pain. Autopsy findings may include acute emphysema (a type of lung abnormality), which results from lower respiratory tract obstruction, edema (swelling) of the upper airway, and minimal findings of eosinophilia (an excess of a type of white blood cell associated with allergy) in the liver. When death occurs within minutes of exposure without signs of respiratory distress, lack of significant pathologic findings would not exclude a diagnosis of anaphylaxis.

Anaphylaxis may occur following exposure to allergens from a variety of sources including food, aeroallergens, insect venom, drugs, and immunizations. Most treated cases resolve without sequela. Anaphylaxis can be due to an exaggerated acute systemic hypersensitivity reaction, especially involving immunoglobulin E antibodies, as in allergic anaphylaxis, or it could be a non-immunologically mediated reaction leading to similar clinical symptomatology as in non-immune anaphylaxis. Non-immune anaphylaxis cannot be detected by skin tests or in vitro allergy diagnostic procedures. As stated, anaphylaxis is a single discrete event. It is not an initial episode of a chronic condition such as chronic urticaria (hives).

Anaphylaxis following immunization is a rare occurrence with estimates in the range of 1–10 per 1 million doses distributed, depending on the vaccine studied. [The Brighton Collaboration Anaphylaxis Working Group, ''Anaphylaxis: Case Definition and Guidelines for Data Collection, Analysis, and Presentation of Immunization Safety Data, Vaccine, Aug. 2007; 5676.] The IOM has reported that the evidence favors acceptance of a causal relationship between certain vaccines and anaphylaxis based on case reports and case series. The IOM has reported that causality could be inferred with reasonable certainty based on one or more case reports because of the unique nature and timing of anaphylaxis following vaccine administration and provided there is an absence of likely alternative causes. [Institute of Medicine (IOM), Immunization Safety Review Vaccination and Sudden Unexpected Death in Infancy, Washington, DC: The National Academies Press, 2003) 55.] The IOM concluded that the scientific evidence convincingly supports a causal relationship between varicella vaccine and anaphylaxis. There are multiple, well-documented reports in the literature that anaphylaxis occurs after receipt of the varicella vaccine. One case series reported 16 cases of anaphylaxis after vaccination against varicella, with nearly all demonstrating anti-gelatin immunoglobulin E (IgE) antibodies. [Sakaguchi, M., T. Nakayama, H. Fujita, M. Toda, and S. Inouye. 2000b. Minimum estimated incidence in Japan of anaphylaxis to live virus vaccines including gelatin. *Vaccine* 19(4–5):431–436.]

There is a long history of including anaphylaxis as a known adverse effect of vaccines, including in the initial Table contained in the Act. The time-frame for the first symptom or manifestation of onset contained in the original statutory Table was shortened from 24 hours to 4 hours in the Table changes promulgated in 1995. Since that time, anaphylaxis has been added as an injury for the Hepatitis B vaccine.

The statute requires that injuries eligible for compensation under the Program be of sufficient seriousness to cause continued effects for more than 6 months, result in death, or result in inpatient hospitalization and surgical intervention. The Secretary continues to recognize that in many instances, cases involving anaphylaxis will not meet the statutory severity criteria, as the reaction can be short-lived and treated effectively. However, because there is a known risk of serious residual injury or death from anaphylaxis, the Secretary continues to recommend that anaphylaxis be included on the Table for other vaccines, and be added for varicella virus vaccines.

The Secretary proposes to add anaphylaxis as a Table injury for varicella virus-containing vaccines, with an onset less than or equal to 4 hours from the administration of the vaccine. In addition, the Secretary proposes to update the definition of anaphylaxis in the QAI. (see proposed regulation text at proposed paragraph (c)(1)).

D. Shoulder Injury Related to Vaccination

The Secretary proposes to add SIRVA as a Table injury for varicella virus-containing vaccines. [See section I.A above.] The interval of onset will be less than or equal to 48 hours. However, the Secretary recognizes that there currently is no intramuscular formulation of this vaccine available, and therefore petitioners alleging an injury of SIRVA associated with this vaccine presently cannot meet the QAI for SIRVA. Please see section I.A., above, for additional discussion on this point.

E. Vasovagal Syncope

The Secretary proposes to add vasovagal syncope to the Table for varicella virus-containing vaccines. [See section I.B above.] The proposed time interval of onset is less than or equal to 1 hour following vaccination.

VIII. Pneumococcal Conjugate Vaccines

Pneumococcal conjugate vaccines were first licensed by FDA in 2000. Over the next decade, the heptavalent (seven serotypes) vaccine dramatically reduced the rate of invasive pneumococcal disease in young infants and nasal carriage of the vaccine serotypes among all age groups, including the immunocompromised and older individuals. A 13-valent pneumococcal conjugate vaccine licensed in 2010 has replaced the 7-valent product in the infant schedule. Pneumococcal conjugate vaccines are included on the Table, with an effective date of coverage of December 19, 1999, with no injuries or conditions specified.

A. Shoulder Injury Related to Vaccination

The Secretary proposes to add SIRVA as a Table injury for pneumococcal conjugate vaccines. [See section I.A above.] The interval of onset will be less than or equal to 48 hours.

B. Vasovagal Syncope

The Secretary proposes to add vasovagal syncope to the Table for pneumococcal conjugate vaccines. [See section I.B above.] The proposed time interval of onset is less than or equal to 1 hour following vaccination.

IX. Hepatitis A Vaccines

Hepatitis A vaccine was first licensed by FDA in 1996 and introduced incrementally, first for children living in

communities with the highest rates of disease and then in 1999 for children living in States/communities with consistently elevated rates of infection. The impact of immunization with hepatitis A vaccine has been a dramatic decline in the rates of disease and a sharp reduction in the groups with the highest risk of infection: Native Americans and Alaskan natives. Rates of hepatitis A infection are now similar in most areas of the United States. As a consequence, hepatitis A vaccine has now been recommended for all children in the United States who are 12–23 months of age. Hepatitis A vaccine is included on the Table, with an effective date of December 1, 2004.

A. Shoulder Injury Related to Vaccination

The Secretary proposes to add SIRVA as a Table injury for hepatitis A vaccines. [See section I.A above.] The interval of onset will be less than or equal to 48 hours.

B. Vasovagal Syncope

The Secretary proposes to add vasovagal syncope to the Table for hepatitis A vaccines. [See section I.B above.] The proposed time interval of onset is less than or equal to 1 hour following vaccination.

X. Seasonal Influenza Vaccines

All seasonal trivalent influenza vaccines have been covered under the VICP since July 1, 2005. At that time, all seasonal influenza vaccines were trivalent. Quadrivalent vaccines for seasonal influenza became available for general use for the 2013–14 influenza season. On June 25, 2013, Public Law 113–15 was enacted, extending the applicable excise tax on trivalent influenza vaccines to also include any other vaccines against seasonal influenza. *See* Public Law 113–15 (amending 26 U.S.C. 4132(a)(1)(N)). The amendment included in Public Law 113–15 ensured that seasonal influenza vaccines are covered under the Program. Seasonal influenza vaccines (other than trivalent influenza vaccines) were added to the Table under the final catch-all category (42 CFR 100.3(c)(8)) with an effective date of November 12, 2013. The Secretary proposes to modify category XIV on the Table from ''Trivalent influenza vaccines'' to ''Seasonal influenza vaccines.''

There are currently six types of seasonal influenza vaccines distributed during flu season. The standard dose trivalent inactivated influenza vaccine (IIV3) contains three killed virus strains and is injected. IIV3 is indicated in individuals 6 months of age or older, including healthy people and those with chronic medical conditions (such as asthma, diabetes, or heart disease). High dose trivalent inactivated influenza vaccine (IIV3 High dose) is indicated in individuals who are 65 years of age or older. Trivalent recombinant influenza vaccine (RIV3) is indicated for individuals between the ages of 18 and 49 years. The standard dose quadrivalent inactivated influenza vaccine (IIV4) has the same indications as IIV3. The quadrivalent live attenuated influenza vaccine (LAIV4) is indicated for healthy, non-pregnant persons aged 2–49 years. The cell-culture based inactivated influenza vaccine (ccIIV3) is indicated for individuals who are 18 years of age and older.

The covered injuries proposed for seasonal influenza vaccines are the same as those proposed for trivalent influenza vaccines. The trivalent influenza vaccine and the quadrivalent influenza vaccine, distributed each year during flu season, are types of seasonal influenza vaccines.

A. Anaphylaxis

The Secretary proposes to add anaphylaxis as a Table injury for seasonal influenza vaccines. [See section VII.C above.] The IOM concluded that the scientific evidence convincingly supports a causal relationship between trivalent influenza vaccines and anaphylaxis. Sensitivity to eggs has long been known to cause allergic reactions to influenza vaccination in some individuals. The IOM assessed the mechanistic evidence as strong, including the following: 21 case reports of potential anaphylaxis following influenza vaccine; a strong temporal relationship between vaccine administration and anaphylactic reaction; isolation of anti-gelatin IgE in two cases; positive skin testing as a positive re-challenge in two cases; and repeated symptoms to vaccination against influenza on two occasions. Their conclusion made no distinction between the intranasal live attenuated vaccine and the injected vaccine. [Coop, C.A., S.K. Balanon, K.M. White, B. A. Whisman, and M.M. Rathkopf. 2008. Anaphylaxis from the influenza virus vaccine. *International Archives of Allergy and Immunology* 146(1):85–88.] [Chung, E.Y., L. Huang, and L. Schneider. 2010. Safety of influenza vaccine administration in egg-allergic patients. *Pediatrics* 125(5):e1024–e1030.] [Lasley, M.V. 2007. Anaphylaxis after booster influenza vaccine due to gelatin allergy. *Pediatric Asthma, Allergy and Immunology* 20(3):201–205.]

The Secretary proposes to add anaphylaxis as a Table injury for seasonal influenza vaccines, with an onset of less than or equal to 4 hours from the administration of the vaccine. In addition, the Secretary proposes to update the definition of anaphylaxis in the QAI.

B. Shoulder Injury Related to Vaccination

The Secretary proposes to add SIRVA only for seasonal influenza vaccines that are injected intramuscularly (as detailed in the proposed QAI). As proposed, this injury would not apply to formulations of the live attenuated influenza vaccine (LAIV), as LAIV is not administered intramuscularly with a needle. [See section I.A above.] In addition, this injury would not apply to the formulations of influenza vaccine where the route of administration is intradermal, such as the formulation that delivers 0.1 milliliters of vaccine through a prefilled microinjection system that contains a needle that is only 1.5 millimeters long. This needle is not long enough to enter the deltoid bursa or any other structure in the shoulder related to the development of SIRVA. SIRVA would apply only to formulations of the seasonal influenza vaccine that are administered through intramuscular injection. The interval of onset will be less than or equal to 48 hours.

C. Vasovagal Syncope

The Secretary proposes to add vasovagal syncope to the Table for injected vaccines only (as detailed in the proposed QAI). As proposed, this injury would apply to the seasonal inactivated influenza vaccine that is injected intramuscularly but not to the LAIV, as LAIV is not administered with a needle, and the syncopal reaction appears to be related to the act of injection. [See section I.B above.] The proposed time interval of onset is less than or equal to 1 hour following vaccination.

D. Guillain-Barré Syndrome (GBS)

GBS is an acute paralysis caused by dysfunction in the peripheral nervous system (*i.e.,* the nervous system outside the brain and spinal cord). GBS may manifest with weakness, abnormal sensations, and/or abnormality in the autonomic (involuntary) nervous system. In the United States, each year approximately 3,000 to 4,000 cases of GBS are reported, and the incidence of GBS increases in older individuals. Senior citizens tend to have a poorer prognosis. Most people fully recover from GBS, but some people can either

develop permanent disability or die due to respiratory difficulties. It is not fully understood why some people develop GBS, but it is believed that stimulation of the body's immune system, as occurs with infections, can lead to the formation of autoimmune antibodies and cell-mediated immunity that play a role in its development.

GBS may present as one of several clinicopathological subtypes. The most common type in North America and Europe, comprising more than 90 percent of cases, is acute inflammatory demyelinating polyneuropathy (AIDP), which has the pathologic and electrodiagnostic features of focal demyelination of motor and sensory peripheral nerves and roots. Demyelination refers to a loss or disruption of the myelin sheath, which wraps around the axons of some nerve cells and which is necessary for the normal conduction of nerve impulses in those nerves that contain myelin. Polyneuropathy refers to the involvement of multiple peripheral nerves. Motor nerves affect muscles or glands. Sensory nerves transmit sensations. The axon is a portion of the nerve cell that transmits nerve impulses away from the nerve cell body. Another subtype of GBS, called acute motor axonal neuropathy (AMAN), is generally seen in other parts of the world and is predominated by axonal damage that primarily affects motor nerves. AMAN lacks features of demyelination. Another less common subtype of GBS includes acute motor and sensory neuropathy (AMSAN), which is an axonal form of GBS that is similar to AMAN, but also affects the axons of sensory nerves and roots.

The diagnosis of the AIDP, AMAN, and AMSAN subtypes of GBS requires bilateral flaccid (relaxed with decreased muscle tone) limb weakness and decreased or absent deep tendon reflexes in weak limbs, and a monophasic illness pattern with the interval between onset and nadir of weakness between 12 hours and 28 days with a subsequent clinical plateau. The clinical plateau leads to either stabilization at the nadir of symptoms, or subsequent improvement without significant relapse. Death may occur without clinical plateau. Treatment-related fluctuations in all subtypes of GBS can occur within 9 weeks of GBS symptom onset and recurrence of symptoms after this time-frame would not be consistent with GBS. In addition, there must not be a more likely alternative diagnosis for the weakness.

Other factors in all subtypes of GBS that add to diagnostic certainty, but are not required for diagnosis, include electrophysiologic findings consistent with GBS or cytoalbuminologic dissociation (*i.e.,* elevation of cerebral spinal fluid (CSF) protein and a total white cell count in the CSF less than 50 cells per microliter).

The weakness in the AIDP, AMAN, and AMSAN subtypes of GBS is usually, but not always, symmetric and usually has an ascending pattern of progression from legs to arms. However, other patterns of progression may occur. The cranial nerves can be involved. Respiratory failure can occur due to respiratory involvement. Fluctuations in the degree of weakness prior to reaching the point of greatest weakness or during the plateau or improvement phase may occur, especially in response to treatment. These fluctuations occur in the first 9 weeks after onset and are generally followed by eventual improvement.

According to the Brighton Collaboration, Fisher Syndrome (FS), also known as Miller Fisher Syndrome, is a subtype of GBS characterized by ataxia, areflexia, and ophthalmoplegia, and overlap between FS and GBS may be seen with limb weakness. [James J. Sejvar et. al. Guillain-Barre Syndrome and Fisher Syndrome: Case definitions and guidelines for collection, analysis, and presentation of immunization safety data Vaccine 29(3):599–612]. The diagnosis of FS requires bilateral ophthalmoparesis; bilateral reduced or absent tendon reflexes; ataxia; the absence of limb weakness (the presence of limb weakness suggests a diagnosis of AIDP, AMAN, or AMSAN); a monophasic illness pattern; an interval between onset and nadir of weakness between 12 hours and 28 days; subsequent clinical plateau (the clinical plateau leads to either stabilization at the nadir of symptoms or subsequent improvement without significant relapse); no alteration in consciousness; no corticospinal track signs; and the absence of an identified, more likely, alternative diagnosis. Death may occur without a clinical plateau.

Exclusionary criteria for the diagnosis of GBS include the ultimate diagnosis of any of the following conditions: Chronic inflammatory demyelinating polyneuropathy (CIDP), carcinomatous meningitis, brain stem encephalitis (other than Bickerstaff brainstem encephalitis), myelitis, spinal cord infarct, spinal cord compression, anterior horn cell diseases such as polio or West Nile virus infection, subacute inflammatory demyelinating polyradiculoneuropathy, multiple sclerosis, cauda equina compression, metabolic conditions such as hypermagnesemia or hypophosphatemia, tick paralysis, heavy metal toxicity (such as arsenic, gold, or thallium), drug-induced neuropathy (such as vincristine, platinum compounds, or nitrofurantoin), porphyria, critical illness neuropathy, vasculitis, diphtheria, myasthenia gravis, organophosphate poisoning, botulism, critical illness myopathy, polymyositis, dermatomyositis, hypokalemia, or hyperkalemia. The above list is not exhaustive. [Sejvar 599–612].

For all subtypes of GBS (AIDP, AMAN, AMSAN, and FS), the onset of symptoms less than 3 days (72 hours) after exposure excludes that exposure as a cause because the immunologic steps necessary to create symptomatic disease require a minimum of 3 days.

CIDP is clinically and pathologically distinct from GBS. The onset phase of CIDP is generally greater than 8 weeks and the weakness may remit and relapse. CIDP is also not monophasic. [Sejvar 599–612.]

In the past, GBS has been causally associated with certain vaccines. For example, the 1976 influenza A (swine flu) vaccine was found by the IOM to be causally associated with GBS. The risk of developing GBS in the 6 week period after receiving the 1976 swine flu vaccine was 9.2 times higher than the risk for those who were not vaccinated. [Lawrence B. Schonberger, *et al.*, ''Guillain-Barre Syndrome Following Vaccination in the National Influenza Immunization Program, United States, 1976–1977,'' American Journal of Epidemiology, 25 Apr. 1979; 118 and IOM, ''Immunization Safety Review: Influenza Vaccines and Neurological Complications,'' (Washington, DC: The National Academies Press, 2004) 25]. Since the 1976 influenza season, numerous studies have been conducted to evaluate whether other influenza vaccines were associated with GBS. In most published studies, no association was found, but one large study published in the *New England Journal of Medicine* evaluated the 1992–93 and 1993–94 influenza seasons and suggested approximately one additional case of GBS out of 1 million persons vaccinated, in the 6 weeks following vaccination, may be attributable to the vaccine formulation used in those years. The background incidence of GBS not associated with a vaccine among adults was documented in the study to be 0.87 cases per million persons for any 6 week period. [Tamar Lasky, et al., ''The Guillain-Barré Syndrome and the 1992–1993 and 1993–1994 Influenza Vaccines,'' The New England Journal of Medicine, Dec. 17, 1998; 1797.]

The IOM published a thorough scientific review of the peer-reviewed literature in 2004 and concluded that people who received the 1976 swine influenza vaccine had an increased risk for developing GBS [IOM, Immunization Safety Review: Influenza Vaccines and Neurological Complications, 25]. Based on its review of the published literature, the IOM also decided that the evidence linking GBS and influenza vaccines in influenza seasons other than 1976 was not clear. This led to the IOM's conclusion that the evidence was inadequate to accept or reject a causal relationship between influenza immunization and GBS for years other than 1976.

In 2012, the IOM published another report that evaluated the association of seasonal influenza vaccine and GBS. Pandemic vaccines, such as the influenza vaccine used in 1976 and the monovalent 2009 H1N1 influenza vaccine, were specifically excluded and not evaluated. The IOM concluded that the evidence is inadequate to accept or reject a causal relationship between seasonal influenza vaccine and GBS. (IOM, Adverse Effects of Vaccines 334). It is important to note that monovalent vaccines are usually only given in response to an actual or potential pandemic, while seasonal influenza vaccines are offered annually. The monovalent 2009 H1N1 vaccine, a type of pandemic vaccine, is covered under the Countermeasures Injury Compensation Program. The VICP does not cover pandemic influenza vaccines, such as the 2009 H1N1 Influenza vaccine.

A meta-analysis of the VSD, EIP (Emerging Infections Program—an active population-based surveillance program), and PRISM (Post-Licensure-Rapid Immunization Safety Monitoring—a cohort-based active surveillance network) data was performed and published, together with additional data from safety surveillance studies performed by Medicare, the Department of Defense, and the Department of Veterans Affairs, which, in total, analyzed data from 23 million people who were vaccinated with the influenza A (H1N1) 2009 monovalent vaccine. [Daniel A. Salmon et al., ''Association between Guillain-Barré syndrome and influenza A (H1N1) 2009 monovalent inactivated vaccines in the USA: a meta-analysis,'' Lancet, electronically published March 13, 2013, *http://dx.doi.org/10.1016/S0140-6736(12)62189-8*.] The meta-analysis provides the benefit of additional statistical power. Additional power allows for the analyses of certain hypotheses which were not possible to analyze individually in the six studies that made up the meta-analysis. The meta-analysis found that the 2009 H1N1 inactivated vaccine was associated with a small increased risk of GBS within 6 weeks of vaccination. This excess risk is equivalent to 1.6 excess cases in the 6 weeks after vaccination per million people vaccinated. This increased risk found in the meta-analysis was consistent: (1) Across studies looking at different groups of people; (2) using different definitions of illness; (3) in people who received or did not receive a concurrent seasonal influenza vaccine or had influenza-like symptoms; (4) across various time windows; and (5) in different age categories. This suggests that these five factors did not affect the risk of developing GBS.

Considering the totality of the evidence with the enhanced surveillance studies and meta-analysis performed to monitor the safety of the monovalent 2009 H1N1 vaccine, scientific evidence demonstrates a small increased risk of GBS in the 6 weeks following administration of the monovalent 2009 H1N1 vaccines.

Presently, there is no scientific evidence demonstrating that current formulations of the seasonal influenza vaccine, which contain the H1N1 virus, can cause GBS. However, the degree of surveillance needed to detect an increased risk of one case per million vaccinations, as was seen with the monovalent 2009 H1N1 vaccine, is unlikely to be routinely performed as the strains in the flu vaccines change from year to year. Nonetheless, numerous studies have been conducted in order to determine whether a possible association between seasonal influenza vaccines and GBS exists, and almost all have not shown any causal relationship. The IOM reviewed literature concerning such studies and concluded that the evidence was inadequate to accept or reject a causal association for all versions of seasonal influenza vaccines since 1976.

Using studies demonstrating a causal association between the 2009 H1N1 and 1976 swine flu vaccines and GBS as background, the Secretary proposes to add the injury of GBS to the Table for seasonal influenza vaccines. Although the scientific evidence does not show a causal association for current formulations of seasonal flu vaccines and GBS, the Secretary proposes including the injury of GBS for seasonal influenza vaccines on the Table in accordance with the ACCV Guiding Principles, acknowledging the fact that seasonal influenza vaccine formulations, unlike other vaccines, change from year-to-year and that enhanced surveillance activities may not occur with each virus strain change. This is done even though it appears that any instances of GBS caused by seasonal influenza vaccines, if they exist at all, are very rare. The Secretary proposes adding GBS to the Table for seasonal influenza vaccines and recognizes that this will create a presumption of causation that will result in compensation for numerous instances of GBS that are not vaccine-related.

While there is no evidence demonstrating that current formulations of the seasonal influenza vaccine can cause GBS, the totality of the evidence, particularly the enhanced surveillance studies and meta-analysis performed to monitor the safety of the 2009 H1N1 vaccine, provides compelling evidence of a small increased risk of GBS in the 6 weeks following the administration of the 2009 H1N1 vaccine. Utilizing this scientific data as background, the Secretary proposes an onset interval of 3–42 days for GBS presumed to be caused by the seasonal influenza vaccine to be covered under the proposed Table. Day 3 begins 72 hours after administration of the vaccination and takes into account the time interval needed to show first signs or symptoms after exposure. [Peripheral Neuropathy (Philadelphia, PA: Elsevier Saunders, 2005, 626].

XI. Meningococcal Vaccines

There are two types of meningococcal vaccines administered in the United States. The polysaccharide vaccine was licensed by the FDA in 1978, and is indicated for persons 2 years of age and older; the meningococcal conjugate vaccines were licensed starting in 2005. The conjugate vaccines were developed with the expectation that they would provide more long-lasting immunity, a more rapid immune response upon exposure to Neisseria meningitidis, and the development of ''herd immunity'' through reduction of the asymptomatic carrier state. The meningococcal polysaccharide and conjugate vaccines were added to the Table with an effective date of February 1, 2007.

A. Anaphylaxis

The Secretary proposes to add anaphylaxis as a Table injury for meningococcal vaccines. [See section VII.C above.] The IOM Committee, following an extensive review of the scientific and medical literature, concluded that the evidence convincingly supported a causal relationship between meningococcal vaccines and anaphylaxis. The Institute of Medicine based their conclusion on a case report of anaphylaxis with onset

30 minutes following vaccination. [Yergeau, A., L. Alain, R. Pless, and Y. Robert. 1996. Adverse events temporally associated with meningococcal vaccines. *Canadian Medical Association Journal* 154(4):503–507.]

The Secretary proposes to add anaphylaxis as a Table injury for meningococcal vaccines, with an onset less than or equal to 4 hours from the administration of the vaccine. In addition, the Secretary proposes to update the definition of anaphylaxis in the QAI.

B. Shoulder Injury Related to Vaccination

The Secretary proposes to add SIRVA as a Table injury for meningococcal vaccines. [See section I.A above.] The interval of onset will be less than or equal to 48 hours.

C. Vasovagal Syncope

The Secretary proposes to add vasovagal syncope to the Table for meningococcal vaccines. [See section I.B above.] The proposed time interval of onset is less than or equal to 1 hour following vaccination.

XII. Human Papillomavirus Vaccines

The first human papillomavirus (HPV) vaccine was licensed by the FDA in June 2006 for females between the ages of 9–26 years. In 2011, one of the two licensed HPV vaccines was given a permissive use recommendation in males by the CDC and other recommending bodies (*i.e.,* the American Academy of Pediatrics and the American Academy of Family Physicians). HPV vaccine was added to the Table with an effective date of February 1, 2007.

A. Anaphylaxis

The Secretary proposes to add anaphylaxis as a Table injury for HPV vaccines. [See VII.C] The IOM Committee concluded that the evidence favors acceptance of a causal relationship between human papillomavirus vaccines and anaphylaxis. They based their conclusion on temporality and clinical symptoms consistent with anaphylaxis in 9 reports from VAERS over 31 months of surveillance. [Slade, B.A., L. Leidel, C. Vellozzi E.J. et al. Post licensure safety surveillance for quadrivalent human papillomavirus recombinant vaccine. *Journal of the American Medical Association* 2009. 302(7):750–757.]

The Secretary notes that there are limitations to the VAERS passive reporting system. First, there is underreporting; not all adverse events following vaccines are reported to the system. The rates of underreporting have been examined for different disorders and are greatest for adverse events of mild severity. Second, many reports are filed before a complete clinical evaluation has been conducted. Therefore, the presumptive diagnosis that has been provided at the time of the report may not be the correct diagnosis. Third, investigations conducted after the initial report sometimes reveal alternative causes for the adverse event. In many instances, incomplete information is provided in the initial report. Follow-up of the reports by the CDC and FDA may be conducted to collect additional information from the healthcare providers. The primary purpose of VAERS is to look for signals for evidence of unexpected adverse events that would require other investigations to try to determine causal relationships. Although conclusions about causation are not possible for most adverse events reported to VAERS, the IOM found likely causality based on the distinctive nature of anaphylactic reactions and the temporal relationship between the HPV vaccine administration and the event. The Secretary proposes to add anaphylaxis as a Table injury for HPV vaccines, with an onset of less than or equal to 4 hours from the administration of the vaccine. In addition, the Secretary proposes to update the definition of anaphylaxis in the QAI.

B. Shoulder Injury Related to Vaccination

The Secretary proposes to add SIRVA as a Table injury for HPV vaccines. [See section I.A above.] The proposed time interval of onset is less than or equal to 48 hours.

C. Vasovagal Syncope

The Secretary proposes to add vasovagal syncope to the Table for HPV vaccines. [See section I.B above.] The proposed time interval of onset is less than or equal to 1 hour following vaccination.

XIII. Category for Any New Vaccine Recommended by the Centers for Disease Control and Prevention for Routine Administration to Children After Publication by the Secretary of a Notice of Coverage

Category XVII of the current Table pertains to any new vaccine recommended by the CDC for routine administration to children, after publication by the Secretary of a notice of coverage. This category pertains to vaccines that are covered under the Program, but with respect to which the Secretary has not yet finalized actions adding the vaccines as separate categories to the Table. Through this rule, the Secretary proposes retaining this category and adding two associated injuries for vaccines covered by this category.

A. Shoulder Injury Related to Vaccination

The Secretary proposes to add SIRVA for the category of vaccines captured under Category XVII of the Table. [See section I.A above.] As detailed in the proposed QAI, this injury would only apply to intramuscular vaccines injected into the upper arm. The interval of onset will less than or equal to 48 hours.

B. Vasovagal Syncope

The Secretary proposes to add vasovagal syncope to the Table for this category of vaccines. As detailed in the proposed QAI, this injury would apply only to injected vaccines as the syncopal reaction appears to be related to the act of injection. [See section I.B above.] The proposed time interval of onset is less than or equal to 1 hour following vaccination.

XIV. Additional Table Changes

The Secretary is proposing a number of organizational and structural changes to the Table and QAI designed to increase clarity and scientific accuracy, including the addition of a glossary of terms used within the Table and the QAI.

Organizational Changes

- To streamline the Table, the Secretary proposes a new paragraph (b), *Provision that applies to all vaccines listed.* This section includes any acute complication or sequela, including death, of the illness, disability, injury, or condition listed, rather than adding this provision to every line of the Table.
- To further streamline the Table, the Secretary proposes the deletion of redundant wording in the various definitions, particularly with regard to any references to the presumption of causation, and the importance of the entire medical record. These elements have been included in paragraph (b). In addition, complicated language previously included in the definition of encephalopathy, which indicated that idiopathic injuries do not rebut the Table presumption, has been simplified and made generally applicable to all injuries. This has also been included in paragraph (b).
- The QAI (proposed paragraph (c)) contain definitions for those terms that are used in the Table (paragraphs (a) and (b)).

• The newly added glossary (proposed paragraphs (d)) defines terms used in multiple places in the QAI (proposed paragraph (c)). Most of these terms were formerly contained in the QAI, and have been moved to the glossary so that each reference is consistent. These definitions include: chronic encephalopathy, significantly decreased level of consciousness, injected, and seizure.

• The proposed Table and QAI include some changes made by the Final Rule adding Intussusception as an Injury for Rotavirus Vaccines to the Vaccine Injury Table (80 FR 35848, June 23, 2015).

Expansion

• The Secretary proposes to add definitions for new Table injuries, including SIRVA, disseminated varicella-strain virus disease, varicella vaccine-strain viral reactivation disease, GBS, and vasovagal syncope.

• The Secretary proposes to add definitions of terms that had been on the Table or in the QAI, but that previously were undefined, including encephalitis, injected, and immunodeficient recipient.

Harmonization

• The Secretary proposes additional changes to the QAI to address certain changes in scientific nomenclature. Definitions, such as acute encephalopathy and acute encephalitis, both of which lead to chronic encephalopathy, have been harmonized. Definitions for brachial neuritis and SIRVA have also been harmonized.

• The Secretary proposes modification of category XIV on the Table from ''Trivalent influenza vaccines'' to ''Seasonal influenza vaccines''.

• The Secretary proposes modification of category IX on the Table from ''Haemophilus influenzae type b polysaccharide conjugate vaccines'' to ''Haemophilus influenzae type b vaccines''.

• Minor technical changes resulting from updated medical information have been included in the definitions of anaphylaxis, encephalopathy, chronic arthritis, brachial neuritis, thrombocytopenic purpura, and seizure.

All of the proposed changes were discussed and approved by the ACCV, although the ACCV expressed some reservations regarding the definition of ''immunodeficient recipient''. The discussion was reviewed, and the Secretary has modified the definition to address the concerns raised by the ACCV.

Economic and Regulatory Impact

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety, distributive, and equity effects). In addition, under the Regulatory Flexibility Act, if a rule has a significant economic effect on a substantial number of small entities the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations that are ''significant'' because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues require special analysis.

The Secretary has determined that no resources are required to implement the requirements in this rule. Compensation will be made in the same manner. This proposed rule only lessens the burden of proof for potential petitioners. Therefore, in accordance with the Regulatory Flexibility Act of 1980 (RFA), and the Small Business Regulatory Enforcement Act of 1996, which amended the RFA, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

The Secretary has also determined that this proposed rule does not meet the criteria for a major rule as defined by Executive Order 12866 and would have no major effect on the economy or Federal expenditures. We have determined that the proposed rule is not a ''major rule'' within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801. Similarly, it will not have effects on State, local, and tribal governments and on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

Nor on the basis of family well-being will the provisions of this rule affect the following family elements: family safety; family stability; marital commitment; parental rights in the education, nurture and supervision of their children; family functioning; disposable income or poverty; or the behavior and personal responsibility of youth, as determined under section 654(c) of the Treasury and General Government Appropriations Act of 1999.

This rule is not being treated as a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget.

As stated above, this proposed rule would modify the Vaccine Injury Table based on legal authority.

Impact of the New Rule

This proposed rule will have the effect of making it easier for future petitioners alleging injuries that meet the criteria in the Vaccine Injury Table to receive the Table's presumption of causation (which relieves them of having to prove that the vaccine actually caused or significantly aggravated the injury).

Paperwork Reduction Act of 1995

This proposed rule has no information collection requirements.

List of Subjects in 42 CFR Part 100

Biologics, Health insurance, Immunization.

Dated: June 24, 2015.

James Macrae,

Acting Administrator, Health Resources and Services Administration.

Approved: July 10, 2015.

Sylvia M. Burwell,

Secretary.

Accordingly, 42 CFR part 100 is proposed to be amended as set forth below:

PART 100—VACCINE INJURY COMPENSATION

■ 1. The authority citation for 42 CFR part 100 continues to read as follows:

Authority: Secs. 312 and 313 of Public Law 99–660 (42 U.S.C. 300aa–1 note); 42 U.S.C. 300aa–10 to 300aa–34; 26 U.S.C. 4132(a); and sec. 13632(a)(3) of Public Law 103–66.

■ 2. Revise § 100.3 to read as follows:

§ 100.3 Vaccine injury table.

(a) In accordance with section 312(b) of the National Childhood Vaccine Injury Act of 1986, title III of Public Law 99–660, 100 Stat. 3779 (42 U.S.C. 300aa–1 note) and section 2114(c) of the Public Health Service Act, as amended (PHS Act) (42 U.S.C. 300aa–14(c)), the following is a table of vaccines, the injuries, disabilities, illnesses, conditions, and deaths resulting from the administration of such vaccines, and the time period in which the first

symptom or manifestation of onset or of the significant aggravation of such injuries, disabilities, illnesses, conditions, and deaths is to occur after vaccine administration for purposes of receiving compensation under the Program. Paragraph (b) of this section sets forth additional provisions that are not separately listed in this Table but that constitute part of it. Paragraph (c) of this section sets forth the Qualifications and Aids to Interpretation for the terms used in the Table. Conditions and injuries that do not meet the terms of the Qualifications and Aids to Interpretation are not within the Table. Paragraph (d) of this section sets forth a glossary of terms used in paragraph (c).

VACCINE INJURY TABLE

Vaccine	Illness, disability, injury or condition covered	Time period for first symptom or manifestation of onset or of significant aggravation after vaccine administration
I. Vaccines containing tetanus toxoid (e.g., DTaP, DTP, DT, Td, or TT)	A. Anaphylaxis	≤4 hours.
	B. Brachial Neuritis	2–28 days (not less than 2 days and not more than 28 days)
	C. Shoulder Injury Related to Vaccine Administration.	≤48 hours.
	D. Vasovagal syncope	≤1 hour.
II. Vaccines containing whole cell pertussis bacteria, extracted or partial cell pertussis bacteria, or specific pertussis antigen(s) (e.g., DTP, DTaP, P, DTP-Hib).	A. Anaphylaxis	≤4 hours.
	B. Encephalopathy or encephalitis	≤72 hours
	C. Shoulder Injury Related to Vaccine Administration.	≤48 hours.
	D. Vasovagal syncope	≤1 hour.
III. Vaccines containing measles, mumps, and rubella virus or any of its components (e.g., MMR, MM, MMRV).	A. Anaphylaxis	≤4 hours.
	B. Encephalopathy or encephalitis	5–15 days (not less than 5 days and not more than 15 days)
	C. Shoulder Injury Related to Vaccine Administration.	≤48 hours.
	D. Vasovagal syncope	≤1 hour.
IV. Vaccines containing rubella virus (e.g., MMR, MMRV)	A. Chronic arthritis	7–42 days (not less than 7 days and not more than 42 days).
V. Vaccines containing measles virus (e.g., MMR, MM, MMRV)	A. Thrombocytopenic purpura	7–30 days (not less than 7 days and not more than 30 days).
	B. Vaccine-Strain Measles Viral Disease in an immunodeficient recipient.	
	—Vaccine-strain virus identified	Not applicable.
	—If strain determination is not done or if laboratory testing is inconclusive.	≤12 months.
VI. Vaccines containing polio live virus (OPV)	A. Paralytic Polio	
	—in a non-immunodeficient recipient.	≤30 days.
	—in an immunodeficient recipient	≤6 months.
	—in a vaccine associated community case.	Not applicable.
	B. Vaccine-Strain Polio Viral Infection.	
	—in a non-immunodeficient recipient.	≤30 days.
	—in an immunodeficient recipient	≤6 months.
	—in a vaccine associated community case.	Not applicable.
VII. Vaccines containing polio inactivated virus (e.g., IPV)	A. Anaphylaxis	≤4 hours.
	B. Shoulder Injury Related to Vaccine Administration.	≤48 hours.
	C. Vasovagal syncope	≤1 hour.
VIII. Hepatitis B vaccines	A. Anaphylaxis	≤4 hours.
	B. Shoulder Injury Related to Vaccine Administration.	≤48 hours.
	C. Vasovagal syncope	≤1 hour.
IX. Haemophilus influenzae type b (Hib) vaccines	A. Shoulder Injury Related to Vaccine Administration.	≤48 hours.
	B. Vasovagal syncope	≤1 hour.
X. Varicella vaccines	A. Anaphylaxis	≤4 hours.
	B. Disseminated varicella vaccine-strain viral disease.	
	—Vaccine-strain virus identified	Not applicable.
	—If strain determination is not done or if laboratory testing is inconclusive.	7–42 days (not less than 7 days and not more than 42 days).
	C. Varicella vaccine-strain viral reactivation.	Not applicable.
	D. Shoulder Injury Related to Vaccine Administration.	≤48 hours.
	E. Vasovagal syncope	≤1 hour.

VACCINE INJURY TABLE—Continued

Vaccine	Illness, disability, injury or condition covered	Time period for first symptom or manifestation of onset or of significant aggravation after vaccine administration
XI. Rotavirus vaccines	A. Intussusception	1–21 days (not less than 1 day and not more than 21 days).
XII. Pneumococcal conjugate vaccines	A. Shoulder Injury Related to Vaccine Administration.	≤48 hours.
	B. Vasovagal syncope	≤1 hour.
XIII. Hepatitis A vaccines	A. Shoulder Injury Related to Vaccine Administration.	≤48 hours.
	B. Vasovagal syncope	≤1 hour.
XIV. Seasonal influenza vaccines	A. Anaphylaxis	≤4 hours.
	B. Shoulder Injury Related to Vaccine Administration.	≤48 hours.
	C. Vasovagal syncope	≤1 hour.
	D. Guillain-Barré Syndrome	3–42 days (not less than 3 days and not more than 42 days).
XV. Meningococcal vaccines	A. Anaphylaxis	≤4 hours.
	B. Shoulder Injury Related to Vaccine Administration.	≤48 hours.
	C. Vasovagal syncope	≤1 hour.
XVI. Human papillomavirus (HPV) vaccines	A. Anaphylaxis	≤4 hours.
	B. Shoulder Injury Related to Vaccine Administration.	≤48 hours.
	C. Vasovagal syncope	≤1 hour.
XVII. Any new vaccine recommended by the Centers for Disease Control and Prevention for routine administration to children, after publication by the Secretary of a notice of coverage.	A. Shoulder Injury Related to Vaccine Administration.	≤48 hours.
	B. Vasovagal syncope	≤1hour.

(b) *Provisions that apply to all conditions listed.* (1) Any acute complication or sequela, including death, of the illness, disability, injury, or condition listed in paragraph (a) of this section (and defined in paragraphs (c) and (d) of this section) qualifies as a Table injury under paragraph (a) except when the definition in paragraph (c) requires exclusion.

(2) In determining whether or not an injury is a condition set forth in paragraph (a) of this section, the Court shall consider the entire medical record.

(3) An idiopathic condition that meets the definition of an illness, disability, injury, or condition set forth in paragraph (c) of this section shall be considered to be a condition set forth in paragraph (a) of this section.

(c) *Qualifications and aids to interpretation.* The following qualifications and aids to interpretation shall apply to, define and describe the scope of, and be read in conjunction with paragraphs (a), (b), and (d) of this section:

(1) *Anaphylaxis.* Anaphylaxis is an acute, severe, and potentially lethal systemic reaction that occurs as a single discrete event with simultaneous involvement of two or more organ systems. Most cases resolve without sequela. Signs and symptoms begin minutes to a few hours after exposure. Death, if it occurs, usually results from airway obstruction caused by laryngeal edema or bronchospasm and may be associated with cardiovascular collapse. Other significant clinical signs and symptoms may include the following: cyanosis, hypotension, bradycardia, tachycardia, arrhythmia, edema of the pharynx and/or trachea and/or larynx with stridor and dyspnea. There are no specific pathological findings to confirm a diagnosis of anaphylaxis.

(2) *Encephalopathy.* A vaccine recipient shall be considered to have suffered an encephalopathy if an injury meeting the description below of an acute encephalopathy occurs within the applicable time period and results in a chronic encephalopathy, as described in paragraph (d) of this section.

(i) *Acute encephalopathy.* (A) For children less than 18 months of age who present:

(*1*) Without a seizure, an acute encephalopathy is indicated by a significantly decreased level of consciousness that lasts at least 24 hours,

(*2*) Following a seizure, an acute encephalopathy is demonstrated by a significantly decreased level of consciousness that lasts at least 24 hours and cannot be attributed to a postictal state—from a seizure or a medication.

(B) For adults and children 18 months of age or older, an acute encephalopathy is one that persists at least 24 hours and is characterized by at least two of the following:

(*1*) A significant change in mental status that is not medication related (such as a confusional state, delirium, or psychosis);

(*2*) A significantly decreased level of consciousness which is independent of a seizure and cannot be attributed to the effects of medication; and

(*3*) A seizure associated with loss of consciousness.

(C) The following clinical features in themselves do not demonstrate an acute encephalopathy or a significant change in either mental status or level of consciousness: sleepiness, irritability (fussiness), high-pitched and unusual screaming, poor feeding, persistent inconsolable crying, bulging fontanelle, or symptoms of dementia.

(D) Seizures in themselves are not sufficient to constitute a diagnosis of encephalopathy and in the absence of other evidence of an acute encephalopathy seizures shall not be viewed as the first symptom or manifestation of an acute encephalopathy.

(ii) Regardless of whether or not the specific cause of the underlying condition, systemic disease, or acute event (including an infectious organism) is known, an encephalopathy shall not be considered to be a condition set forth in the Table if it is shown that the encephalopathy was caused by:

(A) An underlying condition or systemic disease shown to be unrelated to the vaccine (such as malignancy, structural lesion, psychiatric illness, dementia, genetic disorder, prenatal or perinatal central nervous system (CNS) injury); or

(B) An acute event shown to be unrelated to the vaccine such as a head trauma, stroke, transient ischemic attack, complicated migraine, drug use (illicit or prescribed) or an infectious disease.

(3) *Encephalitis.* A vaccine recipient shall be considered to have suffered encephalitis if an injury meeting the description below of an acute encephalitis occurs within the applicable time period and results in a chronic encephalopathy, as described in paragraph (d) of this section.

(i) *Acute encephalitis.* Encephalitis is indicated by evidence of neurologic dysfunction, as described in paragraph (c)(3)(i)(A) of this section, plus evidence of an inflammatory process in the brain, as described in paragraph (c)(3)(i)(B) of this section.

(A) Evidence of neurologic dysfunction consists of either:

(*1*) One of the following neurologic findings referable to the CNS: Focal cortical signs (such as aphasia, alexia, agraphia, cortical blindness); cranial nerve abnormalities; visual field defects; abnormal presence of primitive reflexes (such as Babinski's sign or sucking reflex); or cerebellar dysfunction (such as ataxia, dysmetria, or nystagmus); or

(*2*) An acute encephalopathy as set forth in paragraph (c)(2)(i) of this section.

(B) Evidence of an inflammatory process in the brain (central nervous system or CNS inflammation) must include cerebrospinal fluid (CSF) pleocytosis (≤5 white blood cells (WBC)/mm^3 in children >2 months of age and adults; >15 WBC/mm3 in children <2 months of age); or at least two of the following:

(*1*) Fever (temperature ≥ 100.4 degrees Fahrenheit);

(*2*) Electroencephalogram findings consistent with encephalitis, such as diffuse or multifocal nonspecific background slowing and periodic discharges; or

(*3*) Neuroimaging findings consistent with encephalitis, which include, but are not limited to brain/spine magnetic resonance imaging (MRI) displaying diffuse or multifocal areas of hyperintense signal on T2-weighted, diffusion-weighted image, or fluid-attenuation inversion recovery sequences.

(ii) Regardless of whether or not the specific cause of the underlying condition, systemic disease, or acute event (including an infectious organism) is known, encephalitis shall not be considered to be a condition set forth in the Table if it is shown that the encephalitis was caused by:

(A) An underlying malignancy that led to a paraneoplastic encephalitis;

(B) An infectious disease associated with encephalitis, including a bacterial, parasitic, fungal or viral illness (such as herpes viruses, adenovirus, enterovirus, West Nile Virus, or human immunodeficiency virus), which may be demonstrated by clinical signs and symptoms and need not be confirmed by culture or serologic testing; or

(C) *Acute disseminated encephalomyelitis (ADEM).* Although early ADEM may have laboratory and clinical characteristics similar to acute encephalitis, findings on MRI are distinct with ADEM displaying evidence of acute demyelination (scattered, focal, or multifocal areas of inflammation and demyelination within cerebral subcortical and deep cortical white matter; gray matter involvement may also be seen but is a minor component); or other conditions or abnormalities that would explain the vaccine recipient's symptoms.

(4) *Intussusception.* (i) For purposes of paragraph (a) of this section, intussusception means the invagination of a segment of intestine into the next segment of intestine, resulting in bowel obstruction, diminished arterial blood supply, and blockage of the venous blood flow. This is characterized by a sudden onset of abdominal pain that may be manifested by anguished crying, irritability, vomiting, abdominal swelling, and/or passing of stools mixed with blood and mucus.

(ii) For purposes of paragraph (a) of this section, the following shall not be considered to be a Table intussusception:

(A) Onset that occurs with or after the third dose of a vaccine containing rotavirus;

(B) Onset within 14 days after an infectious disease associated with intussusception, including viral disease (such as those secondary to non-enteric or enteric adenovirus, or other enteric viruses such as Enterovirus), enteric bacteria (such as Campylobacter jejuni), or enteric parasites (such as Ascaris lumbricoides), which may be demonstrated by clinical signs and symptoms and need not be confirmed by culture or serologic testing;

(C) Onset in a person with a preexisting condition identified as the lead point for intussusception such as intestinal masses and cystic structures (such as polyps, tumors, Meckel's diverticulum, lymphoma, or duplication cysts);

(D) Onset in a person with abnormalities of the bowel, including congenital anatomic abnormalities, anatomic changes after abdominal surgery, and other anatomic bowel abnormalities caused by mucosal hemorrhage, trauma, or abnormal intestinal blood vessels (such as Henoch Scholein purpura, hematoma, or hemangioma); or

(E) Onset in a person with underlying conditions or systemic diseases associated with intussusception (such as cystic fibrosis, celiac disease, or Kawasaki disease).

(5) *Chronic arthritis.* Chronic arthritis is defined as persistent joint swelling with at least two additional manifestations of warmth, tenderness, pain with movement, or limited range of motion, lasting for at least 6 months.

(i) Chronic arthritis may be found in a person with no history in the 3 years prior to vaccination of arthropathy (joint disease) on the basis of:

(A) Medical documentation recorded within 30 days after the onset of objective signs of acute arthritis (joint swelling) that occurred between 7 and 42 days after a rubella vaccination; and

(B) Medical documentation (recorded within 3 years after the onset of acute arthritis) of the persistence of objective signs of intermittent or continuous arthritis for more than 6 months following vaccination; and

(C) Medical documentation of an antibody response to the rubella virus.

(ii) The following shall not be considered as chronic arthritis: Musculoskeletal disorders such as diffuse connective tissue diseases (including but not limited to rheumatoid arthritis, juvenile idiopathic arthritis, systemic lupus erythematosus, systemic sclerosis, mixed connective tissue disease, polymyositis/determatomyositis, fibromyalgia, necrotizing vasculitis and vasculopathies and Sjogren's Syndrome), degenerative joint disease, infectious agents other than rubella (whether by direct invasion or as an immune reaction), metabolic and endocrine diseases, trauma, neoplasms, neuropathic disorders, bone and cartilage disorders, and arthritis associated with ankylosing spondylitis, psoriasis, inflammatory bowel disease, Reiter's Syndrome, blood disorders, or arthralgia (joint pain), or joint stiffness without swelling.

(6) *Brachial neuritis.* This term is defined as dysfunction limited to the upper extremity nerve plexus (*i.e.,* its trunks, divisions, or cords). A deep, steady, often severe aching pain in the

shoulder and upper arm usually heralds onset of the condition. The pain is typically followed in days or weeks by weakness in the affected upper extremity muscle groups. Sensory loss may accompany the motor deficits, but is generally a less notable clinical feature. Atrophy of the affected muscles may occur. The neuritis, or plexopathy, may be present on the same side or on the side opposite the injection. It is sometimes bilateral, affecting both upper extremities. A vaccine recipient shall be considered to have suffered brachial neuritis as a Table injury if such recipient manifests all of the following:

(i) Pain in the affected arm and shoulder is a presenting symptom and occurs within the specified time-frame;

(ii) Weakness:

(A) Clinical diagnosis in the absence of nerve conduction and electromyographic studies requires weakness in muscles supplied by more than one peripheral nerve.

(B) Nerve conduction studies (NCS) and electromyographic (EMG) studies localizing the injury to the brachial plexus are required before the diagnosis can be made if weakness is limited to muscles supplied by a single peripheral nerve.

(iii) Motor, sensory, and reflex findings on physical examination and the results of NCS and EMG studies, if performed, must be consistent in confirming that dysfunction is attributable to the brachial plexus; and

(iv) No other condition or abnormality is present that would explain the vaccine recipient's symptoms.

(7) *Thrombocytopenic purpura.* This term is defined by the presence of clinical manifestations, such as petechiae, significant bruising, or spontaneous bleeding, and by a serum platelet count less than 50,000/mm^3 with normal red and white blood cell indices. Thrombocytopenic purpura does not include cases of thrombocytopenia associated with other causes such as hypersplenism, autoimmune disorders (including alloantibodies from previous transfusions) myelodysplasias, lymphoproliferative disorders, congenital thrombocytopenia or hemolytic uremic syndrome. Thrombocytopenic purpura does not include cases of immune (formerly called idiopathic) thrombocytopenic purpura that are mediated, for example, by viral or fungal infections, toxins or drugs. Thrombocytopenic purpura does not include cases of thrombocytopenia associated with disseminated intravascular coagulation, as observed with bacterial and viral infections. Viral infections include, for example, those infections secondary to Epstein Barr virus, cytomegalovirus, hepatitis A and B, human immunodeficiency virus, adenovirus, and dengue virus. An antecedent viral infection may be demonstrated by clinical signs and symptoms and need not be confirmed by culture or serologic testing. However, if culture or serologic testing is performed, and the viral illness is attributed to the vaccine-strain measles virus, the presumption of causation will remain in effect. Bone marrow examination, if performed, must reveal a normal or an increased number of megakaryocytes in an otherwise normal marrow.

(8) *Vaccine-strain measles viral disease.* This term is defined as a measles illness that involves the skin and/or another organ (such as the brain or lungs). Measles virus must be isolated from the affected organ or histopathologic findings characteristic for the disease must be present. Measles viral strain determination may be performed by methods such as polymerase chain reaction test and vaccine-specific monoclonal antibody. If strain determination reveals wild-type measles virus or another, non-vaccine-strain virus, the disease shall not be considered to be a condition set forth in the Table. If strain determination is not done or if the strain cannot be identified, onset of illness in any organ must occur within 12 months after vaccination.

(9) *Vaccine-strain polio viral infection.* This term is defined as a disease caused by poliovirus that is isolated from the affected tissue and should be determined to be the vaccine-strain by oligonucleotide or polymerase chain reaction. Isolation of poliovirus from the stool is not sufficient to establish a tissue specific infection or disease caused by vaccine-strain poliovirus.

(10) *Shoulder injury related to vaccine administration (SIRVA).* SIRVA manifests as shoulder pain and limited range of motion occurring after the administration of a vaccine intended for intramuscular administration in the upper arm. These symptoms are thought to occur as a result of unintended injection of vaccine antigen or trauma from the needle into and around the underlying bursa of the shoulder resulting in an inflammatory reaction. SIRVA is caused by an injury to the musculoskeletal structures of the shoulder (*e.g.* tendons, ligaments, bursae, etc.). SIRVA is not a neurological injury and abnormalities on neurological examination or nerve conduction studies (NCS) and/or electromyographic (EMG) studies would not support SIRVA as a diagnosis (even if the condition causing the neurological abnormality is not known). A vaccine recipient shall be considered to have suffered SIRVA if such recipient manifests all of the following:

(i) No history of pain, inflammation or dysfunction of the affected shoulder prior to intramuscular vaccine administration that would explain the alleged signs, symptoms, examination findings, and/or diagnostic studies occurring after vaccine injection;

(ii) Pain occurs within the specified time-frame;

(iii) Pain and reduced range of motion are limited to the shoulder in which the intramuscular vaccine was administered; and

(iv) No other condition or abnormality is present that would explain the patient's symptoms (*e.g.* NCS/EMG or clinical evidence of radiculopathy, brachial neuritis, mononeuropathies, or any other neuropathy).

(11) *Disseminated varicella vaccine-strain viral disease.* Disseminated varicella vaccine-strain viral disease is defined as a varicella illness that involves the skin beyond the dermatome in which the vaccination was given and/or disease caused by vaccine-strain varicella in another organ. For organs other than the skin, disease, not just mildly abnormal laboratory values, must be demonstrated in the involved organ. If there is involvement of an organ beyond the skin, and no virus was identified in that organ, the involvement of all organs must occur as part of the same, discrete illness. If strain determination reveals wild-type varicella virus or another, non-vaccine-strain virus, the viral disease shall not be considered to be a condition set forth in the Table. If strain determination is not done or if the strain cannot be identified, onset of illness in any organ must occur 7– 42 days after vaccination.

(12) *Varicella vaccine-strain viral reactivation disease.* Varicella vaccine-strain viral reactivation disease is defined as the presence of the rash of herpes zoster with or without concurrent disease in an organ other than the skin. Zoster, or shingles, is a painful, unilateral, pruritic rash appearing in one or more sensory dermatomes. For organs other than the skin, disease, not just mildly abnormal laboratory values, must be demonstrated in the involved organ. There must be laboratory confirmation that the vaccine-strain of the varicella virus is present in the skin or in any other involved organ, for example by oligonucleotide or polymerase chain reaction. If strain determination reveals

wild-type varicella virus or another, non-vaccine-strain virus, the viral disease shall not be considered to be a condition set forth in the Table.

(13) *Vasovagal syncope.* Vasovagal syncope (also sometimes called neurocardiogenic syncope) means loss of consciousness (fainting) and postural tone caused by a transient decrease in blood flow to the brain occurring after the administration of an injected vaccine. Vasovagal syncope is usually a benign condition but may result in falling and injury with significant sequela. Vasovagal syncope may be preceded by symptoms such as nausea, lightheadedness, diaphoresis, and/or pallor. Vasovagal syncope may be associated with transient seizure-like activity, but recovery of orientation and consciousness generally occurs simultaneously with vasovagal syncope. Loss of consciousness resulting from the following conditions will not be considered vasovagal syncope: organic heart disease, cardiac arrhythmias, transient ischemic attacks, hyperventilation, metabolic conditions, neurological conditions, and seizures. Episodes of recurrent syncope occurring after the applicable time period are not considered to be sequela of an episode of syncope meeting the Table requirements.

(14) *Immunodeficient recipient.* Immunodeficient recipient is defined as an individual with an identified defect in the immunological system which impairs the body's ability to fight infections. The identified defect may be due to an inherited disorder (such as severe combined immunodeficiency resulting in absent T lymphocytes), or an acquired disorder (such as acquired immunodeficiency syndrome resulting from decreased CD4 cell counts). The identified defect must be demonstrated in the medical records, either preceding or postdating vaccination.

(15) *Guillain-Barré Syndrome (GBS).* (i) GBS is an acute monophasic peripheral neuropathy that encompasses a spectrum of four clinicopathological subtypes described below. For each subtype of GBS, the interval between the first appearance of symptoms and the nadir of weakness is between 12 hours and 28 days. This is followed in all subtypes by a clinical plateau with stabilization at the nadir of symptoms, or subsequent improvement without significant relapse. Death may occur without a clinical plateau. Treatment related fluctuations in all subtypes of GBS can occur within nine weeks of GBS symptom onset and recurrence of symptoms after this time-frame would not be consistent with GBS.

(ii) The most common subtype in North America and Europe, comprising more than 90 percent of cases, is acute inflammatory demyelinating polyneuropathy (AIDP), which has the pathologic and electrodiagnostic features of focal demyelination of motor and sensory peripheral nerves and nerve roots. Another subtype called acute motor axonal neuropathy (AMAN) is generally seen in other parts of the world and is predominated by axonal damage that primarily affects motor nerves. AMAN lacks features of demyelination. Another less common subtype of GBS includes acute motor and sensory neuropathy (AMSAN), which is an axonal form of GBS that is similar to AMAN, but also affects the sensory nerves and roots. AIDP, AMAN, and AMSAN are typically characterized by symmetric motor flaccid weakness, sensory abnormalities, and/or autonomic dysfunction caused by autoimmune damage to peripheral nerves and nerve roots. The diagnosis of AIDP, AMAN, and AMSAN requires:

(A) Bilateral flaccid limb weakness and decreased or absent deep tendon reflexes in weak limbs;

(B) A monophasic illness pattern;

(C) An interval between onset and nadir of weakness between 12 hours and 28 days;

(D) Subsequent clinical plateau (the clinical plateau leads to either stabilization at the nadir of symptoms, or subsequent improvement without significant relapse; however, death may occur without a clinical plateau); and,

(E) The absence of an identified more likely alternative diagnosis.

(iii) Fisher Syndrome (FS), also known as Miller Fisher Syndrome, is a subtype of GBS characterized by ataxia, areflexia, and ophthalmoplegia, and overlap between FS and AIDP may be seen with limb weakness. The diagnosis of FS requires:

(A) Bilateral ophthalmoparesis;

(B) Bilateral reduced or absent tendon reflexes;

(C) Ataxia;

(D) The absence of limb weakness (the presence of limb weakness suggests a diagnosis of AIDP, AMAN, or AMSAN);

(E) A monophasic illness pattern;

(F) An interval between onset and nadir of weakness between 12 hours and 28 days;

(G) Subsequent clinical plateau (the clinical plateau leads to either stabilization at the nadir of symptoms, or subsequent improvement without significant relapse; however, death may occur without a clinical plateau);

(H) No alteration in consciousness;

(I) No corticospinal track signs; and

(J) The absence of an identified more likely alternative diagnosis.

(iv) Evidence that is supportive, but not required, of a diagnosis of all subtypes of GBS includes electrophysiologic findings consistent with GBS or an elevation of cerebral spinal fluid (CSF) protein with a total CSF white blood cell count below 50 cells per microliter. Both CSF and electrophysiologic studies are frequently normal in the first week of illness in otherwise typical cases of GBS.

(v) To qualify as any subtype of GBS, there must not be a more likely alternative diagnosis for the weakness.

(vi) Exclusionary criteria for the diagnosis of all subtypes of GBS include the ultimate diagnosis of any of the following conditions: chronic immune demyelinating polyradiculopathy (''CIDP''), carcinomatous meningitis, brain stem encephalitis (other than Bickerstaff brainstem encephalitis), myelitis, spinal cord infarct, spinal cord compression, anterior horn cell diseases such as polio or West Nile virus infection, subacute inflammatory demyelinating polyradiculoneuropathy, multiple sclerosis, cauda equina compression, metabolic conditions such as hypermagnesemia or hypophosphatemia, tick paralysis, heavy metal toxicity (such as arsenic, gold, or thallium), drug-induced neuropathy (such as vincristine, platinum compounds, or nitrofurantoin), porphyria, critical illness neuropathy, vasculitis, diphtheria, myasthenia gravis, organophosphate poisoning, botulism, critical illness myopathy, polymyositis, dermatomyositis, hypokalemia, or hyperkalemia. The above list is not exhaustive.

(d) *Glossary for purposes of paragraph (c) of this section*—(1) *Chronic encephalopathy*—(i) A chronic encephalopathy occurs when a change in mental or neurologic status, first manifested during the applicable Table time period as an acute encephalopathy or encephalitis, persists for at least 6 months from the first symptom or manifestation of onset or of significant aggravation of an acute encephalopathy or encephalitis.

(ii) Individuals who return to their baseline neurologic state, as confirmed by clinical findings, within less than 6 months from the first symptom or manifestation of onset or of significant aggravation of an acute encephalopathy or encephalitis shall not be presumed to have suffered residual neurologic damage from that event; any subsequent chronic encephalopathy shall not be presumed to be a sequela of the acute encephalopathy or encephalitis.

(2) *Injected* refers to the intramuscular, intradermal, or

subcutaneous needle administration of a vaccine.

(3) *Sequela* means a condition or event which was actually caused by a condition listed in the Vaccine Injury Table.

(4) *Significantly decreased level of consciousness* is indicated by the presence of one or more of the following clinical signs:

(i) Decreased or absent response to environment (responds, if at all, only to loud voice or painful stimuli);

(ii) Decreased or absent eye contact (does not fix gaze upon family members or other individuals); or

(iii) Inconsistent or absent responses to external stimuli (does not recognize familiar people or things).

(5) *Seizure* includes myoclonic, generalized tonic-clonic (grand mal), and simple and complex partial seizures, but not absence (petit mal), or pseudo seizures. Jerking movements or staring episodes alone are not necessarily an indication of seizure activity.

(e) *Coverage provisions.* (1) Except as provided in paragraph (e)(2), (3), (4), (5), (6), (7), or (8) of this section, this section applies to petitions for compensation under the Program filed with the United States Court of Federal Claims on or after [EFFECTIVE DATE OF THE FINAL REGULATION.]

(2) Hepatitis B, Hib, and varicella vaccines (Items VIII, IX, and X of the Table) are included in the Table as of August 6, 1997.

(3) Rotavirus vaccines (Item XI of the Table) are included in the Table as of October 22, 1998.

(4) Pneumococcal conjugate vaccines (Item XII of the Table) are included in the Table as of December 18, 1999.

(5) Hepatitis A vaccines (Item XIII of the Table) are included on the Table as of December 1, 2004.

(6) Trivalent influenza vaccines (Included in item XIV of the Table) are included on the Table as of July 1, 2005. All other seasonal influenza vaccines (Item XIV of the Table) are included on the Table as of November 12, 2013.

(7) Meningococcal vaccines and human papillomavirus vaccines (Items XV and XVI of the Table) are included on the Table as of February 1, 2007.

(8) Other new vaccines (Item XVII of the Table) will be included in the Table as of the effective date of a tax enacted to provide funds for compensation paid with respect to such vaccines. An amendment to this section will be published in the **Federal Register** to announce the effective date of such a tax.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–IA–2013–0091; 96300–1671–0000–R4]

RIN 1018–AX84

Endangered and Threatened Wildlife and Plants; Revision of the Section 4(d) Rule for the African Elephant (Loxodonta africana)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are proposing to revise the rule for the African elephant promulgated under section 4(d) of the Endangered Species Act of 1973, as amended (ESA), to increase protection for African elephants in response to the alarming rise in poaching of the species to fuel the growing illegal trade in ivory. The African elephant was listed as threatened under the ESA effective June 11, 1978, and at the same time a rule issued under section 4(d) of the ESA (a ''4(d) rule'') was promulgated to regulate import and use of specimens of the species in the United States. This proposed rule would update the current 4(d) rule with measures that are appropriate for the current conservation needs of the species. We are proposing measures that are necessary and advisable to provide for the conservation of the African elephant as well as appropriate prohibitions from section 9(a)(1) of the ESA. Among other things, we propose to incorporate into the 4(d) rule certain restrictions on the import and export of African elephant ivory contained in the African Elephant Conservation Act (AfECA) as measures necessary and advisable for the conservation of the African elephant. We are not, however, revising or reconsidering actions taken under the AfECA, including our determinations in 1988 and 1989 to impose moratoria on the import of ivory other than sport-hunted trophies from both range and intermediary countries. We are proposing to take these actions under section 4(d) of the ESA to increase protection and benefit the conservation of African elephants, without unnecessarily restricting activities that have no conservation effect or are strictly regulated under other law.

DATES: In preparing the final decision on this proposed rule, we will consider comments received or postmarked on or before September 28, 2015.

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

- *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–HQ–IA–2013–0091, which is the docket number for this rulemaking. You may submit a comment by clicking on ''Comment Now!''
- *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–HQ–IA–2013–0091; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: BPHC; Falls Church, VA 22041.

We will not accept email or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section at the end of **SUPPLEMENTARY INFORMATION** for further information about submitting comments).

FOR FURTHER INFORMATION CONTACT: Craig Hoover, Chief, Wildlife Trade and Conservation Branch, Division of Management Authority; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: IA; Falls Church, VA 22041 (telephone, (703) 358–2093).

SUPPLEMENTARY INFORMATION:

Applicable Laws

In the United States, the African elephant is primarily protected and managed under the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*); the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention) (27 U.S.T. 1087), as implemented in the United States through the ESA; and the African Elephant Conservation Act (AfECA) (16 U.S.C. 4201 *et seq.*).

Endangered Species Act

Under the ESA, species may be listed either as ''threatened'' or as ''endangered.'' When a species is listed as endangered under the ESA, certain actions are prohibited under section 9 (16 U.S.C. 1538), as specified at 50 CFR 17.21. These include prohibitions on take within the United States, within the territorial seas of the United States, or upon the high seas; import; export; sale and offer for sale in interstate or foreign commerce; and delivery, receipt, carrying, transport, or shipment in interstate or foreign commerce in the course of a commercial activity.

The ESA does not specify particular prohibitions and exceptions to those

prohibitions for threatened species. Instead, under section 4(d) of the ESA, the Secretary of the Interior is given the discretion to issue such regulations as deemed necessary and advisable to provide for the conservation of the species. The Secretary also has the discretion to prohibit by regulation with respect to any threatened species any act prohibited under section 9(a)(1) of the ESA for endangered species. Exercising this discretion under section 4(d), the Service has developed general prohibitions (50 CFR 17.31) and established a permit process for specified exceptions to those prohibitions (50 CFR 17.32) that apply to most threatened species. Permits issued under 50 CFR 17.32 must be for ''Scientific purposes, or the enhancement of propagation or survival, or economic hardship, or zoological exhibition, or educational purposes, or incidental taking, or special purposes consistent with the purposes of the [ESA].''

Under section 4(d) of the ESA, the Service may also develop specific prohibitions and exceptions tailored to the particular conservation needs of a threatened species. In such cases, the Service issues a 4(d) rule that may include some of the prohibitions and authorizations set out at 50 CFR 17.31 and 17.32, but that also may be more or less restrictive than the general provisions at 50 CFR 17.31 and 17.32.

Convention on International Trade in Endangered Species of Wild Fauna and Flora

CITES entered into force in 1975, and is currently implemented by 180 countries (called Parties), including the United States. The aim of CITES is to regulate international trade in listed animal and plant species, including their parts and products, to ensure the trade is legal and does not threaten the survival of species. CITES regulates both commercial and noncommercial international trade through a system of permits and certificates that must be presented when leaving and entering a country with CITES specimens. Species are listed in one of three appendices, which provide different levels of protection. In some circumstances, different populations of a species are listed at different levels. Appendix I includes species that are threatened with extinction and are or may be affected by trade. The Convention states that Appendix-I species must be subject to ''particularly strict regulation'' and trade in specimens of these species should only be authorized ''in exceptional circumstances.'' Appendix II includes species that are not necessarily threatened with extinction now, but may become so if international trade is not regulated. Appendix III includes species that a range country has identified as being subject to regulation within its jurisdiction and as needing cooperation of other Parties in the control of international trade.

Import and export of CITES species is prohibited unless accompanied by any required CITES documents. Documentation requirements vary depending on the appendix in which the species or population is listed and other factors. CITES documents cannot be issued until specific biological and legal findings have been made. CITES does not regulate take or domestic trade of listed species. It contributes to the conservation of listed species by regulating international trade and, in order to make the necessary findings, encouraging assessment and analysis of the population status of species in trade and the effects of international trade on wild populations to ensure that trade is legal and does not threaten the survival of the species.

African Elephant Conservation Act

The AfECA was enacted in 1988, to ''perpetuate healthy populations of African elephants'' by regulating the import and export of certain African elephant ivory to and from the United States. Building from and supporting existing programs under CITES, the AfECA called on the Service to establish moratoria on the import of raw and worked ivory from both African elephant range countries and intermediary countries (those that export ivory that does not originate in that country) that failed to meet certain statutory criteria. The statute also states that it does not provide authority for the Service to establish a moratorium that prohibits the import of sport-hunted trophies that meet certain standards.

In addition to authorizing establishment of the moratoria and prohibiting any import in violation of the terms of any moratorium, the AfECA prohibits: The import of raw African elephant ivory from any country that is not a range country; the import of raw or worked ivory exported from a range country in violation of that country's laws or applicable CITES programs; the import of worked ivory, other than certain personal effects, unless the exporting country has determined that the ivory was legally acquired; and the export of all raw (but not worked) African elephant ivory. While the AfECA comprehensively addresses the import of ivory into the United States, it does not address other uses of ivory or African elephant specimens other than ivory and sport-hunted trophies. The AfECA does not regulate the use of ivory within the United States and, other than the prohibition on the export of raw ivory, does not regulate export of ivory from the United States. The AfECA also does not regulate the import or export of live African elephants.

Regulatory Background

Ghana first listed the African elephant in CITES Appendix III on February 26, 1976. Later that year, the CITES Parties agreed to add African elephants to Appendix II, effective February 4, 1977. In October 1989, all populations of African elephants were transferred from CITES Appendix II to Appendix I (effective in January 1990), which ended much of the previous legal commercial trade in African elephant ivory.

In 1997, based on proposals submitted by Botswana, Namibia, and Zimbabwe and the report of a Panel of Experts (which concluded, among other things, that populations in these countries were stable or increasing and that poaching pressure was low) the CITES Parties agreed to transfer the African elephant populations in these three countries to CITES Appendix II. The Appendix-II listing included an annotation that allowed noncommercial export of hunting trophies, export of live animals to appropriate and acceptable destinations, export of hides from Zimbabwe, and noncommercial export of leather goods and some ivory carvings from Zimbabwe. It also allowed for a one-time export of raw ivory to Japan (which took place in 1999), once certain conditions had been met. All other African elephant specimens from these three countries were deemed to be specimens of a species listed in Appendix I and regulated accordingly.

The population of South Africa was transferred from CITES Appendix I to Appendix II in 2000, with an annotation that allowed trade in hunting trophies for noncommercial purposes, trade in live animals for reintroduction purposes, and trade in hides and leather goods. (At that time, the Panel of Experts reviewing South Africa's proposal concluded, among other things, that South Africa's elephant population was increasing, that there were no apparent threats to the status of the population, and that the country's anti-poaching measures were ''extremely effective.'') Since then, the CITES Parties have revised the Appendix-II listing annotation three times. The current annotation, in place since 2007, covers the Appendix-II populations of Botswana, Namibia, South Africa, and Zimbabwe and allows export of: Sport-hunted trophies for

noncommercial purposes; live animals to appropriate and acceptable destinations; hides; hair; certain ivory carvings from Namibia and Zimbabwe for noncommercial purposes; and a one-time export of specific quantities of raw ivory, once certain conditions had been met (this export, to China and Japan, took place in 2009). As in previous versions of the annotation, all other African elephant specimens from these four populations are deemed to be specimens of species included in Appendix I and the trade in them is regulated accordingly.

The African elephant was listed as threatened under the ESA, effective June 11, 1978 (43 FR 20499, May 12, 1978). A review of the status of the species at that time showed that the African elephant was declining in many parts of its range and that habitat loss, illegal killing of elephants for their ivory, and inadequacy of existing regulatory mechanisms were factors contributing to the decline. At the same time the African elephant was designated as a threatened species, the Service promulgated a 4(d) rule to regulate import and certain interstate commerce of the species in the United States (43 FR 20499, May 12, 1978).

The 1978 4(d) rule for the African elephant stated that the prohibitions at 50 CFR 17.31 applied to any African elephant, alive or dead, and to any part, product, or offspring thereof, with certain exceptions. Specifically, under the 1978 rule, the prohibition at 50 CFR 17.31 against importation did not apply to African elephant specimens that had originated in the wild in a country that was a Party to CITES if they had been exported or re-exported in accordance with Article IV of the Convention, and had remained in customs control in any country not party to the Convention that they transited *en route* to the United States. (At that time, the only African elephant range States that were Parties to CITES were Botswana, Ghana, Niger, Nigeria, Senegal, South Africa, and Zaire [now the Democratic Republic of the Congo].) The 1978 rule allowed for a special purpose permit to be issued in accordance with the provisions of 50 CFR 17.32 to authorize any activity otherwise prohibited with regard to the African elephant, upon submission of proof that the specimens were already in the United States on June 11, 1978, or that the specimens were imported under the exception described above.

The 4(d) rule has been amended twice in response to changes in the status of African elephants and the illegal trade in elephant ivory, and to more closely align U.S. requirements with actions taken by the CITES Parties. On July 20, 1982, the Service amended the 4(d) rule for the African elephant (47 FR 31384) to ease restrictions on domestic activities and to more closely align its requirements with provisions in CITES Resolution Conf. 3.12, *Trade in African elephant ivory,* adopted by the CITES Parties at the third meeting of the Conference of the Parties (CoP3, 1981). The 1982 rule applied only to import and export of ivory (and not other elephant specimens) and eliminated the prohibitions under the ESA against taking, possession of unlawfully taken specimens, and certain activities for the purpose of engaging in interstate and foreign commerce, including the sale and offer for sale in interstate commerce of African elephant specimens. At that time, the Service concluded that the restrictions on interstate commerce contained in the 1978 rule were unnecessary and that the most effective means of utilizing limited resources to control ivory trade was through enforcement efforts focused on imports.

Following enactment of the AfECA (in October 1988), the Service established, on December 27, 1988, a moratorium on the import into the United States of African elephant ivory from countries that were not parties to CITES (53 FR 52242). On February 24, 1989, the Service established a second moratorium on all ivory imports into the United States from Somalia (54 FR 8008). On June 9, 1989, the Service put in place the current moratorium, which bans the import of ivory other than sport-hunted trophies from both range and intermediary countries (54 FR 24758).

The 4(d) rule was revised on August 10, 1992 (57 FR 35473), following establishment of the 1989 moratorium under the AfECA on the import of African elephant ivory into the United States, and again on June 26, 2014 (79 FR 30400, May 27, 2014), associated with the update of U.S. CITES implementing regulations. In the 2014 revision of the 4(d) rule, we removed the CITES marking requirements for African elephant sport-hunted trophies. At the same time, these marking requirements were updated and incorporated into our CITES regulations at 50 CFR 23.74. The purpose of this change was to make clear what is required under CITES (at 50 CFR part 23) for trade in sport-hunted trophies and what is required under the ESA (at 50 CFR part 17).

Need for Regulatory Actions

We have reevaluated the provisions of the 4(d) rule and considered other administrative actions in response to unprecedented increases in the illegal killing of elephants, an alarming growth in illegal trade of elephant ivory, recommendations adopted by the CITES Parties in March 2013 to help curb the illegal killing and illegal trade, issuance of Executive Order 13648 on Combating Wildlife Trafficking in July 2013, and the stated priorities in the National Strategy for Combating Wildlife Trafficking, issued by President Obama in February 2014.

Illegal Killing of Elephants and Illegal Ivory Trade

The increase in poaching of elephants and the escalation of the illegal trade in ivory are described in documents made available at CoP16. See, in particular, CoP16 Doc. 53.1, *Monitoring the illegal killing of elephants* (including the Addendum); CoP16 Doc. 53.2.2, *Monitoring of illegal trade in ivory and other elephant specimens;* and *Elephants in the Dust—the African Elephant Crisis,* all available at *http://www.cites.org. Status of African elephant populations and levels of illegal killing and the illegal trade in ivory: A report to the African Elephant Summit, December 2013* (also available at *http://www.cites.org*) provides an update to information presented at CoP16. A further update on the status of African elephants was prepared for the 65th meeting of the CITES Standing Committee (SC65), in July 2014, and presented in Annex 1 to document SC65 Doc. 42.1, *Elephant conservation, illegal killing and ivory trade.*

CoP16 Doc. 53.1 and its Addendum (prepared by the CITES Secretariat), the December 2013 report for the African Elephant Summit (prepared by the CITES Secretariat, the International Union for Conservation of Nature (IUCN), and TRAFFIC, the Wildlife Trade Monitoring Network), and Annex 1 to SC65 Doc. 42.1 (prepared by the IUCN/Species Survival Commission Asian and African Elephant Specialists Groups, the CITES Secretariat, the United Nations Environment Programme's World Conservation Monitoring Centre (UNEP–WCMC), and TRAFFIC) provide analyses of trends in levels of illegal killing of elephants based on data from the CITES Monitoring the Illegal Killing of Elephants (MIKE) program. MIKE is a site-based monitoring system intended to measure levels and trends in the illegal killing of elephants and to determine changes in these trends over time. Data are collected by ranger patrols and others at established MIKE sites and reported to the CITES Secretariat. The reports in CoP16 Doc. 53.1 and its Addendum contain analyses of data collected between 2002

and 2011, from more than 40 MIKE sites across Africa. The report prepared for the African Elephant Summit in December 2013 contains an updated MIKE analysis using 2012 data, and the report in the Annex to SC65 Doc. 42.1 contains a further updated MIKE analysis using data collected through 2013. The data set used for the most recent analysis (in SC65 Doc. 42.1) consists of 12,073 records of elephant carcasses found between 2002 and the end of 2013, at 53 MIKE sites in 29 countries across Africa.

MIKE data are used to evaluate relative poaching levels based on the Proportion of Illegally Killed Elephants (PIKE), which is calculated as the number of illegally killed elephants found divided by the total number of elephant carcasses encountered by patrols or other means, aggregated by year for each site. The data in these reports show a steady increase in levels of illegal killing starting in 2006, with 2011 having the highest levels of poaching since MIKE records began in 2002. In 2012 and 2013, there appears to be a gradual decline, with 2013 levels close to those recorded in 2010. Despite the decline since 2011, poaching levels overall remain alarmingly high, with nearly two-thirds of dead elephants found in 2013 deemed to have been illegally killed. These reports state that the PIKE levels translate to 17,000 elephants killed at African MIKE sites in 2011, and 15,000 elephants killed at African MIKE sites in 2012. These numbers were estimated using models. The authors of the 2014 report prepared for SC65 note that it was not possible to derive an estimate for 2013 using the same method as in previous years because some of the required covariates for 2013 were not yet available. However, the authors provide a ''preliminary and rough calculation'' using a different method that estimates more than 14,000 elephants were killed at MIKE sites in 2013. The authors stress that this estimate must be treated with caution, but they state that ''there are good reasons to believe that the number of elephants illegally killed in Africa in 2013 ran, as in previous years, into the tens of thousands, perhaps in the order of 20 to 22 thousand.''

A joint press release, issued by the CITES Secretariat, IUCN, and TRAFFIC International on December 2, 2013, at the opening of the African Elephant Summit in Gabarone, Botswana, asserted that the figures for MIKE sites amount to an estimated 25,000 elephants killed illegally across Africa in 2011, and 22,000 killed illegally in 2012. Others have suggested that the numbers killed continent-wide are likely even higher. The statistical model used to evaluate MIKE data estimates that the ''threshold of sustainability'' at MIKE sites was crossed in 2010, with poaching rates remaining above the population growth rate of 4 to 5 percent for healthy elephant populations every year since.

A recent study, published in the Proceedings of the National Academy of Sciences (in July 2014), reaffirmed these assertions. Wittemyer et al. (2014) used MIKE data to analyze the impacts of illegal killing on elephant populations across the African continent, using two different approaches. The results demonstrate ''an over-harvest driven decline in African elephants likely began in 2010.'' The authors assumed an average annual population increase in the absence of illegal killing of 4.2 percent. They estimated that illegal killing rates averaged about 6.8 percent between 2010 and 2012, which the authors estimate corresponds to more than 33,000 elephants killed per year (based on current population estimates). They also noted that preliminary data for 2013 suggest regional and continental levels were slightly lower than for 2012, but still unsustainable.

CoP16 Doc. 53.2.2 and Annex 1 to SC65 Doc. 42.1 contain reports, prepared by TRAFFIC, on data in the CITES Elephant Trade Information System (ETIS). ETIS is a system for collecting and compiling law enforcement data on seizures and confiscations in order to monitor the pattern and scale of illegal trade in elephant specimens. TRAFFIC receives seizure and confiscation data from CITES Parties, manages and coordinates the ETIS system, and produces a comprehensive report for meetings of the CoP and updates for meetings of the Standing Committee.

The report in CoP16 Doc. 53.2.2 covers the period 1996 through 2011, and the report in SC65 Doc. 42.1 covers the period 1996 through 2012 (data for 2013 were not yet complete when the report was prepared). The data set used for the analysis presented in SC65 Doc. 42.1 includes 14,070 separate raw or worked ivory seizure records from 72 countries or territories during 1996–2012. Using 1998 as a baseline (because it is the first full year after some populations of African elephant were transferred from Appendix I to Appendix II and, at the same time, the development of monitoring systems, including ETIS, was mandated by the Parties), the reports examine trends in both the frequency of illegal ivory trade transactions and the scale of the illegal trade in ivory.

Illegal trade activity (frequency of transactions) remained at or slightly above 1998 levels up to 2006. In 2006, a gradual increase in activity began and grew with each successive year, with a ''major surge'' in 2011. The authors report that the frequency of illegal ivory trade transactions in 2011 represented ''a three-fold increase in illegal trade activity since 1998.''

The scale of illegal trade was assessed by evaluating the weight of ivory traded illegally. The authors caution that there is more uncertainty in evaluating the weight of ivory in illegal trade than in evaluating the frequency of illegal transactions, but the trend is clear. Like the trend in frequency of transactions, there was relative stability in the weight of ivory in illegal trade through 2007, followed by a sharp increase in the following years. The authors estimate that the quantity of illegal ivory in trade in 2011, measured by weight, was nearly three times 1998 levels, and, although 2012 data show a slight decrease compared to 2011, levels in 2012 represent a value that is about two and a half times the 1998 levels. This upward trend reflects a major increase in large consignments of ivory (over 100 kg) in illegal trade, which, the authors note, points to the increasing involvement of international criminal syndicates. In its 2014 report to SC65, TRAFFIC states that the frequency of large-scale ivory seizures has increased greatly since 2000, and that the ''upward surge in the weight of ivory seized from 2009 through 2012 has been primarily driven by increased seizures in the large ivory weight class.'' Although 2013 data were not complete when the report was written and, therefore, were not included in the analysis, the authors note that the 18 seizures made in 2013 for which they had data ''collectively constitute the greatest quantity of ivory derived from large-scale seizure events going back to 1989.''

Elephants in the Dust—the African Elephant Crisis is a report commissioned by the CITES Secretariat through its MIKE program and prepared by UNEP, the CITES Secretariat, IUCN, and TRAFFIC for presentation at CoP16. This report highlights the long-term threats to African elephants posed by habitat loss due to human population growth and large-scale conversion of land for agriculture. It also raises alarm at the added impact of the increasing poaching levels on elephant populations, not only in central Africa but also in previously secure areas of east, west, and southern Africa. Both the TRAFFIC report to CoP16 and *Elephants in the Dust* conclude that elephants are

facing the most serious conservation crisis since 1989, when the African elephant was transferred from CITES Appendix II to Appendix I. The poaching of African elephants to supply international demand for ivory has reached unprecedented levels, and opportunistic poaching has been replaced by coordinated slaughter commissioned by organized networks or syndicates.

The CITES Parties have taken steps to address the growing illegal trade in ivory, including, at CoP16, calling on countries to ensure that they have comprehensive measures in place to regulate the domestic trade in raw and worked ivory. At SC65, the Standing Committee took steps to hold countries that have been identified as being significantly involved in illegal ivory trade (either as source, transit, or destination countries for illegal ivory) accountable. Identified countries that fail to take actions to resolve problems by the agreed deadlines may be subject to CITES trade sanctions.

U.S. Involvement in the Illegal Ivory Trade

Demand for ivory is driving the current poaching crisis. Although the primary markets are in Asia, particularly in China and Thailand, the United States continues to play a role as a destination and transit country for illegally traded elephant ivory. Service wildlife inspectors stationed at major U.S. ports intercept smuggled wildlife and ensure that wildlife importers and exporters comply with declaration, permit, and other requirements for international trade in elephants and other wildlife species. Over the years, seizures of unlawfully imported and exported elephant specimens at U.S. ports have ranged from whole elephant tusks and large ivory carvings to knife handles, jewelry made from ivory or hair, and tourist souvenirs including items made from elephant feet and bones. The Service provides seizure data to TRAFFIC annually for inclusion in the CITES ETIS database. Since 1990, the annual number of seizure cases involving elephant specimens at U.S. ports has ranged from over 450 (in 1990) to 60 (in 2008); in most other years the number falls between 75 and 250 cases. In 2012, the most recent year for which we have complete data, there were about 225 seizure cases involving elephant specimens, which resulted in seizure of over 1,500 items that contained or consisted of elephant parts or products. Nearly 1,000 of those items contained or consisted of elephant ivory. (About 300 of the items were elephant hairs.)

Service special agents have investigated multiple smuggling operations involving the trafficking of elephant ivory for U.S. markets. Some examples of major investigations are provided here. In September 2012, the owner of a Philadelphia African art store was arrested and pleaded guilty to smuggling African elephant ivory into the United States. Approximately one ton of elephant ivory was seized from his store; it was the largest ivory seizure in U.S. history. According to the indictment, the art store owner paid a co-conspirator to travel to Africa to purchase raw elephant ivory and have it carved to his specifications and stained or dyed so that the carvings would appear old. He sold the carvings at his store in Philadelphia and elsewhere in the United States as ''antiques.''

The arrest in Philadelphia was an outgrowth of a multi-year investigation that documented over 20 shipments of newly carved elephant ivory smuggled into the United States in air and ocean cargo from Cameroon, Ivory Coast, Nigeria, and Uganda. The smuggled ivory came into the country through New Jersey and New York, and was distributed to collectors and retailers across the United States, including to Chicago, Houston, Memphis, New York City, Philadelphia, and Trenton. A total of 10 individuals were charged and later convicted as part of this investigation. Much of the ivory in this case was sent via parcel accompanied by fraudulent shipping and customs documents, and disguised with clay and other substances to look like musical instruments and wooden statues.

Service investigators teamed with officers from the New York Department of Environmental Conservation to probe illegal ivory sales by a New York City jeweler distributor and two Manhattan retailers. This investigation documented a booming and unauthorized trade in ivory. Prosecutions were pursued by the Attorney General for the State of New York based on violations of State laws regulating the sale of elephant ivory. The stores prosecuted paid $50,000 in fines and forfeited over one ton of elephant ivory (which was destroyed at the Service's ''ivory crush'' described below). The distributor forfeited 70 pounds of elephant ivory valued at $30,000 and paid $10,000 in restitution.

Service special agents worked with the Thai Royal Police to secure the 2010 U.S. indictment of two businessmen (the owner of a Los Angeles area donut shop and a Thai trafficker) and four arrests in Thailand in a case that exposed transcontinental trafficking in elephant ivory. Over the course of this 5-year undercover investigation, officers showed that ivory was being smuggled from Africa into Thailand by Thai operatives who then sold it to clients in the United States and other countries. The investigation began in 2006, when Service wildlife inspectors conducting an inspection ''blitz'' at the international mail facility in Los Angeles intercepted a package of elephant ivory that had been mailed from Thailand to a U.S. business and labeled as toys. The U.S. defendant pleaded guilty to Federal charges.

Operation Scratchoff was a multi-year investigation, launched by the Service in New York in 2006. It documented and disrupted the illegal activities of both international smugglers who were bringing ivory into the country from Africa and U.S. retailers involved in this black market trade. Special agents documented smuggled ivory entering the United States from Cameroon, Gabon, Ghana, Ivory Coast, Kenya, Nigeria, and Uganda. Most of the ivory smuggled by defendants in this case was shipped from Africa via mail parcel through John F. Kennedy International Airport. The shipments were accompanied by fraudulent shipping and customs documents identifying their contents as African wooden handicrafts or wooden statues. The ivory itself was painted to look like wood; covered with clay; or hidden inside wooden handicrafts, such as traditional African musical instruments. Work on this investigation resulted in the arrest and conviction of eight individuals in the United States on felony smuggling and/or Lacey Act (16 U.S.C. 3371 *et seq.*) charges with final sentencing in 2010 and 2011. Prison terms for five of these defendants, which included a 33-month sentence for one, totaled more than 7 years. Operation Scratchoff also led to the arrest in January 2010 of an ivory supplier in Uganda by Ugandan authorities, and the identification of additional ivory trafficking suspects.

In 2008, a Canadian citizen was sentenced to 5 years in prison and ordered to pay a $100,000 fine for illegally smuggling ivory from Cameroon into the United States for sale here. The perpetrator operated art import and export businesses in Montreal, Canada and in Cameroon that were fronts for smuggling products made from protected wildlife species, including raw elephant ivory. She ran a sophisticated smuggling operation that utilized local artists and craftsmen in Cameroon, operatives within international shipping companies, contacts in the illegal ivory trade, her business in Canada, and partners in three countries. Two of her shipments,

sent to Ohio, included fresh ivory from more than 20 recently killed elephants.

In 2006, Service special agents secured a 20-count criminal indictment against Primitive Art Works, a Chicago art gallery specializing in high-end exotic artifacts from around the world, and its two owners for smuggling elephant ivory and products made from other protected species into the United States. The Service seized over 1,000 ivory carvings and tusks from the defendants, who were asking as much as $50,000 a piece for these items. Both owners pleaded guilty to wildlife violations later that year.

In 2001, during Operation Loxa, Service officers in Los Angeles intercepted more than 250 pounds of smuggled African elephant ivory, the largest ivory seizure ever on the west coast of the United States. The two shipments, which were smuggled from Nigeria, were declared to customs as handcrafted furniture. The ivory included whole tusks and pieces hidden inside furniture and concealed in beaded cloth. Four individuals were arrested and indicted for conspiracy to smuggle elephant ivory into the United States. Three of them were convicted.

Service special agents have also investigated cases involving smuggling of elephant ivory out of the United States to other markets, particularly in Asia. In an investigation, known as Operation Crash, an Asian antique dealer was convicted for his role in the conspiracy to smuggle items made from elephant ivory and rhinoceros horn valued at over $1,000,000. The investigation revealed that this individual worked in the United States as a buyer for four different Asian dealers, who were purchasing numerous ivory carvings from auction houses in the United States. After purchasing the ivory at auctions, the antique dealer smuggled the ivory (through the mail) to various locations in Hong Kong, using false declarations to avoid export controls.

In 2011, a Chinese national was intercepted at John F. Kennedy International Airport prior to boarding a plane to Shanghai, China. Service investigators found 18 elephant ivory carvings concealed in his luggage. This individual was an Asian art dealer who purchased the carvings at various U.S. auction houses during a week-long buying trip. Upon arrest, he told agents that he wrapped the ivory carvings in tin foil to avoid x-ray detection.

At auctions in the United States, Service law enforcement officers have documented foreign buyers placing absentee bids on wildlife items, including those made from African elephant ivory. In some cases, the ivory items are smuggled directly to the foreign buyers. In many instances, however, the foreign buyers employ couriers with residences in the United States to collect the elephant ivory and smuggle it overseas on their behalf. We are concerned that foreign ivory buyers and couriers view the United States as a significant source and market for elephant ivory.

In November 2013, the Service destroyed nearly six tons of contraband African and Asian elephant ivory that had been either seized at U.S. ports or as part of law enforcement investigations over the past 25 years for violation of wildlife laws. We crushed this contraband ivory, which had been stored at the Service's National Wildlife Property Repository, to raise public awareness about the current African elephant poaching crisis and to send a clear message that the United States will not tolerate ivory trafficking and the toll it is taking on wild elephant populations. The six tons of ivory crushed in 2013 underscores the continuing U.S. role in the illegal market and the need for us to take further actions to curtail that role.

There is also a legal market for ivory within the United States. We do not have comprehensive information on the U.S. domestic ivory market. *Tackling the Ivories,* a 2004 report by Douglas Williamson for TRAFFIC North America, described the status of U.S. trade in elephant and hippopotamus ivory. At that time, the author noted that ''as one of the world's largest markets for wildlife products, the [United States] has long played a significant role in the international ivory trade.'' He concluded that the ivory trade within the United States was not closely monitored and that its full extent was unknown. In addition to ivory available from retail outlets, he noted that there was ''significant trade conducted via the internet, with little oversight.'' The domestic trade involved both raw and worked ivory. Worked ivory was readily available in the form of carvings, jewelry, piano keys, and other items. Raw ivory was bought by companies and individuals to be fashioned into specialty items including knife handles, gun grips, and pool cues. Along with legal trade, Williamson found evidence of illegal trade, including internet sellers in China that routinely shipped ivory to the United States, via express delivery service, and offered to falsely label the shipments as ''bone carvings.''

In a 2006–2007 survey of selected metropolitan areas across the United States, Martin and Stiles (2008) identified retail establishments trading in worked ivory, including ivory from African elephants. In each area surveyed, the surveyors visited major flea markets, antique markets, main shopping areas for antiques and crafts, department stores, and luxury hotel gift shops. The study does not identify all establishments trading in ivory, but gives a general idea of the number of establishments and geographic scope. In the 16 areas surveyed, the authors identified a total of 652 retail outlets offering a total of more than 23,000 ivory products for sale. Of the areas surveyed, those with the most retail outlets and the greatest number of ivory products for sale were: New York City (124 retail outlets containing a total of 11,376 ivory products); San Francisco Bay area (40 retail outlets containing a total of 2,777 ivory products); and greater Los Angeles (170 retail outlets containing a total of 2,605 ivory products). Martin and Stiles estimated that as much as one-third of the items they found were imported illegally after the 1989 AfECA import moratorium.

In March and April of 2014, one of the authors of the 2008 study conducted a follow-up survey (Stiles 2015) in Los Angeles and San Francisco, California. He found a total of more than 1,250 ivory items offered for sale by 107 vendors in these two California cities, ''with 777 items and 77 vendors in Los Angeles and well over 473 ivory items and 30 vendors in San Francisco.'' While there were ''significantly fewer venders'' offering ivory for sale, compared to the 2006–2007 survey, Stiles noted ''a much higher incidence of what appears to be ivory of recent manufacture in California, roughly doubling from approximately 25% in 2006 to about half in 2014. In addition, many of the ivory items seen for sale in California advertised as antiques (*i.e.,* more than 100 years old) appear to be more likely from recently killed elephants.''

Basis for Regulatory Changes and Necessary and Advisable Determination

It is often impossible to distinguish ivory legally imported into the United States from that which has been smuggled into the country, which significantly undermines enforcement efforts and provides an opportunity for illegal ivory to be laundered through U.S. markets. In addition, U.S. citizens may be involved in the global ivory market with ivory that has never been imported into the United States. The Service has reevaluated our domestic controls, given the current poaching crisis in Africa and the associated increase in illegal trade in ivory, the

recent CITES recommendations, and evidence that substantial quantities of illegal ivory are making their way into U.S. markets. We have determined that it is appropriate to take certain regulatory actions, including revision of the 4(d) rule as necessary and advisable for the conservation of the species and to include certain prohibitions from section 9(a)(1) of the ESA, to more strictly regulate U.S. trade in ivory. The proposed revisions would regulate import, export, and commercial use of African elephant ivory and sport-hunted trophies and appropriately protect live elephants within the United States, while including certain limited exceptions for items and activities that we do not believe, based on all available evidence, are contributing to the poaching of elephants in Africa, including trade in live animals, parts and products other than ivory, and certain manufactured items containing ivory that meet specific criteria.

These new restrictions would facilitate enforcement efforts within the United States and improve regulation of both domestic and foreign trade in elephant ivory by U.S. citizens. Improved domestic controls will make it more difficult to launder illegal elephant ivory through U.S. markets, which will contribute to a reduction in poaching of African elephants.

This proposed action is consistent with Executive Order 13648 on Combating Wildlife Trafficking signed by President Obama on July 1, 2013, to ''address the significant effects of wildlife trafficking on the national interests of the United States.'' The Executive Order calls on executive departments and agencies to take all appropriate actions within their authority to ''enhance domestic efforts to combat wildlife trafficking, to assist foreign nations in building capacity to combat wildlife trafficking, and to assist in combating transnational organized crime.'' Increased control of the U.S. market for elephant ivory is also among the administrative actions called for in the National Strategy for Combating Wildlife Trafficking, issued by President Obama on February 11, 2014. Director's Order No. 210, issued by the Director of the U.S. Fish and Wildlife Service, established policy and procedures for the Service to follow in implementing the National Strategy with regard to trade in African elephant ivory and parts and products of other ESA-listed species.

This proposal is also in line with international efforts. At CoP16, in March 2013, the CITES Parties adopted a revised resolution on trade in elephant specimens (Resolution Conf. 10.10 (Rev. CoP16)), which, among other things, urges Parties with a legal domestic ivory market to ensure that they have in place ''comprehensive internal legislative, regulatory, enforcement and other measures to regulate the domestic trade in raw and worked ivory.'' Wittemyer et al. (2014) concluded that it is obvious that stemming the rate of illegal killing of elephants is paramount. They call for a global response, including heavy *in situ* conservation efforts, enforcement of end-use markets, and curbing demand to reduce black market prices for ivory and ''alleviate the unsustainable pressure from illegal killing on wild populations.''

In developing this proposed rule, we have also considered the provisions already in place for protection of African elephants under CITES, the AfECA, and the guidance provided in Director's Order No. 210. Provisions for African elephants under CITES and the AfECA can help to address current threats to the species, but the ESA can reach activities that are not regulated under these other laws. For each type of activity and specimen, the available protections provided through the combination of all applicable laws are analyzed to explain why the overall proposed regulatory framework is appropriate for the conservation of this species.

General Provisions

We are proposing to revise the 4(d) rule for the African elephant, in 50 CFR 17.40(e), so that all of the provisions at 50 CFR 17.31 and 17.32 would apply unless specifically indicated otherwise in the rule. Any activity that would be prohibited or exempted under 50 CFR 17.31 and any activity that would require authorization under 50 CFR 17.32 would be regulated as indicated in those sections except as provided in this proposed rule. This legal framework provides far greater protections for African elephants compared to the current rule, which regulates only certain import to and export from the United States; possession, sale, offer for sale, transport, and similar activities with any African elephant specimen illegally imported into the United States; and sale or offer for sale of any sport-hunted trophy imported into the United States in violation of a permit condition. The protections that would be offered to African elephants through this proposed rule and reasons each of the measures is appropriate for the conservation of the species are explained below.

Nothing in this rule would affect other legal requirements applicable to African elephants and their parts and products under other laws such as the AfECA and CITES. For example, while an import into the United States that met all standards as a noncommercial transshipment under section 10(i) of the ESA would not be a violation of the ESA, it would remain a violation of the import moratorium under the AfECA. In addition, any person importing or exporting African elephants or their parts and products to or from the United States would need to comply with all applicable CITES requirements beyond what are described in this proposed rule, as well as the general wildlife import/export requirements found at 50 CFR part 14 and general permitting requirements in 50 CFR part 13. These additional requirements, when applicable, are noted in the text of the rule.

Take of Live Elephants

The current 4(d) rule does not regulate the taking of live African elephants. Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct, an ESA-protected species and therefore includes both lethal and certain non-lethal effects on protected wildlife. Under the proposed rule, the taking of any live African elephant would be prohibited within the United States, within the U.S. territorial sea, or upon the high seas (with the latter two acts possibly occurring during transport of a live elephant, such as during transport to or from the United States). Take of endangered or threatened species is not regulated under the ESA beyond these geographic areas, so this change to the 4(d) rule would not have any effect on the ability of U.S. citizens to travel to countries that allow hunting of African elephants and engage in sport hunting. However, the import of any associated sport-hunted trophy into the United States would be regulated as described below. For any African elephant held in captivity within the United States, take would not include animal husbandry practices that meet minimum standards under the Animal Welfare Act (AWA; 7 U.S.C. 2131 *et seq.*), breeding procedures, and veterinary care that is not likely to result in injury to the elephant. (See the definition of ''harass'' at 50 CFR 17.3.) Therefore this new restriction would not affect routine procedures for care of African elephants that are held in zoos and similar facilities in the United States. This prohibition is the same as the prohibition on take of Asian elephants, which has been in place since the Asian elephant was listed under the ESA in 1976.

The proposed rule would help to ensure that elephants held in captivity receive an appropriate standard of care. Any activities that qualify as take, including those beyond the standard veterinary care, breeding procedures, and AWA care standards described in the definition of ''harass,'' would have to qualify for one of the purposes that allow for issuance of a threatened species permit under 50 CFR 17.32. While the taking of live African elephants held in captivity within the United States or being transported is not a threat to the species, including a prohibition against take, even for species that are not native to the United States, is a standard protection for threatened species and ensures an adequate level of care for wildlife held in captivity.

Interstate and Foreign Commerce

The current 4(d) rule for the African elephant does not regulate sale or offer for sale in interstate or foreign commerce or delivery, receipt, carrying, transport, or shipment in interstate or foreign commerce in the course of a commercial activity of African elephants (including live animals, parts and products, and sport-hunted trophies). The only commercial activities regulated under the current 4(d) rule are possession, sale or offer for sale, and receipt, delivery, transport, or shipment of African elephants (including parts and products) that were illegally imported into the United States and sale or offer for sale of any sport-hunted trophy imported into the United States in violation of a permit condition. These restrictions will remain in place through the ESA section 9(c)(1) prohibition on possession of any CITES specimen that was imported or exported contrary to the Convention, prohibitions under the Lacey Act (16 U.S.C. 3371 *et seq.*), and ESA section 11 penalties for violations of ESA or CITES permit conditions. We propose to allow continued sale or offer for sale in interstate or foreign commerce and delivery, receipt, carrying, transport, or shipment in interstate or foreign commerce in the course of a commercial activity of live animals and African elephant parts and products other than ivory and sport-hunted trophies without a threatened species permit.

The poaching crisis is driven by demand for elephant ivory. There is no information to indicate that commercial activities involving live elephants or commercial use of elephant parts and products other than ivory has had any effect on the rates or patterns of illegal killing of elephants and the illegal trade in ivory. Live animals are occasionally removed from the wild and placed in captivity, often from populations in small management areas where there have been local over-population issues and consequent negative impacts to habitat. African elephant parts other than ivory (such as hides) that are commercialized generally become available when animals are culled for management purposes, during salvage of animals poached for their ivory, or when problem animals have to be killed. African elephants are not killed primarily for their hides or for parts other than ivory. In addition, the import and export of live African elephants and parts and products are regulated under CITES and other U.S. law. This includes import into and export from the United States for both commercial and noncommercial purposes. It is only commercial activity associated with interstate or foreign commerce not involving import or export that would not be regulated. We have no information indicating that such commercial activity is having any effect on the conservation status of African elephants. Requiring individuals to obtain a threatened species permit under 50 CFR 17.32 when the removal of a small number of live elephants or the incidental harvest of their hides or hair has no negative impact on the species would provide no meaningful protective measures for African elephants, especially when activities that also involve import or export to or from the United States are already regulated under CITES. For these reasons, we have determined that it is not necessary to propose restrictions on commercial activities in interstate or foreign commerce with live African elephants, leather goods, and other African elephant non-ivory parts and products.

We do, however, propose to prohibit sale or offer for sale of ivory in interstate or foreign commerce and delivery, receipt, carrying, transport, or shipment of ivory in interstate or foreign commerce in the course of a commercial activity, with some exceptions, and to prohibit the same commercial activities with sport-hunted African elephant trophies. ''Foreign commerce'' is defined in section 3 the ESA (16 U.S.C. 1532(9)). ''Commercial activity'' as used in the term ''in the course of a commercial activity'' is also defined in section 3 the ESA and means ''all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling'' (16 U.S.C. 1532(2)). The Service has defined ''industry or trade'' at 50 CFR 17.3 to mean ''the actual or intended transfer of wildlife . . . from one person to another person in the pursuit of gain or profit.'' The ESA definition of ''commercial activity'' includes an exception for ''exhibitions of commodities by museums or similar cultural or historical organizations.'' ''Person'' is defined in the ESA to include corporations, partnerships, trusts, associations, or any other private entity along with Federal, State, local, and foreign governments, as well as individuals. Activities that would be prohibited could be authorized through a threatened species permit under 50 CFR 17.32 for scientific purposes, enhancement of propagation or survival of the species, zoological exhibition, educational purposes, or other special purposes consistent with the purposes of the ESA. The ESA does not reach sale or offer for sale or activities in the course of a commercial activity that occur solely within the boundaries of a State (*i.e.,* intrastate commerce).

There are a number of potential activities involving ivory or sport-hunted trophies that would not be prohibited under these ESA standards, provided the activity did not qualify as ''sale'' or ''offer for sale.'' Under our definition of ''industry or trade,'' commercial use of threatened specimens does not fall under the prohibition for ''commercial activity'' unless the transaction involves the *transfer* of the specimen from one person to another person in the pursuit of gain or profit. Activities that would involve the movement of ivory or sport-hunted trophies in interstate or foreign commerce for gain or profit where there would be no transfer of the item to another person would not be a violation of this rule. For example, a person who transported an item containing ivory across State lines for the purpose of having the item repaired would not fall under the prohibition for ''commercial activity.'' Not every transaction that involves the exchange of money qualifies as commercial activity under the ESA. In this case, the repair person would gain financially and the item may increase in value once repaired, but the payment of money would be to compensate the repair person for his or her labor and expenses and not involve gain or profit from the ivory item itself (unless the activity involved using additional ivory to repair the item, which would not be allowed). The donation of an item consisting of or containing ivory also would not be considered commercial activity, even if the donor qualified for a tax benefit

where the tax benefit is not income. Exhibitions of ivory items or sport-hunted trophies involving gain or profit would remain exempt under the ESA definition of ''commercial activity,'' provided that all entities involved in the transaction qualified as ''museums or similar cultural or historical organizations.'' Finally, the exemption available through section 10(h) of the ESA (16 U.S.C. 1539(h)) would continue to allow commercialization of qualifying antiques in interstate and foreign commerce. There are, however, other Federal and State restrictions that may apply to commercial activities involving ivory, including ''use after import'' restrictions on certain specimens that have been imported under CITES (see below).

As explained in the section Need for Regulatory Actions, while there has long been poaching of African elephants for their ivory and illegal trade in that ivory, since 2006, there has been an unprecedented increase in the illegal killing of African elephants, with estimates exceeding 20,000 per year in recent years. Concurrent with this increase in illegal killing there has been an alarming increase in illegal trade in ivory. Recent law enforcement efforts have demonstrated that the United States plays a role in the illegal trade and the associated illegal killing. The study by Martin and Stiles (2008) estimated that as much as one-third of the ivory found in selected metropolitan areas had been imported into the United States illegally since the 1989 AfECA moratorium. Stiles estimated, in his 2014 follow-up study, that as much as one half of the ivory for sale in two California cities during his survey had been imported illegally. All of this demonstrates the need to impose restrictions on commercializing elephant ivory within the United States. The proposed rule would restrict commercial activities with African elephant ivory consistent with the restrictions in place for endangered species and those in place for other threatened species, with a narrow exception for manufactured items containing a small (*de minimis*) quantity of ivory. Sale or offer for sale of ivory in interstate or foreign commerce and delivery, receipt, carrying, transport, or shipment of ivory in interstate or foreign commerce in the course of a commercial activity would also remain available by threatened species permit under 50 CFR 17.32, provided the person met all of the requirements of that section as well as the general permitting requirements under 50 CFR part 13.

For the same reasons that it is appropriate for the conservation of African elephants to restrict commercial activities involving ivory in interstate and foreign commerce, it is appropriate to restrict commercial activities involving sport-hunted trophies in interstate and foreign commerce. African elephant trophies contain raw or worked ivory, and in fact sometimes only the raw or worked ivory from the animal is imported into the United States as the trophy. Sport hunting is considered a noncommercial activity and CITES regulation of import and export of sport-hunted trophies reflects this approach. For example, the listing of the African elephant in CITES Appendix II for Botswana, Namibia, South Africa, and Zimbabwe is specifically annotated to note that trade in hunting trophies is for noncommercial purposes only. In Resolution Conf. 12.3 (Rev. CoP16), the CITES Parties have specified that a hunting trophy is an animal that was taken for the hunter's personal use. In addition, a CITES import permit for an African elephant trophy hunted in an Appendix I country can only be issued if the importing government finds that the specimen is not to be used for primarily commercial purposes. Reflecting these restrictions, CITES permits for African elephant sport-hunted trophies include a permit condition that the specimen can be used for noncommercial purposes only.

Consistent with these and similar restrictions for other CITES species, in the 2007 revisions to our CITES-implementing regulations, we clarified that in situations where commercial import would be prohibited under CITES, an item imported for noncommercial purposes could not be used for commercial purposes after import into the United States. Under our CITES regulations, Appendix-I specimens (except those imported under a CITES exemption document or before the species was listed in Appendix I), CITES Appendix-II specimens with an annotation that trade is for noncommercial purposes only, and CITES Appendix-II specimens without a noncommercial annotation but listed as threatened under the ESA can only be used within the United States for noncommercial purposes (see 50 CFR 23.55). This restriction under the authority of CITES reaches intrastate as well as interstate and foreign commerce. We propose to prohibit the commercialization of sport-hunted African elephant trophies in a manner consistent with other legal standards under CITES, including the commercialization of any manufactured items that might otherwise qualify under the *de minimis* exception discussed below.

Since announcing our intentions to remove or revise the 4(d) rule, we have received input from the public, including musicians and musical instrument manufacturers, museums, antique dealers, and others who may be impacted by these proposed changes. Having considered relevant information provided by these groups, in this proposed rule we would allow for continued commercialization of African elephant ivory in interstate and foreign commerce that is not contributing to the poaching of elephants and where we believe the risk of illegal trade is low.

We propose to allow sale and offer for sale of ivory in interstate or foreign commerce along with delivery, receipt, carrying, transport, or shipment of ivory in interstate or foreign commerce in the course of a commercial activity without a threatened species permit for manufactured items containing *de minimis* amounts of ivory, provided they meet the following criteria:

- For items located in the United States, the ivory was imported into the United States prior to January 18, 1990 (the date the African elephant was listed in CITES Appendix I) or was imported into the United States under a CITES pre-Convention certificate with no limitation on its commercial use;
- For items located outside the United States, the ivory is pre-Convention (removed from the wild prior to February 26, 1976 (the date the African elephant was first listed under CITES));
- The ivory is a fixed component or components of a larger manufactured item and is not, in its current form, the primary source of value of the item;
- The manufactured item is not made wholly or primarily of ivory;
- The total weight of the ivory component or components is less than 200 grams;
- The ivory is not raw; and
- The item was manufactured before the effective date of the final rule for this action.

We have included the phrase ''in its current form'' in the criterion stating that the ivory is not the primary source of value of the item, to make clear that we would consider the value added by the craftsmanship (carving, etc.) that went into the ivory component, not just the value of the ivory itself. We use the phrase ''wholly or primarily'' (in the next criterion) as those terms are commonly defined in the dictionary. We consider ''wholly'' to mean ''entirely, totally, altogether'' and ''primarily'' to mean ''essentially, mostly, chiefly, principally.'' We have chosen 200 grams

as the weight limit because we understand that this is the approximate maximum weight of the ivory veneer on a piano with a full set of ivory keys and that this quantity would also cover most other musical instruments with ivory trim or appointments. We also understand the 200-gram limit would cover a broad range of decorative and utilitarian objects containing small amounts of ivory (insulators on old tea pots, decorative trim on baskets, and knife handles, for example).

We have intentionally crafted this exception to allow commercial activity in a very narrow class of items. While we have given careful consideration to the types of items containing African elephant ivory for which we could allow continued commercialization in interstate and foreign commerce (because we do not believe the trade is contributing to the poaching of elephants and we believe the risk of illegal trade is low) we seek comment from the public on the specific criteria we have proposed to qualify for this *de minimis* exception. In particular, we are interested in input on criterion (iii), the ivory is a fixed component or components of a larger manufactured item and is not in its current form the primary source of value of the item and criterion (v), the manufactured item is not made wholly or primarily of ivory. We seek comment on the impact of not including these criteria in the rule and whether these criteria are clearly understandable.

Examples of items that we do not expect would qualify for the *de minimis* exception include chess sets with ivory chess pieces (both because we would not consider the pieces to be fixed components of a larger manufactured item and because the ivory would likely be the primary source of value of the chess set), an ivory carving on a wooden base (both because it would likely be primarily made of ivory and the ivory would likely be the primary source of its value), and ivory earrings or a pendant with metal fittings (again both because they would likely be primarily made of ivory and the ivory would likely be the primary source of its value). For the reasons discussed in the section *Import and export of ivory, other than sport-hunted trophies,* this *de minimis* exception would not apply to manufactured items containing ivory that were imported to or exported from the United States for law enforcement or scientific purposes or to otherwise qualifying inherited items or items in a household move that were imported or exported under one of the exceptions in this rule.

Our law enforcement experience over the last 25 years (see the *U.S. involvement in the illegal ivory trade* section) has shown that the vast majority of items in the illegal ivory trade are either raw ivory (tusks and pieces of tusks) or manufactured pieces (mostly carvings) that are composed entirely or primarily of ivory. As described earlier, in November 2013, the Service destroyed six tons of seized ivory that represented over 25 years of law enforcement efforts to control illegal ivory trade in the United States. The six tons of contraband ivory did not include any items that would be covered by this exception. As demonstrated by the thousands of seized ivory items destroyed in the ''crush,'' ivory traffickers are not manufacturing items with small amounts of pre-Convention ivory or dealing in such items. Rather, because the incentive to deal in illegal ivory is economic, the trade focuses on raw ivory and large pieces of carved ivory from which the highest profits can be made. Likewise, in the case described earlier involving the Philadelphia African art dealer, which included the seizure of approximately one ton of ivory, all of the seized ivory was in the form of whole ivory carvings and did not include any items that would qualify under the proposed *de minimis* exception.

The information we have about the domestic market, including the surveys conducted by Martin and Stiles and our own investigations, indicates that trade in the types of manufactured items that would qualify for this proposed *de minimis* exception is not contributing to or driving the illegal ivory trade. Martin and Stiles identify recently made and presumably illegally imported items as figurines, netsukes, and jewelry, none of which would qualify under the criteria proposed for a *de minimis* exception.

The requirement that the ivory is either pre-Convention (removed from the wild prior to February 26, 1976) or was imported into the United States prior to 1990, and the requirement that the item must have been manufactured before the effective date of a final rule would make it unlikely that commercialization of ivory under this exception would directly contribute to the future illegal killing of elephants. Noting the types of items that make up the illegal trade, and requiring that the ivory be a fixed component of a larger manufactured item, that the ivory is not raw, that it is not the primary source of value of the item, that the total weight of the ivory is less than 200 grams, and that the manufactured item is not made wholly or primarily of ivory would minimize the possibility of the ivory contributing to either global or U.S. illegal ivory markets or that the *de minimis* exception could be exploited as a cover for the illegal trade.

These changes will allow us to appropriately regulate the U.S. domestic market in ivory as well as U.S. participation in global markets for ivory and achieve our goal of conserving the African elephant, while allowing limited continued trade that is not contributing to the poaching of elephants. Improved domestic controls will make it more difficult to launder illegal elephant ivory through U.S. markets, which we believe will ultimately contribute to a reduction in the illegal killing of African elephants.

Since announcing our intention to revise the 4(d) rule for the African elephant and prohibit sale and offer for sale of African elephant ivory in interstate commerce, we have heard from a number of representatives of the U.S. museum community. They have expressed their concern about how prohibitions on interstate commerce will impact their ability to acquire items for museum collections. We recognize that museums can play a unique role in society by curating objects that are of historical and cultural significance. We are considering including an exception to the prohibitions on interstate commerce for museums, either through this rulemaking process or through a separate rulemaking under the ESA. We seek comment from the public on this issue. Additionally, we seek comment on how to best define museums in this regard, given the diverse interests that they serve.

Import and Export, Other Than Ivory and Sport-Hunted Trophies

Under the current 4(d) rule, African elephants and African elephant parts and products other than sport-hunted trophies and ivory (*e.g.,* live elephants, including those with tusks, and leather products) may be imported into or exported from the United States without a threatened species permit, provided all permit requirements of 50 CFR parts 13 (general permitting regulations) and 23 (CITES regulations) have been met. This would not change with the proposed revisions to the 4(d) rule. We would, however, add a clarification that the requirements at 50 CFR part 14 (general import, export, and transport regulations) must also be met.

As noted earlier, the import into the United States of live elephants, including those with tusks, is not regulated under the AfECA. In section 4202(2) (16 U.S.C. 4202(2)) of the statute, Congress found that it is the large illegal trade in ivory that is the

major cause of decline of the species and threatens its existence. Although live elephants may have tusks, there is no information indicating that the limited import of live elephants for conservation or zoological exhibition purposes has ever negatively affected the species. Live African elephants are only occasionally imported into the United States (most live elephants held in captivity in the United States are Asian elephants). During the 5 years from 2009 to 2013, there were eight live African elephants imported into the United States (four in 2011 and four in 2013), all for zoological or educational purposes. Three of these animals were pre-Convention (removed from the wild prior to 1976); the other five were either captive born or captive bred. In addition, the AfECA's focus on regulating ivory primarily through moratoria on the import of raw and worked ivory (not elephants themselves) indicates Congress' intent to regulate ivory as a commodity, not ivory that is attached to a live elephant and therefore cannot be commercialized separate from the elephant itself. Likewise, the AfECA prohibitions all address the import or export of raw or worked ''ivory,'' not elephants. Finally, the definition of ''raw ivory'' also indicates that Congress intended the term not to apply to live elephants. The term raw ivory in section 4244(10) (16 U.S.C. 4244(10)) means any ''tusk, and any piece thereof, the surface of which, polished or unpolished, is unaltered or minimally carved.'' The references to pieces of tusks and the polishing or carving of tusks when read in the context of the definition and application of the term ''raw ivory'' in the statute indicate that the definition is speaking of tusks that are no longer attached to a live animal.

When establishing regulations for threatened species under the ESA, the Service has generally adopted restrictions on the import and export of live as well as dead animals and their parts and products, either through a 4(d) rule or through the provisions of 50 CFR 17.31. In this case, import and export of both live and dead African elephants and all parts and products are already carefully regulated under CITES. Under CITES and the U.S. regulations that implement CITES at 50 CFR part 23, the United States regulates and monitors all commercial and noncommercial trade in African elephants and any parts and products that are imported into or exported from the country. All African elephant populations are protected under CITES, with most populations listed in Appendix I and only four populations (those in Botswana, Namibia, South Africa, and Zimbabwe) listed in Appendix II. Import into and export from the United States of African elephant specimens will continue to require CITES documentation.

Under CITES, for nearly all live or dead elephants and elephant parts or products, including those from Appendix II populations, the exporting country must issue an export permit that is supported by findings that the specimen was legally acquired under national laws, that the export will not be detrimental to the survival of the species, and, for live animals, that the elephant will be shipped in a manner that minimizes the risk of injury, damage to health, or cruel treatment. The CITES export permit must be presented upon export and must also be presented to U.S. officials upon import into the United States. For nearly all Appendix-I African elephant specimens, a CITES import permit would also have to be issued by the Service after finding that the import will be for purposes that are not detrimental to the survival of the species, that the specimen will not be used for primarily commercial purposes, and, for a live animal, that the proposed recipient is suitably equipped to house and care for the elephant. Any later re-export of African elephant specimens would require additional CITES documents.

Some limited exceptions to these permitting requirements exist. Consistent with an exception in the Convention, the Service provides an exemption from permitting requirements for personal and household effects, but only for dead specimens and not for most Appendix-I specimens. Personal and household effects must be personally owned for noncommercial purposes, and the quantity imported or exported must be necessary or appropriate for the nature of the trip or household use. The exemption is extremely limited for items containing African elephant ivory (see 50 CFR 23.15(f)). Not all CITES countries have adopted the personal and household effects exemption, so individuals who might cross an international border with an African elephant item and want to take advantage of this exemption would need to check with the Service and any country of transit in advance for documentation requirements. There is also an exemption for pre-Convention animals and parts or products, but a person who wants to transport an item under this exemption must obtain and present to government officials upon export and import a CITES pre-Convention certificate that verifies that the specimen was acquired before the Convention applied to it.

In addition to the requirements under CITES, individuals who import or export wildlife and wildlife products into or from the United States must file wildlife declaration forms with the Service's Office of Law Enforcement and must use designated ports. Individuals who are in the business of importing and exporting wildlife and wildlife products must be licensed by the Service. These requirements allow us to monitor the species and quantity of wildlife that are imported into and exported from the United States and ensure that such trade is legal.

The need to address the increase in illegal killing and illegal trade of African elephants is linked to the economic value of and international market in ivory. There is no information indicating that the conservation status and management needs of the species are linked to the occasional import of live elephants into the United States for captive propagation programs or public education and display, or to the market in hides and other non-ivory parts or products. The Service monitors U.S. imports and exports of elephant specimens through wildlife declaration forms, and all CITES Parties are required to submit annual reports on trade in CITES species and the number and types of CITES permits and certificates issued each year. This information verifies that import and export of live African elephants and parts or products other than ivory and sport-hunted trophies is small and does not affect the conservation of the species. There is no evidence of an illegal market in live elephants or parts and products other than ivory.

In addition, as noted above, import and export of African elephant specimens would continue to be strictly regulated through the documentation procedures and required findings under CITES. Particularly relevant to the major threats facing African elephants, these CITES documents are not issued unless the importing or exporting countries find that the import or export would not be detrimental to the survival of the species, that the live animal or part or product was legally acquired, and that the specimen will not be used for primarily commercial purposes. Requiring individuals to obtain an ESA threatened species permit in addition to the required CITES documents prior to import or export of live animals and parts or products other than ivory and trophies would add no meaningful protection for the species and would be an unnecessary overlay of authorization on top of existing documentation that

already ensures that the import or export is legal and not detrimental to the survival of the species. Therefore, because the import and export of live African elephants and parts or products other than ivory and sport-hunted trophies must comply with the strict provisions of CITES and other U.S. import/export requirements and because the import or export of such animals and parts or products poses no risk to the species, we find that authorization under the ESA to import or export African elephant specimens other than sport-hunted trophies or ivory remains neither necessary nor appropriate provided that all import and export requirements under CITES and other U.S. laws have been met.

Import and Export of Sport-Hunted Trophies

As noted earlier, the ESA does not prohibit U.S. hunters from traveling to other countries and taking threatened species, but authorization may be required under the ESA to import the sport-hunted trophy into the United States. We are proposing to limit the number of sport-hunted African elephant trophies that may be imported into the United States to two per hunter per year. This action is intended to address a small number of circumstances in which U.S. hunters have participated in legal elephant culling operations and imported, as sport-hunted trophies, a large number of elephant tusks from animals taken as part of the cull. We propose to disallow this activity, which has resulted, in some cases, in the import of commercial quantities of ivory as sport-hunted trophies. Based on our import records, we expect this proposed change to impact fewer than 10 hunters per year.

This proposed change is consistent with the purposes of the ESA and CITES. Sport hunting is meant to be a personal, noncommercial activity. Engaging in hunting that results in acquiring quantities of ivory that exceed what would reasonably be expected for personal use and enjoyment is inconsistent with sport hunting as a noncommercial activity. Given the current conservation concerns with escalating illegal trade in ivory and the associated levels of illegal killing to supply that trade, it is consistent with the purposes of the ESA and other provisions in this proposed rule regulating commercialization of ivory to more closely regulate activities that have resulted in the import of large quantities of raw ivory into the United States.

This provision is also consistent with Congress' intent under the AfECA. Congress included in the AfECA an exemption from the import moratorium for sport-hunted trophies legally taken in an elephant range country, but that was on the basis of finding that sport hunting does not directly or indirectly contribute to the illegal trade in African elephant ivory. The escalating illegal trade of ivory is currently driving unprecedented increases in the illegal killing of elephants. We therefore find it is necessary to use our authority under section 4(d) of the ESA to ensure that ivory imported into the United States as sport-hunted trophies is in fact the result of sport hunting and is not commercialized. Section 4241 of the AfECA (16 U.S.C. 4241) expressly states that the Service's authority under the AfECA is in addition to and does not affect the Service's legal authority under the ESA, which includes our legal authority under section 4(d). The AfECA therefore does not preclude us from using our authority under the ESA to limit the number of African elephant trophies imported by an individual hunter each year to appropriate levels. For certain species, the parties to CITES have set limits on the number of trophies that any one hunter may import in a calendar year, which currently for leopards is no more than two, for markhor is no more than one, and for black rhinoceros is no more than one. See 50 CFR 23.74(d). Taking into consideration these decisions by the parties to CITES, we similarly propose to set the limit at two African elephants per hunter per year.

We are also proposing to require issuance of a threatened species permit under 50 CFR 17.32 for import of all African elephant sport-hunted trophies. The current 4(d) rule provides conditions under which sport-hunted African elephant trophies may be imported into the United States, one of which is that the Service has made a determination that the killing of the trophy animal would enhance the survival of the species.

For elephant trophies taken from CITES Appendix-I populations, we issue a combined CITES/ESA import permit and the ESA finding is communicated through that permit. Under the current 4(d) rule, we do not issue an import permit for trophies from Appendix-II populations and the ESA finding is communicated through public notification, including in the **Federal Register**.

For the import of sport-hunted trophies from Appendix-II populations, revision of the 4(d) rule would mean that the enhancement finding required under the current 4(d) rule would be communicated through the threatened species permitting process under 50 CFR 17.32. This change in procedure would not result in any significant burden to U.S. hunters and would not affect whether future hunters would be able to obtain trophy import permits. The standards for making enhancement findings for each African elephant range country under the current 4(d) rule are the same as the standards for making findings for import permits for sport-hunted trophies of other species classified as threatened, where such findings are required. The standards for making enhancement findings under the current 4(d) rule are also the same as the standards that would be used in the future for making enhancement findings for African elephant trophy imports through the threatened species permit process. Permits have always been required for the import of African elephant trophies from any Appendix-I country, so it is only trophies from the four Appendix-II countries that would now also require import authorization through a threatened species permit. Hunters would benefit from the consistency of having all African elephant import authorizations provided through the permitting process (we expect it would reduce confusion regarding the process for obtaining import authorization, depending on the country) and benefit from a process that would allow them to submit relevant information through the permit application. Hunters seeking authorization to import a trophy from an Appendix-II population would also now be able to take advantage of the process for requesting reconsideration and appeal of a permit denial under 50 CFR 13.29. The Service would benefit from having a consistent process for authorizing ESA importation of African elephant sport-hunted trophies, as well as having the ability to obtain current information from hunters that is relevant to making the enhancement findings.

As provided in section 9(c)(2) (16 U.S.C. 1538(c)(2)) and our regulations at 50 CFR 17.8, the ESA provides a limited exemption for the import of some threatened species, which is frequently used by hunters to import sport-hunted trophies. Importation of threatened species that are also listed under CITES Appendix II are presumed not to be in violation of the ESA if the importation is not made in the course of a commercial activity, all CITES requirements have been met, and all general wildlife import requirements under 50 CFR part 14 have been met. This presumption can be rebutted, however, when information shows that

the species' conservation and survival would benefit from the granting of ESA authorization prior to import. The Service determined that this was the case in 1997 and 2000, when the four populations of African elephants were transferred from CITES Appendix I to CITES Appendix II and we retained the requirement for ESA enhancement findings prior to the import of sport-hunted trophies. We amended the African elephant 4(d) rule in June of 2014, again maintaining the requirement for an ESA enhancement finding prior to allowing the import of African elephant sport-hunted trophies.

Our proposal to require issuance of threatened species enhancement permits under 50 CFR 17.32 for the import of any African elephant hunting trophy would change the procedure for issuing ESA authorization but not change the requirement that an enhancement finding be made prior to import into the United States. As described in the Need for Regulatory Actions section, the overall conservation status of African elephants has deteriorated in the years following the transfer of the four populations of African elephants to CITES Appendix II. Extensive and well-documented information indicates that the escalating rate of illegal killing of African elephants is driven by the illegal markets for elephant ivory. This information affirms the need to continue making enhancement findings prior to allowing the import of sport-hunted trophies that consist entirely or in part of the ivory tusks from the elephant. Authorizing importation of all sport-hunted trophies through threatened species enhancement permits would allow us to more carefully evaluate trophy imports in accordance with legal standards and the conservation needs of the species. For example, the issuance of threatened species enhancement permits under 50 CFR 17.32 would mean that the standards under 50 CFR part 13 would also be in effect, such as the requirement that an applicant submit complete and accurate information during the application process and the ability of the Service to deny permits in situations where the applicant has been assessed a civil or criminal penalty under certain circumstances, failed to disclose material information, or made false statements. Therefore, we have determined that the additional safeguard of requiring the issuance of threatened species enhancement permits under 50 CFR 17.32 prior to the import of sport-hunted trophies is warranted.

In addition, the 4(d) rule would incorporate certain restrictions under the AfECA on the import and export of sport-hunted trophies. We do not have separate AfECA regulations and consider that including restrictions in the 4(d) rule that have their source in the AfECA would provide hunters and other members of the public easy access to information on all requirements that apply to activities with African elephant sport-hunted trophies. All of these provisions are also appropriate conservation measures for the species under the ESA that ensure that hunting of African elephants by U.S. citizens is sustainable and legal under the laws of the range country and that any ivory associated with the trophy does not contribute to the illegal killing of elephants. Adopting these AfECA provisions as appropriate conservation measures for the species under section 4(d) of the ESA would also make a violation of relevant provisions of the AfECA a violation of the ESA, thus increasing protections for African elephants when a person violates the AfECA.

The AfECA provides for the import of sport-hunted African elephant trophies but only if the trophy was legally taken in an African elephant range country that has declared an ivory export quota to the CITES Secretariat. These requirements have been incorporated into the proposed 4(d) rule. Also, the AfECA provides an exemption from any moratorium for the import of African elephant sport-hunted trophies, but the exemption applies to import only, not export. The export of all raw ivory is prohibited under section 4223(2) of the AfECA (16 U.S.C. 4223(2)). We propose to incorporate into the 4(d) rule the AfECA prohibition on the export of raw ivory. Export of raw ivory would not be allowed even under an ESA threatened species permit because the AfECA prohibition would still stand; similarly, export of raw ivory that qualified as an antique under the ESA, while not regulated under the proposed 4(d) rule, would still be prohibited under the AfECA. We have also proposed minor revisions to the 4(d) rule to clarify that general wildlife import requirements under 50 CFR part 14 also apply to the import of sport-hunted trophies and to more closely align import requirements with the recommendations in CITES Resolution Conf. 10.10 (Rev. CoP16), *Trade in elephant specimens.*

The revised 4(d) rule would also allow the noncommercial export of worked ivory that was imported as part of a sport-hunted trophy provided it meets one of the exceptions we have proposed for scientific or law enforcement purposes or as part of a musical instrument, traveling exhibition, or household move or inheritance. Worked ivory that had been imported as a sport-hunted trophy could also be exported if it qualifies as an ESA antique.

Import and Export of Ivory, Other Than Sport-Hunted Trophies

Under the current 4(d) rule, import of raw or worked ivory other than sport-hunted trophies is allowed only if it is a *bona fide* antique greater than 100 years old or it is being imported following export from the United States after being registered with the Service. Under the terms of the 1989 AfECA moratorium, the import of raw and worked African elephant ivory, other than ivory from legally taken sport-hunted trophies, is prohibited from both African elephant range countries and intermediary countries (*i.e.,* countries that export ivory that did not originate in the country).

Under the proposed revisions to the 4(d) rule, import of ivory other than sport-hunted trophies would be prohibited, with limited, narrow exceptions including: the import of raw ivory by a government agency for law enforcement purposes or for a genuine scientific purpose that will contribute to the conservation of the African elephant; and the import of worked ivory under these same exceptions for law enforcement or scientific purposes that will contribute to the conservation of the species, or as part of a musical instrument, an item in a traveling exhibition, or as part of a household move or inheritance. The export of raw ivory would be prohibited under the proposed revisions to the 4(d) rule and the export of worked ivory would be limited to those items that qualify for the exceptions described above. Section 4(d) of the ESA does not apply to items that qualify as antiques and therefore these proposed prohibitions on import and export of ivory do not apply to ESA antiques. However, as noted previously, the prohibitions on import and export of ivory under the AfECA would still apply, regardless of the age of the item. The proposed revisions are consistent with the 1989 AfECA moratorium, and are generally consistent with the Service's Director's Order No. 210, as amended on May 15, 2014. We have determined that these provisions are appropriate under the ESA for the conservation of the African elephant.

Restrictions on import and export are appropriate under both the AfECA and the ESA because strict regulation of the import and export of ivory are necessary to prevent U.S. citizens and others

subject to the jurisdiction of the United States from engaging in activities that could contribute to the illegal killing of elephants. Nonetheless, situations where not allowing the activity could actually be detrimental to the conservation of the species, or limited circumstances where careful controls would be in place to make it likely that the activity will not contribute to illegal trade in ivory or the killing of elephants for their ivory, can be allowed. Adopting the AfECA provisions as appropriate conservation measures for the species under section 4(d) of the ESA would make a violation of the AfECA a violation of the ESA, thus increasing protections for African elephants when a person violates the AfECA. Finally, because there are no AfECA regulations in the Code of Federal Regulations, the public would benefit from having all legal requirements relating to the import and export of African elephant ivory located in one place through the 4(d) rule.

On June 9, 1989, the Service established the current moratorium on the importation of both raw and worked ivory (other than that from sport-hunted trophies) after finding that most ivory was traded outside of the CITES Ivory Trade Control System that existed at that time and that illegal and excessive taking of elephants was taking place at unsustainable levels (54 FR 24758). African elephant range countries were unable to effectively control taking of elephants and intermediary countries could not ensure that all ivory in trade originated from legal sources. Specifically, the Service found that most ivory range countries had such low elephant populations that the countries had determined that no sustainable harvest was possible and had requested no ivory export quota for that year; that there was likely no sustainable harvest of elephants throughout most of Africa, even for those countries that had export quotas, due to declining populations; and that most African elephant range countries had significant poaching problems. For intermediary countries, the Service determined that all major intermediary countries that were parties to CITES at that time had engaged in import of raw ivory from other intermediary countries (alone a criterion for establishment of a moratorium under the AfECA) and that due to the virtual impossibility of distinguishing legal from illegal ivory, it was no longer possible for any intermediary country to ensure that it was not importing ivory from a range country in violation of the laws of that country.

In recent years, many of the conditions that supported imposing the moratorium have continued or even worsened. In particular, recent information shows that for elephant range countries, the taking of elephants is not effectively controlled and the amounts of raw ivory that are being illegally exported from these countries are undermining the conservation of elephants. For intermediary countries, recent information on the scope and extent of illegal ivory trade shows that these countries are importing (through illegal trade) raw or worked ivory that originates in range countries in violation of the laws of the range countries. However, some actions in the United States, in other countries, and through CITES, have been taken to strengthen controls on poaching and illegal trade. In January 1990, all populations of African elephants were transferred from CITES Appendix II to Appendix I, which generally ended legal commercial trade in African elephant ivory. In 1997, based on proposals submitted by Botswana, Namibia, and Zimbabwe and the report of a Panel of Experts, the CITES Parties agreed to transfer the African elephant populations in these three countries to CITES Appendix II. The Appendix-II listing included an annotation that allowed noncommercial export of hunting trophies, export of live animals to appropriate and acceptable destinations, export of hides from Zimbabwe, and noncommercial export of leather goods and some ivory carvings from Zimbabwe. It also allowed for a one-time export of raw ivory to Japan (which took place in 1999), once certain conditions had been met. All other African elephant specimens from these three countries were deemed to be specimens of a species listed in Appendix I and regulated accordingly.

The population of South Africa was transferred from CITES Appendix I to Appendix II in 2000, with an annotation that allowed trade in hunting trophies for noncommercial purposes, trade in live animals for reintroduction purposes, and trade in hides and leather goods. Since then, the CITES Parties have revised the Appendix-II listing annotation three times. The current annotation, in place since 2007, covers the Appendix-II populations of Botswana, Namibia, South Africa, and Zimbabwe and allows export of: Sport-hunted trophies for noncommercial purposes; live animals to appropriate and acceptable destinations; hides; hair; certain ivory carvings from Namibia and Zimbabwe for noncommercial purposes; and a one-time export of specific quantities of raw ivory, once certain conditions had been met (this export, to China and Japan, took place in 2009). As in previous versions of the annotation, all other African elephant specimens from these four populations are deemed to be specimens of species included in Appendix I and the trade in them is regulated accordingly.

Most recently, the Service determined in April 2014 that import of sport-hunted trophies from Tanzania and Zimbabwe could not be allowed until new information is received, because the killing of African elephants for trophies does not meet the enhancement standard under the current 4(d) rule. The Service understands that Botswana has closed its sport-hunting program on government land for 2014 (although hunting on private concessions continues) and is not currently allowing exports. South Africa and Namibia continue to have well-managed elephant conservation programs; the Service's findings remain in place that the killing of trophy animals from these countries for import into the United States enhances the survival of the species.

All of this information, along with the recent levels of illegal killing and illegal trade as described in the section Need for Regulatory Actions, indicates that the circumstances facing African elephants and involving ivory in both range countries and intermediary countries support adoption of these restrictions for the species under the ESA. The threats facing the species call for all appropriate actions to restrict the import of African elephant ivory where that import is likely to contribute to commercializing elephant ivory. We believe that it is appropriate to allow certain limited exceptions to these import restrictions under the 4(d) rule, however, where import either would be beneficial to law enforcement or the conservation of the species, or where import of certain worked ivory meets strict criteria and is regulated in such a manner that it does not contribute to the illegal trade in ivory and poses no risk to elephant populations.

We propose to allow the import of raw or worked ivory into the United States or the export of worked ivory from the United States when it would be directly beneficial for law enforcement efforts. Under this exception, raw or worked ivory could be imported into the United States and worked ivory could be exported from the United States only by an employee or agent of a Federal, State, or tribal government agency for law enforcement purposes. Specimens from protected species are frequently used as evidence to prosecute violations of law in the United States, and this may require the import of ivory from other countries. Likewise, there may be situations where worked ivory would

need to be exported from the United States by a Federal, State, or tribal agency to assist with a law enforcement action in another country. Not having this exception would hinder the Service's ability to enforce Federal laws such as the AfECA, the ESA, and the Lacey Act that protect African elephants and other wildlife. It could also hinder other Federal agencies, States, and tribes from effective enforcement of their laws. Not including this exception would be contrary to the AfECA's policy to assist in the conservation and protection of the African elephant by supporting the conservation programs of African countries and the CITES Secretariat, which represents the interests of all parties to CITES including the United States. The limitation that ivory could only be imported or exported by an employee or agent of a Federal, State, or tribal government would ensure that the exception is invoked only in appropriate circumstances. Any ivory imported or exported under this exception would be strictly for noncommercial law enforcement purposes, and therefore could not subsequently be sold or offered for sale in interstate or foreign commerce or delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity, even if it qualified under the *de minimis* exception. The limited applicability of this exception to noncommercial import or export by government officials for law enforcement purposes indicates that no ESA threatened species permit should be required. Such a permit would provide no protection for the species and would inhibit law enforcement officials' ability to respond quickly to enforcement needs involving the import or export of African elephant ivory.

We also propose to allow the import or export of ivory when it would contribute to the conservation of African elephants. Under this exception, either raw or worked African elephant ivory could be imported into the United States and worked ivory could be exported from the United States for genuine scientific purposes that would benefit elephant conservation. For example, researchers in the United States have developed techniques to determine the origin of ivory, and the import of ivory samples is essential to this work. In such instances, prohibition of import would hinder science that could assist in protecting the species from poaching or illegal trade in ivory, or could result in valuable information that addresses other threats to the species. Similarly, the export of worked African elephant ivory could assist both U.S. scientists that are located outside the United States and scientists from other countries in their work to conserve the species. We believe that allowing under the 4(d) rule import and export of ivory in these circumstances is necessary and appropriate for the conservation of the African elephant; it is also consistent with the AfECA's purpose to ''perpetuate healthy populations of African elephants.'' Any ivory imported or exported under this exception would be strictly for genuine scientific purposes, and could not subsequently be sold or offered for sale in interstate or foreign commerce or delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity, even if it qualified under the *de minimis* exception. The requirement to obtain a threatened species permit under 50 CFR 17.32 prior to import or export would ensure that the activity meets the standard of being for a genuine scientific purpose and that the science will actually contribute to the conservation of African elephants.

We are also proposing to allow the noncommercial import or export of carefully regulated items containing worked elephant ivory that are appropriate exceptions to the import moratorium and appropriate provisions under the 4(d) rule. None of these exceptions allows the import or export of raw ivory. The exceptions are for qualifying musical instruments, items in certain travelling exhibitions, and qualifying items that are part of an inheritance or household move.

Under all three of these exceptions, the importer or exporter would need to show that the African elephant ivory in the item was legally acquired and removed from the wild prior to February 26, 1976 (the date the African elephant was first listed under CITES). This does not necessarily mean that the current owner of an item containing ivory, a musical instrument, for example, acquired the instrument or the ivory in the instrument prior to February 1976. It means that there is sufficient information to show that the ivory was harvested (taken from the wild) prior to February 26, 1976, even though the instrument may not have been manufactured until after that date. It also means that there is sufficient information to show that the ivory was harvested in compliance with all applicable laws of the range country and that any subsequent import and export of the ivory and the instrument containing the ivory was legal under CITES and other applicable laws (understanding that the instrument may have changed hands many times before being acquired by the current owner).

These requirements would ensure that any item imported or exported under one of these three exceptions originated from elephants that were legally taken prior to the date that African elephants were first protected under CITES, the ESA, and the AfECA and therefore before contemporary laws and programs were developed to address current threats to the species. The ivory would have originated from elephants taken prior to development of the conservation programs of African countries and the CITES Secretariat referenced in section 4203 of the AfECA that the AfECA was enacted to support. This would also mean that any ivory imported or exported under the exceptions originated before U.S. citizens and other individuals subject to the jurisdiction of the United States were first regulated under these laws. The showing that the ivory was legally acquired would ensure that the ivory contained in the item was not previously part of the global market in illegal ivory. Thus these requirements would minimize the chances that the worked ivory in items imported or exported under these three exceptions contributed to the killing of elephants that the AfECA and listing under the ESA and CITES were designed to address or that the owner or others who may have owned the ivory played a role in the taking of the elephant in contravention of U.S. laws to protect the species.

Under all three of these exceptions, the importer or exporter would have to obtain the appropriate CITES document showing that the import or export is in full compliance with CITES requirements. The requirement to obtain appropriate CITES documents would ensure that each item imported or exported under one of these three exceptions qualifies under CITES' strict standards and that all such import and export will be monitored and reported to the CITES Secretariat in each Party's annual report. Any musical instrument or item in a traveling exhibition would also have to be securely marked or uniquely identified so that authorities at U.S. and foreign ports can verify that the item presented for import or export is actually the specimen for which the CITES document was issued. While items imported or exported under a CITES pre-Convention certificate (as part of a household move or inheritance) do not specifically need to be marked or identified, port authorities would verify that the description and quantity of any items presented for import or export match what is

described in the CITES document. All of this would ensure that each import or export of items under these exceptions is verified and monitored, which ensures that all such import and export remains legal.

A CITES musical instrument certificate or equivalent CITES document would be issued for the import and export of personally owned instruments containing African elephant ivory to facilitate the frequent, noncommercial, cross-border movement of instruments that are being used for noncommercial purposes. Noncommercial purposes could include personal use, performance, display, or competition where the musician is financially compensated for his or her participation, but does not include financial gain through activities such as sale or lease of the instrument itself. Under the terms for obtaining a CITES musical instrument certificate (contained in CITES Resolution Conf. 16.8, *Frequent cross-border non-commercial movements of musical instruments*), the individual seeking a certificate would need to demonstrate that the CITES specimens contained in the instrument, in this case African elephant ivory, were acquired (removed from the wild) prior to February 26, 1976 (the date that African elephants were first listed under CITES). In addition, the country issuing the certificate would need to find that the elephant ivory used to manufacture the instrument was legally acquired under CITES. The issuing country would also include as a condition on the certificate a statement that the ivory covered by the certificate is for noncommercial use only and may not be sold, traded, or otherwise disposed of outside the certificate holder's country of usual residence. This restriction would also be included as a prohibition in the 4(d) rule, although musical instruments containing ivory that are owned by individuals whose residence is the United States could be sold or offered for sale in interstate or foreign commerce or delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity once the instrument was returned to the United States if the instrument qualified under the *de minimis* exception. Musical instrument certificates are used like passports. Upon each export and import, the original certificate is presented to the appropriate border control officer, who inspects the certificate, verifies that the certificate corresponds to the instrument presented for import, and validates the certificate to document the history of each cross-border movement. All of these requirements would limit use of the exception to personally owned musical instruments containing legally acquired, pre-Convention ivory, and ensure that any instrument entering the United States would be used for noncommercial purposes only, and that an instrument would not be commercialized while traveling under the authorization of the CITES certificate. These requirements provide adequate assurances that any import or export of such instruments would not contribute to either the illegal trade in elephant ivory or the illegal killing of elephants.

A CITES traveling exhibition certificate would be issued for the import and export of items consisting of or containing African elephant ivory to facilitate the frequent cross-border movement of items that are part of an orchestra, museum, or similar exhibition registered in the country in which the traveling exhibition is based. Under the terms for obtaining the CITES certificate (contained in CITES Resolution 12.3 (Rev. CoP16), *Permits and certificates* and in our regulations at 50 CFR 23.49), the ivory in the traveling exhibition must be pre-Convention ivory (*i.e.,* it was acquired prior to February 26, 1976, the date that African elephants were first listed under CITES). Similar to the musical instrument certificate, the country issuing the certificate would need to find that any item containing elephant ivory was legally acquired under CITES and would be returned to the country in which the exhibition is based. The country issuing the certificate would also include the condition that the ivory covered by the certificate may not be sold or otherwise transferred in any country other than the country in which the exhibition is based and registered. This restriction would also be included as a prohibition in the 4(d) rule, although exhibition items containing ivory that are owned by persons who are based in the United States could be sold or offered for sale in interstate or foreign commerce or delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity if the item qualified under the *de minimis* exception and the exhibition was back in the United States. Like musical instrument certificates, traveling exhibition certificates are used like passports. Upon each import or export, the original certificate is presented to the appropriate border control officer, who inspects the certificate, verifies that the certificate corresponds to the item presented for import, and validates the certificate to document the history of each cross-border movement. Similar to the strict regulation of musical instruments, these requirements would limit use of the exception to items consisting of or containing African elephant ivory legally acquired prior to February 26, 1976, and ensure that the item would not be commercialized while outside the country in which the exhibition is based while traveling under the authorization of the CITES certificate. These requirements provide adequate assurances that any import or export of these items would not contribute to either the illegal trade in elephant ivory or the illegal killing of elephants.

Items imported or exported as part of an inheritance or a household move under the final exception would need to be for personal use only and accompanied by a valid CITES pre-Convention certificate. To qualify for a pre-Convention certificate, the importer or exporter of an item containing African elephant ivory would need to present sufficient information to show that the ivory was removed from the wild prior to February 26, 1976. There must also be sufficient information to show that the ivory was harvested in compliance with all applicable laws of the range country and that any subsequent import and export of the ivory and the instrument containing the ivory was legal under CITES and other applicable laws. For any item imported or exported as an inheritance, the importer or exporter would also need to show that the item was received through an inheritance. For any item imported or exported as part of a household move, the importer or exporter would need to show that they own the item, that it was legally acquired, and that they are moving it for personal use. Any such items would need to be imported or exported within 1 year of changing residence from one country to another and the shipment would need to contain only ivory items purchased, inherited, or otherwise acquired prior to the change in residence. Finally, the type and quantity of ivory items imported or exported under this exception would need to be appropriate for a household move. Because any ivory imported or exported under this exception would be solely for personal use, any such ivory could not subsequently be sold or offered for sale in interstate or foreign commerce or delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity, even if

it qualified under the *de minimis* exception.

All of these requirements would help to ensure that any imports or exports under these proposed exceptions did not contribute to past poaching and smuggling, did not contribute to the recent increase in illegal killing of elephants and illegal trade of ivory, and would be in compliance with AfECA requirements. In addition, the requirements that items under most of the exceptions must be imported or exported for personal or noncommercial use only, the limits on sale or other disposal of musical instruments and exhibition items while the item is traveling under the CITES certificate, the requirement that inherited items must be documented as acquired through an inheritance and not purchase, the requirement that household move items are limited to the number and type that would reasonably be expected for a person's move of their household, the requirement that household move items must be imported or exported within 1 year of a documented change of residence, and the prohibition on commercialization of inherited or household move items even if they qualify under the *de minimis* exception would minimize the chances of these exceptions being used as a means to commercialize ivory.

Because of the strict requirements that must be met to be eligible for import or export of any item under these three exceptions, we are proposing that no additional threatened species permit would be required under 50 CFR 17.32. The requirements to obtain the relevant CITES document, the findings that must be made before the CITES document can be issued, and the requirement to present the item along with all required CITES and general wildlife import/export documents to Federal officials upon import or export would ensure that each import or export is legal and adequately monitored. Presentation of the items and documents upon import or export would also provide Federal officials the opportunity to make sure that all other requirements have been met. Requiring individuals to obtain an ESA threatened species permit in addition to the required CITES documents prior to import or export of items under these limited exceptions would be an unnecessary overlay of documents on top of existing CITES documentation that ensures that such import or export is not contributing to the illegal killing of elephants.

All of these exceptions are identical or similar to the exceptions to the AfECA import moratorium that were provided as a matter of law enforcement discretion through Director's Order No. 210, as amended on May 15, 2014. The only substantive change is that the Director's Order contained an additional standard that any musical instrument, item in a traveling exhibition, item in a household move, or inherited item containing ivory could not be imported if it had been transferred from one person to another person for financial gain or profit since February 25, 2014 (the date of the original Director's Order). We have determined that this restriction is not needed because with this proposed rule it would be a violation of the ESA for any person to sell or offer for sale ivory or sport-hunted trophies in interstate or foreign commerce or to deliver, receive, carry, transport, or ship ivory or sport-hunted trophies in interstate or foreign commerce in the course of a commercial activity except for certain manufactured items that would qualify under the *de minimis* exception. Therefore any U.S. citizen or other person subject to the jurisdiction of the United States who commercialized an item containing ivory or a sport-hunted trophy in violation of these prohibitions would be in violation of this rule regardless of whether this additional restriction were in place.

Under the current 4(d) rule, worked ivory may be exported in accordance with the requirements in 50 CFR parts 13 and 23, and raw ivory may not be exported from the United States for commercial purposes under any circumstances. Under the AfECA, the export of all raw ivory is prohibited. We propose to revise the 4(d) rule to prohibit export of raw ivory, consistent with the AfECA prohibition, with the exception of antiques. For the same reasons discussed above, we also propose to prohibit export of worked ivory, other than antiques, except in the same limited circumstances and for the same limited purposes allowed for import: By a government agency for law enforcement purposes, for a genuine scientific purpose that will contribute to the conservation of the African elephant, as part of a qualifying musical instrument, as a qualifying item in a traveling exhibition, or as a qualifying item that is part of a household move or inheritance.

In developing this proposed rule, we have given very careful consideration to the types of circumstances and purposes for which we could allow exceptions to the prohibitions on import and export of African elephant ivory. However, we seek information and comment regarding the need for and advisability of finalizing a rule that includes a broader exception to those prohibitions for the noncommercial import or export of worked ivory in circumstances that are not covered by the exceptions for musical instrument, traveling exhibitions, household moves or inheritances, or genuine scientific purposes. In particular, we seek information from individuals who may wish to engage in noncommercial import or export of worked African elephant ivory that would be prohibited by this proposed rule. We are also interested in the potential impacts of these prohibitions on segments of the trade not covered by these exceptions.

Information regarding the illegal killing of elephants and the alarming growth in illegal trade in elephant ivory shows that all appropriate actions are needed to restrict the export of raw and worked African elephant ivory where that export is likely to contribute to commercializing elephant ivory. It is appropriate, however, to allow certain limited exceptions to the export prohibition where export either would be beneficial to law enforcement or the conservation of the species, or where export of certain articles of worked ivory meet strict criteria and are regulated in such a manner that their export would not contribute to the illegal trade in ivory and pose no risk to elephant populations. Export of worked African elephant ivory would also be available by threatened species permit under 50 CFR 17.32, provided the person met all of the requirements of that section as well as the general permitting requirements under 50 CFR part 13.

As noted previously, Section 4(d) of the ESA does not apply to items that qualify as antiques. While the prohibitions on import and export of ivory proposed here thus do not apply to ESA antiques, the prohibitions on import and export of ivory under AfECA would still apply, regardless of the age of the item. In addition, certain worked ivory items that qualify under the ESA section 9(b)(1) ''pre-Act'' exemption (see below) could also be exported (see below). No ESA permit would be required for any worked ivory that qualified under any of these provisions, but it would still need to be accompanied by any required CITES document and meet all requirements under the Service's general wildlife import/export regulations.

Qualifying Pre-Act Specimens

The ESA provides an exemption in section 9(b)(1) from any prohibitions contained in a 4(d) rule for specimens of threatened species ''held in captivity or in a controlled environment'' on the date the ESA entered into effect

(December 28, 1973) or the date the final rule listing the species under the ESA was published in the **Federal Register** (which for the African elephant was May 12, 1978), whichever is later. The exemption applies only if ''such holding and any subsequent holding or use of the fish or wildlife was not in the course of a commercial activity.'' As noted above in *Interstate and foreign commerce,* activities with threatened species do not qualify as ''commercial activity'' unless the activity involves the transfer of the specimen from one person to another person in the pursuit of gain or profit. Therefore, the exemption would apply unless commercial activity with an African elephant specimen (including ivory) on or after May 12, 1978, involved the transfer of the specimen from one person to another person in pursuit of gain or profit. (See the discussion on activities that occur ''in the course of a commercial activity'' under *Interstate and foreign commerce,* above.)

Persons wishing to engage in activities that otherwise would be prohibited under this 4(d) rule would have the burden of showing that their activities qualify for this ''pre-Act'' exemption. The statutory exemption would not change with revision of the 4(d) rule, but it is also important to remember that nothing in the ESA provides that an exemption under that law modifies or supersedes provisions in other applicable statutes such as the AfECA. (See *Antique specimens,* below, for a full discussion on the relationship between ESA exemptions and AfECA restrictions.) Therefore, activities prohibited under the AfECA remain prohibited, even if the ESA ''pre-Act'' exemption applies.

The pre-Act exemption would apply to the following examples if the activity met all requirements of the ESA: The prohibition against take for qualifying live elephants that were held in captivity on May 12, 1978; the prohibition on the export of worked ivory that was held in a controlled environment on May 12, 1978; and the requirement to get a threatened species permit for the export of worked ivory to be used for genuine scientific purposes for ivory that was held in a controlled environment on May 12, 1978, provided that in each case the holding and any subsequent holding or use of the live animal or specimen since 1978 did not include transfer from one person to another person in the pursuit of gain or profit.

In addition, if the holding as of May 12, 1978, or any subsequent holding or use included a transfer from one person to another person in the pursuit of gain or profit, the exemption would still be available if the activities qualified as exhibition of commodities by a museum or similar cultural or historical organization. All import and export requirements under CITES and the general wildlife import/export regulations at 50 CFR part 14 would still need to be met. Section 9(b)(1) of the ESA provides an exemption from ESA threatened-species prohibitions only, not from requirements that arise under CITES and the general import/export requirements under the ESA.

Antique Specimens

Section 10(h) of the ESA provides an exemption for antique articles that are: (a) Not less than 100 years of age; (b) composed in whole or in part of any endangered species or threatened species; (c) have not been repaired or modified with any part of any such species on or after the date of the enactment of the ESA; and (d) are entered at a port designated for ESA antiques. Any person who is conducting activities with a qualifying ESA antique is exempt from, among other things, any restrictions provided in a 4(d) rule for that species, including restrictions on import; export; sale or offer for sale in interstate or foreign commerce; and delivery, receipt, carrying, transport, or shipment in interstate or foreign commerce and in the course of a commercial activity. The taking prohibition would not apply to dead specimens such as antiques. Anyone wishing to engage in activities under this antiques exception must be able to demonstrate that the item meets the requirements of the ESA.

Items that qualify as antiques under the ESA are not subject to the prohibitions in the proposed 4(d) rule. The ESA antiques exemption does not apply, however, to prohibitions imposed under the AfECA on the import of raw and worked African elephant ivory into the United States and the export of raw ivory from the United States. As with the ESA section 9(b)(1) ''pre-Act'' exemption, nothing in the ESA provides that an exemption under that law modifies or supersedes provisions in other applicable statutes such as the AfECA. The provisions in the AfECA regarding the import and certain export of African elephant ivory were specifically enacted to address conservation concerns with African elephants and were enacted later in time than the earlier, more general ESA exemption applicable to all endangered and threatened species, so the later, more specific restrictions on import and export in the AfECA take precedence over the earlier, more general exemption in the ESA. As noted previously, section 4241 of the AfECA (16 U.S.C. 4241) specifies that the authority of the Service under the AfECA is in addition to and does not affect the authority of the Service under the ESA.

A qualifying ESA antique containing African elephant ivory could thus only be imported if it also qualified for one of the exceptions from enforcement of the AfECA moratorium created by Director's Order No. 210: antique raw or worked ivory for law enforcement purposes, antique raw or worked ivory for scientific purposes, antique worked ivory that is part of a musical instrument, antique worked ivory in a traveling exhibition, antique worked ivory that is part of a household move, or antique worked ivory that was inherited. As noted previously, we believe these exceptions are consistent with Congressional intent in enacting the AfECA, which focused on the harm caused by poaching to supply the illegal trade in ivory. An antique sport-hunted trophy could not qualify for import because it would not be able to meet the requirements under the AfECA that it was taken from an elephant range country with an elephant quota declared to the CITES Secretariat (which did not exist 100 years ago). Because the prohibition on the export of all raw ivory is under the AfECA, the ESA antique exemption also could not be used to export antique raw ivory.

For qualifying ESA antiques containing African elephant ivory that could be imported as described above and antiques containing African elephant ivory that meet all of the requirements under section 10(h) of the ESA and were imported before the AfECA import moratorium was put in place in 1989, whether those antiques could be commercialized in interstate or foreign commerce would depend on whether restrictions are based on the ESA or CITES. Any restrictions that are based on CITES or laws other than the ESA would remain in place.

As discussed earlier, one of the requirements to qualify for the ESA antiques exemption is that the antique must have been imported into the United States through a port designated for the import of ESA antiques. These ports were first designated on September 22, 1982. Therefore, under the terms of the ESA, no item that contains parts of any endangered or threatened species (including African elephant ivory) can qualify under the ESA antiques exemption unless it was imported into the United States through one of the designated ESA antiques ports on some date after September 22, 1982.

On February 25, 2014 (as amended on May 15, 2014), the Service issued Director's Order No. 210, which, among other things, provides direction to Service employees on implementation and enforcement of the ESA antiques exemption. Appendix A to Director's Order No. 210 reiterates the four statutory requirements for an item to qualify as an ESA antique and states that, as a matter of law enforcement discretion, the prohibitions under the ESA would not be enforced for antiques that meet the requirements of being at least 100 years old; being composed of an endangered or threatened species; and not having been repaired or modified with any part of an endangered or threatened species since December 28, 1973, but were imported prior to September 22, 1982, or were created in the United States and never imported and therefore do not meet the requirement of having been imported at a designated ESA antiques port. This Director's Order remains in place. The Service will apply its law enforcement discretion regarding otherwise qualifying antiques that were imported prior to September 22, 1982, or were produced in the United States and never imported, allowing them to be exported, sold or offered for sale in interstate or foreign commerce, and delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity, provided all other legal requirements are met. Appendix A of the Director's Order also contains guidance on documentation needed and other information for conducting activities with ESA antiques. Director's Order No. 210, as amended on May 15, 2014, including Appendix A can be found at *http://www.fws.gov/policy/do210.html*.

As described in Director's Order No. 210, the person claiming the benefit of the ESA antiques exemption must provide evidence to demonstrate that the item qualifies as an ESA antique. This evidence may include a qualified appraisal, documents that provide detailed provenance, and/or scientific testing. Since issuance of the Director's Order, we have heard from some people who are concerned about what the Service might require in terms of documentation or authentication of their antique items. We want to be clear that establishing provenance does not necessarily require destructive testing; there may be other ways to establish provenance, such as a qualified appraisal or another method that documents the age by establishing the origin of the item. We have listed scientific testing (in the Appendix to Director's Order No. 210) as an option for people who may want to make use of it in certain circumstance for certain items. However, this is only one option, in a suite of possible options. The provenance may be determined through a detailed history of the item, including but not limited to family photos, ethnographic fieldwork, or other information that authenticates the item and assigns the work to a known period of time or, where possible, to a known artist. Scientific testing could be necessary if there is no other way to establish the provenance of an item.

In addition, we want to be clear that we do not require scientific testing of the ivory components in a manufactured antique item. Where a person can demonstrate that an item, for example a table with ivory inlays, is older than 100 years, and that the table has not been repaired or modified with ivory (or any other threatened or endangered species) since December 28, 1973, the Service considers the age criteria in Section 10(h) to be met. We would not require testing of the ivory itself to determine its age. Of course, to qualify for the ESA antiques exemption a person must demonstrate that all four of the criteria in Section 10(h) of the ESA have been met.

We also want to clarify that these documentation requirements are not new. The ESA itself places the burden of proof on the person claiming the benefit of the exemption (Sec. 10(g)) and the Service has required documentation for antique items since the 1970s. This documentation requirement is also not unique to African elephant ivory; it applies to specimens of any species listed under the ESA when a person is claiming the benefit of this exemption from prohibitions. Over the years, the Service has provided information regarding acceptable documentation for establishing age and provenance; most recently, in the Appendix to Director's Order No. 210. Our CITES regulations at 50 CFR 23.34 also provide information on the kinds of records a person can use to show the origin of a specimen. We seek comment from the public on whether additional guidance is needed in the regulatory code regarding implementation of the ESA antiques exemption.

Determination

Section 4(d) of the ESA states that the ''Secretary shall issue such regulations as [s]he deems necessary and advisable to provide for the conservation'' of species listed as threatened. Additionally, section 4(d) of the ESA provides that the Secretary ''may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1).'' Thus regulations promulgated under section 4(d) of the ESA provide the Secretary, as delegated to the Service, discretion to select appropriate provisions for threatened species, including prohibitions, exceptions, and required authorizations. Some of the ESA prohibitions and exceptions from section 9(a)(1) of the ESA and from 50 CFR 17.31 and 17.32 may be appropriate for the species and be incorporated into a 4(d) rule. However, the 4(d) rule may also include other provisions that take into account other applicable laws and are tailored to the specific conservation needs of the listed species, and therefore may be more or less restrictive than the general provisions for threatened species. As noted by Congress when the ESA was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [she] may choose to forbid both taking and importation but allow the transportation of such species,'' as long as the measures will ''serve to conserve, protect, or restore the species concerned in accordance with the purposes of the [ESA]'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

This proposed rule includes appropriate provisions that are necessary and advisable to provide for the conservation of the African elephant, while also including appropriate prohibitions from Section 9(a)(1) of the ESA. The primary threat to the African elephant is poaching of elephants for their tusks and the associated illegal trade in both raw and worked ivory. To restrict this illegal trade, the proposed provisions under this rule prohibit the import of African elephant ivory, with certain narrow exceptions, restrict the import of sport-hunted trophies, and prohibit the export of raw ivory. The rule provides two exceptions from the prohibition on import of ivory that would directly benefit law enforcement efforts that involve African elephants and science that would contribute to the conservation of the species. The rule provides three additional exceptions, which apply to the noncommercial import or export of worked ivory only, for qualifying musical instruments, items in a traveling exhibition, inherited items, and items that are part of a household move. Any worked ivory imported or exported under these

exceptions would need to meet strict criteria under both CITES and this rule, resulting in restrictions that safeguard against import or export of ivory that could contribute to the illegal trade in ivory or pose a risk to elephant populations. The import and export of ivory is also subject to applicable restrictions under the AfECA, except to the extent allowed under Director's Order No. 210, as amended on May 15, 2014. Our information indicates that these strict controls on the import and export of African elephant ivory will help to ensure that U.S. participation in the ivory trade will not contribute to the illegal killing of elephants.

For the same reasons that the import and export of raw and worked ivory need to be carefully regulated, the import and export of African elephant sport-hunted trophies must be regulated in a manner that would ensure that the import and export does not contribute to the illegal trade of ivory. The proposed rule would require that the import of all sport-hunted trophies, regardless of the CITES status of the source population, be authorized through the issuance of a threatened species permit under 50 CFR 17.32. Authorizing importation through threatened species enhancement permits would allow us to more carefully evaluate trophy imports in accordance with legal requirements and the conservation needs of the species. The limitation of two trophies per hunter per year would ensure that the importation of African elephant trophies is actually the result of personal, noncommercial sport hunting and would prevent the importation of commercial quantities of ivory.

Perhaps the biggest change from the current 4(d) rule would be new restrictions on the commercialization of ivory in interstate and foreign commerce. The proposed rule would prohibit the sale or offer for sale of ivory and sport-hunted trophies in interstate or foreign commerce and the delivery, receipt, carrying, transport, or shipment of ivory and sport-hunted trophies in interstate or foreign commerce in the course of a commercial activity. Exceptions would be available for qualifying antiques and for certain items manufactured before the date of the final rule for this rulemaking that contain less than 200 grams of ivory and meet other conditions, while certain commercial activities could also be authorized through a threatened species permit under 50 CFR 17.32. However, the *de minimis* exception and threatened species permits would not be available for sport-hunted trophies and ivory items that were imported as part of a household move or inheritance. We have determined that items meeting the *de minimis* exception, including the requirements that the ivory be a fixed component of a larger manufactured item, that the ivory is not raw, that the ivory is not the primary source of value of the item, that the total weight of the ivory is less than 200 grams, and that the manufactured item is not made wholly or primarily of ivory, would minimize the possibility of the ivory contributing to either the global or U.S. markets in illegal ivory.

The proposed rule, however, would continue to allow certain activities that pose no risk to African elephants. Live elephants and elephant parts or products other than ivory and sport-hunted trophies could continue to be imported into or exported from the United States, sold or offered for sale in interstate or foreign commerce, and delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity, provided all other requirements under CITES and the Service's general import/export regulations were met. CITES requirements, including findings that must be made before documents can be issued, would continue to ensure that all import and export of live animals and parts or products other than ivory and sport-hunted trophies remain legal and non-detrimental to the survival of the species. There is no information that indicates that import, export, or commercialization of live elephants or non-ivory parts and products as currently regulated under CITES has any negative effect on African elephants or is contributing in any way to the current crisis involving the killing of elephants for their ivory. The new restriction on the taking of live elephants held in captivity within the United States or during transport would help to ensure that animals in captivity receive an appropriate standard of care.

In addition to this proposed rule being necessary and advisable to provide for the conservation of the species and including appropriate prohibitions from section 9(a)(1) of the ESA, it also is consistent with other efforts to improve elephant conservation. With this rule, the United States would ensure that we have in place comprehensive internal regulatory and enforcement measures to regulate domestic trade in raw and worked ivory, as called for at the 16th meeting of the Conference of the Parties to CITES in March 2013 (see Resolution Conf. 10.10 (Rev. CoP16)). More broadly, the proposed rule would respond to the President's Executive Order of July 1, 2013, calling for all Federal agencies to take action to combat wildlife trafficking in all wildlife and to reduce demand for illegally traded wildlife, both at home and abroad. All of the proposed revisions to the African elephant 4(d) rule would allow us to better regulate the U.S. domestic market and U.S. participation in the global market for African elephant ivory, which we believe will lead to a reduction of the illegal killing of elephants for their ivory.

TABLE 1—HOW WOULD PROPOSED CHANGES TO THE AFRICAN ELEPHANT 4(d) RULE AFFECT TRADE IN AFRICAN ELEPHANT IVORY?

[This table is only for guidance on proposed revisions to the existing Endangered Species Act 4(d) rule for the African elephant. Please see the proposed rule text for details. All imports and exports must be accompanied by appropriate CITES documents and meet other FWS import/export requirements]

	What activities are currently allowed/prohibited?	What are the proposed changes?
	In 2014, the Service revised Director's Order No. 210 (effective May 15, 2014) and U.S. CITES implementing regulations [50 CFR part 23] (effective June 26, 2014). Both of these actions created new rules for trade in elephant ivory	This column describes the contents of the proposed rule in general terms. Please refer to the proposed rule text for details. These provisions will not go into effect until we have considered input received during the public comment period and published a final rule in the **Federal Register**.
Import	*Commercial* What's allowed: • No commercial imports allowed	*Commercial* The proposed rule does not include any changes for commercial imports.

TABLE 1—HOW WOULD PROPOSED CHANGES TO THE AFRICAN ELEPHANT 4(d) RULE AFFECT TRADE IN AFRICAN ELEPHANT IVORY?—Continued

[This table is only for guidance on proposed revisions to the existing Endangered Species Act 4(d) rule for the African elephant. Please see the proposed rule text for details. All imports and exports must be accompanied by appropriate CITES documents and meet other FWS import/export requirements]

	What activities are currently allowed/prohibited?	What are the proposed changes?
	Noncommercial What's allowed: • Sport-hunted trophies (no limit) • Law enforcement and bona fide scientific specimens • Worked elephant ivory that was legally acquired and removed from the wild prior to February 26, 1976 and has not been sold since February 25, 2014 and is either: ○ Part of a household move or inheritance (see Director's Order No. 210 for details); ○ Part of a musical instrument (see Director's Order No. 210 for details); or ○ Part of a traveling exhibition (see Director's Order No. 210 for details). What's prohibited: • Worked ivory that does not meet the conditions described above. • Raw ivory (except for sport-hunted trophies).	*Noncommercial* The proposed rule includes the following changes for noncommercial imports: • Limits sport-hunted trophies to two per hunter per year. • Removes the requirement that worked elephant ivory has not been sold since February 25, 2014. All other requirements for worked elephant ivory (listed in the previous column) must be met.
Export	*Commercial* What's allowed: • CITES pre-Convention worked ivory, including antiques. What's prohibited: • Raw ivory	*Commercial* The proposed rule would further restrict commercial exports to only those items that meet the criteria of the ESA antiques exemption.* Raw ivory remains prohibited regardless of age.
	Noncommercial What's allowed: • Worked ivory What's prohibited: • Raw ivory	*Noncommercial* The proposed rule would further restrict noncommercial exports to the following categories: • Only those items that meet the criteria of the ESA antiques exemption.* • Worked elephant ivory that was legally acquired and removed from the wild prior to February 26, 1976, and is either: ○ Part of a household move or inheritance; ○ Part of a musical instrument; or ○ Part of a traveling exhibition. • Worked ivory that qualifies as pre-Act • Law enforcement and *bona fide* scientific specimens. Raw ivory remains prohibited regardless of age.
Foreign commerce	There are no restrictions on foreign commerce	The proposed rule includes the following changes for foreign commerce: • Restricts foreign commerce to: ○ items that meet the criteria of the ESA antiques exemption,* and ○ certain manufactured items that contain a small (*de minimis*) amount of ivory. • Prohibits foreign commerce in: ○ sport-hunted trophies, and ○ ivory imported/exported as part of a household move or inheritance.
Sales across state lines † (interstate commerce).	What's allowed: • Ivory lawfully imported prior to the date the African elephant was listed in CITES Appendix I (January 18, 1990)—[seller must demonstrate]. • Ivory imported under a CITES pre-Convention certificate—[seller must demonstrate].	The proposed rule includes the following changes for interstate commerce: • Further restricts interstate commerce to only: ○ items that meet the criteria of the ESA antiques exemption,* and ○ certain manufactured items that contain a small (*de minimis*) amount of ivory.** • Prohibits interstate commerce in: ○ ivory imported under the exceptions for household move or inheritance, or for law enforcement or genuine scientific purposes, and ○ sport-hunted trophies.

TABLE 1—HOW WOULD PROPOSED CHANGES TO THE AFRICAN ELEPHANT 4(d) RULE AFFECT TRADE IN AFRICAN ELEPHANT IVORY?—Continued

[This table is only for guidance on proposed revisions to the existing Endangered Species Act 4(d) rule for the African elephant. Please see the proposed rule text for details. All imports and exports must be accompanied by appropriate CITES documents and meet other FWS import/export requirements]

	What activities are currently allowed/prohibited?	What are the proposed changes?
Sales within a state (intrastate commerce).	What's allowed: • Ivory lawfully imported prior to the date the African elephant was listed in CITES Appendix I (January 18, 1990)—[seller must demonstrate]. • Ivory imported under a CITES pre-Convention certificate—[seller must demonstrate].	The proposed rule does not include any changes for intrastate commerce.
Noncommercial movement † within the United States.	Noncommercial use, including interstate and intrastate movement within the United States, of legally acquired ivory is allowed.	The proposed rule does not include any changes for noncommercial movement within the United States.
Personal possession	Possession and noncommercial use of legally acquired ivory is allowed.	The proposed rule does not include any changes for personal possession.

† See preamble discussion in the section titled *Interstate and foreign commerce.*

* To qualify for the ESA antique exemption an item must meet all of the following criteria [seller/importer/exporter must demonstrate]:

A. It is 100 years or older.

B. It is composed in whole or in part of an ESA-listed species;

C. It has not been repaired or modified with any such species after December 27, 1973; and

D. It is being or was imported through an endangered species ''antique port.''

Under Director's Order No. 210, as a matter of enforcement discretion, items imported prior to September 22, 1982, and items created in the United States and never imported must comply with elements A, B, and C above, but not element D.

** To qualify for the *de minimis* exception, manufactured items must meet all of the following criteria:

(i) If the item is located within the United States, the ivory was imported into the United States prior to January 18, 1990, or was imported into the United States under a Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) pre-Convention certificate with no limitation on its commercial use;

(ii) If the item is located outside the United States, the ivory was removed from the wild prior to February 26, 1976;

(iii) The ivory is a fixed component or components of a larger manufactured item and is not in its current form the primary source of the value of the item;

(iv) The ivory is not raw;

(v) The manufactured item is not made wholly or primarily of ivory;

(vi) The total weight of the ivory component or components is less than 200 grams; and

(vii) The item was manufactured before the effective date of the final rule].

For a discussion of the *de minimis* exception see the section of the preamble titled *Interstate and foreign commerce;* for details of the *de minimis* exception see paragraph (e)(3) in the rule text at the end of this document.

Required Determinations

Regulatory Planning and Review: Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is significant because it may raise novel legal or policy issues. Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

A brief assessment to identify the economic costs and benefits associated with this proposed rule follows. The Service has prepared an economic analysis, as part of our review under the National Environmental Policy Act (NEPA), which we will make available for review and comment (see the paragraph in this Required Determinations section on the *National Environmental Policy Act*). The proposed rule would revise the 4(d) rule, which regulates trade of African elephants *(Loxodonta africana)*, including African elephant parts and products. We are proposing to revise the 4(d) rule to more strictly control U.S. trade in African elephant ivory. Revision of the 4(d) rule as proposed would mean that African elephants are subject to some of the standard provisions for species classified as threatened under the ESA. This means that the taking of live elephants and (with certain exceptions) import, export, and commercial activities in interstate or foreign commerce of African elephant parts and products containing ivory would generally be prohibited without a permit issued under 50 CFR 17.32 for ''Scientific purposes, or the enhancement of propagation or survival, or economic hardship, or zoological exhibition, or educational purposes, or incidental taking, or special purposes consistent with the purposes of the [ESA].'' There are specific exceptions for certain activities with specimens containing *de minimis* quantities of ivory; ivory items that meet certain requirements for musical instruments, traveling exhibitions, inherited items, and items that are part of a household move; ivory imported or exported for scientific purposes or law enforcement; certain live elephants; and ivory items that qualify as ''pre-Act'' or as antiques under the ESA.

This rule would regulate only African elephants and African elephant ivory. Asian elephants and parts or products from Asian elephants, including ivory, are regulated separately under the ESA. Ivory from other species such as walrus is also regulated separately under the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*). Ivory from extinct species such as mammoths is not

regulated under statutes implemented by the Service.

Impacted markets include those involving U.S. citizens or other persons subject to the jurisdiction of the United States that buy, sell, or otherwise commercialize African elephant ivory products across State lines and those that buy, sell, or otherwise commercialize such specimens in international trade. Examples of products in trade containing African elephant ivory include cue sticks, pool balls, knife handles, gun grips, furniture inlay, jewelry, artwork, and musical instrument parts.

The market for African elephant products, including ivory, is not large enough to have major data collections or reporting requirements, which results in a limited amount of available data for economic analysis. Some import and export data are available from the Service's Office of Law Enforcement and Division of Management Authority, and from reports produced by other organizations. On the whole, the available data provide a general overview of the African elephant ivory market. Using this information, we can make reasonable assumptions to approximate the potential economic impact of revision of the 4(d) rule for the African elephant. With this proposed rule, we solicit public input on impacts to sales, percentage of revenue impacted, and the number of businesses affected, particularly with regard to interstate and foreign commerce, for which we have the least amount of information, to help quantify these costs and benefits. Please see the Public Comments section at the end of **SUPPLEMENTARY INFORMATION** for further information about submitting comments.

Imports. There has been a moratorium on the import of African elephant ivory other than sport-hunted trophies, established under the AfECA and in place since 1989. In recent years, the Service has allowed, as a matter of law enforcement discretion, the import of certain antique African elephant ivory. Director's Order No. 210, issued in February 2014, clarified that we will no longer allow any commercial import of African elephant ivory, regardless of its age. We are proposing to reflect this provision of Director's Order No. 210 in the 4(d) rule (except for antiques, which are exempt from this 4(d) rule, but remain subject to the AfECA moratorium). Import of live African elephants and non-ivory African elephant parts and products would continue to be allowed under the proposed revisions, provided the requirements at 50 CFR parts 13, 14, and 23 are met. Import of African elephant sport-hunted trophies would be limited to two trophies per hunter per year. This may impact about seven hunters, representing about 3 percent to 4 percent of hunters, annually.

Exports. Under the current 4(d) rule, raw ivory may not be exported from the United States for commercial purposes under any circumstances. In addition, export of raw ivory from the United States is prohibited under the AfECA. Therefore, the revisions to the 4(d) rule would have no impact on exports of raw ivory. Revision of the 4(d) rule as proposed would mean that export of worked African elephant ivory would be prohibited without an ESA permit issued under 50 CFR 17.32, except for specimens that qualify as ''pre-Act'' or as ESA antiques and certain musical instruments; items in a traveling exhibition; items that are part of a household move or inheritance; items exported for scientific purposes; and items exported for law enforcement purposes that meet specific conditions and, therefore, may be exported without an ESA permit. Export of live African elephants and non-ivory products made from African elephants would continue to be allowed provided the requirements at 50 CFR parts 13, 14, and 23 are met.

From 2007 to 2011, the total declared value of worked African elephant ivory exported from the United States varied widely from $32.1 million to $175.7 million. The declared value of items containing African elephant ivory that were less than 100 years old (and, therefore, could not qualify as ESA antiques) ranged from $607,000 to $3.7 million annually during the same time period. As this rule would no longer permit the commercial export of non-antique ivory, we expect based on the information currently available that, on average, commercial export of worked ivory would decrease by about 2 percent annually.

Domestic and Foreign Commerce. The proposed rule would prohibit certain commercial activities such as sale in interstate or foreign commerce of African elephant ivory and delivery, receipt, carrying, transport, or shipment of ivory in interstate or foreign commerce in the course of a commercial activity (except for qualifying ESA antiques and certain manufactured items containing *de minimis* amounts of ivory) without an ESA permit issued under 50 CFR 17.32. Otherwise, commercial activities in interstate and foreign commerce with live African elephants and African elephant parts and products other than ivory would continue to be allowed under the proposed revisions to the 4(d) rule. While revisions to the 4(d) rule would generally result in prohibitions on sale or offer for sale in interstate or foreign commerce as well as prohibitions on delivery, receipt, carrying, transport, or shipment in interstate or foreign commerce in the course of a commercial activity of both raw and worked African elephant ivory, it would not have an impact on intrastate commerce. Businesses would not be prohibited by the 4(d) rule from selling raw or worked ivory within the State in which they are located. (There are, however, restrictions under our CITES regulations at 50 CFR 23.55 for intrastate sale of elephant ivory.) As noted earlier, available data provide only a general overview of the African elephant ivory market. Assuming that the domestic market is similar to the export market, then non-antique worked ivory domestic sales would also decrease about 2 percent annually under the proposed rule. We request information from the public about the potential impact to the domestic market. Because we are proposing to allow domestic and foreign commerce commercial activities with certain items containing *de minimis* amounts of ivory, and many of these items would be precluded from export, it is possible that an even smaller percentage of the domestic market would be impacted compared to the export market. Certain commercial activities such as sale in interstate or foreign commerce with raw ivory and non-antique worked ivory, with the exception of those items containing *de minimis* amounts of worked ivory mentioned above, would no longer be permitted.

Revising the 4(d) rule for African elephant, as proposed here, would improve domestic regulation of the U.S. market as well as foreign markets where commercial activities involving elephant ivory are conducted by U.S. citizens and facilitate enforcement efforts within the United States. We are proposing to take this action to increase protection for African elephants in response to the alarming rise in poaching of African elephants, which is fueling the rapidly expanding illegal trade in ivory. As noted in the preamble to this proposed rule, the United States continues to play a role as a destination and transit country for illegally traded elephant ivory. Increased control of the U.S. domestic market and foreign markets where commercial activities involving elephant ivory are conducted by U.S. citizens would benefit the conservation of the African elephant.

Regulatory Flexibility Act: Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory

Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 *et seq.*). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The U.S. Small Business Administration (SBA) defines a small business as one with annual revenue or employment that meets or is below an established size standard. To assess the effects of the rule on small entities, we focus on businesses that buy or sell elephant ivory. Businesses produce a variety of products from elephant ivory including cue sticks, pool balls, knife handles, gun grips, furniture inlay, jewelry, and instrument parts. Depending on the type of product produced, these businesses could be included in a number of different industries, including (1) Musical Instrument Manufacturing (North American Industry Classification System (NAICS) 339992), where small businesses have less than $10.0 million revenue; (2) Sporting and Recreational Goods and Supplies Merchant Wholesalers (NAICS 423910), where small businesses have fewer than 100 employees; (3) All Other Miscellaneous Wood Product Manufacturing (NAICS 321999), where small businesses have fewer than 500 employees; (4) Metal Kitchen Cookware, Utensil, Cutlery, and Flatware (except Precious) Manufacturing (NAICS 332215), where small businesses have fewer than 500 employees; (5) Jewelry and Silverware Manufacturing, (NAICS 339910), where small businesses have fewer than 500 employees; (6) Used Merchandise Stores (NAICS 453310), where small businesses have less than $7.5 million in revenue; and (7) Art Dealers (NAICS 453920), where small businesses have less than $7.5 million in revenue. Table 2 describes the number of businesses within each industry and the estimated percentage of small businesses. The U.S. Economic Census does not capture the detail necessary to determine the number of small businesses that are engaged in commerce with African elephant ivory products within these industries. Based on the distribution of small businesses with these industries as shown in Table 2, we expect that the majority of the entities involved with trade in African elephant ivory would be considered small as defined by the SBA.

TABLE 2—DISTRIBUTION OF BUSINESSES WITHIN AFFECTED INDUSTRIES

NAICS Code	Description	Number of businesses	Percentage of small businesses
339992	Musical instrument manufacturing	597	73
423910	Sporting and recreational goods and supplies merchant wholesalers	5,953	97
321999	All other miscellaneous wood product manufacturing	1,763	100
332215	Metal kitchen cookware, utensil, cutlery, and flatware (except precious) manufacturing.	188	99
339910	Jewelry and silverware manufacturing	2,119	100
453310	Used merchandise stores	19,793	74
453920	Art dealers	4,937	95

Source: U.S. Census Bureau, 2012 County Business Patterns.

The impact on individual businesses is dependent on the percentage of interstate and export sales that involve non-antique African elephant ivory that would not fall under the *de minimis* exception. That is, the impact depends on where businesses are located, where their customers are located, and the kinds of items containing ivory that they sell. Information on business profiles to determine the percent of revenues affected by the rule is currently unavailable. Overall, we estimate that worked ivory exports would decrease about $2.1 million annually, which represents about 2 percent of the total declared value of worked ivory exported from 2007 to 2011. We also expect that domestic sales would decrease by about 2 percent annually. Because we are proposing to allow domestic commercial activities with certain items containing *de minimis* amounts of ivory, and many of these items would be precluded from export, it is possible that an even smaller percentage of the domestic market would be impacted compared to the export market.

Based on the available information, we do not expect these changes to have a substantial impact on small entities within the five affected industries listed above. We, therefore, certify that this proposed rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

This proposed rule would create no substantial fee or paperwork changes in the permitting process. The regulatory changes would require issuance of ESA permits for import of sport-hunted African elephant trophies. We estimate that we would issue 300 ESA permits per year for these sport-hunted trophies, with a fee of $100 per permit. These changes are not major in scope and would create only a modest financial or paperwork burden on the affected members of the general public. The authority to regulate activities involving ESA-listed species already exists under the ESA and is carried out through regulations contained in 50 CFR part 17.

Small Business Regulatory Enforcement Fairness Act: This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Would not have an annual effect on the economy of $100 million or more. This proposed rule revises the 4(d) rule for African elephant, which makes the African elephant subject to the same of the provisions applied to other threatened species not covered by a 4(d)

rule, with certain exceptions. This proposed rule would not have a negative effect on this part of the economy. It would affect all importers, exporters, re-exporters, and domestic and certain traders in foreign commerce of African elephant ivory equally, and the impacts would be evenly spread among all businesses, whether large or small. There is not a disproportionate impact for small or large businesses.

b. Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, tribal, or local government agencies; or geographic regions.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act: Under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This proposed rule would not significantly or uniquely affect small governments. A Small Government Agency Plan is not required. The proposed rule imposes no unfunded mandates. Therefore, this proposed rule would have no effect on small governments' responsibilities.

b. This proposed rule would not produce a Federal requirement of $100 million or greater in any year and is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings: Under Executive Order 12630, this proposed rule does not have significant takings implications. While certain activities that were previously unregulated would now be regulated, possession and other activities with African elephant ivory such as sale in intrastate commerce would remain unregulated. A takings implication assessment is not required.

Federalism: These proposed revisions to part 17 do not contain significant Federalism implications. A federalism summary impact statement under Executive Order 13132 is not required.

Civil Justice Reform: Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act: This proposed rule does not contain new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has reviewed and approved the information collection requirements associated with applications and reporting for CITES and ESA permits and assigned OMB Control No. 1018–0093, which expires May 31, 2017. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA): This proposed rule is being analyzed under the criteria of the National Environmental Policy Act, the Department of the Interior procedures for compliance with NEPA (Departmental Manual (DM) and 43 CFR part 46), and Council on Environmental Quality regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). We have prepared a draft environmental assessment to determine whether this rule will have a significant impact on the quality of the human environment under the National Environmental Policy Act of 1969. The draft environmental assessment is available online at *http://www.regulations.gov* at Docket Number FWS–HQ–IA–2013–0091.

Government-to-Government Relationship with Tribes: The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required. Individual tribal members must meet the same regulatory requirements as other individuals who trade in African elephants, including African elephant parts and products.

Energy Supply, Distribution, or Use: Executive Order 13211 pertains to regulations that significantly affect energy supply, distribution, or use. This proposed rule would revise the current regulations in 50 CFR part 17 regarding trade in African elephants and African elephant parts and products. This proposed rule would not significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Clarity of the Rule: We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, please send us comments by one of the methods listed under **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Comments

We are seeking comments on the impact of the provisions in this proposed rule on the affected public. You may submit your comments and materials concerning this proposed rule by one of the methods listed under **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed under **ADDRESSES**.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If you provide personal identifying information in your written comments, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at the U.S. Fish and Wildlife Service; Division of Management Authority; 5275 Leesburg Pike; Falls Church, VA 22041; telephone, (703) 358–2093.

References Cited

A list of references cited is available online at *http://www.regulations.gov* at Docket Number FWS–HQ–IA–2013–0091.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend title 50, chapter I,

subchapter B of the Code of Federal Regulations as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Section 17.40 is amended by revising paragraph (e) to read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(e) African elephant (*Loxodonta africana*). This paragraph (e) applies to any specimen of the species *Loxodonta africana* whether live or dead, including any part or product thereof. Except as provided in paragraphs (e)(2) through (9) of this section, all of the prohibitions and exceptions in §§ 17.31 and 17.32 apply to the African elephant. Persons seeking to benefit from the exceptions provided in this paragraph (e) must demonstrate that they meet the criteria to qualify for the exceptions.

(1) *Definitions.* In this paragraph (e), *antique* means any item that meets all four criteria under section 10(h) of the Endangered Species Act (16 U.S.C. 1539(h)). *Ivory* means any African elephant tusk and any piece of an African elephant tusk. *Raw ivory* means any African elephant tusk, and any piece thereof, the surface of which, polished or unpolished, is unaltered or minimally carved. *Worked ivory* means any African elephant tusk, and any piece thereof, that is not raw ivory.

(2) *Live animals and parts and products other than ivory and sport-hunted trophies.* Live African elephants and African elephant parts and products other than ivory and sport-hunted trophies may be imported into or exported from the United States; sold or offered for sale in interstate or foreign commerce; and delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity without a threatened species permit issued under § 17.32, provided the requirements in 50 CFR parts 13, 14, and 23 have been met.

(3) *Interstate and foreign commerce of ivory.* Except for antiques and certain manufactured items containing *de minimis* quantities of ivory, sale or offer for sale of ivory in interstate or foreign commerce and delivery, receipt, carrying, transport, or shipment of ivory in interstate or foreign commerce in the course of a commercial activity is prohibited. Except as provided in paragraphs (e)(5)(iii) and (e)(6) through (8) of this section, manufactured items containing *de minimis* quantities of ivory may be sold or offered for sale in interstate or foreign commerce and delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity without a threatened species permit issued under § 17.32, provided they meet all of the following criteria:

(i) If the item is located within the United States, the ivory was imported into the United States prior to January 18, 1990, or was imported into the United States under a Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) pre-Convention certificate with no limitation on its commercial use;

(ii) If the item is located outside the United States, the ivory was removed from the wild prior to February 26, 1976;

(iii) The ivory is a fixed component or components of a larger manufactured item and is not in its current form the primary source of the value of the item;

(iv) The ivory is not raw;

(v) The manufactured item is not made wholly or primarily of ivory;

(vi) The total weight of the ivory component or components is less than 200 grams; and

(vii) The item was manufactured before [*EFFECTIVE DATE OF THE FINAL RULE*].

(4) *Import/export of raw ivory.* Except as provided in paragraphs (e)(6) through (9) of this section, raw ivory may not be imported into or exported from the United States.

(5) *Import/export of worked ivory.* Except as provided in paragraphs (e)(6) through (9) of this section, worked ivory may not be imported into or exported from the United States unless it is contained in a musical instrument, or is part of a traveling exhibition, household move, or inheritance, and meets the following criteria:

(i) *Musical instrument.* Musical instruments that contain worked ivory may be imported into and exported from the United States without a threatened species permit issued under § 17.32 provided:

(A) The ivory was legally acquired prior to February 26, 1976;

(B) The instrument containing worked ivory is accompanied by a valid CITES musical instrument certificate or equivalent CITES document;

(C) The instrument is securely marked or uniquely identified so that authorities can verify that the certificate corresponds to the musical instrument in question; and

(D) The instrument is not sold, traded, or otherwise disposed of while outside the certificate holder's country of usual residence.

(ii) *Traveling exhibition.* Worked ivory that is part of a traveling exhibition may be imported into and exported from the United States without a threatened species permit issued under § 17.32 provided:

(A) The ivory was legally acquired prior to February 26, 1976;

(B) The item containing worked ivory is accompanied by a valid CITES traveling exhibition certificate (See the requirements for traveling exhibition certificates at 50 CFR 23.49);

(C) The item containing ivory is securely marked or uniquely identified so that authorities can verify that the certificate corresponds to the item in question; and

(D) The item containing worked ivory is not sold, traded, or otherwise disposed of while outside the certificate holder's country of usual residence.

(iii) *Household move or inheritance.* Worked ivory may be imported into or exported from the United States without a threatened species permit issued under § 17.32 for personal use as part of a household move or as part of an inheritance if the ivory was legally acquired prior to February 26, 1976, and the item is accompanied by a valid CITES pre-Convention certificate. It is unlawful to sell or offer for sale in interstate or foreign commerce or to deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity any African elephant ivory imported into the United States as part of a household move or inheritance. The exception in paragraph (e)(3) of this section regarding manufactured items containing *de minimis* quantities of ivory does not apply to items imported or exported under this paragraph (e)(5)(iii) as part of a household move or inheritance.

(6) *Sport-hunted trophies.* (i) African elephant sport-hunted trophies may be imported into the United States provided:

(A) The trophy was legally taken in an African elephant range country that declared an ivory export quota to the CITES Secretariat for the year in which the trophy animal was killed;

(B) A determination is made that the killing of the trophy animal will enhance the survival of the species and the trophy is accompanied by a threatened species permit issued under § 17.32;

(C) The trophy is legibly marked in accordance with 50 CFR part 23;

(D) The requirements in 50 CFR parts 13, 14, and 23 have been met; and

(E) No more than two African elephant sport-hunted trophies are

imported by any hunter in a calendar year.

(ii) It is unlawful to sell or offer for sale in interstate or foreign commerce or to deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity any sport-hunted African elephant trophy. The exception in paragraph (e)(3) of this section regarding manufactured items containing *de minimis* quantities of ivory does not apply to ivory imported or exported under this paragraph (e)(6) as part of a sport-hunted trophy.

(iii) Except as provided in paragraph (e)(9) of this section, raw ivory that was imported as part of a sport-hunted trophy may not be exported from the United States. Except as provided in paragraphs (e)(5), (7), (8), and (9) of this section, worked ivory imported as a sport-hunted trophy may not be exported from the United States. Parts of a sport-hunted trophy other than ivory may be exported from the United States without a threatened species permit issued under § 17.32 of this part, provided the requirements of 50 CFR parts 13, 14, and 23 have been met.

(7) *Import/export of ivory for law enforcement purposes.* Raw or worked ivory may be imported into and worked ivory may be exported from the United States by an employee or agent of a Federal, State, or tribal government agency for law enforcement purposes, without a threatened species permit issued under § 17.32, provided the requirements of 50 CFR parts 13, 14, and 23 have been met. It is unlawful to sell or offer for sale in interstate or foreign commerce and to deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity any African elephant ivory that was imported into or exported from the United States for law enforcement purposes. The exception in paragraph (e)(3) of this section regarding manufactured items containing *de minimis* quantities of ivory does not apply to ivory imported or exported under this paragraph (e)(7) for law enforcement purposes.

(8) *Import/export of ivory for genuine scientific purposes.* (i) Raw or worked ivory may be imported into and worked ivory may be exported from the United States for genuine scientific purposes that will contribute to the conservation of the African elephant, provided:

(A) It is accompanied by a threatened species permit issued under § 17.32; and

(B) The requirements of 50 CFR parts 13, 14, and 23 have been met.

(ii) It is unlawful to sell or offer for sale in interstate or foreign commerce and to deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity any African elephant ivory that was imported into or exported from the United States for genuine scientific purposes. The exception in paragraph (e)(3) of this section regarding manufactured items containing *de minimis* quantities of ivory does not apply to ivory imported or exported under this paragraph (e)(8) for genuine scientific purposes.

(9) *Antique ivory.* Antiques (as defined in paragraph (e)(1) of this section) are not subject to the provisions of this rule. Antiques containing or consisting of ivory may therefore be imported into or exported from the United States without a threatened species permit issued under § 17.32, provided the requirements of 50 CFR parts 13, 14, and 23 have been met. Also, the provisions and prohibitions under the African Elephant Conservation Act (16 U.S.C. 4201 *et. seq.*) apply, regardless of the age of the item. Antiques that consist of or contain raw or worked ivory may similarly be sold or offered for sale in interstate or foreign commerce and delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity without a threatened species permit issued under § 17.32.

* * * * *

Michael Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2015–18487 Filed 7–27–15; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 80, No. 145

Wednesday, July 29, 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.

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee (RAC) will meet in Yreka, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act.

DATES: The meeting will be held August 24, 2015, at 6:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Klamath National Forest (NF) Supervisor's Office, Conference Room, 1312 Fairlane Road, Yreka, California.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Klamath NF Supervior's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Natalie Stovall, RAC Coordinator, by phone at 530–841–4411 or via email at *nstovall@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is:

1. Project update and financial status;
2. Identifying a Chair for the RAC;
3. Review current RAC committee charter;
4. Recruitment for new committee members; and
5. Time frames for new proposals submissions.
6. Approval of funding for RAC administration and travel for RAC Committee members.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 17, 2015, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Natalie Stovall RAC Corrdinator, 1711 S. Main Street, Yreka, California 96097; by email to *nstovall@fs.fed.us* or via facsimile to 530–841–4571.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: July 13, 2015.

Patricia A. Gratham,

Forest Supervisor.

[FR Doc. 2015–18560 Filed 7–28–15; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the West Virginia Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a public meeting of the West Virginia Advisory Committee to the Commission will convene at 9:00 a.m. (EDT) on Friday, August 14, 2015 in the House Government Organization Committee Room E–215 in Building 1 of the West Virginia State Capitol Complex, located at 1900 Kanawha Blvd., East, Charleston, WV 25305. The purpose of the meeting is to hear from government officials, advocates, and other experts as well as the public on the topic of the treatment by the West Virginia criminal justice system and mental health court of persons with mental health disabilities, including persons who are intellectually and developmentally disabled. In addition, the Committee will discuss the next steps that should be planned for completing the Committee's mental health project.

For persons who plan to attend the meeting and are hearing-impaired or require other accommodations, please contact Evelyn Bohor at *ero@usccr.gov* at the Eastern Regional Office at least 10 working days before the scheduled meeting date with your request.

Time will be set aside after the experts have completed their presentations so that members of the public may address the Committee. Persons interested in the issue are also invited to submit written comments; the comments must be received in the regional office by Monday, September 14, 2015. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov*. Persons who desire additional information about the public meeting may contact the Eastern Regional Office by phone at (202) 376–7533 or email to *ero@usccr.gov*.

Records and documents discussed during the meeting will be available for public viewing as they become available by clicking on the ''Meeting Details'' and ''Documents'' links at the following link: *https://database.faca.gov/committee/meetings.aspx?cid=281*. Records generated from this meeting may also be inspected and reproduced

at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov*, or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda

Welcome and Introductions
Tara Martinez, Chair
Discuss Administrative Matters, Including Next Steps for Completing the Committee's Project
Ivy L Davis, Designated Federal Official (DFO)
Presentations by Government, Advocates and Other Experts
West Virginia State Advisory Committee
Time Set-Aside for Interested in the Audience to Make Statements on the Subject of the Committee's Review
West Virginia State Advisory Committee

Meeting Details

Date: Friday, August 14, 2015 (EDT).
Address: House Government Organization Committee Room E–215 in Building 1 of the West Virginia State Capitol Complex, located at 1900 Kanawha Blvd., East, Charleston, WV 25305.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis at *ero@usccr.gov*, or 202–376–7533

Dated: July 23, 2015.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2015–18435 Filed 7–28–15; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–837]

Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET Film) from Taiwan. The period of review (POR) is July 1, 2013, through June 30, 2014. This review covers respondents Nan Ya Plastics Corporation (Nan Ya) and Shinkong Materials Technology Corporation (SMTC), producers and exporters of PET Film from Taiwan. The Department preliminarily determines that sales of subject merchandise have not been made below normal value (NV) by Nan Ya. We preliminarily find that SMTC had no shipments during the POR. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* July 29, 2015.

FOR FURTHER INFORMATION CONTACT: Milton Koch or Jacqueline Arrowsmith at (202) 482–2584 or (202) 482–5255, respectively; AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the order is PET Film. The PET Film subject to the order is currently classifiable under subheading 3920.62.00.90 of the Harmonized Tariff Schedule of the United States. A full description of the scope of the order is contained in the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments: Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan; 2013–2014'' (Preliminary Decision Memorandum), which is hereby adopted by this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit in room B8024 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Decision Memorandum are identical in content.

Methodology

The Department conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Preliminary Determination of No Shipments

Based on our analysis of U.S. Customs and Border Protection (CBP) information and information provided by SMTC and its affiliate Shinkong Synthetic Fibers Corp. (SSFC), we preliminarily determine that SMTC had no shipments of the subject merchandise, and, therefore, no reviewable transactions, during the POR.

Preliminary Results of Review

As a result of this review, we preliminarily determine the following weighted-average dumping margin for the period July 1, 2013, through June 30, 2014.

Manufacturer/exporter	Weighted-average dumping margin (percent)
Nan Ya Plastics Corporation	0.00

Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.[1] Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[2] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[3] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[4] Case and rebuttal briefs should be filed using ACCESS.[5] In order to be properly filed, ACCESS must successfully receive an

[1] *See* 19 CFR 351.224(b).
[2] *See* 19 CFR 351.309(c)(ii).
[3] *See* 19 CFR 351.309(d).
[4] *See* 19 CFR 351.309(c)(2) and (d)(2).
[5] *See* 19 CFR 351.303.

electronically-filed document in its entirety by 5 p.m. Eastern Time.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS, within 30 days after the date of publication of this notice.[6] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs.

Unless extended, the Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries in accordance with 19 CFR 351.212(b)(1). We intend to issue instructions to CBP 15 days after the date of publication of the final results of this review.

If Nan Ya's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis.* Where the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by Nan Ya for which it did not know that its merchandise was destined for the United States. Furthermore, this clarification applies to all POR entries entered under the case number for SMTC if we continue to make a final determination of no shipments of subject merchandise because it certified that it made no POR shipments of subject merchandise for which it had knowledge of the U.S. destination. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate of 2.40 percent[7] if there is no rate for the intermediary company(ies) involved in the transaction.[8]

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of PET Film from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the company under review will be the rate established in the final results of this review (except, if the rate is zero or *de minimis,* no cash deposit will be required); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters is 2.40 percent.[9] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h)(1).

Dated: July 22, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Preliminary Finding of No Shipments for SMTC
5. Comparisons to Normal Value
6. Product Comparisons
7. Date of Sale
8. Export Price
9. Currency Conversion
10. Recommendation

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[6] *See* 19 CFR 351.310(c).

[7] *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan,* 67 FR 44174 (July 1, 2002), as amended in 67 FR 46566 (July 15, 2002) (*PET Film from Taiwan Amended Final Determination*).

[8] For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[9] *See PET Film from Taiwan Amended Final Determination.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–837]

Certain Cut-to-Length Carbon Quality Steel Plate from the Republic of Korea: Partial Rescission of Countervailing Duty Administrative Review; 2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* July 29, 2015.

FOR FURTHER INFORMATION CONTACT: John Conniff, 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) 482–1009.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2015, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the countervailing duty order on certain

cut-to-length carbon quality steel plate from the Republic of Korea (Korea).[1]

Pursuant to requests from Dongkuk Steel Mill Co., Ltd. (DSM),[2] Hyundai Steel Co. Ltd. (Hyundai Steel),[3] and Nucor Corporation (Nucor), the petitioner,[4] the Department published in the **Federal Register** the notice of initiation of this countervailing duty administrative review for the period January 1, 2014, through December 31, 2014.[5] On July 2, 2015, Nucor withdrew its request for 10 companies in the review in a timely manner.[6]

Rescission of the 2014 Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. The Department published the *Initiation* on April 3, 2015.[7] Nucor's withdrawal of its review request was submitted within the 90-day period following the publication of the *Initiation* and, thus, is timely. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review of the countervailing duty order on certain cut-to-length carbon quality steel plate from Korea with respect to the following companies: BDP International, Daewoo International Corp., GS Global Corp., Hyundai Glovis, Iljin Steel, Samsung C&T Corp., Samsung C&T Engineering & Construction Group, Samsung C&T Trading and Investment Group, Samsung Heavy Industries, and Steel N People Ltd. DSM and Hyundai Steel did not withdraw their requests for review and, thus, the reviews of these firms will continue.

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 80 FR 3059 (February 2, 2015).

[2] *See* DSM's March 2, 2015, letter to the Department.

[3] *See* Hyundai Steel's March 2, 2015, letter to the Department.

[4] *See* Nucor's February 27, 2015, letter to the Department.

[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 80 FR 18202 (April 3, 2015) (*Initiation*).

[6] *See* Nucor's July 2, 2015, submission where it withdrew its request for the following companies: BDP International, Daewoo International Corp., GS Global Corp., Hyundai Glovis, Hyundai Steel, Iljin Steel, Samsung C&T Corp., Samsung C&T Engineering & Construction Group, Samsung C&T Trading and Investment Group, Samsung Heavy Industries, and Steel N People Ltd.

[7] *See Initiation.*

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries. For the companies for which this review is rescinded countervailing duties shall be assessed at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2014, through December 31, 2014, in accordance with 19 CFR 351.212(c)(1)(i).

The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

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: July 22, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–967; A–570–935; A–570–941; A–570–954; A–570–912; A–570–943; A–570–962; A–570–947; A–570–939; A–570–930; A–570–937; A–570–920; A–570–952; A–570–945; A–570–922; A–570–925]

Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Aluminum Extrusions From the People's Republic of China; Certain Circular Welded Carbon Quality Steel Line Pipe From the People's Republic of China; Certain Kitchen Appliance Shelving and Racks From the People's Republic of China; Certain Magnesia Carbon Bricks From the People's Republic of China; Certain New Pneumatic Off-the-Road Tires From the People's Republic of China; Certain Oil Country Tubular Goods From the People's Republic of China; Certain Potassium Phosphate Salts from the People's Republic of China; Certain Steel Grating From the People's Republic of China; Certain Tow Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China; Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of China; Citric Acid and Certain Citrate Salts From the People's Republic of China; Lightweight Thermal Paper From the People's Republic of China; Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China; Prestressed Concrete Steel Wire Strand From the People's Republic of China; Raw Flexible Magnets From the People's Republic of China; Sodium Nitrite From the People's Republic of China

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On July 20, 2015, the U.S. Trade Representative (USTR) instructed the Department of Commerce (Department) to implement its determinations under section 129 of the Uruguay Round Agreements Act (URAA) regarding the antidumping duty (AD) investigations on aluminum extrusions from the People's Republic of China (PRC); certain circular welded carbon quality steel line pipe from the PRC; certain kitchen appliance shelving and racks (kitchen racks) from the PRC; certain magnesia carbon bricks from the PRC; certain oil country tubular goods from the PRC; certain potassium phosphate salts from the PRC; certain steel grating from the PRC; certain tow behind lawn groomers and certain parts thereof from the PRC; circular welded

austenitic stainless pressure pipe from the PRC; citric acid and certain citrate salts from the PRC; lightweight thermal paper from the PRC; narrow woven ribbons with woven selvedge from the PRC; prestressed concrete steel wire strand from the PRC; raw flexible magnets from the PRC; and sodium nitrite from the PRC; and regarding the AD administrative reviews of certain new pneumatic off-the-road tires from the PRC and kitchen racks from the PRC, which renders them not inconsistent with the World Trade Organization (WTO) dispute settlement findings in the Appellate Body report on *United States—Countervailing and Anti-dumping Measures on Certain Products from China,* WT/DS449/AB/R (July 7, 2014), and the panel report, as modified by the Appellate Body report, WT/DS449/R (March 27, 2014), adopted by the WTO Dispute Settlement Body on July 22, 2014 (DS 449). The Department issued its final determinations in these section 129 proceedings on June 26, 2015 and July 10, 2015.[1] The Department is now implementing these final determinations.

DATES: *Effective Date:* July 20, 2015.

FOR FURTHER INFORMATION CONTACT: Lisa Wang or Erin Begnal, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5673 or (202) 482–1442.

SUPPLEMENTARY INFORMATION: On January 28, 2015, the Department informed parties that it was initiating proceedings under section 129 of the URAA to implement the findings adopted by the WTO Dispute Settlement Body in DS 449 with respect to the above-referenced AD investigations and administrative reviews concerning the Department's imposition of ADs calculated on the basis of the methodology for nonmarket economy countries prescribed by section 773(c) of the Tariff Act of 1930 (the Act), as amended, concurrently with the imposition of countervailing duties upon the same products without having assessed whether so-called ''double remedies,'' (*i.e.,* the offsetting of the same subsidy twice) arose from such concurrent duties. Although the AD investigation on drill pipe from the PRC (A–570–965) was also subject to the dispute settlement findings in DS 449, the Department did not initiate a section 129 proceeding regarding the drill pipe from the PRC AD investigation because the AD order on drill pipe from the PRC was revoked following a negative injury determination by the U.S. International Trade Commission.[2]

On February 10, 2015, and April 14, 2015, the Department issued questionnaires to the mandatory respondents and accepted voluntary respondents in the underlying investigations and administrative reviews, concerning the issue of double remedies. None of the respondents in the underlying investigations or administrative reviews subject to this notice responded to the double remedies questionnaires. In the preliminary determinations, because no party responded to the Department's requests for information in these section 129 proceedings, we preliminarily determined that, without the requested information, there is no basis for making an adjustment for potential overlapping remedies under section 777A(f) of the Act. Between April 15, 2015, and May 28, 2015, the Department issued the preliminary determinations and provided interested parties an opportunity to comment. Following the comment period, the Department issued its final determinations for the section 129 proceedings on June 26, 2015 and July 10, 2015, which were unchanged from the preliminary determinations.

In its July 20, 2015 letter, the USTR notified the Department that, consistent with section 129(b)(3) of the URAA, consultations with the Department and the appropriate congressional committees with respect to the June 26, 2015, and July 10, 2015 determinations have been completed. Also on July 20, 2015, in accordance with section 129(b)(4) of the URAA, the USTR directed the Department to implement these determinations.

Nature of the Proceedings

Section 129 of the URAA governs the nature and effect of determinations issued by the Department to implement findings by WTO dispute settlement panels and the Appellate Body.

Specifically, section 129(b)(2) of the URAA provides that ''notwithstanding any provision of the Tariff Act of 1930,'' upon a written request from the USTR, the Department shall issue a determination that would render its actions not inconsistent with an adverse finding of a WTO panel or the Appellate Body.[3] The Statement of Administrative Action, U.R.A.A., H. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA), variously refers to such a determination by the Department as a ''new,'' ''second,'' and ''different'' determination.[4] After consulting with the Department and the appropriate congressional committees, the USTR may direct the Department to implement, in whole or in part, the new determination made under section 129

[1] *See* Memoranda from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Enforcement and Compliance, regarding: (1) Section 129 Proceeding (WTO DS449): Antidumping Duty Investigation of Aluminum Extrusions from the People's Republic of China—Final Determination (dated June 26, 2015); (2) Section 129 Proceeding (WTO DS449): Antidumping Duty Investigation of Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China—Final Determination (dated July 10, 2015); (3) Section 129 Proceeding (WTO DS449): Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China—Final Determination (dated June 26, 2015); (4) Section 129 Proceeding (WTO DS449): Antidumping Duty Review of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China—Final Determination (dated June 26, 2015); (5) Section 129 Proceeding (WTO DS449): Antidumping Duty Investigation of Certain Magnesia Carbon Bricks from the People's Republic of China—Final Determination (dated June 26, 2015); (6) Section 129 Proceeding (WTO DS449): Antidumping Duty Review of Certain New Pneumatic Off-The-Road Tires from the People's Republic of China—Final Determination (dated June 26, 2015); (7) Section 129 Proceeding (WTO DS449): Antidumping Duty Investigation of Oil Country Tubular Goods from the People's Republic of China—Final Determination (dated June 26, 2015); (8) Section 129 Proceeding (WTO DS449): Antidumping Duty Investigation of Certain Potassium Phosphate Salts from the People's Republic of China—Final Determination (dated June 26, 2015); (9) Section 129 Proceeding (WTO DS449): Antidumping Duty Investigation of Certain Steel Grating from the People's Republic of China—Final Determination (dated July 10, 2015); (10) Section 129 Proceeding (WTO DS449): Antidumping Duty Investigation of Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China—Final Determination (dated July 10, 2015); (11) Section 129 Proceeding (WTO DS449): Antidumping Duty Investigation of Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China—Final Determination (dated July 10, 2015); (12) Section 129 Proceeding (WTO DS449): Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from the People's Republic of China—Final Determination (dated July 10, 2015); (13) Section 129 Proceeding (WTO DS449): Antidumping Duty Investigation of Lightweight Thermal Paper from the People's Republic of China—Final Determination (dated June 26, 2015); (14) Section 129 Proceeding (WTO DS449): Antidumping Duty Investigation of Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China—Final Determination (dated July 10, 2015); (15) Section 129 Proceeding (WTO DS449): Antidumping Duty Investigation of Prestressed Concrete Steel Wire Strand from the People's Republic of China—Final Determination (dated June 26, 2015); (16) Section 129 Proceeding (WTO DS449): Antidumping Duty Investigation of Raw Flexible Magnets from the People's Republic of China—Final Determination (dated July 10, 2015); (17) Section 129 Proceeding (WTO DS449): Antidumping Duty Investigation of Sodium Nitrite from the People's Republic of China—Final Determination (dated July 10, 2015).

[2] *See Drill Pipe From the People's Republic of China: Notice of Court Decision Not in Harmony With International Trade Commission's Injury Determination, Revocation of Antidumping and Countervailing Duty Orders Pursuant to Court Decision, and Discontinuation of Countervailing Duty Administrative Review,* 79 FR 78037 (December 29, 2014).

[3] *See* 19 U.S.C. 3538(b)(2).

[4] *See* SAA at 1025, 1027.

of the URAA.[5] Pursuant to section 129(c) of the URAA, the new determination shall apply with respect to unliquidated entries of the subject merchandise that are entered or withdrawn from warehouse, for consumption, on or after the date on which the USTR directs the Department to implement the new determination.[6] The new determination is subject to judicial review, separate and apart from judicial review of the Department's original determination.[7]

Final Determinations: Analysis of Comments Received

To the extent that issues were raised by interested parties during the period for comment following the issuance of the preliminary determinations, those issues are addressed in the respective final determinations. The final determinations are public documents and are available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, complete versions of the final determinations can be accessed directly on the Internet at *http://enforcement.trade.gov/download/section129/full-129-index.html.* The signed versions of the final determinations and the electronic versions of the final determinations are identical in content.

Final Antidumping Duty Margins

The recalculated AD rates, as included in the final determinations and which remain unchanged from the preliminary determinations for each company, are as follows:

ALUMINUM EXTRUSIONS FROM THE PEOPLE'S REPUBLIC OF CHINA

[AD Investigation]

Exporter	Producer	Weighted-average dumping margin	Margin adjusted for export subsidies [8]
Guang Ya Aluminium Industries Co., Ltd.; Foshan Guangcheng Aluminium Co., Ltd.; Kong Ah International Company Limited; Guang Ya Aluminium Industries (Hong Kong) Limited; Zhaoqing New Zhongya Aluminum Co., Ltd.; Zhongya Shaped Aluminium (HK) Holding Limited; Karlton Aluminum Company Ltd.	Guang Ya Aluminium Industries Co., Ltd.; Foshan Guangcheng Aluminium Co., Ltd.; Kong Ah International Company Limited; Guang Ya Aluminium Industries (Hong Kong) Limited; Zhaoqing New Zhongya Aluminum Co., Ltd.; Zhongya Shaped Aluminium (HK) Holding Limited; Karlton Aluminum Company Ltd.; Xinya Aluminum & Stainless Steel Product Co., Ltd. (A.K.A. New Asia Aluminum & Stainless Steel Product Co., Ltd.).	33.28	33.02
Alnan Aluminium Co., Ltd	Alnan Aluminium Co., Ltd	32.79	0.00
Changshu Changsheng Aluminium Products Co., Ltd	Changshu Changsheng Aluminium Products Co., Ltd	32.79	0.00
China Square Industrial Limited	China Square Industrial Limited	32.79	0.00
Cosco (J.M.) Aluminium Co., Ltd	Cosco (J.M.) Aluminium Co., Ltd	32.79	0.00
First Union Property Limited	First Union Property Limited	32.79	0.00
Foshan Jinlan Non-ferrous Metal Product Co. Ltd	Foshan Jinlan Non-ferrous Metal Product Co. Ltd	32.79	0.00
Foshan Sanshui Fenglu Aluminium Co., Ltd	Foshan Sanshui Fenglu Aluminium Co., Ltd	32.79	0.00
Guangdong Hao Mei Aluminium Co., Ltd	Guangdong Hao Mei Aluminium Co., Ltd	32.79	0.00
Guangdong Weiye Aluminium Factory Co., Ltd	Guangdong Weiye Aluminium Factory Co., Ltd	32.79	0.00
Guangdong Xingfa Aluminium Co., Ltd	Guangdong Xingfa Aluminium Co., Ltd	32.79	0.00
Hanwood Enterprises Limited	Hanwood Enterprises Limited	32.79	0.00
Honsense Development Company	Honsense Development Company	32.79	0.00
Innovative Aluminium (Hong Kong) Limited	Innovative Aluminium (Hong Kong) Limited	32.79	0.00
Jiangyin Trust International Inc	Jiangyin Trust International Inc	32.79	0.00
JMA (HK) Company Limited	JMA (HK) Company Limited	32.79	0.00
Kam Kiu Aluminium Products Sdn Bhd	Kam Kiu Aluminium Products Sdn Bhd	32.79	0.00
Longkou Donghai Trade Co., Ltd	Longkou Donghai Trade Co., Ltd	32.79	0.00
Ningbo Yili Import and Export Co., Ltd	Ningbo Yili Import and Export Co., Ltd	32.79	0.00
North China Aluminum Co., Ltd	North China Aluminum Co., Ltd	32.79	0.00
PanAsia Aluminium (China) Limited	PanAsia Aluminium (China) Limited	32.79	0.00
Pingguo Asia Aluminum Co., Ltd	Pingguo Asia Aluminum Co., Ltd	32.79	0.00
Popular Plastics Co., Ltd	Popular Plastics Co., Ltd	32.79	0.00
Press Metal International Ltd	Press Metal International Ltd	32.79	0.00
Shenyang Yuanda Aluminium Industry Engineering Co. Ltd.	Shenyang Yuanda Aluminium Industry Engineering Co. Ltd.	32.79	0.00
Tai-Ao Aluminium (Taishan) Co., Ltd	Tai-Ao Aluminium (Taishan) Co., Ltd	32.79	0.00
Tianjin Ruixin Electric Heat Transmission Technology Co., Ltd.	Tianjin Ruixin Electric Heat Transmission Technology Co., Ltd.	32.79	0.00
USA Worldwide Door Components (Pinghu) Co., Ltd.; Worldwide Door Components (Pinghu) Co.	USA Worldwide Door Components (Pinghu) Co., Ltd.; Worldwide Door Components (Pinghu) Co.	32.79	0.00
Zhejiang Yongkang Listar Aluminium Industry Co., Ltd	Zhejiang Yongkang Listar Aluminium Industry Co., Ltd	32.79	0.00
Zhongshan Gold Mountain Aluminium Factory Ltd	Zhongshan Gold Mountain Aluminium Factory Ltd	32.79	0.00
PRC-wide Entity		33.28	33.28

[5] *See* 19 U.S.C. 3538(b)(4).

[6] *See* 19 U.S.C. 3538(c).

[7] *See* 19 U.S.C. 1516a(a)(2)(B)(vii).

CERTAIN CIRCULAR WELDED CARBON QUALITY STEEL LINE PIPE FROM THE PEOPLE'S REPUBLIC OF CHINA

[AD Investigation]

Exporter	Producer	Weighted-average dumping margin	Margin adjusted for export subsidies [9]
Huludao Steel Pipe Industrial Co., Ltd./Huludao City Steel Pipe Industrial Co., Ltd.	Huludao Steel Pipe Industrial Co., Ltd./Huludao City Steel Pipe Industrial Co., Ltd.	73.87	73.44
Pangang Group Beihai Steel Pipe Corporation	Pangang Group Beihai Steel Pipe Corporation	73.87	73.44
Jiangsu Yulong Steel Pipe Co., Ltd	Jiangsu Yulong Steel Pipe Co., Ltd	73.87	73.44
Tianjin Xingyuda Import and Export Co., Ltd	Tianjin Lifengyuanda Steel Pipe Group Co., Ltd	73.87	73.44
PRC-wide Entity		101.10	101.10

CERTAIN KITCHEN APPLIANCE SHELVING AND RACKS FROM THE PEOPLE'S REPUBLIC OF CHINA

[AD Investigation]

Exporter	Producer	Weighted-average dumping margin	Margin adjusted for export subsidies [10]
Guangdong Wireking Housewares Hardware Co., Ltd. (a/k/a Foshan Shunde Wireking Housewares Hardware Co., Ltd.).	Guangdong Wireking Housewares Hardware Co., Ltd	95.99	95.99
New King Shan (Zhu Hai) Co., Ltd	New King Shan (Zhu Hai) Co., Ltd	43.09	41.92
Marmon Retail Services Asia	Leader Metal Industry Co., Ltd. (a/k/a Marmon Retail Services Asia).	43.09	41.92
Hangzhou Dunli Import Export Co., Ltd	Hangzhou Dunli Industry Co., Ltd	43.09	41.92
Jiangsu Weixi Group Co	Jiangsu Weixi Group Co.	43.09	41.92
PRC-wide Entity *		95.99	95.99

* This rate also applies to Asber Enterprise Co., Ltd. (China).

CERTAIN KITCHEN APPLIANCE SHELVING AND RACKS FROM THE PEOPLE'S REPUBLIC OF CHINA

[AD Administrative Review: 03/05/2009–08/31/2010]

Exporter	Weighted-average dumping margin [11]
Guangdong Wireking Housewares Hardware Co., Ltd (a/k/a Foshan Shunde Wireking Housewares Hardware Co., Ltd.)	7.89
New King Shan (Zhu Hai) Co., Ltd	0.00
Hangzhou Dunli Import Export Co., Ltd	7.89
PRC-wide Entity	95.99

CERTAIN MAGNESIA CARBON BRICKS FROM THE PEOPLE'S REPUBLIC OF CHINA

[AD Investigation]

Exporter	Producer	Weighted-average dumping margin	Margin adjusted for export subsidies [12]
RHI Refractories Liaoning Co., Ltd	RHI Refractories Liaoning Co., Ltd	128.10	106.86
Dashiqiao City Guancheng Refractor Co., Ltd	Dashiqiao City Guancheng Refractor Co., Ltd	128.10	106.86
Fengchi Imp. And Exp. Co., Ltd. Of Haicheng City	Fengchi Refractories Co., of Haicheng City	128.10	106.86
Jiangsu Sujia Group New Materials Co. Ltd	Jiangsu Sujia Group New Materials Co. Ltd	128.10	106.86
Liaoning Fucheng Refractories Group Co., Ltd	Liaoning Fucheng Refractories Group Co., Ltd	128.10	106.86
Liaoning Fucheng Special Refractory Co., Ltd	Liaoning Fucheng Special Refractory Co., Ltd	128.10	106.86
Liaoning Jiayi Metals & Minerals Co., Ltd	Liaoning Jiayi Metals & Minerals Co., Ltd	128.10	106.86
Yingkou Bayuquan Refractories Co., Ltd	Yingkou Bayuquan Refractories Co., Ltd	128.10	106.86
Yingkou Dalmond Refractories Co., Ltd	Yingkou Dalmond Refractories Co., Ltd	128.10	106.86
Yingkou Guangyang Co., Ltd	Yingkou Guangyang Co., Ltd	128.10	106.86
Yingkou Jiahe Refractories Co., Ltd	Yingkou Jiahe Refractories Co., Ltd	128.10	106.86
Yingkou Kyushu Refractories Co, Ltd	Yingkou Kyushu Refractories Co, Ltd	128.10	106.86
Yingkou New Century Refractories Ltd	Yingkou New Century Refractories Ltd	128.10	106.86
Yingkou Wonjin Refractory Material Co., Ltd	Yingkou Wonjin Refractory Material Co., Ltd	128.10	106.86
PRC-wide Entity *		236.00	236.00

* This rate also applies to Liaoning Mayerton Refractories Co., Ltd. and Dalian Mayerton Refractories Co., Ltd.

CERTAIN NEW PNEUMATIC OFF-THE-ROAD TIRES FROM THE PEOPLE'S REPUBLIC OF CHINA

[AD Administrative Review: 02/20/2008–08/31/2009)

Exporter	Weighted-average dumping margin [13]
Hebei Starbright Tire Co., Ltd	28.97
Hangzhou Zhongce Rubber Co., Ltd	28.97
KS Holding Limited/KS Resources Limited	28.97
Laizhou Xiongying Rubber Industry Co., Ltd	28.97
Qingdao Taifa Group Co., Ltd	28.97
Weihai Zhongwei Rubber Co., Ltd	28.97

CERTAIN OIL COUNTRY TUBULAR GOODS FROM THE PEOPLE'S REPUBLIC OF CHINA

[AD Investigation]

Exporter	Producer	Weighted-average dumping margin	Margin adjusted for export subsidies [14]
Tianjin Pipe International Economic and Trading Corporation.	Tianjin Pipe (Group) Corporation	32.07	31.99
Angang Group Hong Kong Co., Ltd	Angang Steel Co. Ltd	32.07	32.04
Angang Steel Co., Ltd., and Angang Group International Trade Corporation.	Angang Steel Co. Ltd	32.07	32.04
Anhui Tianda Oil Pipe Co., Ltd	Anhui Tianda Oil Pipe Co., Ltd	32.07	32.04
Anshan Zhongyou Tipo Pipe & Tubing Co., Ltd	Anshan Zhongyou Tipo Pipe & Tubing Co., Ltd	32.07	32.04
Baotou Steel International Economic and Trading Co., Ltd.	Seamless Tube Mill of Inner Mongolia Baotou Steel Union Co., Ltd.	32.07	32.04
Benxi Northern Steel Pipes Co., Ltd	Benxi Northern Steel Pipes Co., Ltd	32.07	32.04
Chengdu Wanghui Petroleum Pipe Co. Ltd	Chengdu Wanghui Petroleum Pipe Co. Ltd	32.07	32.04
Dalipal Pipe Company	Dalipal Pipe Company	32.07	32.04
Freet Petroleum Equipment Co., Ltd. of Shengli Oil Field, the Thermal Recovery Equipment, Zibo Branch (A.K.A. Zibo Thermal Equipment Company of Shengli Oil Field Freet).	Freet Petroleum Equipment Co., Ltd. of Shengli Oil Field, the Thermal Recovery Equipment, Zibo Branch (A.K.A. Zibo Thermal Equipment Company of Shengli Oil Field Freet).	32.07	32.04
Hengyang Steel Tube Group International Trading, Inc.	Hengyang Valin MPM Tube Co., Ltd.; Hengyang Valin Steel Tube Co., Ltd.	32.07	32.04
Huludao Steel Pipe Industrial Co., Ltd./Huludao City Steel Pipe Industrial Co., Ltd.	Huludao Steel Pipe Industrial Co., Ltd./Huludao City Steel Pipe Industrial Co., Ltd.	32.07	32.04
Jiangsu Chengde Steel Tube Share Co., Ltd	Jiangsu Chengde Steel Tube Share Co., Ltd	32.07	32.04
Jiangyin City Changjiang Steel Pipe Co., Ltd	Jiangyin City Changjiang Steel Pipe Co., Ltd	32.07	32.04
Pangang Group Beihai Steel Pipe Corporation	Pangang Group Beihai Steel Pipe Corporation	32.07	32.04
Qingdao Bonded Logistics Park Products International Trading Co., Ltd.	Shengli Oilfield Highland Petroleum Equipment Co., Ltd.; Shandong Continental Petroleum Equipment Co., Ltd.; Aofei Tele Dongying Import & Export Co., Ltd.; Highgrade Tubular Manufacturing (Tianjin) Co., Ltd.; Cangzhou City Baohai Petroleum Material Co., Ltd.	32.07	32.04
Qiqihaer Haoying Iron and Steel Co., Ltd. of Northeast Special Steel Group.	Qiqihaer Haoying Iron and Steel Co., Ltd. of Northeast Special Steel Group.	32.07	32.04
Shandong Dongbao Steel Pipe Co., Ltd	Shandong Dongbao Steel Pipe Co., Ltd	32.07	32.04
Shandong Huabao Steel Pipe Co., Ltd	Shandong Huabao Steel Pipe Co., Ltd	32.07	32.04
Shandong Molong Petroleum Machinery Co., Ltd	Shandong Molong Petroleum Machinery Co., Ltd	32.07	32.04
Shanghai Metals & Minerals Import & Export Corp./Shanghai Minmetals Materials & Products Corp.	Jiangsu Changbao Steel Pipe Co., Ltd.; Huludao Steel Pipe Industrial Co., Ltd.; Northeast Special Steel Group Qiqihaer Haoying Steel And Iron Co., Ltd.; Beijing Youlu Co., Ltd.	32.07	32.04
Shanghai Zhongyou Tipo Steel Pipe Co., Ltd	Shanghai Zhongyou Tipo Steel Pipe Co., Ltd	32.07	32.04
Shengli Oil Field Freet Petroleum Equipment Co., Ltd	Freet Petroleum Equipment Co., Ltd. Of Shengli Oil Field, The Thermal Recovery Equipment, Zibo Branch; Faray Petroleum Steel Pipe Co., Ltd.; Shengli Oil Field Freet Petroleum Steel Pipe Co., Ltd.	32.07	32.04
Shengli Oil Field Freet Petroleum Steel Pipe Co., Ltd	Freet Petroleum Equipment Co., Ltd. of Shengli Oil Field, the Thermal Recovery Equipment, Zibo Branch; Anhui Tianda Oil Pipe Co., Ltd; Wuxi Fastube Dingyuan Precision Steel Pipe Co., Ltd.	32.07	32.04
Shengli Oilfield Highland Petroleum Equipment Co., Ltd.	Tianjin Pipe Group Corp.; Goods & Materials Supply Dept. Of Shengli Oilfield Sinopec; Dagang Oilfield Group New Century Machinery Co. Ltd.; Tianjin Seamless Steel Pipe Plant; Baoshan Iron & Steel Co. Ltd.	32.07	32.04
Shengli Oilfield Shengji Petroleum Equipment Co., Ltd	Shengli Oilfield Shengji Petroleum Equipment Co., Ltd	32.07	32.04

CERTAIN OIL COUNTRY TUBULAR GOODS FROM THE PEOPLE'S REPUBLIC OF CHINA—Continued

[AD Investigation]

Exporter	Producer	Weighted-average dumping margin	Margin adjusted for export subsidies [14]
Tianjin Seamless Steel Pipe Plant	Tianjin Seamless Steel Pipe Plant	32.07	32.04
Tianjin Tiangang Special Petroleum Pipe Manufacturer Co., Ltd.	Tianjin Tiangang Special Petroleum Pipe Manufacturer Co., Ltd.	32.07	32.04
Wuxi Baoda Petroleum Special Pipe Manufacturing Co., Ltd.	Wuxi Baoda Petroleum Special Pipe Manufacturing Co., Ltd.	32.07	32.04
Tianjin Xingyuda Import and Export Co., Ltd. & Hong Kong Gallant Group Limited.	Tianjin Lifengyuanda Steel Group Co., Ltd	32.07	32.04
Wuxi Seamless Oil Pipe Co., Ltd	Wuxi Seamless Oil Pipe Co., Ltd	32.07	32.07
Wuxi Sp. Steel Tube Manufacturing Co., Ltd	Wuxi Precese Special Steel Co., Ltd	32.07	32.04
Wuxi Zhenda Special Steel Tube Manufacturing Co., Ltd.	Huai'an Zhenda Steel Tube Manufacturing Co., Ltd	32.07	32.04
Xigang Seamless Steel Tube Co., Ltd	Xigang Seamless Steel Tube Co., Ltd.; Wuxi Seamless Special Pipe Co., Ltd.	32.07	32.04
Yangzhou Lontrin Steel Tube Co., Ltd	Yangzhou Lontrin Steel Tube Co., Ltd	32.07	32.04
Zhejiang Jianli Co., Ltd., & Zhejiang Jianli Steel Tube Co., Ltd.	Zhejiang Jianli Co., Ltd.; Zhejiang Jianli Steel Tube Co., Ltd.	32.07	32.07
PRC-wide Entity *		99.14	99.14

* Includes: Jiangsu Changbao Steel Tube Co., Ltd. and Jiangsu Changbao Precision Tube Co., Ltd. and Shengli Oil Field Freet Import & Export Trade Co., Ltd.

CERTAIN POTASSIUM PHOSPHATE SALTS FROM THE PEOPLE'S REPUBLIC OF CHINA

[AD Investigation]

Exporter	Producer	Weighted-average dumping margin [15]
Snow-Apple Group Limited	Chengdu Long Tai Biotechnology Co., Ltd	62.23
Tianjin Chengyi International Trading (Tianjin) Co., Limited	Zhenjiang Dantu Guangming Auxiliary Material Factory	62.23
Tianjin Chengyi International Trading (Tianjin) Co., Limited	Sichuan Shifang Hongsheng Chemicals Co., Ltd	62.23
Wenda Co., Ltd	Thermphos (China) Food Additive Co., Ltd	62.23
Yunnan Newswift Company Ltd	Guangxi Yizhou Yisheng Fine Chemicals Co., Ltd	62.23
Yunnan Newswift Company Ltd	Mainzhu Hanwang Mineral Salt Chemical Co., Ltd	62.23
Yunnan Newswift Company Ltd	Sichuan Shengfeng Phosphate Chemical Co., Ltd	62.23
PRC-wide Entity [16]		95.40

CERTAIN STEEL GRATING FROM THE PEOPLE'S REPUBLIC OF CHINA

[AD Investigation]

Exporter	Producer	Weighted-average dumping margin [17]
Ningbo Haitian International Co., Ltd	Ningbo Lihong Steel Grating Co., Ltd	38.16
Yantai Xinke Steel Structure Co., Ltd	Yantai Xinke Steel Structure Co., Ltd	38.16
Sinosteel Yantai Steel Grating Co., Ltd	Sinosteel Yantai Steel Grating Co., Ltd	136.76
Ningbo Jiulong Machinery Manufacturing Co., Ltd	Ningbo Jiulong Machinery Manufacturing Co., Ltd	145.18
PRC-wide Entity *		145.18

* The PRC-wide entity rate includes Shanghai DAHE Grating Co., Ltd.

CERTAIN TOW BEHIND LAWN GROOMERS AND CERTAIN PARTS THEREOF FROM THE PEOPLE'S REPUBLIC OF CHINA

[AD Investigation]

Exporter	Producer	Weighted-average dumping margin [18]
Nantong D & B Machinery Co., Ltd	Nantong D & B Machinery Co., Ltd	154.72
Qingdao Huatian Truck Co., Ltd. a.k.a. Qingdao Huatian Hand Truck Co., Ltd.	Qingdao Huatian Truck Co., Ltd. a.k.a. Qingdao Huatian Hand Truck Co., Ltd.	154.72
PRC-wide Entity *		386.28

* The PRC-wide entity includes Jiashan Superpower Tools Co., Ltd. and Princeway Furniture (Dong Guan) Co., Ltd.

CIRCULAR WELDED AUSTENITIC STAINLESS PRESSURE PIPE FROM THE PEOPLE'S REPUBLIC OF CHINA

[AD Investigation]

Exporter	Producer	Weighted-Average dumping margin [19]
Zhejiang Jiuli Hi—Tech Metals Co., Ltd	Zhejiang Jiuli Hi—Tech Metals Co., Ltd	10.53
PRC-wide Entity (including Winner Machinery Enterprise Co., Ltd.).		55.21

CITRIC ACID AND CERTAIN CITRATE SALTS FROM THE PEOPLE'S REPUBLIC OF CHINA

[AD Investigation]

Exporter	Producer	Weighted-average dumping margin	Margin adjusted for export subsidies [20]
TTCA Co., Ltd. (a.k.a. Shandong TTCA Biochemistry Co., Ltd.).	TTCA Co., Ltd. (a.k.a. Shandong TTCA Biochemistry Co., Ltd.).	129.08	127.32
Yixing Union Biochemical Co., Ltd	Yixing Union Biochemical Co., Ltd	94.61	[21] N/A
Anhui BBCA Biochemical Co., Ltd	Anhui BBCA Biochemical Co., Ltd	111.85	110.97
Anhui BBCA Biochemical Co., Ltd	China BBCA Maanshan Biochemical Corp	111.85	110.97
A.H.A. International Co., Ltd	Yixing Union Biochemical Co., Ltd	111.85	110.97
A.H.A. International Co., Ltd	Nantong Feiyu Fine Chemical Co., Ltd	111.85	110.97
High Hope International Group Jiangsu Native Produce IMP & EXP Co., Ltd.	Yixing Union Biochemical Co., Ltd	111.85	110.97
Huangshi Xinghua Biochemical Co., Ltd	Huangshi Xinghua Biochemical Co., Ltd	111.85	110.97
Lianyungang JF International Trade Co., Ltd	TTCA Co., Ltd. (a.k.a. Shandong TTCA Biochemistry Co., Ltd.).	111.85	110.97
Laiwu Taihe Biochemistry Co., Ltd	Laiwu Taihe Biochemistry Co., Ltd	111.85	110.97
Lianyungang Shuren Scientific Creation Import & Export Co., Ltd.	Lianyungang Great Chemical Industry Co., Ltd	111.85	110.97
Penglai Marine Bio-Tech Co. Ltd	Penglai Marine Bio-Tech Co. Ltd	111.85	110.97
RZBC Imp & Exp. Co., Ltd./RZBC Co., Ltd./RZBC (Juxian) Co., Ltd.	RZBC Co., Ltd	111.85	110.97
RZBC Imp & Exp. Co., Ltd./RZBC Co., Ltd./RZBC (Juxian) Co., Ltd.	RZBC (Juxian) Co., Ltd	111.85	110.97
RZBC Imp & Exp. Co., Ltd./RZBC Co., Ltd./RZBC (Juxian) Co., Ltd.	Lianyungang Great Chemical Industry Co., Ltd	111.85	110.97
Shihezi City Changyun Biochemical Co., Ltd	Shihezi City Changyun Biochemical Co., Ltd	111.85	110.97
Weifang Ensign Industry Co., Ltd	Weifang Ensign Industry Co., Ltd	111.85	110.97
PRC-wide Entity		156.87	156.87

LIGHTWEIGHT THERMAL PAPER FROM THE PEOPLE'S REPUBLIC OF CHINA

[AD Investigation]

Exporter	Producer	Weighted-average dumping margin	Margin adjusted for export subsidies [22]
Shanghai Hanhong Paper Co., Ltd, also known as Hanhong International Limited.	Shanghai Hanhong Paper Co., Ltd	115.29	115.29
Guangdong Guanhao High-Tech Co., Ltd	Guangdong Guanhao High-Tech Co., Ltd	19.77	19.64
PRC-wide Entity		115.29	115.29

NARROW WOVEN RIBBONS WITH WOVEN SELVEDGE FROM THE PEOPLE'S REPUBLIC OF CHINA

[AD Investigation]

Exporter	Producer	Weighted-average dumping margin	Margin adjusted for export subsidies [23]
Beauty Horn Investment Limited	Tianjin Sun Ribbon Co., Ltd	123.83	123.44
Fujian Rongshu Industry Co., Ltd	Fujian Rongshu Industry Co., Ltd	123.83	123.44
Guangzhou Complacent Weaving Co., Ltd	Guangzhou Complacent Weaving Co., Ltd	123.83	123.44
Ningbo MH Industry Co., Ltd	Hangzhou City Linghu Jiacheng Silk Ribbon Co., Ltd	123.83	123.44
Ningbo V.K. Industry & Trading Co., Ltd	Ningbo Yinzhou Jinfeng Knitting Factory	123.83	123.44
Stribbons (Guangzhou) Ltd	Stribbons (Guangzhou) Ltd	123.83	123.44
Stribbons (Guangzhou) Ltd	Stribbons (Nanyang) MNC Ltd	123.83	123.44
Sun Rich (Asia) Limited	Dongguan Yi Sheng Decoration Co., Ltd	123.83	123.44

NARROW WOVEN RIBBONS WITH WOVEN SELVEDGE FROM THE PEOPLE'S REPUBLIC OF CHINA—Continued

[AD Investigation]

Exporter	Producer	Weighted-average dumping margin	Margin adjusted for export subsidies [23]
Tianjin Sun Ribbon Co., Ltd.	Tianjin Sun Ribbon Co., Ltd	123.83	123.44
Weifang Dongfang Ribbon Weaving Co., Ltd	Weifang Dongfang Ribbon Weaving Co., Ltd	123.83	123.44
Weifang Yu Yuan Textile Co., Ltd	Weifang Yu Yuan Textile Co., Ltd	123.83	123.44
Xiamen Yi He Textile Co., Ltd	Xiamen Yi He Textile Co., Ltd	123.83	123.44
Yangzhou Bestpak Gifts & Crafts Co., Ltd	Yangzhou Bestpak Gifts & Crafts Co., Ltd	123.83	123.44
PRC-wide Entity *		247.65	247.65

* Including Ningbo Jintian Import & Export Co., Ltd.

PRESTRESSED CONCRETE STEEL WIRE STRAND FROM THE PEOPLE'S REPUBLIC OF CHINA

[AD Investigation]

Exporter	Producer	Weighted average dumping margin	Margin adjusted for export subsidies [24]
Wuxi Jinyang Metal Products Co., Ltd	Wuxi Jinyang Metal Products Co., Ltd	42.97	42.42
Xinhua Metal Products Co., Ltd	Xinhua Metal Products Co., Ltd	175.94	175.74
Fasten Group Import & Export Co., Ltd	Jiangyin Fasten Steel Products Co., Ltd., Jiangyin Walsin Steel Cable Co., Ltd., Jiangyin Hongyu Metal Products Co., Ltd.	175.94	175.85
PRC-wide Entity *		193.55	193.55

* This rate also applies to Tianjin Shengte Prestressed Concrete Steel Strand Co., Ltd., Silvery Dragon PC Steel Products Group Co., Ltd., and Tongda.

RAW FLEXIBLE MAGNETS FROM THE PEOPLE'S REPUBLIC OF CHINA

[AD Investigation]

Exporter	Producer	Weighted-average dumping margin [25]
Guangzhou Newlife Magnet Electricity Co., Ltd	Guangzhou Newlife Magnet Electricity Co., Ltd	105.00
PRC-wide Entity *		185.28

* The PRC-wide entity includes Polyflex Magnets Ltd.

SODIUM NITRITE FROM THE PEOPLE'S REPUBLIC OF CHINA

[AD Investigation]

Exporter	Producer	Weighted-average dumping margin [26]
PRC-wide Entity *		190.74

* The PRC-wide entity includes Hualong Ammonium Nitrate Company Ltd. and Qingdao Hengyuan Chemical Co., Ltd.

Implementation of the Revised Cash Deposit Requirements

On July 20, 2015, in accordance with sections 129(b)(4) and 129(c)(1)(B) of the

[8] Consistent with our practice, where the product was also subject to a concurrent countervailing duty proceeding, the weighted-average margins listed here reflect a deduction for the countervailing duty determined to constitute an export subsidy.

[9] Consistent with our practice, where the product was also subject to a concurrent countervailing duty proceeding, the weighted-average margins listed here reflect a deduction for the countervailing duty determined to constitute an export subsidy.

[10] Consistent with our practice, where the product was also subject to a concurrent countervailing duty proceeding, the weighted-average margins listed here reflect a deduction for the countervailing duty determined to constitute an export subsidy.

[11] Consistent with our practice, where the product was also subject to a concurrent countervailing duty proceeding, the weighted-average margins listed here reflect a deduction for the countervailing duty determined to constitute an export subsidy.

[12] Consistent with our practice, where the product was also subject to a concurrent countervailing duty proceeding, the weighted-average margins listed here reflect a deduction for the countervailing duty determined to constitute an export subsidy.

[13] Consistent with our practice, where the product was also subject to a concurrent countervailing duty proceeding, the weighted-average margins listed here reflect an adjustment for the countervailing duty determined to constitute an export subsidy.

[14] Consistent with our practice, where the product was also subject to a concurrent countervailing duty proceeding, the weighted-average margins listed here reflect a deduction for the countervailing duty determined to constitute an export subsidy.

[15] The calculated margins in the underlying investigation were not adjusted to reflect a deduction for any countervailing duty determined to constitute export subsidies.

[16] The PRC-wide rate includes Sichuan Blue Sword Import and Export Co., Ltd., and SD BNI (LYG) Co., Ltd.

Continued

URAA and after consulting with the Department and Congress, the USTR directed the Department to implement these final determinations. With respect to each of these proceedings, unless the applicable cash deposit rate has been superseded by intervening administrative reviews, the Department will instruct U.S. Customs and Border Protection to require a cash deposit for estimated ADs at the appropriate rate for each exporter/producer specified above, for entries of subject merchandise, entered or withdrawn from warehouse, for consumption, on or after July 20, 2015.

This notice of implementation of these section 129 final determinations is published in accordance with section 129(c)(2)(A) of the URAA.

Dated: July 22, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–18625 Filed 7–28–15; 8:45 am]

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[17] The calculated margins in the underlying investigation were not adjusted to reflect a deduction for any countervailing duty determined to constitute export subsidies.

[18] The calculated margins in the underlying investigation were not adjusted to reflect a deduction for any countervailing duty determined to constitute an export subsidy.

[19] The calculated margins in the underlying investigation were not adjusted to reflect a deduction for any countervailing duty determined to constitute export subsidies.

[20] Consistent with our practice, where the product was also subject to a concurrent countervailing duty proceeding, the weighted-average margins listed here reflect a deduction for the countervailing duty determined to constitute an export subsidy.

[21] Yixing Union Biochemical Co., Ltd.'s countervailing duty margin did not consist of any export subsidies.

[22] Consistent with our practice, where the product was also subject to a concurrent countervailing duty proceeding, the weighted-average margins listed here reflect a deduction for the countervailing duty determined to constitute an export subsidy.

[23] Consistent with our practice, where the product was also subject to a concurrent countervailing duty proceeding, the weighted-average margins listed here reflect a deduction for the countervailing duty determined to constitute an export subsidy.

[24] Consistent with our practice, where the product was also subject to a concurrent countervailing duty proceeding, the weighted-average margins listed here reflect a deduction for the countervailing duty determined to constitute an export subsidy.

[25] The calculated margins in the underlying investigation were not adjusted to reflect a deduction for any countervailing duty determined to constitute export subsidies.

[26] The calculated margins in the underlying investigation were not adjusted to reflect a deduction for any countervailing duty determined to constitute export subsidies.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') has determined that two requests for new shipper reviews of the antidumping duty order on multilayered wood flooring from the People's Republic of China (''PRC'') meet the statutory and regulatory requirements for initiation. The period of review (''POR'') for these two new shipper reviews is December 1, 2014, through May 31, 2015.

DATES: *Effective Date:* July 29, 2015.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor or Robert Galantucci, AD/CVD Operations, Office 4, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–5831 or 202–482–2923, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on multilayered wood flooring from the PRC on December 8, 2011.[1] On June 22, 2015, and June 23, 2015, the Department received timely new shipper review requests from Dongtai Zhangshi Wood Industry Co., Ltd. (''Zhangshi'') and Huzhou Muyun Wood Co., Ltd. (''Muyun''), respectively, in accordance with section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(c).[2]

In their submissions, Zhangshi and Muyun certified that they are both the producers and exporters of the subject merchandise upon which their respective review requests were based.[3] Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Zhangshi and Muyun certified that they did not export multilayered wood flooring to the United States during the period of investigation (''POI'').[4] In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Zhangshi and Muyun certified that, since the initiation of the investigation, they have never been affiliated with any producer or exporter that exported multilayered wood flooring to the United States during the POI, including those not individually examined during the investigation.[5] As required by 19 CFR 351.214(b)(2)(iii)(B), Zhangshi and Muyun also certified that their export activities were not controlled by the central government of the PRC.[6]

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Zhangshi and Muyun submitted documentation establishing the following: (1) The date on which each company first shipped multilayered wood flooring for export to the United States and the date on which the multilayered wood flooring was first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.[7]

The Department conducted U.S. Customs and Border Protection (''CBP'') database queries and confirmed that Zhangshi and Muyun's shipments of subject merchandise had entered the United States for consumption and that liquidation of such entries had been properly suspended for antidumping duties. The Department also confirmed by examining CBP data that Zhangshi and Muyun entries were made during the POR specified by the Department's regulations.[8]

[1] *See Multilayered Wood Flooring from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 76 FR 76690 (December 8, 2011) (''*Order*''), as amended *Multilayered Wood Flooring from the People's Republic of China: Amended Antidumping and Countervailing Duty Orders,* 77 FR 5484 (February 3, 2012).

[2] *See* Letter from Zhangshi to the Secretary of Commerce ''Multilayered Wood Flooring from the People's Republic of China; A–570–970; Request for Antidumping Duty New Shipper Review,'' dated June 22, 2015 (''Zhangshi Initiation Request''); Letter from Muyun to the Secretary of Commerce ''Multilayered Wood Flooring from the People's Republic of China Request for New Shipper Review,'' dated June 23, 2015 (''Muyun Initiation Request''); Letter from Zhangshi to the Secretary of Commerce ''Multilayered Wood Flooring from the People's Republic of China; A–570–970; New Shipper Review for Dongtai Zhangshi Wood Industry Co., Ltd.; Clarification of Company Name,'' dated July 10, 2015.

[3] *See* Zhangshi Initiation Request at Exhibit 3; *see also* Muyun Initiation Request at Exhibit 1.

[4] *See id.*

[5] *See id.*

[6] *See id.*

[7] *See* Zhangshi Initiation Request at Exhibit 1; *see also* Muyun Initiation Request at Exhibit 2.

[8] *See* July 21, 2015, Memoranda to the File, regarding ''U.S. Customs and Border Protection Data'' for Zhangshi and Muyun; *see also* Memorandum to the File entitled, ''Initiation of Antidumping New Shipper Review of Multilayered Wood Flooring from the People's Republic of China: Dongtai Zhangshi Wood Industry Co., Ltd.'' (''Zhangshi Initiation Checklist'') dated

Period of Review

Pursuant to 19 CFR 351.214(c), an exporter or producer may request a new shipper review within one year of the date on which its subject merchandise was first entered. Moreover, 19 CFR 351.214(d)(1) states that if the request for the review is made during the six-month period ending with the end of the semiannual anniversary month, the Secretary will initiate a new shipper review in the calendar month immediately following the semiannual anniversary month. Further, 19 CFR 315.214(g)(1)(i)(B) states that if the new shipper review was initiated in the month immediately following the semiannual anniversary month, the POR will be the six-month period immediately preceding the semiannual anniversary month. Within one year of the dates on which their multilayered wood flooring was first entered Zhangshi and Muyun made the requests for new shipper reviews in June, which is the semiannual anniversary month of the *Order.* Therefore, the Secretary must initiate these reviews in July and the POR is December 1, 2014, through May 31, 2015.

Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(b), and the information on the record, the Department finds that the requests submitted by Zhangshi and Muyun meet the threshold requirements for initiation of new shipper reviews for the shipments of multilayered wood flooring from the PRC produced and exported by these companies.[9] However, if the information supplied by Zhangshi and Muyun is later found to be incorrect or insufficient during the course of this proceeding, the Department may rescind the review or apply adverse facts available pursuant to section 776 of the Act, depending upon the facts on record. The Department intends to issue the preliminary results of these new shipper reviews no later than 180 days from the date of initiation, and the final results no later than 90 days from the issuance of the preliminary results.[10]

It is the Department's usual practice, in cases involving non-market economies, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, the Department will issue questionnaires to Zhangshi and Muyun which will include a section requesting information with regard to these companies' export activities for separate rates purposes. The review of each exporter will proceed if the response provides sufficient indication that it is not subject to either *de jure* or *de facto* government control with respect to its export of subject merchandise.

The Department will instruct CBP to allow, until the completion of the review, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from Zhangshi and Muyun, in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because Zhangshi and Muyun certified that they produced and exported the subject merchandise, the Department will apply the bonding privilege only for subject merchandise that the respondent both produced and exported. To assist in its analysis of the *bona fides* of Zhangshi and Muyun's sales, upon initiation of this NSR, the Department will require Zhangshi and Muyun to submit on an ongoing basis complete transaction information concerning any sales of subject merchandise to the United States that were made subsequent to the POR.

Interested parties requiring access to proprietary information in these new shipper reviews should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 19 CFR 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 19 CFR 351.221(c)(1)(i).

Dated: July 21, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–18618 Filed 7–28–15; 8:45 am]

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concurrently with this notice; Memorandum to the File entitled, ''Initiation of Antidumping New Shipper Review of Multilayered Wood Flooring from the People's Republic of China: Huzhou Muyun Wood Co., Ltd.'' (''Muyun Initiation Checklist'') dated concurrently with this notice.

[9] *See* Zhangshi Initiation Checklist; *see also* Muyun Initiation Checklist.

[10] *See* section 751(a)(2)(B)(iv) of the Act.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: The Judges Panel of the Malcolm Baldrige National Quality Award (Judges Panel) will meet in closed session on Wednesday, August 26, 2015, from 9:00 a.m. until 3:30 p.m. Eastern Time. The purpose of this meeting is to review the results of examiners' scoring of written applications. Panel members will vote on which applicants merit site visits by examiners to verify the accuracy of quality improvements claimed by applicants. The meeting is closed to the public in order to protect the proprietary data to be examined and discussed at the meeting.

DATES: The meeting will be held on Wednesday, August 26, 2015, from 9:00 a.m. until 3:30 p.m. Eastern Time. The entire meeting will be closed to the public.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Robert Fangmeyer, Director, Baldrige Performance Excellence Program, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, Maryland 20899–1020, telephone number (301) 975–2360, email *robert.fangmeyer@nist.gov*.

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 3711a(d)(1) and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet on Wednesday, August 26, 2015, from 9:00 a.m. until 3:30 p.m. Eastern Time. The Judges Panel is composed of twelve members, appointed by the Secretary of Commerce, chosen for their familiarity with quality improvement operations and competitiveness issues of manufacturing companies, services companies, small businesses, health care providers, and educational institutions. Members are also chosen who have broad experience in for-profit and nonprofit areas. The purpose of this meeting is to review the results of examiners' scoring of written applications. Panel members will vote on which applicants merit site visits by examiners to verify the accuracy of quality improvements claimed by applicants. The meeting is closed to the public in order to protect the

proprietary data to be examined and discussed at the meeting.

The Chief Financial Officer and Assistant Secretary for Administration, with the concurrence of the Acting, Assistant General Counsel for Administration, formally determined on May, 19 2015, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in Sunshine Act, Public Law 94–409, that the meeting of the Judges Panel may be closed to the public in accordance with 5 U.S.C. 552b(c)(4) because the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential and 5 U.S.C. 552b(c)(9)(B) because for a government agency the meeting is likely to disclose information that could significantly frustrate implementation of a proposed agency action. The meeting, which involves examination of current Award applicant data from U.S. organizations and a discussion of these data as compared to the Award criteria in order to recommend Award recipients, will be closed to the public.

Richard R. Cavanagh,

Acting Associate Director for Laboratory Programs.

[FR Doc. 2015–18469 Filed 7–28–15; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Genome in a Bottle Consortium—Progress and Planning Workshop

AGENCY: National Institute of Standards & Technology (NIST), Commerce.

ACTION: Notice of public workshop.

SUMMARY: NIST announces the Genome in a Bottle Consortium meeting to be held on Thursday and Friday, August 27 and 28, 2015. The Genome in a Bottle Consortium is developing the reference materials, reference methods, and reference data needed to assess confidence in human whole genome variant calls. A principal motivation for this consortium is to enable performance assessment of sequencing and science-based regulatory oversight of clinical sequencing. The purpose of this meeting is to update participants about progress of the consortium work, continue to get broad input from individual stakeholders to update or refine the consortium work plan, continue to broadly solicit consortium membership from interested stakeholders, and invite members to participate in work plan implementation. Topics of discussion at this meeting will include progress and planning of the Analysis Group, which is analyzing and integrating the large variety of sequencing data for four candidate NIST Reference Materials, as well as potential future Reference Materials.

DATES: The Genome in a Bottle Consortium meeting will be held on Thursday, August 27, 2015 from 9:00 a.m. to 5:30 p.m. Eastern Time and Friday, August 28, 2015 from 9:00 a.m. to 12:45 p.m. Eastern Time. Attendees must register by 5:00 p.m. Eastern Time on Thursday, August 20, 2015.

ADDRESSES: The meeting will be held in the Green Auditorium, Building 101, National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For further information contact Justin Zook by email at *jzook@nist.gov* or by phone at (301) 975–4133 or Marc Salit by email at *salit@nist.gov* or by phone at (650) 350–2338. To register, go to: *https://www-s.nist.gov/CRS/conf_disclosure.cfm?&conf_id=8473.*

SUPPLEMENTARY INFORMATION: Clinical application of ultra high throughput sequencing (UHTS) for hereditary genetic diseases and oncology is rapidly growing. At present, there are no widely accepted genomic standards or quantitative performance metrics for confidence in variant calling. These standards and quantitative performance metrics are needed to achieve the confidence in measurement results expected for sound, reproducible research and regulated applications in the clinic. On April 13, 2012, NIST convened the workshop ''Genome in a Bottle'' to initiate a consortium to develop the reference materials, reference methods, and reference data needed to assess confidence in human whole genome variant calls (*www.genomeinabottle.org*). On August 16–17, 2012, NIST hosted the first large public meeting of the Genome in a Bottle Consortium, with about 100 participants from government, academic, and industry. This meeting was announced in the **Federal Register** (77 FR 43237) on July 24, 2012. A principal motivation for this consortium is to enable science-based regulatory oversight of clinical sequencing.

At the August 2012 meeting, the consortium established work plans for four technical working groups with the following responsibilities:

(1) Reference Material (RM) Selection and Design: Select appropriate sources for whole genome RMs and identify or design synthetic DNA constructs that could be spiked-in to samples for measurement assurance.

(2) Measurements for Reference Material Characterization: Design and carry out experiments to characterize the RMs using multiple sequencing methods, other methods, and validation of selected variants using orthogonal technologies.

(3) Bioinformatics, Data Integration, and Data Representation: Develop methods to analyze and integrate the data for each RM, as well as select appropriate formats to represent the data.

(4) Performance Metrics and Figures of Merit: Develop useful performance metrics and figures of merit that can be obtained through measurement of the RMs.

The products of these technical working groups will be a set of well-characterized whole genome and synthetic DNA RMs along with the methods (documentary standards) and reference data necessary for use of the RMs. These products will be designed to help enable translation of whole genome sequencing to regulated clinical applications. The pilot NIST whole genome RM was released in May 2015 and is available at *http://tinyurl.com/giabpilot*. The consortium is currently analyzing and integrating data from two trios that are candidate NIST RMs. The consortium meets in workshops two times per year, in January at Stanford University in Palo Alto, CA, and in August at the National Institute of Standards and Technology in Gaithersburg, MD. At these workshops, including the last meetings at Stanford in January 2015 and at NIST in August 2014, participants in the consortium have discussed progress developing well-characterized genomes for NIST Reference Materials and planned future experiments and analysis of these genomes (see *https://federalregister.gov/a/2012-18064*, *https://federalregister.gov/a/2013-18934*, *https://federalregister.gov/a/2014-18841* and *https://federalregister.gov/a/2015-01158* for past workshops at NIST and Stanford). The January 2015 meeting was announced in the **Federal Register** (80 FR 3220) on January 22, 2015, and the meeting is summarized at *https://docs.google.com/document/d/19J6YDg1MH1iD-8Q8mmV9L7wHOfuyUC3aogctZ2Nh87U/edit?usp=sharing.*

There is no cost for participating in the consortium. No proprietary

information will be shared as part of the consortium, and all research results will be in the public domain.

All visitors to the NIST site are required to pre-register to be admitted. Anyone wishing to attend this meeting must pre-register at *https://www-s.nist.gov/CRS/conf_disclosure.cfm?&conf_id=8473* by 5:00 p.m. Eastern Time on Thursday, August 20, 2015, in order to attend. Also, please note that under the REAL ID Act of 2005 (Pub. L. 109–13), federal agencies, including NIST, can only accept a state-issued driver's license or identification card for access to federal facilities if issued by states that are REAL ID compliant or have an extension. NIST also currently accepts other forms of federal-issued identification in lieu of a state-issued driver's license. For detailed information please contact Justin Zook at *jzook@nist.gov* or 301–975–4133, or visit: *http://www.nist.gov/public_affairs/visitor/*.

Richard R. Cavanagh,

Acting Associate Director for Laboratory Programs.

[FR Doc. 2015–18470 Filed 7–28–15; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE070

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys in the Atlantic Ocean

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

ACTION: Notice; receipt of applications for incidental harassment authorization (IHA); request for comments and information.

SUMMARY: NMFS has received multiple requests for authorization under the Marine Mammal Protection Act (MMPA) to take marine mammals incidental to conducting geophysical survey activity in the Atlantic Ocean. NMFS is announcing receipt of these requests and invites information, suggestions, and comments on the applications.

DATES: Comments and information must be received no later than August 28, 2015.

ADDRESSES: Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Laws@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted to the Internet at *www.nmfs.noaa.gov/pr/permits/incidental/oilgas.htm* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

Electronic copies of the applications may be obtained by visiting the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental/oilgas.htm*.

In 2014, the Bureau of Ocean Energy Management produced a Programmatic Environmental Impact Statement (PEIS) to evaluate potential significant environmental effects of geological and geophysical (G&G) activities on the Mid- and South Atlantic Outer Continental Shelf (OCS), pursuant to requirements of the National Environmental Policy Act. These activities include geophysical surveys in support of oil and gas exploration and development, as are proposed in the MMPA applications before NMFS. The PEIS is available at: *www.boem.gov/Atlantic-G-G-PEIS/*.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified area, the incidental, but not intentional, taking of small numbers of marine mammals, providing that certain findings are made and the necessary prescriptions are established.

The incidental taking of small numbers of marine mammals may be allowed only if NMFS (through authority delegated by the Secretary) finds that the total taking by the specified activity during the specified time period will (i) have a negligible impact on the species or stock(s) and (ii) not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). Further, the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking must be set forth, either in specific regulations or in an authorization.

The allowance of such incidental taking under section 101(a)(5)(A), by harassment (which is defined to include behavioral harassment and injury), serious injury, death, or a combination thereof, requires that regulations be promulgated for the specific activity. Subsequently, a Letter of Authorization may be issued pursuant to the prescriptions established in such regulations, providing that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations. Under section 101(a)(5)(D), NMFS may authorize such incidental taking by harassment only, for periods of not more than one year, pursuant to requirements and conditions contained within an IHA. The proposed incidental take authorization and establishment of prescriptions through either specific regulations or an IHA requires notice and opportunity for public comment.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: ''. . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

The use of sound sources such as those described in the applications (*e.g.,* airgun arrays) may result in the disturbance of marine mammals through disruption of behavioral patterns or may cause auditory injury of marine

mammals. Therefore, incidental take authorization under the MMPA is warranted.

Summary

In 2014, we received four separate requests for authorization for take of marine mammals incidental to oil and gas industry geophysical surveys in the Atlantic Ocean. Upon review of these requests, we submitted questions, comments, and requests for additional information to the individual applicant companies. As a result of these interactions, the applicant companies provided revised versions of the applications and we have determined that these revised versions are sufficiently complete to begin processing.

On August 18, 2014, we received an application from Spectrum Geo Inc., followed by revised versions on November 25, 2014, May 14, 2015, and July 6, 2015. TGS–NOPEC Geophysical Company submitted an application on August 25, 2014, followed by revised versions on November 17, 2014, and July 21, 2015. We also received a request from ION GeoVentures on September 5, 2014, followed by a revised version on June 24, 2015. Finally, TDI-Brooks International, Inc. submitted a request for authorization on October 22, 2014.

All requested authorizations would be for the statutory maximum of one year from the date of effectiveness, with the exception of ION GeoVentures, which has requested a period of validity from July through December 2016. The first four applicants propose to conduct 2D marine seismic surveys using airgun arrays, whereas the fourth (TDI-Brooks) proposes to conduct deep water multibeam bathymetry and sub-bottom profiler data acquisition (*i.e.,* not using airgun arrays). Generally speaking, these surveys may occur within state and U.S. waters including the Exclusive Economic Zone and waters out to 350 nmi, from Delaware to approximately Cape Canaveral, Florida. Please see the applications for specific details of survey design.

Information Solicited

NMFS is seeking public input on these requests for authorization as outlined below and request that interested persons submit information, suggestions, and comments concerning the applications (see **ADDRESSES**). We will only consider comments that are relevant to marine mammal species that occur in U.S. waters of the Mid- and South Atlantic and the potential effects of geophysical survey activities on those species. NMFS is particularly interested in information addressing the following topics:

- Best available scientific information and appropriate use of such information in assessing potential effects of the specified activities on marine mammals and their habitat;
- Application approaches to estimating acoustic exposure and take of marine mammals;
- Appropriate mitigation measures and monitoring requirements for these activities.

Comments indicating general support for or opposition to oil and gas exploration and development are not relevant to this request for information and will not be considered. Comments should be supported by data or literature citations as appropriate. We will consider all relevant information, suggestions, and comments related to the requests during the development of proposed authorizations governing the incidental taking of marine mammals.

Dated: July 23, 2015.

Perry F. Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–18467 Filed 7–28–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE041

Marine Mammals; File No. 19091

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the NMFS Southwest Fisheries Science Center (SWFSC), 8901 La Jolla Shore Dr., La Jolla, CA 92037, [Responsible Party: Lisa Ballance, Ph.D.], has applied in due form for a permit to conduct research on five species of pinnipeds, over 50 species of cetaceans, and five species of sea turtles.

DATES: Written, telefaxed, or email comments must be received on or before August 28, 2015.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 19091 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman 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.*), 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 SWFSC proposes to conduct research on over 55 species of marine mammals and five species of sea turtles in all oceans of the world, with special focus on the eastern Pacific Ocean. This includes research on ESA listed species: North Atlantic right (*Eubalaena glacialis*), North Pacific right (*E. japonica*), Southern right (*E. australis*), bowhead (*Balaena mysticetus*), sei (*Balaenoptera borealis*), Southern resident killer (*Orcinus orca*), humpback (*Megaptera novaeangliae*), fin (*Balaenoptera physalus*), sperm (*Physeter macrocephalus*), and blue (*Balaenoptera musculus*) whales; Steller sea lions (*Eumetopias jubatus*); and green (*Chelonia mydas*), hawksbill (*Eretmochelys imbricata*), leatherback (*Dermochelys coriacea*), loggerhead (*Caretta caretta*), and olive ridley (*Lepidochelys olivacea*) sea turtles. The purpose of this research is to determine the abundance, distribution, movement patterns, dive behavior, demography and stock structure, and to monitor trends in recruitment of pinnipeds,

cetaceans, and sea turtles in U.S. territorial and international waters as mandated by the MMPA and ESA. These studies are conducted through ground, vessel, and aerial surveys for observation, photogrammetry, photo-identification, biological sample collection, and tagging animals. Researchers also may salvage and import/export specimens and biological samples of these species.

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: July 23, 2015.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–18549 Filed 7–28–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD989

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Applications for six new scientific research permits, and fourteen research permit renewals.

SUMMARY: Notice is hereby given that NMFS has received 20 scientific research permit application requests relating to Pacific salmon, sturgeon, and eulachon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management, conservation, and recovery efforts. The applications may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm.*

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on August 28, 2015.

ADDRESSES: Written comments on the applications should be submitted to the Protected Resources Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404. Comments may also be submitted via fax to 707–578–3435 or by email to *nmfs.swr.apps@noaa.gov* (include the permit number in the subject line of the fax or email).

FOR FURTHER INFORMATION CONTACT: Jeff Abrams, Santa Rosa, CA (ph.: 707–575–6080), Fax: 707–578–3435, email: *Jeff.Abrams@noaa.gov*). Permit application instructions are available from the address above, or online at *https://apps.nmfs.noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): Threatened California Coastal (CC); Threatened Central Valley spring-run (CVSR); endangered Sacramento River winter-run (SRWR).

Coho salmon (*O. kisutch*): Threatened Southern Oregon/Northern California Coast (SONCC); endangered Central California Coast (CCC).

Steelhead (*O. mykiss*): Threatened Northern California (NC); threatened CCC; threatened California Central Valley (CCV); threatened South-Central California Coast (S–CCC); endangered Southern California (SC).

North American green sturgeon (*Acipenser medisrostris*): Threatened southern distinct population segment (sDPS).

Eulachon (*Thaleichthys pacificus*): Threatened sDPS.

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR parts 222–227). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 1440–2R

The Interagency Ecological Program (IEP), a consortium of nine state and federal agencies, is seeking to renew Permit 1440 for a period of five years. The permit would authorize IEP to take CVSR Chinook salmon, SRWR Chinook salmon, CCV steelhead, CCC steelhead and sDPS green sturgeon while conducting 11 surveys in the San Francisco Bay-Delta region. The studies would examine the abundance, and temporal and spatial distribution of various life stages of pelagic fishes of management concern, including listed species, and their food (*e.g.,* zooplankton) resources, along with environmental conditions. These IEP studies are intended to monitor/inform the effectiveness of water operations, aquatic habitat restoration, and fish management practices, thereby providing a benefit to listed fish. The 11 studies included are: (1) Adult Striped Bass, a striped bass population study; (2) Fall Midwater Trawl, which monitors the relative abundance of native and introduced fish species; (3) Sturgeon Tagging, a white sturgeon tagging program; (4) Summer Townet, which targets delta smelt and young-of-the-year striped bass; (5) Estuarine and Marine Fish, a San Francisco Bay trawl study; (6) 20mm Survey, a study to monitor juvenile delta smelt distribution and relative abundance; (7) Yolo Bypass, a research effort to understand fish and invertebrate use of the Yolo Bypass seasonal floodplain; (8) Upper Estuary Zooplankton, which targets multiple zooplankters; (9) Spring Kodiak Trawl, which determines the relative abundance and distribution of spawning delta smelt; (10) Suisun Marsh Survey, monitoring to determine the effects of the Suisun Marsh Salinity Control Gates operation on fish, including listed salmonids; and (11) Smelt Larva Survey, which provides distribution data for longfin smelt larvae in the Delta. Listed fish would be captured by fyke net, gill net, midwater trawl, trammel net, hoop net, otter trawl, larval fish net, zooplankton net, Kodiak trawl net, rotary screw trap, and beach seine. The majority of captured fishes would be identified to species, enumerated, measured for standard length, and released. Juvenile SRWR and CVSR Chinook salmon would be identified using the Delta Model Length-at-Date-of-Capture Table. Listed species would be processed first and released. A subsample of wild juvenile SRWR and CVSR Chinook salmon sized captures would be tissue sampled for genetic analysis, and a subsample of hatchery

juvenile SRWR and CVSR Chinook salmon sized captures would be sacrificed (*i.e.,* intentional directed mortality) in order to collect coded wire tag data for management purposes and for stock confirmation. To reduce handling mortality, investigators would conduct water to water transfers, use fish-friendly nets, avoid handling when possible, and would not release fish from a vessel under way.

Permit 13675–2R

The Fishery Foundation of California is seeking to renew permit 13675 to annually take juvenile CVSR Chinook salmon, SRWR Chinook salmon, CCV steelhead, and sDPS green sturgeon while conducting research designed to monitor the use of the Fremont Landing Conservation Bank (FLCB) at the confluence of the Sacramento and Feather rivers in California's Central Valley. The requested permit would authorize take for a period of five years. FLCB is a restored area that provides mitigation for impacts to listed salmonid species in the Central Valley. The proposed monitoring would evaluate the use of the FLCB by listed fish, provide data directly related to success criteria described in the FLCB management plan, and benefit listed fish by informing adaptive management strategies being conducted at the FLCB. The researchers would use beach seines and fyke nets to capture listed fish. Once captured, all listed fish would be identified to species and released. A subsample would be measured for fork length. No anesthesia would be used, and no additional handling procedures would be implemented. Captured fish would remain completely wetted at all times to minimize stress. Any fish exhibiting signs of physiological stress would be immediately released. The researchers are not proposing to kill any of the fish they capture, but some may die as an unintended result of the research.

Permit 13791–2R

The United States Fish and Wildlife Service (USFWS), Stockton Fish and Wildlife Office (SFWO), has requested to renew Permit 13791 for a period of four years. The permit would authorize SFWO to annually take juvenile and smolt CVSR Chinook salmon, SRWR Chinook salmon, CCV steelhead, and juvenile and larval sDPS green sturgeon while conducting seven research studies. The purpose of the studies is to evaluate/monitor the: (1) Abundance, temporal and spatial distribution, and survival of salmonids and other fishes in the lower Sacramento and San Joaquin rivers and the San Francisco Estuary (SFE); (2) occurrence and habitat use of fishes, especially early life history stages, within the Liberty Island and Cache Slough Complex, (3) relative gear efficiencies for all IEP fish survey nets, and also the distribution of delta smelt; (4) littoral habitat use of juvenile Chinook salmon within the Delta; (5) the effect of projected water operations on delta smelt; (6) length at date race criteria of SRWR Chinook salmon sized juvenile Chinook salmon; and (7) SRWR and CVSR Chinook salmon floodplain usage in the Yolo bypass. These studies would result in capture/handle/release take, tissue sampling, and/or intentional directed mortality. Intentional directed mortality would apply to only juvenile hatchery adipose clipped salmonids and larval green sturgeon. Capture methods would include Kodiak trawl, midwater trawl, beach seine, zooplankton net, larval net, gill net, fyke net, purse seine, and boat electrofishing. All listed fish except adipose fin clipped SRWR and CVSR Chinook salmon would be immediately collected from the sampling gears, placed in containers filled with river water collected at the location being sampled, processed, held in a recovery container filled with aerated river water, and subsequently released at the sampled location. A fin tissue sample would be collected from a subset of natural origin SRWR and CVSR Chinook salmon for stock determination. The purpose of intentional mortality of hatchery origin (adipose clipped) SRWR and CVSR Chinook salmon would be to collect coded wire tags (CWT), and up ten green sturgeon larvae would be killed during larval fish collections in order to identify the contents of the larval trawl net, which can only be achieved in the lab. The data provided by these studies would provide natural resource managers real-time biological and population data on fishes to evaluate the effect of water operations and fish management practices within the SFE, thereby benefiting listed fish.

Permit 14516–2R

Dr. Jerry Smith, Associate Professor in the Department of Biological Sciences at San Jose State University, is requesting to renew permit 14516 for a period of five years. The permit would authorize Dr. Smith to annually take multiple life stages of CCC coho salmon and CCC steelhead while conducting two studies: (1) Stream and lagoon surveys in Gazos Creek, Waddell Creek, and Scott Creek; and (2) lagoon surveys in Pescadero Creek Lagoon and San Gregorio Lagoon. The purpose of the studies is to: (1) Provide an annual index of relative abundance for juvenile listed salmonids, provide data on lagoon and upstream habitat utilization and growth, and provide an assessment of trends and year to year response to variations in habitat conditions; and (2) determine juvenile listed salmonid abundance and growth, and provide adult life history information in the lagoons. Capture methods would include backpack electrofishing, and beach seine. Captured salmonids would be measured, and a subset of juvenile captures and all adults would have scale samples taken, before being released at the capture location. A subsample of juvenile steelhead would also be marked via caudal fin clip to perform a mark-recapture analysis. Scale and fin tissue samples would be taken from adult fish carcasses. Captured live fish would be held in flow-through live cars, covered with a towel to provide shade and cover to calm fish. Adult fish would be processed and released first. In lagoons, live cars would be kept in deeper water with cooler temperatures and less turbidity to prevent warming above ambient temperatures or a decrease in dissolved oxygen. The researchers are not proposing to kill any of the fish they capture, but a small number may die as an unintended result of the activities.

Permit 15215

The California Department of Fish and Wildlife (CDFW), Fisheries Branch, Fish Health Laboratory, is applying for a permit to take endangered SRWR Chinook salmon, CCC coho salmon and SC steelhead for a period of five years. The purpose of the proposed research is to investigate wild fish kills/disease outbreaks that could occur in California that involve federally listed endangered species. The research would benefit the listed species by providing fisheries managers with the necessary information to help alleviate future outbreaks of fish disease through proper management of fishery and water resources. The proposed research would only be conducted in the event of elevated and unexplained endangered species mortality or the presence of clinically diseased animals. Given such a triggering event, endangered fish would be collected in any of the state waters of California in which a disease outbreak/fish die-off occurred. Adult and juvenile endangered fish would be collected by hand or dip-net, as only dead and/or moribund fish, or fish displaying clinical signs of disease, would be collected. Moribund or clinically diseased fish would be euthanized (*i.e.,* intentional directed mortality). Trained CDFW pathologists and veterinarians would assess

moribund or diseased fish prior to euthanasia, and only fish that would likely die regardless of the actions proposed by CDFW would be euthanized. Necropsies would be performed on dead and euthanized captured fish either in the laboratory or in the field, fish would be examined for signs of parasitic and bacterial infections, and fin and/or internal tissues would be collected for virology, histopathology, immunological testing and/or DNA testing.

Permit 16274

The Mendocino Redwood Company (MRC) is seeking to renew Permit 1181–Modification 1 for a period of five years. The permit would authorize MRC to take CC Chinook salmon, SONCC coho salmon, CCC coho salmon, NC steelhead, and CCC steelhead while conducting research and monitoring to assess juvenile and adult populations of salmonids and their distribution in streams within MRC's property. Research would be conducted in several watersheds within Mendocino and northern Sonoma counties. The data gathered would benefit listed fish by informing a better understanding of salmonid distribution, abundance, and habitat utilization in these areas. Juvenile salmonids would be captured by backpack electrofishing, anesthetized, weighed, measured to fork length, and released. A subsample of juvenile salmonids would be fin clipped to mark and to collect tissue samples for genetic analysis. Live adults and/or juveniles would be observed via snorkel surveys and spawning surveys. Carcasses would be measured and then marked to ensure duplicate measurements were not made. Outmigrant trapping would be conducted using a rotary screw trap or weir/pipe trap; captured outmigrants would be anesthetized, measured, and released. A subsample of outmigrants would be marked (dye, elastomer, or fin clip) or Passive Integrated Transponder (PIT) tagged. All anesthetized fish would be allowed to recover in a bucket containing aerated natal water prior to being released back into the stream from which they were taken. The researchers are not proposing to kill any of the fish they capture, but a small number may die as an unintended result of the activities.

Permit 17063

The United States Forest Service (USFS), Redwood Sciences Laboratory is requesting to renew permit 1071 for a period of five years to perform eight studies that together would take CC Chinook salmon, SONCC coho salmon, CCC coho salmon, NC steelhead, CC steelhead, and SC steelhead. The purposes of the eight studies are: (1) To investigate the invasion history of non-listed speckled dace in the Van Duzen River and the Eel River, (2) to investigate the invasion history of non-listed California roach in the Van Duzen River and the Eel River, (3) to develop an Individual Based Modeling (IBM) approach to predict the effects of management practices on salmonid population in Northern California, (4) to link abiotic factors (*e.g.,* distance to spawning ground) to the expression of an anadromous or resident life history for *O. mykiss* in the Eel River, (5) to link the distribution and movement of watershed products (*e.g.,* wood, sediment, and water) in tributaries and mainstem channels to fish diversity and abundance in Northern California rivers, (6) to provide managers with insights into the status and relatedness of Sacramento sucker populations in northern California, (7) to document the speckled dace invasion of the Mad River, and (8) to provide managers with a tool to predict the effects of management decisions on Santa Ana suckers in the Santa Ana River. Listed adult and juvenile salmonids would be observed via snorkel surveys. Listed juvenile salmonids would be captured via backpack and/or boat electrofishing for all eight studies, and also via beach seine and/or fyke net for Study 6 (*i.e.,* Sacramento sucker relatedness and distribution). For most studies, listed salmonids that are captured would be anesthetized, measured and/or weighed, and released. Captured fishes would be held in multiple live cars to prevent overcrowding and to maintain acceptable water quality conditions. In addition to capturing, handling and releasing fish, Study 4 (*i.e.* factors affecting the expression of an anadromous versus resident life history in *O. mykiss*) would also include intentional directed mortality for otolith microchemical analyses. A maximum of four *O. mykiss* would be sacrificed from each of seventy sample streams distributed throughout the Eel River, which would include both anadromous (listed as threatened) and resident (non-listed) life history forms.

Permit 17077–2R

Dr. Peter Moyle, with the University of California at Davis, Department of Wildlife, Fish and Conservation Biology, has applied for a five year renewal of Permit 17077 to take listed species while conducting research designed to develop a better understanding of how physical habitat, flow and other factors interact to maintain assemblages of native and non-native aquatic species in the upper SFE. This study would provide knowledge about food web and habitat support for native fishes, including listed anadromous fish, which are suspected of utilizing such habitats during development. While listed fish are not the target species for this study, the study would benefit listed fish by improving management decisions regarding creating additional habitat, and helping to anticipate the effects of drought and climate change on food and habitat availability. Sampling would be conducted in three distinct regions of the SFE: (1) The Cache-Lindsey complex, (2) the Sherman Lake complex and (3) Suisun Marsh, and would take juvenile and adult CVSR Chinook salmon, SRWR Chinook Salmon, CCV steelhead, and sDPS green sturgeon. Capture methods would be similar for each of these regions, and would include otter trawling, beach seining and boat electrofishing, however electrofishing would be suspended immediately upon encountering a listed species. All sampled fish would be placed in a bucket with ambient water and an aerator, examined for responsiveness and returned to the water as soon as possible with a minimum of handling, after identification and length estimates were made. Juvenile SRWR and CVSR Chinook salmon would be identified using published size-at-date criteria. Only adult green sturgeon captures would receive additional processing beyond identification and measuring for length. Adult green sturgeon would be scanned for the presence of a PIT tag, and a soft pelvic fin tissue sample would be collected. The researchers are not proposing to kill any of the fish they capture, but a small number may die as an unintended result of the activities.

Permit 17219

The NMFS Southwest Fisheries Science Center, Fishery Ecology Division (FED), requests a five-year renewal of permit 1044-Modification 4 for research throughout California that would include take of SRWR Chinook salmon, CVSR Chinook salmon, SONCC coho salmon, CCC coho salmon, NC steelhead, CCC steelhead, CCV steelhead, S–CCC steelhead, SC steelhead, and juvenile sDPS green sturgeon. The proposed research would benefit listed fish by supporting conservation and management of listed anadromous salmonids and green sturgeon in California by directly addressing information needs identified by NMFS and other agencies. FED studies address priority topics identified

in NMFS technical recovery team reports, NMFS recovery plans, joint programs such as the California Coastal Monitoring Program developed by NMFS and CDFW, and state programs such as the Fisheries Restoration Grant Program. Research objectives of specific proposed studies include: (1) Estimating population abundance and dynamics; (2) evaluating factors affecting growth, survival, and life-history; (3) assessing life-stage specific habitat use and movement; (4) collecting data necessary to construct various types of models (*e.g.,* population, life-cycle, bioenergetics, and habitat-use models); (5) determining genetic structure of populations; (6) evaluating the effects of activities such as water management and habitat restoration on populations; and (7) developing improved sampling and monitoring methods.

Research and take would involve various life stages (juvenile, smolt, adult, and carcass). Listed fish would be observed during spawning surveys, and captured by electrofishing, beach seine, rotary screw trap, and/or hook-and-line. The majority of captured fish would be anesthetized, measured to fork length, and released. A subsample of captured fish would be further sampled by collection of scales, fin clips, gill clips or stomach contents; and/or marking or tagging including fin tissue clips, PIT tags, elastomer tags, acoustic tags, or radio tags. Species care after capture would include use of aerated buckets or live cars for holding and recovery, and minimization of handling time. The majority of fish captured would be released alive at their point of capture following recovery from handling. However, in limited cases some fish would be: (1) Retained in enclosures in streams for short-term growth and survival experiments and then released, or (2) euthanized for analysis of otoliths and/or parasitological/pathological studies of parasites and diseases of wild juvenile steelhead.

Permit 17272

The USFWS, Arcata Fish and Wildlife Office Fisheries Program (AFWO) is seeking to renew permit 1068-Modification 2 for a period of five years. The requested permit would authorize AFWO to take multiple life stages of hatchery and wild SONCC coho salmon via monitoring and research activities in Northwest California. Five studies are proposed, the purposes of which are to monitor: (1) Chinook salmon fry production and disease incidence in the Klamath River below Iron Gate dam, (2) Chinook salmon escapement in the mainstem Klamath River below the Shasta River confluence, (3) Chinook salmon escapement in the mainstem Klamath River from Iron Gate dam to the Shasta River confluence, (4) coho salmon escapement between Iron Gate Dam and the Indian Creek confluence, and (5) long-term salmonid disease incidence in the lower Klamath River. Trained AFWO crews would conduct redd surveys, on foot and from rafts, which could observe/harass spawning SONCC coho salmon. Crews would spend minimal time around redds and avoid walking on redds. Trained AFWO crews would also capture juvenile SONCC coho salmon using rotary-screw traps, frame nets, and beach seines. Traps would be thoroughly cleaned at least once a day. Juvenile coho salmon would be held in aerated holding buckets filled with fresh river water then anesthetized, measured for fork length, weighed, and released back into the river. There would be some intentional mortality of hatchery juvenile coho salmon for disease analysis. Aside from these hatchery fish, the researchers are not proposing to kill any of the fish they capture, but a small number may die as an unintended result of the activities. The proposed studies would benefit listed coho salmon by informing the AFWO goal to develop conservation strategies for aquatic resources and to evaluate the success of aquatic habitat restoration efforts that will lead to the recovery and conservation of fish populations and fisheries in northern California.

Permit 17351

The Green Diamond Resource Company (GDRC) has applied for a five year renewal of research permit 1060-Modification 1 to take listed salmonids while conducting research and monitoring under an existing Aquatic Habitat Conservation Plan (AHCP). The AHCP, which was approved in 2007 and is valid until 2057, identifies potential threats to three listed fish species that may result from GDRC's timber harvest activities and describes minimization and mitigation measures and effectiveness monitoring to address potential threats. The requested take limits would allow for implementation of monitoring and research activities in several northern California watersheds including the Winchuk River, Smith River, Lower Klamath basin tributaries, Mad River, Little River, several Humboldt Bay tributaries, and Eel River. The three species identified which would be taken as a direct result of this monitoring are CC Chinook salmon, SONCC coho salmon, and NC steelhead. Research and take would involve various life stages (fry, juvenile, smolt, adult, and carcass). Trained GDRC crews would observe listed salmonids during snorkel surveys and spawning surveys. Crews would avoid walking in suitable spawning habitats (*e.g.,* riffle crests). Listed salmonids would be captured by various capture methods including backpack electrofishing, kick net sampling, rotary screw trapping, v-notch weir outmigrant trapping, and minnow trapping. Most captured fish would be measured and released. A subsample of captured fish would be anesthetized, then marked via dorsal fin clip, fin tissue sampled, scale sampled, and/or PIT tagged. Anesthetized individuals would be allowed to recover in mesh containers placed in the stream channel prior to release. Data collected would be used to document long-term population trends and better understand the potential impacts on the covered species and their habitats that may result from AHCP covered activities. The researchers are not proposing to kill any of the fish they capture, but a small number may die as an unintended result of the activities.

Permit 17396

The USFWS, Anadromous Fish Restoration Program (AFRP) has applied for a five year permit to take listed fish while conducting research designed to: (1) Provide data necessary to evaluate the effectiveness of AFRP restoration projects, including appraisal of spawning gravel augmentation, in-channel and floodplain habitat enhancement actions, and water allocation/flow regime alteration actions; and (2) provide reconnaissance-level population and biological data on contemporary anadromous fish population patterns within the Central Valley of California, in order to prioritize and select future restoration projects to benefit anadromous salmonids. All AFRP restoration monitoring projects would serve to benefit anadromous salmonids by providing data on restoration project effectiveness, and providing valuable information relating to adaptive management procedures. Take of listed species including various life stages of CVSR Chinook salmon, CCV steelhead, and sDPS green sturgeon would result from activities in the following five proposed projects: (1) Bobcat flat restoration effectiveness monitoring in the lower Tuolumne River; (2) adult sturgeon acoustic telemetry in the lower San Joaquin basin; (3) San Joaquin River sturgeon spawning habitat assessment; (4) steelhead sampling and acoustic tracking in the lower Stanislaus, Tuolumne and Merced Rivers; and (5) fish reconnaissance in the San Joaquin River system. Observe/harass take

would result from snorkel surveys. Capture methods would include beach seine, trammel nets, gill nets, fyke nets, hook-and-line, egg mats, benthic d-nets, and boat and backpack electrofishing. The majority of captured listed fish would be handled and released; a subsample of captures would be anesthetized, scale sampled, fin clipped (to mark and to collect fin tissue for genetic analysis), acoustic tagged, and/or subject to intentional directed mortality. Green sturgeon eggs (n = 100) and larvae (n = 5) would be intentionally sacrificed, which would be necessary to provide voucher tissue specimens, and would benefit the species by providing critical information on green sturgeon spawning habitat. To minimize physiological stress, all sturgeon would be held in a net pen submerged in river or with flowing water through their gills while waiting to be handled. All listed salmonids would be immediately collected from the sampling gears, placed in five gallon buckets filled with fresh river water from the location being sampled, processed, held in another container filled with fresh river water for recovery, and subsequently released in the sampled location. The new information on these species generated by these projects would help prioritize future restoration projects, thus benefiting listed species.

Permit 17867

The Humboldt Redwood Company (HRC) is seeking to renew permit 1074-Modification 1 for a period of five years. The permit would authorize HRC to take juvenile and adult CC Chinook salmon, SONCC coho salmon and NC steelhead while conducting research and monitoring that satisfies two objectives: (1) To comply with CDFW's Restorable Class I policy by sampling reaches through snorkel and electrofishing methods to identify Class I habitat within proposed timber harvest plans, and (2) to monitor fish occupancy trends at the reach, sub basin, watershed and HRC property level over time by repeated snorkel surveys at index and randomly selected reaches. Adult and juvenile salmonids would be observed during snorkel surveys, and juvenile salmonids would be captured by backpack electrofishing. Snorkel surveys would be the preferred method of detecting presence/absence of fish species. Captured fish would be identified, and transported upstream of the project area. All captured specimens would be kept in aerated buckets, observed closely, and not released until fully recovered. The proposed monitoring would help to achieve HRC's fisheries program's general goal, which is to determine the occurrence, distribution, population and habitat conditions of anadromous fishes on HRC lands as well as to monitor, protect, restore and enhance the anadromous fishery resources in watersheds owned by HRC. The researchers are not proposing to kill any of the fish they capture, but a small number may die as an unintended result of the activities.

Permit 17877

The United States Bureau of Reclamation (BOR) is requesting to renew Permit 1072—Modification 2 for a period of five years. BOR is applying for this permit as a contingent of the Trinity River Restoration Program (TRRP), an inter-agency partnership of the BOR, USFWS, Hoopa Valley Tribe, Yurok Tribe, CDFW, Trinity County, USFS, NMFS, and the California Department of Water Resources. The TRRP benefits listed species by conducting large-scale channel restoration and habitat restoration activities in the Trinity River mainstem and watershed as a means of restoring declining fishery resources. The following six specific studies are proposed: (1) Trinity River juvenile salmonid outmigrant monitoring, (2) juvenile Chinook salmon density monitoring, (3) Trinity River Chinook salmon redd and carcass survey, (4) Trinity River invasive brown trout predation on coho investigation, (5) Trinity River juvenile coho salmon ecology study, and (6) watershed rehabilitation/research. The requested permit would authorize BOR to take juvenile, smolt, adult and carcasses of SONCC coho salmon via: (1) Observation/harassment by way of snorkel surveys, hand netting that specifically targets other species, and spawning surveys; and (2) capture by rotary screw trap, boat electrofishing, hook-and-line, beach seine, fyke net, or minnow trapping. Fin tissue samples would be collected from carcasses. The majority of captured juvenile coho salmon would be anesthetized, measured to fork length and released, but a subsample would also be PIT tagged. Tagged fish would be held in recovery pens post tagging to monitor and enhance post-tagging health. The researchers are not proposing to kill any of the fish they capture, but a small number may die as an unintended result of the activities.

Permit 17916

The Bureau of Land Management (BLM), Arcata Field Office, is seeking to renew permit 1088-Modificaiton 1 for a period of five years to monitor the effects of current management actions related to the Northwest Forest Plan's Aquatic Conservation Strategy on anadromous salmonids and their habitats. In order to monitor land management actions and implement the Northwest Forest Plan in northern California, BLM needs to obtain updated information on fish distribution and habitat. Sampling would occur in various watersheds, including the Mattole River, Eel River, Lost Coast region tributaries to the Pacific Ocean, and Humboldt Bay tributaries. Take of CC Chinook salmon, SONCC coho salmon, and NC steelhead would result from this monitoring and research. The preponderance of requested take would result from spawning surveys, snorkel surveys, and presence/absence surveys from the bank, all of which would result in observe/harass take of juvenile and/or adult salmonids. Capture methods that would take juvenile salmonids include backpack electrofishing and beach seine. A small number of salmonid fry may also be captured during kick net activities intended to sample invertebrates. Electrofishing would be used only when stream conditions prohibit less invasive sampling methods, and electrofishing activities would follow the NMFS 2000 Electrofishing Guidelines. Personnel handling fish would have wet hands and experience in fish handling. After length measurements were complete, fish would be placed in a bucket of freshwater for longer than 30 minutes to allow for recovery prior to being released. Recovering fish would be kept in cool, shaded, aerated water and would not be overcrowded. This research would benefit listed fish by informing adaptive management strategies intended to aid in the recovery of at-risk anadromous salmonids. The researchers are not proposing to kill any of the fish they capture, but a small number may die as an unintended result of the activities.

Permit 18012

The CDFW, Bay Delta Region (Region III), requests a five year renewal of permit 10094 to authorize take related to two research projects, the Watershed Restoration Project (WRP) and the Fisheries Management Project (FMP), designed to assess and restore the productivity of CC Chinook salmon, CCC coho salmon, NC steelhead, CCC steelhead, and S–CCC steelhead in Sonoma, Mendocino, Napa, Marin, San Mateo, Santa Cruz and Monterey counties in north central California. Program staff would accomplish this goal by conducting habitat and

salmonid surveys to determine potential limiting factors and stock status in order to identify the specific measures and actions needed to protect and increase production of listed salmonids. Proposed studies include: (1) Juvenile salmonid occurrence, distribution and habitat monitoring; (2) adult salmonid occurrence, passage, and distribution; (3) spawning ground surveys; (4) life cycle station monitoring; and (5) juvenile steelhead lagoon beach seining. Listed fish would be observed/harassed during snorkel surveys, spawning surveys, carcass surveys, and by the use of electronic counting stations (*i.e.,* DIDSON camera, Vaki Riverwatcher and/or video weir). Listed salmonids would be captured using backpack electrofishing, beach seining, rotary screw traps, fyke/pipe traps, and potentially adults may be captured using a resistance board weir. When electrofishing, the avoidance and impact minimization measures outlined in the NMFS 2000 electrofishing guidelines would be followed. The majority of juvenile captures would be handled (measured for fork length and weighed), and released. A subset of juvenile salmonid captures would be anesthetized, fin tissue sampled to collect tissue for genetic analysis, scale sampled, marked with an upper caudal fin clip, and/or PIT tagged. Only healthy fish with no signs of stress or injury would be subjected to marking or tagging. All fish would be allowed to recover fully and would be observed carefully for injury prior to release. Captured adult salmonids would be handled (*i.e.,* identified, measured, weighed, and scale and tissue samples taken), tagged (bi-colored Floy tags and/or opercular-hole-punched) and released upstream of the weir. All fish handled would be held in clean and decontaminated containers that are supplied with cool, aerated water and would be released back into the stream reach from which they were collected after recovery. Implementation of these activities under the WRP and the FMP would benefit listed species by informing recommendations on proposed habitat restoration projects and by determining the impacts of various management actions. The researchers are not proposing to kill any of the fish they capture, but a small number may die as an unintended result of the activities.

Permit 18712

H.T. Harvey & Associates has requested a permit to complete a project that is intended to meet three Marine Protected Area (MPA) monitoring goals set by the MPA Monitoring Enterprise: (1) To assess trends in the condition of ecosystems inside and outside of MPA's, (2) to evaluate the effects of specific MPA design criteria such as MPA size and distance between MPAs, and (3) to evaluate the effect of visitors on MPAs. The project would contribute to the goals of the monitoring enterprise by describing the baseline biological community in four northern California estuaries: (1) Mad River Estuary in Humboldt County, (2) South Humboldt Bay State Marine Recreational Management Area in Humboldt County, (3) Ten Mile Estuary State Marine Conservation Area (SMCA) in Mendocino County, and (4) Big River Estuary SMCA in Mendocino County. Sampling related to this project may take juvenile and smolt CC Chinook salmon, SONCC coho salmon, CCC coho salmon, NC steelhead, and adult sDPS eulachon. Beach seines and fyke nets would be used to capture fish whereby take (*i.e.,* capture/handle/release) of listed salmonids would occur. Handling would consist of identifying and measuring fish to fork length. To ensure that handled fish would experience minimal adverse effects as a result of the sampling process, fish would be allowed to recover briefly either in live wells or in shaded, aerated buckets. The researchers are not proposing to kill any of the fish they capture, but a small number may die as an unintended result of the activities.

Permit 18937

The Scripps Institution of Oceanography, University of California, San Diego, California Sea Grant (CSG) College Program is seeking a five year permit to annually take listed CC Chinook salmon, CCC coho salmon, and CCC steelhead while monitoring the status and trends of listed salmonids in the Russian River watershed. CSG is proposing to collect data to estimate population metrics such as abundance, survival, growth, and spatial distribution of multiple life stages of salmonids, and relate them to different recovery actions including hatchery releases, habitat enhancement projects, and stream flow improvement projects. Data collection would be designed to meet four specific study objectives: (1) Evaluation of the Russian River Coho Salmon Captive Broodstock Program, (2) implementation of the California Coastal Salmonid Monitoring Plan, (3) comparing juvenile coho salmon oversummer survival with stream flow, and (4) evaluation of habitat enhancement projects. The four proposed studies would provide resource agencies with valuable information that would help guide future decisions regarding recovery actions. Fish populations would be monitored in many tributaries of the Russian River watershed and several methods that could observe/harass and/or capture fish would be employed, including: Snorkel surveys, spawning surveys, redd surveys, downstream migrant trapping (pipe/funnel trap), minnow trapping, operation of PIT tag detection systems (*i.e.,* PIT tag arrays and PIT tag wand surveys), and backpack electrofishing. Handling of live fish captured in traps or during electrofishing surveys would include anesthetization, measuring for fork length, scanning for CWT and PIT tags, fin tissue sampling, scale sampling, PIT tagging, and/or gastric lavage. Adult salmonid carcasses encountered during spawning surveys would be scanned for PIT tags, measured, fin clipped, scale sampled, and otoliths would be extracted. All live fish would be released back into the stream following recovery in aerated buckets of cold water. Specific measures that would be taken to reduce the risk of injury or mortality to fish include following the NMFS 2000 Electrofishing Guidelines, minimizing the time that fish are handled, placing potential predators in separate holding buckets, running aerators in buckets, avoiding overcrowding in buckets, changing water in the anesthesia bucket frequently, placing a thermometer in holding buckets and replacing water frequently if the temperatures are rising, wetting measuring boards and weigh pans, processing listed species first, checking traps at least once per day and more frequently in high flow or windy conditions, and placing flow deflectors inside the trap box to provide refugia for fish. The researchers are not proposing to kill any of the fish they capture, but a small number may die as an unintended result of the activities.

Permit 19121

The United States Geological Survey, California Water Survey has applied for a five year permit for take associated with completing two main objectives: (1) To examine research applications of the SmeltCam that have been developed and coordinated with the IEP, and (2) to provide fisheries science support for the BOR's compliance with Biological Opinions. The studies are intended to: (1) Provide new quantitative data addressing the potential benefits of habitat restoration to the SFE and Delta ecosystem and its native fish populations, and (2) determine the vertical and lateral distribution of delta smelt, and the continued evaluation and application of SmeltCam technology for

studies of delta smelt and other fishes. The results of these studies are expected to provide net benefits to listed species by improving our understanding of their ecology and habitat use, and by informing the development of new research tools that can guide management decisions and habitat restoration actions. Sampling would be conducted in Suisun Bay, and would take multiple life stages of CVSR Chinook salmon, SRWR Chinook salmon, CCV steelhead, and sDPS green sturgeon. Capture methods would include beach seine, fyke trap, larval net, otter trawl, midwater trawl, boat electrofishing, set line, and gill net. All sampling would follow methods and protocols designed to minimize take of listed species while conducting research and monitoring. For example, sampling gear such as gill nets would be watched closely to monitor the status of any fishes entangled in the net. Set times would be short (approximately one hour), and nets would be set in habitats that listed fish are unlikely to inhabit. Listed salmonids captured in the course of sampling would be identified, carefully measured for length and released. Green sturgeon would be anesthetized using MS–222, scanned for a presence of a PIT tag, PIT tagged if no PIT tag is present, tissue sampled, and allowed to recover prior to release. All fishes collected in any sampling gear would be handled as gently as possible to facilitate safe release back to the water. The researchers are not proposing to kill any of the fish they capture, but a small number may die as an unintended result of the activities.

Permit 19400

ICF consulting has requested a five year permit to take juvenile CVSR Chinook salmon and SRWR Chinook salmon while conducting a study to investigate if longfin smelt in San Pablo Bay shift their vertical distribution under different environmental and biological conditions. Although this study principally targets longfin smelt, ESA listed Chinook salmon would be encountered during sampling. ICF proposes to collect data that would be useful to local researchers on captured and/or photographed listed Chinook salmon, including abundance, length, and potentially tissue samples. Fish would be sampled using a midwater trawl, however the majority of tows would be conducted with only a video device (*i.e.,* SmeltCam) acting as the codend. Therefore, the majority of take would be observe/harass. The fish camera image program would be able to determine the length, and thereby an estimate of the race/run/listing status, of salmon that pass through the net. In order to verify the results of the SmeltCam, some tows would be conducted with both the video device and a traditional codend. Physically captured juvenile salmonids would be placed in a bucket with aerated water, handled (*i.e.,* measured to fork length and possibly fin tissue sampled for genetic analysis), and released. The researchers are not proposing to kill any of the fish they capture.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: July 22, 2015.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–18600 Filed 7–28–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE042

Endangered Species; File No. 18238

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that NMFS Southwest Fisheries Science Center (SWFSC), 8901 La Jolla Shore Dr., La Jolla, CA 92037, [Responsible Party: Lisa Ballance, Ph.D.], has applied in due form for a permit to take green (*Chelonia mydas*), loggerhead (*Caretta caretta*), and olive ridley (*Lepidochelys olivacea*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or email comments must be received on or before August 28, 2015.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 18238 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Brendan Hurley, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested 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).

The SWFSC requests a five-year research permit proposes to continue long-term monitoring of resident green sea turtles in southern California to characterize population structure, foraging ecology, and migration patterns. Up to 60 green, five olive ridley, and five loggerhead sea turtles would be captured annually using entanglement, seine, or dip net and have the following procedures performed before release: photography/video; temporary marking the carapace; flipper tagging and passive integrated transponder tagging; ultrasound; morphometrics; tetracycline injection; biological sampling; cloacal and oral swabbing; lavage; and up two transmitter attachments. Animals with transmitters may be surveyed and tracked by vessel after release. The permit would be valid for five years from the date of issuance.

Dated: July 23, 2015.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–18551 Filed 7–28–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC078

Endangered Species; File No. 17183

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

ACTION: Notice; receipt of application for a permit modification.

SUMMARY: Notice is hereby given that Raymond Carthy, Ph.D., University of Florida, Florida Cooperative Fish and Wildlife Research Unit, 117 Newins-Ziegler Hall, P.O. Box 110450, Gainesville, FL 32611, has requested an modification to scientific research Permit No. 17183–01.

DATES: Written, telefaxed, or email comments must be received on or before August 28, 2015.

ADDRESSES: The modification request and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 17183 Mod 2 from the list of available applications. These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Brendan Hurley, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 17183, issued on May 6, 2013 (78 FR 26323) is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 17183–01 authorizes the permit holder to continue long-term research on the demographics and movements of green (*Chelonia mydas*), loggerhead (*Caretta caretta*), hawksbill (*Eretmochelys imbricata*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles off the northwest coast of Florida. Researchers are authorized to capture sea turtles annually by strike net, tangle net, dip net or hand capture. Captured sea turtles may be measured; weighed; passive integrated transponder and flipper tagged; epibiota sampled; tissue and blood sampled; gastric lavaged; carapace sampled and marked; cloacal swabbed; photographed; and released. A subset of sea turtles may be fitted with telemetry tags—either a satellite tag or an acoustic tag with an accelerometer. The permit is valid through April 17, 2018. The permit holder requests the permit be amended to: (1) Increase the number of Kemp's ridley sea turtles captured from 50 to 200 turtles annually; and (2) allow a larger subset of green and Kemp's ridley sea turtles to receive transmitter attachments to address objectives of habitat use and movements.

Dated: July 23, 2015.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–18550 Filed 7–28–15; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (''PRA''), this notice announces that the Information Collection Request (''ICR'') abstracted below has been forwarded to the Office of Management and Budget (''OMB'') for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before August 28, 2015.

ADDRESSES: Comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW., Washington, DC 20503, within 30 days of the notice's publication, or by email at *OIRAsubmissions@omb.eop.gov.* Please identify the comments by OMB Control No. 3038–0021. Please provide the Commission with a copy of all submitted comments at the address listed below. Please refer to OMB Reference No. 3038–0021, found on *http://reginfo.gov.* Comments may also be sent through the Agency's Web site at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.

Comments may also be mailed to: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, by Hand Deliver/Courier at the same address, or to the Federal eRulemaking Portal: *http://www.regulations.gov/.*

A copy of the supporting statements for the collection of information discussed above may be obtained by visiting *RegInfo.gov.* All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Wasserman, Chief Counsel, Division of Clearing and Risk, Commodity Futures Trading Commission, (202) 418–5092; email: *rwasserman@cftc.gov,* and refer to OMB Control No. 3038–0021.

SUPPLEMENTARY INFORMATION: This is a request for an extension of a previously approved collection—Extension.

Title: Regulations Governing Bankruptcies of Commodity Brokers (OMB Control No. 3038–0021).

Abstract: This collection of information involves recordkeeping and notice requirements in the Commodity Futures Trading Commission's (''CFTC'' or ''Commission'') bankruptcy rules for commodity broker liquidations, 17 CFR part 190. These requirements are intended to facilitate the effective, efficient, and fair conduct of liquidation proceedings for commodity brokers and to protect the interests of customers in these proceedings.

Burden Statement: Commodity broker liquidations occur at unpredictable and irregular intervals; for purposes of estimating information collection burden, this notice assumes an average of one commodity broker liquidation

every three years. The CFTC further notes that the information collection burden will vary in particular commodity broker liquidations depending on the size of the commodity broker, the extent to which accounts are able to be quickly transferred, and other factors specific to the circumstances of the liquidation. The Commission estimates the average burden of this collection of information as follows:

- Rule 190.02(a)(1)

Estimated Respondents or Recordkeepers per Year: 0.33.
Estimated Reports Annually per Respondent or Recordkeeper: 2.
Estimated Hours per Response: 0.5.
Estimated Total Hours per Year: 0.33.

- Rule 190.02(a)(2)

Estimated Respondents or Recordkeepers per Year: 0.33.
Estimated Reports Annually per Respondent or Recordkeeper: 1.
Estimated Hours per Response: 2.
Estimated Total Hours per Year: 0.67.

- Rule 190.02(b)(1)

Estimated Respondents or Recordkeepers per Year: 0.33.
Estimated Reports Annually per Respondent or Recordkeeper: 4.
Estimated Hours per Response: 1.
Estimated Total Hours per Year: 1.32.

- Rule 190.02(b)(2)

Estimated Respondents or Recordkeepers per Year: 0.33.
Estimated Reports Annually per Respondent or Recordkeeper: 10,000.
Estimated Hours per Response: 0.1.
Estimated Total Hours per Year: 330.

- Rule 190.02(b)(3)

Estimated Respondents or Recordkeepers per Year: 0.05 (rarely if ever occurs).
Estimated Reports Annually per Respondent or Recordkeeper: 10,000.
Estimated Hours per Response: 0.2.
Estimated Total Hours per Year: 100.

- Rule 190.02(b)(4)

Estimated Respondents or Recordkeepers per Year: 0.33.
Estimated Reports Annually per Respondent or Recordkeeper: 10,000.
Estimated Hours per Response: 0.2.
Estimated Total Hours per Year: 660.

- Rule 190.02(c)

Estimated Respondents or Recordkeepers per Year: 0.33.
Estimated Reports Annually per Respondent or Recordkeeper: 10.
Estimated Hours per Response: 10.
Estimated Total Hours per Year: 33.

- Rule 190.03(a)(1)

Estimated Respondents or Recordkeepers per Year: 0.33.
Estimated Reports Annually per Respondent or Recordkeeper: 20,000.
Estimated Hours per Response: 0.01.
Estimated Total Hours per Year: 66.

- Rule 190.03(a)(2)

Estimated Respondents or Recordkeepers per Year: 0.33.
Estimated Reports Annually per Respondent or Recordkeeper: 20,000.
Estimated Hours per Response: 0.02.
Estimated Total Hours per Year: 132.

- Rule 190.04(b)

Estimated Respondents or Recordkeepers per Year: 0.33.
Estimated Reports Annually per Respondent or Recordkeeper: 40,000.
Estimated Hours per Response: 0.01.
Estimated Total Hours per Year: 132.

- Rule 190.06(b)

Estimated Respondents or Recordkeepers per Year: 0.33.
Estimated Reports Annually per Respondent or Recordkeeper: 1.
Estimated Hours per Response: 1.
Estimated Total Hours per Year: 0.33.

- Rule 190.06(d)

Estimated Respondents or Recordkeepers per Year: 125.
Estimated Reports Annually per Respondent or Recordkeeper: 1000.
Estimated Hours per Response: 0.05.
Estimated Total Hours per Year: 6250.

- Rule 190.10(c)

Estimated Respondents or Recordkeepers per Year: 125.
Estimated Reports Annually per Respondent or Recordkeeper: 1000.
Estimated Hours per Response: 0.05.
Estimated Total Hours per Year: 6250.

There are estimated to be no capital costs or operating and maintenance costs associated with this collection.

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

Dated: July 24, 2015.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2015–18574 Filed 7–28–15; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (''PRA''), this notice announces that the Information Collection Request (''ICR'') abstracted below has been forwarded to the Office of Management and Budget (''OMB'') for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before August 28, 2015.

ADDRESSES: Comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW., Washington, DC 20503, within 30 days of the notice's publication, by email at *OIRAsubmissions@omb.eop.gov.* Please identify the comments by OMB Control No. 3038–0033. Please provide the Commission with a copy of all submitted comments at the address listed below. Please refer to OMB Reference No. 3038–0033, found on *http://reginfo.gov.* Comments may also be sent through the Agency's Web site at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.

Comments may also be mailed to: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, or by Hand Deliver/Courier at the same address, or to the Federal eRulemaking Portal: *http://www.regulations.gov/.*

A copy of the supporting statements for the collection of information discussed above may be obtained by visiting *RegInfo.gov.* All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Schwartz, Deputy General Counsel, Office of General Counsel, Commodity Futures Trading Commission, (202) 418–5958; email: *rschwartz@cftc.gov,* and refer to OMB Control No. 3038–0033.

SUPPLEMENTARY INFORMATION: This is a request for an extension of a previously approved collection—Extension.

Title: Notification of Pending Legal Proceedings Pursuant to 17 CFR 1.60, OMB Control Number 3038–0033.

Abstract: Rule 1.60 of the Commission's Part 1 regulations requires every designated contract market (''DCM'') and futures

commission merchant (''FCM'') to submit to the Commodity Futures Trading Commission (''Commission'') certain specified information concerning pending legal proceedings to which the DCM or FCM is a party or to which its property is subject.[1] The Commission initially estimated that 105 entities would be affected by this rule. That number was based on the current numbers of active registered DCMs (15) and FCMs (75).[2] These numbers remain current, and the Commission received no comments on the 60-day notice.

Burden Statement: The respondent burden for this collection is estimated to average 0.20 hours per response, once annually. This estimate includes providing the Commission with notice and copies of specified legal documents.

Respondents/Affected Entities: DCMs and FCMs.

Estimated Number of Respondents: 105.

Estimated Total Annual Burden on Respondents: 21 hours.[3]

Frequency of Collection: Once annually.

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

Dated: July 24, 2015.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2015–18585 Filed 7–28–15; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 1.60 (2015).

[2] 80 FR 27293, 27294 (2015).

[3] The 60-day **Federal Register** notice (80 FR 27293, May 13, 2015), contained a math error in the calculation of the total burden. The total burden should be 21 hours, not .20 hours.

CONSUMER PRODUCT SAFETY COMMISSION

Notice of LG Electronics Tianjin Appliance Co., Ltd. and LG Electronics USA Inc., Provisional Acceptance of a Settlement Agreement and Order, CPSC Docket No. 15–C0005; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Notice; correction.

SUMMARY: The Consumer Product Safety Commission published a document in the **Federal Register** of July 24, 2015, concerning the provisional acceptance of a Settlement Agreement and Order, CPSC Docket No. 15–C0005, for LG Electronics Tianjin Appliance Co., Ltd. and LG Electronics USA Inc. A footnote was omitted from the **SUMMARY** paragraph of the document.

FOR FURTHER INFORMATION CONTACT: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Correction

In the **Federal Register**/Vol. 80, No. 142/July 24, 2015, in FR Doc. 2015–18150, on page 44081, in the first column, correct the **SUMMARY** paragraph to include the footnote:

[1] The Commission voted (4–1) to provisionally accept this Settlement Agreement and Order, regarding LG Electronics (Tianjin) Appliance Co., Ltd. and LG Electronics USA. Chairman Elliot F. Kaye, Commissioner Robert S. Adler, Commissioner Marietta S. Robinson and Commissioner Joseph P. Mohorovic voted to provisionally accept the Settlement Agreement and Order. Commissioner Ann Marie Buerkle voted to reject the Settlement Agreement and Order.

Dated: July 24, 2015.

Todd A. Stevenson,

Secretary.

[FR Doc. 2015–18575 Filed 7–28–15; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket No. DARS–2015–0022]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by August 28, 2015.

Title, Associated Forms and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 204, Administrative Matters: U.S.-International Atomic Energy Agency Additional Protocol; and related clause at DFARS 252.204–7010, Requirement for Contractor to Notify DoD if the Contractor's Activities are Subject to Reporting Under the U.S.-International Atomic Energy Agency Additional Protocol; OMB Control Number 0704–0454.

Type of Request: Extension.

Number of Respondents: 300.

Responses per Respondent: 1.

Annual Responses: 300.

Average Burden per Response: 1 hour.

Annual Burden Hours: 300.

Needs and Uses: This requirement is necessary to provide for protection of information or activities with national security significance. As such, this information collection requires contractors to comply with the notification process at DFARS clause 252.204–7010, Requirement for Contractor to Notify DoD if the Contractor's Activities are Subject to Reporting Under the U.S.-International Atomic Energy Agency Additional Protocol.

Under the U.S.-International Atomic Energy Agency (IAEA) Additional Protocol, the United States is required to declare a wide range of public and private nuclear-related activities to the IAEA and potentially provide access to IAEA inspectors for verification purposes. The U.S.-IAEA Additional Protocol permits the United States unilaterally to declare exclusions from inspection requirements for activities with direct national security significance.

The clause at 252.204–7010 is included in contracts for research and development or major defense acquisition programs involving fissionable materials (*e.g.,* uranium, plutonium, neptunium, thorium, americium); other radiological source materials; or technologies directly related to nuclear power production, including nuclear or radiological waste materials.

The clause requires a contractor to provide written notification to the applicable DoD program manager and a copy of the notification to the contracting officer if the contractor is required to report its activities under the U.S.-IAEA Additional Protocol. Upon such notification, DoD will determine if access may be granted to IAEA inspectors, or if a national security exclusion should be applied.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number, and title for the **Federal Register** document. The general policy for comments and other public 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 provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

DoD Clearance Officer: Mr. Frederick C. Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at: Public Collections Program, WHS/ESD/ Information Management Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2015–18589 Filed 7–28–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2015–0021]

Submission for OMB Review; Comment Request

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by August 28, 2015.

SUPPLEMENTARY INFORMATION:

Title, Associated Forms, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) part 236, Construction and Architect-Engineering Contracts, and related clauses at DFARS 252.236; OMB Control Number 0704–0255.

Type of Request: Extension.

Number of Respondents: 3,353.

Response per Respondent: Approximately 1.

Annual Responses: 3,369.

Average Burden per Response: Approximately 101 hours.

Annual Burden Hours: 342,315.

Needs and Uses: DoD contracting officers need this information to evaluate contractor proposals for contract modifications; to determine that a contractor has removed obstructions to navigation; to review contractor requests for payment for mobilization and preparatory work; to determine reasonableness of costs allocated to mobilization and demobilization; and to determine eligibility for the 20 percent evaluation preference for United States firms in the award of some overseas construction contracts.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503. You may also submit comments, identified by docket number and title, by the following method:

Federal eRulemaking Portal: http://www.regulations.gov.

Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number, and title for the **Federal Register** document. The general policy for comments and other public 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 provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

DoD Clearance Officer: Mr. Frederick C. Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at: Publication Collections Program, WHS/ESD Information Management Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2015–18591 Filed 7–28–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulation System

[Docket Number 2015–0013]

Submission for OMB Review; Comment Request

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by August 28, 2015.

SUPPLEMENTARY INFORMATION:

Title, Associated Forms, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) part 243, Contract Modifications, and the related clause at DFARS 252.243–7002; OMB Control Number 0704–0397.

Type of Request: Extension.

Number of Respondents: 328.

Responses Per Respondent: 1.6, approximately.

Annual Responses: 520.

Average Burden Per Response: 4.8 hours, approximately.

Annual Burden Hours: 2,483.

Needs and Uses: The information collection required by the clause at DFARS 252.243–7002, Requests for Equitable Adjustment, implements 10 U.S.C. 2410(a). The clause at DFARS 252.243–7002 is prescribed at DFARS 243.205–71 for use in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items that are estimated to exceed the simplified acquisition threshold. The clause requires contractors to certify that requests for equitable adjustment that exceed the simplified acquisition threshold are made in good faith and that the supporting data are accurate and complete. The clause also requires contractors to fully disclose all facts relevant to the requests for adjustment. DoD contracting officers and auditors use this information to evaluate contractor requests for equitable adjustments to contracts.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed

information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number, and title for the **Federal Register** document. The general policy for comments and other public 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 provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

DoD Public Collections Clearance Officer: Mr. Frederick C. Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at: Publication Collections Program, WHS/ESD Information Management Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2015–18590 Filed 7–28–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD15–29–000]

Dan Sullivan; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On June 30, 2015, Dan Sullivan filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed Drake Cottonwood Hydropower Project would have an installed capacity of 14 kilowatts (kW) and would be located on the existing irrigation canal off Cottonwood Creek; 1.5 miles of the canal will be enclosed with a 15-inch-diameter pipe. The project would be located near Hotchkiss in Delta County, Colorado.

Applicant Contact: Dan Sullivan, 8301 Crawford Road, Hotchkiss, CO 81419, Phone No. (970) 216–6925.

FERC Contact: Robert Bell, Phone No. (202) 502–6062, email: *robert.bell@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) 1.5 miles of 15-inch PVC pipe located on the existing irrigation canal off Cottonwood Creek; (2) a proposed 10-foot-long by 12-foot-wide by 8-foot-high powerhouse containing four generating units with a total installed capacity of 14 kW; (3) a 4-foot-long by 10-foot-wide tailrace returning flow back into the irrigation canal; and (4) appurtenant facilities. The proposed project would have an estimated annual generating capacity of 95 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA ..	The conduit the facility uses a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA.	The facility has an installed capacity that does not exceed 5 megawatts.	Y
FPA 30(a)(3)(C)(iii), as amended by HREA.	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: Based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/*

[1] 18 CFR 385.2001–2005 (2014).

ecomment.asp. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number (*e.g.,* CD15–29–000) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659.

Dated: July 22, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–18479 Filed 7–28–15; 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 rate filings:

Docket Numbers: ER15–2191–000.
Applicants: Grant Wind, LLC.
Description: Supplement to July 13, 2015 Grant Wind, LLC tariff filing.
Filed Date: 7/21/15.
Accession Number: 20150721–5154.
Comments Due: 5 p.m. ET 8/3/15.

Docket Numbers: ER15–2234–000.
Applicants: Rochester Gas and Electric Corporation.
Description: § 205(d) Rate Filing: RGE–RED Borderline Service Agreement to be effective 7/22/2015.
Filed Date: 7/21/15.
Accession Number: 20150721–5148.
Comments Due: 5 p.m. ET 8/11/15.

Docket Numbers: ER15–2235–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Eligibility for Start-Up Offer Cancellation Costs to be effective 10/1/2015.
Filed Date: 7/21/15.
Accession Number: 20150721–5149.
Comments Due: 5 p.m. ET 8/11/15.

Docket Numbers: ER15–2236–000.
Applicants: Midwest Power Transmission Arkansas, LLC.
Description: Baseline eTariff Filing: Midwest Power Transmission Arkansas, LLC to be effective 9/21/2015.
Filed Date: 7/22/15.
Accession Number: 20150722–5001.
Comments Due: 5 p.m. ET 8/12/15.

Docket Numbers: ER15–2237–000.
Applicants: Kanstar Transmission, LLC.
Description: Baseline eTariff Filing: Kanstar Transmission, LLC to be effective 9/21/2015.
Filed Date: 7/22/15.
Accession Number: 20150722–5025.
Comments Due: 5 p.m. ET 8/12/15.

Docket Numbers: ER15–2238–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No. 3412, Queue No. X3–011 to be effective 6/20/2015.
Filed Date: 7/22/15.
Accession Number: 20150722–5042.
Comments Due: 5 p.m. ET 8/12/15.

Docket Numbers: ER15–2239–000.
Applicants: NextEra Energy Transmission West, LLC.
Description: Baseline eTariff Filing: NextEra Energy Transmission West, LLC Transmission Owner Tariff to be effective 10/20/2015.
Filed Date: 7/22/15.
Accession Number: 20150722–5051.
Comments Due: 5 p.m. ET 8/12/15.

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: July 22, 2015.

Nathaniel J. Davis,

Deputy Secretary.

[FR Doc. 2015–18566 Filed 7–28–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD15–30–000]

Sweetwater Authority; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On July 14, 2015, Sweetwater Authority filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed Perdue Water Treatment Plant Hydroelectric Project would have an installed capacity of 700 kilowatts (kW) and would be located on San Diego County Water Authority's existing raw water Pipeline 3, which carries raw water to a 24-inch diameter turnout pipe which in turn transports water into the Perdue Water Treatment Plant. The project would be located near Spring Valley in San Diego County, California.

Applicant Contact: Scott McClelland, Sweetwater Authority, 100 Lakeview Avenue, Spring Valley, CA 91977, Phone No. (619) 409–1413.

FERC Contact: Robert Bell, Phone No. (202) 502–6062, email: *robert.bell@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A proposed 32-foot-long, 16-inch diameter pipe to generating unit one and a proposed 23-foot-long, 14-inch-diameter pipe to generating unit two; (2) a proposed powerhouse containing two generating units with a total installed capacity of 700 kW; (3) a proposed 10-foot-long, 16-inch diameter pipe from unit one and a proposed 23-foot-long, 16-inch-diameter pipe which merge into a proposed 11-foot-long, 24-inch-diameter discharge pipe into the treatment plant; and (4) appurtenant facilities. The proposed project would have an estimated annual generating capacity of 3,784 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA	The conduit the facility uses a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA	The facility has an installed capacity that does not exceed 5 megawatts.	Y
FPA 30(a)(3)(C)(iii), as amended by HREA	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: Based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number (*e.g.,* CD15–30–000) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: July 22, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–18480 Filed 7–28–15; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2001–2005 (2014).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF15–21–000]

Columbia Gas Transmission, LLC; Notice of Intent To Prepare an Environmental Assessment for the Planned WB Xpress Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the WB XPress Project involving construction and operation of facilities by Columbia Gas Transmission, LLC (Columbia) in Kanawha, Grant, Upshur, Randolph, Pendleton, Clay, Braxton, and Hardy Counties, West Virginia and Fairfax, Shenandoah, Warren, Clark, Fauquier, and Loudoun Counties, Virginia. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before August 24, 2015.

If you sent comments on this project to the Commission before the opening of this docket on April 1, 2015, you will

need to file those comments in Docket No. PF15–21–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Public Participation

For your convenience, there are four methods you can use to submit your comments to the Commission. The Commission will provide equal consideration to all comments received, whether filed in written form or provided verbally. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (PF15–21–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

(4) In lieu of sending written or electronic comments, the Commission invites you to attend the public scoping meeting(s) its staff will conduct in the project area, scheduled as follows.

FERC Public Scoping Meeting, WB XPress Project, August 12, 2015, 7:00 p.m.–9:30 p.m., Virginia Run Elementary School, 15450 Martins Hundred Drive, Centreville, VA 20120

We [1] will begin our sign up of speakers at 6:00 p.m. The scoping meeting will begin at 7:00 p.m. with a description of our environmental review process by Commission staff, after which speakers will be called. The meeting will end once all speakers have provided their comments or at 9:30 p.m., whichever comes first. Please note that there may be a time limit of three minutes to present comments, and speakers should structure their comments accordingly. If time limits are implemented, they will be strictly enforced to ensure that as many individuals as possible are given an opportunity to comment. The meetings will be recorded by a stenographer to ensure comments are accurately recorded. Transcripts will be entered into the formal record of the Commission proceeding.

Columbia representatives will be present one hour prior to the start of the scoping meeting to provide additional information about the project and answer questions.

Please note this is not your only public input opportunity; please refer to the review process flow chart in appendix 1.[2]

Summary of the Planned Project

Columbia plans to construct and operate approximately 28.7 miles of various diameter pipeline, perform modifications to seven existing compressor stations, construct two new compressor stations, and uprate the maximum allowable operation pressure (MAOP) on various segments of the existing WB and VB natural gas transmission pipeline systems. According to Columbia, its project would expand the capacity of its pipeline system by 1.3 billion cubic feet per day to provide firm bi-directional transportation service along Columbia's existing Line WB natural gas pipeline system to meet growing market demands in western West Virginia and northern Virginia.

The WB XPress Project would consist of the following facilities:

West Virginia

Aboveground Facilities

- One new West Virginia Compressor Station: a new, natural gas-fired compressor station at approximately MP 0.3 of the Line WB–5 Extension in Kanawha County, West Virginia.
- Installation of new valve sites and launcher/receiver facilities along Line WB–5 in Kanawha, Grant and Clay Counties, West Virginia.
- Modifications to increase horsepower at four (4) existing Compressor Stations including Cleveland, Files Creek, Seneca, and Lost River Compressor Stations in Upshur, Randolph, Pendleton, and Hardy Counties, West Virginia, respectively.
- Modifications to existing natural gas pipeline appurtenances at the Frametown Compressor Station in Braxton County, West Virginia.
- Modifications to four existing Valve Sites including Glady Valve Site in Randolph County, West Virginia; Dink Valve Site in Clay County, West Virginia; Whitmer and Smokehole in Pendleton County, West Virginia; and one regulator station, Panther Mountain Regulator Station, in Kanawha County, West Virginia.

Pipeline Facilities

- Line WB–5 Extension: Installation of approximately 0.3 mile of new 36-inch-diameter natural gas transmission pipeline from the planned new Compressor Station to the Panther Mountain Regulator Station in Kanawha County, West Virginia.
- Line WB–22: Installation of approximately 0.6 mile of new 36-inch-diameter natural gas transmission pipeline from the proposed new West Virginia Compressor Stations to the Panther Regulator Station, ending at the proposed WB–22 Receiver Site in Kanawha County, West Virginia.
- Line WB: Generally lift and lay replacement of approximately 25.3

[1] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

miles of 26-inch-diameter natural gas transmission pipeline loop and associated appurtenances in Randolph and Pendleton Counties, West Virginia.

- Line WB: Replacement of 5 sections, totaling approximately 0.3 mile of 26-inch-diameter natural gas transmission pipeline between Mileposts (MP) 134.6 and 146.4 in Pendleton, Grant, and Hardy Counties, West Virginia.
- Line WB–5: Replacement of approximately 1,185 feet (0.2 mile) of 36-inch-diameter natural gas transmission pipeline between MP 4.5 and MP 4.7 in Grant County, West Virginia.

MAOP Restoration

- Line WB–5: Incremental pressure increase of approximately 72.4 miles of the Line WB–5 Segment to restore this segment to its originally certificated MAOP of 1,000 square inch gauge (psig) in Upshur, Randolph, Pendleton, Grant and Hardy Counties, West Virginia.

Uprate Segments

- Line WB–6: Incremental pressure increase of approximately 2.4 miles of the Line WB–6 to 1,000 psig MAOP in Randolph County, West Virginia.
- Line WB–5: Incremental pressure increase of approximately 22.1 miles of the Line WB–5 Segment to 1,000 psig in Pendleton, Grant, and Hardy Counties, West Virginia.

Virginia

Aboveground Facilities

- One new, electric-driven compressor station at approximately MP 0.0 of the proposed new Line VA–1 in Fairfax County, Virginia.
- Installation of a receiver facility at the end of the proposed Line VA–1, in Fairfax County, Virginia.
- Modifications to increase horsepower at the existing Strasburg Compressor Station located in Shenandoah County Virginia, in order to increase capacity for the transportation of additional volume along Columbia's Line VB natural gas pipeline system.
- Modifications to existing natural gas pipeline appurtenances at the Loudoun Compressor Station in Loudoun County, Virginia.
- Modifications to the existing Dysart Valve Site, in Shenandoah County, Virginia and one metering station, Nineveh Meter Station, in Warren County, Virginia.

Pipeline Facilities

- Line VA–1: installation of approximately 2.0 miles of new 12-inch-diameter natural gas transmission pipeline and associated appurtenances in Fairfax County, Virginia.

MAOP Restoration

- Line VB–5: Incremental pressure increase of approximately 70.4 miles of the Line VB–5 Segment to restore this segment to its originally certificated MAOP of 1,000 psig in Shenandoah, Warren, Clark, Fauquier, and Loudoun Counties, Virginia.

The general location of the project facilities is shown in appendix 1.[3]

Land Requirements for Construction

Construction of the planned facilities would disturb about 605.5 acres of land, which includes 257.6 acres of existing right-of-way, 36.3 acres of proposed new permanent right-of-way, 97.1 acres of existing fenced facilities, and 16.7 acres of new proposed aboveground facilities that would be retained for operational activities. Approximately 311.6 acres of temporary workspace, staging areas, and access roads would be used temporarily during construction and would revert back to pre-construction conditions. The entire planned pipeline route parallels existing pipeline, utility, or road rights-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife, including migratory birds;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate with us in the preparation of the EA.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, the U.S. Forest Service, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Virginia Department of Historical Resources, Virginia Department of Game and Inland Fisheries, Virginia Department of Conservation and Recreation, Virginia Department of Environmental Quality, West Virginia Department of Environmental Protection, and West Virginia Department of Natural Resources have expressed their intention to participate as a cooperating

[3] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

agency in the preparation of the EA to satisfy their NEPA or other permitting responsibilities related to this project.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office(s) (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

Once Columbia files its application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* PF15–21). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: July 22, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–18484 Filed 7–28–15; 8:45 am]

BILLING CODE 6717–01–P

[5] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–528–000]

Equitrans, L.P.; Notice of Application

Take notice that on July 10, 2015, Equitrans, L.P. (Equitrans), having its principal place of business at 625 Liberty Avenue, Suite 1700, Pittsburgh, Pennsylvania 15222, filed in the above referenced docket an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations requesting authorization for the replacement of existing segment located in Armstrong and Indiana Counties, Pennsylvania (the TP–371 Pipeline Replacement Project), all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Matthew Eggerding, Counsel—Midstream, EQT Corporation, 625 Liberty Avenue, Suite 1700, Pittsburgh, PA 15222; by calling (412) 553–5786; by faxing (412) 553–7781; or by emailing *MEggerding@eqt.com.*

Specifically, the applicant proposes to replace approximately 21 miles of 12-inch diameter pipe with 20-inch diameter pipe and install a pig launcher and receiver in order to improve system integrity, reliability, and safety of the TP–371 pipeline. The cost of the project will be approximately $93.6 million, and was included as part of the sales agreement when Equitrans acquired the TP–371 pipeline.

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS)

or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on August 13, 2015.

Dated: July 23, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–18570 Filed 7–28–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP15–1121–000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing: July 18–31 2015 Auction to be effective 7/18/2015.
Filed Date: 7/16/15.
Accession Number: 20150716–5080.
Comments Due: 5 p.m. ET 7/28/15.

Docket Numbers: RP15–1122–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Compliance filing Pro Forma GT&C Section 46 1Line Service to be effective N/A.
Filed Date: 7/17/15.
Accession Number: 20150717–5075.
Comments Due: 5 p.m. ET 7/29/15.

Docket Numbers: RP15–1123–000.
Applicants: MoGas Pipeline LLC.
Description: Compliance filing MoGas Cost and Revenue Compliance Filing RP09–791 to be effective N/A.
Filed Date: 7/17/15.
Accession Number: 20150717–5111.
Comments Due: 5 p.m. ET 7/29/15.

Docket Numbers: RP15–1124–000.
Applicants: Millennium Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Service Agmt—Columbia to be effective 9/1/2015.
Filed Date: 7/17/15.
Accession Number: 20150717–5141.
Comments Due: 5 p.m. ET 7/29/15.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP15–1106–001.
Applicants: Equitrans, L.P.
Description: Tariff Amendment: Negotiated Capacity Release Agreements—07/01/2015 Update to be effective 7/1/2015.
Filed Date: 7/17/15.
Accession Number: 20150717–5117.
Comments Due: 5 p.m. ET 7/29/15.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 20, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–18569 Filed 7–28–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC15–10–000]

Commission Information Collection Activities (FERC–732); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork

Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–732, Electric Rate Schedules and Tariffs: Long-Term Firm Transmission Rights in Organized Electricity Markets.

DATES: Comments on the collection of information are due September 28, 2015.

ADDRESSES: You may submit comments (identified by Docket No. IC15–10–000) by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp*. For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp*.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–732, Electric Rate Schedules and Tariffs: Long-Term Firm Transmission Rights in Organized Electricity Markets.

OMB Control No.: 1902–0245.

Type of Request: 18 CFR part 42 provides the reporting requirements of FERC–732 as they pertain to long-term transmission rights. To implement section 1233[1] of the Energy Policy Act of 2005 (EPAct 2005),[2] the Commission requires each transmission organization that is a public utility with one or more organized electricity markets to make available long-term firm transmission rights that satisfy each of the Commission's guidelines.

The FERC–732 regulations require that transmission organizations (that are public utilities with one or more organized electricity markets) choose one of two ways to file:

- File tariff sheets making long-term firm transmission rights available that are consistent with each of the guidelines established by FERC
- File an explanation describing how their existing tariffs already provide long-term firm transmission rights that are consistent with the guidelines.

Additionally, the Commission requires each transmission organization to make its transmission planning and expansion procedures and plans available to the public.

FERC–732 enables the Commission to exercise its wholesale electric rate and electric power transmission oversight and enforcement responsibilities in accordance with the FPA, the Department of Energy Organization Act (DOE Act), and EPAct 2005.

Type of Respondents: Public utility with one or more organized electricity markets.

Estimate of Annual Burden:[3] The Commission estimates the total Public Reporting Burden for this information collection as:[4]

FERC–732, ELECTRIC RATE SCHEDULES AND TARIFFS: LONG-TERM FIRM TRANSMISSION RIGHTS IN ORGANIZED ELECTRICITY MARKETS

	Number of respondents (A)	Number of responses per respondent (B)	Total number of responses (A) × (B) = (C)	Average burden hours per response (D)	Estimated total annual burden (C) × (D)
Public utility with one or more organized electricity markets	1	1	1	1,180	1,180

The total estimated annual cost burden to respondents would be $84,960 [1,180 hours * $72.00/hour[5] = $84,960].

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: July 22, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–18481 Filed 7–28–15; 8:45 am]

BILLING CODE 6717–01–P

[1] 16 U.S.C. 824 *et al.*

[2] Added new section 217 (16 U.S.C. 824Q) to the Federal Power Act (FPA)

[3] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 CFR 1320.3.

[4] No filings were received during the past twelve months.

[5] The cost figure is the 2015 FERC average salary plus benefits ($149,489/year or $72/hour). FERC staff estimates that industry costs for salary plus benefits are similar to Commission costs.

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: ER15–1868–001.

Applicants: Montour, LLC.

Description: Compliance filing: Amendment to Notice of Succession & Certificate of Concurrance-Conemaugh to be effective 7/22/2015.

Filed Date: 7/22/15.

Accession Number: 20150722–5070.

Comments Due: 5 p.m. ET 8/12/15.

Docket Numbers: ER15–1872–001.
Applicants: Montour, LLC.
Description: Compliance filing: Amendment to Notice of Succession & Certificate of Concurrance-Keystone to be effective 7/22/2015.
Filed Date: 7/22/15.
Accession Number: 20150722–5071.
Comments Due: 5 p.m. ET 8/12/15.

Docket Numbers: ER15–2232–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. Resource Termination–Enerwise Global Technologies, Inc.
Filed Date: 7/21/15.
Accession Number: 20150721–5121.
Comments Due: 5 p.m. ET 8/11/15.

Docket Numbers: ER15–2240–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Southern Power (Butler Solar) LGIA Amendment Filing to be effective 6/22/2015.
Filed Date: 7/22/15.
Accession Number: 20150722–5100.
Comments Due: 5 p.m. ET 8/12/15.

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: July 22, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–18567 Filed 7–28–15; 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: EC15–174–000.
Applicants: Biofuels Washington, LLC.
Description: Application Under FPA Section 203 of Biofuels Washington, LLC with Privileged Exhibit I.
Filed Date: 7/22/15.
Accession Number: 20150722–5149.
Comments Due: 5 p.m. ET 8/12/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–623–005.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Errata to Compliance Filing submitted on 7/9/15 pursuant to the 6/9/15 Order to be effective 4/1/2015.
Filed Date: 7/22/15.
Accession Number: 20150722–5122.
Comments Due: 5 p.m. ET 8/3/15.

Docket Numbers: ER15–2240–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Southern Power (Butler Solar) LGIA Amendment Filing to be effective 6/22/2015.
Filed Date: 7/22/15.
Accession Number: 20150722–5100.
Comments Due: 5 p.m. ET 8/12/15.

Docket Numbers: ER15–1727–001.
Applicants: Nevada Power Company.
Description: Compliance filing: OATT Revision to Schedule 7 07.23.15 to be effective 7/14/2015.
Filed Date: 7/23/15.
Accession Number: 20150723–5109.
Comments Due: 5 p.m. ET 8/13/15.

Docket Numbers: ER15–2241–000.
Applicants: MP2 Energy NJ LLC.
Description: Tariff Cancellation: Tariff Cancellation to be effective 7/23/2015.
Filed Date: 7/22/15.
Accession Number: 20150722–5113.
Comments Due: 5 p.m. ET 8/12/15.

Docket Numbers: ER15–2242–000.
Applicants: MP2 Energy IL LLC.
Description: Tariff Cancellation: Tariff Cancellation to be effective 7/23/2015.
Filed Date: 7/22/15.
Accession Number: 20150722–5115.
Comments Due: 5 p.m. ET 8/12/15.

Docket Numbers: ER15–2243–000.
Applicants: Silver State Solar Power South, LLC.
Description: Baseline eTariff Filing: Silver State Solar Power South, LLC MBR Application to be effective 9/15/2015.
Filed Date: 7/22/15.
Accession Number: 20150722–5124.
Comments Due: 5 p.m. ET 8/12/15.

Docket Numbers: ER15–2244–000.
Applicants: Pacific Gas and Electric Company.
Description: Baseline eTariff Filing: eTariff System Migration: Refile Existing Records from Tariff ID 1000 to 1100 to be effective 7/23/2015.
Filed Date: 7/23/15.
Accession Number: 20150723–5000.
Comments Due: 5 p.m. ET 8/13/15.

Docket Numbers: ER15–2245–000.
Applicants: Pacific Gas and Electric Company.
Description: Baseline eTariff Filing: eTariff System Migration: Refile Existing Records from Tariff ID 3000 to 3100 to be effective 7/23/2015.
Filed Date: 7/23/15.
Accession Number: 20150723–5001.
Comments Due: 5 p.m. ET 8/13/15.

Docket Numbers: ER15–2246–000.
Applicants: Pacific Gas and Electric Company.
Description: Baseline eTariff Filing: eTariff System Migration: Refile Existing Records from Tariff ID 2000 to 2100 to be effective 7/23/2015.
Filed Date: 7/23/15.
Accession Number: 20150723–5002.
Comments Due: 5 p.m. ET 8/13/15.

Docket Numbers: ER15–2246–001.
Applicants: Pacific Gas and Electric Company.
Description: Tariff Amendment: eTariff System Migration: Additional Records from Tariff ID 2000 to 2100 to be effective 7/23/2015.
Filed Date: 7/23/15.
Accession Number: 20150723–5004.
Comments Due: 5 p.m. ET 8/13/15.

Docket Numbers: ER15–2247–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2207 WindFarm 66 LLC GIA Cancellation to be effective 6/30/2015.
Filed Date: 7/23/15.
Accession Number: 20150723–5021.
Comments Due: 5 p.m. ET 8/13/15.

Docket Numbers: ER15–2248–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3054 Upstream Wind Energy LLC GIA to be effective 6/26/2015.
Filed Date: 7/23/15.
Accession Number: 20150723–5023.
Comments Due: 5 p.m. ET 8/13/15.

Docket Numbers: ER15–2249–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: True-Up LGIA and Distribution Service Agmt Wellhead Power Delano LLC to be effective 9/22/2015.
Filed Date: 7/23/15.
Accession Number: 20150723–5057.
Comments Due: 5 p.m. ET 8/13/15.

Docket Numbers: ER15–2250–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 2015–7–23_PSC–WAPA–TIA–367–Exh C–0.1.0—Filing to be effective 9/21/2015.

Filed Date: 7/23/15.
Accession Number: 20150723–5064.
Comments Due: 5 p.m. ET 8/13/15.

Docket Numbers: ER15–2251–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2015–07–23_SA 2821 ATC–SWLP Pole Removal and Replacement Agreement to be effective 9/21/2015.
Filed Date: 7/23/15.
Accession Number: 20150723–5073.
Comments Due: 5 p.m. ET 8/13/15.

Docket Numbers: ER15–2252–000.
Applicants: Otter Tail Power Company.
Description: § 205(d) Rate Filing: Big Stone South-Ellendale Construction Management Agreement to be effective 6/12/2015.
Filed Date: 7/23/15.
Accession Number: 20150723–5083.
Comments Due: 5 p.m. ET 8/13/15.

Docket Numbers: ER15–2253–000.
Applicants: PJM Interconnection, L.L.C., Baltimore Gas and Electric Company.
Description: § 205(d) Rate Filing: Exelon on BG&E behalf submits Clean-up Filing of OATT Attachment H–2 to be effective 2/2/2015.
Filed Date: 7/23/15.
Accession Number: 20150723–5107.
Comments Due: 5 p.m. ET 8/13/15.

Docket Numbers: ER15–2254–000.
Applicants: Scrubgrass Generating Company, L.P.
Description: Baseline eTariff Filing: Reactive Power Tariff Filing to be effective 9/1/2015.
Filed Date: 7/23/15.
Accession Number: 20150723–5110.
Comments Due: 5 p.m. ET 8/13/15.

Docket Numbers: ER15–2255–000.
Applicants: Armenia Mountain Wind, LLC.
Description: § 205(d) Rate Filing: Notice of Succession to be effective 7/24/2015.
Filed Date: 7/23/15.
Accession Number: 20150723–5129.
Comments Due: 5 p.m. ET 8/13/15.

Docket Numbers: ER15–2256–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2015–07–23_Gas Day Order 809 Compliance Filing to be effective 11/5/2016.
Filed Date: 7/23/15.
Accession Number: 20150723–5132.
Comments Due: 5 p.m. ET 8/13/15.

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: July 23, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–18568 Filed 7–28–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9931–45–Region 6]

Clean Water Act Section 303(d): Availability of List Decisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of The Environmental Protection Agency's (EPA) Responsiveness Summary Concerning EPA's March 10, 2015 Public Notice of Proposed Decisions to Add Waters and Pollutants to Louisiana's 2014 Section 303(d) List.

On March 10, 2015 EPA published a notice in the **Federal Register** at Volume 80, Number 46, page 12628 providing the public the opportunity to review its decision to partially approve and proposal to partially disapprove Louisiana's 2014 Section 303(d) list. Specifically, EPA approved Louisiana's listing of 279 waterbody-pollutant combinations, and associated priority rankings. EPA proposed to disapprove Louisiana's decisions not to list 43 water quality limited segments and associated pollutants constituting 93 waterbody-pollutant combinations. EPA also proposed to add these waterbody-pollutant combinations to the 2014 Section 303(d) list because applicable numeric water quality standards were not attained in these segments for one of the following parameters: Dissolved oxygen (marine criterion); turbidity; and minerals (individually or a combination of sulfates, chlorides, and/or total dissolved solids).

Based on the Responsiveness Summary, EPA finds no new information or persuasive arguments as to why the 43 water quality limited segments should not be added to the 2014 Louisiana Section 303(d) list as proposed. Therefore, EPA is taking Final Action on the addition of 43 water quality limited segments and associated 93 waterbody-pollutant combinations to the final Louisiana 2014 Section 303(d) list. The basis for these decisions is described in EPA's Decision Document for the Louisiana 2014 Section 303(d) list, available at *http://www.epa.gov/region6/water/npdes/tmdl/index.htm.*

ADDRESSES: Copies of EPA's Responsiveness Summary Concerning EPA's July 21, 2015 Public Notice of Final Decisions to Add Waters and Pollutants to Louisiana's 2014 Section 303(d) list can be obtained at EPA Region 6's Web site at *http://www.epa.gov/region6/water/npdes/tmdl/index.htm#303dlists*, or by writing or calling Evelyn Rosborough, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733, telephone (214) 665–7515, facsimile (214) 665–6490, or email: *rosborough.evelyn@epa.gov.* Underlying documents from the administrative record for these decisions are available for public inspection at the above address. Please contact Evelyn Rosborough to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Evelyn Rosborough at (214) 665–7515.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish Total Maximum Daily Loads (TMDLs) according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of Section 303(d) of the CWA (40 CFR 130.7). The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The list of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7).

Consistent with EPA's regulations, Louisiana submitted to EPA its 2014 listing decisions under Section 303(d) on August 19, 2014. On February 26, 2015, EPA approved Louisiana's 2014

listing of 279 water body-pollutant combinations and associated priority rankings, and proposed to disapprove Louisiana's decisions not to list 43 water quality limited segments and associated pollutants constituting 93 waterbody-pollutant combinations. On July 21, 2015, EPA finalized the action to disapprove Louisiana's 2014 listing decisions not to list 43 water quality limited segments. EPA identified these additional waters for inclusion on the 2014 Section 303(d) List.

Dated: July 21, 2015.

William K. Honker,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 2015–18523 Filed 7–28–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0422; FRL–9930–32]

Pesticide Cumulative Risk Assessment: Framework for Screening Analysis; Notice of Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of draft guidance, *Pesticide Cumulative Risk Assessment: Framework for Screening Analysis,* for public comment. This document provides guidance on how the EPA will screen groups of pesticides for cumulative evaluation using a two-step approach beginning with the evaluation of available toxicological information and if necessary followed by a risk-based screening approach. This framework supplements the existing guidance documents for establishing common mechanism groups (CMGs) and conducting cumulative risk assessments (CRA). Additionally, EPA is also seeking comments on a draft copy of the human health risk assessment where the cumulative assessment was conducted in conjunction with pending actions for abamectin.

DATES: Comments must be received on or before August 28, 2015.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2015–0422 by one of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: Monique Perron, Health Effects Division (7509P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0395; email address: *perron.monique@epa.gov* or Don Wilbur, Health Effects Division (7509P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–8894; email address: *wilbur.donald@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. What action is the Agency taking?

Section 408(b)(2)(D)(v) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to take into account available evidence concerning the cumulative effects of pesticide residues and other substances that have a common mechanism of toxicity. The Office of Pesticide Programs (OPP) has previously developed two guidance documents:

- *Guidance For Identifying Pesticide Chemicals and Other Substances that have a Common Mechanism of Toxicity* (USEPA, 1999), which describes the process for CMGs;
- *Guidance on Cumulative Risk Assessment of Pesticide Chemicals That Have a Common Mechanism of Toxicity* (USEPA, 2002), which describes the steps used in conducting CRA. Copies of those two guidance documents can be found at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2015–0422.

The process described in those documents results in a highly refined CRA but requires an extensive amount of resources, large amounts of toxicology and exposure data, and may involve sophisticated modelling. The process involves developing science policy documents that establish a CMG before conducting a highly refined CRA. To date, OPP has established five CMGs: Organophosphates (OPs), *N*-methyl carbamates (NMCs), chloracetanilides, triazines, and naturally occurring pyrethrins and synthetic pyrethroids. CRAs have been conducted on each group and are available at *http://www.epa.gov/oppsrrd1/cumulative/.*

The level of refinement provided by this approach is not necessary or even feasible for all existing pesticide classes. The 2002 CRA guidance notes that not all cumulative assessments need to be of the same depth and scope and that it is important to determine the need for a comprehensive risk assessment by considering the exposure profile. The 2011 World Health Organization International Programme on Chemical Safety guidance on CRA which are available at *http://www.who.int/ipcs/en*

describes a screening approach involving tiered analysis with increasing levels of refinement. The Agency has developed this guidance to assist scientists and decision-makers in screening pesticides for potential common mechanism groupings and conducting screening-level CRAs, neither of which is provided for in either of the listed guidance documents.

Specifically, the draft *Pesticide Cumulative Risk Assessment: Framework for Screening Analysis,* that the EPA is seeking comment on, provides guidance for screening available information to identify groups of pesticides that may have a common mechanism of toxicity (*i.e.,* candidate CMGs). In addition, this document provides guidance for screening available information on those candidate groups for potential cumulative risks, which may lead to more refined CRAs. This document relies on the policies and principles provided in the CMG and CRA guidance documents along with expertise and knowledge gained by OPP in the conduct of the five referenced CRAs.

Based on the proposed screening guidance, *Pesticide Cumulative Risk Assessment: Framework for Screening Analysis,* EPA determined that abamectin and emamectin share a similar toxicological profile and a testable hypothesis can be identified. Thus, EPA has developed a screening level cumulative analysis using highly conservative exposure assumptions. Specifically, dietary and residential exposures were assessed to determine whether there would be any potential cumulative concern.

The cumulative assessment was done in conjunction with pending actions for abamectin to expand the use of abamectin on Caneberry subgroup 13–07A, soybeans, sweet corn, ear tags for lactating dairy cattle, and golf course turf. A draft copy of the human health risk assessment considering both aggregate and cumulative risks is included in the docket to provide an example of how the EPA would implement the, *Pesticide Cumulative Risk Assessment: Framework for Screening Analysis,* and to allow for public comment.

Authority: FFDCA § 408(b) [21 U.S.C. 346 a(b)].

Dated: July 17, 2015.

Jack Housenger,

Director, Office of Pesticide Programs.

[FR Doc. 2015–18612 Filed 7–28–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0374; FRL–9930–74]

Pesticide Experimental Use Permit; Receipt of Application; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of an application (88877–EUP–E) from the University of Kentucky's Department of Entomology requesting an experimental use permit (EUP) for *Wolbachia pipientis, w*AlbB Strain. EPA has determined that the permit may be of regional and national significance. Therefore, because of the potential significance, EPA is seeking comments on this application.

DATES: Comments must be received on or before August 28, 2015.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2015–0374, by one of the following methods:

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

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, EPA has not attempted to describe all the specific entities that may be affected by this action.

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

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

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, EPA seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

II. What action is EPA taking?

Under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136c, EPA can allow manufacturers to field test pesticides under development. Manufacturers are required to obtain an EUP before testing new pesticides or new uses of pesticides if they conduct experimental field tests on 10 acres or more of land or one acre or more of water.

Pursuant to 40 CFR 172.11(a), EPA has determined that the following EUP application may be of regional and national significance, and therefore is

seeking public comment on the EUP application:

Submitter: University of Kentucky, Department of Entomology, S–225 Agricultural Science Center North, Lexington, KY 40546–0091, (88877–EUP–E).

*Pesticide Chemical: Wolbachia pipientis, w*AlbB Strain.

Summary of Request: The University of Kentucky's Department of Entomology has proposed to field test a new strain of *Wolbachia pipientis* (*w*AlbB Strain) to determine its pesticidal value for suppression and elimination of *Aedes aegypti,* a mosquito that vectors some human diseases, *e.g.,* dengue and chikungunya. For 6 months between autumn 2015 and December 31, 2016, approximately 100,000 *Aedes aegypti* WB1 strain male mosquitoes infected with *Wolbachia pipientis, w*AlbB Strain will be released weekly at four sites in Fresno County, California, with a total target area of 3.4 square kilometers (840 acres) for control. The released male mosquitoes are expected to mate with indigenous female mosquitoes, causing conditional sterility and resulting in population decline and potential elimination. Adult and egg collection data from the treated area will be compared to data from the control site to evaluate the effect of the pesticide on the mosquito population.

Following the review of the application and any comments and data received in response to this solicitation, EPA will decide whether to issue or deny the EUP request, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

Authority: 7 U.S.C. 136 *et seq.*

Dated: July 20, 2015.

R. McNally,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2015–18615 Filed 7–28–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9931–39–OA]

Announcement of the Board of Directors for the National Environmental Education Foundation

AGENCY: Office of External Affairs and Environmental Education, Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The National Environmental Education and Training Foundation (doing business as The National Environmental Education Foundation or NEEF) was created by Section 10 of Public Law 101–619, the National Environmental Education Act of 1990. It is a private 501(c)(3) non-profit organization established to promote and support education and training as necessary tools to further environmental protection and sustainable, environmentally sound development. It provides the common ground upon which leaders from business and industry, all levels of government, public interest groups, and others can work cooperatively to expand the reach of environmental education and training programs beyond the traditional classroom. The Foundation promotes innovative environmental education and training programs such as environmental education for medical healthcare providers and broadcast meteorologists; it also develops partnerships with government and other organizations to administer projects that promote the development of an environmentally literal public. The Administrator of the U.S. Environmental Protection Agency, as required by the terms of the Act, announces the following appointment to the National Environmental Education Foundation Board of Directors. The appointee is Dr. Martin Philbert, Dean, School of Public Health at the University of Michigan, Ann Arbor (UM).

FOR FURTHER INFORMATION CONTACT: For information regarding this Notice of Appointment, please contact Mr. Brian Bond, Senior Advisor to the Administrator for Public Engagement, U.S. EPA 1200 Pennsylvania Ave. NW., Washington, DC 20460. General information concerning NEEF can be found on their Web site at: *http://www.neefusa.org.*

SUPPLEMENTARY INFORMATION:

Additional Considerations: Great care has been taken to assure that this new appointee not only has the highest degree of expertise and commitment, but also brings to the Board diverse points of view relating to environmental education. This appointment is a four-year term which may be renewed once for an additional four years pending successful re-election by the NEEF nominating committee.

Dr. Martin Philbert is the Dean, School of Public Health at the University of Michigan, Ann Arbor (UM). In addition, Dr. Philbert is well known to the EPA, especially through Dr. Ken Olden, EPA's Director of the National Center for Environmental Assessment. Martin Philbert became Dean of the UM School of Public Health on January 1, 2011, having previously served as Senior Associate Dean for Research at the school since 2004. He arrived at UM in 1995 from Rutgers University's Neurotoxicology Laboratories, where he was a research assistant professor. He has maintained a continuously federally funded portfolio of basic research activities throughout his career. Most recently his work has been funded by the National Institutes of Health, the Department of the Air Force and the National Cancer Institute. At the national level, he is recognized for his expertise in neurotoxicology and experimental neuropathology. He is the author of numerous research publications in top peer-reviewed journals, and one book. Dr. Philbert received his Ph.D., Neurochemistry/Experimental Neuropathology from London University in 1987, and his B.Sc. (Honors), Biology/Chemistry, CCAT from Cambridge in 1984.

This appointee will join the current Board members which include:

- Decker Anstrom (NEEF Chairman), Former U.S. Ambassador, Retired Chairman, The Weather Channel Companies
- Diane Wood (NEEF Secretary) President, National Environmental Education Foundation
- Carlos Alcazar, Founder and Chairman, Culture ONE World
- Megan Reilly Cayten, Co-Founder and Chief Executive Officer, Catrinka, LLC
- David M. Kiser (NEEF Treasurer), Vice President, Environment, Health, Safety and Sustainability, International Paper
- Wonya Lucas, President and CEO, Public Broadcasting Atlanta
- Shannon Schuyler, Principal, Corporate Responsibility Leader, PricewaterhouseCoopers (PwC)
- Jacqueline M. Thomas, Vice President of Corporate Responsibility, Toyota Motor Sales USA Inc.
- Raul Perea-Henze, MD, MPH, Managing Director, HORUS Advisors, Washington, DC
- George Basile, Ph.D., Professor, School of Sustainability, Arizona State University, Tempe, AZ
- Jennifer Harper-Taylor, Siemens Foundation (in process)

Background: Section 10(a) of the National Environmental Education Act of 1990 mandates a National Environmental Education Foundation. The Foundation is established in order to extend the contribution of environmental education and training to meeting critical environmental protection needs, both in this country and internationally; to facilitate the

cooperation, coordination, and contribution of public and private resources to create an environmentally advanced educational system; and to foster an open and effective partnership among Federal, State, and local government, business, industry, academic institutions, community based environmental groups, and international organizations.

The Foundation is a charitable and nonprofit corporation whose income is exempt from tax, and donations to which are tax deductible to the same extent as those organizations listed pursuant to section 501(c) of the Internal Revenue Code of 1986. The Foundation is not an agency or establishment of the United States. The purposes of the Foundation are—

(A) Subject to the limitation contained in the final sentence of subsection (d) herein, to encourage, accept, leverage, and administer private gifts for the benefit of, or in connection with, the environmental education and training activities and services of the United States Environmental Protection Agency;

(B) to conduct such other environmental education activities as will further the development of an environmentally conscious and responsible public, a well-trained and environmentally literate workforce, and an environmentally advanced educational system;

(C) to participate with foreign entities and individuals in the conduct and coordination of activities that will further opportunities for environmental education and training to address environmental issues and problems involving the United States and Canada or Mexico.

The Foundation develops, supports, and/or operates programs and projects to educate and train educational and environmental professionals, and to assist them in the development and delivery of environmental education and training programs and studies.

The Foundation has a governing Board of Directors (hereafter referred to in this section as 'the Board'), which consists of 13 directors, each of whom shall be knowledgeable or experienced in the environment, education and/or training. The Board oversees the activities of the Foundation and assures that the activities of the Foundation are consistent with the environmental and education goals and policies of the Environmental Protection Agency and with the intents and purposes of the Act. The membership of the Board, to the extent practicable, represents diverse points of view relating to environmental education and training. Members of the Board are appointed by the Administrator of the Environmental Protection Agency.

Within 90 days of the date of the enactment of the National Environmental Education Act, and as appropriate thereafter, the Administrator will publish in the **Federal Register** an announcement of appointments of Directors of the Board. Such appointments become final and effective 90 days after publication in the **Federal Register**. The directors are appointed for terms of 4 years. The Administrator shall appoint an individual to serve as a director in the event of a vacancy on the Board within 60 days of said vacancy in the manner in which the original appointment was made. No individual may serve more than 2 consecutive terms as a director.

Dated: July 20, 2015.

Gina McCarthy,

Administrator.

[FR Doc. 2015–18608 Filed 7–28–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10089, Security Bank of North Fulton, Alpharetta, Georgia

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Security Bank of North Fulton, Alpharetta, Georgia (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Security Bank of North Fulton on July 24, 2009. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: July 21, 2015.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2015–18548 Filed 7–28–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012228–002.

Title: COSCON/''K'' Line/WHL/WHS Space Charter and Sailing Agreement.

Parties: COSCO Container Lines Co. Ltd.; Kawasaki Kisen Kaisha, Ltd.; Wan Hai Lines Ltd.; and Wan Hai Lines (Singapore) PTE Ltd.

Filing Party: Eric C. Jeffrey, Esq.; Nixon Peabody LLP; 799 9th Street NW., Suite 500; Washington, DC 20001–4501.

Synopsis: The amendment revises language in the agreement concerning operational coordination with parties using slots provided under the agreement.

Agreement No.: 201223–001.

Title: Lease and Operating Agreement between PRPA and Eco-Energy Distribution-Philadelphia, LLC.

Parties: Eco-Energy Distribution-Philadelphia, LLC and The Philadelphia Regional Port Authority (PRPA).

Filing Party: Paul D. Coleman, Esq.; Hoppel, Mayer & Coleman; Attorneys and Counsellors at Law; 1050 Connecticut Avenue NW., 10th Floor; Washington, DC 20036.

Synopsis: The amendment authorizes Eco-Energy to change the type of security deposit to a cash security to be held by PRPA, to change the allowable depth of dredging, and to change the location of a pipeline.

Agreement No.: 201227–004.

Title: Pacific Ports Operational Improvements Agreement.

Parties: Ocean Carrier Equipment Management Association, Inc.; West

Coast MTO Agreement; Maersk Line A/S; APL Co. Pte Ltd.; American President Lines, Ltd.; CMA CGM S.A.; Cosco Container Lines Company Limited; Evergreen Line Joint Service Agreement FMC Agreement No. 011982; Hamburg-Sud; Alianca Navegacao e Logistica Ltda.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hapag-Lloyd USA; Companhia Libra de Navegacao; Compania Libra de Navegacion Uruguay S.A.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha Line; Kawasaki Kisen Kaisha, Ltd.; Hyundai Merchant Marine Co., Ltd.; Zim Integrated Shipping Services; Matson Navigation Company, Inc.; APM Terminals Pacific, Ltd.; California United Terminals, Inc.; Eagle Marine Services, Ltd.; International Transportation Service, Inc.; Long Beach Container Terminal, Inc.; Seaside Transportation Service LLC; Total Terminals LLC; West Basin Container Terminal LLC; Pacific Maritime Services, LLC; SSA Terminal (Long Beach), LLC; Trapac Inc.; Yusen Terminals, Inc.; SSA Terminals, LLC; SSA Terminal (Oakland), LLC; SSA Terminals (Seattle), LLC; Sea Star Stevedoring Company, Inc.; Washington United Terminals, Inc.

Filing Party: David Smith, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The Amendment deletes Hanjin Shipping Co., Ltd. as a party to the Agreement effective September 19, 2015.

By Order of the Federal Maritime Commission.

Dated: July 24, 2015.

Karen V. Gregory,

Secretary.

[FR Doc. 2015–18604 Filed 7–28–15; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 24, 2015.

A. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *First State Bancshares, Inc.,* Farmington, Missouri, to acquire 100 percent of the voting shares of Central Bank, Lebanon, Missouri.

B. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Coastal Financial Corporation,* Everett, Washington; to acquire Prime Pacific Financial Services, Inc., and thereby indirectly acquire Prime Pacific Bank, National Association, both in Lynnwood, Washington.

Board of Governors of the Federal Reserve System, July 24, 2015.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2015–18597 Filed 7–28–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 13, 2015.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Fred Luecke, Giddings, Texas; Susan Luecke Walther, Lincoln, Texas; Jimmie Luecke and Jimmie Luecke, both of Giddings, Texas, as the general partner of the Jimmie Luecke Children Partnership, Ltd. II, together as the Luecke family group,* to retain voting shares of Giddings, Bancshares, Inc., and thereby indirectly retain voting shares of First National Bank of Giddings, both in Giddings, Texas.

Board of Governors of the Federal Reserve System, July 24, 2015.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2015–18598 Filed 7–28–15; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place NW., Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 11C–26, Rockville, MD

20857; (301) 443–6593, or visit our Web site at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on June 1, 2015, through June 30, 2015. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: July 24, 2015.

James Macrae,

Acting Administrator.

List of Petitions Filed

1. Sabrina Santacroce on behalf of J.R., Palm Bay, Florida, Court of Federal Claims No: 15–0555V
2. Samuel Crosby, New Orleans, Louisiana, Court of Federal Claims No: 15–0556V
3. John Emerson, Epsom, New Hampshire, Court of Federal Claims No: 15–0557V
4. Lorraine Swanson, Boston, Massachusetts, Court of Federal Claims No: 15–0558V
5. Maria L. Torres on behalf of Jaden Arenas, New York, New York, Court of Federal Claims No: 15–0561V
6. Lisa Hale, Dallas, Texas, Court of Federal Claims No: 15–0562V
7. Brian Felten, Kalamazoo, Michigan, Court of Federal Claims No: 15–0563V
8. Rafael Correa and Darling Brito on behalf of A.C., Dallas, Texas, Court of Federal Claims No: 15–0566V
9. Richard Young, Manassas, Virginia, Court of Federal Claims No: 15–0567V
10. Mark Greer, Hamilton, Illinois, Court of Federal Claims No: 15–0568V
11. Hilton H. Dier, Montpelier, Vermont, Court of Federal Claims No: 15–0571V
12. Warren K. Bailey, Woodsville, New Hampshire, Court of Federal Claims No: 15–0574V
13. Cameron Moore and Laura Moore on behalf of L.M., Cary, North Carolina, Court of Federal Claims No: 15–0575V
14. Susanne Murphy, Boston, Massachusetts, Court of Federal Claims No: 15–0578V
15. Christopher Fitzwater, Parkersburg, West Virginia, Court of Federal Claims No: 15–0579V
16. Darlene Dayton, Madison, Alabama, Court of Federal Claims No: 15–0589V
17. Conchita Del Mundo, M.D., Santa Ana, California, Court of Federal Claims No: 15–0590V
18. Kathy Cox, Tulsa, Oklahoma, Court of Federal Claims No: 15–0591V
19. Charles Joy, Dallas, Texas, Court of Federal Claims No: 15–0594V
20. Matthew Akers and Kristine Akers on behalf of A.A., Sterling Heights, Michigan, Court of Federal Claims No: 15–0597V
21. Anneleise Graf, Placerville, California, Court of Federal Claims No: 15–0599V
22. Elizabeth Johnson, Farmington Hills, Michigan, Court of Federal Claims No: 15–0602V
23. Merry Moore, Valencia, California, Court of Federal Claims No: 15–0605V
24. Theodore John Thies, Cedar Rapids, Iowa, Court of Federal Claims No: 15–0609V
25. Timothy Bass, Beverly Hills, California, Court of Federal Claims No: 15–0610V
26. Rebecca Stone, Southern Pines, North Carolina, Court of Federal Claims No: 15–0611V
27. Craig McDonald and Mary Beth McDonald on behalf of A.M., Vienna, Virginia, Court of Federal Claims No: 15–0612V
28. Veronica Nelson, Portland, Texas, Court of Federal Claims No: 15–0615V
29. Muhammad Iyaz on behalf of Z.I., Harrisburg, Pennsylvania, Court of Federal Claims No: 15–0622V

30. Samuel V. Darroch, Palm Beach, Florida, Court of Federal Claims No: 15–0623V
31. Anna Gilerman, Plano, Texas, Court of Federal Claims No: 15–0624V
32. Holly Swenson, Missoula, Montana, Court of Federal Claims No: 15–0625V
33. Wendy Earley on behalf of C.B., Overland Park, Kansas, Court of Federal Claims No: 15–0630V
34. Daniel Neiman and Allyson F. Neiman on behalf of N.K.N., Reno, Nevada, Court of Federal Claims No: 15–0631V
35. Nicholle M. Cielencki, Williamsville, New York, Court of Federal Claims No: 15–0632V
36. Jennifer Schaefer, Alton, Illinois, Court of Federal Claims No: 15–0635V
37. Lindsey Anthony, State College, Pennsylvania, Court of Federal Claims No: 15–0636V
38. Janice Berry, Pinson, Alabama, Court of Federal Claims No: 15–0638V
39. Fermin Padilla, Canon City, Colorado, Court of Federal Claims No: 15–0642V
40. Elizabeth Leanne Johnson and Brittney Joseph Johnson on behalf of D.B.J., New York, New York, Court of Federal Claims No: 15–0643V
41. Paula Husovsky on behalf of J.H., Linwood, New Jersey, Court of Federal Claims No: 15–0644V
42. Janette H. Herrera, Miami, Florida, Court of Federal Claims No: 15–0651V
43. Stephanie Wolfe on behalf of M.W., Bel Air, Maryland, Court of Federal Claims No: 15–0652V
44. Peggy Gordon, Seattle, Washington, Court of Federal Claims No: 15–0654V
45. Reginald Allen, Newport, Tennessee, Court of Federal Claims No: 15–0655V
46. Alan Archer, Kansas City, Missouri, Court of Federal Claims No: 15–0656V
47. Christine Marquis, Silverdale, Washington, Court of Federal Claims No: 15–0659V
48. Arthur Collins, Gillette, Wyoming, Court of Federal Claims No: 15–0661V
49. Sarah Davis, Lakeland, Florida, Court of Federal Claims No: 15–0662V
50. Tori Ricker, Hagerstown, Maryland, Court of Federal Claims No: 15–0665V
51. Michael Choi, Boston, Massachusetts, Court of Federal Claims No: 15–0668V
52. Bahman Sharifipour and Andrew Sharifipour on behalf of Beverly Sharifipour, Boston, Massachusetts, Court of Federal Claims No: 15–0669V
53. Nettie J. Foxx, Temple, Texas, Court of Federal Claims No: 15–0670V
54. John Thompson and Huali Thompson on behalf of J.C.T., Chesterfield, Missouri, Court of Federal Claims No: 15–0671V
55. Thomas Dausman, Syracuse, New York, Court of Federal Claims No: 15–0674V
56. Patricia Vance, Charleston, South Carolina, Court of Federal Claims No: 15–0675V
57. Sharon Long, Monument, Colorado, Court of Federal Claims No: 15–0676V
58. Robert Michael Gall, Warsaw, Virginia, Court of Federal Claims No: 15–0677V
59. Tamatha Anders, Austin, Texas, Court of Federal Claims No: 15–0678V
60. Lorene Scott, Philadelphia, Pennsylvania, Court of Federal Claims No: 15–0679V
61. Marlyne Tannen, Fort Lee, New Jersey, Court of Federal Claims No: 15–0680V
62. Carol Byrd, Howard Beach, New York, Court of Federal Claims No: 15–0681V
63. Mary Phy, Mount Juliet, Tennessee, Court of Federal Claims No: 15–0682V
64. Rebecca Guy, Glens Falls, New York, Court of Federal Claims No: 15–0683V
65. Robert Nolop, Overland Park, Kansas, Court of Federal Claims No: 15–0684V

[FR Doc. 2015–18603 Filed 7–28–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Advisory Committee on Children and Disasters

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that the National Advisory Committee on Children and Disasters (NACCD) will be holding a meeting via teleconference. The meeting is open to the public.

DATES: The August 27, 2015, NACCD meeting is scheduled from 3:00 p.m. to 4:00 p.m. EST. The agenda is subject to change as priorities dictate. Please check the NACCD Web site, located at *WWW.PHE.GOV/NACCD* for the most up-to-date information on the meeting.

ADDRESSES: To attend the meeting via teleconference, call toll-free: 1–888–989–6485, international dial-in: 1–312–470–0178. The pass-code is: 5885575. Please call 15 minutes prior to the beginning of the conference call to facilitate attendance. Pre-registration is required for public attendance. Individuals who wish to attend the meeting should submit an inquiry via the NACCD Contact Form located at *www.phe.gov/NACCDComments*.

FOR FURTHER INFORMATION CONTACT: Please submit an inquiry via the NACCD Contact Form located at *www.phe.gov/NACCDComments*.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), and section 2811A of the Public Health Service (PHS) Act (42 U.S.C. 300hh–10a), as added by section 103 of the Pandemic and All Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5), the HHS Secretary, in consultation with the Secretary of the U.S. Department of Homeland Security, established the National Advisory Committee on Children and Disasters (NACCD). The purpose of the NACCD is to provide advice and consultation to the HHS Secretary with respect to the medical and public health needs of children in relation to disasters. The Office of the Assistant Secretary for Preparedness and Response (ASPR) provides management and administrative oversight to support the activities of the NACCD.

Background: This public meeting will be dedicated to the members voting to approve the report of findings of the NACCD Health Care Preparedness Working Group.

Availability of Materials: The meeting agenda and materials will be posted on the NACCD Web site at: *www.phe.gov/naccd* prior to the meeting.

Procedures for Providing Public Input: All written comments must be received prior to August 27, 2015. Please submit comments via the NACCD Contact Form located at *www.phe.gov/NACCDComments*. Individuals who plan to attend and need special assistance should submit a request via the NACCD Contact Form located at *www.phe.gov/NACCDComments*.

Dated: July 20, 2015.

Nicole Lurie,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2015–18442 Filed 7–28–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990–0331–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for renewal of the approved information collection assigned OMB control number 0990–0331, scheduled to expire on 08/31/2015. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before August 28, 2015.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the OMB control number 0990–0331 and document identifier HHS–OS–0990–0331–30D for reference.

Information Collection Request Title: Evaluation of the Responsible Fatherhood, Marriage and Family Strengthening Grants for Incarcerated and Reentering Fathers and Their Partners.

Abstract: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) is conducting an evaluation of a demonstration program called Responsible Fatherhood, Marriage and Family Strengthening Grants for Incarcerated and Reentering Fathers and Their Partners (MFS–IP). This demonstration program, funded in 2006 by the Office of Family Assistance within the Administration for Children and Families (ACF), supported healthy marriage and responsible fatherhood activities among incarcerated and recently released fathers, their partners, and children. The MFS–IP evaluation assesses the effects of these activities by comparing relationship quality and stability, positive family interactions, family financial well-being, recidivism, and community connectedness between intervention and control groups.

Data collection for the entire evaluation is expected to last 7 years, from the time the first participant was enrolled in late 2008 until the last qualitative follow-back interview is administered. The burden table below includes completion of a set of follow-back qualitative interviews with a small group of respondents (previously approved under OMB No. 0990–0331). The current approval expires on August 21, 2015, and we are requesting an extension until December 31, 2015, to enable us to complete all of the interviews that have been previously approved by OMB under this information collection.

Need and Proposed Use of the Information: Primary data for the evaluation comes from in-person surveys with incarcerated and released fathers and their partners at baseline, 9, 18, and 34 month interviews and the qualitative follow-back. This qualitative follow-back is the focus of the current amendment request and it will only be conducted with a very small subsample of the original couples. As previously described and approved under OMB No. 0990–0331, being able to do additional qualitative follow-back with these cases will enable us to better understand how reentry success and family well-being are interrelated for the survey population, inform future research and evaluation with this population (particularly development and selection of appropriate quantitative measures of family relationship quality), and better identify meaningful leverage points for reentry intervention. This information will assist federal, state, and community policymakers and patrons in understanding what policy and programmatic supports could help to strengthen families and improve reentry outcomes in this population.

Likely Respondents: A small sub-sample of couples from the MFS–IP impact study sample, which includes 1,991 fathers incarcerated at the time of the baseline survey and 1,481 of their female partners.

Burden Statement: In this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The table below shows data collection burden, which remains unchanged from the data collection burden approved by OMB in our study renewal of August 2012.

Forms	Annualized number of respondents	Number of responses per respondent	Average burden (in hours) per response	Total annualized burden hour
MFS–IP Follow-up Survey—Male (9 & 18 month)	20	1	1.5	30
MFS–IP Follow-up Survey—Female (9 & 18 month)	20	1	1.5	30
MFS–IP Follow-up Survey—Male (34 month and follow-back)	80	1	1.5	120
MFS–IP Follow-up Survey—Female (34 month and follow-back)	80	1	1.5	120
Totals				320

Terry S. Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2015–18606 Filed 7–28–15; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.); notice is hereby given of a meeting of the Board of Scientific Counselors, NIAAA.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Alcohol Abuse and Alcoholism, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAAA.

Date: September 8, 2015.

Time: 7:45 a.m. to 5:15 p.m.

Agenda: To review and evaluate personal qualifications and performance; and competence of individual investigators.

Place: National Institute of Health, Building 10, CRC 2–2330, 10 Center Drive, Bethesda, MD 20892.

Contact Person: George Kunos, M.D., Ph.D., Scientific Director, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 5625 Fishers Lane, Room 2S–24A, Bethesda, MD 20892, 301–443–2069, *gkunos@mail.nih.gov.*

Name of Committee: Board of Scientific Counselors, NIAAA.

Date: September 9, 2015.

Time: 8:00 a.m. to 5:15 p.m.

Agenda: To review and evaluate personal qualifications and performance; and competence of individual investigators.

Place: National Institute of Health, 5635 Fisher Lane, Conference Room 3002–3004, Bethesda, MD 20892.

Contact Person: George Kunos, M.D., Ph.D., Scientific Director, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 5625 Fishers Lane, Room 2S–24A, Bethesda, MD 20892, 301–443–2069, *gkunos@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: July 23, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–18475 Filed 7–28–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Genetics and Connectivity in Mental Disease.

Date: August 4, 2015.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Julius Cinque, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252, *cinquej@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Vascular and Hematology.

Date: August 27, 2015.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Luis Espinoza, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301–435–0952, *espinozala@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation: Biomedical Imaging PAR15–088.

Date: August 31, 2015.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, VA 22311.

Contact Person: Jan Li, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, Bethesda, MD 20892, 301–435–1049, *lij21@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 23, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–18587 Filed 7–28–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2014–0005]

1670–0023 Technical Assistance Request and Evaluation; Correction

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Notice; correction.

SUMMARY: The Department of Homeland Security published a document in the **Federal Register** of July 2, 2015, concerning request for comments for reinstatement of previously approved collection. The document contained an incorrect date.

FOR FURTHER INFORMATION CONTACT: Kendall Carpenter, 703–235–4087.

Correction

In the **Federal Register** of July 2, 2015, in FR Doc. 2015–16387, on page 38222, in the second column, correct the date under the **DATES** and **ADDRESSES** captions to read:

DATES: Comments are encouraged and will be accepted until August 3, 2015.

ADDRESSES: Written comments should reach the contact person listed no later than August 3, 2015.

Dated: July 13, 2015.

Kendall Carpenter,

Telecommunications Specialist.

[FR Doc. 2015–18582 Filed 7–28–15; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Establishment of the U.S. Immigration and Customs Enforcement Advisory Committee on Family Residential Centers and Solicitation of Nominations for Membership

AGENCY: U.S. Immigration and Customs Enforcement, DHS.

ACTION: Notice of establishment of advisory committee and solicitation of membership nominations.

SUMMARY: The Department of Homeland Security (DHS) announces the establishment of the U.S. Immigration and Customs Enforcement (ICE) Advisory Committee on Family Residential Centers (ACFRC) and invites the public to nominate individuals for one-year, two-year, and three-year term appointments.

DATES: Submit nominations for committee membership by August 1, 2015.

ADDRESSES: Nominations must be in writing and be submitted to: John Amaya, Senior Advisor to the Director, U.S. Immigration and Customs Enforcement, Office of the Director, 500 12th Street SW., 11th Floor, Washington, DC 20536; or by email to *ICE_ACFRC@ice.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: John Amaya at the above address or by telephone 202–732–3000 or email *ICE_ACFRC@ice.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Under the Secretary of DHS's authority in Title 6, United States Code (U.S.C.), section 451, this Committee is established in accordance with and operates under the provisions of the Federal Advisory Committee Act (FACA) (Title 5, U.S.C., Appendix). The committee will provide advice and recommendations to the Secretary of DHS through the Assistant Secretary of ICE on matters concerning ICE's family residential centers on matters relating to detention management, family and youth services, health, and education.

II. Structure

The Committee shall be composed of up to 15 members who are appointed by and serve at the pleasure of the Secretary of DHS. The membership shall consist of experts and advocates from the fields of primary education, immigration law, physical and mental health, trauma-informed services, family and youth services, detention management, and detention reform, and other fields as the Secretary determines to be appropriate. Members will be appointed to represent their respective academic institution or organization and will not be Special Government Employees (SGEs) as defined in Title 18, U.S.C., section 202(a).

For the initial appointments to the Committee, approximately one-third of the members shall serve 1-year terms of office, one-third shall serve 2-year terms of office, and one-third shall serve 3-year terms of office. Thereafter, members will serve terms of office of up to three years, with approximately one-third of members' terms of office expiring each year. A member appointed to fill an unexpired term serves the remainder of that term. ICE and DHS will strive to fill a Committee vacancy no later than six months after the position is vacated. In the event the Committee terminates, all appointments to the Committee terminate.

The Designated Federal Official (DFO) may approve the establishment of subcommittees for any purpose consistent the Committee's charter. Subcommittees shall be composed of Committee members as determined by the DFO. Subcommittees may not work independently of the chartered Committee and must present their work to the Committee for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the Committee and may not report directly to the Federal Government or any other entity.

The Committee is expected to meet two times each year. Additional meetings may be held with the approval of the DFO.

III. Compensation

Members may be reimbursed for travel and per diem, and all travel for Committee business must be approved in advance by the DFO.

IV. Nominations

ICE and DHS will consider nominations of all qualified individuals to ensure that the Committee includes the areas of subject matter expertise noted above (see ''Structure''). Individuals may nominate themselves or other individuals, and professional associations and organizations may nominate one or more qualified persons for membership on the Committee. Nominations must state that the nominee is willing to serve as a member of the Committee. Potential candidates will be asked to provide detailed information concerning financial interests, consultancies, research grants, and/or contracts that might be affected by recommendations of the Committee to permit evaluation of possible sources of conflicts of interests.

A nomination package should include the following information for each nominee:

(1) A letter of nomination stating the name, affiliation, and contact information for the nominee, the basis for the nomination (*i.e.,* what specific attributes recommend him/her for service in this capacity), and the nominee's field(s) of expertise.

(2) A biographical sketch of the nominee and a copy of his/her curriculum vitae and/or resume.

(3) The name, return mailing address, email address, and daytime phone number at which the nominator can be contacted.

To ensure a diverse nominee pool, ICE and DHS encourage nominations for appropriately qualified candidates of every gender, age, race, ethnicity, national origin, religion, sexual orientation, gender identity, disability, and geographic region.

All nominations should be provided in a single, complete package. All nominations should be sent to the submission address and contact provided above.

Please note this notice is not intended to be the exclusive method by which ICE and DHS will solicit membership nominations and expressions of interest to identify qualified candidates. However, all candidates for membership on the Committee will be subject to the same evaluation criteria.

Dated: July 23, 2015.

Sarah R. Saldaña,

Director, U.S. Immigration and Customs Enforcement.

[FR Doc. 2015–18581 Filed 7–28–15; 8:45 am]

BILLING CODE 9110–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 5774–N–03]

Promise Zones Initiative: Proposed Third Round Selection Process Solicitation of Comment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: Through this notice, HUD solicits comment, for a period of 60-

days, on the proposed selection process, criteria and submissions for the Third Round of the Promise Zones Initiative.

DATES: *Comments Due Date:* September 28, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Questions or comments should be directed by email to *PromiseZones@hud.gov* with ''Third Round Promise Zones selection'' in the subject line. Questions or comments may also be directed by postal mail to the Office of the Deputy Assistant Secretary for Economic Development, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Room 7136, Washington, DC 20410 ATTN: 3nd Round Promise Zones selection.

FOR FURTHER INFORMATION CONTACT: Bryan Herdliska, Office of Community Planning and Development, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC, 20410; telephone number 202–402–6758. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background—Round 1 and 2 Promise Zones

In his 2013 State of the Union address, President Obama announced the establishment of the Promise Zones Initiative to partner with high-poverty communities across the country to create jobs, increase economic security, expand educational opportunities, increase access to quality, affordable housing, and improve public safety.[1] On January 8, 2014, the President announced the first five Promise Zones, which are located in: San Antonio, TX; Philadelphia, PA; Los Angeles, CA; Southeastern Kentucky, KY; and the Choctaw Nation of Oklahoma, OK. On April 28, 2015, the Obama Administration announced eight more Promise Zones as part of the second round Promise Zone selection process, which are located in: Camden, NJ; Hartford, CT; Indianapolis, IN; Minneapolis, MN; Sacramento, CA; St. Louis County, MO; Barnwell, SC; and Porcupine, SD. Each of these communities (eight urban, one rural, and one tribal) submitted a plan on how it will partner with local business and community leaders to make investments that reward hard work and expand opportunity. In exchange, the Federal government is helping these Promise Zone designees secure the resources and flexibility they need to achieve their goals.[2]

The first five Promise Zones were selected through a competitive process following an invitation to eligible communities to apply for a designation, which was issued on October 30, 2013 with an application deadline of November 26, 2013.[3] The urban designations were conferred by HUD while the rural and tribal designations were conferred by USDA. The pool of eligible applicants was limited to communities with demonstrated capacity in one or more areas of Promise Zone work that would prepare them to broaden their efforts to additional revitalization priorities. Specifically, urban eligibility was limited to communities encompassing a Choice Neighborhoods or Promise Neighborhoods Implementation grant, or a Byrne Criminal Justice Innovation grant, while rural and tribal eligibility was limited to communities encompassing a Stronger Economies Together, Sustainable Communities, Promise Neighborhoods Implementation, or Rural Jobs Accelerator grant.

The second round Promise Zone selection process opened on August 29, 2014 with an application deadline of November 21, 2014.[4] This second round competition designated 8 more communities meeting the specified eligibility criteria without regard to their prior selection for receipt of federal grants. As with the first round, the urban designations were conferred by HUD while the rural and tribal designations were conferred by USDA.

Promise Zone Benefits

The Promise Zones Initiative seeks to revitalize high-poverty communities across the country by creating jobs, increasing economic activity, improving educational opportunities, reducing violent crime, leveraging private capital, and assisting local leaders in navigating federal programs. Promise Zones will not receive grant funding. The Promise Zone designation partners the Federal government with local leaders who are addressing multiple community revitalization challenges in a collaborative way and have demonstrated a commitment to results. Promise Zone Designees will receive: The opportunity to engage Five AmeriCorps VISTA members in the Promise Zone; a federal liaison assigned to assist with navigating federal programs; preferences for certain competitive federal programs; technical assistance from participating agencies; and Promise Zone tax incentives if enacted by Congress.

Altogether, this package of assistance will help local leaders accelerate efforts to revitalize their communities. The Promise Zone designation will be for a term of 10 years, and may be extended as necessary to capture the full term of availability of the Promise Zones tax incentives, if enacted by Congress. During this term, the specific benefits made available to Promise Zones will vary from year to year, and sometimes more often than annually, due to changes in an agency's policies and changes in appropriations and authorizations for relevant programs. All assistance provided to Promise Zones is subject to applicable regulations, statutes, and changes in Federal agency policies, appropriations, and authorizations for relevant programs. Subject to these limitations, the Promise Zone designation commits the Federal government to partner with local leaders who are addressing multiple community revitalization challenges in a collaborative way and have demonstrated a commitment to results.

Third Round Promise Zones Selection Process

A third and final round of Promise Zone designations is currently in the selection process planning stage with announcements of the designees expected in spring 2016. HUD anticipates making at least seven designations in the third round in the urban, rural and tribal categories, depending on resources available. As a result of the third round competition, the Department of Housing and Urban Development (HUD) intends to designate five urban communities and the Department of Agriculture (USDA) intends to designate one rural and one tribal community. This third round of selections with bring the total number of Promise Zone designations to 20, including the five designations announced in January, 2014, and the eight announced in April, 2015.

Due to the nature of the Initiative, Promise Zone activities are likely to be carried out by a variety of organizations and organization types. Eligible lead applicants for Urban Promise Zone designations are:

[1] See *http://www.whitehouse.gov/the-press-office/2013/02/15/fact-sheet-president-s-plan-ensure-hard-work-leads-decent-living.*

[2] See *http://www.whitehouse.gov/the-press-office/2014/01/08/fact-sheet-president-obama-s-promise-zones-initiative.*

[3] See *www.hud.gov/promisezones.*

[4] See *http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2015/HUDNo_15-049.*

1. Units of General Local Government (UGLG or local government); [5]

2. An office or department within local government or a county government with the support of the UGLG;

3. Non-profit organizations [6] applying with the support of the UGLG;

4. Public Housing Agencies, Community Colleges, Local Education Agencies (LEAs), or Metropolitan Planning Organizations (MPO) applying with the support of the UGLG.

For eligible lead applicants for Rural and Tribal Promise Zone designations please refer to the Rural and Tribal Promise Zone Application Guide located at *https://www.hud.gov/promisezones.*

The selection process under consideration is that any community meeting the community eligibility criteria set forth in the *Third Round Application Guide* would be eligible to apply for Promise Zone designation. All of the following must be present in an application for a proposed Promise Zone to be eligible for designation:

i. Proposed Promise Zone must have one contiguous boundary and cannot include separate geographic areas;

ii. The rate of overall poverty or Extremely Low Income rate (whichever is greater) of residents within the Promise Zone must be at or above 32.5 percent;

iii. Promise Zone boundaries must encompass a population of at least 10,000 but no more than 200,000 residents;

iv. The Promise Zone application must affirmatively demonstrate support from all mayors or chief executives of UGLGs that include any geographical area within the proposed Promise Zone boundary, where such city(is), county(ies), parish(es), or county equivalent(s) is(are) the sole UGLG(s) providing general government services for such geographical area(s), subject to the following conditions:

a. The chief executive of a city, county, parish, or county equivalent may only affirmatively demonstrate support for the Promise Zone Plan of one proposed Promise Zone containing a geographical area in which the city, county, parish or county equivalent is the sole provider of general public services;

b. Subject to the limitation in paragraph a. above, the chief executive of a county, parish, or county equivalent may affirmatively demonstrate support for the Promise Zone Plan of any proposed Promise Zone located in the county, parish, or county equivalent where another UGLG also provides general government services;

c. With the exception of paragraph b. above, if the Mayor or chief executive of a county, parish or county equivalent demonstrates affirmative support for the Promise Zone Plan of more than one proposed Promise Zone in which the UGLG he or she represents is the sole provider of general government services, all of the applications from that UGLG will be disqualified from the competition;

d. Where the proposed Promise Zone boundaries cross UGLG boundaries, one Lead Applicant must be identified for the Promise Zone application, and commitment must be demonstrated by the mayors or chief executives of all of the UGLGs that are sole providers of general government services for any part of the proposed Promise Zone geographical area; and

e. If a Promise Zone designated in Round 1 or 2 is located within a UGLG in which a new application is being submitted, the applicant must include an explanation of how, if a second Promise Zone designation is made, the UGLG that is the sole provider of general government services plans to work with both of the Promise Zone designees at the same time and sustain the level of effort, resources and support committed to each Promise Zone under its respective Promise Zone Plan for the full term of each Promise Zone designation. This explanation must be evidenced by commitments from the UGLG in materials submitted by the mayor or chief executive in support of the application.

Solicitation of Comment

HUD is soliciting public comments on the proposed selection process, criteria, and submissions for the third round of the Promise Zone Initiative that has been announced through this **Federal Register** Notice. The draft *Third Round Urban Application Guide* and the draft *Third Round Rural and Tribal Application Guide* can be found at *www.hud.gov/promisezones.*

Comments are due by September 28, 2015 and may be submitted at *PromiseZones@hud.gov* with ''Third Round Promise Zone selections'' in the subject line.

HUD has created a MAX Survey stage site in order to allow both applicants and other stakeholders an opportunity to experience the proposed intake mechanism for the third round selection process and provide specific feedback on its operation and functionality. To access the MAX Survey platform, please go to: *www.hud.gov/promisezones.*

Questions or comments may also be directed by postal mail to: Office of the Deputy Assistant Secretary for Economic Development, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Room 7136, Washington, DC 20410, ATTN: Third Round Promise Zone selections.

In addition to providing comments on the proposed selection process, criteria, and submissions for the third round of the Promise Zone Initiative, commenters are encouraged to address any or all of the following questions.

A. Overarching Questions

For communities considering a Promise Zone application:

1. Are the programs that provide preferential access for designated Promise Zones helpful? Are there policy areas or issues that you need to address that are not represented?

2. If your community is not designated, but you and your partners intend to continue community revitalization efforts, please explain what particular types of information, technical assistance, peer exchange, introductions or other non-competitive assistance would be helpful to you as you move your work forward?

3. Do you find the MAX SURVEY sufficiently easy to use compared to other federal application systems (*e.g.* Grants.Gov)?

4. Would you be willing to provide the type of information requested in the Goals and Activities template for purposes of potentially connecting you to federal and private partners/peers that could facilitate your community's development work if it were not part of a competition for a federal designation? (See MAX SURVEY at *www.hud.gov/promisezones.*)

B. Community Development Marketplace

For users of the Community Development Marketplace (a database of strategy and activity information Second Round applicants permitted HUD and USDA to share):

5. What kind of potential user are you? HUD has heard from foundations, investors, communities, researchers and national intermediaries and stakeholder networks, but there may be others who can use this data.

6. Does the Third Round template capture information that would be useful to you? (See MAX SURVEY at

[5] Unit of general local government as defined in section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)). *See definition (a)(1) Unit of General Local Government.*

[6] Including Workforce Investment Boards (WIBS) and Community Action Agencies (CAA). Examples are illustrative and not exhaustive.

www.hud.gov/promisezones.) If yes, how is this information useful to you?

7. Are there additional pieces of information that would assist you in filtering and searching for information you would like to have?

C. Promise Zone Web site

8. Is the Web site clear and easy to use? If not, what elements would be more helpful? (See *www.hud.gov/promisezones* and linked program information.)

9. Is the interagency program information presented on the Web site well-matched to your community's needs? If not, what type of information would be helpful to add?

D. Communications and Stakeholder Engagement

10. Do you find Promise Zone communications, through emails, webinars, written documents and other means, useful to organizations working in your community? Please elaborate on what is useful or what could be done to make it more useful.

11. How can HUD communicate more clearly/effectively with residents and community based organizations about the way that the Promise Zone Initiative operates and how it supports local work?

12. How can the Promise Zone Initiative better engage new Americans and immigrant stakeholders?

E. Data Collection, Research and Evaluation

13. How can the Promise Zones make use of the EPA Smart Location database?

14. Does the Promise Zone framework for tracking data address the issue of burdening designees in terms of data access and reporting? Are there other ways we could accomplish this?

15. Is the Promise Zone table of core indicators, measures, and data sources useful for community development outcome tracking? Are there other measures that should be added?

Dated: July 23, 2015.

Harriet Tregoning,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2015–18626 Filed 7–28–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[156A2100DD/AAKC001030/A0A501010.999900 253G]

Final Decision on Remand Against Federal Acknowledgment of the Duwamish Tribal Organization

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of corrections to Final Decision On Remand.

SUMMARY: This notice announces that the Department of the Interior (Department) through the Assistant Secretary—Indian Affairs (AS–IA) issued corrections to the ''Summary under the Criteria and Evidence for Final Decision on Judicial Remand'' dated July 2, 2015 (Final Decision on Remand) that declined to acknowledge that the Duwamish Tribal Organization (DTO), c/o Cecile Maxwell-Hansen, is an Indian tribe within the meaning of Federal law. This notice supplements the notice of final decision on remand published in the **Federal Register** on July 8, 2015.

DATES: The Final Decision on Remand (corrected) is final for the Department on publication of this notice.

ADDRESSES: Requests for a copy of the Final Decision on Remand (corrected) should be addressed to the Office of the Assistant Secretary—Indian Affairs, Attention: Office of Federal Acknowledgment, 1951 Constitution Avenue NW., MS 34B–SIB, Washington, DC 20240. It is also available through *www.bia.gov/WhoWeAre/AS-IA/OFA/RecentCases/index.htm.*

FOR FURTHER INFORMATION CONTACT: Mr. R. Lee Fleming, Director, Office of Federal Acknowledgment, (202) 513–5650.

SUPPLEMENTARY INFORMATION: On July 2, 2015, the Department issued a ''Summary under the Criteria and Evidence for Final Decision on Judicial Remand'' (Final Decision on Remand) declining to acknowledge that the Duwamish Tribal Organization (DTO), c/o Cecile Maxwell-Hansen, is an Indian tribe within the meaning of Federal law. On July 8, 2015, the Department published a notice of the Final Decision on Remand in the **Federal Register** at 80 FR 39142.

The Final Decision on Remand dated July 2, 2015, was incomplete. It omitted language that the AS–IA has determined should have been included in the final decision and it omitted an appendix referenced in the text. The Final Decision on Remand dated July 23, 2015, corrects these omissions.

This notice announces the corrections to the Final Decision on Remand. The Final Decision on Remand (corrected) dated July 23, 2015 does not affect the determination that the petitioner does not satisfy all seven mandatory criteria in the either the 1978 or 1994 regulations, 25 CFR part 83. This notice supplements the **Federal Register** notice of the final decision on remand published on July 8, 2015.

The Final Decision on Remand (corrected) is final for the Department on publication of this notice in the **Federal Register**.

Dated: July 24, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2015–18621 Filed 7–28–15; 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 Tribal-State Class III Gaming Compact taking effect.

SUMMARY: This notice publishes the Indian Gaming Compact between the State of New Mexico and the Pueblo of Taos governing Class III gaming (Compact) taking effect.

DATES: *Effective Date:* July 29, 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: Under section 11 of the Indian Gaming Regulatory Act (IGRA) Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts are subject to review and approval by the Secretary. The Secretary took no action on the Compact within 45 days of its submission. Therefore, the Compact is considered to have been approved, but only to the extent the Compact is consistent with IGRA. *See* 25 U.S.C. 2710(d)(8)(C).

Dated: July 23, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2015–18553 Filed 7–28–15; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NER–DEWA–18330]; [PX.DDEWA0014.001]

Draft Environmental Impact Statement and Visitor Use Management Plan for Delaware Water Gap National Recreation Area, Pennsylvania and New Jersey

AGENCY: National Park Service, Interior.

ACTION: Notice of intent.

SUMMARY: The National Park Service (NPS) is preparing an Environmental Impact Statement (EIS) for the Visitor Use Management Plan for Delaware Water Gap National Recreation Area (DEWA), in New Jersey and Pennsylvania. This effort will examine current and potential visitor opportunities and will develop long-term strategies for protecting resources while providing access, connecting visitors to key visitor experiences, and managing use. The planning process will also involve evaluating the zones in the 1987 General Management Plan (GMP), and may include updating the zoning scheme as needed through a GMP amendment. This notice initiates the public participation and scoping process for the EIS. The public is invited to comment on the purpose, need, objectives, preliminary management options, or any other issues associated with the proposal.

DATES: The public scoping period will commence on the date this notice is published in the **Federal Register** and last for at least 30 days. The NPS will hold public meetings near the park and surrounding region to provide the public an opportunity to review the proposal and project information. The place and time of public scoping meetings will be announced by the NPS in local newspapers serving the area. Scoping and other periodic public meeting notices and information regarding the visitor use management plan will also be placed on the PEPC Web site at *http://parkplanning.nps.gov/dewa* for continuing public review and comment.

ADDRESSES: A scoping brochure and other materials describing the overall purpose, issues, and possible management strategies may be obtained from the PEPC Web site: *http://parkplanning.nps.gov/dewa,* from the national recreation area's Information Desk at Delaware Water Gap National Recreation Area, Headquarters, 1978 River Road, Bushkill, PA 18324; or via telephone at (570) 426–2452.

If you wish to comment on the scoping brochure or any other issues associated with the Plan, you may mail or hand-deliver comments to Delaware Water Gap National Recreation Area Attn: VUM Plan, 1978 River Road, Bushkill, PA 18324; or comment via the Internet at *http://parkplanning.nps.gov/dewa.*

FOR FURTHER INFORMATION CONTACT: Leslie Morlock, Chief of Strategic Planning and Project Management, Delaware Water Gap National Recreation Area, 1978 River Road, Bushkill, PA 18324, telephone (570) 296–6952 extension 10, or by email at *leslie_morlock@nps.gov;* or Ericka Pilcher, Visitor Use Management Specialist, Denver Service Center Planning Division, 12795 West Alameda Parkway, Littleton, CO 80228, telephone (303) 969–6673, or by email at *ericka_pilcher@nps.gov.*

SUPPLEMENTARY INFORMATION: In recent years, areas within Delaware Water Gap National Recreation Area have experienced changes in the amounts and patterns of use by visitors and local residents. This use is affecting park natural and cultural resources in ways unanticipated since the finalization of the park's General Management Plan in 1987. As a result, and pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the NPS is beginning a comprehensive planning and environmental impact statement process to determine how best to protect park resources and values while providing appropriate opportunities for visitor use, experience, and enjoyment of the recreation area. Delaware Water Gap National Recreation Area encompasses a portion of a national scenic trail and a wild and scenic river.

Several statutes, including the National Parks and Recreation Act, Wild and Scenic Rivers Act, and National Trails System Act, expressly require federal agencies to address visitor capacity. Therefore, the comprehensive understanding of visitor use throughout the park would also assist in setting visitor capacities for the river and feed into future planning. This Plan will: (1) Be grounded in the recreation area's purpose, significance, and fundamental and other important resources and values; (2) clearly define the necessary conditions for park visitors to understand, enjoy, and appreciate these resources and values; (3) identify the desired conditions for visitor experiences linked to these resources and values; (4) establish indicators, standards, and management strategies for maintaining these desired conditions; and (5) establish visitor capacities where needed.

A range of management strategies, including the potential rezoning of some park areas, will be developed to address long term management of visitor use and protection of natural and cultural resources in the national recreation area. These will be presented for public comment during public scoping to help develop alternatives, including a ''no-action alternative,'' for the Plan. The Plan will also explore management approaches that can be adapted to changing conditions, identifying indicators and thresholds, develop monitoring systems to assure the protection of resources, and continue to provide a quality visitor experience.

Before including your address, phone number, email address, or other personal identifying information in any 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.

Dated: June 1, 2015.

Michael A. Caldwell,

Regional Director, Northeast Region, National Park Service.

[FR Doc. 2015–18593 Filed 7–28–15; 8:45 am]

BILLING CODE 4312–JG–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NER–MAVA–18479; PX.P0073134K.00.1]

Notice of Termination of the Environmental Impact Statement for the General Management Plan for Martin Van Buren National Historic Site, New York

AGENCY: National Park Service, Interior.

ACTION: Notice of termination.

SUMMARY: The National Park Service (NPS) is preparing a general management plan (GMP) for Martin Van Buren National Historic Site. A Notice of Intent to prepare an environmental impact statement (EIS) for the GMP was published in the **Federal Register** on December 11, 2007. The NPS has decided to terminate the EIS and

instead, has prepared an environmental assessment (EA) for the GMP (GMP/EA).

DATES: The GMP/EA is expected to be distributed for public review and comment during the summer of 2015. The NPS will provide information on when the GMP/EA will be released for public review, the dates of the public comment period, and the dates that public meetings will be held on the park's planning Web site at *http://parkplanning.nps.gov/mava* and through local and regional media.

ADDRESSES: Refer to the park's planning Web site at *http://parkplanning.nps.gov/mava* for additional information on where and how to obtain a copy of the GMP/EA, how to comment on the GMP/EA, and locations of upcoming public meetings.

FOR FURTHER INFORMATION CONTACT: Jim O'Connell, Project Manager; NPS/Northeast Region; 15 State Street; Boston, MA 02019 or Sarah Olson, Superintendent; Martin Van Buren NHS; 1013 Old Post Road; Kinderhook, NY 12106.

SUPPLEMENTARY INFORMATION: The GMP for Martin Van Buren National Historic Site will provide long-term guidance for resource management, visitor services, and interpretive programming. The three GMP alternatives evaluated in the GMP/EA focus on management of lands added to the park in 2009, maintaining and protecting resources, visitor use, facilities, access, interpretation, and NPS operations in the park as a whole. GMP planning and alternatives development incorporated input from park partners and cooperators; participants in local community meetings; consultation with local, regional, and national government agencies; and comments gathered at a 2009 public scoping session. The public was informed about the process and invited to participate through newsletters, emails, letters, and response cards.

The GMP was originally scoped as an EIS; however, internal discussions and input received during public and agency scoping did not raise any potentially significant environmental issues nor has the impact analysis identified any potentially significant adverse impacts. It is also noted that many of the actions proposed in the GMP/EA will have benefits to the park's resources, operational needs, and visitor experiences. For these reasons the NPS determined that an EA is the appropriate level of environmental review for the GMP.

Dated: June 18, 2015.

Jonathan Meade,

Deputy Regional Director, Northeast Region, National Park Service.

[FR Doc. 2015–18592 Filed 7–28–15; 8:45 am]

BILLING CODE 4310–WV–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–925]

Certain Communications or Computing Devices and Components Thereof Commission Determination Not To Review an Initial Determination Terminating the Investigation in Its Entirety Based Upon Settlement; Termination of Investigation; and Vacatur of Order No. 34

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge has issued a final initial determination and recommended determination on remedy and bonding in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief, specifically a limited exclusion order against certain marine sonar imaging systems, products containing the same, and components thereof, imported by respondents Garmin International, Inc.; Garmin North America, Inc.; Garmin USA, Inc., each of Olathe, Kansas, and Garmin Corporation of New Taipei City, Taiwan, and a cease and desist order against the domestic respondents. This notice is soliciting public interest comments from the public only. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3042. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*, 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 (*http://www.usitc.gov*). The public record for this investigation may be viewed on EDIS at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 21, 2014, based on a Complaint filed by Enterprise Systems Technologies S.a.r.l. of Luxembourg (''Enterprise''). 79 FR 49537–38 (Aug. 21, 2014). The Complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain communications or computing devices and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 6,691,302 (''the '302 patent''); 5,870,610; 6,594,366; and 7,454,201. The notice of investigation named the following respondents: HTC Corporation of Taoyuan, Taiwan; HTC America, Inc. of Bellevue, Washington; LG Electronics Inc. of Seoul, Republic of Korea; LG Electronics USA, Inc. of Englewood Cliffs, New Jersey; LG Electronics MobileComm U.S.A., Inc. of San Diego, California; Samsung Electronics Co. Ltd. of Seoul, Republic of Korea; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; Samsung Telecommunications America, LLC of Richardson, Texas (collectively, ''Remaining Respondents''); Apple Inc. of Cupertino, California (''Apple''); and Cirrus Logic Inc. of Austin, Texas (''Cirrus''). The Office of Unfair Import Investigations was also named as a party to the investigation.

On September 9, 2014, the ALJ issued an initial determination, Order No. 6, granting intervenor status to Google Inc. of Mountain View, California (''Google''). On March 9, 2015, the ALJ issued an ID, Order No. 20, terminating the investigation as to Cirrus. On June 5, 2015, the ALJ issued an ID, Order No. 37, terminating the investigation as to Apple. The Commission determined not to review those IDs.

On May 21, 2015, the ALJ issued Order No. 34, an initial determination terminating the '302 patent from the investigation based upon a lack of standing. Enterprise filed a petition for review on May 28, 2015. The parties subsequently moved for a 60-day extension to file any further briefing on the issue. The Commission granted the motion on June 1, 2015, and extended the date for determining whether to review Order No. 34 to August 21, 2015. Thus, Order No. 34 remains outstanding.

On June 22, 2015, Enterprise, Remaining Respondents, and Google jointly moved to terminate the investigation in its entirety based upon settlement. On June 29, 2015, the Commission investigative attorney filed a response in support of the motion. No other responses to the motion were received.

The ALJ issued the subject ID on July 1, 2015, and a corrected version on July 17, 2015, granting the joint motion for termination. The ALJ found that the settlement agreement satisfies the requirements of Commission Rule 210.21(b). She further found, pursuant to Commission Rule 210.50(b)(2), that there is no indication that termination of the investigation would adversely impact the public interest. No one petitioned for review of the ID.

The Commission has determined not to review the ID as corrected. In light of the settlement, the Commission has determined to vacate Order No. 34 as moot.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 23, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–18485 Filed 7–28–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–931]

Certain Formatted Magnetic Data Storage Tapes and Cartridges Containing Same; Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on Settlement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 19) by the presiding administrative law judge (''ALJ'') terminating the above-captioned investigation based on settlement.

FOR FURTHER INFORMATION CONTACT: Clark S. Cheney, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2661. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 29, 2014, based on a complaint filed by Advanced Research Corporation of White Bear Lake, Minnesota (''ARC''). 79 FR 58382–83 (Sept. 29, 2014). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), based on infringement of five U.S. patents. The notice of investigation, as amended, named the following respondents: Fujifilm Holdings Corporation of Tokyo, Japan; Fujifilm Corporation of Tokyo, Japan; Fujifilm Recording Media USA, Inc., of Bedford, Massachusetts; Oracle Corporation of Redwood Shores, California; Oracle America, Inc., of Redwood Shores, California; and International Business Machines Corp. of Armonk, New York. The Office of Unfair Import Investigations was also named as a party. *Id.* at 58383; 79 FR 78905 (Dec. 31, 2014).

On June 19, 2015, ARC and all respondents filed a joint motion to terminate the investigation based on a settlement agreement between ARC and all respondents. On June 26, 2015, the Commission investigative attorney filed a response supporting the motion.

On June 29, 2015, the ALJ issued the subject ID, granting the motion to terminate the investigation. The ALJ found that the motion complied with Commission Rules and that termination would be in the public interest. No petitions for review of the ID were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 24, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–18578 Filed 7–28–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Members of SGIP 2.0, Inc.

Notice is hereby given that, on June 29, 2015, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Members of SGIP 2.0, Inc. (''MSGIP 2.0'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, National Energy Technology Laboratory (NETL), Morgantown, WV; Open Geospatial Consortium (OGC), Wayland, MA; OMNETRIC Corp., Minnetonka, MN; National Instruments, Austin, TX; Opus One Solutions, Richmond Hill, Ontario, CANADA; ITOCHU Corporation, Tokyo, JAPAN; GridIntellect LLC, Madison, AL; Inman Technology, Cambridge, MA; Xtensible Solutions, Greenwood Village, CO; and Southern California Edison (SCE), Westminster, CA, have been added as parties to this venture.

Also, Kyocera Telecommunications Research Center (KTRC), Fremont, CA; The Associated General Contractors of America, Arlington, VA; RCES Center from Univ. of Texas at El Paso, El Paso, TX; Arizona Public Service Company, Phoenix, AZ; California Independent System Operator Corporation, Folsom, CA; CenterPoint Energy Houston Electric, Houston, TX; Clevest Solutions, Inc., Richmond, British Columbia, CANADA; Coordinated Science Laboratory—University of Illinois, Urbana, IL; HomePlug Powerline Alliance, Inc., Beaverton, OR; India Smart Grid Forum (ISGF), New Delhi, INDIA; Kottage Industries LLC, Worthington, OH; Mitsubishi Electric Research Labs, Cambridge, MA; MobiComm Communications, The Hague, NETHERLANDS; Telecommunications Industry Association (TIA), Arlington, VA; Tennessee Valley Authority, Chattanooga, TN; UPnP Forum,

Beaverton, OR; ZIV USA INC., Rolling Meadows, IL; Climate Talk Alliance, San Ramon, CA; FutureDOS, Calgary, Alberta, CANADA; Duquesne Light Company, Pittsburgh, PA; Modbus Organization, Inc., Hopkinton, MA; Nexans, Bethel, CT; PowerGrid360, San Jose, CA; Washington Laboratories, Gaithersburg, MD; ComRent International, Upper Marlboro, MD; and City of Watertown, Watertown, WI, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MSGIP 2.0 intends to file additional written notifications disclosing all changes in membership.

On February 5, 2013, MSGIP 2.0 filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 7, 2013 (78 FR 14836).

The last notification was filed with the Department on April 7, 2015. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 14, 2015 (80 FR 27704).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–18580 Filed 7–28–15; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Mechanical Stratigraphy and Natural Deformation in Eagle Ford Formation and Equivalent Boquillas Formation, South-Central and West Texas (Eagle Ford II)

Notice is hereby given that, on July 1, 2015, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on Mechanical Stratigraphy and Natural Deformation in Eagle Ford Formation and Equivalent Boquillas Formation, South-Central and West Texas (''Eagle Ford II'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: BHP Billiton Petroleum (Americas) Inc., Houston, TX; Murphy Exploration and Production Company, Houston, TX; ConocoPhillips Company, Houston, TX; Marathon Oil Company, Houston, TX; and Pioneer Natural Resources USA, Inc., Irving, TX. The general area of Eagle Ford II's planned activity is to examine the influence that mechanical stratigraphy exerts on natural and induced fracture systems in the oil and gas window of the Eagle Ford productive trend. Eagle Ford II will (i) expand the outcrop characterization; (ii) relate outcrop based results to the subsurface geology and geomechanics of the productive Eagle Ford trend; and (iii) perform numerical geomechanical modeling to understand the natural and induced hydraulic fracturing to validate and improve the modeling approach and to simulate a range of stratigraphic and stress conditions within the Eagle Ford productive trend and associated deformation features.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–18576 Filed 7–28–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Mobile Alliance

Notice is hereby given that, on July 6, 2015, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open Mobile Alliance (''OMA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Asurion LLC, San Mateo, CA; Augmate Corporation, New York, NY; AVSystem, Kraków, POLAND; China Academy of Telecommunication, Beijing, PEOPLE'S REPUBLIC OF CHINA; flo Data LTD, London, UNITED KINGDOM; HaoLianShiDai (Beijing), Beijing, PEOPLE'S REPUBLIC OF CHINA; Imagination Technologies Limited, Herts, UNITED KINGDOM; Jasper Technologies, Santa Clara, CA; Mobile Tornado Group PLC, Afek Park, ISRAEL; Netcomm Wireless Limited, Sydney, AUSTRALIA; Nextiva, Scottsdale, AZ; Redstone Sunshine (Beijing) Technology Co., Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; Reliance Jio Infocomm Limited, Navi Mumbai, INDIA; Sierra Wireless, Richmond, CANADA; Skylink Design Inc., Pleasanton, CA; Sonim Technologies, Bangalore, INDIA; Symantec, Culver City, CA; TA Technology (Shanghai) Co., Ltd., Shanghai, PEOPLE'S REPUBLIC OF CHINA; Tenggle Technologies, Beijing, PEOPLE'S REPUBLIC OF CHINA; Tile Data Processing Inc., Montreal, CANADA; u-blox AG, Thalwil, SWITZERLAND; Vuzix Corporation, Rochester, NY; and Zebra Technologies Corporation, Chicago, IL; have been added as parties to this venture.

Also, BlackBerry Limited, Waterloo, CANADA; castLabs GmbH, Berlin, GERMANY; Cellebrite, Petah Tikva, ISRAEL; CETECOM GmbH, Essen, GERMANY; Cisco Systems Inc., San Jose, CA; Cybage Software Private Limited, Pune, INDIA; Digicert SSL Certificate Authority, Lindon, UT; Fraunhofer Gesellschaft e.V., Erlangen, GERMANY; General Dynamics Broadband UK, Chippenham, UNITED KINGDOM; iYogi Inc., New York, NY; Kochar Infotech, Amritsa, INDIA; LG Electronics Inc., Seoul, REPUBLIC OF KOREA; Logos Solvo Ltd., Ebène, MAURITIUS; Masang Soft., Inc., Seoul, REPUBLIC OF KOREA; Metaswitch Networks Ltd., Enfield, UNITED KINGDOM; Morpho Cards GmbH, Paderborn, GERMANY; Rogers Wireless Inc., Toronto, CANADA; Scanbuy, Inc., New York, NY; setcom wireless products GmbH, Munich, GERMANY; Solaiemes, Madrid, SPAIN; Sony Mobile Communications AB, Stockholm, SWEDEN; Stream Communications, Glagow, UNITED KINGDOM; Synthesis AG, Zurich, SWITZERLAND; Telefonica S.A., Madrid, SPAIN; Telular, Chicago, IL; Thales, Toulouse, FRANCE; and Wistron Corporation, New Taipei City, TAIWAN have withdrawn as parties to this venture.

The following members have changed their names: Bluefish Technologies Holdings APD to Bluefish Technologies Europe A/S., Birkerod, DENMARK; and Zeebric, Inc. to Qliktag Software, Inc., Newport Beach, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OMA intends

to file additional written notifications disclosing all changes in membership.

On March 18, 1998, OMA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 31, 1998 (63 FR 7233).

The last notification was filed with the Department on July 8, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 8, 2014 (79 FR 46452).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–18579 Filed 7–28–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Allseen Alliance, Inc.

Notice is hereby given that, on July 13, 2015, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), AllSeen Alliance, Inc. (''AllSeen Alliance'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Yifang Digital Technology Co., Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; ZTE Corporaton, Shanghai, PEOPLE'S REPBULIC OF CHINA; Vodafone Group Services GmbH, Dusseldorf, GERMANY; Incognito Software Systems Inc., Vancouver, British Columbia, CANADA; Howden Joinery Group plc, London, UNITED KINGCOM; IS2T, Nantes, FRANCE; EUROICC d.o.o., Zemun, REPUBLIC OF SERBIA; Apptellect Inc., Mississauga, Ontario, CANADA; Kona S Co., Ltd., Geumcheon-gu, Seoul, REPUBLIC OF KOREA; SKIDEEV, Kowloon, HONG KONG-CHINA; CertiVox Ltd., London, UNITED KINGDOM; Appception, Inc., Mountain View, CA; Skyworth Group Co., Ltd., Shen Zhen, PEOPLE'S REPUBLIC OF CHINA; Arcelik A.S., Istanbul, TURKEY; Novatel Wireless, San Diego, CA; Granite River Labs, Santa Clara, CA; Hackster, Inc., San Francisco, CA; and International Business Machines Corporation, Austin, TX, have been added as parties to this venture.

Also, Audio Partnership Plc, London, UNITED KINGDOM; Beijing Winner Micro Electronics Co., Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; EXO U Inc., Montreal, Quebec, CANADA; Lets GOWEX S.A., Madrid, SPAIN; Geo Semiconductor Inc., San Jose, CA; Razer USA Ltd., Carlsbad, CA; and Robert Bosh LLC, Palo Alto, CA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AllSeen Alliance intends to file additional written notifications disclosing all changes in membership.

On January 29, 2014, AllSeen Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 4, 2014 (79 FR 12223).

The last notification was filed with the Department on May 1, 2015. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 3, 2015 (80 FR 31618).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–18577 Filed 7–28–15; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0101]

Agency Information Collection Activities: Proposed eCollection eComments Requested; Firearms and Explosives Services Division Customer Service Survey

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the 80 FR 29749, on May 22, 2015, allowing for a 60 day comment period.

DATES: The purpose of this notice is to allow for an additional 30 days for public comment until August 27, 2015.

FOR FURTHER INFORMATION CONTACT: If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Thomas DiDomenico at *FESDsurvey@atf.gov.* Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington DC 20503 or send email to *OIRA_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection 1140–0101

(1) *Type of Information Collection:* Extension of an existing collection.

(2) *Title of the Form/Collection:* Firearms and Explosives Services Division Customer Service Survey.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: The Firearms & Explosives Services Division (FESD) provides dealer licensing and other services related to the importation and transfers of weapons within the firearms and explosives industry. This anonymous survey allows FESD to gauge customer satisfaction, correct potential deficiencies, and improve overall customer satisfaction.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 18,200 respondents will take 5 minutes to complete the survey.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 1,517 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: July 22, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–18379 Filed 7–28–15; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Mine Mapping and Records of Opening, Closing, and Reopening of Mines

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, ''Mine Mapping and Records of Opening, Closing, and Reopening of Mines,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before August 28, 2015.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201409-1219-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Mine Mapping and Records of Opening, Closing, and Reopening of Mines information collection requirements codified in regulations 30 CFR part 75. This collection is intended to protect miners by assuring that up-to-date, accurate mine maps contain the information needed to clarify the best alternatives for action during an emergency operation. Coal mine operators routinely use maps to create safe and effective development plans.

Mine maps are schematic depictions of critical mine infrastructure, such as water, power, transportation, ventilation, and communication systems. Using accurate, up-to-date maps during a disaster, mine emergency personnel can locate refuges for miners and identify sites of explosion potential; they can know where stationary equipment was placed, where ground was secured, and where they can best begin a rescue operation. During a disaster, maps can be crucial to the safety of the emergency personnel who must enter a mine to begin a search for survivors. Mine maps may describe the current status of an operating mine or provide crucial information about a long-closed mine that is being reopened.

Coal mine operators use map information to develop safe and effective plans and to help determine hazards before beginning work in areas, such as abandoned underground mines or the worked out and inaccessible areas of an active underground or surface mine. Abandoned mines or inaccessible areas of active mines may have water inundation potentials, explosive levels of methane or lethal gases. If an operator that is unaware of the hazards were to mine into such an area, miners could be killed or seriously injured. Federal Mine Safety and Health Act of 1977 section 103(h) authorizes this information collection. *See* 30 U.S.C. 813(h).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219–0073.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on August 31, 2015. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 11, 2015 (80 FR 26953).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219–0073. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–MSHA.

Title of Collection: Mine Mapping and Records of Opening, Closing, and Reopening of Mines.

OMB Control Number: 1219–0073.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 1,631.

Total Estimated Number of Responses: 711.

Total Estimated Annual Time Burden: 13,872 hours.

Total Estimated Annual Other Costs Burden: $17,573,769.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: July 22, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–18529 Filed 7–28–15; 8:45 am]

BILLING CODE 4510–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Ventilation Plans, Tests, and Examinations in Underground Coal Mines

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) revision titled, ''Ventilation Plans, Tests, and Examinations in Underground Coal Mines,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before August 28, 2015.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201406-1219-005* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Ventilation Plans, Tests, and Examinations in Underground Coal Mines information collection requirements codified in regulations 30 CFR 75.310, 75.312, 75.342, 75.351, 75.360 through 75.364, 75.370, 75.371, and 75.382. An underground mine is a maze of tunnels that must be adequately ventilated with fresh air to provide a safe environment for miners. Ground conditions are subject to frequent changes, and mechanical ventilation equipment of sufficient capacity must operate at all times while miners are in the mine; therefore, sufficient tests and examinations are necessary to ensure the integrity of the ventilation system and to detect any changes that may require adjustments in the system. Records of tests and examinations are necessary to ensure the ventilation system is being maintained and changes that could adversely affect the integrity of the system or the safety of the miners are not occurring. The subject examination, reporting, and recordkeeping requirements also incorporate examinations of other critical aspects of the underground work environment, such as roof conditions and electrical equipment that have historically caused numerous fatalities if not properly maintained and operated. This information collection has been classified as a revision, because of additional provisions to this collection from regulations 30 CFR 75.362, 75.370, and 75.371 resulting from a final rule published May 1, 2014 (79 FR 24814). Federal Mine Safety and Health Act of 1977 section 101(a) authorizes this information collection. *See* 30 U.S.C. 811(a).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219–0088. The current approval is scheduled to expire on July 31, 2015; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 14, 2015 (80 FR 20015).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219–0088. The OMB is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–MSHA.

Title of Collection: Ventilation Plans, Tests, and Examinations in Underground Coal Mines.

OMB Control Number: 1219–0088.

Affected Public: Private Sector–businesses or other for-profits.

Total Estimated Number of Respondents: 434.

Total Estimated Number of Responses: 1,902,012.

Total Estimated Annual Time Burden: 313,624 hours.

Total Estimated Annual Other Costs Burden: $118,982.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: July 15, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–18546 Filed 7–28–15; 8:45 a.m.]

BILLING CODE 4510–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0008]

Newport News Shipbuilding; Notice of Application for a Permanent Variance and Request for Comments

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of Newport News Shipbuilding for a permanent variance from the OSHA shipyard-employment standards that prohibit shipyard employers from permitting workers to ride the hook or the load, from swinging or suspending loads over the heads of workers, and placing employees in a hazardous position between a swinging load and a fixed object while engaged in the construction and assembly of modular ship sections.

DATES: Submit comments, information, documents in response to this notice, and request for a hearing on or before August 28, 2015.

ADDRESSES: Submit comments by any of the following methods:

1. *Electronically:* Submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

2. *Facsimile:* If submissions, including attachments, are not longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693–1648.

3. *Regular or express mail, hand delivery, or messenger (courier) service:* Submit comments, requests, and any attachments to the OSHA Docket Office, Docket No. OSHA–2012–0008, Technical Data Center, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210; telephone: (202) 693–2350 (TTY number: (877) 889–5627). Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express mail, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m.–4:45 p.m., e.t.

4. *Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA–2012–0008). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

5. *Docket:* To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

6. *Extension of comment period:* Submit requests for an extension of the comment period on or before August 28, 2015 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *Meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

Copies of this Federal Register notice. Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This **Federal Register** notice, as well as news releases and other relevant information, also are available at OSHA's Web page at *http://www.osha.gov.*

Hearing Requests. According to 29 CFR 1905.15, hearing requests must include: (1) A short and plain statement detailing how the proposed variance would affect the requesting party; (2) a specification of any statement or representation in the variance application that the commenter denies, and a concise summary of the evidence adduced in support of each denial; and (3) any views or arguments on any issue of fact or law presented in the variance application.

I. Notice of Application

Northrop Grumman Shipbuilding Inc., 4101 Washington Ave., Newport News, Virginia 23607, submitted on October 6, 2009, an application for a permanent multi-state variance under Section 6(d) of the Occupational Safety and Health Act of 1970 (''OSH Act''; 29 U.S.C. 655) and 29 CFR 1905.11 (''Variances and other relief under section 6(d)'') (Exhibit 1: Northrop Grumman Shipbuilding's original

variance application dated 10/26/2009). On September 6, 2011, Newport News Shipbuilding (NNS), a division of Huntington Ingalls Industries, the successor to Northrop Grumman Shipbuilding, submitted an amended application for a permanent variance for the Newport News, Virginia, facility only (Exhibit 2: NNS's amended variance application).[1 2 3]

NNS seeks a permanent variance from the provisions in OSHA shipyard-employment standards that regulate gear and equipment used for rigging and materials handling, specifically paragraphs (i), (j), and (q) of 29 CFR 1915.116. These provisions prohibit shipyard employers from permitting workers to ride the hook or the load, swinging or suspending loads over the heads of workers, or placing workers in a hazardous position between a swinging load and a fixed object. These paragraphs specify the following requirements:

- *29 CFR 1915.116(i):* Employees shall not be permitted to ride the hook or the load.
- *29 CFR 1915.116(j):* Loads (tools, equipment or other materials) shall not be swung or suspended over the heads of employees.
- *29 CFR 1915.116(q):* At no time shall an employee be permitted to place himself in a hazardous position between a swinging load and a fixed object.

In its application, NNS contends that the permanent variance would provide its workers with a place of employment that is at least as safe and healthful as they would obtain under these standards. NNS certifies that it (1) provided the union representative[4] with a copy of its variance application, and (2) notified its workers of the variance request by posting a summary of the application at a prominent location where it normally posts notices to its workers, and specifying where the workers can examine a complete copy of the application. In addition, NNS states that it informed workers and the union representative of their right to petition the Assistant Secretary of Labor for Occupational Safety and Health for a hearing on this variance application.

II. Supplementary Information

A. Overview

NNS operates a shipyard in Newport News, Virginia, where it designs, builds, overhauls, and repairs a wide variety of ships for the U.S. government and navies of other countries. In the course of shipbuilding operations, NNS performs many operations that require the use of cranes or hoists during the course of vessel construction. Work processes include the erection of large modular units that, when assembled, comprise a vessel. In exceptional cases, workers may be beneath a portion of the unit for brief periods of time. Workers who work beneath units primarily remove interferences and ensure proper alignment of the units, as discussed below.

As noted above, § 1915.116(i), (j), and (q) prohibit workers from riding the hook or load, working on or under a suspended load, or working between a swinging load and a fixed object. However, the procedures and equipment used in shipbuilding today differ substantially from the procedures and equipment used when OSHA adopted these standards in 1982. Shipbuilding is no longer the ''stick construction'' industry it was when the standards were promulgated. With technological advancements, shipyards today build vessels using modular-production methods. Using these methods, shipyards completely construct major units of a vessel in modules. These modules include all components such as piping, electrical equipment, wiring, machinery, and ventilation. Modular-ship sections typically weigh 25 to 400 tons, but can weigh more. Generally, NNS uses cranes/hoists to lift and move ship sections during the following phases of modular production:

Phase 1: Fabrication shop/area. In the fabrication shop/area, NNS uses cranes/hoists to lift and rotate ship sections to various orientations to optimize work quality and productivity.

Phase 2: Travel from the fabrication shop/area to the ship-assembly staging area. In this phase, NNS typically uses one or more cranes/hoists to move a ship section from the fabrication shop/area, through the shipyard, and to the ship-assembly staging area.

Phase 3: Lifting from the staging area to the ship-assembly location (such as a dry dock or marine railway). This phase consists of using cranes/hoists for end-to-end installation (involving horizontal assembly), stacking installation (involving vertical assembly), or inserting installation (involving both horizontal and vertical assembly).

- End-to-end installation. This installation involves using cranes/hoists to move ship sections for end-to-end mating (horizontal assembly) of the sections, with brief worker exposure on or under a suspended load, or between a swinging load and a fixed object.
- Stacking installation. In this phase, which involves using a crane/hoist to place a ship module on top of another module (vertical assembly), it is necessary to have workers work briefly on or under a suspended load, or between a swinging load and a fixed object, to identify and remove interferences (or obstructions) that preclude proper alignment and mating of the sections.
- Inserting installation. These installations involve a combination of end-to-end and stacking installations in which NNS uses cranes/hoists to both lower and move horizontally ship sections into their mating position. For inserting installations, it is necessary to have workers work briefly on or under a suspended load, or between a swinging load and a fixed object, to identify and remove interferences for properly aligning and mating the sections.

NNS argues that OSHA should grant it a variance from 29 CFR 1915.116(i), (j), and (q) because modular shipbuilding occasionally requires workers to work briefly on or under a suspended load, or between a swinging load and a fixed object.

NNS points to OSHA's past approval of an alternative standard for the National Aeronautics and Space Administration (NASA) for work performed under a suspended load (see Ex. 1, Appendix A). This alternative standard, NASA–STD–8719.9, establishes a specific set of controls when no alternative to working under a section or module is available. The NASA document provides 15 safety and engineering requirements that NASA uses in lieu of compliance with 29 CFR 1910.179(n)(3)(vi), 29 CFR 1910.180(h)(3)(vi), and 29 CFR 1910.180(h)(4)(ii).

B. NNS's Proposed Alternative to 29 CFR 1915.116(i), (j), and (q)

As part of its variance application, NNS is proposing an alternative means of compliance with the provisions prohibiting work on or under a suspended modular-ship section, or between a swinging modular-ship

[1] Unless stated otherwise, the terms ''variance application'' or ''application'' used subsequently in this notice refers to both the original (2009) and amended (2011) applications submitted by NNS.

[2] This address also is the place of employment described in the application.

[3] Virginia operates its own OSHA-approved occupational safety and health plan under Section 18 of the Occupational Safety and Health Act (29 U.S.C. 667). Thus, Virginia generally adopts and enforces its own occupational safety and health standards. However, the Virginia plan does not cover private-sector maritime facilities. Accordingly, Federal OSHA retains its authority over occupational safety and health matters not covered by the Virginia plan (see 29 CFR 1952.375(b)(1)), including granting variances from OSHA standards applicable to such facilities.

[4] Mr. Arnold D. Outlaw, President, Local 8888, United Steelworkers (USW), Newport News, VA.

section and a fixed object. In its variance request, NNS states that ''[m]odular ship construction and repair techniques require, in rare cases, personnel to be under, in, or on such a load as the final fit-up of a modular section is made'' (Exhibit 2: NNS's amended variance application). NNS asserts that its alternative means of compliance would provide equivalent protection with the provisions of the standard from which it seeks a variance.

NNS's application includes a description of the alternate means of compliance that it would implement during modular-ship construction and structural-repair operations. The protection of workers from exposure to the crushing hazards associated with work on or under a suspended load, or between a swinging load and a fixed object during the lifting phase of modular-ship sections includes the application of significant engineering, administrative, coordination, and supervisory controls. The variance application further describes ship construction and ship-repair operations as: Highly engineered; involving tested and certified equipment; and including continuous communication and monitoring between the workers involved. Hazard analysis, rigging procedures, rigging-lifting-plan with associated drawings, and crew briefings are among existing modular-ship-section lifting requirements adopted by the industry. All workers performing various jobs (*e.g.,* supervisors, operators, riggers) receive special training and obtain necessary qualifications or certifications. Accordingly, NNS proposes the following conditions for its alternative means of compliance:

1. General Conditions and Definition of Suspended Load Operation

NNS defines a ''suspended-load operation'' as an operation that meets the following three criteria:

(a) Involves the use of a crane or hoist that supports the weight of a suspended load, whether the load is static or dynamic, including the rigging (*i.e.,* slings, Hydra Sets, lifting fixtures, shackles, straps) when attached to the hook (Note: This condition does not apply to loads supported entirely by a holding fixture, or blocks, even though still attached to the crane and hoist hook);

(b) When workers involved in the operation have any part of their body directly under the suspended load (Note: This condition does not apply when workers have their hands on the sides of a load, *e.g.,* to guide the load); and

(c) In the event of a crane or hoist failure, the falling load could contact workers working directly under it, with injury or death a possible result (Note: This condition does not apply when the falling load would push a worker's hand away such that no injury could result, or the load would come to rest on a holding fixture or block before injuring a worker).

2. Suspended-Load Operations

NNS proposed to meet the following conditions prior to performing suspended-load operations:

(a) A Registered Professional Engineer familiar with the type of equipment used for the suspended-load operations will prepare and sign a written hazard analysis for each operation. The hazard analysis will provide the following information:

(i) Justification of why NNS cannot perform the operation without workers on or under a suspended load, or between a swinging load and a fixed object, including procedural and design options investigated to determine if NNS could perform the operation without workers working on or under a suspended load, or between a swinging load and a fixed object.

(ii) Detailed description of the precautions taken to protect workers should the load shift, move inadvertently or drop. This description will include an evaluation of the secondary support system, *i.e.,* equipment designed to assume support of (*i.e.,* catch) the load to prevent injury to workers should the crane/hoist fail; this description will include a determination of the feasibility of using this system under the planned lifting conditions. NNS will construct the secondary support system in accordance with recognized engineering practices and designed with a minimum safety factor of 2 to yield.

(iii) The maximum number of exposed workers allowed under a load suspended from a crane/hoist. In this regard, NNS will limit the number of workers working under a load suspended from a crane/hoist. NNS will allow only those workers absolutely necessary to perform the operation to work in the safety-controlled access area. The rigging-lifting-plan drawing(s) will identify the name and exact location of each individual worker involved in the suspended-load operation and the drawing will ensure that each worker is in the safest location.

(iv) The time of exposure. NNS will ensure that workers' exposures under suspended loads are brief and that they do not remain under the load any longer than necessary to complete the work.

(b) The most senior manager at the site for crane operations and a qualified representative of NNS's health and safety department must review and approve in writing the suspended-load operation based on a detailed hazard analysis and rigging-lifting-plan drawing(s).

(c) NNS will maintain written, up-to-date procedures that specify the minimum requirements for suspended loads. Accordingly, NNS will revise the written hazard analysis and the Operational Procedures Document (or Lift Plan) (*e.g.,* Operations and Maintenance Instruction, Technical Operating Procedure, Work-Authorization Document) to specify the necessary additional requirements identified by the hazard analysis discussed in Condition 2(b). The procedures will be readily available on-site for inspection by workers during the operation at locations normally used to post worker information.

(d) Each suspended-load operation will have a separate hazard analysis and rigging-lifting-plan drawing performed and approved. A separate hazard analysis is not needed for a limited number of routine and repetitive operations for which a rigging-lifting-plan drawing(s) and procedures already exist and for which no new hazards are present.

(e) NNS will design, test, inspect, maintain, and operate each crane/hoist used in a suspended-load operation in accordance with OSHA standards and internal written procedures.[5] Registered professional engineers will review and certify all aspects of crane/hoist operations. NNS will maintain the results of the annual inspections and all related documents and make them available to OSHA on request.

(f) Each crane/hoist involved in suspended-load operations will undergo a system safety review that uses all documentation available on the suspended-load operation, including the hazards analysis and the rigging-lifting-plan drawing, and with approval based on a detailed analysis of the potential hazards and rationale for acceptance. The review will determine single failure points (SFPs) in all critical mechanical functional components and support systems in the drive trains and critical electrical components.

(i) For cranes/hoists identified as having no SFPs, but for which failure would result in inadvertent movement of the load, the total weight of the

[5] NNS designated its internal written suspended-load operational procedures as proprietary.

suspended load will not exceed the device's rated load.

(ii) For cranes/hoists identified as having SFPs the failure of which would result in inadvertent movement of the load, the most senior manager at the site for crane operations and a qualified representative of NNS's health and safety department will approve the use of that device for suspended-load operations.

(g) Before lifting a load during a suspended-load operation, the crane/hoist will undergo a visual inspection (without major disassembly) of components instrumental in controlling the lift (*e.g.,* primary and secondary brake systems, hydraulics, mechanical linkages, and wire ropes). The most senior manager at the site for crane operations must resolve any potential problems before the operation begins. This pre-lift inspection will be in addition to the inspections required in § 1910.179(j) and 180(d).

(h) A trained and qualified operator (*e.g.,* 29 CFR 1926.1427) will remain at the crane/hoist controls while workers are under the load.

(i) Safety-controlled access areas will be established with appropriate barriers (rope, cones, safety watches etc.). All non-essential employees will be required to remain outside the barriers.

(j) Prior to initiating any suspended-load operation, the most senior manager at the site for crane operations or designee (*e.g.,* supervisor controlling the lift) will hold a face-to-face meeting of all workers involved in the operation to plan and review the approved lift plan (operational procedural document), including procedures for entering and leaving the safety-controlled access area and the written hazard analysis.

(k) The most senior manager at the site for crane operations or designee (*e.g.,* supervisor controlling the lift) will ensure communications (*i.e.,* voice, radio, hard-wired, or visual) are maintained between the crane/hoist operator(s), signal person(s), and any worker on or under the suspended modular-ship section, or between the swinging modular-ship section and a fixed object.

(l) Workers on or under a suspended modular-ship section, or between a swinging modular-ship section and a fixed object, will remain in continuous sight of the operator(s) and/or the signal person(s) when feasible. When NNS demonstrates that maintaining continuous sight is not feasible, these workers must remain in continuous communications with the operator and/or signal person.

(m) Workers will not alter their planned access/egress travel path without approval from the most senior manager at the site for crane operations or designee (*e.g.,* supervisor controlling the lift), and then only after the most senior manager at the site for crane operations communicates this change to all workers involved in the operation.

(n) NNS will provide a list of approved suspended-load operations, a list of cranes/hoists used for suspended-load operations, and copies of the associated hazards analysis to OSHA's Office of Technical Programs and Coordination Activities (OTPCA) and the Norfolk Area Office within 15 working days after developing these documents.

III. Decision

After reviewing NNS's amended application, OSHA preliminarily finds that NNS developed and proposes to implement engineering and administrative controls that appear to effectively control the hazards associated with work performed on or under a suspended modular-ship section, or between a swinging modular-ship section and a fixed object for brief periods.

NNS also developed and proposes to implement an alternative means of compliance that appears to provide workers with protection that is equivalent to the protection afforded to them by the OSHA standards that regulate work on or under a suspended load, or between a swinging load and a fixed object (see, respectively, 29 CFR 1915.116(i), (j), and (q)). This alternative incorporates key elements of a job hazard analysis and lift planning, review, and approval to proceed (*i.e.,* permitting). The alternative will inform essential and affected employees of the steps required to complete suspended-load operations safely, including the hazards associated with these operations and the methods NNS will apply during each step to control the hazards (*e.g.,* secondary support systems, inspection of hoisting and rigging equipment, use of safety-controlled access areas, and specially trained and qualified workers).

In addition, NNS developed and proposes to implement a worker-training program to instruct affected and essential employees in the hazards associated with performing lifting and rigging operations.

OSHA recognized and addressed the need to work on or under a suspended load, or between a swinging load and a fixed object, when it granted NASA an alternative standard (Ex. 1). The alternative standard permitted NASA to expose its workers to these conditions when it complied with specific OSHA standards such as the construction hoisting and rigging standard (29 CFR 1926.753) and the conditions of the alternate standard (see Appendix A of NASA–STD–8719.9, NASA Standard for Lifting Devices and Equipment (in Ex. 1). NNS is proposing to adopt and implement the conditions of NASA's alternate standard for its suspended-load operations.

Based on a review of available information and NNS's variance application, OSHA made a number of additions and revisions to the application that it believes are necessary to protect NNS's workers involved in suspended-load operations. The following items describe these additions and revisions:

1. OSHA bases the scope of the revised variance application primarily on the scope specified in NNS's application. OSHA expanded the scope to include the types of modular-section lifts made from the Lift Staging Area (described earlier in this notice as Phase 3 of modular ship section lifts) to a ship and to describe the types of lifting operations excluded from the scope of the application. The expanded scope serves to increase worker protection from exposure to crushing hazards associated with work on or under a suspended modular-ship section, or between a swinging modular-ship section and a fixed object, by providing precise identification and description of the limited circumstances under which the variance conditions would apply.

2. OSHA added a section to the application that defined the terms ''essential employee,'' ''modular-ship section,'' ''safety-controlled access area,'' and ''suspended-load operation'' based on NNS's use of these terms in its variance application (Exhibit 2: NNS's amended variance application). OSHA defined the terms ''competent person'' and ''qualified person, employee, or worker'' based on existing OSHA standards. OSHA added a definition for ''lift incident'' based on conditions the Agency added to the variance. OSHA added a definitions section because it believes the definition will enhance the NNS's and its workers' understanding of the conditions specified by the variance, thereby enhancing worker safety and health.

3. OSHA defines a number of abbreviations to the variance application. OSHA added these definitions to clarify the abbreviations and standardize their usage, thereby enhancing NNS's and its workers' understanding of the conditions specified by the variance application, thereby enhancing their safety and health.

4. OSHA added a condition requiring the use of properly engineered lashing material to ensure that suspended loads do not inadvertently move or fall from cranes/hoists. This addition will enhance worker safety and health by ensuring that lashing material is strong enough to prevent the load from dropping and injuring workers.

5. As part of the safety and engineering criteria, NNS proposed the development of a written hazard analysis in its application, and OSHA added a condition to this proposal that NNS perform a Failure Modes and Effects Analysis (FMEA) and approval to identify potential single point failures. Such analysis serves to further minimize the potential for inadvertent movement of the suspended load during modular-ship section lifts. This addition will minimize worker exposure to crushing hazards during modular-ship section lifts.

6. OSHA added a condition that the most senior manager at the site for crane operations approve in writing the written hazard analysis and rigging-lifting-plan drawings to ensure that these documents are technically accurate and reflect the knowledge and best practices of those responsible for supervising suspended-load operations.[6]

7. NNS proposed to implement a system-safety review to determine SFPs. OSHA added the clarification to the variance application that a registered professional engineer (PE) must perform this review using a FMEA. This addition will ensure that NNS conducts the system-safety review according to professional standards. OSHA also clarified that the FMEA should include any weight calculations or structural analysis performed during the review. The FMEA will protect worker safety and health by accurately and reliably identifying potential crane/hoist failures that might result in inadvertent movement of the suspended load, thereby endangering workers near this equipment.

8. NNS proposed in its application to develop an Operational Procedural Document. OSHA added a condition to the application requiring that the most senior manager at the site for crane operations (for example, the supervisor controlling the lift) review the Lift Plan with essential employees to ensure that these workers are familiar with and thoroughly understand the procedures governing the suspended-load operations. The Lift Plan will enhance worker safety and health by ensuring that suspended-load operations occur according to procedures planned in advance to minimize hazards.

9. OSHA added a condition requiring that NNS implement procedures to control hazards from unplanned or unforeseen activities that were not included in the initial planning of the modular-ship section lift operations and not covered by the initial procedural documents (such as lift plan, hazard analysis, and rigging/lifting drawing(s)). This condition will require NNS to develop the Operational Procedural Document to cover the unplanned activities in order to protect worker safety and health by reducing the probability of worker exposure to unanticipated hazards.

10. NNS proposed a case-by-case review of planned suspended-load operations that follow the set of safety and engineering criteria (described by this condition). OSHA added to this condition that a senior crane operations manager and a health and safety representative must perform this review following development of the Operational Procedural Document. This addition will enhance worker safety and health by ensuring that knowledgeable company officials responsible for suspended-load operations conduct the review.

11. NNS proposed a condition addressing use of the Operational Procedural Document, and OSHA added to this condition requirements that NNS: comply with a program operated by an accredited agency under OSHA's Gear Certification program (29 CFR part 1919); use registered PE-designed pad-eye connection points; comply with nationally recognized non-destructive testing methods;[7] and provide drawings to document hoisting and rigging equipment design specifications. These additions will protect worker safety and health by ensuring all equipment used for suspended-load operations will be of suitable quality and design.

12. NNS proposed a pre-lift inspection in its application. OSHA added a condition to this proposal requiring that safety devices be operational during any lifts conducted during the pre-lift inspections. This addition will increase worker protection during pre-lift inspections.

13. OSHA added a condition specifying that NNS develop a written checklist to document the identification and removal of interferences to proper mating and unnecessary or unsecured items. The inspection using this checklist must be conducted by a qualified employee(s) before the suspended-load operation begins. This condition will protect worker safety and health by reducing the time workers spend under the suspended load removing interferences to proper mating, and eliminating the need for workers to remove unsecured items while exposed to a suspended load.

14. Another condition added by OSHA requires that that NNS conduct a test lift before beginning each suspended-load operation. The test lift will protect worker safety and health by ensuring that equipment, including the rigging and crane/hoist systems, is in working order for the lift, thus minimizing the possibility of worker harm resulting from equipment failure.

15. NNS proposed a condition specifying that a trained and qualified operator remain at the crane/hoist controls while workers are on or under a suspended load, or between a swinging load and a fixed object. OSHA added a condition requiring that the operator not initiate movement while workers are on or under a suspended load, or between a swinging load and a fixed object, and that NNS use safety devices such as brakes, dogs or stops to further ensure that no such movement takes place. This added condition will protect workers from the hazards associated with inadvertent movement of suspended loads.

16. In its application, NNS proposed the use of safety-controlled access areas where all non-essential employees must remain outside the controlled access areas during modular-ship section load operations. This requirement will protect workers by minimizing the number of workers exposed to this hazard.

17. OSHA added the prohibition of working under, in or on suspended loads requirement to limit the presence of essential employees to adjusting chain falls, making initial connections or confirming clearances between hull structures and outfitting systems. This requirement protects workers by minimizing worker exposure to the hazards of working under, in, or on suspended loads.

18. OSHA added a condition that NNS train workers (including, but not limited to, current and newly assigned to be involved in modular-ship section load operations, qualified, and essential employees) to recognize hazards associated with work under, in or on suspended modular-ship section loads and associated hazard-control methods which minimize their risk of harm during these operations. This added

[6] The hazard analysis and rigging-lifting-plan drawings will protect worker safety and health by making NNS plan suspended-load operations, anticipate hazards beforehand, and place workers at locations to minimize their exposure to hazards.

[7] For example, ASTM E164–13 Standard Practice for Contact Ultrasonic Testing of Weldments.

condition includes refresher training to ensure that workers retain knowledge of the hazards and associated control methods or update this knowledge as changes occur in hazard-control technology, methods, and procedures. Finally, the added condition requires NNS to document the training to provide a means of tracking the training received by workers and, consequently, to prompt NNS to update that training if necessary.

19. NNS proposed a pre-job briefing requirement in its variance application, and OSHA clarified this condition by specifying that: The pre-job briefing include all workers involved in the suspended-load operation, both essential and non-essential employees; NNS document worker attendance at the briefing using a signed roster; and the briefing address the rigging-lifting drawing(s). This clarification will protect workers by refreshing their knowledge of procedures just before the suspended-load operation begins.

20. NNS proposed having continuous communication during suspended-load operations, and OSHA revised the condition by specifying that suspended-load operations must cease upon loss of communications. This requirement will protect workers by minimizing their exposure to hazards during communications failure.

21. In its application, NNS proposed that workers remain in continuous sight of the operator(s) and/or signal person(s) when feasible during suspended-load operations. OSHA clarified this condition by specifying that all essential employees must remain in continuous sight and/or be in communication with the most senior manager at the site for crane operations or designee (*e.g.,* supervisor controlling the lift) because this manager must account for all workers involved in the operation to ensure that no worker is in harm's way.

22. OSHA added a condition that the crane/hoist operator would have to lower the suspended load to the ground or other supporting structure, or the most senior manager at the site for crane operations or designee (*e.g.,* supervisor controlling the lift) would have to cordon off the site of the crane/hoist operation, if NNS postpones or discontinues a lift. If the load remains suspended after postponing or discontinuing a lift, the crane/hoist operator would have to remain on duty. This condition would reduce workers' exposure to the suspended-load hazard by ensuring that the crane/hoist operator remains in control of the suspended load should workers be in the vicinity of the load.

23. Another condition added by OSHA requires a post-lift review of the suspended-load operation. This condition would protect workers by assisting NNS in identifying shortcomings in the suspended-load program.

24. NNS proposed to develop a listing of the modular-ship section lift operations (suspended-load operations) scheduled to be performed during each quarter. OSHA is clarifying this condition by specifying that by the 15th calendar day of each new quarter NNS would have to prepare a list of planned modular-ship section lifts to be performed during the upcoming quarter (including the cranes/hoists used for suspended-load operations, the date and time of the operation, associated hazard analysis completed, and the calculated weight of each lift), and update the list when significant changes occur. OSHA also specified that workers and their representatives would have access to the list, and by January 15th of each year, NNS would have to provide to the Norfolk Area Office and OSHA's Office of Technical Programs and Coordination Activities a copy of the list. The list requirement enhances worker safety by ensuring that NNS and workers have the most recent information on each modular-ship section lift in advance of its being performed so they have an opportunity to review and become familiar with the operation's potential hazards and planned hazard mitigation strategies.

25. OSHA added a condition requiring that NNS conduct an investigation of all lift incidents related to suspended-load operations. This condition would protect workers by ensuring that NNS investigates such incidents and take actions necessary to prevent a recurrence.

26. OSHA included a records-management condition that would assist the Agency in monitoring and enforcing the variance conditions. This requirement will protect workers by ensuring that NNS implements and maintains these conditions.

27. OSHA also added a condition that requires NNS to provide the Agency with up-to-date information regarding its corporate status. This information would permit OSHA to monitor and enforce the conditions to the benefit of NNS's workers.

IV. Specific Conditions of the Variance Application

After reviewing the evidence described above, OSHA preliminarily determined that the proposed conditions would provide a place of employment as safe and healthful as that provided by the standards from which NNS is requesting a variance, notably 29 CFR 1915.116(i), (j), and (q). Therefore, pursuant to the provisions of 29 CFR 1905.11(c), OSHA is announcing NNS's application for a permanent variance and is seeking public comment on this application. The application includes the following conditions:

A. Application

Except for the requirements specified by § 1915.116(i), (j), and (q), Newport News Shipbuilding would have to comply fully with all other safety and health provisions that are applicable to shipyard employment when implementing the permanent variance.

B. Scope

1. The variance would only apply to operations that satisfy all of the following:

(a) the operations are performed by Newport News Shipbuilding employees during modular-ship section construction and structural-repair operations at the company's Newport News, Virginia, facility;

(b) the operations involve lifting modular-ship sections from the lift-staging area to a ship during one of the following assembly phases:

(i) ''End-to-End'' (horizontal) assembly of modular-ship sections;

(ii) ''Stacking'' (vertical) assembly of modular-ship sections; or

(iii) ''Inserting'' (combined vertical/horizontal) assembly of modular-ship sections.

(c) the workers exposed to the hazards of the lift are those supporting modular-ship section lifts and essential employees working on or under a suspended modular-ship section, or between a swinging modular-ship section and a fixed object, during vessel assembly, repair, overhaul, and removal of interferences (or obstructions) that preclude proper alignment and mating of sections (fit-up); and

(d) Workers are exposed to the hazards of the lift only for a brief period of time.

2. The variance would *not* cover:

(a) Lifting modular-ship sections in the fabrication (assembly) shop or area;

(b) Transporting modular-ship sections from the fabrication (assembly) shop or area to the lift-staging area;

(c) Lifting structures or equipment onto a ship's deck; and

(d) Loads consisting of tools, equipment, or other materials.[8]

[8] In sum, Condition B.2 specifies that there would be no instances of workers working on or under a suspended modular-ship section, or between a swinging modular-ship section and a fixed object,

Continued

Note: Under Condition B.1.c, if engineering calculations show that failure of the crane/hoist or rigging during the lifting process could dislodge the ship from its supporting blocks (*e.g.,* keel blocks, bilge blocks), then all workers, other than those essential to the modular-ship section alignment and mating operation, must vacate the ship while the modular ship-section is suspended during the lifting process. Example: When lifting a superstructure onto the main deck of a vessel under construction, should the load fall between the dry dock and ship, then the ship could dislodge from the supporting blocks; therefore, all workers other than those essential to the lift would have to vacate the vessel during the suspended-load operation.

C. Definitions

The following definitions would apply to the permanent variance, and do not necessarily apply in other contexts:

1. *Affected employee*—a Newport News Shipbuilding employee having a direct or supporting role in completing a suspended modular-ship section lift operation (including workers performing tasks such as crane operator, signal person, supervisor).

2. *Brief period of time*—a limited amount of very short duration that is necessary for employees to work under, in or on the load for the purposes of alignment or positioning only. This will be limited to the amount of time necessary to perform the alignment or positioning operation, or 15 minutes, whichever is less.

3. *Competent person*—one who is capable of identifying existing and predictable hazards in the surrounding or working conditions that are unsanitary, hazardous, or dangerous to employees, and who has authority to take prompt corrective measures to eliminate them.[9]

4. *Essential employee*—a Newport News Shipbuilding employee required to work under, in or on a suspended modular-ship section, or between a swinging modular-ship section and a fixed object, while ensuring the proper alignment and mating of modular-ship sections. Examples of work activities performed by essential employees include, but are not limited to: adjusting chain falls; confirming clearances between hull structures and outfitting systems; identifying and removing interferences; and aligning and mating the section to a ship.

5. *Lift incident*—an unplanned event or series of events that resulted in a work-related recordable injury or illness, or caused or could cause harm to a worker (includes near-miss events).[10]

6. *Lift Plan*—a set of written documents that specify the core requirements for completing a suspended modular-ship section lift. The following are examples of documents included in a lift plan: Engineering design; engineering hazard analysis; rigging and lifting drawings; crane, rigging and other lift support equipment inspection; operation and maintenance instructions; technical operating procedures; and work review, justification, and authorization documents. The documents included in a lift plan are collectively also known as the operational procedural document.

7. *Modular-ship section*—a ship block, section, or module that includes a portion of two or more of the following structures: deck, bulkhead, overhead, or hull.

8. *Qualified person*—one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, successfully demonstrated an ability to solve or resolve problems relating to the subject matter, the work, or the project.[11]

9. *Rigging-lifting-plan drawing*—a sketch of the rigging used whenever essential employees perform a suspended modular-ship section lift by working under, in or on a suspended load, or between a swinging load and a fixed object. The sketch is required to include the following essential information concerning the planned lift: (1) The number and location of essential employees that are to be on or under the load; (2) a pictorial illustration of the rigging configuration with size of all rigging components including load attachment points; (3) load identification, unit number or description; (4) weight of the load; (5) gear capacity and asset (crane) number/hook capacity; and (6) approval line.

10. *Safety-controlled access area*—a work area with controlled access. The periphery of the safety-controlled access area must:

(a) Be well defined and easily recognizable;

(b) Have means to keep unauthorized personnel out of the zone such as appropriate barriers (*e.g.,* rope, cones, safety watches);

(c) Extend a safe distance beyond the radius of the crane when at its maximum extended lifting position as determined by a hazard analysis; and

(d) Monitored and controlled by a competent person.

11. *Single failure point* (SFP) – identification of the critical components of the crane/hoist system involved in a suspended-load operation such that malfunction of any single component would provoke a total systems failure.

12. *Suspended modular-ship-section operation* – an operation that meets all three of the following criteria:

(a) The operation involves the use of a crane/hoist or cranes/hoists that support the weight of a suspended modular-ship section, with no distinction made between static and dynamic loads. The load consists of all associated rigging equipment, including slings, Hydra Sets, lifting lugs, shackles, and straps, when attached to the crane hook;[12]

(b) When workers involved in the operation have any part of their body directly under the suspended load;[13] and

(c) In the event of a crane or hoist failure (including a rigging failure), the falling load could contact workers working directly beneath it, with injury or death as a possible result.[14]

D. Abbreviations

Abbreviations used throughout the permanent variance would include:

1. CSP—Certified safety professional
2. FMEA—Failure modes and effects analysis
3. JHA—Job-hazard analysis
4. NASA—National Aeronautics and Space Administration
5. NNS—Newport News Shipbuilding
6. OSHA—Occupational Safety and Health Administration
7. PE—Professional engineer
8. SFP—Single failure point

E. Engineering-Review Requirements

1. Hazard-avoidance protocol. Using a hazard-avoidance protocol, NNS would have to design hazards out of the suspended-load operations covered by the permanent variance to the greatest extent possible. Accordingly, NNS would:

at the assembly shop or area, or while traveling with a suspended load through the shipyard.

[9] Adapted from 29 CFR 1926.32(f).

[10] See 29 CFR 1904 (Recording and Reporting Occupational Injuries and Illnesses) (*http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9631*); recordkeeping forms and instructions (*http://www.osha.gov/recordkeeping/RKform300pkg-fillable-enabled.pdf**); and updates to OSHA's recordkeeping rule and Web page ((79 FR 56130); (*http://www.osha.gov/recordkeeping/index.html*).

[11] Adapted from 29 CFR 1926.32(m).

[12] This condition does not apply to loads supported entirely by a holding fixture or blocks even though still attached to the crane and hoist hook.

[13] This condition does not apply when workers have their hands on the sides of a load, *e.g.,* to guide the load.

[14] This condition does not apply when the falling load would push a worker's hand away such that no injury could result, or the load would come to rest on a holding fixture or block before injuring a worker.

(a) Have to engineer, design, install, and operate all future systems, hardware, and equipment associated with these operations to prevent exposing workers to the hazards associated with working under, in or on a suspended modular-ship section, or between a swinging modular-ship section and a fixed object, unless NNS demonstrates that doing so is technically infeasible;

(b) Perform an operation in which employees work under, in or on a suspended modular-ship section, or work between a swinging modular-ship section and a fixed object, only under specifically approved and controlled conditions; and

(c) Perform the operation specified under Condition E.1.b above only after meeting all the review, approval, documentation, and special requirements.

2. Use of properly engineered lashing materials.

(a) When the operation specified under Condition E.1.b above involves the use of a crane/hoist that supports the weight of a modular-ship section, NNS would have to use properly engineered lashing materials [15] capable of lifting, moving, and suspending the entire weight of the load; and

(b) NNS would have to conduct a detailed weight calculation in determining whether the lashing material can support the requisite weight of the load, considering the duration of maintaining the load in a safe condition in the event of loss of continuous communication, and paying special consideration to environmental factors that may affect the load (*e.g.,* water retention, snow, ice).

3. Engineering-hazard analysis.

(a) The most senior manager at the site for crane operations specified in paragraph E.1.b above must approve suspended modular-ship section load operations in writing based on: a detailed written hazard analysis, a rigging-lifting-plan, and a supporting drawing of the operation;

(b) NNS would have to ensure that the:

(i) Responsible crane-operations organization prepares the written engineering-hazards analysis under the direction of the most senior manager at the site for crane operations; and

(ii) Qualified representatives of NNS' engineering offices and the health and safety department review this analysis and indicate approval by signing the analysis;

(c) The engineering-hazard analysis would have to be in writing and include:

(i) A justification specifying why NNS cannot conduct the operation without its employees working under, in, or on suspended modular-ship sections, or between a swinging modular-ship section and a fixed object, with this justification describing the procedures and design options NNS considered in determining that it could not conduct the operation without its employees working under, in, or on a suspended modular-ship section, or working between a swinging modular-ship section and a fixed object;

(ii) Details of the engineering controls taken to prevent the modular-ship sections from moving or shifting when employees are under, in, or on a suspended modular-ship section or between a swinging modular-ship section and a fixed object, including the evaluation of testing and safety devices used for this purpose;

4. Secondary support systems. NNS would have to design any secondary support systems used during the operation specified in Condition E.1.b above in accordance with recognized engineering practices and designed with a minimum safety factor of 2 to yield.

F. Limiting Employee Hazard Exposure

NNS would have to limit employee exposure to the hazards of working under, in, or on a suspended modular-ship section, or between a swinging modular-ship section and a fixed object by:

1. Establishing a safety-controlled access area, taking into account the swing radius of the crane;

2. Allowing only essential personnel in the safety-controlled access area;

3. Ensuring that the rigging-lifting-plan drawings identify by name the exact location of each essential employee allowed in the safety-controlled access area and the location of that employee in the area;

4. Ensuring that each essential employee allowed in the safety-controlled access area is in the safest location possible for performing the work;

5. Ensuring that each essential employee moves to and from the work location using the safest route possible, and remains at that location only long enough to complete the work;

6. Verifying in writing that procedures are in place to prevent movement or shifting of the suspended modular-ship section when essential employees are under, in, or on a suspended modular-ship section, or between a swinging modular-ship section and a fixed object; and

7. Ensuring that a crane operator who meets the requirements of 29 CFR 1926.1427 and 1926.1430 is operating the crane used to suspend the modular-ship section while essential employees are working under, in, or on a suspended modular-ship section, or between a swinging modular-ship section and a fixed object.

G. Job-Hazard Analysis and Rigging-Lifting Drawings

Each operation specified under Condition E.1.b above would have a separate written job-hazard analysis that includes a detailed rigging specification drawing(s) and a detailed lifting plan drawing(s) approved and signed by the most senior manager at the site for crane operations. A separate hazard analysis is not needed for routine and repetitive operations where a rigging-lifting-plan drawing(s) and procedures already exist and where no new hazards are present.

H. Failure-Modes and Effects Analysis (FMEA) and Approval

1. Each crane involved in an operation specified under Condition E.1.b above would undergo a FMEA approved in writing by a Registered Professional Engineer.

2. The FMEA would:

(a) Determine SFPs by assessing the rigging equipment and all critical mechanical functional components and support systems in the drive trains and critical electrical components of the crane; and

(b) Include weight calculations and any structural analysis deemed necessary by the Registered Professional Engineer responsible for approving the FMEA.

3. For cranes and rigging equipment identified as not having any SFPs, the failure of which would result in movement of the modular-ship section, the total weight of the suspended modular-ship section load would not exceed the crane's rated load.

4. For those cranes and rigging equipment identified as having an SFP, the failure of which would result in movement of the modular-ship section, the most senior manager at the site for crane operations and a qualified representative of the health and safety department would have to approve in writing use of the crane and rigging equipment for an operation specified under Condition E.1.b above after reviewing all the documentation required by this order that addresses the operation, including the FMEA.

[15] Used in accordance with the applicable provisions of 29 CFR 1915 Subpart G—Gear and Equipment for Rigging and Material Handling.

I. Operational Procedural Document (Lift Plan)

NNS would have to:

1. Develop and maintain written procedures that specify the requirements for an operation specified under Condition E.1.b above.

2. Revise the written detailed job-hazard analysis, rigging-lifting-plan drawing(s), and the operational-procedures documents (*e.g.,* operations and maintenance instruction, technical operating procedure, work authorization document, FMEA) to specify any additional requirements identified by the job-hazard analysis.

3. Review any revisions made under Condition I.2 above with essential employees and make these revisions available on-site during an operation specified by Condition E.1.b above for inspection by affected employees, employee representatives, or OSHA personnel.

J. New or Unforeseen Work Activity

During an operation under Condition E.1.b above, if a new or unforeseen work activity or circumstance not covered by the original operational-procedural documents (*e.g.,* job-hazard analysis, rigging-lifting-plan drawing(s), operations and maintenance instruction, technical operating procedure, work authorization document, FMEA) arises, then NNS would have to:

1. Immediately stop the lift and lower the modular-ship section to the ground or other supporting structure;

2. Before continuing the operation, obtain approval in writing from the most senior manager at the site for crane operation and the health and safety department to revise the operations; and

3. Before repeating the operation on a subsequent occasion, prepare revised operational-procedures documents (*e.g.,* job-hazard analysis, rigging-lifting-plan drawing(s), operations and maintenance instruction, technical operating procedure, work authorization document, and FMEA) and obtain the approvals required of these documents.

K. Operational Requirements

1. A Registered Professional Engineer would have to develop and approve inspection, testing, and maintenance procedures, and competent persons would have to perform the procedures and resolve noted discrepancies.

2. An independent third-party such as an accredited agency under OSHA's Gear Certification program (29 CFR 1919) would have to inspect all cranes and rigging equipment not more than one year before the modular-ship section lift being performed, and NNS would have to maintain the inspection results, and make them available to OSHA upon request.

3. The engineers who design the modular-ship section subject to the operation specified under Condition E.1.b above would have to design or approve the pad-eye (lifting-lugs) connection points on the section, and specify the size (length and diameter) of wire-rope slings that would lift, move, and handle the section.

4. Before using lifting pad-eyes and other welded lifting connection points in the operation, NNS would have to perform non-destructive tests on these pad-eyes and connections according to nationally recognized non-destructive testing methods.[16]

5. NNS would have to:

(a) Document the design specifications pertinent to the operation on engineering drawings;

(b) Ensure that these drawing accompany the modular-ship section during an operation specified under Condition E.1.b above; and

(c) Make the drawings available to the crane foreman/supervisor.

L. Pre-Lift Inspections and Test Lift[17]

1. Before lifting the modular-ship section involved in an operation specified under Condition E.1.b above, the components of the crane and rigging equipment involved in lifting the load would have to undergo a visual inspection (without major disassembly, and documented with a written checklist).

2. NNS would have to resolve any discrepancies identified in this visual inspection before initiating an operation.

3. Before lifting modular-ship sections for assembly with the ship, a qualified person(s) would have to:

(a) Perform an inspection to identify and remove interferences to proper mating; and

(b) Use a written checklist to document the inspection, including the removal of litter, tools, and any other unnecessary or unsecured equipment or items.

4. Before initiating an operation specified under Condition E.1.b above, NNS would have to:

(a) Conduct a test lift that consists of lifting the modular-ship section one to three feet above the lift staging area for five minutes; and

(b) Ensure that all safety devices identified in the modular-ship section lift plan are operational during the test lift.

M. Crane Operator

1. NNS would ensure that the crane operator who meets the requirements of 29 CFR 1926.1427 and 1926.1430 remains at the crane controls at all times during an operation specified under Condition E.1.b above.

2. Unless specifically authorized and required by the lift plan, the operator would:

(a) Not initiate movement of the suspended modular-ship section while an employee(s) is under, in, or on a modular-ship section, or between a swinging load and a fixed object,

(b) Engage all safety devices such as brakes, dogs, or stops in accordance with the lifting plan when an employee(s) is under, in, or on a modular-ship section, or between a swinging load and a fixed object.

N. Safety-Controlled Access Areas

NNS would have to:

1. Establish safety-controlled access areas for all operations specified by Condition E.1.b above.

2. Ensure that all non-essential personnel remain outside the safety-controlled access areas.

Note: When engaged in an operation specified under Condition E.1.b above, if engineering calculations show that a failure of the crane or rigging during the lifting process could result in dislodging the ship from its supporting blocks (*e.g.,* keel blocks, bilge blocks), then all personnel, other than essential employees necessary for aligning and mating the modular-ship section, must vacate the ship during the operation and remain outside the safety-controlled access area. Example: When lifting a superstructure onto the main deck of a vessel under construction, dropping the load between the dry dock and ship could knock the ship off of the supporting blocks; therefore, all workers other than essential employees required to align and mate the modular-ship section to the ship must vacate the vessel and remain outside the safety-controlled access area during the operation.

O. Working Under, In, or On Suspended Modular-Ship Section, or Working Between a Swinging Modular-Ship Section and a Fixed Object

1. NNS's essential employees may be under, in, or on a suspended modular-ship section, or between a swinging modular-ship section and a fixed object, only while ensuring the proper alignment and mating of modular-ship sections. Examples of work activities

[16] See footnote 7.

[17] NNS must perform the pre-lift inspections specified below in addition to the inspections required by §§ 1910.179(j), .180(d), and 1915.111, which apply to cranes in maritime facilities (see 1910.5). The pre-lift inspection and test is in addition to the inspections and/or testing required by other safety procedures or daily operator checks specified under these conditions.

include, but are not limited to: adjusting chain falls, confirming clearances between hull structures and outfitting systems, identifying and removing interferences, and aligning and mating the section to a ship.

2. Only essential employees authorized by the most senior manager at the site for crane operations (*e.g.,* rigging foreman or supervisor) may be under, in, or on a suspended modular-ship section, or between a swinging modular-ship section and a fixed object.

P. Training

1. NNS would have to develop and implement a worker training program to instruct affected employees in the:

(a) Hazards associated with performing work under, in, or on suspended modular-ship section, or between a swinging modular-ship section and a fixed object; and

(b) The controls mandated to protect affected employees from these hazards.

2. NNS would have to train and instruct the crane foreman/supervisor to strictly adhere to the lift plan and the rigging specifications on the approved drawings.

3. NNS would have to develop and implement a refresher training program, conducted periodically and as necessary, for all employees working under, in, or on suspended modular-ship section, or between a swinging modular-ship section and a fixed object. At a minimum, the refresher training would:

(a) Consist of a lift briefing;

(b) Review each employee's responsibilities; and

(c) Take place before initiating the operation.

4. NNS would have to document all training provided under the permanent variance, and maintain training records as specified below under Condition U.2.a.

Q. Briefing

Prior to conducting an operation in which its employees work under, in, or on suspended modular-ship section, or between a swinging modular-ship section and a fixed object, NNS would have to:

1. Hold the briefing with all affected employees having a direct or supporting role in the operation (including workers and/or contractors performing tasks such as crane operator, signal person, essential employees, supervisors), to review the operational procedures involved in the operation, including procedures for entering and leaving the safety-controlled access area;

2. Use the written job-hazard analysis and rigging-lifting-plan drawing(s) during the briefing to supplement the information;

3. Cover all safety considerations;

4. Ensure that the employees understand the information provided at the briefing; and

5. Document the briefing using a signed roster of attendees, and maintain the roster as specified at Condition U.2.a.

R. Continuous Communication

NNS would have to:

1. Maintain communications (voice, radio, hard wired, or visual) between the crane/hoist operator(s), signal person(s), and employees working under, in, or on the suspended modular-ship section, or between a swinging modular-ship section and a fixed object, at all times;

2. Upon losing communications, stop the operation immediately, inform employees of the problem, ensure that the employees exit the safety-controlled access area, and that the modular-ship section is in a safe condition (*e.g.,* prevented from inadvertent movement or shifting while suspended or returned to the lift staging area if restoring communications takes longer than the load can remain safely suspended as determined in Condition E.2.b above); and

3. Commence the operation only after restoring communications and informing the affected employees about what action NNS is taking to avoid a reoccurrence.

S. Continuous Visual Observation

The most senior manager at the site for crane operations or designee (*e.g.,* supervisor controlling the lift) must have continuous sight of and be in constant visual communication with, any essential employees working under, in, or on a suspended modular-ship section, or between a swinging modular-ship section and a fixed object.

T. Post-Lift Review and Incident Investigations

1. Post-lift review. NNS would have to conduct and document a post-lift review for each operation involving a suspended modular-ship section, including the identification of any incident that occurred during the operation.

2. Lift-incident investigation. NNS would have to investigate each lift incident. In doing so, NNS would have to:

(a) Initiate the investigation within 8 hours of the lift incident or 8 hours after becoming aware of the incident;

(b) Have a competent person(s) with expertise in the hazards associated with the operations involved in the incident conduct the investigation;

(c) Have the investigator(s) prepare a written report at the conclusion of the investigation which includes, at a minimum, the date of the incident, the date the investigation began, the date of the report, the location of the incident, the equipment or processes involved, a description of the incident, the root cause, the contributing factors, and any corrective actions resulting from the investigation (the completed OSHA 301 Incident Report form may be used for this purpose); [18]

(d) Provide a copy of the report to OSHA's Norfolk Area Office and OTPCA at OSHA's National Office within 15 calendar days of the incident or 15 calendar days after becoming aware of the incident;

(e) Within 15 calendar days of completing the incident report, address the findings of the report and implement corrective actions;

(f) Document in writing the corrective actions taken;

(g) Review the findings of the report and corrective actions taken with all affected workers; and

(h) Provide certification to OSHA's Norfolk Area Office and OTPCA at OSHA's National Office within 15 calendar days of completing the incident report, that the employer informed affected workers of the incident and the results of the incident investigation (including the root cause determination and preventive and corrective actions identified and implemented).

U. Records

1. By the 15th calendar day of each new quarter, NNS would have to prepare a list of planned modular-ship section lifts to be performed during the upcoming quarter (including the cranes/hoists used, the date and time of the operation, associated hazard analysis completed, and the calculated weight of the lift), and update the list when significant changes occur. NNS would have to:

(a) Make this document available for inspection by affected employees, employee representatives, and OSHA upon request; and

(b) By January 15 of each year, NNS would have to provide to the Norfolk Area Office and OTPCA, a copy of the list of approved suspended-load operations completed the previous year.

2. NNS would have to:

(a) Retain all records required by the permanent variance for five years from the time it generates each such record

[18] See footnote 10.

(except when applicable regulations define a longer records-retention period); and

(b) Make all records and related documents available for inspection by affected employees, employee representatives, and OSHA upon request.

V. Notice to OSHA

NNS would have to:

1. Inform OTPCA as soon as it has knowledge that it will:

(a) Cease to do business; or

(b) Transfer the activities covered by this permanent variance to a successor company.

2. Submit to the Norfolk Area Office and OTPCA, a copy of any incident-investigation report and associated corrective-action plan within 15 working days of the incident.

3. Submit to OTPCA annually, a written certification indicating whether the conditions of the permanent variance are effective and remain relevant and necessary, and any recommendations for modifying these conditions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to Section 29 U.S.C. 655(6)(d), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1905.11.

Signed at Washington, DC, on July 23, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015–18468 Filed 7–28–15; 8:45 am]

BILLING CODE 4510–26–P

LIBRARY OF CONGRESS

United States Copyright Office

[Docket No. 2015–3]

Extension of Comment Period; Mass Digitization Pilot Program; Request for Comments

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

ACTION: Extension of comment period.

SUMMARY: The U.S. Copyright Office is extending the deadline for public comments that address topics listed in the Office's June 9, 2015 Notice of Inquiry regarding a mass digitization ''pilot program'' for certain copyrighted works.

DATES: Comments are now due no later than 5:00 p.m. EDT on October 9, 2015.

ADDRESSES: All comments should be submitted electronically. To submit comments, please visit *http://copyright.gov/policy/massdigitization.* The Web site interface requires submitters to complete a form specifying name and organization, as applicable, and to upload comments as an attachment via a browser button. To meet accessibility standards, commenting parties must upload comments in a single file not to exceed six megabytes (''MB'') in one of the following formats: A Portable Document File (''PDF'') format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (''RTF''); or ASCII text file format (not a scanned document). The form and face of the comments must include both the name of the submitter and organization. The Office will post all comments publicly on the Office's Web site exactly as they are received, along with names and organizations. If electronic submission of comments is not feasible, please contact the Office at 202–707–1027 for special instructions.

FOR FURTHER INFORMATION CONTACT: Kevin Amer, Senior Counsel for Policy and International Affairs, by telephone at 202–707–1027 or by email at *kamer@loc.gov.*

SUPPLEMENTARY INFORMATION: On June 4, 2015, the Copyright Office issued a report entitled *Orphan Works and Mass Digitization,* in which it recommended that Congress consider the implementation of a legal framework known as extended collective licensing to facilitate certain mass digitization activities.[1] The Office recommended that such legislation initially take the form of a limited ''pilot program'' based on the general parameters described in the Office's report and developed through additional public outreach and discussion. On June 9, 2015, the Office issued a Notice of Inquiry inviting public comment on several issues regarding the practical operation of such a system.[2] To provide sufficient time for commenters to respond, the Office is extending the time for filing comments from August 10, 2015 to October 9, 2015.

[1] U.S. Copyright Office, Orphan Works and Mass Digitization: A Report of the Register of Copyrights (2015), *available at http://copyright.gov/orphan/reports/orphan-works2015.pdf.*

[2] Mass Digitization Pilot Program; Request for Comments, 80 FR 32614 (June 9, 2015).

Dated: July 23, 2015.

Karyn A. Temple Claggett,

Associate Register of Copyrights and Director of Policy and International Affairs.

[FR Doc. 2015–18473 Filed 7–28–15; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that one meeting of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference.

DATES: All meetings are Eastern time and ending times are approximate:

Arts Education (review of applications): This meeting will be closed.

Date and time: August 19, 2015; 1:30 p.m. to 3:30 p.m.

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *plowitzk@arts.gov,* or call 202/682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

Dated: July 24, 2015.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2015–18583 Filed 7–28–15; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 80 FR 18443, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain*.

Comments: Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov*. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton at (703) 292–7556 or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: ''Research Performance Progress Report.''

OMB Approval Number: 3145–0221.

Type of Request: Intent to seek approval to extend an information collection for three years.

Use of the Information

NSF developed the RPPR as a new service within Research.gov. This service replaced NSF's annual and interim project reporting capabilities which resided in the NSF FastLane System.

Information regarding NSF's implementation of the Research Performance Progress Report (RPPR) may be found at the following Web site: *http://www.nsf.gov/bfa/dias/policy/rppr/index.jsp*

Burden on the Public: The Foundation estimates that an average of 5 hours is expended for each report submitted. An estimated 24,000 reports are expected during the course of one year for a total of 120,000 public burden hours annually.

Dated: July 24, 2015.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2015–18563 Filed 7–28–15; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0027]

Information Collection: NRC Form 7, Application for NRC Export/Import License, Amendment, Renewal or Consent Request(s)

AGENCY: United States (U.S.) Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled ''NRC Form 7, Application for NRC Export/Import License, Amendment, Renewal or Consent Request(s).''

DATES: Submit comments by August 28, 2015.

ADDRESSES: Submit comments directly to the OMB reviewer at: Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150–0027), NEOB–10202, Office of Management and Budget, Washington, DC, 20503; telephone: 202–395–7315, email: *vladik_dorjets@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Tremaine Donnell, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID: NRC–2015–0027 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID: NRC–2015–0027.

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.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML15203B046 (Form 7).

- The supporting statement is available in ADAMS under Accession No. ML15153A003.
- *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.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, Tremaine Donnell,

Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''NRC Form 7, Application for NRC Export/Import License, Amendment, Renewal or Consent Request(s).'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on March 17, 2015, 80 FR 13901.

1. *The title of the information collection:* NRC Form 7, Application for NRC Export/Import License, Amendment, Renewal or Consent Request(s).

2. *OMB approval number:* 3150–0027.

3. *Type of submission:* Extension.

4. *The form number if applicable:* NRC Form 7.

5. *How often the collection is required or requested:* On occasion.

6. Who will be required or asked to respond: Any person in the U.S. who wishes to export or import (a) nuclear material and equipment subject to the requirements of a specific license; (b) amend a license; (c) renew a license; (d) obtain consent to export Category 1 quantities of materials listed in Appendix P to 10 CFR part 110; or (5) request an exemption from a licensing requirement under Part 110.

7. The estimated number of annual responses: 105.

8. The estimated number of annual respondents: 105.

9. An estimate of the total number of hours needed annually to comply with the information collection requirement or request: 252.

10. *Abstract:* Persons in the U.S. wishing to export or import nuclear material or equipment, who are required to obtain a specific license, amendment, license renewal, obtain consent to export Category 1 quantities of byproduct material listed in Appendix P to 10 CFR part 110 or request an exemption from a licensing requirement under Part 110. The NRC Form 7 application will be reviewed by the NRC and by the Executive Branch, and if applicable statutory, regulatory, and policy considerations are satisfied, the NRC will issue an export, import, amendment or renewal license, or grant an exemption.

Dated at Rockville, Maryland, this 22nd day of July 2015.

For the Nuclear Regulatory Commission.

Tremaine U. Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2015–18476 Filed 7–28–15; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75449; File No. SR–NYSEARCA–2015–55]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services

July 14, 2015.

Correction

In notice document 2015–17660 beginning on page 42860 in the issue of Monday, July 20, 2015, make the following correction:

On page 42862, in the first column, in the 30th line, ''August 7, 2015'' should read ''August 10, 2015''.

[FR Doc. C1–2015–17660 Filed 7–28–15; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75514; File No. SR–NASDAQ–2015–084]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify NASDAQ Rule 7014(g) Concerning Rebates Available Under the NBBO Program

July 23, 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 July 16, 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend NASDAQ Rule 7014(g) concerning rebates available under the NBBO Program. The Exchange will implement the new rebate on July 17, 2015.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to add a new $0.0004 per share executed credit in securities listed on NYSE, which would be available to any member that provides shares of liquidity in all securities through one or more of its Nasdaq Market Center MPIDs (''MPIDs'') that represent 0.50% or more of Consolidated Volume [3] during the month. The NBBO Program provides a per share executed rebate [4] with respect to all other displayed orders (other than Designated Retail Orders, as defined in NASDAQ Rule 7018) in securities priced at $1 or more per share that provide liquidity and establish the NBBO. Currently, NASDAQ offers a $0.0002 per share executed credit to a member that either: (1) Executes shares of liquidity provided in all securities through one or more of its MPIDs that represents 0.475% or more of Consolidated Volume during the month; or (2) add [sic] NOM Market Maker liquidity, as defined in Chapter XV, Section 2 of the Nasdaq Options Market rules, in Penny Pilot Options and/or Non-Penny Pilot Options above 0.90% of total industry customer equity and ETF option ADV contracts per day in a month. Thus, the NBBO program provides an incentive to members to improve the quality of the market by rewarding members that provide significant market-improving order flow with a credit.

The proposed new rebate, which is provided in lieu of the current rebate, is designed to further improve the market by providing members with a higher credit as incentive to provide a greater level of Consolidated Volume to NASDAQ and to quote aggressively in Tape A securities. In this regard, the proposed new credit will apply to all other displayed orders (other than Designated Retail Orders, as defined in NASDAQ Rule 7018) in securities listed on NYSE (''Tape A'') priced at $1 or more per share that provide liquidity and establish the NBBO.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change to amend Rule 7014(g) is reasonable because it provides an opportunity for members that qualify to receive a rebate of $0.0004 per share executed for all other displayed orders (other than Designated Retail Orders, as defined in Rule 7018) in Tape A securities priced at $1 or more per share that provide liquidity and establish the NBBO.[7] Thus the rebate provides incentive to members to provide aggressively priced orders in Tape A securities that improve the market by setting the NBBO. Requiring a higher level of Consolidated Volume than the lower $0.0002 per share executed tier is consistent with incentivizing member to provide greater market improving activity in the form of Consolidated Volume in return for eligibility for a higher credit. The Exchange believes that it is reasonable to limit the higher credit to Tape A securities because it desires to improve the market on NASDAQ in Tape A securities in terms of setting the NBBO, which is currently not as robust as price setting in non-Tape A securities.

NASDAQ believes the proposed change is equitable and not unfairly discriminatory because the $0.0004 per share executed rebate under the NBBO Program is available to all members on an equal basis and provides a rebate for activity that improves the Exchange's market quality through increased activity and by encouraging the setting of the NBBO. In this regard, the NBBO Program encourages higher levels of liquidity provision into the price discovery process and is consistent with the overall goals of enhancing market quality. Also, the Exchange believes that the qualification requirement for the new tier is equitable and not unfairly discriminatory because it represents an increased yet attainable level for members to achieve and to qualify for this higher rebate. In addition, the Exchange notes that the new eligibility standard for the tier, which requires a member to execute shares of liquidity provided in all securities through one or more of its MPIDs that represents 0.50% or more of Consolidated Volume during the month, represents a lower Consolidated Volume requirement than the QMM Program, which requires at least 0.70% of Consolidated Volume to qualify under the lowest credit tier.[8] The Exchange believes the proposed qualification standard is equitable and not unfairly discriminatory because the NBBO Program rebates do not apply to all shares of liquidity provided, and thus the Consolidated Volume threshold is set lower.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule changes [sic] will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[9] NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their

[3] Consolidated Volume is the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Rusell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity. *See* Rule 7018. For purposes of the proposed tier, the Exchange will calculate Consolidated Volume during the first month that it is implemented based on only the day during that month that the rebate is available.

[4] The rebate is provided in addition to any rebate or credit payable under NASDAQ Rule 7018(a) and the Investor Support Program (''ISP'') and Qualified Market Maker (''QMM'') Program under NASDAQ Rule 7014.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4) and (5).

[7] This is similar to other programs originating from BATS Global Markets 2011 filing. See Securities Exchange Act Release No. 73967 (January 3, 2011), 80 FR 594 (January 7, 2011) (SR–BATS–2010–038.

[8] See Rule 7014(e).

[9] U.S.C. 78f(b)(8)

order routing practices, NASDAQ believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, NASDAQ is proposing to enhance the NBBO Program with an additional and higher rebate opportunity in Tape A securities in return for market improving participation. Consequently, the proposed changes do not impose a burden on competition because the proposed rebate, and incentive programs generally, are reflective of the need for exchanges to offer financial incentives to attract order flow and to let such financial incentives evolve in response to competition. Accordingly, while the Exchange does not believe that the proposed change will result in any burden on competition, if the change proposed herein are unattractive to market participants it is likely that NASDAQ will lose market share as a result.

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.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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–2015–084 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2015–084. 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 o File Number SR–NASDAQ–2015–084, and should be submitted on or before August 19, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–18539 Filed 7–28–15; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75504; File No. SR–CTA/CQ–2015–01]

Consolidated Tape Association; Order Approving the Twenty Second Substantive Amendment to the Second Restatement of the CTA Plan and Sixteenth Substantive Amendment to the Restated CQ Plan

July 22, 2015.

I. Introduction

On April 27, 2015, the Consolidated Tape Association (''CTA'') Plan and Consolidated Quotation (''CQ'') Plan participants (collectively the ''Participants'') [1] filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 608 thereunder,[3] a proposal to amend the Second Restatement of the CTA Plan and Restated CQ Plan (collectively, the ''Plans'').[4]The proposals represent the 22nd Substantive Amendment to the CTA Plan and 16th Substantive Amendment to the CQ Plan (collectively ''the Amendments''), and reflect changes unanimously adopted by the Participants. The Amendments would require the Participants to include timestamps in the trade-report and bid-and-offer information that they report to the Plans' processor. The proposed Amendments were published for comment in the **Federal Register** on

[1] The Participants are: BATS Exchange, Inc. (''BATS''), BATS–Y Exchange, Inc. (''BATS–Y''), Chicago Board Options Exchange, Inc. (''CBOE''), EDGA Exchange, Inc. (''EDGA''), EDGX Exchange, Inc. (''EDGX''), Financial Industry Regulatory Authority, Inc. (''FINRA''), International Securities Exchange, LLC (''ISE''), NASDAQ OMX BX, Inc. (''Nasdaq BX''), NASDAQ OMX PHLX, Inc. (''Nasdaq PSX''), Nasdaq Stock Market LLC (''Nasdaq''), National Stock Exchange (''NSX''), New York Stock Exchange LLC (''NYSE''), NYSE MKT LLC (''NYSE MKT''), and NYSE Arca, Inc. (''NYSE Arca'').

[2] 15 U.S.C. 78k–1.

[3] 17 CFR 242.608.

[4] *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (May 20, 1974) (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR 34851 (August 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (January 22, 1980), 45 FR 6521 (January 28, 1980) (permanently authorizing the CQ Plan). The most recent restatement of both Plans was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a ''transaction reporting plan'' under Rule 601 under the Act, 17 CFR 242.601, and a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for listed securities, is a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608.

May 14, 2015.[5] The Commission received one comment letter in response to the Notice.[6] On July 17, 2015, the Participants to the Plan responded to the comment letter.[7] This order approves the proposed Amendments to the Plans.

II. Description of the Proposal

Currently, Section VI(c) of the CTA Plan requires transaction reports that the Participants submit to the Processor to include the stock symbol, the number of shares, and the price of the transaction. Section VI(a) of the CQ Plan provides that each bid and offer that a Participant reports to the Processor under the CQ Plan must include the bid or offer's quotation size or aggregate quotation size.

The Amendments propose to require Participants to include in reports to the Processor the time of the trade or the quotation. In the case of a Participant that is a national securities exchange, the time of the transaction or quotation is to be reported in microseconds as identified in the Participant's matching engine publication timestamp. In the case of FINRA, the time of a transaction will be the time of execution that a FINRA member reports to a FINRA trade reporting facility and the time of a bid or offer will be the quotation publication timestamp that the bidding or offering member reports to the FINRA quotation facility, all in accordance with FINRA rules.[8] In addition, if a FINRA trade reporting facility or quotation facility provides a proprietary feed of trades or quotes reported by the facility to the Processor, then the FINRA facility must also furnish the Processor with the time of the transmission as published on the facility's proprietary feed.

III. Summary of Comment Letter and Participants' Response

The Commission received one comment letter on the proposed Amendments and a response to that comment letter from the Participants. The commenter supports the proposed Amendments, but suggested clarifications to certain aspects of the Amendments.

First, in order to ensure that sourcing and reporting of timestamp data would be consistent across exchanges, the commenter recommended that the Amendments provide a clearer definition of ''matching engine publication timestamp.'' [9] The commenter stated that the term ''matching engine publication timestamp'' is not defined in the Plans or in the proposal, and is not a commonly understood term.[10] The commenter suggested that the transaction time to be reported to the Securities Information Processors (''SIPs'') should be the timestamp applied when the trade is executed in the exchange's matching engine, and the quotation time should be the timestamp applied when the quotation is added to the exchange's order book.[11] The commenter further stated that the timestamp reported by the exchange should reflect the actual underlying matching engine event, and not any internal processing that may occur at the exchange before submission to the SIPs.[12] In response to the comment that the ''matching engine publication timestamps'' be more clearly defined, the Participants stated that the purpose of the Amendments is to respond to the Commission's request to provide information allowing market participants to compare proprietary data feed latency to consolidated data feed latency.[13] The Participants noted that they devoted considerable effort and resources to expedite this timestamp initiative at Chair White's request. The Participants use the proposed term of ''matching engine publication timestamps'' to connote the timestamp published by each Participant's matching engine. The Participants believe that the proposal will provide transparency that will enable market participants to compare the latency between the proprietary data feed and the consolidated data feed, which the Participants believe the industry will find most useful.[14]

Next, the commenter stated that the proposed Amendments should provide clarity on the timestamp information that FINRA would be required to provide to the SIPs.[15] As proposed, any FINRA proprietary data feed of trades or quotes reported by the FINRA trade reporting facility (''TRF'') to the SIPs would be required to furnish the SIPs with the time of the transmission as published on the proprietary feeds. The commenter suggested that the Amendments should require the FINRA TRF or quotation facility to provide to the SIPs the timestamp when the trade or quote was processed by the FINRA facility regardless of whether the facility offers a proprietary feed.[16] In response, the Participants stated that additional timestamps for non-proprietary FINRA feeds would not provide meaningful information to market participants because they would not enable a market participant to compare the time that a Participant transmits information via a proprietary feed to the time the SIP transmits the same information.[17] Additionally, the Participants stated that FINRA TRFs or quotation facilities should not include intermediate processing timestamps because such additional timestamps go beyond the scope of the Amendments' objectives and that requiring these additions would be costly and time consuming.[18] The Participants noted that additional timestamps would delay the rollout of the timestamp initiative considerably, impose a significant cost on the industry, require specialized equipment, add significant bandwidth requirements, and result in an array of timestamps that would likely lead to confusion within the industry.[19]

Additionally, the commenter believes that the SIPs should be responsible for market-wide determinations of whether a trade is reported out of sequence and not last sale eligible.[20] The commenter suggested that the SIPs should make market-wide determinations if transactions are out of sequence by comparing the incoming transaction's execution time against the execution time of the most recent transaction that was last sale eligible and published. The Participants stated that the Participants have historically determined last sale elgibility and out of sequence reporting pursuant to their own rules [21] and believe that such determinations should continue to be made by the Participants consistent with their respective rules.[22]

[5] *See* Securities Exchange Act Release No. 74909 (May 8, 2015), 80 FR 27764 (''Notice'').

[6] *See* Letter from Theodore R. Lazo, Managing Director and Associate Director, SIFMA, to Brent J. Fields, Secretary, Commission, dated June 5, 2015 (''SIFMA Letter'') commenting on this proposal as well as the parallel amendment to the UTP Plan.

[7] *See* Letter from Emily Kasparov, Chairman, CTA Plan Operating Committee to Brent J. Fields, Secretary, Commission, dated July 17, 2015 (''Response Letter'').

[8] If a FINRA member reports to it in seconds or milliseconds, FINRA must convert the times to microseconds and must furnish the Processor the reports in microseconds.

[9] *See* SIFMA Letter at 3.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *See* Response Letter at 2–3.

[14] *See* Response Letter 3–4.

[15] *See* SIFMA Letter at 1, 3.

[16] *See* SIFMA Letter at 3.

[17] *See* Response Letter at 3.

[18] *See* Response Letter at 3–4.

[19] *Id.*

[20] *See* SIFMA Letter at 3.

[21] *See* Response Letter at 4.

[22] The commenter also called for change in the governance structure of NMS plans which it states is ineffective and opaque, suggesting that governing bodies of NMS plans should include representatives from broker-dealers, asset managers, and the public, with each of these groups having voting power on the plans' operating committees. *See* SIFMA Letter at 4. The Participants noted that the Plans held numerous meetings to fashion the timestamp tools

Continued

In addition, the Participants noted that this suggestion is outside the scope of the Amendments.[23]

IV. Discussion and Commission Findings

After careful review and consideration of the proposed Amendments, the comment letter, and the Response Letter, the Commission finds that the proposed Amendments to the Plans are consistent with the requirements of the Act and the rules and regulations thereunder,[24] and, in particular, Section 11A(a)(1) of the Act[25] and Rule 608 thereunder[26] in that they are necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system. While supporting the timestamp Amendments, the commenter raised three issues regarding the proposal—the need to define the term ''matching engine publication timestamp'' more clearly, the need for additional timestamps, and a preference that the SIPs determine whether a trade is reported out of sequence and not last sale eligible. The commenter also believes that there is a need to reform SIP governance. The Participants responded to the commenter's concerns, as discussed above, indicating why they believe that the proposal adequately addresses the issue it was meant to address—providing additional information so that interested persons will be able to measure the latency between the consolidated data feeds and industry proprietary data feeds. The Participants stated that including additional timestamps would delay implementation of the proposal, add costs, and could be confusing. The Participants also indicated that they continue to believe they should decide, consistent with their rules, whether trades are reported out of sequence and not last sale eligible. The Commission agrees with the Participants' response to the issues raised by the comment letter.

The proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[27] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations and transactions in securities. These goals are furthered by the proposed changes requiring that Participants add timestamps to their trade and quotation reports as this will add transparency regarding the latencies between the CTA and CQ Plans' consolidated data feeds and industry proprietary feeds. Users of the consolidated feeds will be better able to monitor the latency of those feeds and to assess whether such feeds meet their trading and other requirements.

V. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,[28] and the rules thereunder, that the proposed Amendments to the CTA Plan and CQ Plan (File No. SR–CTA/CQ–2015–01) are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–18392 Filed 7–28–15; 8:45 am]

BILLING CODE 8011–01–P

including meetings among the Participants and Plan subcommittees, Commission staff, and also involved consultation with industry representatives from the Plan's Advisory Committees. *See* Response Letter at 2.

[23] *See* Response Letter at 4.

[24] The Commission has considered the proposed amendment's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78k–1(a)(1).

[26] 17 CFR 240.608.

[27] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[28] 15 U.S.C. 78k–1.

[29] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75505; File No. S7–24–89]

Joint Industry Plan; Order Approving Amendment No. 35 to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis Submitted by the BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

July 22, 2015.

I. Introduction

On April 27, 2015, the operating committee (''Operating Committee'' or ''Committee'')[1] of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''Nasdaq/UTP Plan'' or ''Plan'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 608 thereunder,[3] a proposal to amend the Nasdaq/UTP Plan.[4] The

[1] The Plan Participants (collectively the ''Participants'') are the: BATS Exchange, Inc.; BATS Y-Exchange, Inc.; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; EDGA Exchange, Inc.; EDGX Exchange, Inc.; Financial Industry Regulatory Authority, Inc. (''FINRA''); International Securities Exchange LLC; NASDAQ OMX BX, Inc.; NASDAQ OMX PHLX LLC; Nasdaq Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE MKT LLC; and NYSE Arca, Inc.

[2] 15 U.S.C. 78k–1.

[3] 17 CFR 240.608.

[4] The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for each of its Participants. This consolidated information informs investors of the current quotation and recent trade prices of Nasdaq securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities. *See* Securities Exchange Act Release No. 55647 (April 19, 2007) 72 FR 20891 (April 26, 2007).

proposal represents the 35th Amendment to the Plan (the ''Amendment''), and reflects changes unanimously adopted by the Participants. The Amendment requires the Participants to include timestamps in the trade-report and bid-and-offer information that they report to the Plan's processor. The proposed Amendment was published for comment in the **Federal Register** on May 14, 2015.[5] The Commission received one comment letter in response to the Notice.[6] On July 17, 2015, the Participants to the Plan responded to the comment letter.[7] This order approves the proposed Amendment to the Plan.

II. Description of the Proposal

Currently, Section VIII of the UTP Plan (Transmission of Information to Processor by Participants) requires transaction reports that the Participants to submit to the Processor to include (1) the identification of the security, (2) the price bid and offered, together with size, (3) the FINRA Participant along with the FINRA Participant's market participant identification or Participant from which the quotation emanates, (4) identification of quotations that are not firm, and (5) through appropriate codes and messages, withdrawals and similar matters.

Section VIII also requires each Participant to promptly collect and transmit to the Processor trade reports executed in its market that include (1) identification of the security, (2) the number of shares in the transaction, (3) the price at which the shares were purchased or sold, (4) the buy/sell/cross indicator, (5) the market of execution, and (6) through appropriate codes and messages, late or out-of-sequence trades, corrections and similar matters.

The Amendment proposes to require Participants to include in quotation information and trade reports to the Processor the time of the trade or the quotation. In the case of a Participant that is a national securities exchange, the time of the transaction or quotation is to be reported in microseconds as identified in the Participant's matching engine publication timestamp. In the case of FINRA, the time of a transaction will be the time of execution that a FINRA member reports to a FINRA trade reporting facility and the time of a bid or offer will be the quotation publication timestamp that the bidding or offering member reports to the FINRA quotation facility, all in accordance with FINRA rules.[8] In addition, if a FINRA trade reporting facility or quotation facility provides a proprietary feed of trades or quotes reported by the facility to the Processor, then the FINRA facility must also furnish the Processor with the time of the transmission as published on the facility's proprietary feed.

III. Summary of Comment Letter and Participants' Response

The Commission received one comment letter on the proposed Amendment and a response to that comment letter from the Participants. The commenter supports the proposed Amendment, but suggested clarifications to certain aspects of the Amendment.

First, in order to ensure that sourcing and reporting of timestamp data would be consistent across exchanges, the commenter recommended that the Amendment provide a clearer definition of ''matching engine publication timestamp.''[9] The commenter stated that the term ''matching engine publication timestamp'' is not defined in the Plans or in the proposal, and is not a commonly understood term.[10] The commenter suggested that the transaction time to be reported to the Securities Information Processors (''SIPs'') should be the timestamp applied when the trade is executed in the exchange's matching engine, and the quotation time should be the timestamp applied when the quotation is added to the exchange's order book.[11] The commenter further stated that the timestamp reported by the exchange should reflect the actual underlying matching engine event, and not any internal processing that may occur at the exchange before submission to the SIPs.[12] In response to the comment that the ''matching engine publication timestamps'' be more clearly defined, the Participants stated that the purpose of the Amendment is to respond to the Commission's request to provide information allowing market participants to compare proprietary data feed latency to consolidated data feed latency.[13] The Participants noted that they devoted considerable effort and resources to expedite this timestamp initiative at Chair White's request. The Participants use the proposed term of ''matching engine publication timestamps'' to connote the timestamp published by each Participant's matching engine. The Participants believe that the proposal will provide transparency that will enable market participants to compare the latency between the proprietary data feed and the consolidated data feed, which the Participants believe the industry will find most useful.[14]

Next, the commenter stated that the proposed Amendment should provide clarity on the timestamp information that FINRA would be required to provide to the SIPs.[15] As proposed, any FINRA proprietary data feed of trades or quotes reported by the FINRA trade reporting facility (''TRF'') to the SIPs would be required to furnish the SIPs with the time of the transmission as published on the proprietary feeds. The commenter suggested that the Amendment should require the FINRA TRF or quotation facility to provide to the SIPs the timestamp when the trade or quote was processed by the FINRA facility regardless of whether the facility offers a proprietary feed.[16] In response, the Participants stated that additional timestamps for non-proprietary FINRA feeds would not provide meaningful information to market participants because they would not enable a market participant to compare the time that a Participant transmits information via a proprietary feed to the time the SIP transmits the same information.[17] Additionally, the Participants stated that FINRA TRFs or quotation facilities should not include intermediate processing timestamps because such additional timestamps go beyond the scope of the Amendment's objectives and that requiring these additions would be costly and time consuming.[18] The Participants noted that additional timestamps would delay the rollout of the timestamp initiative considerably, impose a significant cost on the industry, require specialized equipment, add significant bandwidth requirements, and result in an array of timestamps that would likely lead to confusion within the industry.[19]

[5] *See* Securities Exchange Act Release No. 74910 (May 8, 2015), 80 FR 27713 (''Notice'').

[6] *See* Letter from Theodore R. Lazo, Managing Director and Associate Director, SIFMA, to Brent J. Fields, Secretary, Commission, dated June 5, 2015 (''SIFMA Letter'') commenting on this proposal as well as the parallel amendment to the CTA and CQ Plans.

[7] *See* Letter from Emily Kasparov, Chairman, CTA Plan Operating Committee to Brent J. Fields, Secretary, Commission, dated July 17, 2015 (''Response Letter'').

[8] If a FINRA member reports to it in seconds or milliseconds, FINRA must convert the times to microseconds and must furnish the Processor the reports in microseconds.

[9] *See* SIFMA Letter at 3.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *See* Response Letter at 2–3.

[14] *See* Response Letter 3–4.

[15] *See* SIFMA Letter at 1, 3.

[16] *See* SIFMA Letter at 3.

[17] *See* Response Letter at 3.

[18] *See* Response Letter at 3–4.

[19] *Id.*

Additionally, the commenter believes that the SIPs should be responsible for market-wide determinations of whether a trade is reported out of sequence and not last sale eligible.[20] The commenter suggested that the SIPs should make market-wide determinations if transactions are out of sequence by comparing the incoming transaction's execution time against the execution time of the most recent transaction that was last sale eligible and published. The Participants stated that the Participants have historically determined last sale eligibility and out of sequence reporting pursuant to their own rules [21] and believe that such determinations should continue to be made by the Participants consistent with their respective rules.[22] In addition, the Participants noted that this suggestion is outside the scope of the Amendment.[23]

IV. Discussion and Commission Findings

After careful review and consideration of the proposed Amendment, the comment letter, and the Response Letter, the Commission finds that the proposed Amendment to the Plan is consistent with the requirements of the Act and the rules and regulations thereunder,[24] and, in particular, Section 11A(a)(1) of the Act [25] and Rule 608 thereunder [26] in that they are necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system. While supporting the timestamp Amendments, the commenter raised three issues regarding the proposal—the need to define the term ''matching engine publication timestamp'' more clearly, the need for additional timestamps, and a preference that the SIPs determine whether a trade is reported out of sequence and not last sale eligible. The commenter also believes that there is a need to reform SIP governance. The Participants responded to the commenter's concerns, as discussed above, indicating why they believe that the proposal adequately addresses the issue it was meant to address—providing additional information so that interested persons will be able to measure the latency between the consolidated data feeds and industry proprietary data feeds. The Participants stated that including additional timestamps would delay implementation of the proposal, add costs, and could be confusing. The Participants also indicated that they continue to believe they should decide, consistent with their rules, whether trades are reported out of sequence and not last sale eligible. The Commission agrees with the Participants' response to the issues raised by the comment letter.

The proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[27] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations and transactions in securities. These goals are furthered by the proposed changes requiring that Participants add timestamps to their trade and quotation reports as this will add transparency regarding the latencies between the Nasdaq/UTP Plan's consolidated data feeds and industry proprietary feeds. Users of the consolidated feeds will be better able to monitor the latency of those feeds and to assess whether such feeds meet their trading and other requirements.

V. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,[28] the rules thereunder, that the proposed Amendment to Nasdaq/UTP Plan (File No. S7–24–89) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Robert W. Errett,

Deputy Secretary.

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[20] *See* SIFMA Letter at 3.

[21] *See* Response Letter at 4.

[22] The commenter also called for change in the governance structure of NMS plans which it states is ineffective and opaque, suggesting that governing bodies of NMS plans should include representatives from broker-dealers, asset managers, and the public, with each of these groups having voting power on the plans' operating committees. *See* SIFMA Letter at 4. The Participants noted that the Plans held numerous meetings to fashion the timestamp tools including meetings among the Participants and Plan subcommittees, Commission staff, and also involved consultation with industry representatives from the Plan's Advisory Committees. *See* Response Letter at 2.

[23] *See* Response Letter at 4.

[24] The Commission has considered the proposed Amendment's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78k–1(a)(1).

[26] 17 CFR 240.608.

[27] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[28] 15 U.S.C. 78k–1.

[29] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75509; File No. SR–MIAX–2015–47]

Self-Regulatory Organizations: Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 612 Regarding the Reset on Quote Functionality Included in the MIAX Aggregate Risk Manager

July 23, 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 July 13, 2015, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 612 concerning the Reset on Quote functionality included in the MIAX Aggregate Risk Manager.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 612, Aggregate Risk Manager (''ARM'') to make optional and more specifically define the current ARM ''Reset on Quote'' functionality, as described below.

The MIAX System [3] maintains a counting program (''counting program'') for Market Makers [4] in their assigned option classes. Using the counting program, ARM protects Market Makers by limiting the number of contracts they execute in an option class on the Exchange within a specified time period that has been established by the Market Maker (a ''specified time period''). MIAX Market Makers establish a percentage of their quotations (the ''Allowable Engagement Percentage'') and the specified time period for each option class in which they are appointed.[5] When an execution against a Market Maker's Standard quote [6] or Day eQuote (as defined below) occurs, the System looks back over the specified time period to determine whether the execution is of sufficient size to trigger the Aggregate Risk Manager. The System activates the Aggregate Risk Manager when it has determined that a Market Maker has traded a number of contracts equal to or above their Allowable Engagement Percentage during the specified time period. The Aggregate Risk Manager then automatically cancels and removes the Market Maker's Standard quotes from the Exchange's disseminated quotation in all series of that particular option class until the Market Maker sends a notification to the System of the intent to reengage quoting and submits a new revised quotation in the affected class. Any eQuotes [7] other than Day eQuotes [8] present in the market are not cancelled by the Aggregate Risk Manager.

Currently, Exchange Rule 612(b)(1) states that, when a Market Maker revises his/her quotation on the buy side or sell side of an individual option, that side of the individual option will not be included in the Allowable Engagement Percentage and Net Offset calculations until it trades again.

Proposed Rule 612(b)(1)(i) would clarify the existing rule to more precisely define this functionality. Proposed sub-paragraph (b)(1)(i) would clarify that when a Market Maker revises his/her quotation on the buy side or sell side of an individual option, contracts executed on that side will not be included in the Allowable Engagement Percentage and Net Offset calculations. For ease of reference, the Exchange proposes to establish the name ''Reset on Quote'' to describe this functionality in the new sub-paragraph. The Exchange believes that this change more precisely and accurately describes the Reset on Quote functionality and should better serve to inform Members and investors of what happens to the counting program when a Standard quote replaces another Standard quote.[9] The proposed rule will specifically state that, in such a situation, the counting program is reset to zero (*i.e.,* the counting system will be reset and begin anew) on that side upon receipt of the revised quotation for the affected individual option until it trades again. The Exchange believes this proposed amendment more precisely describes the current functionality.

Additionally, the proposed rule would give Market Makers the ability to opt out of the Reset on Quote functionality, and to opt back in at any time following the Market Maker's determination to opt out. Under the proposed rule, a Market Maker may determine to disengage or re-engage the Reset on Quote functionality for an option class.[10] A Market Maker may disengage Reset on Quote by notifying the Exchange of its determination to disengage in a manner required by the Exchange and communicated to Members by Regulatory Circular. If a Market Maker determines to disengage the Reset on Quote functionality, the counting program will continue to count the number of contracts executed during the specified time period despite the submission by the Market Maker of a new Standard quote on that side of the market. If the Reset on Quote functionality is disengaged, the System will not reset the counting program to zero upon receipt of a revised quotation and instead will continue to add the number of contracts executed against the new quote to the number of contracts executed against any previous quotes on that side of the individual option during the specified time period. Absent notification to the Exchange to disengage Reset on Quote, the ARM counting system will, by default, continue to function as it does currently.

Once a Market Maker has determined to disengage Reset on Quote, it will not be re-engaged until the Market Maker determines to do so by notifying the Exchange of such a determination in a manner required by the Exchange and communicated to Members by Regulatory Circular. This non-automated notification requires the Exchange to re-engage the Reset on Quote functionality, as opposed to the method of re-engaging the standard ARM protections, where the Market Maker re-engages the ARM by sending a notification to the System of the intent to re-engage quoting and submits a new revised quotation in the affected class. The purpose of the non-automated method of re-engaging Reset on Quote is to give Market Makers the ability to reconsider and re-engage Reset on Quote during times of peak or unusual market activity, rather than an automated re-engagement. The Exchange believes that this non-automated contact will strengthen the efficiency of Reset on Quote by providing Market Makers with the ability to thoroughly assess current market conditions in setting risk management levels and controls.

The System will consider disengagement of Reset on Quote to be a persistent state; disengagement of the Reset on Quote functionality will remain in place indefinitely (*i.e.,* for an

[3] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[4] The term ''Market Maker'' refers to a ''Lead Market Maker,'' ''Primary Lead Market Maker'' and ''Registered Market Maker'' collectively. A Lead Market Maker is a Member registered with the Exchange for the purpose of making markets in securities traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of these Rules with respect to Lead Market Makers. A Primary Lead Market Maker is a Lead Market Maker appointed by the Exchange to act as the Primary Lead Market Maker for the purpose of making markets in securities traded on the Exchange. A Registered Market Maker is a Member registered with the Exchange for the purpose of making markets in securities traded on the Exchange, who is not a Lead Market Maker. *See* Exchange Rule 100.

[5] The Exchange's Board or designated committee appoints one Primary Lead Market Maker and other Market Makers to each options class traded on the Exchange. For a complete description of the Exchange's appointment process, *see* Exchange Rule 602.

[6] A Standard quote is a quote submitted by a Market Maker that cancels and replaces the Market Maker's previous Standard quote, if any. *See* Exchange Rule 517(a)(1).

[7] An eQuote is a quote with a specific time in force that does not automatically cancel and replace a previous Standard quote or eQuote. An eQuote can be cancelled by the Market Maker at any time, or can be replaced by another eQuote that contains specific instructions to cancel an existing eQuote. *See* Exchange Rule 517(a)(2).

[8] A Day eQuote is a quote submitted by a Market Maker that does not automatically cancel or replace the Market Maker's previous Standard quote or eQuote. Day eQuotes will expire at the close of trading each trading day. *See* Exchange Rule 517(a)(2)(i).

[9] eQuotes, including Day eQuotes, do not cancel or replace existing eQuotes. *See supra* notes 7 and 8.

[10] The terms ''class of options'' or ''option class'' mean all option contracts covering the same underlying security. *See* Exchange Rule 100.

entire trading session and across multiple trading sessions) until the Market Maker notifies the Exchange to re-engage it. A Market Maker may determine to disengage and re-engage Reset on Quote multiple times intra-day.

The purpose of the proposed rule change is to enable individual Market Makers to tailor their risk management by disengaging or re-engaging the ARM Reset on Quote functionality for an individual option class or for multiple classes as market conditions warrant, based on their own risk tolerance and quoting behavior. The proposed rule change would provide Market Makers with flexibility to choose to have ARM count contracts executed during the specified time period that result from all executions on that side of the market, regardless of the number, price and/or size of the quotes against which executions occur during the counting period. This flexibility means that Market Makers may still elect to have the Reset on Quote functionality engaged, and thus only count contracts executed against their most recently submitted quote for purposes of calculating the Allowable Engagement Percentage. This will provide greater customization of risk controls based on each individual Market Maker's risk thresholds.

The Exchange will announce the implementation date of the proposed rule change by Regulatory Circular to be published no later than 60 days following the operative date of the proposed rule. The implementation date will be no later than 60 days following the issuance of the Regulatory Circular.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(5) of the Act [12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that Members will benefit from the proposed rule change. Market Makers, who are obligated to submit continuous two-sided quotations in a certain number of series in their appointed option classes for a certain percentage of each trading session,[13] are vulnerable to the risk from unusual market conditions, volatility in specific option classes, and other market events that may cause them to receive multiple, extremely rapid automatic executions before they can adjust their quotations and overall risk exposure in the market. The Reset on Quote functionality is a valuable tool in assisting Market Makers in risk management; the ability of a Market Maker to determine if and when it is engaged or disengaged enables them to further tailor their risk management based on their expectation of market behavior and volatility or on actual real-time market conditions.

Without adequate risk management tools in place on the Exchange, the incentive for Exchange Market Makers to quote aggressively respecting both price and size could be diminished, and could result in a concomitant reduction in the depth and liquidity they provide to the market. Such a result may undermine the quality of the markets that would otherwise be available to customers and other market participants. Accordingly, the Exchange proposes to help Market Makers better manage their risk exposure by giving them the ability to opt out of the Reset on Quote functionality. This should encourage Market Makers to provide additional depth and liquidity to the Exchange's markets, thereby removing impediments to and perfecting the mechanisms of a free and open market and a national market system and, in general, protecting investors and the public interest.

In addition, the proposed rule change promotes just and equitable principles of trade by providing Exchange Market Makers with the ability to refine and tailor their participation in risk management mechanisms on the Exchange to give them confidence that protections are in place to reduce the risks associated with their Market Making obligations. Finally, the proposed rule change is designed to protect investors and the public interest by helping Market Makers prevent executions resulting from activity that exceeds their risk tolerance level under these rules as established by the Exchange.

The amendments to the existing Reset on Quote functionality in the proposed rule are intended to remove impediments to and perfect the mechanisms of a free and open market by adding precision and ease of reference to the Exchange's rules, thus promoting transparency and clarity for Market Makers seeking to determine their risk management settings.

The Exchange notes that the proposed rule change will not relieve Exchange Market Makers of their continuous quoting obligations under Exchange Rule 604 and under Reg NMS Rule 602.[14] All of a Market Maker's quotes in each option class will be considered firm until such time as the Allowable Engagement Percentage threshold has been equaled or crossed and the Market Maker's quotes are removed by the Aggregate Risk Manager in all series of that option class.[15]

With regard to the impact of this proposal on system capacity, the Exchange notes that it has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle any potential additional traffic associated with the proposed rule change. The Exchange believes that its members will not have a capacity issue as a result of this proposal.

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 proposed rule change will foster competition by providing Exchange Market Makers with the ability to enhance and specifically customize their use of the Exchange's risk management tools to use in submitting quotations with the best possible price and size in order to compete for executions and order flow. The Exchange further believes the proposed rule change will not impose any burden on intra-market competition because its use is voluntary and is available to all Exchange Market Makers and Market Maker organizations.

As to inter-market competition, the Exchange believes that the proposed rule change should promote competition because it is designed to protect Exchange Market Makers from unusual market conditions or events that may cause them to receive multiple, automatic executions before they can adjust their quotation exposure in the market.

For all the reasons stated, the Exchange does not believe that the proposed rule change will impose any

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] For a complete description of MIAX Market Maker quoting obligations, *see* Exchange Rule 604.

[14] 17 CFR 242.602.

[15] *See* Exchange Rule 612(c).

burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and believes the proposed change will in fact enhance competition.[16]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6)[18] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission 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–2015–47 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–2015–47. 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–2015–47, and should be submitted on or before August 19, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Robert W. Errett,

Deputy Secretary.

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[16] The Commission notes that, in the Form 19b-4, the Exchange states that the proposed rule change ''is based in part on the rules of another options exchange,'' Chicago Board Options Exchange, Inc. Rule 8.18, ''which gives Market Makers the ability to specify a maximum cumulative percentage, defined as the sum of the percentages of the original quoted size of each side of each series within a class that traded, that a Market Maker is willing to trade during a rolling time period after which their quotations in the affected class are removed .''

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75516; File No. SR–C2–2015–021]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Price Check Parameters

July 23, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 17, 2015, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 6.13 and 6.17 relating to price check parameters on the Exchange. The text of the proposed rule change is provided in Exhibit 5 and is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Rule 6.17, C2 does not automatically execute eligible orders that are marketable if (i) the width between the national best bid and offer (the ''NBBO'') is not within an acceptable price range (as established by the Exchange on a series by series basis for market orders and/or marketable limit orders within certain parameters and announced to Trading Permit Holders (''TPHs'') via Regulatory Circular) (the ''market width parameter''), or (ii) the execution would follow an initial partial execution on the Exchange and would be at a subsequent price that is not within an acceptable tick distance (''ATD'') from the initial execution (as determined by the Exchange on a series by series and premium basis for market order and/or marketable limit orders and announced to TPHs by Regulatory Circular) (the ''drill through parameter'').

The purpose of this proposed rule change is, first, to codify another price reasonability check within Rule 6.17. The reasonability check is currently in use but not expressly covered in the rules. Specifically, under this reasonability check, referred to as the ''limit order price parameter,'' the Exchange will not accept for execution eligible limit orders if (i) prior to the opening (including before a series is opened following a halt),[3] the order is to buy are at more than an acceptable tick distance above the Exchange's previous day's close or the order is to sell are at more than an acceptable tick distance below the Exchange's previous day's close (such ATD will be as determined by the Exchange on a series by series and premium basis and announced to TPHs by Regulatory Circular);[4] or, (ii) once a series has opened, the order is to buy are at more than an acceptable tick distance above the disseminated Exchange offer or the order to sell are at more than an acceptable tick distance below the disseminated Exchange bid (such ATD will be as determined by the Exchange on a series by series and premium basis and announced to TPHs by Regulatory Circular).[5] The Exchange will not apply pre-opening limit order price parameters to limit orders of Exchange Market-Makers or away Market-Makers, or to Intermarket Sweep Orders (''ISOs'') as such cannot be entered prior to the opening on the System.[6] Once a series has opened, limit order price parameters will be applied to ISOs in all classes in which the limit order price parameter is activated.[7] The Exchange may determine on a class by class basis and announce via Regulatory Circular whether to apply the parameters in (i) and/or (ii) above to immediate-or-cancel orders if doing so would be necessary or appropriate in furtherance of the interests of investors and the promotion of fair and orderly markets.[8]

For purposes of this limit order price parameter: An ''acceptable tick distance'' or ''ATD'' [9] is to be determined by the Exchange on a series by series and premium basis and shall be no less than five minimum increment

[3] This includes halts that may occur at any time after the opening of trading on a particular trading day. The Exchange notes that this is the manner in which the limit order price parameter functionality currently operates. The Exchange believes that this functionality provides an additional safeguard to consider the reasonableness of limit order pricing prior to a re-opening following a trading halt.

[4] This parameter for limit orders received prior to the opening (including before a series is opened following a halt) is not applicable to limit orders of Exchange Market-Makers and away Market-Makers. The Exchange believes that Market-Makers actively evaluate the pre-opening market and utilize their own risk management parameters when entering, maintaining and cancelling orders prior to the opening, minimizing the likelihood of a Market-Maker order resulting from an error from being entered and continuing to rest prior to the opening of trading. In that regard, while the Exchange believes that the application of its limit order price parameters serve to promote a fair and orderly market, the parameters are not a substitute for a broker-dealer's compliance with Rule 15c3–5 under the Act, 17 CFR 240.15c3–5 (commonly referred to as the ''Market Access Rule'').

[5] The Exchange notes that with respect to simple orders, limit order price parameters will be applied [sic] a series by series basis with ATDs to be applied to the series that is the subject of the simple order execution as only one series is involved in a simple order execution. With respect to complex orders, limit order price parameters will be applied on a class by class basis with ATDs to be applied to both (each) of the individual legs of both (each) series comprising the complex order as well as the net derived premium price (''net premium basis'') of the complex order as a whole. These parameters will be applied on a class by class basis for complex orders as multiple series in a class are involved in a complex order execution. The Exchange notes that the ATDs determined by the Exchange on a series by series and premium basis (*i.e.* simple order executions) and class by class and net premium basis (*i.e.* complex order executions) under Rules 6.17 and 6.13 will be announced via Regulatory Circular at least one day in advance.

[6] Under Rule 1.1, the term ''System'' means the automated trading system used by the Exchange for the trading of options contracts.

[7] For all classes where the limit order price parameter is activated, it is currently applied to ISOs. ISOs are oftentimes used to capture size on the Exchange that is not available on other markets. As a result, ISOs tend to be large orders and thus, the consequences of order entry errors may be great. In an effort to protect market participants from the consequences of such order entry errors and prevent market disruptions that may be caused by erroneously placed orders, the Exchange has determined to apply limit order price parameters to ISOs on the Exchange. The Exchange believes that applying limit order price parameters to ISOs serves to protect investors and is consistent with Section 6(b) of the Act. The Exchange has in place rules and surveillances to ensure that ISOs are used in an appropriate manner consistent with the Options Order Protection and Locked/Crossed Market Plan, C2 Rules, and Federal Securities laws. *See* Section E of Chapter 6 (incorporating by reference CBOE's rules relating to the Options Order Protection and Locked/Crossed Market Plan), relating to Intermarket Linkage and corresponding Chicago Board Options Exchange, Incorporated (''CBOE'') Rule 6.80(8) defining an ISO as a Limit Order for an options series that, simultaneously with the routing of the ISO, one or more additional ISOs, as necessary, are routed to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or any Protected Offer, in the case of a limit order to buy, for the options series with a price that is superior to the limit price of the ISO and noting that a Trading Permit Holder may submit an ISO to the Exchange only if it has simultaneously routed one or more additional ISOs to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or Protected Offer, in the case of a limit order to buy, for an options series with a price that is superior to the limit price of the ISO. Should the Exchange, in the future, determine that, in the interests of fair and orderly markets or, in furtherance of the objectives of the Options Order Protection and Locked/Crossed Market Plan, limit order price parameters should be applied to ISOs (or another order type) in a different manner as other order types, the Exchange may determine to widen or narrow the ATDs with respect to ISOs (or another order type), which would be announced via Regulatory Circular. Should the Exchange, in the future, determine that, in the interests of fair and orderly markets or, in furtherance of the objectives of the Options Order Protection and Locked/Crossed Market Plan, limit order price parameters should not apply to ISOs, a further rule filing would be required.

[8] For all classes where the limit order price parameter is activated, it is not currently applied to immediate-or-cancel orders. Immediate-or-cancel orders are oftentimes used by Market-Makers and sophisticated investors to hit existing books as orders become available. Although the Exchange also believes that there is less of a need to protect Market-Makers and sophisticated investors from potential order entry errors, the Exchange is interested in the protection of all market participants from unintended order entry errors. As a result, in furtherance of the interests of investors and the promotion of fair and orderly markets, the Exchange is considering applying limit order price parameters to immediate-or-cancel orders in the future. Any such determination would be made pursuant to proposed Rules 6.13.04(g) and 6.17(b) and announced via Regulatory Circular [sic].

[9] The Exchange notes that, for a given series, the applicable ATDs for the limit order price parameters (which may not be less than five minimum increment ticks) may differ from the ATDs for the drill through parameters (which may not be less than two minimum increment ticks). For example, the Exchange may determine that the drill through ATD for all series of a given class trading in $0.01 increments is $0.02 and the limit order price ATD settings for the same class are as described in note 8, *infra* [sic]. The settings may differ because the limit order price parameters and the drill through parameters are intended to provide reasonability checks that address various trading scenarios (*e.g.,* marketable orders that would otherwise drill through multiple price points and limit orders that are priced significantly through the disseminated Exchange bid/offer or the prior day's close). The Exchange believes use of multiple reasonability checks helps to prevent the entry and execution of orders at potentially erroneous prices, which should promote a fair and orderly market.

ticks.[10] The senior official in the Help Desk might widen or inactivate the limit order price parameters on an intra-day basis in the interest of a fair and orderly market.[11] The limit order price parameter takes precedence over another parameter to the extent that both are applicable to an incoming limit order.[12]

The Exchange is also proposing to codify a limit order price parameter for complex orders within Rule 6.13 under proposed Interpretation and Policy .04(g). This limit order price parameter, which is comparable to the limit order price parameters applicable to simple orders described above, is not currently in use. Under this complex order limit order price parameter the Exchange will return a limit priced complex order to the order entry firm where the order is (i) prior to the opening (including before a series is opened following a halt), priced at a net debit that is more than an acceptable tick distance above the derived net market using the Exchange's previous day's close in the individual series legs comprising the complex order or priced at a net credit that is more than an acceptable tick distance below the derived net market using the Exchange's previous day's close in the individual series legs comprising the complex order (such ATD will be as determined by the Exchange on a class by class and net premium basis and announced via Regulatory Circular); or (ii) once a series has opened, priced at a net debit that is more than an acceptable tick distance above the opposite side derived net market using the Exchange's best bid or offer in the individual series legs comprising the complex order or priced at a net credit that is more than an acceptable tick distance below the opposite side derived net market using the Exchange's best bid or offer in the individual series legs comprising the complex order (such ATD will be as determined by the Exchange on a class by class and net premium basis and announced via Regulatory Circular).[13] Similar to simple orders, this parameter for limit priced complex orders received prior to the opening would not be applicable to limit orders of Exchange Market-Makers or away Market-Makers, or to ISOs as such cannot be entered prior to the opening on the System. Once a series has opened, limit order price parameters will be applied to ISOs in all classes in which the limit order price parameter is activated.[14] The Exchange may determine on a class by class basis and announce via Regulatory Circular whether to apply the parameters in (i) and/or (ii) above to immediate-or-cancel complex orders (similar to the discussion above for simple orders). The Exchange also notes that the limit order price parameter will not be applicable to stock-option orders.[15] The Exchange also proposes several non-substantive changes within Interpretation and Policy .04 to Rule 6.13 to abbreviate the terms ''acceptable price range'' and ''acceptable tick distance'' where appropriate for consistency purposes.

Similar to simple orders, the ATD for the limit order price parameter for complex orders will be no less than 5

[10] For example, currently the Exchange has determined for all classes where the limit order price parameter is activated that the Exchange would not accept the following limit orders for execution: (i) If the market quote is less than or equal to $3, limit orders to buy priced more than $0.50 above the offer and limit orders to sell priced more than $0.50 below the bid; (ii) if the market quote is greater than $3 and less than or equal to $10, limit orders to buy priced more than $1.00 above the offer and limit orders to sell priced more than $1.00 below the bid; (iii) if the market quote is greater than $10 and less than or equal to $30, limit orders to buy priced more than $1.50 above the offer and limit orders to sell priced more than $1.50 below the bid; (iv) if the market quote is greater than $30 and less than or equal to $50, limit orders to buy priced more than $2.00 above the offer and limit orders to sell priced more than $2.00 below the bid; or (v) if the market quote is equal to or greater than $50, limit orders to buy priced more than $3.00 above the offer and limit order to sell priced more than $3.00 below the bid. *See* C2 Regulatory Circular RG13–059, which is available at *http://www.c2exchange.com/publish/RegCir_C2/C2RG13–059.pdf.* For the same classes, the Exchange has determined that limit orders received before a series is in opened will be checked against the previous trading day's closing price using the same parameters noted above. Exchange Market Maker and away Market Maker orders received pre-open are excluded from this pre-open limit order price parameter. The foregoing limit order price parameters are in effect in all classes except options on Apple Inc. (AAPL). There are no limit order price parameters currently activated for option class AAPL. *See* id. According to the Exchange, volume for options class AAPL is higher and trading is more volatile, while the price of the underlying stock is higher (*e.g.,* Apple Inc. closed at $125.69 on July 7, 2015). The Exchange believes that application of the limit order price parameter in these circumstances may serve as more of a hindrance to the orderly processing orders (*e.g.,* application of the parameter may result in an inordinate number of orders being excepted from automated process and instead routing for manual handling) and, as a result, has determined to not apply the parameters to option class AAPL for the time being. However, the Exchange may evaluate whether to apply the parameters to the option class and any determination to do so would be announced via Regulatory Circular.

[11] For example, if an underlying stock is high priced or volatile and is experiencing significant price movement and the existing parameters would result in an inordinate number of limit orders not being accepted, the senior official in the Help Desk may determine to widen the parameters on an intra-day basis in the overlying or related options series. See C2 Rule 6.17(B); *see also* C2 Regulatory Circular RG13–059, which is available at *http://www.c2exchange.com/publish/RegCir_C2/C2RG13-059.pdf.* As another example, if the overall market is experiencing significant volatility, the senior official in the Help Desk may determine to widen the limit order price parameters for a series. In that regard, the Exchange has determined that on any trading day where the front-month E-mini S&P 500 Futures (symbol ES/1) are trading more than 20 points above or below the previous day's closing values by 8:00 a.m. (all times noted are Central Time), the Exchange will widen the limit order price parameter levels from $0.50, $1.00, $1.50, $2.00 and $3.00 as set out in note 10, *supra,* to $1.00, $2.00, $3.00, $4.00 and $6.00, respectively, for the trading day for all series where the limit order price parameter is activated (referred to herein as the ''Standing Intraday Relief Condition''). *See* C2 Regulatory Circular C2 RG13–059. The next trading day, the limit order price parameter levels would revert back to the normal setting, unless the E-mini S&P 500 Future is more than 20 points above or below the previous day's closing values by 8:00 a.m.

Example of Standing Intraday Relief Condition: If on Monday the E-mini S&P 500 Futures close at 1700 and by 8:00 a.m. on Tuesday the E-mini S&P 500 Future is trading at 1730 (30 points above the prior day's close of 1700), then the Exchange would adjust the limit order price parameters to the wider levels noted above. If the E-mini S&P 500 Futures close on Tuesday at 1725 and by 8:00 a.m. on Wednesday are trading at 1720 (only 5 points below the prior day's close of 1725), then the limit order price parameter settings would revert back to the levels that were in place on Monday. However, if by 8:00 a.m. on Wednesday the E-mini S&P 500 Futures are trading at 1700 (25 points below the prior day's close of 1725), then the limit order price parameter settings would remain at the levels that were in place on Tuesday.

The Exchange notes that these examples are non-exhaustive and for illustrative purposes only. The Exchange also notes that it may determine for the parameters to differ among series and between pre-open and intra-day.

[12] For example, assume the Exchange has established drill through and limit order price ATD settings as prescribed in notes 10 and 11 [sic], *supra.* If the market quote in a given series is $2.15–$2.55 and an incoming limit order to buy is priced at $3.50 (more than $0.50 above the offer), the limit order price ATD will be triggered and the Exchange will not accept the limit order for execution. The drill through parameter would not apply (the drill through ATD parameter would only be considered if the limit order price ATD parameter is not triggered).

[13] In accordance with the existing provisions of Rule 6.13.01, all pronouncements regarding determinations by the Exchange pursuant to proposed Rule 6.13.04(g) will be announced via Regulatory Circular.

[14] Should the Exchange, in the future, determine that, in the interests of fair and orderly markets or, in furtherance of the objectives of the Options Order Protection and Locked/Crossed Market Plan, limit order price parameters should be applied to ISOs (or another order type) in a different manner as other order types, the Exchange may determine to widen or narrow the ATDs with respect to ISOs (or another order type), which would be announced via Regulatory Circular. Should the Exchange, in the future, determine that, in the interests of fair and orderly markets or, in furtherance of the objectives of the Options Order Protection and Locked/Crossed Market Plan, limit order price parameters should not apply to ISOs, a further rule filing would be required.

[15] Stock-options orders are excluded from the calculation because the individual component stock leg is not traded on the Exchange and, as a result, calculation of a derived net market by the Exchange's automated system would be a more complicated function. If in the future the Exchange would decide to enhance the limit order price parameter functionality to address stock-option orders, the Exchange would file a rule change to address stock-option orders.

minimum net price increment ticks (where the ''minimum net price increment'' is the minimum increment for net priced bids and offers for the given complex order strategy). For example, if the minimum net price increment for complex orders in a given series in a class is $0.01, then the ATD would be no less than $0.05 (5 × $0.01). If the minimum net price increment is $0.05, then the ATD would be no less than $0.25 (5 × $0.05). Also similar to simple orders, the Exchange might widen or inactivate limit order price parameter for complex orders for one or more classes on an intra-day basis in the interest of a fair and orderly market.[16] The limit order price parameter will take precedence over another complex order parameter to the extent that both are applicable to an incoming limit order.[17]

The Exchange is also proposing a miscellaneous change to Rule 6.13.04 to specifically identify the price check parameters that are not applicable to stock-option orders in the introductory text to this provision. The particular parameters to which stock-option orders may be subjected are already identified within the rule text. This proposed change is simply to include a list of those parameters which are not applicable to stock-option orders in the introductory paragraph for ease of reference.[18]

The Exchange notes that the limit order price parameter for simple and complex is intended to protect market participants from executions of limit orders at prices that are significantly through the Exchange's market (*i.e.,* no less than five minimum increment ticks for simple orders and no less than five minimum net price increment ticks for complex orders). The Exchange believes that TPHs that submit orders on C2 generally intend to receive executions of their orders at or near the Exchange's market. A limit order that is priced significantly through the Exchange's market could be indicative of an error (*e.g.,* mistake in intended price, series, put/call) and could result in executions occurring at prices that have little or no relation to the theoretical price of the option. Accordingly, the Exchange believes the limit order price parameter is a mechanism that will help prevent the entry of erroneous orders, dramatic price swings and, potentially, executions qualifying as obvious errors[19] on C2. The Exchange also believes that orders that are significantly priced through the market have the potential to create market volatility by trading at different price levels until executed in their entirety. As such, the Exchange believes the limit order price parameter may also help limit volatility.

Second, the Exchange is proposing various miscellaneous changes to the existing text in Rule 6.17. In particular, the Exchange is proposing to include a title for each type of price check parameter within the rule text (*i.e.,* for the existing market width parameters, the existing drill through parameters, and the proposed limit order price parameters). The addition of these titles is non-substantive and is intended for ease of reference only. In addition, the Exchange is proposing to replace the ''class-by-class basis'' reference in proposed Rule 6.17(c) with ''series by series and premium basis'' to provide consistency within the Rules and reflect the fact that the APR for a simple order will apply on a series by series basis to the single series involved in the order and be determined on a premium basis in relation to the bid-ask differential in that series. For the same reasons, the Exchange proposes to add the term ''and premium'' to proposed Rule 6.17(a)(1) regarding market width parameters. The Exchange is also renumbering Rule 6.17 and clarifying existing references to APR and ATD as references to the existing market width APR and drill through ATD for ease of reference.

The existing text of Rule 6.17 also provides that the senior official in the Help Desk may grant intra-day relief by widening the APR or ATD settings for one or more option series and that notification of intraday relief will be announced via message to Trading Permit Holders that request to receive such messages. The Exchange is proposing to amend this provision to add that such intra-day relief may be granted in the interest of a fair and orderly market. The Exchange is also proposing to amend this provision to make clear that the senior official in the Help Desk can grant relief by widening or inactivating the applicable APR and/or ATD setting. The Exchange believes including the reference to inactivating the applicable settings is not substantive because an applicable APR or ATD parameter could be widened to such a level that it would be in effect inactive. The Exchange is also proposing to provide within the rule text that the intra-day relief granted by the senior official in the Help Desk will not extend beyond the trade day on which it is granted, unless a determination to extend such relief if announced to TPHs via Regulatory Circular.[20] The Exchange is also proposing to provide within the rule text that the Exchange will make and keep records to document all determinations to grant intra-day relief under Rule 6.17, and shall maintain those records in accordance with Rule 17a–1 under the Act.[21] The rule text will also provide that the Exchange will periodically review determinations to grant intra-day relief for consistency with the interest of a fair and orderly market. Finally, the Exchange notes that the same intra-day relief provisions are proposed to apply to the limit order price parameter provisions for complex orders in proposed Rule 6.13.04(g).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[22] in general and furthers the objectives of Section 6(b)(5) of the Act[23] in particular, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism of a free and open market and a national market

[16] *See also* note 11, *supra.*

[17] Rule 6.13.04 sets forth various price check parameters applicable to complex orders. For each price check parameter that may be applicable to incoming limit orders—except the market width parameter—the system will not accept or will return the order back to the order entry firm if the parameter is triggered. If the market width parameter is triggered, an incoming (or resting) marketable limit order will be held in the system, displayed in the complex order book if applicable, and not be eligible for automatic execution until the market width condition is resolved. *See* Rule 6.13.04. In the instance where both the limit order price parameter and another parameter are applicable, the limit order price parameter takes precedence (*i.e.,* is applied first) before the other parameter is applied.

[18] Specifically, paragraphs (b) (credit-to-debit parameters), (c) (same expiration strategy parameters), (e) (percentage distance parameters) and proposed paragraph (g) (limit order price parameters) of Rule 6.13.04 are not applicable to stock-option orders.

[19] *See* C2 Rule 6.15.

[20] The Exchange notes that conditions when the Standing Intraday Relief will be instituted and the particular form of relief have been announced via Regulatory Circular. *See* note 11, *supra.* The announcement of the pre-established conditions and relief is intended to serve the circular notification requirement and, as such, a separate circular would not be issued if this relief is instituted over multiple days. However, if the Exchange would determine to modify the conditions for Standing Intraday Relief, then the Exchange would announce those changes by issuing another Regulatory Circular.

[21] 17 CFR 240.17a-1. The Exchange notes that determinations to grant intra-day relief under Rule 6.17 will be made in compliance with the provisions of the Act and the rules thereunder, including, but not limited to, the requirements in Section 6(b)(5) of the Act, 15 U.S.C. 78f(b), that the rules of a national securities exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

system, and, in general, to protect investors and the public interest.

The Exchange believes the proposed rule change furthers the objective of Section 6(b)(5) of the Act in that it permits the Exchange to address the entry of simple and complex limit orders that are priced significantly away from the market that are likely to have resulted from human or operational error.[24] By being able to quickly and efficiently reject orders that likely resulted from such error, the proposed use of the limit order price parameter would promote a fair and orderly market. Additionally, by having the flexibility to determine the series or classes where the limit order price parameter would be applied (or not applied) and the levels at which the ATD settings would be applied, and to grant relief on an intra-day basis, the Exchange is able to effectively structure and efficiently react to particular option characteristics and market conditions—including (without limitation) price, volatility, and significant price movements—which contributes to its ability to maintain a fair and orderly market. Accordingly, the Exchange believes that this proposal is designed to promote just and equity principles of trade, remove impediments to, and perfect the mechanism of, a free and open market.[25]

The Exchange also believes that the other proposed changes to Rule 6.17 (*e.g.,* to include titles for the various price check parameters; to change a reference from class by class to series by series; to make clear that intra-day relief may be granted in the interest of a fair and orderly market and may include widening or inactivating the applicable APR and/or ATD; and to include provisions indicating that intra-day relief may not extend beyond the trade day on which it is granted, unless a determination to extend such relief is announced to Trading Permit Holders via Regulatory Circular, and that the Exchange will make and keep records to document determinations to grant intra-day relief under Rule 6.17) should also serve to further these objectives by more clearly and fully describing certain aspects of the operation of these price check parameters and addressing determinations to modify the operation of the price check parameters on an intra-day basis as provided within Rule 6.17. For the same reason, Exchange believes the substantially similar intra-day relief provisions for complex orders in proposed Rule 6.13.04(g) should also serve to further these objectives. The Exchange also believes that the proposed change to the introductory paragraph to Rule 6.13.04 to specifically identify the price check parameters that are not applicable to stock-option orders should also serve to further these objectives by making the rule easier to read and navigate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will promote competition in that the limit order price parameters provide market participants with additional protection from anomalous trading. Thus, the Exchange does not believe the proposal creates any significant impact on competition.

The price check parameter features are intended to prevent executions at potentially erroneously prices, which should serve to promote a fair and orderly market and promote trading activity on the Exchange to the benefit of the Exchange, its TPHs, and market participants. The Exchange notes that the limit order price parameters are applied equally to all eligible limit orders, with the limited exception that the parameters do not apply to limit orders for Exchange Market-Makers and away Market-Makers entered prior to the opening. The Exchange believes this does not place an undue burden on competition as the Exchange believes that Market-Makers actively evaluate the pre-opening market and utilize their own risk management parameters when entering, maintaining (and cancelling) orders prior to the opening, minimizing the likelihood of a Market-Maker order resulting an error from being entered and continuing to rest prior to the opening of trading.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[26] and Rule 19b–4(f)(6) thereunder.[27] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent 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[28] and Rule 19b–4(f)(6) thereunder.[29]

A proposed rule change filed under Rule 19b–4(f)(6)[30] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[31] 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. According to the Exchange, the proposed rule change will provide additional protections against the execution of limit orders that are priced significantly away from the market as a result of human or

[24] The Exchange believes that these principles are equally applicable to ISOs. In an effort to protect market participants from the consequences of such order entry errors and prevent market disruptions that may be caused by erroneously placed orders, the Exchange has determined to apply limit order price parameters to ISOs on the Exchange. The Exchange believes that applying limit order price parameters to ISOs serves to protect investors and is consistent with Section 6(b) of the Act.

[25] The Exchange notes that limit order price parameters are in effect in all classes except options on Apple Inc. (AAPL). There are no limit order price parameters currently activated for option class AAPL. *See* C2 Regulatory Circular RG13–059, which is available at *http://www.c2exchange.com/publish/RegCir_C2/C2RG13-059.pdf.* According to the Exchange, volume for options class AAPL is higher and trading is more volatile, while the price of the underlying stock is higher (*e.g.,* Apple Inc. closed at $125.69 on July 7, 2015). The Exchange believes that application of the limit order price parameters in these circumstances may serve as more of a hindrance to the orderly processing orders (*e.g.,* application of the parameter may result in an inordinate number of orders being excepted from automated process and instead routing for manual handling) and, as a result, has determined to not apply the parameters to option class AAPL for the time being. The Exchange believes that because of these factors different treatment of the AAPL class is warranted. However, the Exchange may evaluate whether to apply the parameters to the option class and any determination to do so would be announced via Regulatory Circular.

[26] 15 U.S.C. 78s(b)(3)(A)(iii).

[27] 17 CFR 240.19b–4(f)(6).

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 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.

[30] 17 CFR 240.19b–4(f)(6).

[31] 17 CFR 240.19b–4(f)(6)(iii).

operational error. In addition, C2's proposed changes to allow flexibility in setting the ATD for a particular option class or series and to grant intra-day relief in the interest of a fair and orderly market should provide the Exchange with the ability to address particular option characteristics and markets conditions. Accordingly, the Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposal operative upon filing.[32]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2015–021 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–C2–2015–021. 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–C2–2015–021, and should be submitted on or before August 19, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–18540 Filed 7–28–15; 8:45 am]

BILLING CODE 8011–01–P

[32] 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).

[33] 17 CFR 200.30–3(a)(12), (59).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14385 and #14386]

New Jersey Disaster #NJ–00011

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Jersey (FEMA–4231–DR), dated 07/22/2015.

Incident: Severe storm.

Incident Period: 06/23/2015.

Effective Date: 07/22/2015.

Physical Loan Application Deadline Date: 09/21/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 04/22/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/22/2015, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Atlantic, Burlington, Camden, Gloucester.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.625
Non-Profit Organizations without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14385B and for economic injury is 14386B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015–18556 Filed 7–28–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14371 and #14372]

Louisiana Disaster Number LA–00009

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Louisiana (FEMA–4228–DR), dated 07/13/2015.

Incident: Severe Storms and Flooding.

Incident Period: 05/18/2015 through 06/20/2015.

Effective Date: 07/21/2015.

Physical Loan Application Deadline Date: 09/11/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 04/13/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of LOUISIANA, dated 07/13/2015, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Parishes: Rapides.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Cynthia G. Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2015–18554 Filed 7–28–15; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2015–0048]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions, extensions, and one reinstatement without change of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*.

(SSA), Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*.

Or you may submit your comments online through *www.regulations.gov*, referencing Docket ID Number [SSA–2015–0048].

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than September 28, 2015. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Certificate of Support—20 CFR 404.370, 404.750, 404.408a—0960–0001. A parent of a deceased, fully insured worker may be entitled to Social Security Old-Age, Survivors, and Disability Insurance (OASDI) benefits based on the earnings record of the deceased worker under certain conditions. One of the conditions is the parent must have received at least one-half support from the deceased worker. The one-half support requirement also applies to a spousal applicant in determining whether OASDI benefits are subject to Government Pension Offset (GPO). SSA uses the information from Form SSA–760–F4 to determine if the parent of a deceased worker or a spouse applicant meets the one-half support requirement. Respondents are (1) parents of deceased workers and (2) spouses who may meet the GPO exception.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–760–F4	18,000	1	15	4,500

2. Statement of Household Expenses and Contributions—20 CFR 416.1130–416.1148—0960–0456. SSA bases eligibility for Supplemental Security Income (SSI) on the needs of the recipient. In part, we assess need by determining the amount of income a recipient receives. This income includes in-kind support and maintenance in the form of food and shelter provided by others. SSA uses Form SSA–8011–F3, to determine whether the claimant or recipient receives in-kind support and maintenance. This is necessary to determine (1) the claimant or recipient's eligibility for SSI and (2) the SSI payment amount. SSA only uses this form in cases where SSA needs the householder's (head of household) corroboration of in-kind support and maintenance. Respondents are householders of homes in which an SSI applicant or recipient resides.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–8011–F3	417,025	1	15	104,256

3. Integrated Registration Services (IRES) System—20 CFR 401.45—0960–0626. The IRES System verifies the identity of individuals, businesses, organizations, entities, and government agencies seeking to use SSA's eService Internet and telephone applications. Individuals need this verification to electronically request and exchange business data with SSA. Requestors provide SSA with the information needed to establish their identities. Once SSA verifies identity, the IRES system issues the requestor a user identification number (User ID) and a password to conduct business with SSA. Respondents are employers and third party submitters of wage data,

business entities providing taxpayer identification information, and data exchange partners conducting business in support of SSA programs.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
IRES Internet Registrations	662,102	1	5	55,175
IRES Internet Requestors	9,209,489	1	2	306,983
IRES CS (CSA) Registrations	23,562	1	11	4,320
Totals	9,895,153			366,478

4. Request for Reinstatement (Title II)—20 CFR 404.1592b–404.1592f—0960–0742. SSA allows certain previously entitled disability beneficiaries to request expedited reinstatement (EXR) of benefits under Title II of the Social Security Act when their medical condition no longer permits them to perform substantial gainful activity. SSA uses Form SSA–371 to obtain: (1) A signed statement from individuals requesting an EXR of their Title II disability benefits, and (2) proof the requestors meet the EXR requirements. SSA maintains the form in the disability folder of the applicant to demonstrate the requestors' awareness of the EXR requirements, and their choice to request EXR. Respondents are applicants for EXR of Title II disability benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–371	10,000	1	2	333

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than August 28, 2015. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov*.

1. Coverage of Employees of State and Local Governments—20 CFR 404, Subpart M—0960–0425. The Code of Federal Regulations at 20 CFR 404, Subpart M, prescribes the rules for states submitting reports of deposits and recordkeeping to SSA. SSA requires states (and interstate instrumentalities) to provide wage and deposit contribution information for pre-1987 periods. Not all states have completely satisfied their pending wage report and contribution liability with SSA for pre-1987 tax years. SSA needs these regulations until we close out all pending items with all states, and provide for collection of this information in the future, if necessary. The respondents are State and local governments or interstate instrumentalities.

Type of Request: Reinstatement without change of a previously approved collection.

Regulation section	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
404.1204(a) & (b)	52	1	30	26
404.1215	52	1	60	52
404.1216(a) & (b)	52	1	60	52
Total	156			130

2. Function Report Adult-Third Party—20 CFR 404.1512 & 416.912—0960–0635. Individuals receiving or applying for Social Security Disability Insurance (SSDI) or SSI provide SSA with medical evidence and other proof SSA requires to prove their disability. SSA, and Disability Determination Services on our behalf, collect this information using Form SSA–3380–BK. We use the information to document how claimant's disabilities affect their ability to function, and to determine eligibility for SSI and SSDI claims. The respondents are third parties familiar with the functional limitations (or lack thereof) of claimants who apply for SSI and SSDI benefits.

Type of Request: Revision of an OMB approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–3380–BK	780,000	1	61	793,000

Dated: July 24, 2015.

Naomi R. Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2015–18558 Filed 7–28–15; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 9207]

Notification of United States-Chile Environment Affairs Council and Joint Commission on Environmental Cooperation Meetings

ACTION: Notice of the upcoming United States-Chile Environment Affairs Council and Joint Commission on Environmental Cooperation meetings and request for comments; invitation to public session.

SUMMARY: The Department of State and the Office of the United States Trade Representative are providing notice that the parties to the United States-Chile Free Trade Agreement (FTA) intend to hold the seventh meeting of the Environment Affairs Council (Council) established under Chapter 19 of the FTA, as well as the fifth meeting of the United States-Chile Joint Commission on Environmental Cooperation (Commission) established under the United States-Chile Environmental Cooperation Agreement (ECA), on Thursday, August 13, 2015. The Council will review implementation of Chapter 19 (Environment) of the FTA and the Commission will review implementation of the ECA. All interested persons are invited to attend the Council and Commission joint public session beginning at 3:00 p.m. on August 13 at the U.S. Department of State George C. Marshall Conference Center, 2201 C St. NW., Washington, DC.

During the Council and Commission meetings, Members will discuss the progress made in implementing Chapter 19 obligations and the impacts of environmental cooperation. The Commission will also finalize an updated Environmental Cooperation Work Program for 2015–2017. More information on the Council and Commission is included below under **SUPPLEMENTARY INFORMATION.**

All interested persons are invited to attend a public session where they will have an opportunity to ask questions and discuss implementation of Chapter 19 and the Environmental Cooperation Agreement with Council and Commission Members and environmental cooperation implementers. At the public session, the Council hopes to receive input from the public on current environmental issues and ideas for future cooperation. The Department of State and Office of the United States Trade Representative invite written comments or suggestions regarding topics to be discussed at the meeting. In preparing comments, we encourage submitters to refer to Chapter 19 of the FTA and the ECA (*available at http://www.state.gov/e/oes/eqt/trade/chile/index.htm*).

DATES: The public session of the Council and Commission will be held August 13, 2015 from 3:00–5:00 p.m. at the U.S. Department of State George C. Marshall Conference Center. We request RSVPs and any written comments no later than August 7, 2015 in order to facilitate consideration.

ADDRESSES: RSVPs and any written comments should be submitted to both:

(1) Katherine Weber, U.S. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Office of Environmental Quality and Transboundary Issues by email at *WeberKP@state.gov* with the subject line ''UNITED STATES-CHILE EAC/JCEC MEETING'' or by fax to (202) 647–5947.

(2) David Oliver, Deputy Assistant U.S. Trade Representative for Environment and Natural Resources, Office of the United States Trade Representative, by email to *David_Oliver@ustr.eop.gov* with the subject line ''UNITED STATES-CHILE EAC/JCEC MEETING'' or by fax to (202) 395–9517.

In your RSVP, please include your full name and affiliation.

FOR FURTHER INFORMATION CONTACT: Katherine Weber, telephone (202) 647–2252.

SUPPLEMENTARY INFORMATION: The United States and Chile negotiated the United States-Chile Free Trade Agreement (FTA) and United States-Chile Environmental Cooperation Agreement (ECA) in concert, signing the FTA on June 6, 2003 in Miami, U.S.A. and the ECA on June 17, 2003 in Santiago, Chile. Article 19.3 of the FTA establishes an Environment Affairs Council (Council).The Council ordinarily meets annually to discuss implementation of Chapter 19 of the FTA and its meetings include a public session. The Joint Commission on Environmental Cooperation (Commission) was established in Article II of the ECA. The Commission meets at least every two years to evaluate cooperative activities under the agreement, to recommend options for improving cooperation, and to establish programs of work that reflect national priorities and identify the scope and focus of environmental cooperation work over the coming years.

The Council and Commission last met in January 2013 in Santiago, Chile. The Council reviewed the implementation of the Environment Chapter of the FTA. The Commission signed the 2012–2014 Work Program, which built on previous successes and identified activities to achieve the long-term goals of: (1) Strengthening effective implementation and enforcement of environmental laws and regulations; (2) encouraging development and adoption of sound environmental practices and technologies, particularly in business enterprises; (3) promoting sustainable development and management of environmental resources, including wild fauna and flora, protected wild areas, and other ecologically important ecosystems; and (4) encouraging civil society participation in the environmental decision-making process and environmental education.

If you would like to attend the public session, please notify Katherine Weber and David Oliver at the email addresses listed above under the heading **ADDRESSES**. Please include your full name and identify any organization or group you represent. In preparing comments, we encourage submitters to refer to:

- Chapter 19 of the FTA,
- The Final Environmental Review of the FTA, and
- The ECA.

These documents are available at: *http://www.state.gov/e/oes/eqt/trade/chile/index.htm.* Visit *http://www.state.gov* and the USTR Web site at *www.ustr.gov* for more information.

Dated: July 16, 2015.

John Thompson,

Acting Director, Office of Environmental Quality and Transboundary Issues, U.S. Department of State.

[FR Doc. 2015–18616 Filed 7–28–15; 8:45 am]

BILLING CODE 4710–09–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: June 1–30, 2015.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net*. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above:

Approvals by Rule Issued Under 18 CFR 806.22(f)

1. Chief Oil & Gas, LLC, Pad ID: B & B Investment Group Drilling Pad #1, ABR–201010068.R1, Asylum Township, Bradford County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: June 1, 2015.
2. Range Resources—Appalachia, LLC, Pad ID: Mohawk Lodge Unit, ABR–20100619.R1, Gallagher Township, Clinton County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: June 1, 2015.
3. SWEPI LP, Pad ID: Vandergrift 290, ABR–20100442.R1, Charleston Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 1, 2015.
4. Talisman Energy USA Inc., Pad ID: Gardiner 01 071, ABR–20100522.R1, Troy Township, Bradford County, Pa.; Consumptive Use of Up to 6.000 mgd; Approval Date: June 1, 2015.
5. Talisman Energy USA Inc., Pad ID: Vanblarcom 03 054, ABR–20100523.R1, Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.000 mgd; Approval Date: June 1, 2015.
6. Talisman Energy USA Inc., Pad ID: Cole 03 016, ABR–20100549.R1, Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.000 mgd; Approval Date: June 1, 2015.
7. Talisman Energy USA Inc., Pad ID: Wilber 03 065, ABR–20100552.R1, Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.000 mgd; Approval Date: June 1, 2015.
8. XTO Energy Incorporated, Pad ID: Moser 8521H, ABR–20100641.R1, Franklin Township, Lycoming County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 1, 2015.
9. Chesapeake Appalachia, LLC, Pad ID: Gregory, ABR–201011004.R1, Wysox Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: June 2, 2015.
10. Seneca Resources Corporation, Pad ID: DCNR 595 1V, ABR–20090432.R1, Bloss Township, Tioga County, Pa.; Consumptive Use of Up to 0.099 mgd; Approval Date: June 2, 2015.
11. Seneca Resources Corporation, Pad ID: Wilcox (TEOG 1), ABR–20090433.R1, Covington Township, Tioga County, Pa.; Consumptive Use of Up to 0.099 mgd; Approval Date: June 2, 2015.
12. Seneca Resources Corporation, Pad ID: Wilcox Pad F, ABR–20090505.R1, Covington Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 2, 2015.
13. Seneca Resources Corporation, Pad ID: J. Pino Pad G, ABR–20090717.R1, Covington Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 2, 2015.
14. Seneca Resources Corporation, Pad ID: T. Wivell Horizontal Pad, ABR–20090814.R1, Covington Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 2, 2015.
15. Seneca Resources Corporation, Pad ID: D.M. Pino Pad H, ABR–20090933.R1, Covington Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 2, 2015.
16. Seneca Resources Corporation, Pad ID: Murray Pad A, ABR–20100317.R1, Richmond Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 2, 2015.
17. SWEPI LP, Pad ID: Fowler 6707, ABR–20100405.R1, West Branch Township, Potter County, Pa.; Consumptive Use of Up to 4.990 mgd; Approval Date: June 2, 2015.
18. SWEPI LP, Pad ID: State 6721, ABR–20100440.R1, Elk Township, Tioga County, Pa.; Consumptive Use of Up to 4.990 mgd; Approval Date: June 2, 2015.
19. SWEPI LP, Pad ID: Gee 832, ABR–20100444.R1, Middlebury Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 2, 2015.
20. XTO Energy Incorporated, Pad ID: MARQUARDT 8534H, ABR–20100664.R1, Penn Township, Lycoming County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 2, 2015.
21. EQT Production Company, Pad ID: Ginger, ABR–201506001, Jay Township, Elk County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: June 8, 2015.
22. Cabot Oil & Gas Corporation, Pad ID: ForwoodE P1, ABR–201506002, Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.250 mgd; Approval Date: June 8, 2015.
23. Cabot Oil & Gas Corporation, Pad ID: FergusonA P1, ABR–201506003, Harford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.250 mgd; Approval Date: June 8, 2015.
24. Pennsylvania General Energy Company, LLC, Pad ID: Reed Run Norwich Pad D, ABR–201012028.R1, Norwich Township, McKean County, Pa.; Consumptive Use of Up to 3.500 mgd; Approval Date: June 12, 2015.
25. Warren Marcellus, LLC, Pad ID: Ruark East 1 1H, ABR–201008001.R1, Washington Township, Wyoming County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: June 12, 2015.
26. Warren Marcellus, LLC, Pad ID: Mirabelli Pad 1–1H, ABR–201008138.R1, Washington Township, Wyoming County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: June 12, 2015.
27. Warren Marcellus, LLC, Pad ID: P&G Warehouse 1–1H, ABR–201008156.R1, Meshoppen Township, Wyoming County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: June 12, 2015.
28. Chesapeake Appalachia, LLC, Pad ID: Weisbrod, ABR–201011010.R1, Sheshequin Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: June 15, 2015.
29. Chesapeake Appalachia, LLC, Pad ID: Zaleski, ABR–201011021.R1, Asylum Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: June 15, 2015.
30. SWEPI LP, Pad ID: Johnson 434, ABR–20100501.R1, Shippen Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 15, 2015.
31. SWEPI LP, Pad ID: Red Run Mountain 736, ABR–20100502.R1, McIntyre Township, Lycoming County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 15, 2015.
32. SWEPI LP, Pad ID: Newlin 476, ABR–20100503.R1, Charleston Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 15, 2015.

33. SWEPI LP, Pad ID: Walker 438, ABR–20100516.R1, Shippen Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 15, 2015.
34. SWEPI LP, Pad ID: Dandois 482, ABR–20100517.R1, Sullivan Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 15, 2015.
35. XTO Energy Incorporated, Pad ID: Jenzano, ABR–20090713.R1, Franklin Township, Lycoming County, Pa.; Consumptive Use of Up to 3.000 mgd; Approval Date: June 15, 2015.
36. Energy Corporation of America, Pad ID: Whitetail Gun & Rod Club #1, ABR–20090418.R1, Goshen Township, Clearfield County, Pa.; Consumptive Use of Up to 0.900 mgd; Approval Date: June 16, 2015.
37. EXCO Resources (PA), LLC, Pad ID: Flook Drilling Pad #1, ABR–20100505.R1, Mifflin Township, Lycoming County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: June 16, 2015.
38. XTO Energy Incorporated, Pad ID: Lucella 8564H, ABR–201009074.R1, Moreland Township, Lycoming County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 16, 2015.
39. Chief Oil & Gas, LLC, Pad ID: PMG God Drilling Pad #1, ABR–201011068.R1, Asylum Township, Bradford County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: June 17, 2015.
40. XTO Energy Incorporated, Pad ID: Hazlak, ABR–20090715.R1, Shrewsbury Township, Lycoming County, Pa.; Consumptive Use of Up to 3.000 mgd; Approval Date: June 17, 2015.
41. EOG Resources, Inc., Pad ID: PHC Pad A, ABR–20100353.R1, Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: June 22, 2015.
42. EOG Resources, Inc., Pad ID: PHC 21V, ABR–20100427.R1, Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 0.999 mgd; Approval Date: June 22, 2015.
43. Inflection Energy (PA), LLC, Pad ID: Hensler Well Site, ABR–201506004, Hepburn Township, Lycoming County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 22, 2015.
44. Seneca Resources Corporation, Pad ID: Gamble Pad P, ABR–201506005, Hepburn Township, Lycoming County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 22, 2015.
45. Seneca Resources Corporation, Pad ID: Gamble Pad C, ABR–201506006, Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 22, 2015.
46. SWEPI LP, Pad ID: Patel 914, ABR–20100529.R1, Abbott Township, Potter County, Pa.; Consumptive Use of Up to 4.990 mgd; Approval Date: June 22, 2015.
47. SWEPI LP, Pad ID: Greenwood Hunting Lodge 427, ABR–20100532.R1, McIntyre Township, Lycoming County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 22, 2015.
48. SWEPI LP, Pad ID: Simonetti 817 (rev), ABR–20100545.R1, Gaines Township, Tioga County, Pa.; Consumptive Use of Up to 4.990 mgd; Approval Date: June 22, 2015.
49. SWEPI LP, Pad ID: Breon 492, ABR–20100553.R1, Sullivan Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 22, 2015.
50. SWEPI LP, Pad ID: Coon Hollow 904, ABR–20100560.R1, West Branch Township, Potter County, Pa.; Consumptive Use of Up to 4.990 mgd; Approval Date: June 22, 2015.
51. SWEPI LP, Pad ID: Parker 727, ABR–201203022.R1, Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: June 22, 2015.
52. Chesapeake Appalachia, LLC, Pad ID: Yvonne, ABR–201010015.R1, Rush Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: June 25, 2015.
53. Chesapeake Appalachia, LLC, Pad ID: Tama, ABR–201010057.R1, North Towanda Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: June 25, 2015.
54. EOG Resources, Inc., Pad ID: HARKNESS 2H, ABR–20091220.R1, Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 1.999 mgd; Approval Date: June 25, 2015.
55. EOG Resources, Inc., Pad ID: COP Pad A, ABR–20100531.R1, Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: June 25, 2015.
56. EOG Resources, Inc., Pad ID: PHC Pad B, ABR–20100352.R1, Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: June 25, 2015.
57. EOG Resources, Inc., Pad ID: REITER 1H Pad, ABR–201008048.R1, Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: June 25, 2015.
58. EOG Resources, Inc., Pad ID: JANOWSKY 1H, ABR–201008054.R1, Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: June 25, 2015.
59. EOG Resources, Inc., Pad ID: KINGSLEY 4H, ABR–201008079.R1, Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: June 25, 2015.
60. EOG Resources, Inc., Pad ID: MELCHIONNE 1H Pad, ABR–201008087.R1, Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: June 25, 2015.
61. EOG Resources, Inc., Pad ID: SEAMAN 1H Pad, ABR–201008091.R1, Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: June 25, 2015.
62. EOG Resources, Inc., Pad ID: MICCIO 1H Pad, ABR–201008119.R1, Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: June 25, 2015.
63. EOG Resources, Inc., Pad ID: JACKSON 1H Pad, ABR–201009053.R1, Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: June 25, 2015.
64. EOG Resources, Inc., Pad ID: NICHOLS 2H Pad, ABR–201107020.R1, Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: June 25, 2015.
65. EXCO Resources (PA), LLC, Pad ID: Warburton Unit #1H Drilling Pad, ABR–20090816.R1, Penn Township, Lycoming County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: June 25, 2015.
66. EOG Resources, Inc., Pad ID: Houseknecht 2H, ABR–20090419.R1, Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 0.490 mgd; Approval Date: June 25, 2015.
67. EOG Resources, Inc., Pad ID: JENKINS 1H, ABR–20100426.R1, Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 1.999 mgd; Approval Date: June 25, 2015.
68. EOG Resources, Inc., Pad ID: PHC Pad Q, ABR–20100551.R1, Lawrence Township, Clearfield

County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: June 25, 2015.

69. EOG Resources, Inc., Pad ID: COP Pad B, ABR–20100645.R1, Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: June 25, 2015.
70. EOG Resources, Inc., Pad ID: PHC Pad T, ABR–201009039.R1, Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: June 25, 2015.
71. EXCO Resources (PA), LLC, Pad ID: Falk Unit #1H, ABR–20090920.R1, Penn Township, Lycoming County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: June 25, 2015.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: July 23, 2015.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2015–18521 Filed 7–28–15; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2015 0091]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel BLUEWATER; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 28, 2015.

ADDRESSES: Comments should refer to docket number MARAD–2015–0091. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel BLUEWATER is:

Intended Commercial Use of Vessel: ''Vessel will be used to carry passengers for diving trips.''

Geographic Region: ''Michigan.''

The complete application is given in DOT docket MARAD–2015–0091 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Date: July 21, 2015.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2015–18504 Filed 7–28–15; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. USCG–2015–0472]

Deepwater Port License Application: Delfin LNG LLC, Delfin LNG Deepwater Port

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of intent; notice of public meeting; request for comments.

SUMMARY: The Maritime Administration (MARAD), in coordination with the U.S. Coast Guard (USCG), will prepare an environmental impact statement (EIS) as part of the environmental review of the Delfin LNG LLC (Delfin LNG) deepwater port license application. The application proposes the ownership, construction, operation and eventual decommissioning of an offshore liquefied natural gas (LNG) deepwater port export facility that would be located in Federal waters within the Outer Continental Shelf (OCS) West Cameron Area, West Addition Protraction Area (Gulf of Mexico), approximately 37.4 to 40.8 nautical miles off the coast of Cameron Parish, Louisiana, in water depths ranging from approximately 64 to 72 feet (19.5 to 21.9 meters). The deepwater port would consist of four semi-permanently moored floating liquefaction natural gas vessels (FLNGVs), and would reuse and repurpose two existing offshore natural gas pipelines: The former U–T Operating System (UTOS) pipeline and the High Island Operating System (HIOS) pipeline (see Summary of the Application for additional project specifics).

The onshore components of the proposed deepwater port would be located in Cameron Parish, Louisiana and would be reviewed by the Federal Energy Regulatory Commission (FERC) under a separate authorization process (see FERC Docket No. CP15–490–000; 80 FR 30226 (May 27, 2015)). The onshore facility would consist of reactivating approximately 1.1 miles of the existing UTOS pipeline; the addition of 74,000 horsepower of new compression and associated metering and regulation facilities; the installation of new supply header pipelines (which would consist of 0.25 miles of new 42-inch pipeline to connect the former UTOS line to the new meter station); and 0.6 miles of new twin 30-inch pipelines between Transco Station 44 and the new compressor station site. Publication of this Notice of Intent (NOI) begins a 30 day scoping process that will help identify and determine

the scope of environmental issues to be addressed in the EIS. MARAD and the USCG will consider both the Delfin LNG deepwater port license application and the FERC application to be included in this review. For your convenience, we have included the Delfin LNG application to FERC under docket number USCG–2015–0472. This NOI requests public participation in the scoping process, provides information on how to participate and announces informational open houses and public meetings in Louisiana and Texas. Pursuant to the criteria provided in the Deepwater Port Act of 1974, as amended, 33 U.S.C. 1501 *et seq.* (the Act), both Louisiana and Texas are the Adjacent Coastal States for this application.

DATES: There will be two public scoping meetings held in connection with the application. The first public meeting will be held in Lake Charles, Louisiana on August 18, 2015, from 6 p.m. to 8 p.m. The second public meeting will be held in Beaumont, Texas on August 19, 2015, from 6 p.m. to 8 p.m. Both public meetings will be preceded by an informational open house from 4 p.m. to 5:30 p.m.

Each of the public meetings may end later than the stated time, depending on the number of persons wishing to speak. Additionally, materials submitted in response to this request for comments on the Delfin LNG deepwater port license application must reach the Federal Docket Management Facility as detailed below by August 28, 2015.

ADDRESSES: The open house and public meeting in Lake Charles, Louisiana will be held at the Lake Charles Civic Center, 900 Lakeshore Drive, Lake Charles, Louisiana 70601, telephone: 337–491–1256. The open house and public meeting in Beaumont, Texas will be held at the Holiday Inn Beaumont Plaza, 3950 Walden Road, Beaumont, Texas 77705, telephone: 409–842–5995. Free parking is available at both the Lake Charles Civic Center and the Holiday Inn Beaumont Plaza locations.

The public docket for USCG–2015–0472 is maintained by the U.S. Department of Transportation, Docket Management Facility, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

The Federal Docket Management Facility accepts hand-delivered submissions, and makes docket contents available for public inspection and copying at this address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management Facility's telephone number is 202–366–9329, the fax number is 202–493–2251 and the Web site for electronic submissions or for electronic access to docket contents is *http://www.regulations.gov.* keyword search ''USCG–2015–0472''.

FOR FURTHER INFORMATION CONTACT: Mr. Roddy Bachman, USCG, telephone: 202–372–1451, email: *Roddy.C.Bachman@uscg.mil,* or Ms. Yvette M. Fields, MARAD, telephone: 202–366–0926, email: *Yvette.Fields@dot.gov.* For questions regarding viewing the Docket, call Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Meeting and Open House

We invite you to learn about the proposed deepwater port at any of the above informational open houses and to comment at any of the above public meetings on environmental issues related to the proposed deepwater port. Your comments will help us identify and refine the scope of the environmental issues to be addressed in the EIS.

Speaker registrations will be available at the door. Speakers at the public scoping meetings will be recognized in the following order: Elected officials, public agencies, individuals or groups in the sign-up order and then anyone else who wishes to speak.

In order to allow everyone a chance to speak at a public meeting, we may limit speaker time, extend the meeting hours or both. You must identify yourself, and any organization you represent, by name. Your remarks will be recorded or transcribed for inclusion in the public docket.

You may submit written material at a public meeting, either in place of or in addition to speaking. Written material must include your name and address and will be included in the public docket.

Public docket materials will be made available to the public on the Federal Docket Management Facility Web site (see Request for Comments).

Our public meeting locations are wheelchair-accessible. If you plan to attend an open house or public meeting and need special assistance such as sign language interpretation, non-English language translator services or other reasonable accommodation, please notify the USCG (see **FOR FURTHER INFORMATION CONTACT**) at least 5 business days in advance. Include your contact information as well as information about your specific needs.

Request for Comments

We request public comments or other relevant information on environmental issues related to the proposed deepwater port. The public meeting is not the only opportunity you have to comment on the Delfin LNG deepwater port license application. In addition to or in place of attending a meeting, you can submit comments directly to the Federal Docket Management Facility during the public comment period (see **DATES**). We will consider all comments and material received during the 30-day scoping period. The license application, comments and associated documentation as well as the draft and final EISs (when published) are available for viewing at the Federal Docket Management System (FDMS) Web site: *http://www.regulations.gov* under docket number USCG–2015–0472.

Public comment submissions should include:

- Docket number USCG–2015–0472.
- Your name and address.

Submit comments or material using only one of the following methods:

- Electronically (preferred for processing) to the Federal Docket Management System (FDMS) Web site: *http://www.regulations.gov* under docket number USCG–2015–0472.
- By mail to the Federal Docket Management Facility (USCG–2015–0472), U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001
- By personal delivery to the room and address listed above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- By fax to the Federal Docket Management Facility at 202–493–2251.

Faxed, mailed or hand delivered submissions must be unbound, no larger than 8½ by 11 inches and suitable for copying and electronic scanning. The format of electronic submissions should also be no larger than 8½ by 11 inches. If you mail your submission and want to know when it reaches the Federal Docket Management Facility, please include a stamped, self-addressed postcard or envelope.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the FDMS Web site (*http://www.regulations.gov*) and will include any personal information you provide. Therefore, submitting this information to the docket makes it public. You may wish to read the Privacy and Use Notice that is available on the FDMS Web site and the Department of Transportation Privacy Act Notice that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477), see Privacy Act. You may

view docket submissions at the Federal Docket Management Facility or electronically on the FDMS Web site.

Background

Information about deepwater ports, the statutes, and regulations governing their licensing, including the application review process, and the receipt of the current application for the proposed Delfin LNG deepwater port appears in the July 16, 2015 edition of the **Federal Register**. The ''Summary of the Application'' from that publication is reprinted below for your convenience.

Consideration of a deepwater port license application includes review of the proposed deepwater port's impact on the natural and human environment. For the proposed deepwater port, USCG and MARAD are the co-lead Federal agencies for determining the scope of this review, and in this case, it has been determined that review must include preparation of an EIS. This NOI is required by 40 CFR 1501.7. It briefly describes the proposed action, possible alternatives and our proposed scoping process. You can address any questions about the proposed action, the scoping process or the EIS to the USCG project manager identified in this notice (see **FOR FURTHER INFORMATION CONTACT**).

Proposed Action and Alternatives

The proposed action requiring environmental review is the Federal licensing of the proposed deepwater port described in ''Summary of the Application'' below. The alternatives to licensing the proposed port are: (1) Licensing with conditions (including conditions designed to mitigate environmental impact), (2) proposed deepwater port site alternatives or (3) denying the application, which for purposes of environmental review is the ''no-action'' alternative.

Scoping Process

Public scoping is an early and open process for identifying and determining the scope of issues to be addressed in the EIS. Scoping begins with this notice, continues through the public comment period (see **DATES**), and ends when USCG and MARAD have completed the following actions:

- Invites the participation of Federal, state, and local agencies, any affected Indian tribe, the applicant, in this case Delfin LNG, and other interested persons;
- Determines the actions, alternatives and impacts described in 40 CFR 1508.25;
- Identifies and eliminates from detailed study, those issues that are not significant or that have been covered elsewhere;
- Identifies other relevant permitting, environmental review and consultation requirements;
- Indicates the relationship between timing of the environmental review and other aspects of the application process; and
- At its discretion, exercises the options provided in 40 CFR 1501.7(b).

Once the scoping process is complete, USCG will prepare a draft EIS in conjunction with MARAD. Also, MARAD will publish a **Federal Register** notice announcing public availability of the draft EIS. (If you want that notice to be sent to you, please contact the USCG project manager identified in **FOR FURTHER INFORMATION CONTACT**). You will have an opportunity to review and comment on the draft EIS. USCG will consider those comments and then prepare the final EIS. As with the draft EIS, we will announce the availability of the final EIS and once again, give you an opportunity for review and comment and include final public hearings as required by the Act.

Summary of the Application

Delfin LNG is proposing to construct, own, operate, and eventually decommission a deepwater port (referred to hereafter as the Delfin deepwater port) in the Gulf of Mexico to liquefy domestically-sourced natural gas for export to nations with which the United States has a Free Trade Agreement (FTA) and with non-FTA nations.

The proposed Delfin deepwater port has both onshore and offshore components. As previously described, the proposed Delfin deepwater port would be located in Federal waters within the OCS West Cameron Area, West Addition Protraction Area (Gulf of Mexico) approximately 37.4 to 40.8 nautical miles off the coast of Cameron Parish, Louisiana, in water depths ranging from approximately 64 to 72 feet (19.5 to 21.9 meters). The Delfin deepwater port would consist of four semi-permanently moored FLNGVs located as follows: #1 (29°8′13.1″ N./93°32′2.2″ W.), #2 (29°6′13.6″N./93°32′42.4″ W.), #3 (29°6′40.7″ N./93°30′10.1″ W.), and #4 (29°4′40.9″ N./93°30′51.8″ W.) located in West Cameron (WC) lease blocks 319, 327, 328, and 334, respectively. Delfin LNG would reuse and repurpose two existing offshore natural gas pipelines, the former UTOS pipeline and the HIOS pipeline. Four new 30-inch diameter pipeline laterals, each approximately 6,400 feet in length, connecting the HIOS pipeline to each of the FLNGVs, would be constructed. In addition, a 700-foot 42-inch diameter new pipeline would be constructed to bypass a platform at WC lease block 167 (WC 167) and connect the UTOS and HIOS pipelines. Feed gas would be supplied through the new pipeline laterals to each of the FLNGVs where it would be super cooled to produce LNG. The LNG would be stored onboard the FLNGVs and transferred via ship-to-ship transfer to properly certified LNG trading carriers. Each of the FLNGVs would be semi-permanently moored to four new weathervaning tower yoke mooring systems (TYMS).

The onshore components in Cameron Parish, Louisiana are described specifically in an application submitted to FERC. The onshore components of the Delfin deepwater port will consist of constructing and operating a new natural gas compressor station, gas supply header and a metering station at an existing gas facility (see the FERC Application referenced below). The proposal would require: (1) Reactivation of approximately 1.1 miles of existing 42-inch pipeline, formerly owned by UTOS, which runs from Transcontinental Gas Pipeline Company Station No. 44 (Transco Station 44) to the mean highwater mark along the Cameron Parish Coast; (2) installation of 74,000 horsepower of new compression; (3) construction of 0.25 miles of 42-inch pipeline to connect the former UTOS line to the new meter station; and (4) construction of 0.6 miles of twin 30-inch pipelines between Transco Station 44 and the new compressor station.

Onshore pipeline quality natural gas from the interstate grid would be sent to the existing, but currently idle, 42-inch UTOS pipeline. The gas transported through the UTOS pipeline would then bypass the existing manifold platform located at WC 167 via a newly installed pipeline segment, 700 feet in length, connecting to the existing 42-inch HIOS pipeline.

The bypass of the WC 167 platform would be trenched so that the top of the pipe is a minimum of 3 feet below the seafloor. From the bypass, the feed gas would then be transported further offshore using the HIOS pipeline portion leased by Delfin LNG between WC 167 and High Island A264. The existing UTOS and HIOS pipelines transect OCS Lease Blocks WC 314, 318, 319, 327, and 335, and would transport feed gas from onshore to offshore (one-directional flow). Delfin LNG proposes to install four new lateral pipelines along the HIOS pipeline, starting approximately 16.0 nautical miles south of the WC 167 platform. Each subsea lateral pipeline would be 30 inches in

diameter and approximately 6,400 feet in length, extending from the HIOS pipeline to the Delfin deepwater port. The maximum allowable operating pressure of the pipeline system (UTOS, bypass, HIOS and laterals) would be 1,250 pounds per square inch gauge (psig).

The FLNGVs would receive pipeline quality natural gas via the laterals and TYMS where it would be cooled sufficiently to completely condense the gas and produce LNG. The produced LNG would be stored in International Maritime Organization (IMO) type B, prismatic, independent LNG storage tanks aboard each of the FLNGVs. Each vessel would have a total LNG storage capacity of 165,000 cubic meters (m^3).

An offloading mooring system would be provided on each FLNGV to moor an LNG trading carrier side-by-side for cargo transfer of LNG through loading arms or cryogenic hoses using ship-to-ship transfer procedures. LNG carriers would be moored with pilot and tug assist. The FLNGVs would be equipped with fenders and quick-release hooks to facilitate mooring operations. The offloading system would be capable of accommodating standard LNG trading carriers with nominal cargo capacities up to 170,000 m^3. Delfin LNG estimates that the typical LNG cargo transfer operation would be carried out within 24 hours, including LNG trading carrier berthing, cargo transfer and sail-away. Approximately 31 LNG trading carriers are expected to visit each of the four FLNGVs per year for a total of up to 124 cargo transfer operations per year. Each LNG trading carrier would be assisted by up to three tugs during approach and mooring and up to two tugs while departing the Delfin deepwater port.

The FLNGVs would be self-propelled vessels and have the ability to disconnect from the TYMS and set sail to avoid hurricanes or to facilitate required inspections, maintenance and repairs.

In the nominal design case, each of the four FLNGVs would process approximately 330 million standard cubic feet per day (MMscfd), which would total 1.32 billion standard cubic feet per day (Bscf/d) of input feed gas for all four of the FLNGVs. Based on an estimated availability of 92 percent and allowance for consumption of feed gas during the liquefaction process, each FLNGV would produce approximately 97.5 billion standard cubic feet per year (Bscf/y) of gas (or approximately 2.0 million metric tonnes per annum [MMtpa]) for export in the form of LNG. Together, the four FLNGVs are designed to have the capability to export 390.1 Bscf/y of gas (or approximately 8.0 MMtpa) in the form of LNG.

As detailed engineering and equipment specification advances during the design process and operating efficiencies are gained post-commissioning, the liquefaction process could perform better than this nominal design case. It is therefore anticipated that LNG output, based on the high-side design case of 375 MMscfd of input feed gas, would be as much as approximately 110.8 Bscf/y of gas (or approximately 2.3 MMtpa) for each FLNGV. Taken together, the four FLNGVs would be capable of exporting the equivalent of 443.3 Bscf/y of natural gas in the form of LNG. Therefore, Delfin LNG is requesting authorization to construct and operate facilities capable of exporting up to 443.3 Bscf/y of natural gas in the form of LNG (which equates to approximately 9.2 MMtpa).

The proposed Delfin deepwater port would take a modular implementation approach to allow for early market entry and accommodate market shifts. Offshore construction activities are proposed to begin at the end of first quarter of 2018 and would be completed in four stages, with each stage corresponding to the commissioning and operation of an FLNGV. The anticipated commissioning of FLNGV 1 is the third quarter of 2019 with start-up of commercial operation of FLNGV 1 by the end of 2019. It is anticipated that FLNGVs 2 through 4 would be commissioned 12 months apart. Following this schedule and barring unforeseen events, the Delfin deepwater port would be completed and all four FLNGVs would be fully operational by the summer of 2022.

FERC Application

The onshore component and nearshore pipeline component of the proposed Delfin deepwater port falls under the jurisdiction of and is processed under a separate authorization by FERC. On May 8, 2015, Delfin LNG filed an application with FERC to construct and operate the onshore/nearshore components of the proposed deepwater port. This application was noticed on FERC's Docket: No. CP15–490–000 on May 20, 2015, and in the **Federal Register** Vol. 80, No. 101/Wednesday, May 27, 2015/Notices. The following is an excerpt from FERC's **Federal Register** Notice:

> Take notice that on May 8, 2015 Delfin LNG LLC (Delfin LNG), 1100 Louisiana Street, Houston, Texas 77002, filed in Docket No. CP15–490–000, an Application pursuant to section 7(c) of the Commission's Regulations under the Natural Gas Act and Parts 157 of the Federal Energy Regulatory Commission's (Commission) regulations requesting authorization to (1) reactivate approximately 1.1 miles of existing 42-inch pipeline formerly owned by U–T Offshore System (UTOS), which runs from Transcontinental Gas Pipeline Company Station No. 44 (Transco Station 44) to the mean highwater mark along the Cameron Parish Coast; (2) install 74,000 horsepower of new compression; (3) construct 0.25 miles of 42-inch pipeline to connect the former UTOS line to the new meter station; and (4) construct 0.6 miles of twin 30-inch pipelines between Transco Station 44 and the new compressor station in Cameron Parrish, Louisiana that comprise the onshore portion of Delfin LNG's proposed deepwater port (DWP), an offshore liquefied natural gas facility located off the coast of Louisiana in the Gulf of Mexico, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. Additionally, Delfin LNG requests a blanket construction certificate under Part 17, Subpart F of the Commission's regulations. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (excluding the last three digits) in the docket number field to access the document. For assistance, please contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free (866) 208–3676 or TYY, (202) 502–8659.

It is important to note that the onshore facilities will connect with the offshore deepwater port facilities which are subject to the jurisdiction of MARAD and USCG. As previously discussed, Delfin LNG proposes to lease a segment of pipeline from HIOS that extends from the terminus of the UTOS pipeline offshore. Delfin LNG states in its application that HIOS will submit a separate application with FERC seeking authorization to abandon by lease its facilities to Delfin LNG. Because the review of the deepwater port proposal is the jurisdiction of MARAD and USCG, FERC has acknowledged receipt of the Delfin LNG application, provided under Docket No. CP15–490–000 on May 8, 2015; however, FERC will not begin processing the Delfin LNG application until such time that HIOS submits an abandonment application to FERC for review and processing. Accordingly, although the USCG and MARAD will commence review and processing of the Delfin deepwater port license application, upon the publication of this Notice of Intent, MARAD and USCG will not publish the draft EIS until FERC has received an application for abandonment of the HIOS pipeline and has begun to process Delfin's application for the construction and operation of the onshore components of the proposed deepwater port.

Privacy Act

The electronic form of all comments received into the FDMS can be searched

by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). The Department of Transportation Privacy Act Statement can be viewed in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, pages 19477–78) or by visiting *http://www.regulations.gov.*

(Authority: 33 U.S.C. 1501, *et seq.,* 49 CFR 1.93(h)).

Dated: July 24, 2015.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2015–18594 Filed 7–28–15; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (collectively, the agencies) may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to extend, with revision, the Foreign Branch Report of Condition (FFIEC 030 and FFIEC 030S), which is a currently approved information collection for each agency. The proposed changes would be effective for the FFIEC 030 and FFIEC 030S reports as of the December 31, 2015, report date. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC and the agencies should modify the proposed revisions prior to giving final approval. The agencies will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before September 28, 2015.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number, will be shared among the agencies.

OCC: Because paper mail in the Washington, DC, area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0099, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Board: You may submit comments, identified by FFIEC 030 or FFIEC 030S, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at: *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include reporting form number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert DeV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, which should refer to ''Foreign Branch Report of Condition, 3064–0011,'' by any of the following methods:

- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments on the FDIC's Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: comments@FDIC.gov.* Include ''FFIEC 030 and FFIEC 030S'' in the subject line of the message.
- *Mail:* Gary A. Kuiper, Counsel, Attn: Comments, Room MB–3074, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9:00 a.m. and 5:00 p.m. on business days.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503; by fax to (202) 395–6974; or by email to *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the report forms can be obtained at the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Mark Tokarski, Federal Reserve Board Acting Clearance Officer, (202) 452–3829, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Gary A. Kuiper, Counsel, (202) 898–3877, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Proposal to extend for three years, with revision, the following currently approved collections of information:

Report Title: Foreign Branch Report of Condition.

Form Numbers: FFIEC 030 and FFIEC 030S.

Frequency of Response: Annually, and quarterly for significant branches.

Affected Public: Business or other for profit.

OCC

OMB Number: 1557–0099.

Estimated Number of Respondents: 199 annual branch respondents (FFIEC 030). 57 quarterly branch respondents (FFIEC 030). 30 annual branch respondents (FFIEC 030S).

Estimated Average Time per Response: 3.4 burden hours (FFIEC 030). 0.5 burden hours (FFIEC 030S).

Estimated Total Annual Burden: 1,467 burden hours.

Board

OMB Number: 7100–0071.

Estimated Number of Respondents: 14 annual branch respondents (FFIEC 030). 24 quarterly branch respondents (FFIEC 030). 11 annual branch respondents (FFIEC 030S).

Estimated Average Time per Response: 3.4 burden hours (FFIEC 030). 0.5 burden hours (FFIEC 030S).

Estimated Total Annual Burden: 380 burden hours.

FDIC

OMB Number: 3064–0011.

Estimated Number of Respondents: 8 annual branch respondents (FFIEC 030). 1 quarterly branch respondent (FFIEC 030). 8 annual branch respondents (FFIEC 030S).

Estimated Average Time per Response: 3.4 burden hours (FFIEC 030). 0.5 burden hours (FFIEC 030S).

Estimated Total Annual Burden: 45 burden hours.

General Description of Reports

This information collection is mandatory: 12 U.S.C. 602 (Board); 12 U.S.C. 161 and 602 (OCC); and 12 U.S.C. 1828 (FDIC). This information collection is given confidential treatment under 5 U.S.C. 552(b)(4) and (8).

Abstract

The FFIEC 030 contains asset and liability information for foreign branches of insured U.S. banks and insured U.S. savings associations (U.S. institutions) and is required for regulatory and supervisory purposes. The information is used to analyze the foreign operations of U.S. institutions. All foreign branches of U.S. institutions regardless of charter type file this report as provided in the instructions to the FFIEC 030 and FFIEC 030S.

An institution must file a separate report for each foreign branch, but in some cases may consolidate filing for multiple foreign branches in the same country, as discussed below. A branch with either total assets of at least $2 billion or commitments to purchase foreign currencies and U.S. dollar exchange of at least $5 billion as of the end of a calendar quarter is considered a ''significant branch'' and is required to report quarterly on the FFIEC 030. A foreign branch that does not meet either of the criteria to file quarterly, but has total assets in excess of $250 million, must file the entire FFIEC 030 report on an annual basis as of each December 31.

A foreign branch that does not meet the criteria to file the FFIEC 030 report, but has total assets of $50 million or more (but less than or equal to $250 million), must file the Abbreviated Foreign Branch Report of Condition (FFIEC 030S) on an annual basis as of each December 31.

Current Actions

The agencies propose to revise the officer declaration requirement that applies to the FFIEC 030 and FFIEC 030S, reduce the information provided if the consolidation option is elected, and add a field on the cover page for an institution to indicate whether the branch meets the criteria for annual or quarterly filing.

At present, the FFIEC 030 and FFIEC 030S reports must be signed by an authorized officer who addresses the correctness of the information reported by stating only that the report is true and correct to the best of his or her knowledge and belief. The agencies propose to revise the language of this declaration requirement to make explicit that the authorized officer must be an officer of the parent U.S. institution who attests that the report, including any consolidated branches, has been prepared in conformance with the instructions issued by the Federal Financial Institutions Examination Council and is true and correct to the best of his or her knowledge and belief. In addition, this attestation language would be moved from page 3 to page 1 of the FFIEC 030.

At a U.S. institution's option, branches in a single country currently may report their year-end information on a consolidated basis.[1] When this option is exercised, each branch that is consolidated into the report for the U.S. institution's principal branch in a country is instructed to state on the cover page of its report that no figures are shown for this branch in its report because its figures have been consolidated with those reported by the principal branch in that country. The branch that has been consolidated also must include its address on the cover page of its report, which it must file with the appropriate Federal Reserve District Bank. In turn, the principal branch is instructed to state the number of branches in the country that are consolidated into its report, and then list the address of each consolidated branch. The agencies propose to eliminate the requirement for a branch that is consolidated into the report for the U.S. institution's principal branch in a country to submit the cover page of the report containing the statement that the branch is consolidated into the report filed by the principal branch in that country, along with its address. This requirement is unnecessary given that this information is conveyed in the report for the U.S. institution's principal branch in that country.

The FFIEC 030 report for December 31 must be filed by both annual and quarterly respondents. To aid in identifying annual versus quarterly respondents, the agencies propose to add a field to the cover page of the FFIEC 030 report in which respondents would indicate whether the report is filed annually or quarterly. This field would only need to be completed annually on the December 31 report.

Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

a. Whether the information collection is necessary for the proper performance

[1] However, foreign branches that meet the threshold for reporting on a quarterly basis must not be consolidated with any other branch. In addition, a branch with total assets of less than $50 million, which is exempt from filing the FFIEC 030 and 030S reports, need not be consolidated.

of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record.

Dated: July 17, 2015.

Stuart Feldstein,

Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, July 22, 2015.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 17th day of July, 2015.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2015–18588 Filed 7–28–15; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Publication of Ukraine General Licenses 5, 6, 7, 8, and 9

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice, publication of general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing General License No. 5, General License No. 6, General License No. 7, General License No. 8, and General License No. 9 issued under the Ukraine-related sanctions program. On December 30, 2014, OFAC issued General License No. 5, which authorizes transactions and activities necessary to wind down operations involving the Crimea region of Ukraine, subject to certain limitations. On January 30, 2015, OFAC issued three Ukraine-related general licenses. General License No. 6 authorizes noncommercial, personal remittances to or from the Crimea region of Ukraine or for or on behalf of an individual ordinarily resident in the Crimea region of Ukraine, subject to certain limitations. General License No. 7 authorizes the operation of accounts in U.S. financial institutions for individuals ordinarily resident in the Crimea region of Ukraine, subject to certain limitations. General License No. 8 authorizes transactions related to the receipt and transmission of telecommunications and mail, subject to certain limitations. On May 22, 2015, OFAC issued General License No. 9, which authorizes the exportation of certain services and software incident to the exchange of Internet-based communications, subject to certain limitations.

DATES: *Effective Date:* December 30, 2014, for General License No. 5; January 30, 2015 for General License No. 6, General License No. 7, and General License No. 8; and May 22, 2015 for General License No. 9.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Policy, tel.: 202–622–2746, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202–622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202–622–0077.

Background

Since December 30, 2014, OFAC has issued five general licenses authorizing certain transactions for the Crimea region of Ukraine involving certain activities prohibited by Executive Order 13685 of December 19, 2014. On December 30, 2014, OFAC issued General License No. 5 authorizing transactions and activities prohibited by Executive Order 13685 of December 19, 2014 necessary to wind down operations involving the Crimea region of Ukraine, subject to certain limitations. At the time of its issuance on December 30, 2014, OFAC made General License No. 5 available on the OFAC Web site (*www.treasury.gov/ofac*).

On January 30, 2015, OFAC issued three general licenses. General License No. 6 authorizes noncommercial, personal remittances to or from the Crimea region of Ukraine or for or on behalf of an individual ordinarily resident in the Crimea region of Ukraine, subject to certain limitations. General License No. 7 authorizes the operation of accounts in U.S. financial institutions for individuals ordinarily resident in the Crimea region of Ukraine, subject to certain limitations. General License No. 8 authorizes transactions related to the receipt and transmission of telecommunications and mail involving the Crimea region of Ukraine, subject to certain limitations. At the time of their issuance on January 30, 2015, OFAC made General License Nos. 6, 7, and 8 available on the OFAC Web site (*www.treasury.gov/ofac*).

On May 22, 2015, OFAC issued General License No. 9 authorizing the exportation from the United States or by U.S. persons of certain services and software incident to the exchange of Internet-based communications, subject to certain limitations. At the time of its issuance on May 22, 2015, OFAC made General License No. 9 available on the OFAC Web site (*www.treasury.gov/ofac*). With this notice, OFAC is publishing Ukraine-related General License Nos. 5, 6, 7, 8, and 9 in the **Federal Register**.

Generak License No. 5

Authorizing Certain Activities Prohibited by Executive Order 13685 of December 19, 2014 Necessary To Wind Down Operations Involving the Crimea Region of Ukraine

(a) Except as provided in paragraph (b) of this general license, all transactions and activities prohibited by Section 1 of Executive Order 13685 of December 19, 2014, ''Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to the Crimea Region of Ukraine'' (the ''Crimea E.O.''), that are ordinarily incident and necessary (1) to the winding down or divestiture or transfer to a foreign person of a U.S. person's share of ownership, including an equity interest, in pre-December 20, 2014 investments located in the Crimea region of Ukraine; (2) to the winding down of operations, contracts, or other agreements that were in effect prior to December 20, 2014, involving the exportation, reexportation, sale, or supply of goods, services, or technology

to the Crimea region of Ukraine; or (3) to the winding down of operations, contracts, or other agreements that were in effect prior to December 20, 2014, involving the importation of any goods, services, or technology from the Crimea region of Ukraine into the United States, are authorized through 12:01 a.m. eastern daylight time, February 1, 2015.

(b) This general license does not authorize (1) any new exportation, reexportation, sale, or supply of goods, services, or technology from the United States, or by a U.S. person, wherever located, to the Crimea region of Ukraine, or (2) any new importation into the United States of goods, services, or technology from the Crimea region of Ukraine, except as needed to wind down operations, contracts, or other agreements otherwise prohibited by the Crimea E.O. This general license does not authorize any transactions or dealings otherwise prohibited by any other Executive order or any other part of 31 CFR Chapter V, or any transactions or dealings with any specially designated national (SDN) listed pursuant to any Ukraine-related Executive order.

(c) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the wind-down activities conclude, to file a detailed report, including the parties involved, the type and scope of activities conducted, and the dates of the activities, with the Office of Foreign Assets Control, Licensing Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Annex, Washington, DC 20220.

Issued: December 30, 2014.

General License No. 6

Noncommercial, Personal Remittances Authorized

(a)(1) U.S. persons are authorized to send and receive, and U.S. depository institutions, U.S. registered brokers or dealers in securities, and U.S. registered money transmitters are authorized to process transfers of, funds to or from the Crimea region of Ukraine or for or on behalf of an individual ordinarily resident in the Crimea region of Ukraine in cases in which the transfer involves a noncommercial, personal remittance, provided the transfer is not by, to, or through any person whose property and interests in property are blocked pursuant to Executive Order 13660 of March 6, 2014, Executive Order 13661 of March 17, 2014, Executive Order 13662 of March 20, 2014, or Executive Order 13685 of December 19, 2014 (collectively, the ''Orders'').

(2) Noncommercial, personal remittances do not include charitable donations of funds to or for the benefit of an entity or funds transfers for use in supporting or operating a business, including a family-owned business.

(b) The transferring institutions identified in paragraph (a) of this general license may rely on the originator of a funds transfer with regard to compliance with paragraph (a), provided that the transferring institution does not know or have reason to know that the funds transfer is not in compliance with paragraph (a).

(c) An individual who is a U.S. person is authorized to carry funds as a noncommercial, personal remittance, as described in paragraph (a) of this general license, to an individual in the Crimea region of Ukraine or to an individual ordinarily resident in the Crimea region of Ukraine, other than an individual whose property and interests in property are blocked pursuant to the Orders, provided that the individual who is a U.S. person is carrying the funds on his or her behalf, but not on behalf of another person.

Issued: January 30, 2015.

General License No. 7

Operation of Accounts Authorized

The operation of an account in a U.S. financial institution for an individual ordinarily resident in the Crimea region of Ukraine other than an individual whose property and interests in property are blocked pursuant to Executive Order 13660 of March 6, 2014, Executive Order 13661 of March 17, 2014, Executive Order 13662 of March 20, 2014, or Executive Order 13685 of December 19, 2014 (collectively, the ''Orders''), is authorized, provided that transactions processed through the account:

(a) Are of a personal nature and not for use in supporting or operating a business;

(b) Do not involve transfers directly or indirectly to the Crimea region of Ukraine or for the benefit of individuals ordinarily resident in the Crimea region of Ukraine unless authorized by General License No. 6 (''Noncommercial, Personal Remittances Authorized''); and

(c) Are not otherwise prohibited by the Orders.

Issued: January 30, 2015.

General License No. 8

Transactions Related to Telecommunications and Mail Authorized

(a)(1) Except as provided in paragraph (a)(2) of this general license, all transactions with respect to the receipt and transmission of telecommunications involving the Crimea region of Ukraine are authorized, provided that no payment pursuant to this general license may involve any transaction with a person whose property and interests in property are blocked pursuant to Executive Order 13660 of March 6, 2014, Executive Order 13661 of March 17, 2014, Executive Order 13662 of March 20, 2014, or Executive Order 13685 of December 19, 2014 (collectively, the ''Orders'').

(2) This general license does not authorize:

(i) The provision, sale, or lease of telecommunications equipment or technology; or

(ii) The provision, sale, or lease of capacity on telecommunications transmission facilities (such as satellite or terrestrial network activity).

(b) All transactions of common carriers incident to the receipt or transmission of mail and packages between the United States and the Crimea region of Ukraine are authorized, provided that the importation or exportation of such mail and packages is exempt from the prohibitions of Executive Order 13685 of December 19, 2014, or is otherwise authorized pursuant to 31 CFR part 589.

Issued: January 30, 2015.

General License No. 9

Exportation of Certain Services and Software Incident to Internet-Based Communications Authorized

(a) Except as provided in paragraph (d) of this general license, the exportation or reexportation, directly or indirectly, from the United States or by U.S. persons, wherever located, to persons in the Crimea region of Ukraine of services incident to the exchange of personal communications over the Internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, and blogging, is authorized, provided that such services are widely available to the public at no cost to the user.

(b) Except as provided in paragraph (d) of this general license, the exportation or reexportation, directly or indirectly, from the United States or by U.S. persons, wherever located, to persons in the Crimea region of Ukraine of software necessary to enable the services described in paragraph (a) of this general license is authorized, provided that such software is designated EAR99 under the Export Administration Regulations, 15 CFR parts 730 through 774 (the ''EAR''), or is classified by the U.S. Department of Commerce (Commerce) as mass market

software under export control classification number (ECCN) 5D992 of the EAR, and provided further that such software is widely available to the public at no cost to the user.

(c) Except as provided in paragraph (d) of this general license, the exportation or reexportation, directly or indirectly, from the United States or by U.S. persons, wherever located, to persons in the Crimea region of Ukraine of software that is not subject to the EAR because it is of foreign origin and is located outside the United States that is necessary to enable the services described in paragraph (a) of this general license is authorized, provided that such software would be designated EAR99 if it were located in the United States or would meet the criteria for classification under ECCN 5D992 of the EAR if it were subject to the EAR, and provided further that such software is widely available to the public at no cost to the user.

(d) This general license does not authorize:

(1) The exportation or reexportation, directly or indirectly, of services or software with knowledge or reason to know that such services or software are intended for any person whose property and interests in property are blocked pursuant to Executive Order 13660 of March 6, 2014, Executive Order 13661 of March 17, 2014, Executive Order 13662 of March 20, 2014, or Executive Order 13685 of December 19, 2014;

(2) The exportation or reexportation, directly or indirectly, of any goods or technology listed on the Commerce Control List in the EAR, 15 CFR part 774, supplement No. 1 (CCL), except for software necessary to enable the services described in paragraph (a) of this general license that is classified by Commerce as mass market software under ECCN 5D992 of the EAR;

(3) The exportation or reexportation, directly or indirectly, of commercial-grade Internet connectivity services or telecommunications transmission facilities (such as dedicated satellite links or dedicated lines that include quality of service guarantees); or

(4) The exportation or reexportation, directly or indirectly, of web-hosting services that are for commercial endeavors or of domain name registration services.

(e) Specific licenses may be issued on a case-by-case basis for the exportation or reexportation of services or software incident to the exchange of personal communications over the Internet not specified in paragraphs (a), (b), or (c) of this general license, and for the exportation or reexportation of hardware incident to the exchange of personal communications over the Internet.

Note to General License 9: Nothing in this general license or in any license issued pursuant to paragraph (e) of this general license relieves the exporter from compliance with the export license application requirements of another Federal agency.

Issued: May 22, 2015.

Dated: July 23, 2015.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2015–18520 Filed 7–28–15; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

AGENCY: Department of the Treasury.

NOTICE: 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 August 28, 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* or viewing the entire information collection request at *www.reginfo.gov.*

Departmental Offices, Office of Financial Research

OMB Number: 1505–0245.

Type of Review: Revision of a currently approved collection.

Title: Assessment of Fees on Large Bank Holding Companies and Nonbank Financial Companies.

Abstract: The Financial Research Fund (FRF) Preauthorized Payment Agreement form will collect information with respect to the final rule (31 CFR part 150) on the assessment of fees on large bank holding companies and nonbank financial companies supervised by the Federal Reserve Board to cover the expenses of the FRF.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Burden Hours: 13.

Dated: July 22, 2015.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2015–18394 Filed 7–28–15; 8:45 am]

BILLING CODE 4810–25–P

FEDERAL REGISTER

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No. 145 July 29, 2015

Part II

Environmental Protection Agency

40 CFR Part 63

National Emissions Standards for Hazardous Air Pollutants for Mineral Wool Production and Wool Fiberglass Manufacturing; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2010–1041 and EPA–HQ–OAR–2010–1042; FRL–9928–71–OAR]

RIN 2060–AQ90

National Emissions Standards for Hazardous Air Pollutants for Mineral Wool Production and Wool Fiberglass Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the residual risk and technology reviews (RTR) conducted for the Mineral Wool Production and Wool Fiberglass Manufacturing source categories regulated under national emission standards for hazardous air pollutants (NESHAP). Under this action, we are establishing pollutant-specific emissions limits for hazardous air pollutants (HAP) that were previously regulated (under a surrogate) and for HAP that were previously unregulated. This action finalizes first-time generally available control technologies (GACT) standards for gas-fired glass-melting furnaces at wool fiberglass manufacturing facilities that are area sources. We are also amending regulatory provisions related to emissions during periods of startup, shutdown, and malfunction (SSM); adding requirements for reporting of performance testing through the Electronic Reporting Tool (ERT); and making several minor clarifications and corrections. The revisions in these final rules increase the level of emissions control and environmental protection provided by the Mineral Wool Production and Wool Fiberglass Manufacturing NESHAP.

DATES: This final action is effective on July 29, 2015.

ADDRESSES: The Environmental Protection Agency (EPA) has established two dockets for this action under Docket ID Nos. EPA–HQ–OAR–2010–1041 (for 40 CFR part 63, subpart DDD) and EPA–HQ–OAR–2010–1042 (for 40 CFR part 63, subparts NNN and NN). All documents in these dockets are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov,* or in hard copy at the EPA Docket Center, EPA WJC West Building, Room Number 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Ms. Susan Fairchild, Sector Policies and Programs Division (D 234–04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–5167; fax number: (919) 541–5600; and email address: *fairchild.susan@epa.gov.* For specific information regarding the risk modeling methodology, contact Mr. Chris Sarsony, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4843; fax number: (919) 541–0840; and email address: *sarsony.chris@epa.gov.* For information about the applicability of the NESHAP to a particular entity, contact Ms. Sara Ayres, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency Region 5, 77 West Jackson Boulevard, Mail Code E–19J, Chicago, IL 60604–3507; telephone number: (312) 343–6266; and email address: *ayres.sara@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble Acronyms and Abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ADAF Age-dependent adjustment factors
AEGL Acute Exposure Guideline Levels
ANSI American National Standards Institute
APA Administrative Procedures Act
BDL Below detection limit
BFS Batch Formulation System
CAA Clean Air Act
CA–REL California reference exposure level
CBI Confidential business information
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CEMS Continuous emission monitoring system
CFR Code of Federal Regulations
CO Carbon monoxide
COS Carbonyl sulfide
CPMS Continuous parameter monitoring system
Cr Chromium
CRA Congressional Review Act
CRT Cathode ray tube
DESP Dry electrostatic precipitator
dscm Dry standard cubic meters
EPA Environmental Protection Agency
ERPG Emergency Response Planning Guidelines
ERT Electronic Reporting Tool
ESP Electrostatic precipitator
FA Flame attenuation
FR **Federal Register**
GACT Generally available control technology
HAP Hazardous air pollutants
HCl Hydrogen chloride
HEPA High efficiency particulate air
HF Hydrogen fluoride
HQ Hazard quotient
ICR Information collection request
IRIS Integrated Risk Information System
Lb/ton Pounds per ton
LOI Loss on ignition
MACT Maximum achievable control technology
MDL Minimum detection limit
MIR Maximum individual risk
NAICS North American Industry Classification System
NAIMA North American Insulation Manufacturers Association
NESHAP National Emission Standards for Hazardous Air Pollutants
NO_X Nitrogen oxide
NPV Net present value
NSPS New Source Performance Standards
NSSN National Standards Systems Network
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
PB–HAP Persistent and Bioaccumulative-HAP
PM Particulate matter
ppm Parts per million
PRA Paperwork Reduction Act
RACT/BACT/LAER Reasonably Available Control Technology/Best Available Control Technology/Lowest Achievable Emission Rate
RCRA Resource Conservation and Recovery Act
RDL Representative detection limit
REL Recommended exposure limit
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
RIN Regulatory Information Number
RS Rotary spin
RTR Risk and Technology Review
SAB Science Advisory Board
SBA Small Business Administration
SBAR Small Business Analytical Review
SBREFA Small Business Regulatory Enforcement Flexibility Act
SO_2 Sulfur dioxide
SSM Startup, shutdown, malfunction
TOSHI Target organ specific hazard index
TTN Technology Transfer Network
UMRA Unfunded Mandates Reform Act
UPL Upper prediction limit

VCS Voluntary Consensus Standards

Background Information. On November 25, 2011 (76 FR 72770), the EPA proposed revisions to the Mineral Wool Production and Wool Fiberglass Manufacturing NESHAP based on our RTR under Clean Air Act (CAA) sections 112(f)(2) and (d)(6). We proposed chromium compounds emissions limits for wool fiberglass furnaces at major sources after finding that chromium refractories used to construct furnaces degrade with age and emit continuously-increasing levels of chromium compounds. These findings were the result of emissions testing conducted on these types of furnaces indicating significant amounts (550 pounds) of chromium emissions, 93 percent of which was in the hexavalent (most toxic) form. The furnaces tested were considered representative of all furnaces at each facility. In the November 2011 proposal, we also announced that we had already issued a new information collection request (ICR) to the wool fiberglass industry to collect data on chromium emissions and chromium refractory use at all operating wool fiberglass furnaces with the intent of regulating area sources in a future action.

In the November 2011 proposal we also proposed to discontinue using formaldehyde as a surrogate for phenol and methanol in both the Mineral Wool Production and Wool Fiberglass Manufacturing source categories and to discontinue using carbon monoxide (CO) as a surrogate for carbonyl sulfide (COS) in the Mineral Wool Production source category. This revision was proposed because we found that the surrogate for each pollutant is not necessarily a reasonable representation of the pollutant-specific emissions for these source categories (*e.g.,* formaldehyde is not invariably present in the binder formulation). We proposed maximum achievable control technology (MACT) standards under CAA sections 112(d)(2) and (3) for the HAP phenol and methanol in both source categories, and COS in the Mineral Wool Production source category. We also proposed MACT standards for hydrogen fluoride (HF) and hydrochloric acid (HCl), which are emitted from these source categories, but were not regulated under the MACT standard.

On April 15, 2013 (78 FR 22370), the EPA issued a supplemental proposal that was based on comments to the November 2011 proposal and new information on processes in both source categories. New emissions test data for all wool fiberglass furnaces across the industry showed that the same types of furnaces were in operation at both major and area sources, but that the emissions profile of electric furnaces differed from that of gas-fired furnaces (*i.e.,* emissions that could endanger public health). In that notice, we listed wool fiberglass manufacturing area sources, and proposed chromium emission limits for gas-fired wool fiberglass furnaces at area sources, and announced that the chromium limits at major sources would be specific to gas-fired furnaces (such as air-gas and oxyfuel furnaces) and not electric furnaces (such as cold-top and steel shell furnaces).

On November 13, 2014 (79 FR 68012), the EPA issued a second supplemental proposal to explain changes to previously proposed emissions limits for sources in these source categories. We proposed work practice standards under CAA section 112(h) in lieu of certain emissions limits, and clarified our use of the upper predictive limit (UPL) in setting MACT floors. In this action, we are finalizing decisions and revisions for these rules. We summarize some of the more significant comments we received regarding the proposed rules and provide our responses in this preamble. A summary of all other public comments on the proposal and the EPA's responses to those comments is available in the memorandum, ''National Emissions Standards for Hazardous Air Pollutants: Mineral Wool Production and Wool Fiberglass Manufacturing (Risk and Technology Review)—Summary of Public Comments and Responses'' (Docket ID Nos. EPA–HQ–OAR–2010–1041 and EPA–HQ–OAR–2010–1042). ''Track-changes'' versions of the regulatory language that incorporates the changes in this action are available in the respective dockets.

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I. General Information

A. Does this action apply to me?

Regulated Entities. Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

NESHAP and source category	NAICS [a] code
Mineral Wool Production	327993
Wool Fiberglass Manufacturing	327993

[a] North American Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source categories listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final action will also be available on the Internet through the Technology Transfer Network (TTN) Web site, a forum for information and technology exchange in various areas of air pollution control. Following signature by the EPA Administrator, the EPA will post a copy of this final action at: *http://www.epa.gov/ttn/atw/woolfib/woolfipg* and at *http://www.epa.gov/ttn/atw/minwool/minwopg.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same Web site.

Additional information is available on the RTR Web site at *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* This information includes an overview of the RTR program, links to project Web sites for the RTR source categories and detailed emissions and other data we used as inputs to the risk assessments.

C. Judicial Review and Administrative Reconsideration

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by September 28, 2015. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for the EPA to reconsider the rule ''[i]f the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, EPA, WJC West Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

II. Background

A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of HAP from stationary sources. In the first stage, we must identify categories of sources emitting one or more of the HAP listed in CAA section 112(b) and then promulgate technology-based NESHAP for those sources. ''Major sources'' are those that emit, or have the potential to emit, any single HAP at a rate of 10 tons per year or more, or 25 tons per year or more of any combination of HAP. For major sources, these standards are commonly referred to as maximum achievable control technology or MACT standards and must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). In developing MACT standards, CAA section 112(d)(2) directs the EPA to consider the application of measures, processes, methods, systems or techniques, including but not limited to those that reduce the volume of or eliminate HAP emissions through process changes, substitution of materials, or other modifications; enclose systems or processes to eliminate emissions; collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; are design, equipment, work practice, or operational standards; or any combination of the above.

For these MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as MACT floor requirements, and which may not be based on cost considerations. See CAA section 112(d)(3). For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor, under CAA section 112(d)(2). We may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

In the second stage of the regulatory process, the CAA requires the EPA to undertake two different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, we must review the technology-based standards and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years, pursuant to CAA section 112(d)(6). Under the residual risk review, we must evaluate the risk to public health remaining after application of the technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The residual risk review is required within 8 years after promulgation of the technology-based standards, pursuant to CAA section 112(f). In conducting the residual risk review, if the EPA determines that the current standards provide an ample margin of safety to protect public health, it is not necessary to revise the MACT standards pursuant to CAA section 112(f).[1] For more information on the statutory authority for this rule, see the November 25, 2011, proposal (76 FR 72773).

CAA sections 112(c)(3), (d)(5), and (k)(3) address regulation of area sources. Collectively, these sections are the basis of the Area Source Program under the Urban Air Toxics Strategy (Strategy).[2] Area sources are those that emit less than the major source threshold of HAP (*i.e.,* less than 10 tons per year of a single pollutant or 25 tons per year of a combination of HAP. Under the Strategy, we must regulate emissions of the 30 most toxic HAP emitted by area sources, based on generally available control technology (GACT), at a minimum. These provisions do not require the EPA to regulate all HAP from all HAP-emitting processes as we must do when setting MACT standards. On April 15, 2013, consistent with the Strategy, the agency added gas-fired glass-melting furnaces located at area sources to the source category list[3] [4] and proposed emissions standards for particulate matter (PM) and chromium compounds from these sources at wool fiberglass manufacturing facilities (78 FR 22370). On November 13, 2014, we withdrew our previously proposed GACT limits for PM and proposed to only require total chromium compounds emissions limits for these sources. Reduction of PM is accomplished through chromium reductions because chromium is the toxic pollutant entrained within PM that is emitted by these sources. We are finalizing GACT limits for chromium compound emissions for gas-fired glass-melting furnaces in the Wool Fiberglass Manufacturing area source category.

With this regulation, pursuant to CAA sections 112(c)(3) and (k)(3)(B), the agency will have subjected additional sources to regulation for the urban metal HAP chromium compounds, which is wholly consistent with the goals of the Strategy. For more information on the statutory authority for this rule, see the November 25, 2011, supplemental proposal (76 FR 72770), the April 15, 2013, supplemental proposal (78 FR 22375–22376), and the November 13, 2014, supplemental proposal (79 FR 68012).

B. What is the Mineral Wool Production source category and how does the NESHAP regulate HAP emissions from the source category?

The EPA promulgated the Mineral Wool Production NESHAP on June 1, 1999 (64 FR 29490). The standards are codified at 40 CFR part 63, subpart DDD. The Mineral Wool Production industry consists of facilities that produce mineral wool fiber from slag, rock, or other materials, excluding sand or glass. The source category covered by this MACT standard currently consists of eight facilities.

Mineral wool is a material used mainly for thermal and acoustical insulation. This category includes, but is not limited to, the following process units: A cupola furnace for melting the mineral charge; a blow chamber in which air and, in some cases, a binder are drawn over the fibers, forming them to a screen; a curing oven to bond the fibers; and a cooling compartment. The 1999 NESHAP rule set emissions limits

[1] The U.S. Court of Appeals has affirmed this approach of implementing CAA section 112(f)(2)(A): *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008) (''If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.'').

[2] For EPA's document on the Urban Air Toxics Strategy, see 64 FR 38706–38715–716 (July 19, 1999).

[3] For the listing documents of the Strategy, see 64 FR 38075, July 19, 1999; 67 FR 43112, June 26, 2002; 67 FR 70427, November 22, 2002; 73 FR 78637, December 23, 2008; and 74 FR 30366, June 25, 2009.

[4] We have made several revisions to the CAA section 112(c)(3) list since its issuance: 67 FR 43112, June 26, 2002; 67 FR 70427, November 22, 2002; 73 FR 78637, December 23, 2008; 74 FR 30366, June 25, 2009.

for PM from new and existing cupolas, CO from new cupolas, and formaldehyde from new and existing curing ovens.

C. What changes did we propose for the Mineral Wool Production source category in our November 25, 2011 proposal; April 15, 2013 supplemental proposal; and November 13, 2014 supplemental proposal?

On November 25, 2011, the EPA published a proposed rule for the Mineral Wool Production NESHAP, 40 CFR part 63, subpart DDD, that proposed RTR amendments to this standard under CAA sections 112(d)(6) and (f)(2). In that proposal, we stated that maximum individual risk (MIR) for cancer was 4-in-1 million based on available test data for actual emissions and 10-in-1 million based on the MACT-allowable emission limits of the rule. We proposed, considering all available information, that risks were acceptable.

For PM, we reviewed the control technologies in use by the industry and did not find any improvements or developments in practices, processes, and control technologies since the 1999 MACT standard was promulgated. Therefore, we did not propose amendments to the PM standards under either CAA sections 112(f)(2) or (d)(6).

We also proposed to discontinue use of surrogates where we determined that the surrogacy was not reasonable. We proposed to discontinue using CO as a surrogate for COS, and to discontinue use of formaldehyde as a surrogate for phenol and methanol. Based on new source test data and CAA sections 112(d)(2) and (3), we proposed MACT floor emission limits for existing and new sources of COS, phenol, and methanol, pollutants that were previously regulated under a surrogate; and MACT floor emission limits for formaldehyde, the former surrogate. We retained PM as a surrogate for non-mercury HAP metals because there is a reasonable surrogate relationship. We also proposed emissions limits for HF and HCl, two pollutants that were previously unregulated, and proposed alternative emission limits for periods of startup and shutdown.

On April 15, 2013, we published a supplemental proposal for the Mineral Wool Production NESHAP that took into consideration the comments received on the November 2011 proposal, new emissions testing for horizontal lines, and subcategorization of cupolas based on design and raw material use. We withdrew our previously-proposed alternative emission limits for startup and shutdown, and instead proposed that sources may demonstrate compliance with the MACT floor emission limits during periods of startup and shutdown by keeping records showing that the emissions from cupolas were routed to air pollution control devices operated at the parameters established by the most recent performance test that showed compliance with the standard.

On November 13, 2014, the EPA published a second supplemental proposal for the Mineral Wool Production NESHAP that took into consideration comments received on the 2013 supplemental proposal, explained changes to previously proposed MACT limits for sources in this source category and clarified our use of the UPL in setting the MACT floors. In that proposal, we also proposed work practice standards under CAA section 112(h) for periods of startup and shutdown based on the practices used by the best performers among mineral wool producers to minimize emissions during these activities.

D. What is the Wool Fiberglass Manufacturing source category and how does the NESHAP regulate HAP emissions from the source category?

The EPA promulgated the Wool Fiberglass Manufacturing NESHAP on June 14, 1999 (62 FR 31695). The standards are codified at 40 CFR part 63, subpart NNN. The Wool Fiberglass Manufacturing source category is defined as any facility engaged in producing wool fiberglass from sand, feldspar, sodium sulfate, anhydrous borax, boric acid or any other materials. The Wool Fiberglass Manufacturing industry consists of facilities that produce bonded building insulation using a rotary spin (RS) manufacturing line, and facilities that produce bonded pipe insulation and bonded heavy-density products using a flame attenuation (FA) manufacturing line. The 1999 MACT standards currently apply to 10 major sources in the wool fiberglass industry. Another 20 facilities are area sources.

Wool fiberglass is used primarily as a thermal and acoustical insulation for buildings, automobiles, aircraft, appliances, ductwork and pipes. This category includes, but is not limited to, the following process units: A furnace for melting the mineral charge; a bonded line operation in which air and a binder are drawn over the fibers and cured in an oven to bond the fibers; and a cooling compartment. The 1999 NESHAP rule set emissions limits for PM from new and existing glass-melting furnaces and formaldehyde emissions from new FA and new and existing RS bonded lines.

E. What changes did we propose for major sources in the Wool Fiberglass Manufacturing source category in our November 25, 2011 proposal; April 15, 2013 supplemental proposal; and November 13, 2014 supplemental proposal?

On November 25, 2011, the EPA published a proposed rule for the Wool Fiberglass Manufacturing NESHAP to amend the standard based on our RTR analyses. In that proposal, we found under CAA section 112(f)(2) that the MIR for cancer, primarily due to emissions of hexavalent chromium and formaldehyde, was 40-in-1 million based on actual emissions and 60-in-1 million based on MACT-allowable emissions. The maximum chronic non-cancer target organ specific hazard index (TOSHI) value based on actual emissions was 0.2 with emissions of formaldehyde dominating those impacts. The acute noncancer hazard quotient (HQ), based on the recommended exposure limit (REL) for formaldehyde, was 30. The acute noncancer HQ, based on the Acute Exposure Guideline Levels (AEGL–1) for formaldehyde, was 2. We determined that nothing prevents construction of a high chromium emitting furnace at any wool fiberglass facility. Therefore, we evaluated risk under an auxiliary risk assessment which asked, ''if all wool fiberglass facilities emitted hexavalent chromium at the level of the highest emitter (that is, 450 pounds of hexavalent chromium annually), what would be the risk to human health?'' The MIR under the auxiliary risk analysis exceeded 100-in-one million at four facilities, a level we consider unacceptable.

Although the risk from actual emissions were considered to be well within a level we consider acceptable, we proposed that risk due to hexavalent chromium could be further reduced to achieve an ample margin of safety. The chromium compounds limit would also prevent operation of another high-chromium emitting furnace in this source category. We therefore proposed chromium compounds emission limits of 0.00006 pounds of chromium compounds per ton of glass pulled, under CAA section 112(f)(2).

We proposed under CAA section 112(d)(6) that the control technologies in place on wool fiberglass manufacturing furnaces were essentially the same as existed at the time the MACT standards were promulgated, but that there have been improvements in both the operation and the design of furnaces and their control technologies since that time. As a result, we proposed

emissions limits for both PM and total chromium compounds for gas-fired glass-melting furnaces at major sources, under CAA section 112(d)(6), and indicated our intent to list and regulate chromium compounds at area sources in a future action.

In the November 2011 proposal, similar to how we addressed the mineral wool source category, we also proposed in wool fiberglass to discontinue use of formaldehyde as a surrogate for phenol and methanol because the surrogacy was not reasonable. We proposed phenol, formaldehyde, and methanol MACT floor emission limits based on information collected in 2010 for two subcategories of bonded lines under CAA sections 112(d)(2) and (3). We proposed limits for FA lines that apply to all lines without further subcategorization, and proposed alternative emission limits for periods of startup and shutdown. In that notice, we also announced that we had issued an ICR under our section 114 authority to gather additional emission information on furnace chromium emissions.

In our April 2013 supplemental proposal, we took into consideration comments received on the November 2011 proposal, new process and chromium emissions test data, and related furnace data collected under a CAA section 114 ICR.

We further proposed revised PM emission limits for glass-melting furnaces at wool fiberglass manufacturing facilities that are major sources under CAA section 112(d)(6), presented the results of the new chromium emission testing collected from glass-melting furnaces, and required that the chromium emission limits proposed under CAA sections 112(d)(6) and (f)(2) would apply only to gas-fired glass-melting furnaces at major sources. We proposed an alternative compliance provision for startup and shutdown that would require sources to keep records showing that emissions were routed to the air pollution control devices and that these control devices were operated at the parameters established during the most recent performance test that showed compliance with the applicable emission limits. For electric cold-top furnaces, we proposed limiting raw material content to only cullet during startup and shutdown in recognition of the fact that these furnaces do not allow control devices to be operated during startup. For all other glass-melting furnaces, we also required preheating the empty furnace using only natural gas.

On November 13, 2014, the EPA published a second supplemental proposal. For major sources, the 2014 supplemental proposal took into consideration comments received on the 2013 supplemental proposal, withdrew the previously proposed amendments for affirmative defense, explained changes to previously proposed limits for major sources in this source category, proposed work practice standards under CAA section 112(h) for periods of startup and shutdown, and clarified our use of the UPL in setting MACT floors.

F. What did we propose for area sources in the Wool Fiberglass Manufacturing source category in our November 25, 2011 proposal; April 15, 2013 supplemental proposal; and November 13, 2014 supplemental proposal?

In the November 2011 proposal, we noted our intent to potentially list wool fiberglass manufacturing area sources and to use data from the CAA section 114 letter noted above to regulate wool fiberglass area sources in a future action.

On April 15, 2013, the EPA published a supplemental proposal that listed gas-fired glass-melting furnaces at wool fiberglass manufacturing facilities that are area sources as a source category under CAA sections 112(c)(3)and (k)(3). We also proposed first-time PM and total chromium compounds standards for gas-fired glass-melting furnaces at wool fiberglass manufacturing facilities that are area sources under CAA section 112(d)(5).

We proposed GACT standards of 0.00006 pounds of chromium compounds per ton of glass pulled and 0.33 pounds of PM per ton of glass pulled. These were the same limits that we proposed for gas-fired glass-melting furnaces located at major sources in the Wool Fiberglass Manufacturing source category. To maintain consistency with the major source rule, we proposed the same provisions for startup, shutdown, malfunction, testing, monitoring, and recordkeeping that we proposed for major sources.

On November 13, 2014, the EPA published a second supplemental proposal. For area sources, the 2014 supplemental proposal took into consideration comments received on the 2013 supplemental proposal, withdrew the previously proposed provisions for affirmative defense, explained changes to previously proposed limits for sources in this source category, and proposed work practice standards under CAA section 112(h) for periods of startup and shutdown.

III. What is included in the final Mineral Wool Production rule?

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112 for the Mineral Wool Production source category and amends the Mineral Wool Production NESHAP based on those determinations. This action also finalizes MACT emission limits under CAA sections 112(d)(2) and (3), work practice standards for periods of startup and shutdown under CAA section 112(h), and other changes to the NESHAP discussed in section III.E of this preamble.

In this action, we are finalizing, as previously proposed, the emission limits for HAP-emitting processes in the Mineral Wool Production source category, as shown in Table 2 of this preamble.

TABLE 2—EMISSION LIMITS FOR THE MINERAL WOOL PRODUCTION SOURCE CATEGORY

Process	Subcategory	HAP	2011 Proposal	2013 Proposal	2014 Proposal	Final rule
Cupolas	Existing Open-top	COS	3.3	6.8	No change	6.8
	New Open-top	COS	0.017	4.3	3.2	3.2
	Existing Closed-top	COS	3.3	3.4	No change	3.4
	New Closed-top	COS	0.017	0.025	0.062	0.062
	Existing Processing Slag	HF	0.014	0.16	No change	0.16
		HCl	0.0096	0.21	0.44	0.44
	New Processing Slag	HF	0.014	0.16	0.015	0.015
		HCl	0.0096	0.21	0.012	0.012
	Existing Not Processing Slag	HF	0.014	0.13	No change	0.13
		HCl	0.0096	0.43	No change	0.43
	New Not Processing Slag	HF	0.014	0.13	0.018	0.018
		HCl	0.0096	0.43	0.015	0.015

TABLE 2—EMISSION LIMITS FOR THE MINERAL WOOL PRODUCTION SOURCE CATEGORY—Continued

Process	Subcategory	HAP	2011 Proposal	2013 Proposal	2014 Proposal	Final rule
Bonded Lines	Vertical (Existing and New) Combined Collection and Curing Operations.	Formaldehyde	0.46	2.7	2.4	2.4
		Phenol	0.52	0.74	0.71	0.71
		Methanol	0.63	1.0	0.92	0.92
	Horizontal (Existing and New) Combined Collection and Curing Operations.	Formaldehyde	0.054	No change	0.63	0.63
		Phenol	0.15	No change	0.12	0.12
		Methanol	0.022	No change	0.49	0.49
	Drum (Existing and New) Combined Collection and Curing Operations.	Formaldehyde	0.067	0.18	0.17	0.17
		Phenol	0.0023	1.3	0.85	0.85
		Methanol	0.00077	0.48	0.28	0.28

A. What are the final rule amendments based on the risk review for the Mineral Wool Production source category?

As presented in the November 2014 supplemental proposal, we are finalizing our determination that risks from the Mineral Wool Production source category are acceptable, the current standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. We are, therefore, not requiring additional controls and are thus readopting the existing standards under section 112(f)(2).

B. What are the final rule amendments based on the technology review for the Mineral Wool Production source category?

As discussed in the November 2011 proposal (76 FR 72786–72787, 72798), we identified and evaluated the developments in practices, processes, and control technologies that have occurred since the 1999 MACT rules were promulgated. In cases where we identified such developments, we analyzed the technical feasibility and the estimated impacts (*e.g.,* costs, emissions reductions, risk reductions) of applying these developments. We then decided, based on impacts and feasibility, whether it was necessary to propose amendments to the regulation to require any of the identified developments.

Based on our analyses of the data, information collected under the voluntary ICR, our general understanding of both of the industries and other available information on potential controls for these industries, we identified potential developments [5] in practices, processes, and control technologies.

In addition to reviewing the practices, processes, and technologies that were not considered at the time we developed the 1999 MACT rules, we reviewed a variety of data sources for the mineral wool industry. This review included the NESHAP for various industries promulgated after the 1999 MACT rules, regulatory requirements and technical analyses associated with these regulatory actions to identify any practices, processes, and control technologies considered in these efforts that could possibly be applied to emissions sources in the Mineral Wool Production source category, as well as the costs, non-air impacts, and energy implications associated with the use of these technologies.

We additionally consulted the EPA's Reasonably Available Control Technology/Best Available Control Technology/Lowest Achievable Emission Rate (RACT/BACT/LAER) Clearinghouse to identify potential technology advances, and searched this database to determine whether it contained any practices, processes, or control technologies for the types of processes covered by the mineral wool production rule.

We also requested information from facilities regarding developments in practices, processes or control technologies and we reviewed other information sources, such as state and local permitting agency databases and industry-supported databases. For more information, see the ''Technology Review for the Mineral Wool Production Source Category Memorandum'' in the docket to this rule.

As a result of our technology review under CAA section 112(d)(6) for the Mineral Wool Production source category, we determined that there are no developments in practices, processes, and control technologies that warrant revisions to this MACT standard. We are therefore not amending the standards under CAA section 112(d)(6).

C. What are the final rule amendments pursuant to CAA sections 112(d)(2) and (3) for the Mineral Wool Production source category?

This action finalizes the removal of formaldehyde as a surrogate for phenol and methanol, and the removal of CO as a surrogate for COS, as earlier explained in this preamble and as proposed on November 25, 2011 (76 FR 72770). We also are finalizing the proposed COS, HCl, and HF emission limits for cupolas and the proposed emission limits for formaldehyde, methanol, and phenol for bonded lines developed as a result of new representative detection limit (RDL) values, new source test data and our approach for calculating MACT floors based on limited data sets, as discussed in section III.B of the November 2014 supplemental proposal preamble. These final rule requirements for the Mineral Wool Production NESHAP are consistent with the provisions discussed in our various proposals.

D. What are the final rule amendments addressing emissions during periods of startup and shutdown for the Mineral Wool Production source category?

We are finalizing, as proposed, amendments to the Mineral Wool Production NESHAP to eliminate the SSM exemption. Consistent with *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008), the EPA has established work practice standards for periods of startup and shutdown under CAA section 112(h) because measurement of the emissions is not practicable due to technological and economic limitations. Emissions are not at steady state during startup and shutdown (a necessary factor for accurate emissions testing), and the varying stack conditions, gas compositions and low emission rates make accurate emission measurements impracticable. In addition, the startup period for mineral wool cupolas is usually 2 hours, which is too short a

[5] For the purpose of this exercise, we considered developments not identified or considered during development of the 1999 MACT rules, including any add-on control technology or equipment; any improvements in technology or equipment that could result in significant additional emissions reduction; any work practice or operational procedure; any process change or pollution prevention alternative that could be broadly applied to the industry; and any development in equipment or technology that could result in decreased HAP emissions.

time in which to conduct source testing. We are finalizing under CAA section 112(h), as previously proposed in the November 2014 supplemental proposal, standards requiring affected sources to comply with work practices that are used by the best performers during periods of startup and shutdown. The best performers in the mineral wool industry use one of two possible work practices: either they route any cupola emissions that occur during startup and shutdown to an operating baghouse, or, alternatively, operate the cupola during startup and shutdown with three percent excess oxygen. Regarding the first alternative, baghouses achieve the same outlet concentrations regardless of pollutant loading in the emission stream, and fluctuations in pollutants or exhaust flow rate do not affect the overall level of emissions at the outlet of this control device. Regarding the second alternative, operating the cupola with excess oxygen prevents the formation of pollutants that would otherwise be routed to existing controls.

In the final rule, we are specifying work practice standards that require items of equipment that are required or utilized for compliance with subpart DDD to be operating during startup and shutdown, designating when startups and shutdowns begin, and specifying recordkeeping requirements for startup and shutdown periods. We are also revising Table 1 to subpart DDD of part 63 (General Provisions applicability table) to change several references related to requirements that apply during periods of SSM. We are eliminating or revising certain recordkeeping and reporting requirements related to the eliminated SSM exemption.

E. What other changes have been made to the Mineral Wool Production NESHAP?

We are finalizing, as proposed, addition of EPA Methods 26A and 320 in appendix A part 63 for measuring the concentrations of HCl and HF. We are finalizing, as proposed, the requirement for existing sources to conduct performance tests to demonstrate compliance with the emission limits for cupolas and combined collection/curing operations no later than July 30, 2018 and every 5 years thereafter. We are finalizing, as proposed, the requirement for new sources to comply with the emission limits of the final rule on July 29, 2015, or upon the first cupola campaign, whichever is later, and to conduct performance tests to demonstrate compliance with the emission limits for cupolas and combined collection/curing operations within 180 days of the applicable compliance date.

We are also adding an alternative operating limit for cupolas that provides owners or operators the option of maintaining the percent excess oxygen in the cupola at or above the level established during the performance test. In addition, we are finalizing editorial changes to the performance testing and compliance procedures to specify formaldehyde, methanol, phenol, and COS rather than only the surrogates formaldehyde and CO. In this action, we are finalizing, as proposed, definitions for ''closed-top cupola,'' ''open-top cupola,'' ''combined collection/curing operations'' and ''incinerator.'' We are also adding a definition for ''slag.'' The 2013 supplemental proposal indicated that we would add such a definition (78 FR 22386). Slag is the primary contributing factor to the formation of HF and HCl in the cupola emissions, and is, for some mineral wool formulas, a necessary ingredient for the production of mineral wool. We subcategorized cupolas according to their use of slag as a raw material in the cupola, and are in this final rule defining slag in 40 CFR 63.1196 to mean the by-product materials separated from metals during smelting and refining of raw ore.

We are also making minor corrections to the citations in Table 1 (part 63 General Provision applicability table) to reflect both the final amendments in this action, and the revisions that have been made to the General Provisions since 1999.

F. What are the effective and compliance dates of the new MACT standards for the Mineral Wool Production source category?

The new MACT standards for the Mineral Wool Production source category being promulgated in this action are effective on July 29, 2015. The compliance date for existing cupolas and combined collection/curing operations is July 30, 2018. New sources must comply with the all of the standards immediately upon the effective date of the standard, July 29, 2015, or upon initial startup, whichever is later.

Mineral wool producers are predominantly small businesses. Prior to the November 25, 2011, proposal, we found there was potentially a significant impact to a substantial number of small entities (SISNOSE), and convened a small business advocacy review (SBAR) panel. In that process, the EPA conducted meetings with mineral wool companies and the Small Business Office of Advocacy in order to determine ways in which the impact and burden to small entities could be reduced while continuing to meet the requirements of the CAA. Stakeholders requested up to 3 years to comply with the standards once they were promulgated, in order to be able to install controls, find sources of low-sulfur coke and low-chloride slag, and to conduct performance testing. In subsequent proposals, we subcategorized cupolas according to design and according to raw material use, and can certify that the final rule will not have a SISNOSE. However, we believe that it is still appropriate to retain the proposed compliance date of 3 years after promulgation because the added compliance emissions testing and any process changes sources needed to comply could become significant if the compliance time were shortened to less than the 3 years allowed for standards developed under CAA sections 112(d)(2) and (3).

G. What are the requirements for submission of performance test data to the EPA?

As stated in the proposed preamble to the November 2011 proposal, the EPA is taking a step to increase the ease and efficiency of data submittal and data accessibility. Specifically, the EPA is requiring owners and operators of affected facilities to submit electronic copies of certain required performance test reports.

As mentioned in the preamble of the November 2011 proposal, data will be collected by direct computer-to-computer electronic transfer using EPA-provided software. As discussed in the November 2011 proposal, the EPA-provided software is an electronic performance test report tool called the ERT. The ERT will generate an electronic report package which will be submitted to the Compliance and Emissions Data Reporting Interface (CEDRI) and then archived to the EPA's Central Data Exchange (CDX). A description and instructions for use of the ERT can be found at *http://www.epa.gov/ttn/chief/ert/index.html,* and CEDRI can be accessed through the CDX Web site at *http://www.epa.gov/cdx.*

The requirement to submit performance test data electronically to the EPA does not create any additional performance testing and will apply only to those performance tests conducted using test methods that are supported by the ERT. A listing of the pollutants and test methods supported by the ERT is available at the ERT Web site. The EPA believes, through this approach, industry will save time in the

performance test submittal process. Additionally, this rulemaking benefits industry by cutting back on recordkeeping costs as the performance test reports that are submitted to the EPA using CEDRI are no longer required to be kept in hard copy.

As mentioned in the preamble of the November 2011 proposal, state, local, and tribal agencies will benefit from more streamlined and accurate review of performance test data that will be available on the EPA WebFIRE database. The public will also benefit. Having these data publicly available enhances transparency and accountability. For a more thorough discussion of electronic reporting of performance tests using direct computer-to-computer electronic transfer and using EPA-provided software, see the discussion in the preamble of the November 2011 proposal.

In summary, in addition to supporting regulation development, control strategy development, and other air pollution control activities, having an electronic database populated with performance test data will save industry; state, local, and tribal agencies; and the EPA significant time, money, and effort, while improving the quality of emission inventories, air quality regulations and enhancing the public's access to this important information.

IV. What is the rationale for our final decisions and amendments for the Mineral Wool Production source category?

For each topic, this section provides a description of what we proposed and what we are finalizing for the subject, the EPA's rationale for the final decisions and amendments and a summary of key comments and responses. For all comments not discussed in this preamble, comment summaries and the EPA's responses can be found in the comment summary and response document available in the dockets for each source category.

A. Residual Risk Review for the Mineral Wool Production Source Category

1. What did we propose pursuant to CAA section 112(f) for the Mineral Wool Production source category?

Pursuant to CAA section 112(f), we conducted a residual risk assessment on the Mineral Wool Production source category and presented the results of this assessment, along with our proposed decisions regarding risk acceptability and ample margin of safety, in the November 2011 proposed rule (76 FR 72798). Based on the inhalation risk assessment, we estimated that the MIR could be up to 4-in-1 million due to actual emissions and up to 10-in-1 million due to MACT-allowable emissions, mainly due to formaldehyde stack emissions. We estimated that the incidence of cancer based on actual emissions is 0.0004 excess cancer cases per year or one case every 2,500 years, and that about 1,700 people face a cancer risk greater than 1-in-1 million due to HAP emissions from the mineral wool production source category.

That risk assessment indicated that the maximum modeled chronic non-cancer TOSHI value for the Mineral Wool Production source category could be up to 0.04 with emissions of formaldehyde dominating those impacts, indicating no significant potential for chronic non-cancer impacts.

Our screening analysis for worst-case acute impacts indicated the potential for only one pollutant, formaldehyde, to exceed an HQ value of 1 at only one facility in the Mineral Wool Production source category, with a potential maximum HQ up to 8. A refined emissions multiplier of 3 was used to estimate the peak hourly emission rates from the average rates.

Consequently, in November 2011 we proposed that risks from this source category were acceptable. In addition, we did not identify cost-effective options that would further reduce risk under our ample margin of safety analysis. Therefore, we proposed that the current standards for the Mineral Wool Production source category provide an ample margin of safety to protect public health. We also determined that HAP emissions from this source category were not expected to result in adverse environmental effects.

In the April 2013 supplemental proposal, we revised the risk assessment to reflect new emissions data submitted by the industry following the 2011 proposal, the development of subcategories for HCl and HF emissions from slag- and nonslag-processing cupolas, and subcategories for COS emissions from closed- and open-top cupolas. As noted in the 2013 supplemental proposal, the risks estimated in our revised assessment under CAA section 112(f)(2) from actual emissions increased slightly (based on the new data) compared to the risk assessment conducted for the 2011 proposal. The actual MIR for cancer increased from 4-in-1 million to 10-in-1 million. The maximum chronic non-cancer TOSHI value for the source category increased from 0.04 to 0.12 with emissions of formaldehyde dominating those impacts, indicating no significant potential for chronic noncancer impacts. The acute noncancer HQ, based on the REL for formaldehyde, increased from 8 to 20. The acute noncancer HQ, based on the AEGL–1 for formaldehyde, increased from 0.4 to 1.1. While the risk increased slightly based on the new source test data, we noted that that our findings regarding risk acceptability and ample margin of safety remained unchanged.

In our November 2014 supplemental proposal, we also revised the draft risk assessment under CAA section 112(f)(2) based on new emissions data collected by the industry and updates to the model and model libraries. The new test data that were received did not change our estimate of risk from actual emissions when compared to the risk assessment conducted for the 2013 supplemental proposal. The risk from mineral wool production continued to be driven by formaldehyde and to be well within a level we consider to be acceptable. The MIR for cancer for actual baseline emissions remained 10-in-1 million, with the acute noncancer HQ remaining at 20 for the REL and at 1 for the AEGL–1. The maximum chronic non-cancer TOSHI value based on actual emissions remained at 0.1 with emissions of formaldehyde dominating those impacts, indicating no significant potential for chronic noncancer impacts.

The MIR for cancer from mineral wool production due to allowable emissions (under the original MACT standard) was estimated to be 30-in-1 million (formaldehyde). Facilities actually emit formaldehyde at levels lower than allowed under the 1999 MACT standard, and the limits in the final rule codify formaldehyde (and the other HAP) limits at the actual emissions levels. As a result, the potential MIR for cancer due to allowable emissions after implementation of the standard is estimated to be 10-in-1 million. Therefore, the MIR based on emissions at the level of this standard (*i.e.,* what sources are permitted to emit) decreased by a factor of 3 from MACT-allowable levels. Additional information on the risk assessment can be found in the document titled, ''Residual Risk Assessment for the Mineral Wool Production and Wool Fiberglass Manufacturing in Support of the June 2015 Final Rule'' available in the docket for this action (EPA–HQ–OAR–2010–1041).

2. How did the risk review change for the Mineral Wool Production source category?

We have not changed any aspect of the risk assessment since the November 2014 supplemental proposal.

3. What key comments did we receive on the risk review for the Mineral Wool Production source category, and what are our responses?

The comments received on the proposed risk review were generally supportive of our determination of risk acceptability and ample margin of safety analysis and requirement for additional control. A summary of the comments received regarding the risk acceptability and ample margin of safety analysis and our responses can be found in the comment summary and response document available in the docket for this action (EPA–HQ–OAR–2010–1041). None of the public comments resulted in changes to the conclusions of our risk analysis.

4. What is the rationale for our final approach and final decisions for the risk review for the Mineral Wool Production source category?

As explained in the various proposals and in section IV.A.1 of this preamble, our assessment of residual risk from the Mineral Wool Production source category shows that risks from the source category are acceptable, the current standards provide an ample margin of safety to protect public health, and prevent an adverse environmental effect. We are, therefore, not requiring additional controls and are thus readopting the existing standards under section 112(f)(2).

B. Technology Review for the Mineral Wool Production Source Category

1. What did we propose pursuant to CAA section 112(d)(6) for the Mineral Wool Production source category?

Pursuant to CAA section 112(d)(6), we conducted a technology review that focused on identifying and evaluating developments in practices, processes, and control technologies for sources of HAP in the Mineral Wool Production source category. As discussed in the 2011 proposal (76 FR 72798), existing cupolas are controlled using baghouses, and bonded lines are controlled using thermal oxidizers. We did not identify any relevant cost-effective developments in technologies, practices, or processes since promulgation of the 1999 NESHAP that would further reduce HAP emissions. Therefore, we did not propose any changes to the 1999 NESHAP as a result of our technology review under CAA section 112(d)(6) for the Mineral Wool Production source category. Additional information regarding the technology review for the Mineral Wool Production source category can be found in the document titled, ''Section 112(d)(6) Technology Review for the Final Mineral Wool NESHAP'' available in the docket for this action (EPA–HQ–OAR–2010–1041).

2. How did the technology review change for the Mineral Wool Production source category?

We have not changed any aspect of the technology review for this source category since the November 2014 supplemental proposal.

3. What key comments did we receive on the technology review, and what are our responses?

The comments received on our technology review and findings were generally supportive. A summary of the comments received regarding the technology review and our responses can be found in the comment summary and response document available in the docket for this action (EPA–HQ–OAR–2010–1041). We note that none of the public comments and information received in response to the November 2014 supplemental proposal provided data relevant to the technology review, and we made no changes to the technology review based on the comments.

4. What is the rationale for our final approach for the technology review?

As explained in the various proposals and in section IV.B.1 of this preamble, we did not identify any cost-effective developments in practices, processes and controls used to reduce emissions from the mineral wool production industry. Therefore, consistent with our proposals, we are not making any changes to the standards as a result of the CAA section 112(d)(6) review.

C. MACT Standards for Pollutants Previously Regulated Under a Surrogate and Previously Unregulated Pollutants

1. What did we propose pursuant to CAA section 112(d)(2) and (3) for pollutants previously regulated under a surrogate and for previously unregulated pollutants?

In our November 2011 proposal, we proposed revisions to the 1999 NESHAP under CAA sections 112(d)(2) and (3). We proposed to remove unreasonable surrogates, to set limits for each HAP emitted that was previously regulated under a surrogate, and to set limits for previously unregulated HAP. These revisions included removing CO as a surrogate for COS and removing formaldehyde as a surrogate for methanol and phenol; proposing emission limits for COS from cupolas, formaldehyde, methanol, and phenol from combined collection and curing operations; and proposing emissions limits for previously unregulated pollutants (*i.e.,* HCl and HF emitted from cupolas).

In our April 2013 supplemental proposal, we made changes to the previously proposed emission limits for phenol, formaldehyde, and methanol based on new emissions test data. We further proposed subcategories for COS emissions from cupolas based on cupola design. Finally, we proposed subcategories for HF and HCl from cupolas based on whether they processed slag.

In the November 2014 supplemental proposal, we revised emission limits under CAA sections 112(d)(2) and (3) for cupolas and bonded lines as a result of new information regarding detection limits (and consistent with our procedures for ensuring that emission limits are not set below the minimum level that can be accurately measured), new source test data and our approach for calculating MACT floors based on limited data sets.

2. How did we change our proposed emission limits for pollutants that were previously regulated under a surrogate or that were previously unregulated?

Our final emission limits for pollutants previously regulated under a surrogate, and previously unregulated pollutants did not change since our most recent proposal in November 2014.

3. What key comments did we receive on pollutants previously regulated under a surrogate and on previously unregulated pollutants?

We received comments both supporting and objecting to our use of the UPL in calculating MACT floors and the way we treat limited datasets for these pollutants. The commenters did not provide new information or a basis for the EPA to change the proposed emission limits, and did not show that facilities cannot comply with the MACT standards. The comments related to the proposed emission limits for pollutants that were previously regulated under a surrogate and that were previously unregulated are in the comment summary and the response document available in the docket for this action (EPA–HQ–OAR–2010–1041).

4. What is the rationale for our final approach for pollutants previously regulated under a surrogate and for previously unregulated pollutants?

As we discussed in the preamble for the November 2014 supplemental proposal and provided in the comment summary and response document available in the docket, we are finalizing, as proposed, the emission limits for pollutants previously regulated under a surrogate and for previously unregulated pollutants. Three surrogate relationships were in place in the Mineral Wool MACT standard, and we reviewed each of these to determine whether they were reasonable surrogates. We found that the relationship of formaldehyde, methanol and phenol emissions tend to be specific to the binder formulation of an individual product. We found that the surrogacy of CO for COS was not reasonable because the two pollutants are not invariably present and the relationships tend to be specific to the site. We retained the surrogacy of PM for non-mercury HAP metals because control of PM achieves the same level of control for non-mercury HAP metals, regardless of the concentration of those metals in the PM or whether the concentration of those metals varies in the PM.

We requested and obtained HAP-specific emissions testing for all HAP emitted by all processes in the mineral wool industry. Emissions of PM, HF, HCl, and COS were measured from at least one cupola in operation at each facility, and emissions of formaldehyde, methanol, and phenol were measured at the three bonded lines that were in operation in 2010. As a result of the information we gathered, we are finalizing limits for all measured HAP and for the collection process, which emits HAP but was not regulated under the 1999 MACT standard. We are not changing the PM emission limit as a result of the information we gathered.

HF and HCl were not previously regulated, and the emissions of these pollutants depend upon whether slag is used in the cupola. Slag is a raw material in the mineral wool industry that is a waste product of electric arc furnaces at steel plants. Depending on the end-use of the mineral wool product, slag is a needed ingredient in some mineral wool formulations and an undesirable ingredient in others. The use of slag as a raw material in the mineral wool cupola causes ''shot'' (small pellets of iron) to form in the mineral wool product. The quality of some mineral wool products (such as that used for hydroponic gardening) is affected by the presence of shot, and, as a result, facilities making such products do not use slag in their raw materials. Consequently, their emissions of HF and HCl are lower. Two subcategories of cupolas reflect whether slag is processed in the cupola.

Emissions of COS are affected by whether a cupola is designed as a closed cupola (which results in lower COS emissions) or an open cupola (which results in higher COS emissions). Two subcategories of cupolas reflect this design criteria.

Data collected from the mineral wool industry showed three bonded lines were in operation at the time of data collection in 2010. The bonded lines include both collection (the process in which the fibers are formed and sprayed with a phenol/formaldehyde binding agent); and curing, the thermosetting process that cures the binder. Collection was not regulated under the 1999 MACT standard, the emissions from both the curing and collection processes are vented to the same line, and the emissions from these processes can be measured together. These combined collection and curing operations emit phenol, formaldehyde, and methanol as a result of the phenolic resin used to produce the bonded product. We are finalizing limits for combined collection and curing operations according to three different designs: Vertical, horizontal, and drum. The final emission limits for the mineral wool industry are shown above in Table 2 of section III of this preamble.

D. Startup, Shutdown, and Malfunction Provisions for the Mineral Wool Production Source Category

1. What SSM provisions did we propose for the Mineral Wool Production source category?

In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the United States Court of Appeals for the District of Columbia Circuit vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously.

We have therefore eliminated the SSM exemption in this rule. Consistent with *Sierra Club* v. *EPA,* the EPA has established work practice standards for those periods. We also revised Table 1 of the General Provisions applicability table in several respects as is explained in more detail below. For example, we have eliminated the incorporation of the General Provisions' requirement that the source develop an SSM plan. We also eliminated and revised certain recordkeeping and reporting provisions that are related to the SSM exemption as described in detail in the proposed rule and summarized again in section IV.D of this preamble, in the rule at 40 CFR 63.1389, and in the General Provisions Table 1 to subpart DDD of part 63 (40 CFR part 63, subpart A).

2. How did the SSM provisions change for the Mineral Wool Production source category?

We have not changed any aspect of the proposed SSM provisions since the November 2014 supplemental proposal.

3. What key comments did we receive on the SSM provisions, and what are our responses?

We received comments regarding the proposed revisions to remove the SSM exemptions for the Mineral Wool Production source category. Comments from industry representatives expressed support for the proposed work practice standards. Another commenter contended that we should have established numerical emission limits. As we noted in the November 2014 supplemental proposal (79 FR 68016), the EPA may promulgate a work practice rather than an emissions standard when measurement of the emissions is technically and economically practicable. In the case of this source category, emissions are not at steady state during startup and shutdown (a necessary factor for accurate emissions testing), and the varying stack conditions, gas compositions, and flow rates make accurate emission measurements impracticable. In addition, startup period for mineral wool cupolas, typically 2 hours, is too short a time to conduct source testing.

The commenters did not provide new information or a basis for the EPA to change the proposed provisions and did not show that facilities cannot comply with the work practice standards during periods of startup and shutdown. The comments related to the proposed revisions to remove the SSM exemptions and our specific responses to those comments can be found in the comment summary and response document available in the docket for this action (EPA–HQ–OAR–2010–1041).

4. What is the rationale for our final decisions for the SSM provisions?

For the reasons provided above, in the preamble for the proposed rule and provided in the comment summary and response document available in the docket, we have removed the SSM exemption from the Mineral Wool Production NESHAP; eliminated or revised certain recordkeeping and reporting requirements related to the eliminated SSM exemption; and removed or modified inappropriate, unnecessary, or redundant language in the absence of the SSM exemption. For periods of startup and shutdown, we are finalizing the work practices of the best performers, as proposed in the November 2014 supplemental proposal. Owners/operators may choose to comply using two potential options during startup and shutdown. One, cupola emissions may be controlled using the control devices that meet the limits of the standard during normal operation, or two, the cupola may be operated during startup and shutdown with 3 percent or more excess oxygen. Additionally, sources must maintain records of the startup and shutdown option they practice, and must monitor and keep records of the parameters of the operating control device(s) or the oxygen level of the cupola during these periods. The controls of startup and shutdown emissions practiced by the best performers in the source category are sufficient so that no additional standards are needed to address emissions during startup or shutdown periods.

E. Other Changes Made to the Mineral Wool Production NESHAP

1. What other changes did we propose for the Mineral Wool Production NESHAP?

a. Electronic Reporting

As stated in the preamble to the November 2011 proposed rule, the EPA proposed electronic reporting requirements. See section III.G of this preamble for more information on what we proposed (and what we are finalizing) for electronic reporting.

b. Test Methods and Testing Frequency

We are finalizing, as proposed, the requirement for new sources to conduct performance tests to demonstrate compliance with the emission limits for cupolas and combined collection/curing operations within 180 days of the applicable compliance date and every 5 years thereafter. We are finalizing, as proposed, the requirement for existing sources to conduct performance tests to demonstrate compliance with the emission limits for cupolas and combined collection/curing operations by July 30, 2018 and every 5 years thereafter. We are finalizing, as proposed, the addition of EPA Methods 26A and 320 in appendix A of part 63 for measuring the concentrations of HCl and HF; and EPA Method 318 for measuring the concentrations of COS, formaldehyde, methanol, and phenol. In addition, we are finalizing editorial changes to the performance testing and compliance procedures to replace references in the 1999 NESHAP to the surrogates CO and formaldehyde with references to specific HAP (formaldehyde, methanol, and phenol for the surrogate formaldehyde, and COS for the surrogate CO).

2. How did the provisions regarding these other changes to the Mineral Wool Production NESHAP change since proposal?

We have not made any changes to the proposed provisions for electronic reporting; testing methods and frequency; definitions or revisions to the General Provision applicability table.

3. What key comments did we receive on the other changes to the Mineral Wool Production NESHAP, and what are our responses?

We received no key comments regarding electronic reporting, testing methods and frequency, definitions, and revisions to the General Provisions applicability table. A summary of the comments we did receive and our responses can be found in the comment summary and response document available in the docket for this action (EPA–HQ–OAR–2010–1041).

4. What is the rationale for our final decisions regarding these other changes to the Mineral Wool Production NESHAP?

There was no information in the public comments that affected the rationale for these provisions that was presented in the various proposals. Therefore, we are finalizing the proposed provisions regarding electronic reporting; testing methods and frequency; definitions and revisions to the General Provision applicability table.

V. What is included in the Final Wool Fiberglass Manufacturing Rule for major sources?

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112 for the Wool Fiberglass Manufacturing source category and amends the Wool Fiberglass Manufacturing NESHAP based on those determinations. This action also finalizes other changes to the NESHAP (*e.g.,* compliance dates) as discussed in section V.F of this preamble. In addition, we are finalizing the emission limits for major sources in the Wool Fiberglass Manufacturing source category as shown in Table 3 of this preamble.

TABLE 3—EMISSION LIMITS FOR WOOL FIBERGLASS MANUFACTURING MAJOR SOURCES

[lb pollutant/ton glass pulled]

Process	HAP	Emission limit
Existing Flame Attenuation Lines	Formaldehyde	5.6
	Phenol	1.4
	Methanol	0.50
New Flame Attenuation Lines	Formaldehyde	2.6
	Phenol	0.44
	Methanol	0.35
Existing and New Furnaces	PM	0.33
Existing and New Gas-Fired Furnaces	Chromium compounds	0.00025

A. What are the final rule amendments based on the risk review for the Wool Fiberglass Manufacturing (major sources) source category?

Pursuant to CAA section 112(f)(2), we are finalizing emission limits for chromium emissions from gas-fired glass-melting furnaces of 0.00025 pounds of total chromium per ton of glass pulled to provide an ample margin of safety to protect public health. We are also requiring that facilities establish the materials mix, including the percentages of raw materials and cullet, used in gas-fired glass-melting furnaces during the performance test conducted to demonstrate compliance with the chromium emission limit. We are requiring that the percentage of cullet in the material mix be continually maintained at or below the level established during the most recent performance test showing compliance with the standard.

We note that although we have adopted these same standards, under both CAA sections 112(f)(2) and 112(d)(6), these standards rest on independent statutory authorities and independent rationales. Consequently, these standards remain independent and legally severable.

B. What are the final rule amendments based on the technology review for the Wool Fiberglass Manufacturing (major sources) source category?

We determined that there are developments in practices, processes, and control technologies that warrant revisions to the MACT standards for this source category. Therefore, to satisfy the requirements of CAA section 112(d)(6), we are revising the existing MACT standards to include an emission limit for glass-melting furnaces of 0.33 pounds of PM per ton of glass pulled as we proposed in April 2013. In this action, we are also revising the proposed chromium emission limit for gas-fired glass-melting furnaces from 0.00006 to 0.00025 pounds of total chromium per ton of glass pulled, based on our re-assessment of emissions data for newly-rebuilt gas-fired glass-melting furnaces.

We note that although we have adopted the total chromium compounds standards under both CAA sections 112(f)(2) and 112(d)(6), these standards rest on independent statutory authorities and independent rationales. Consequently, these standards remain independent and legally severable.

C. What are the final rule amendments pursuant to CAA sections 112(d)(2) and (3) for the Wool Fiberglass Manufacturing (major sources) source category?

This action finalizes the HAP-specific limits proposed in November 2014 that we developed under CAA sections 112(d)(2) and (3) as a result of removing the use of formaldehyde as a surrogate for methanol and phenol on FA lines. We are also eliminating the subcategories for FA lines because the technical bases for distinguishing the subcategories when the original rule was developed no longer exist and we are promulgating emission limits at the MACT floor level for formaldehyde, methanol, and phenol.

As explained in section V.H of this preamble, we are not, at this time, finalizing limits under CAA sections 112(d)(2) and (3) for RS lines.

D. What are the final rule amendments pursuant to CAA section 112(h) for the Wool Fiberglass Manufacturing (major sources) source category?

This action finalizes the work practice standards for HCl and HF emissions from glass-melting furnaces at wool fiberglass manufacturing facilities developed under CAA section 112(h) as proposed in November 2014 (79 FR 68023). These amendments to the Wool Fiberglass Manufacturing NESHAP are consistent with the amendments discussed in the November 2014 supplemental proposal.

E. What are the final rule amendments for the Wool Fiberglass Manufacturing (major sources) source category addressing emissions during periods of startup and shutdown?

We are finalizing, as proposed, changes to the Wool Fiberglass Manufacturing NESHAP to eliminate the SSM exemption. Consistent with *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008), the EPA has established work practice standards in this rule that apply during startup and shutdown periods. We are revising Table 1 to subpart NNN of part 63 (General Provisions applicability table) to change several references related to requirements that apply during periods of SSM. We also eliminated or revised certain recordkeeping and reporting requirements related to the eliminated SSM exemption. We are specifying that items of equipment that are required or utilized for compliance with 40 CFR part 63, subpart NNN must be operated during startup and shutdown. We are finalizing the specifications designating when startup and shutdown begins and recordkeeping requirements for demonstrating compliance during startup and shutdown periods.

We determined that facilities in this source category can meet the applicable work practice standards by following the startup and shutdown procedures that we identified as representative of the procedures employed by the best performing units during periods of startup and shutdown.

Gas-fired furnaces use an electrostatic precipitator (ESP) to control emissions during normal operations. The best performing gas-fired furnaces route emissions during startup and shutdown to the control device. We note that operators of gas-fired furnaces that formerly turned off the controls during startup or shutdown would no longer be allowed to do so.

Electric furnaces use baghouses to control emissions during normal operations. Until the crust is formed on top of the molten glass (and startup ends) the temperature of the gases that would be routed to the baghouse would cause the bags to catch fire. The best performing electric furnaces use only cullet (which emits PM at extremely low levels when melted) and clean fuels (natural gas, which does not emit PM when combusted) during startup and shutdown in order to minimize PM emissions during these periods.

F. What other changes have been made to the Wool Fiberglass Manufacturing NESHAP (major sources)?

We are finalizing, as proposed, the addition of EPA Method 29 for measuring the concentrations of chromium. We are finalizing the requirement, as proposed, to maintain the filter temperature at 248 ± 25 °F when using Method 5 to measure PM emissions from furnaces. We are also amending the NESHAP to allow owners or operators to measure PM emissions from furnaces using either EPA Method 5 or Method 29.

We are finalizing, as proposed, the addition of EPA Method 318 as an alternative test method for measuring the concentration of phenol and methanol and EPA Method 308 as an alternative test method for measuring the concentration of methanol. We are finalizing, as proposed in the 2013 supplemental proposal (78 FR 22402), the replacement of a minimum sampling time of 1 hour with the specification to collect 10 spectra when using EPA Method 318. When using Method 316 to measure formaldehyde, we are finalizing, as proposed, the requirement to collect a minimum sampling volume of 2 dry standard cubic meters (dscm); however, we are not finalizing the

proposed minimum sampling run time of 2 hours. We are also finalizing editorial changes to the performance testing and compliance procedures to specify formaldehyde, methanol, phenol (rather than the surrogate, formaldehyde), chromium, HCl, and HF. Additionally, for existing sources we are finalizing, as proposed, the requirement to conduct performance tests to demonstrate compliance with the chromium emission limit for furnaces no later than July 31, 2017 and annually thereafter; to demonstrate compliance with the PM emission limit for furnaces no later than July 31, 2017 and every 5 years thereafter; and to demonstrate compliance with the phenol, formaldehyde and methanol emission limits for FA lines no later than July 31, 2017 and every 5 years thereafter.

We are finalizing the requirement for new sources to comply with the emission limits on July 29, 2015, or upon the initial startup, whichever is later, and to conduct performance tests to demonstrate compliance with the emission limits for furnaces and FA lines no later than 180 days after the applicable compliance date. Following the initial test to demonstrate compliance with the chromium emission limit, owners or operators must test for chromium emissions annually. For all other pollutants, owners or operators must conduct performance tests every 5 years after the initial test to demonstrate compliance with the emissions limits. Table 4 of this preamble summarizes the compliance test schedule for major and area sources.

TABLE 4—WOOL FIBERGLASS MANUFACTURING COMPLIANCE TEST SCHEDULE FOR MAJOR SOURCES

Process	Pollutant(s)	Initial test dates		Subsequent testing frequency
		Existing sources	New sources	
FA Line	Phenol Formaldehyde Methanol.	2 years after publication of the final rule amendments in the **Federal Register**.	Within 180 days after publication in the **Federal Register**, or 180 days after initial startup, whichever is later.	Every 5 years thereafter.
All Furnace Types	PM			
Gas-fired Furnace	Chromium compounds			Annually thereafter.

We are finalizing, as proposed, the clarification that 40 CFR part 63, subpart NNN applies to FA lines, regardless of what products are manufactured on the FA line.

In this action, we are finalizing, as proposed, definitions for ''gas-fired glass-melting furnace'' and ''incinerator.'' We are also revising the definition of ''new source'' and the trigger date for the requirement to submit notifications of intent to construct/reconstruct an affected source to reflect the date of the initial RTR proposal (November 25, 2011).

We are finalizing, as proposed, the monitoring requirement for furnaces and FA lines to provide flexibility in establishing an appropriate monitoring parameter.

We are also making minor corrections to the citations in Table 1 (part 63 General Provision applicability table) to reflect the final amendments in this action, and the revisions that have been made to the General Provisions since 1999.

G. What are the effective and compliance dates of the standards?

The revisions to the MACT standards for the Wool Fiberglass Manufacturing source category being promulgated in this action are effective on July 29, 2015. The compliance date for existing sources is July 31, 2017. New sources must comply with the all of the standards immediately upon the effective date of the standard, July 29, 2015, or upon initial startup, whichever is later.

The effective and compliance dates finalized in this action are consistent with the dates we presented in the 2014 supplemental proposal.

H. What is the status of the Wool Fiberglass Manufacturing MACT standard amendments under CAA sections 112(d)(2) and (3) for RS Manufacturing Lines?

We are not finalizing the formaldehyde, methanol, and phenol standards under CAA sections 112(d)(2) and (3) for RS manufacturing lines in this final action. On November 25, 2011 (76 FR 72791), we proposed to discontinue use of formaldehyde as a surrogate for phenol and methanol and we proposed formaldehyde, methanol and phenol emission limits for RS and FA lines. On April 15, 2013 (72 FR 22387), we proposed revised emission limits for RS lines based on clarification of test data received from the industry during the comment period. We explained that since the 1999 promulgation of the MACT standards, many companies had discontinued the use of formaldehyde. However, they did not distinguish between the bonded lines that still used formaldehyde and those that did not. We had, therefore, included some data for HAP-free lines along with the data for lines still using formaldehyde when we developed the emission limits proposed in the November 2011 proposal (78 FR 22387). In the November 2014 supplemental proposal (79 FR 68203), we also proposed revised formaldehyde, methanol, and phenol emission limits for new RS lines as a result of our updated approach for evaluating limited datasets (79 FR 68023–24).

The EPA is not finalizing these proposed CAA sections 112(d)(2) and (3) standards in this action because we believe the data that we relied on in proposing these standards are not sufficiently related to current operations or emissions from RS bonded lines. The emissions and process data available to EPA were collected beginning in 2003. As previously explained, since that time, sources have phased out the use of a phenol/formaldehyde binder from approximately 95 percent of the lines on which it was previously used. We have also found out that sources often can no longer either identify the products that were tested or on the lines on which those products had been manufactured. Moreover, when sources can identify the products that were tested, those products are now produced using a HAP-free binder, and the product lines that now operate using a phenol/formaldehyde binder do not bear similarity in size, end use, production rate or loss on ignition (LOI) percent to the tested product line. As a result, the data no longer represent current industry conditions, most notably the significant reduction in the use of phenol/formaldehyde binders in wool fiberglass manufacturing. Consequently, we have issued a CAA section 114 ICR to wool fiberglass facilities to obtain updated formaldehyde, methanol, and

phenol emissions and process data for RS manufacturing lines.

I. What are the requirements for submission of performance test data to the EPA for the Wool Fiberglass Manufacturing NESHAP?

The requirements for electronic reporting of performance test data for wool fiberglass manufacturing major sources are the same as the requirements for the mineral wool production source category. See section III.G of this preamble for a description of the requirements.

VI. What is the rationale for our final decisions and amendments for the Wool Fiberglass Manufacturing source category (major sources)?

For each issue, this section provides a description of what we proposed and what we are finalizing for the issue, the EPA's rationale for the final decisions and amendments and a summary of key comments and responses. For all comments not discussed in this preamble, comment summaries and the EPA's responses can be found in the comment summary and response document available in Docket ID No. EPA–HQ–OAR–2010–1042.

A. Residual Risk Review for the Wool Fiberglass Manufacturing Source Category (Major Sources)

1. What did we propose pursuant to CAA section 112(f) for the Wool Fiberglass Manufacturing source category (major sources)?

Pursuant to CAA section 112(f)(2), we conducted a residual risk assessment and presented the results of this assessment, along with our proposed decisions regarding risk acceptability and ample margin of safety, in the November 2011 proposed rule (76 FR 72801). Based on the inhalation risk assessment, we estimated that the MIR could be as high as 40-in-1 million due to actual emissions and up to 60-in-1 million due to MACT-allowable emissions, mainly due to formaldehyde and hexavalent chromium emissions. We stated that the risk levels due to actual and MACT-allowable emissions were acceptable; however, we proposed an emission limit for total chromium (0.00006 pounds per ton of glass pulled) in order to provide an ample margin of safety to protect public health.

In the April 2013 supplemental proposal, we revised the draft risk assessment to reflect new emissions data for hexavalent chromium that we collected from all glass-melting furnaces available for testing in response to our October 28, 2011, CAA section 114 ICR. These revisions reduced our estimate of risk from actual emissions when compared to the risk assessment conducted for the November 2011 proposal. The risk from wool fiberglass manufacturing was driven by formaldehyde and hexavalent chromium. The MIR for actual baseline emissions decreased from 40-in-1-million to 20-in-1 million (formaldehyde), with the acute noncancer HQ remaining at 30 for the REL and at 2 for the AEGL–1 (formaldehyde). The maximum chronic non-cancer TOSHI value based on actual emissions remained at 0.2 with emissions of formaldehyde dominating those impacts, indicating no significant potential for chronic noncancer impacts.

In the November 2014 supplemental proposal, we presented the revised draft risk assessment to reflect updates to the model and model libraries and also retained the proposed emission limits for chromium compounds for existing and new gas-fired glass-melting furnaces. These revisions did not significantly change our estimate of risk from actual emissions when compared to the risk assessment conducted for the April 2013 supplemental proposal (79 FR 68020). The risk from wool fiberglass manufacturing was driven by formaldehyde and hexavalent chromium and continued to be well within a level we consider to be acceptable. The MIR for actual baseline emissions remained 20-in-1 million (formaldehyde), with the acute noncancer HQ remaining at 30 for the REL and decreased from 2 to 1 for the AEGL–1 (formaldehyde). The maximum chronic non-cancer TOSHI value based on actual emissions decreased from 0.2 to 0.1 with emissions of formaldehyde dominating those impacts, indicating no significant potential for chronic noncancer impacts. Overall, we considered the risk to be acceptable.

Based on information provided by the industry, 95 percent of the RS lines no longer use phenol-formaldehyde binders and are no longer major sources. However, this phase out is not reflected in the facility file data on which the risk assessment was based. Throughout the wool fiberglass manufacturing industry, these binders continued to be phased out as this rule was developed. The risk analysis we conducted for the Wool Fiberglass Manufacturing source category overstates the risk because of the continuing phase out. Therefore, we believe the risks from wool fiberglass manufacturing from actual emissions are lower than the risks we estimated.

2. How did the risk review change for the Wool Fiberglass Manufacturing source category (major sources)?

The baseline risk assessment has not changed since the November 2014 supplemental proposal. The MIR based on actual emissions remains at 20-in-1 million with the acute noncancer HQ remaining at 30 for the REL and 1 for the AEGL–1 (formaldehyde). The maximum chronic non-cancer TOSHI value based on actual emissions is 0.1 with emissions of formaldehyde dominating those impacts, indicating no significant potential for chronic noncancer impacts.

The MIR based on MACT-allowable emissions could be as high as 60-in-1 million, which we believe to be a conservative estimate based on four factors: (1) At one time, there were at least 60 RS lines in the industry, (2) industry has stated that 95 percent of RS lines no longer use formaldehyde as a binder, (3) Industry has stated that there are only 5 RS lines left that use a phenol/formaldehyde binder, and (4) Title V permit records indicate that 20 out of a total of 30 facilities have completely phased out their use of formaldehyde as a raw material throughout the facility.

We conducted a new assessment of the risks remaining after implementation of these final rule revisions. The revised assessment of post-control risks reflects the adjustment of the chromium compounds emission limit and the EPA's deferral of setting standards for formaldehyde, methanol and phenol from RS lines. Specifically, the risk assessment takes into account the change in the chromium compounds emission limit for gas-fired glass-melting furnaces from 0.00006 pounds of chromium per ton of glass pulled to 0.00025 pounds of chromium per ton of glass pulled, the emission limits for formaldehyde at new and existing FA lines (2.6 pounds per ton and 5.6 pounds per ton, respectively) and the current emission estimates for formaldehyde, methanol and phenol from RS lines. The MIR for cancer after implementation of the RTR could be up to 60-in-1 million (equal to the current risk estimates for allowables) but, as discussed above, this is a conservative, upper-end estimate. Consequently, we believe risks are significantly lower than estimated and the standards provide an ample margin of safety.

Emissions of chromium compounds are a secondary risk driver to formaldehyde, and the risk is 7-in-1 million based on current actual emissions. It is important to note that,

even though risks are acceptable, the health risks from hexavalent chromium emissions from wool fiberglass manufacturing facilities could be much higher in the future without a chromium compounds emission limit. To capture this scenario, we conducted an auxiliary risk analysis in which we assumed all wool fiberglass furnaces emitted hexavalent chromium at the same rate as the reasonable highest-emitting furnace. The results of the auxiliary risk analysis showed that, in the absence of a chromium emission limit and with furnaces emitting at the assumed emission rate, risk at four facilities is expected to increase over time to greater than 100-in-1 million, due to increasing chromium emissions occurring with furnace age. Therefore, we determined that the chromium emission limit in the final rule, which will limit the MIR cancer risk from hexavalent chromium emissions from this category to no higher than 3-in-1 million, is necessary to provide an ample margin of safety.

Regarding chromium compounds, as discussed above, we received comments on the proposed chromium compounds limit that indicated that a newly-rebuilt furnace, which we believe is the likely compliance technology, may not be able to demonstrate compliance with the proposed emission limit. The comment was based on one specific example from the 2012 test data that showed a 1-year old gas-fired glass-melting furnace emitting approximately 0.0002 pounds chromium per ton of glass. We re-evaluated the proposed chromium compounds limit in light of information on this technology, and based on the data available, we have revised the chromium compounds limit and are now finalizing an emissions limit of 0.00025 pounds per ton of glass pulled for gas-fired glass-melting furnaces. We conducted an assessment of the risk attributable to all HAP for each facility and determined that increasing the chromium compound emission limit from 0.00006 to 0.00025 pounds total chromium per ton of glass pulled has a minimal effect on the post-RTR risks because these risks are largely driven by formaldehyde emissions. Specifically, at the chromium compounds emission limit of 0.00025 pounds total chromium per ton of glass pulled, the MIR due to only chromium emissions for the source category is 3-in-1 million.

The results of the risk assessment are presented in more detail in the final residual risk memorandum titled ''Residual Risk Assessment for the Mineral Wool Production and Wool Fiberglass Manufacturing Source Categories in Support of the June 2015 Final Rule,'' which can be found in Docket ID No. EPA–HQ–OAR–2010–1042.

3. What key comments did we receive on the risk review for Wool Fiberglass Manufacturing (major sources), and what are our responses?

We received comments in support of and against our proposed determination of risk acceptability, ample margin of safety analysis, and requirement for additional control. A summary of these comments and our responses can be found in the comment summary and response document available in the docket for this action (EPA–HQ–OAR–2010–1042). The following is a summary of the key comments received regarding the risk assessment for the Wool Fiberglass Manufacturing source category and our responses to these comments. Additional comments on the risk assessment and our responses can be found in the comment summary and response document available in the docket for this action (EPA–HQ–OAR–2010–1042).

Comment: One commenter stated that the EPA should find the acute health risk from wool fiberglass manufacturing facilities to be unacceptable. The commenter noted that the EPA's assessment in the November 2011 proposal found an acute risk of 30 for the Wool Fiberglass Manufacturing source category and argued that the EPA should find the health risk to be unacceptable under CAA section 112(f)(2) based on this acute risk.

The commenter stated that the EPA has a presumption that an HQ below 1 is safe, that the EPA has stated that a HQ less than or equal to 1 indicates that adverse noncancer effects are not likely to occur, and that exposure below that threshold level is safe. The commenter added that the EPA did not adequately explain why the formaldehyde risks were found to be acceptable although they are 30 times higher than the threshold.

The commenter asserted that, by applying the outdated integrated risk information system (IRIS) dose-response values in determining formaldehyde inhalation exposure risk, the EPA is not basing the proposed rule on the best available science. The commenter urged the EPA to revise the proposed rule to accurately convey the best available science and a weight-of-evidence approach in compliance with the Information Quality Act (IQA) Guidelines and Executive Order 13563. In particular, the commenter argued that the EPA should reject the 1991 IRIS dose-response value and incorporate the Chemical Industry Institute of Toxicology (CIIT, 1999) cancer dose-response value for formaldehyde.

Response: As discussed in sections V.A and VI.A of this preamble, we revised the risk assessment for wool fiberglass facilities for the November 2014 supplemental proposal. For wool fiberglass facilities, the MIR for actual baseline emissions remained 20-in-1 million (formaldehyde), with the acute noncancer HQ remaining at 30 for the REL and decreased from 2 to 1 for the AEGL–1 (formaldehyde). The maximum chronic non-cancer TOSHI value based on actual emissions decreased from 0.2 to 0.1 with emissions of formaldehyde dominating those impacts, indicating no significant potential for chronic noncancer impacts. We found that the risks were acceptable.

We note that the acute risks are based on an REL value, which is defined as ''the concentration level at or below which no adverse health effects are anticipated for specified exposure duration.'' Moreover, we note that the acute risk assessment is a worst-case assessment. For example, the acute assessment assumes worst-case meteorology, peak emissions and an individual being located at the site of maximum concentration for an hour. Taken together, the EPA does not believe that in all RTR reviews, HQ values must be less than or equal to 1. Rather, the EPA finds that acute risks must be judged on a case-by-case basis in the context of all the available health evidence and risk analyses.

To better characterize the potential health risks associated with estimated acute exposures to HAP, and in response to a key recommendation from the Science Advisory Board's (SAB) peer review of the EPA's RTR risk assessment methodologies,[6] we generally examine a wider range of available acute health metrics (*e.g.,* RELs, AEGLs) than we do for our chronic risk assessments. This is in response to the SAB's acknowledgement that there are generally more data gaps and inconsistencies in acute reference values than there are in chronic reference values. In some cases, when Reference Value Arrays[7] for HAP have been developed, we consider additional acute values (*i.e.,* occupational and

[6] The SAB peer review of RTR Risk Assessment Methodologies is available at: *http://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf.*

[7] U.S. EPA. (2009) Chapter 2.9 Chemical Specific Reference Values for Formaldehyde in Graphical Arrays of Chemical-Specific Health Effect Reference Values for Inhalation Exposures (Final Report). U.S. EPA, Washington, DC, EPA/600/R–09/061, and available on-line at: *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=211003.*

international values) to provide a more complete risk characterization. The EPA uses AEGL and Emergency Response Planning Guidelines (ERPG) values (when available) in conjunction with REL values (again, when available) to characterize potential acute health risks. However, it is often the case that HAP do not have all of these acute reference benchmark values. In these instances, the EPA describes the potential acute health risk in relation to the acute health values that are available. Importantly, when interpreting the results, we are careful to identify the benchmark being used and the health implications associated with any specific benchmark being exceeded. By definition, the acute California reference exposure level (CA–REL) represents a health-protective level of exposure, with no risk anticipated below those levels, even for repeated exposures; however, the health risk from higher-level exposures is unknown. Therefore, when a CA–REL is exceeded and an AEGL–1 or ERPG–1 level is available (*i.e.,* levels at which mild effects are anticipated in the general public for a single exposure), we have used them as a second comparative measure. Historically, comparisons of the estimated maximum off-site 1-hour exposure levels have not been typically made to occupational levels for the purpose of characterizing public health risks in RTR assessments. This is because occupational ceiling values are not generally considered protective for the general public since they are designed to protect the worker population (presumed healthy adults) for short duration (*i.e.,* less than 15 minute) increases in exposure. As a result, for most chemicals, the 15-minute occupational ceiling values are set at levels higher than a 1-hour AEGL–1, making comparisons to them irrelevant unless the AEGL–1 or ERPG–1 levels are exceeded. Such is not the case when comparing the available acute inhalation health effect reference values for formaldehyde.[8]

Thus, while this means we cannot rule out the potential for acute concerns due to formaldehyde emissions from these facilities, we note that the worst-case acute HQs are based on conservative assumptions (*e.g.,* worst-case meteorology coinciding with peak short-term 1-hour emissions from each emission point, with a person located at the point of maximum concentration during that hour). We also note that, as stated earlier, the emissions estimates for formaldehyde are expected to be an overestimate of emissions, further supporting our determination that acute risks are not a significant concern for the wool fiberglass source category.

Comment: One commenter stated that AEGLs or ERPGs were developed for accidental release emergency planning and are not appropriate for assessing daily human exposure to toxic air pollutants because they do not include adequate safety and uncertainty factors. The commenter stated that they are not meant to evaluate the acute impacts from routine emissions that occur over the life of a facility and cannot be relied upon to protect the public from the adverse effects of exposure to toxic air pollutants. The commenter concluded that their use is not appropriate in risk assessments and urged the EPA to increase its reliance on the California RELs to address acute exposures in the residual risk assessments.

Response: The EPA does not rely exclusively upon AEGL or ERPG values for assessment of acute exposures. Rather, the EPA's approach is to consider various acute health effect reference values (see the preamble to the November 2011 proposal (76 FR 72781)), including the California REL, in assessing the potential for risks from acute exposures. To better characterize the potential health risks associated with estimated acute exposures to HAP, and in response to a key recommendation from the SAB's peer review of the EPA's RTR risk assessment methodologies, we generally examine a wider range of available acute health metrics (*e.g.,* RELs, AEGLs) than we do for our chronic risk assessments. This is in response to the SAB's acknowledgement that there are generally more data gaps and inconsistencies in acute reference values than there are in chronic reference values. In some cases, when Reference Value Arrays for HAP have been developed, we consider additional acute values (*i.e.,* occupational and international values) to provide a more complete risk characterization. As discussed in the preamble to the November 2011 proposal, the exposure guidelines the EPA considers depends on which exposure guidelines are available for the various HAP emitted. The EPA uses AEGL and ERPG values (when available) in conjunction with REL values (when available) to characterize potential acute health risks. However, it is often the case that HAP do not have all of these acute reference benchmark values. In these instances, the EPA describes the potential acute health risk in relation to the acute health values that are available. Importantly, when interpreting the results, we are careful to identify the benchmark being used and the health implications associated with any specific benchmark being exceeded.

Comment: According to one commenter, the EPA's multipathway risk assessment fell short because the EPA did not use ''allowable'' emissions for this assessment and the proposed rule shows multipathway risks that are 60 times greater than the EPA's threshold. The commenter stated that the EPA acknowledged in its 2014 risk assessment that the emissions allowed by the standard may be up to 3 times greater than actual emissions for phenol, methanol, and formaldehyde, such that the HQ of 30 could be 3 times higher based on allowable emissions. The commenter stated that by using actual emissions, the EPA's analysis is likely to be an underestimate of the health risks from multipathway routes of exposure. The commenter supports the EPA's use of ''allowable'' as well as ''actual'' emissions to assess inhalation risk.

Response: Consistent with previous risk assessments, the EPA considers both allowable and actual emissions in assessing chronic risks under CAA section 112(f)(2) (See, *e.g.,* National Emission Standards for Coke Oven Batteries (70 FR 19998–19999, April 15, 2005); proposed and final National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (71 FR 34428, June 14, 2006, and 71 FR 76603, December 21, 2006). This approach is both reasonable and consistent with the flexibility inherent in the Benzene NESHAP framework for assessing acceptable risk and ample margin of safety, as developed in the Benzene NESHAP (54 FR 38044, September 14, 1989). As a general matter, modeling allowable emission levels is inherently reasonable since this reflects the maximum level sources could emit and still comply with national emission standards. But, it is also reasonable to consider actual emissions, where such data are available, in the acceptable risk and ample margin of safety analyses. See National Emission Standards for Coke Oven Batteries (70 FR 19992, 19998, April 15, 2005). The commenter claims that limiting our review to actual emissions would be inconsistent with the applicability section of Part 63 rules. As explained, however, we did not limit our review to actual emissions.

The commenter also urged the agency to rely on allowable emissions for the purpose of our acute assessment. The

[8] U.S. EPA. (2009) Chapter 2.9 Chemical Specific Reference Values for Formaldehyde in Graphical Arrays of Chemical-Specific Health Effect Reference Values for Inhalation Exposures (Final Report). U.S. EPA, Washington, DC, EPA/600/R–09/061, and available on-line at: *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=211003.*

use of allowable emissions was not considered due to the conservative assumptions used to gauge worst-case potential acute health effects. The conservative assumptions built into the acute health risk screening analysis include: (1) Use of peak 1-hour emissions that are, on average, 10 times the annual average 1-hour emission rates; (2) that all emission points experience peak emissions concurrently; (3) worst-case meteorology (from 1 year of local meteorology); and (4) that a person is located downwind at the point of maximum impact during this same 1-hour period. Thus, performing an acute screen based on allowable emissions would be overly conservative and at best, of questionable utility to decision makers.

Comment: Two commenters stated that the EPA does not have authority to consider ''total facility'' emissions in conducting the residual risk assessments for a given source category. The commenter argued that it would be impossible for the EPA to fulfill its unambiguous obligation for CAA section 112(f) standards to protect public health with an ample margin of safety in cases where facilities contain sources in a category where the 8-year deadline for conducting the CAA section 112(f) risk review precedes the adoption of MACT standards for other sources at the facilities. One commenter added that CAA section 112(f)(2)(A) requires EPA to promulgate standards on a source category basis. Another commenter continued that this provision unambiguously requires the CAA section 112(f) risk assessment to be focused exclusively on ''emissions from a source in the category or subcategory,'' asserting that the EPA does not have authority to consider emissions from any sources other than those in the source category or subcategory under review at that time.

Response: We disagree that examining facility-wide risk in a risk assessment conducted under CAA section 112(f) exceeds the EPA's authority. The development of facility-wide risk estimates provides additional information about the potential cumulative risks in the vicinity of the RTR sources, as one means of informing potential risk-based decisions about the RTR source category in question. While we recognize that, because these risk estimates were derived from facility-wide emissions estimates which have not generally been subjected to the same level of engineering review as the source category emission estimates, they may be less certain than our risk estimates for the source category in question, they remain important for providing context as long as their uncertainty is taken into consideration.

Section 112(f)(2) of the CAA expressly preserves our use of the two-step process for developing standards to address residual risk and interpret ''acceptable risk'' and ''ample margin of safety'' as developed in the Benzene NESHAP (54 FR 38044, September 14, 1989). In the Benzene NESHAP, the EPA rejected approaches that would have mandated consideration of background levels of pollution in assessing the acceptability of risk, concluding that ''. . . comparison of acceptable risk should not be associated with levels in polluted urban air. With respect to considering other sources of risk from benzene exposure and determining the acceptable risk level for all exposures to benzene, the EPA considers this inappropriate because only the risk associated with the emissions under consideration are relevant to the regulation being established and, consequently, the decision being made.'' (54 FR 38044, 38061, September 14, 1989).

Although not appropriate for consideration in the determination of acceptable risk, we note that background risks or contributions to risk from sources outside the source category under review could be one of the relevant factors considered in the ample margin of safety determination, along with cost and economic factors, technological feasibility, and other factors. Background risks and contributions to risk from sources outside the facilities under review were not considered in the ample margin of safety determination for this source category, mainly because of the significant uncertainties associated with emissions estimates for such sources. Our approach here is consistent with the approach we took regarding this issue in the Hazardous Organic NESHAP (HON) RTR (71 FR 76603, December 21, 2006), which the court upheld in the face of claims that the EPA had not adequately considered background.

In our November 2011 proposal, we explained that for these source categories, there are no other significant HAP emissions sources present at wool fiberglass manufacturing and mineral wool production facilities beyond those included in the source category. We also explained that all significant HAP sources have been included in the source category risk analysis. We therefore concluded that the facility-wide risk is essentially the same as the source category risk and that no separate facility-wide analysis was necessary (76 FR 72783, November 25, 2011). Our evaluation of facility-wide risks did not change our decisions under CAA section 112(f)(2) about acceptability and ample margin of safety of the risks associated with the wool fiberglass source categories.

4. What is the rationale for our final approach and final decisions for the risk review for the Wool Fiberglass Manufacturing source category (major sources)?

For the Wool Fiberglass Manufacturing source category, we have determined that the current MACT standards reduce risk to an acceptable level. We have further evaluated the cost, emissions reductions, energy implications and cost effectiveness of the total chromium compounds emission limits being promulgated in this final rule and have determined that they are cost effective, technically feasible and will provide an ample margin of safety to protect public health and prevent adverse environmental effects.

For chromium emissions, we are finalizing the emission limit of 0.00025 pounds total chromium per ton of glass pulled for gas-fired glass-melting furnaces, under CAA section 112(f)(2). This is based on our assessment of emissions from newly-rebuilt gas-fired glass-melting furnaces. Because commenters provided new information indicating that cullet use is tied to increasing chromium emissions from gas-fired glass-melting furnaces, we are also requiring that facilities establish the materials mix, including the percentages of raw materials and cullet, used in gas-fired glass-melting furnaces during the performance test conducted to demonstrate compliance with the chromium emission limit. Affected sources must maintain the percentage of cullet in the material mix at or below the level established during the most recent performance test showing compliance with the standard. If a gas-fired glass-melting furnace uses 100 percent cullet during the most recent performance test showing compliance with the standard, then monitoring of the cullet use on that furnace is not required until the next annual performance test.

B. Technology Review for the Wool Fiberglass Manufacturing Source Category (Major Sources)

1. What did we propose pursuant to CAA section 112(d)(6) for the Wool Fiberglass Manufacturing source category (major sources)?

As discussed in the 2011 proposal (76 FR 72803–72804, 72798), we conducted a technology review for FA and RS bonded lines and for furnaces that focused on identifying and evaluating developments in practices, processes, and control technologies for the emission sources in the Wool Fiberglass Manufacturing source category that have occurred since the 1999 MACT rules were promulgated. We consulted the EPA's RACT/BACT/LAER Clearinghouse to identify potential technology advances for processes similar to those covered by the Wool Fiberglass Manufacturing NESHAP, as well as the costs, non-air impacts, and energy implications associated with the use of these technologies.

We also requested information from facilities regarding developments in practices, processes, or control technologies, and conducted site visits, held meetings with industry representatives, and reviewed other information sources, such as technical literature, state and local permitting agency databases and industry-supported databases. For more information, see the ''Technology Review for the Wool Fiberglass Manufacturing Source Category Memorandum'' in the docket to this rule.

Subsequent to the November 2011 proposal, we announced that we had issued a CAA section 114 ICR to collect emissions data and other information on glass-melting furnaces in order to regulate area sources in a future action. This resulted in a near complete dataset for emissions test data on all wool fiberglass furnaces, with the only exceptions being furnaces at facilities that were closed or that were shut down at the time of the 2012 testing. The data also indicated that three gas-fired glass-melting furnaces had been rebuilt and retested, and we also had emissions test data for these three furnaces for the years before and after the rebuild.

a. Technology Review for Reduction of PM From Furnaces

For our technology review under CAA section 112(d)(6), for PM emissions from glass-melting furnaces, we identified advances in control measures for PM emissions. These included improvements and advances in control technology, such as application of ESPs, as well as developments in furnace design and the use of high-chromium furnace refractories that had been made since promulgation of the 1999 NESHAP.

Our technology review included glass-melting furnaces at both area and major sources. As explained in our April 2013 supplemental proposal, the number of area sources is constantly increasing as a result of the definition of ''wool fiberglass facility'' in Subpart NNN. For example, in 2002, two out of 33 facilities were area sources, but by December 2012, 20 facilities were area sources (78 FR 22377). As also previously explained, there are no differences between the furnaces used at major and area sources (78 FR 22377). Therefore, we believed it was appropriate to consider all furnaces in the technology review, under CAA section 112(d)(6).

In our November 2011 proposal, based on the responses to survey data regarding the performance of existing control measures, we proposed an emission limit of 0.014 pounds of PM per ton of glass pulled for glass-melting furnaces, under CAA section 112(d)(6).

In the April 2013 supplemental proposal, in response to comments we received on our November 2011 proposal, we revised the PM limit for furnaces to 0.33 pounds per ton of glass pulled in order to be consistent with our intentions to set the new limit based on technology review.

We did not propose any further revisions to the proposed PM limit in the November 2014 supplemental proposal.

b. Technology Review for Reduction of Chromium From Furnaces

In our November 2011 proposal, we identified refractories having a high content of chromium, and their use in wool fiberglass furnaces, as a new development affecting the emissions of chromium compounds from sources since promulgation of the 1999 NESHAP. We reviewed the use of chromium refractories (as compared to non-chromium refractories), as well as other control technologies, such as caustic scrubbers. We analyzed the technical feasibility and the estimated impacts (*e.g.,* costs, emissions reductions, risk reductions) of applying these developments. We then determined, based on impacts and feasibility, whether it was necessary to propose amendments to the regulation to require any of the identified developments.

We found that, while the furnaces and control technologies are generally the same as those used at promulgation of the MACT standard in 1999, there have been some developments in furnace design and preference in control equipment. We found that developments in refractory technology and in furnace design are inextricably linked. Oxyfuel furnaces were not widely used prior to 1999 in the wool fiberglass industry, due to a number of factors, especially refractory degradation in the wool fiberglass furnace environment. At that time, new technology of the oxyfuel furnace constructed using conventional refractories of that time (*e.g.,* alumina-silicate, zirconium) limited the furnace life to 4 or 5 years. As a result, air-gas and electric furnaces predominated in the years prior to 1999.

With the advent of new refractory technology, new furnace designs were constructed that could be expected to last longer. With the industry focus upon new furnace designs and technology, the research to develop refractories that could withstand high temperatures, thermal shock and corrosive materials yielded the development of new types of chromium refractory products that could be used for construction of the high-temperature oxyfuel furnace.

As a result, the wool fiberglass industry began a trend toward oxyfuel furnaces constructed using high-chromium refractory products, a trend that commenters noted is expected to continue into the future. This gives rise to increased chromium emissions as a result of both wool fiberglass raw material formulation (corrosivity) and associated refractory degradation (*i.e.,* furnace wear). We explained the mechanisms of chromium emissions at length in our April 2013 supplemental proposal (78 FR 22379–22382) and in our technology review memorandum.

We therefore found that the development of new types of chromium refractories that could and would be used to construct entire gas-fired glass-melting furnaces for wool fiberglass manufacturing is a development that largely took place after promulgation of the MACT standard in 1999. We also proposed a total chromium compounds limit of 0.00006 pounds per ton of glass pulled for all glass-melting furnaces.

In the 2013 supplemental proposal, we did not revise the chromium emission limit for furnaces; however, we explained that there were two general types of furnaces used in this industry: Gas-fired (which include both air-gas and oxyfuel furnaces) and electric furnaces (which include both steel shell and cold-top electric furnaces). We proposed in the April 2013 supplemental proposal to limit the

applicability of the total chromium compounds emission limit to gas-fired glass-melting furnaces for two reasons: (1) Electric furnaces do not have chromium refractories above the glass melt line, and (2) they do not reach the operating temperatures necessary to convert significant amounts of trivalent to hexavalent chromium. As a result, electric furnaces do not emit significant amounts of chromium compounds.

We did not propose to revise the chromium compounds limit in our November 2014 supplemental proposal. However, based on comments received on our April 2013 supplemental proposal, we proposed that sources would be likely to rebuild the furnace rather than install a sodium hydroxide scrubber as previously proposed, due to revisions to our cost estimate for this control option.

2. How did the technology review change for the Wool Fiberglass Manufacturing source category (major sources)?

We did not make any changes to the technology review for PM from furnaces since the November 2014 supplemental proposal, and we are finalizing the previously proposed emission limit for PM, which is 0.33 lb per ton of glass pulled.

For chromium compounds, based on the public comments and information for glass-melting furnaces received on our November 2014 supplemental proposal, we believe it is necessary to revise our technology review under CAA section 112(d)(6) for gas-fired glass-melting furnaces in the Wool Fiberglass Manufacturing source category. Data collected on gas-fired glass-melting furnaces in 2010 and 2012 show that three furnaces tested their emissions for chromium in 2010, then shut down or repaired, and then retested in 2012 using the same test methods and protocols. In each case, chromium emissions were reduced by about 2/3 as a result of having rebuilt the furnaces. In two of the three cases, the chromium emissions before the repair or rebuild were higher than the proposed limit (0.00006 lb/ton of glass). In a third case, a furnace that measured 0.0006 lb/ton of glass in 2010 was rebuilt and retested for the 2012 ICR. The second test measured chromium at 0.0002 lb/ton of glass, a level slightly higher than our proposed chromium emission limit.

While we recognize that the rebuilt furnaces had different designs depending on the company's objectives at the particular facility, at this time we believe the highest emitting rebuilt furnace was well designed for its intended use. This furnace was rebuilt only one year before testing, at a cost to the company of between $10–12 million. As this is a technology review standard, we consider cost when evaluating the technology. We consider it reasonable to evaluate the technology based on the emission limit achieved by new furnaces, and we are increasing the chromium limit above what was previously proposed to account for this new furnace.

The final chromium limit also prevents operation of another furnace that could emit chromium at the reasonable high-end rate of the highest emitting furnace, as characterized in section VI of this preamble. Finally, we evaluated the cost, using our revised economic analysis, of compliance with the final limit and found that these costs are reasonable.

Specifically, we are revising the estimated costs of rebuilding the furnace as an option to comply with the chromium limit. We have determined, based on the revised costs and data regarding the level of chromium emissions that is achieved by rebuilt furnaces, that it is necessary, pursuant to CAA section 112(d)(6), to revise the proposed emission limit for chromium from gas-fired glass-melting furnaces. We are finalizing a limit of 0.00025 pounds chromium compounds per ton of glass pulled. This is a higher limit for chromium compounds than previously proposed, because data show that this level can be achieved by furnaces that are rebuilt, while the previously proposed level was shown to be lower than the level supported by the data provided by industry. We explain our decision further in the responses to key comments below and in the Technology Review Memo for the Wool Fiberglass Manufacturing source category, available in the docket to the rule.

We revised the cost estimate for rebuilding a gas-fired glass-melting furnace; however, we did not revise our finding from our technology review that rebuilding the furnace is an effective approach for reducing chromium emissions. We also note, from our technology review, that other options to reduce chromium from furnaces are available to wool fiberglass manufacturers. These include raw material substitution and installation of a properly-designed caustic (sodium hydroxide) scrubber to the outlet of the dry electrostatic precipitator (DESP). These other options are presented in more detail in the Economic Analysis, which accompanied the April 2013 supplemental proposal.

3. What key comments did we receive on the technology review, and what are our responses?

We received comments in support of and against our proposed technology review. The following is a summary of the key comments received regarding the technology review for the Wool Fiberglass Manufacturing source category and our responses. Additional comments on the technology review and responses can be found in the comment summary and response document available in the docket for this action (EPA–HQ–OAR–2010–1042).

Comment: One commenter stated that the EPA's depiction in the 2011 proposal (76 FR 72770, November 25, 2011) of high-chromium refractories and furnace control technologies as new technology developments is inaccurate, as demonstrated by the following evidence: (1) High-chromium refractories have been used in the wool fiberglass industry since the early 1980s; (2) the EPA was aware in 1999 that chromium was emitted from wool fiberglass plants, as demonstrated by the following statement in its 1999 promulgation preamble ''The hazardous air pollutants (HAP) emitted by the facilities covered by this rule include compounds of three metals (arsenic, chromium, lead) and three organic HAP,'' [9] although chromium emissions (and all metal HAP) at that time were insignificant and PM was chosen as a surrogate for those low emissions; and (3) chromium emission reductions have been achieved by the industry since initial MACT implementation in 1999 without using any new control technologies.

Response: Regarding the characterization of high chromium refractories as a new technology, chromium refractories for use in the glass industry have been a developing technology. According to information provided by the wool fiberglass and refractories industries as part of this rulemaking, significant problems with their use in the furnace had to be overcome before wool fiberglass furnaces could be constructed using them. For example, when fused-cast refractories started to be developed using high chromium materials, some companies discovered ways to manufacture those products that maintained the integrity of the refractory over a long time and in extreme temperatures, making these products candidates for trials in the wool fiberglass industry. At least two

[9] 64 FR 31695 (June 14, 1999).

major corporations [10] have developed high chrome refractory product lines since 1999, and they characterize these refractories on their Web sites as 'new' products developed for the fiberglass industry. Therefore, our characterization of these products as 'new' refers to the improvements in refractory and is not meant to imply that using chromium refractories, in and of itself, is new.

Further, we noted in the November 2011 proposal that we identified ''improvements'' in PM emissions controls, not that we identified ''new'' controls. We acknowledged in both our November 2011 and April 2013 supplemental proposals that sodium hydroxide scrubbers are not currently used in the wool fiberglass industry for removal of chromium, but that these controls are used in metallurgical processes and in the chromium electroplating industry for the removal of hexavalent chromium. We stated in those proposals that we were considering applying scrubber technology to this source category; however, as discussed in the 2014 supplemental proposal (79 FR 68020–69024), the technology basis for the chromium standard is more frequent furnace rebuilds, not scrubber technology.

Moreover, as we explained in our 2013 supplemental proposal (78 FR 22380), the type of furnace used to produce wool fiberglass at the highest emitting wool fiberglass manufacturing source was the type of furnace that is expected to dominate the industry in the future as a new and very efficient energy source. The oxyfuel furnace was not identified in our 1999 MACT standard as a separate technology. While we acknowledge that wool fiberglass furnaces are not 'new' technologies, the oxyfuel furnace is both new to this industry and its use is increasing. As the industry has commented, air-gas furnaces are becoming increasingly difficult to permit, while an oxyfuel furnace has no such restrictions due to its low PM and NO_X emissions profile.

We are not changing our assessment of the industry controls as having improved since 1999, and we are lowering the PM limit in the final rule from 0.5 to 0.33 pounds PM per ton of glass pulled. This limit codifies the current good practices and PM controls within the industry while not imposing additional costs to industry.

Regarding the commenter's allegation that chromium emissions were insignificant in 1999, and on that basis the EPA should not set chromium limits for this industry, we do not agree. The EPA has the responsibility to regulate air toxics under section 112 and to protect the health and environment surrounding these facilities as we are doing in this final rule. Moreover, due to source testing at the wool fiberglass industry, we have more information now than we had in 1999, and the industry's technology (that is, both the furnaces and refractories used) has changed.

Regarding the statement that, since initial MACT implementation in 1999, industry has reduced chromium emissions without using any new control technologies, the industry did not provide data showing that chromium emissions have been reduced.

Comment: One commenter argued that chromium emissions from glass furnaces do not increase with age and that a relationship between furnace age and chromium emissions is not statistically significant. The commenter argued that erosion of the refractories is slow and there is no substantial increase in chromium emissions over time. The commenter noted that the EPA asserted that ''when the glass-melting furnace is constructed using refractories containing high percentages of chromium, the emission levels of chromium compounds continuously increase over the life of the furnace according to the increasingly exposed refractory surface area.'' The commenter noted that the EPA further explains: ''It is our understanding that because of the corrosive properties of the molten glass, fresh refractory is continuously exposed to the molten glass along the metal/glass contact line in the glass-melting furnace process. This increases the surface area of the refractory that is exposed to the molten glass. As a result, when the glass furnace is constructed using high chromium refractories, the emission levels of chromium compounds continuously increase over the life of the furnace.'' The commenter stated that this is not correct. The commenter explained that surface area of refractory exposed to molten glass does not substantially increase, nor do the chromium emissions as a result. The commenter asserted that the slight increase in surface area as between uneven and smooth surfaces of new brick exposed to molten glass cannot explain the major difference that the one source exhibited on chromium emissions. In fact, the commenter observed, the testing results provided by the industry included furnaces in all stages of their life. The commenter argued that given the nearly constant surface area as refractory erodes, and the homogeneous chrome content throughout the brick, there would be no substantial increased chromium emissions over time in the manner the EPA asserts. Furthermore, according to the commenter, the erosion process is very slow given the lifespan of these furnaces.

The commenter stated that the EPA reports that ''[o]ne industry spokesperson estimated that 20,000 pounds per year of refractory are worn away from the inside walls of one wool fiberglass furnace and ducted to the control device before venting to the atmosphere.'' The commenter contended that the context of that statement is that furnace emissions are going through control devices that already meet the definition of BACT for particulate and if this were normal for the industry furnaces, they could not have the long lives that they typically exhibit.

The commenter provided a detailed statistical analysis to demonstrate that a furnace rebuild is not a viable control technology by using EPA's data to show that a relationship between furnace age and chromium emissions is not statistically significant. Using the EPA's data, the commenter also pointed out specific examples of apparent contradictions with the EPA's conclusions, such as the data from one oxyfuel furnace showing lower chromium emissions at the end of its life than at the beginning of its life, and showing no change in emissions after a furnace rebuild. The commenter also points to data from another furnace demonstrating that emissions lessen with furnace age.

The commenter contended that the proposed chromium limit is based on unproven technology, and that experimental and theoretical technologies do not constitute ''available'' or ''generally available'' technology. The commenter provided the results of various analyses to

[10] The North American Refractories Company (NARCO) and the Saint-Gobain Corporation Web sites advertise product lines of refractories that are 50%–95% chromium for use in the glass fiber and wool fiberglass industries. From NARCO's Web site: ''Wool and C-Glass makers rely on NARCO's extensive line of chrome-alumina materials, the SERV and JADE brands, available in standard pressed brick, large cast shapes, and Cast-in-Place linings. Supplying the complete furnace refractory package required for this application is a strength of NARCO''. (*http://www.anhrefractories.com/glass-refractory*). From Saint-Gobain's Web site: ''High temperature sintered chromium oxide based refractories have unequalled resistance against high temperature corrosion by molten SiO_2-Al_2O_3-Fe_2O_3-CaO/MgO slags and by certain glass wool compositions, in an oxidizing environment. Saint-Gobain Ceramics has pioneered and patented a unique range of chromium oxide-alumina-zirconia refractory compositions, marketed as . . .'' (from *http://www.refractories.saint-gobain.com/Chromium-Oxide.aspx*).

demonstrate that there is no proven technology that can meet the proposed limit. The technologies represented in the commenter's analyses include high efficiency particulate air (HEPA) filter, Venturi scrubber, 3-stage filter with water cleaning, membrane baghouse, and caustic scrubber. The commenter described these technologies as ''theoretical'' and ''unproven,'' because they have never been installed at the outlet of a DESP serving a wool fiberglass manufacturing furnace. The commenter contended that a membrane baghouse is used to control emissions from the industry, but has not been demonstrated to achieve the proposed chromium limit. The commenter provided feedback from vendors of these technologies to demonstrate that pilot tests would need to be conducted prior to vendors committing to guaranteeing a specific performance level. The commenter also investigated the performance capacity of the sodium hydroxide scrubber and found that this technology is not transferable to a wool fiberglass manufacturing process.

Response: We disagree with the commenters on the basis of direct statements, measurements and information on refractory content, production rates and furnace life received from industry sources. We issued a CAA section 114 ICR to all five wool fiberglass manufacturing companies and visited four of the manufacturing facilities in December 2012 to improve our understanding of the source of the chromium emissions from this industry. The results of these activities include source test data, information on chromium content of refractories used to construct different parts of all types of furnaces, and a deeper understanding of the properties of materials and technologies used to manufacture wool fiberglass. We were able to confirm our earlier statements presenting our understanding of this industry. Specifically, we confirmed that the furnace refractory are eroded and corroded during the life of the furnace both beneath the level of the glass, at the glass/metal contact line, and, in the case of gas-fired furnaces, above the level of the glass. We also learned that electric furnaces do not have the same temperature profile as gas-fired furnaces and, therefore, typically do not emit chromium at the level of the gas-fired furnaces.

We also learned that oxyfuel furnaces are an important new technology both in terms of energy consumption and potential to emit SO_2 and NO_X, but have the greatest potential (followed by gas-fired furnaces) to emit chromium. We have established that furnace age affects chromium emissions, as documented in ''Memorandum Chromium Emissions and Furnace Age, August 14, 2014'' and ''Explanation of the Mechanisms of Chromium Emissions from Gas-Fired Furnaces, June 3, 2015'', which are available in the public docket for this rulemaking.[11] We also disagree with the commenter's statistical analysis and argument that the EPA has not sufficiently established that there is a relationship between furnace age and chromium emissions. We have based our conclusions on industry comments, furnace emissions testing, technical literature, and other available data.

In the letter dated March 12, 2012, the commenter stated that ''Fiber glass furnaces necessarily use chrome-based refractory products (see Appendices A and B, spreadsheets showing typical chrome content),'' and that ''Virtually all of the above-glass refractory in gas-oxy furnaces, unlike other furnace classes, is chrome-based refractory.''

In that letter, the commenter continued, explaining that ''Since the advent of chrome-based refractory, insulation manufacturers have been able to extend furnace life more than 50 percent. Without these refractories, wool fiberglass manufacturers would not likely be competitive in the global marketplace. Moreover, there currently is no available material that is as good as and has the structural integrity of chrome-based refractory to handle the higher temperature and more corrosive atmosphere inside gas-oxy furnaces.''

Regarding the use of chromium refractories in oxyfuel furnaces, and the continual increase in chromium emissions that result, the commenter added that oxyfuel furnaces have greater chromium emissions than other furnaces because, based on industry experience, the combination of furnace design, glass composition, higher flame temperatures, higher water vapor concentration, and an oxidizing atmosphere with increased concentration of oxides (filterable and condensable PM) can cause more rapid deterioration of the refractory in a gas-oxy fiberglass insulation manufacturing furnace than in other types of glass furnaces.

Regarding the comparison of operating temperatures of oxyfuel to other furnaces, the commenter added that, ''One advantage of gas-oxy firing is the large reduction in NO_X, due to the reduction of nitrogen from the air in combustion, and the reduction in the volume of flue gases. One disadvantage of gas-oxy firing is that the peak flame temperatures are up to 40 percent higher than gas-air furnaces. The gas-oxy burner flame does not have to heat the added air components. In gas-oxy glass furnaces, peak flame temperatures approach 5,000 degrees Fahrenheit, whereas air-gas flame temperatures peak at about 3,560 degrees Fahrenheit, and cold-top electric melters are even lower due to having no heat input above the glass line.''

Regarding the relationship of furnace temperature and glass chemistry to chromium emissions, the commenter explained that ''with the reduction in the flue gas volume, the concentration of glass batch ingredient volatiles and water vapor in the atmosphere (and flue gas) is also much higher. The higher temperature of the gas-oxy burners can volatize the glass batch components more readily than in other furnaces. These glass volatiles that contain alkaline earth oxides reduce the temperature that chrome can be vaporized to as low as 1,832 degrees Fahrenheit. While the chrome must still reach temperatures of 2,700 to 2,900 degrees Fahrenheit to oxidize the chromium from the trivalent to hexavalent state, the potentially increased volatiles can contribute to higher chrome emissions. The 40 percent higher peak flame temperature of oxyfuel burners also raises the probability that available chrome (sic) will encounter the conditions that will convert it to the hexavalent state. Combined, these differences generate conditions that are more corrosive to chrome refractory and can create favorable conditions for conversion to hex chrome (CR206) inside a gas-oxyfueled furnace. These severe conditions do not exist in the other fiber glass furnace classes.''

Regarding the commenters' assertion that wool fiberglass furnaces could not be eroded by the molten fiberglass at the rate stated by industry, we note that the range of furnace life and rates of erosion did not originate from the EPA, but from information obtained from the industry itself. Further, we note that at the rate stated by industry and the control efficiency achieved by fabric filters, that refractory degrading at a rate of 20,000 pounds per year and fabric filters achieving 99-percent efficiency would emit 200 pounds PM annually from the contribution of the refractory alone. Using industry refractory content of 95-percent chromium, 190 of the 200 pounds of annual PM would be chromium compounds; 93 percent (177 pounds) of that chromium would be in the hexavalent state, which is within the range measured at oxyfuel and air-gas furnaces in this industry.

[11] EPA–HQ–OAR–2010–1042 at *www.regulations.gov.*

Regarding the comment that there is no other technology available to meet the chromium limit, we note that all furnaces at existing area sources and all but two furnaces at existing major sources currently meet the final chromium limit. Regarding these two furnaces, the EPA has established that a furnace rebuild is an approach that existing facilities have used to reduce their chromium emissions for furnaces over 6 years old, as discussed in section III.D of the preamble to the 2014 supplemental proposal. Further, the rule requires sources to meet the emission limits, but does not require the use of any specific control device or vendor. Sources may use whatever means they choose to meet the limits, such as more frequent furnace rebuilds, using non-chromium or low chromium refractories in furnace rebuilds, enhanced baghouse operation, improved maintenance and alternative controls, and furnace design features, changes in raw material, or scrubbers.

Comment: Two commenters asserted that the proposed chromium emissions limit would require technological controls that are not cost effective. According to one commenter, the installation of these controls would be economically damaging to the fiberglass insulation industry.

The commenters cited the agency's estimated cost of $300 per pound of hexavalent chromium removed if a scrubber is used to comply and the agency's estimated cost of $12,000 per pound of chromium compounds removed if operations with high-chromium refractory are rebricked with low-chromium refractory. According to the commenters, the conclusion that the proposed new chromium limit is ''feasible and cost effective'' is unreasonable and arbitrary. One commenter observed that the EPA's cost-effectiveness values would be $600,000 per ton of chromium removed for scrubbers and $24 million per ton of chromium removed for rebricking, assuming either proposed compliance solution would actually be successful. As such, the commenters stated that the agency's cost-effectiveness analysis does not support the conclusion that the new chromium limit is authorized and justified under CAA section 112(d)(6). One commenter claimed that the EPA's conclusion is arbitrary because the cost-effectiveness values are far in excess of the cost-effectiveness values the EPA has found acceptable in prior CAA section 112 cost-effectiveness analyses and the EPA has not explained why such high cost-effectiveness values are justified, especially considering risk.

According to the commenters, fiberglass insulation producers provide economic benefits by adding manufacturing jobs to the U.S. economy, shipment of finished product to markets throughout the country, and export of product to foreign markets. According to one commenter, one reason jobs are being sent overseas is the existing regulatory requirements and concerns about the future regulatory climate growing even more stringent. If revisions are not made to the proposal as recommended by the commenter, many of the companies will cease operation and it is likely that foreign competitors will flood the market with substandard product.

Response: We have reviewed the available chromium test data and information provided in response to our 2011 proposal, 2013 supplemental proposal, and 2014 supplemental proposal (76 FR 72770, November 25, 2011; 78 FR 22370, April 15, 2013; and 79 FR 68011, November 13, 2014) and we have revised our technology review, the chromium limit and our economic impact analysis for the final rule.

The EPA is finalizing a chromium limit of 0.00025 pounds per ton of glass pulled. Based on emissions data submitted in 2010 and 2012 by all wool fiberglass manufacturers on every furnace type, the EPA determined that this is a limit reflected by well-designed furnaces in this source category.

As discussed in section VI.B of this preamble, all three of the furnaces that were tested in 2010, then rebuilt or repaired and retested in 2012, showed lower chromium emissions as a result of the furnace rebuild or repair. Of these three furnaces, two emitted chromium below the previously proposed limit of 0.00006 pounds of chromium per ton of glass pulled after the rebuild or repair. One, a new furnace, tested at about 0.0002 pounds of chromium per ton of glass, and had been rebuilt at a cost of about $10 million. Consequently, we revised our limit to reflect the level of chromium emissions that is achieved by a well-designed rebuilt furnace.

Thus, the final emission limit is a level that has been demonstrated by recently rebuilt furnaces. We note that a key aspect of our changing the final chromium limit was to account for this new furnace, which measured chromium emissions at a level slightly higher than the limit we proposed.

In our November 2014 supplemental proposal (79 FR 68012 at 68021), we presented a chart showing chromium emissions by furnace age. That chart indicates 0.00025 pounds per ton represents the level below which rebuilt furnaces operate and many gas-fired furnaces operate below this level beyond their tenth year. We are aware of new developments in the field of chromium refractories that reduce the spalling and degradation of the refractory face. We consider many of these to be design features which a wool fiberglass company would consider when planning to rebuild a furnace. These data demonstrate that well-designed furnaces (that is, furnaces designed and operated to minimize chromium emissions) can continue to meet the chromium limit as they age.

This final rule does not limit the materials with which a gas-fired furnace may be constructed. Specifically, we recognize from industry commenters that gas-fired glass-melting furnaces used by the wool fiberglass industry will continue to use chromium refractories in their glass-melting furnaces. To help ensure that these sources are well-designed to minimize chromium emissions, wool fiberglass gas-fired glass-melting furnaces will be required to conduct chromium emissions performance testing annually.

Two facilities are projected to need to improve performance. For these two facilities, the total capital costs are $21.4 million and the total annualized compliance costs are estimated to be $944,000 for furnace rebuilds and compliance testing. For all other major source facilities subject to the chromium limit, the cost of compliance will include only the cost of emissions testing ($10,000 per furnace for a total of $80,000). Based on the EPA's economic impact analysis, which shows that the impacts to wool fiberglass manufacturers should be low, we believe that the compliance costs of the final rule are reasonable and will not be economically devastating to the wool fiberglass insulation industry.

Regarding the comment requesting that the EPA compare the cost-effectiveness of the proposed chromium limit (*i.e.,* 0.00006 lb/ton of glass) to the cost effectiveness of standards finalized under other rulemakings, cost-effectiveness values for hexavalent chromium are generally not comparable to values for other less toxic pollutants. We note, however, that the values now estimated for hexavalent chromium are now well within the range that we have considered cost effective for other highly toxic pollutants (*e.g.,* mercury and lead) in past actions. CAA section 112(d) neither specifies nor mandates a cost methodology. We note that in *Husqvarna AB* v. *EPA,* 254 F.3d 195, 200 D.C. Cir. 2001), the D.C. Circuit found the EPA's chosen methodology ''reasonable'' because the statute ''did

not mandate a specific method of cost analysis.''

Comment: One commenter stated that the EPA's cost analysis for furnace rebuilds in support of the 2014 supplemental proposal (79 FR 68011, November 13, 2014) underestimated the cost effectiveness by using the wrong costing method, incorrectly applying the costing method used, using the wrong discount rate, and considering costs over only the short term. The commenter provided the document ''National Emission Standards for Hazardous Air Pollutants (NESHAP) Risk and Technology Review (RTR) For the Mineral Wool and Wool Fiberglass Industries Economic Analysis Report,'' January 2015, as the source of this critique of the EPA's analysis.

The commenter argued that the Net Present Value (NPV) methodology is not an appropriate method for calculating cost effectiveness of the proposed accelerated rebuild schedule if the EPA is evaluating the cost of a control as the single factor to consider, and also stated that they could not identify any EPA rules that have used this approach. The commenter suggested that a replacement cost analysis, as described in section 2.5.5.6 of the *EPA Air Pollution Control Cost Manual,*[12] is more appropriate, and more commonly used by the EPA for this situation. The commenter provided cost-effectiveness results (dollars per pound of chromium emission reduction), as follows: Using a replacement cost methodology, the cost effectiveness was estimated by the commenter to be in the range of $366,161 to $527,334 at major source facilities and $67,808 to $97,654 at area sources; and using the NPV methodology, the cost effectiveness was estimated by the commenter to be in the range of $398,939 to $403,532 at major source facilities and $206,857 to $209,239 at area sources (each range represents the cost effectiveness calculated over 10 years versus 30 years).

The commenter further contended that the EPA erred in applying the NPV methodology in that the EPA excluded from its cost analysis the cost of losing the residual value (1 to 3 years) of a furnace's life, which contradicts the EPA's NPV methodology. The commenter explained that the EPA calculated what a $10 million investment losing 7 percent a year would lose in 7 years versus 10 years, and then concluded that the difference was the cost difference of the investments. The commenter contended, however, that both calculations are incorrect in how the process of NPV is used for comparison: With a furnace re-bricking, the $10 million represents the investment that is consumed over the periods of comparison; and using the 10 years as a base case, the $10 million is consumed and has no residual value remaining at the end of the 10 year period. The commenter concluded that, therefore, the $10 million consumed with no residual value must be compared to a $10 million investment that retains a residual value at the end of 7 years, but yet must be replaced (*i.e.,* discounting the residual value at the end of the 7 years to present value (''PV'') and adding that to the annual costs).

The commenter also objected to the EPA's use of a 7-percent discount rate because small variations in the discount rate can significantly bias the cost-benefit analysis. The commenter alleged that the EPA chooses radically different discount rates for different regulations, generally providing no explanation for this variation, which appears arbitrary and capricious because it often chooses relatively high discount rates (between 7 and 10 percent) for regulations imposing future costs and low rates (around 3 percent) for regulations creating future benefits.

The commenter further argued that the EPA's cost analysis failed to look at the longer-term cost of 7-year rebuilds, beyond 10 years into the future. The commenter provided the results of an analysis that presented the impact over 30 years, which show higher costs for both area and major sources.

Response: Regarding the comment that the EPA used the wrong costing method in the 2014 supplemental proposal, the EPA has reviewed the information provided by the commenter and, based on that information, which discussed the estimation of costs for changes in equipment that may occur as a route to comply with NESHAPs, we agree that the EPA's replacement costing approach described in section 2.5.5.6 of the *EPA Air Pollution Control Cost Manual*[13] is more appropriate for estimating the cost of furnace rebuilds than the NPV approach used for the 2014 supplemental proposal.

We received new information from the industry that they believed the replacement costing (RC) approach was a better fit for the situation and approach than the NPV approach, which is what we had used at proposal. The NPV evaluated the loss to the company from having to rebuild a furnace earlier, (*i.e.,* at 7 years into the furnace campaign instead of at 10 years.) The RC approach applies the equivalent uniform cost method as defined in the control cost manual. This is different because it calculates a uniform, or equal cost across the time of the investment, and the NPV is not calculated in the same way. While we note that use of the NPV is not necessarily incorrect in this case, we agree that in other similar rules whereby this type of approach was introduced (that is, replacing a process unit before the end of its useful life, or campaign in this case), the replacement costing approach was applied instead of the NPV. Therefore, we agree with the commenter and have changed our cost estimation method to be consistent.

We also revised the capital cost estimate for rebuilding a furnace to include the cost ($700,000) of transferring production to another facility while the furnace is being rebuilt, based on information provided by the commenter. Based on the revised cost-estimating procedure and capital cost ($10.7 million), we estimated the total annualized cost for rebuilding a furnace to be $462,000.

Regarding the comment that the EPA used the wrong discount rate, the EPA's use of a 7-percent interest rate is in accordance with OMB guidance under Circular A–4 and Circular A–94. This interest rate has been used in the cost estimates for all rulemakings issued by the Office of Air Quality Planning and Standards (OAQPS) since Circular A–94 was issued in 1992 and affirmed by Circular A–4 in 2003. This includes the 2011 proposal for the mineral wool and wool fiberglass rules, and both supplemental proposals. In addition, the *EPA Air Pollution Control Cost Manual*[14], a key cost guidance document prepared by the EPA and widely used in the Agency as a basis for cost estimation that has been available in its current edition since 2003, discusses the use of the 7-percent interest rate for rulemakings at length. The adherence by OAQPS to OMB guidance with regards to annualizing capital costs in its rulemaking has been consistent, and the information provided by the commenter on interest rates is not germane to the analysis for this rulemaking.

Comment: One commenter stated that the EPA's proposed chromium limit in the 2014 supplemental proposal (79 FR 68011, November 13, 2014) was not cost effective because the EPA's cost analysis was missing the following costs associated with furnace rebuilds: New materials (refractory bricks); recycling and disposal of old material; installation

[12] *http://www.epa.gov/ttncatc1/dir1/c_allchs.pdf.*

[13] *http://www.epa.gov/ttncatc1/dir1/c_allchs.pdf.*

[14] *http://www.epa.gov/ttncatc1/dir1/c_allchs.pdf.*

labor; maintenance; loss of production; and loss of labor force. The commenter retained a consultant to conduct a cost analysis of a furnace rebuild, and the analysis is provided by the commenter. The analysis concluded that the total investment of a furnace refractory rebuild is estimated to be about $28 million, assuming the EPA's furnace rebuild cost of $10 million. The $28 million includes approximately $7.9 million for all materials, $2 million for installation labor, $60,000 for brick recycling/disposal, $8 million for additional maintenance, $9 million for loss of production, and $384,000 for loss of labor force. The commenter explained that the loss of production cost is based on 200 tons per day throughput, $0.65 per pound of reproduction, and 35-day shutdown period. These costs are listed in Table 2 of Appendix 2 of Docket ID No. EPA–HQ–OAR–1042–0348. The commenter explained that the additional maintenance cost includes maintenance of control equipment performed while the furnace is shut down during rebuild, as follows:

> Maintaining safe and proper operation at a wool fiberglass manufacturing facility requires that the facility maintain melted glass within the furnace at all times. In addition to the furnace operating continuously, all other equipment used in the manufacturing process, including air pollution control equipment operates continuously during normal operation. During a scheduled rebuild of the furnace refractory, a facility will use that downtime to perform routine maintenance on the entire manufacturing line. This maintenance requires longer downtimes to accomplish because it includes the support equipment for the furnaces as well as the major down line equipment such as forming sections, curing ovens, and line drives. This maintenance is done at this time to avoid the other operational expenses and product supply issues incurred when taking extended downtimes. Therefore, when a facility plans a refractory rebuild, it must consider the additional costs and logistics associated with the routine repair and general maintenance of the entire manufacturing line. NAIMA [North American Insulation Manufacturers Association] members estimate these additional costs to be in the range of $6,000,000 to $10,000,000, and include material (wear part replacements, pollution control device maintenance, electrical preventative maintenance, etc.) and labor to perform this maintenance. (Appendix 2 of Docket ID No. EPA–HQ–OAR–1042–0348).

Response: As noted in the information provided by the commenter (see Appendix 2 of Docket ID No. EPA–HQ–OAR–2010–1042–0348), the EPA's capital cost estimate of $10 million includes material costs, installation labor, and brick recycling/disposal costs. We also revised the capital cost estimate for rebuilding a furnace to include the cost ($700,000) of transferring production to another facility while the furnace is being rebuilt, based on information provided by the commenter. We disagree that the cost of additional maintenance for control devices performed while the furnace is being rebuilt should be included in the total capital cost estimate because these costs are not directly related to rebuilding the furnace (*i.e.,* the furnace could be rebuilt without performing maintenance on control equipment). We also disagree with the commenter that the cost of lost labor force suggested by the comment should be included because we believe that workers would be reassigned to other duties at the facility (including activities related to rebuilding the furnace) while the furnace is shut down.

Comment: One commenter indicated that facilities will need to install control equipment to achieve the proposed chromium standard and that the EPA has grossly underestimated the cost of this equipment for major sources. One commenter provided cost-effectiveness estimates (in dollars per pound of chromium emission reduction) developed by Trinity Consultants for various technologies: HEPA filter would be $18,500 to $24,100; Venturi scrubber would be $29,700 to $41,700; 3-stage filter after DESP would be $49,100 to $63,900.

Response: The EPA amended the proposed chromium limit for major sources to be 0.00025 pounds chromium per ton of glass pulled. Based on emission data submitted to the EPA in 2010 and 2012 by all major source wool fiberglass manufacturers for every furnace type, the EPA determined that all but two major source furnaces currently meet this chromium limit. For those two sources that will not initially meet the finalized chromium limit, the EPA determined that a furnace rebuild may be conducted to achieve the limit with no additional control technologies (*e.g.,* scrubber).

Note that the finalized chromium limit applies to gas-fired furnaces and does not apply to electric furnaces. Electric furnaces at major sources will not be subject to the final chromium emission limits, so wool fiberglass manufacturing facilities operating electric furnaces will not incur any additional costs for compliance with the finalized chromium limits.

Comment: One commenter asserted that the EPA should subcategorize sources by furnace type because the chromium emissions test data indicate significant differences among wool fiberglass furnaces and furnace type. The commenter further asserted that non-oxyfuel furnaces should not have a chromium limit, and that oxyfuel furnaces should be further subcategorized to limit any applicable chromium emission limits to only those furnaces that warrant such limits. A second commenter asserted that the EPA should not subcategorize by furnace type.

One commenter suggested the following list of subcategories: Oxyfuel, specialty, steel shell, air-gas, cold-top electric. The commenter characterized the EPA's authority to subcategorize as broad and discretionary, noting that the CAA authorizes the EPA to ''distinguish among classes, types, and sizes of sources within a category'' in establishing MACT standards, and that the EPA retains discretion in important respects in setting floors for MACT standards within the statutory framework in order to promulgate MACT standards that best serve the public interest. The commenter continued, ''Congress authorized EPA to subcategorize source categories based on classes, types and sizes of sources which will result in different [f]loors for different subcategories.'' The commenter observed that the EPA's criteria for subcategorization include ''air pollution control differences, process operation . . ., emissions characteristics, control device applicability and costs, safety, and opportunities for pollution prevention.'' The commenter also noted that the EPA had incorrectly stated ''[f]urnace construction and refractory composition were not factors that were presented by industry as having an effect on HAP emissions, and those factors were not used as a basis of representativeness for the resulting data set,'' which contradicted the May 5, 2010 testing proposal letter sent to the EPA that categorized furnaces by construction and identified furnaces as having an effect on emissions. The commenter stated that this identification by furnace type in the May 5, 2010 letter is precisely what the EPA should consider when subcategorizing.

The commenter asserted that no subcategories except oxyfuel furnaces should have a chromium limit, noting that non-oxyfuel furnaces (steel shell, cold-top electric, air-gas, and specialty) have extremely low to non-detectable chromium emissions and referred to three supporting references: A summary of the chromium content of refractories and chromium emissions (attachment 8 of comment letter), the test reports sent to the EPA as a basis for the comment, and a technology review of glass furnaces (attachment 10 of the comment

letter).[15] The commenter stated that the technology review (attachment 10) concluded that oxyfuel combustion has a much higher potential for generating hexavalent chromium emissions as compared to air-gas or other types of furnaces based on the following conclusions: (1) Chromium emissions result from volatilization from the surface of chromium alumina refractories used at or above the glass line in the melting furnaces, and (2) the most significant variable with respect to quantity of chromium volatilized and to the presence of hexavalent chromium is the flame temperature. The commenter cited the study's recommendations regarding subcategorization: ''Because of the very significant flame temperature differences between oxyfuel and air-gas furnaces (5,035 degrees Fahrenheit versus 3,562 degrees Fahrenheit, respectively), there is engineering rationale to differentiate or subcategorize the furnaces by combustion type from a standpoint of emissions . . . Other furnaces, such as cold-top melters and steel shell melters, should be in any lower emissions subcategory'' (attachment 10, p. 10).

The commenter further asserted that the EPA should go a step further and subcategorize oxyfuel furnaces to regulate only those furnaces that pose a concern. The commenter stated that the other oxyfuel furnaces other than the CertainTeed Kansas City, Kansas facility (a total of 12 furnaces) do not pose a concern because they show low chromium emissions and do not approach a level of emissions that would trigger MACT applicability. The commenter recommended the following possible approaches for subcategorizing oxyfuel furnaces: (1) Establish a subcategory of the oxyfuel furnaces based on variation in demonstrated chromium emissions; and (2) establish a subcategory of the oxyfuel furnaces based on sources that can demonstrate a less than 1-in-1 million risk (using a risk-based source threshold limit of 25 pounds per year).

Another commenter urged the EPA not to subcategorize the glass-melting furnaces used in the Wool Fiberglass Manufacturing source category. The commenter supported the EPA's recognition at proposal that it was inappropriate to subcategorize in the wool fiberglass source category, given that there are no relevant differences that distinguish among classes, types, and sizes of sources within the category. The commenter argued that use of different types of furnace bricks does not qualify as a basis for subcategorization because sources of the same class, type, and size use different bricks. According to the commenter, the EPA may not subcategorize the source category into high chromium-emitters and low chromium-emitters because that would violate the purpose of protecting public health and the purpose of ensuring that the best-performers drive CAA section 112(d) standards to become stronger. The commenter observed that best-performers may have lower emissions, in part, because of the materials they use in their process or in their equipment. The commenter emphasized that the EPA may not lawfully subcategorize in a way that would place the best and worst performers into their own separate subcategories. The commenter asserted that the EPA should ensure that it sets standards for the entire source category that meet CAA section 112 requirements, rather than subcategorizing in a way that may allow a source to evade stronger emission requirements.

Response: In today's final rule, we are promulgating a PM limit under CAA section 112(d)(6) that is applicable to all glass melting furnaces in the Wool Fiberglass Manufacturing major source category. In our November 2011 proposal, we explained that in conducting our technology review, we found that most sources had reported PM emissions that were less than 10 percent of the current limit with several sources achieving PM emissions that were two to three orders of magnitude lower than the current MACT limit. We reasoned that new furnace designs and improvements in control devices operations, design, and bags since promulgation of the 1999 MACT were most likely responsible for reductions in PM emissions. As previously explained, the EPA may use surrogates to regulate HAP if there is reasonable basis to do so. In several rulemakings, we have used PM as a surrogate ''for HAP metals because PM control technology traps HAP metal particles and other particulates indiscriminately.'' *National Lime Association* v. *EPA,* 233 F.3d at 639. We continue to believe that PM controls would be effective for chromium emissions commensurate with the levels from both steel and electric furnaces used by wool fiberglass manufacturing facilities.

In today's rule, we are also promulgating a chromium compounds limit under CAA section 112(d)(6) that will apply to gas-fired glass-melting furnaces. As explained in the April 2013 supplemental proposal, electric furnaces emit metal HAP including chromium at generally lower emission levels than gas-fired furnaces. For example, because they operate at higher temperatures, gas-fired furnaces are constructed with chromium refractories at various parts of the furnace that are above the molten glass, including the crown. Temperatures above the melt in gas-fired furnaces range from 2500 to 4500 degrees Fahrenheit, and these temperatures are sufficient to convert chromium to its hexavalent state. When chromium is available, as it is in the refractories above the melt in gas-fired furnaces, it may be converted to the hexavalent state by the heat of the gas-fired furnace. Thus, gas-fired furnaces have the potential to emit elevated levels of chromium, even when meeting the total PM limit (78 FR 22379–82; 78 FR 22386). These higher chromium emissions do not occur with electric furnaces because they are constructed with either non-chromium refractories (cold-top electric) or steel in place of refractories (electric steel shell) above the glass/metal line. As also explained in our 2013 supplemental proposal, available test data from both electric and steel shell glass-melting furnaces consistently showed chromium emissions below the detection level of the emissions measurement method (78 FR 22379–80). Furnace construction and source test data also show that electric furnaces are not constructed using high-chromium refractories above the glass-metal line, do not reach the temperatures necessary to transform chromium to the hexavalent state, and do not emit significant amounts of chromium compounds, as do the gas-fired furnaces. In fact, all test data for electric furnaces show that chromium emissions were below the detection limit or were at least one order of magnitude below the proposed limit. Based on test data and statements from industry, we confirmed that gas-fired glass-melting furnaces are constructed using similar high-chromium refractories as one high emitting glass-melting furnace, that chromium emissions increase with furnace age as the refractories age, and that the type of furnace at the high emitter is an emerging new technology that is preferred across the industry where a source of industrial oxygen is economically available.

Additionally, as also explained in today's final rule, we are finalizing a chromium compounds limit, under the ample margin of safety step of CAA section 112(f)(2), that will also apply to gas-fired glass-melting furnaces. As explained above, gas-fired (oxyfuel and

[15] Denis A. Brosnan, Ph.D., PE, ''Technology Review, Chromium Emissions in Wool Fiberglass Melting Furnaces,'' December 10, 2011.

air-gas) furnaces have the greatest potential to emit chromium compounds because they have the internal temperature, the availability of oxygen, reactivity, and corrosivity of the furnace environment that are typical of wool fiberglass furnaces. In the 2013 supplemental proposal, we explained that the elevated chromium emissions from gas-fired furnaces are of concern due to the toxic nature of the type of chromium emitted—hexavalent chromium—and the effects associated with its inhalation. For example, hexavalent chromium is classified as a Class A known human carcinogen (78 FR 22374). In the November 2011 proposal, we also explained that an auxiliary risk characterization analysis, to assess the potential maximum individual lifetime cancer risks in the event that all wool fiberglass manufacturing facilities emitted at the level of the highest hexavalent chromium emitter, indicated that if other facilities were to emit at that reasonable highest measured level, emissions of hexavalent chromium could potentially pose unacceptable risks to public health due to inhalation exposures resulting from stack emissions of hexavalent chromium (76 FR 72801–80). We provided a detailed explanation on our decision to set both PM and total chromium standards in the memorandum titled ''Technical Basis for Separate Chromium Emission Limits for Wool Fiberglass Glass-Melting Furnaces'', which is in the docket for this rulemaking.

Comment: Two commenters predicted that the environmentally beneficial use of recycled mixed and green glass (cullet), and the businesses that provide it, will be adversely impacted by the chromium limit. The commenters pointed out that in 2008–2011, member companies used more than 5.4 billion pounds of recycled glass, and that they are the largest user of mixed glass and the only large user of green glass. These commenters surmise that some chromium may be emitted from cullet when it is remelted in the furnace, and that companies may reduce their use of green cullet to meet the chromium emission limits, an outcome that the commenters see as undesirable. The commenters added that the highest chromium emissions were measured from the furnace that also fed the most green glass cullet as a fraction of total raw materials into the furnace during the test period. One commenter noted that ''not all chrome was retained in the glass (cullet),'' and that green glass cullet ''can be a primary contributor of chrome emissions.''

Response: As discussed in an attachment to comments submitted on the EPA's 2011 proposal, the wool fiberglass ''recipe'' uses alkali or alkaline earth oxides, or boron oxide (borax) for its properties to terminate chains and sheets of silicon and oxygen tetrahedral in the glass melt.[16] The result of this process is the formation of macromolecules. These macromolecules are kinetically unable to crystallize at low temperature and, as a result, essentially polymerize the glass.

The comment attachment further explains that chromium enters the glass in wool fiberglass furnaces below the glass line, and goes into solution without having the potential for volatilization at glass-melting temperatures.[17] Chromium enters the silicate network structure of the glass as a ''modifier'' of the network, and cannot form glass on its own due to thermodynamic constraints. Chromium is held ''rigidly'' in the silicate structure in interstices in the atomic network, and is present in coordinated complexes with oxygen.[18]

Further, based upon comments from industry, technical literature, refractory product specifications, and other data, we conclude that the chromium is not released from the cullet when it is melted, but from the chromium refractories due to several influencing factors: The glass chemistry, furnace temperatures, refractory wear rate and glass pull rate. For more information regarding this topic, see memo titled ''Mechanisms of Chromium Emissions From Wool Fiberglass Glass-Melting Furnaces, June 2015'' in the docket to this rule.

However, we agree that the chemistry of the internal furnace environment may be influenced when green glass cullet comprises most or nearly all of the raw material mixture used in the furnace. This may be due to reaction of submetallic oxides (boron) with the chromium oxide of the refractory. As described in the comment attachment, ''the basics of glass melting are well-known, with fluxes acting on silicon dioxide or SiO_2 to achieve a melted state that forms an amorphous ''network'' of atoms of oxygen and silicon with ''fluxing'' metals resulting in rigid solids at room temperature.''[19] The attachment concludes that, ''Below the glass line in mineral wool[20] (sic) furnaces, chromium from refractory corrosion enters the network structure of the molten glass where it is held to the extent that it is not volatile at the flame temperatures of batch temperature within these furnaces. Therefore, volatilization from chromium refractories within mineral fiberglass furnaces originates at or above the glass line in the furnaces from the exposed refractory surfaces.''

To summarize, according to the commenter, the minerals used to color these glasses is not re-emitted from the cullet when it is melted at the temperatures of wool fiberglass furnaces. According to the commenter, studies show that in order to volatilize chromium from glass, temperatures above 7,000 degrees Celsius (12,000 degrees Fahrenheit) (such as occurs at plasma processing temperatures) are required (Brosnan, 2012).

Therefore, we disagree with the commenter's assertion of the mechanism of chromium emissions from the furnace, *i.e.,* that chromium is volatilized from green glass cullet when it is remelted in the wool fiberglass furnace.

To the contrary, we maintain that chromium emissions are due to chromium refractory products in wool fiberglass furnaces. According to the literature and references, many of which were provided by the commenter, chromium emissions increase from the wool fiberglass furnace as a result of degradation of chromium refractories, which is influenced by the thermochemical interactions within the furnace environment. The rate of degradation of the chromium refractory in the wool fiberglass furnace is influenced by the thermochemical interactions which are influenced by the raw material mixture processed in the furnace and the use of cullet (of any color).

We note that the test results upon which the final limits are based include tests conducted while the furnace was processing cullet in the raw material

[16] Technology Review. Chromium Emissions from Wool Fiberglass Melting Furnaces. Brosnan, Denis A. Ph.D., PE. Clemson University, Clemson, SC February 1, 2012.

[17] Chromium volatilization is only reported in the non-equilibrium melting of glasses at plasma processing temperatures, *i.e.,* with flame temperatures typically reported as above 7,000 degrees Celsius (>12,000 degrees Fahrenheit). Brosnan, 2012.

[18] C. Nelson, Transition Metal Ions in Glasses: Nework Modifiers or Quasi-Molecular Complexes, Mat. Res. Bull. 18 (1983) 959–966.

[19] W. David Kingery, H. Bowen, and D. Uhlmann, *Introduction to Ceramics* (2nd Edition), Wiley (1976).

[20] This report was attached to a comment to the November 25, 2011, Wool Fiberglass Manufacturing proposed RTR rule, and offers the author's view on the technology review for wool fiberglass furnaces. We conclude his use of the term 'mineral wool' in this context may have been either an error (the author advises on both industries) or an inclusion of wool fiberglass as a sub-classification under the overall classification (see NAICS codes) of mineral wool.

mixture. While the technology basis for the final standard is more frequent furnace rebuilds, wool fiberglass furnace operators may choose among a variety of options, as explained in section III.D of the 2014 preamble. Commenters previously identified several options to meet the final standard, including raw material substitution, *i.e.,* reducing the amount of cullet processed in the furnace. In addition to raw material substitution, industry commenters included the furnace rebuild and installation of a control technology at the outlet of the DESP as potential chromium reduction measures.

Regarding the prediction of the commenters that negative environmental impacts will result from the chromium limits because green glass will be landfilled instead of remelted by the wool fiberglass industry, we disagree for the following reasons. First, glass recycling in the past was accomplished through the color segregation of glass materials: Brown, or amber glass for amber containers; clear, or ''flint'' for flint containers; and green glass for green containers. Recycling centers no longer segregate their glass by color, but instead separate recyclable materials according to type: Paper, aluminum, steel, and glass, where glass of all colors is combined together in a single stream. Therefore, we disagree with the commenter that vast amounts of green glass would be landfilled because glass recycling no longer segregates waste glass by color.

Second, we acknowledge that while mixed glass from single stream recycling may be difficult to sell as a raw material, recyclers now decolorize used glass for resale into all glass markets (container glass in particular). One recycler (GMG) in particular shared a description of their process: ''GMG's basic technology provides for the de-colorization and subsequent recolorization of mixed color cullet in the production of glass containers. In so doing, it allows the glass manufacturer to use multiple colored cullet (amber, green, flint) to produce a single color glass, matching rigorous color and transmissivity standards required for many glass products. It accomplishes this in a manner that allows the glass manufacturer to replace virgin raw materials with a former waste product (mixed cullet). GMG's Batch Formulation System (BFS) is a user-friendly software program based upon a GMG proprietary series of algorithms representing the full spectrum of furnace batch materials and their chemistry. The BFS technology, combined with the optical scanning equipment, enables the manufacturer to further increase savings through the use of start-of-the-art optical scanner/feeder with advanced software that instantaneously reports color distribution weights and cullet chemistry in each batch sent to the furnace. Using these real time reports on the incoming cullet stream, the furnace operator can make formula modifications in chemicals and virgin materials to ensure uniform colored glass production.''

Third, the wool fiberglass industry is one of several glass industries, including mineral wool, container glass, pressed and blown glass, and flat glass, that purchase glass cullet as an inexpensive and energy efficient raw material. Therefore, we disagree that glass cullet would necessarily be landfilled instead of used in one of any number of glass industries.

Fourth, because chromium does not readily leach out of vitrified materials such as glasses, and would not further pollute the environment if disposed in a landfill, we believe that even if green glass cullet were landfilled in some areas, that would not result in a worse environmental impact than for chromium (particularly in its hexavalent form, as is most of the chromium from wool fiberglass) to be released into the air upon remelting.

Finally, according to the commenter, the use of cullet is required by Executive Order, and wool fiberglass companies avail themselves of cullet as a low-cost, energy efficient raw material which is also used to increase wool fiberglass production rates due to the lower melting temperature and eutectic point (as compared to all raw minerals). Wool fiberglass manufacturers have stated that they would need to greatly reduce or eliminate their use of cullet in the oxyfuel furnaces in order to meet the proposed chromium limit (0.00006 lb/ton of glass pulled), but that it is a moot point at the final chromium limit (0.00025 lb/ton of glass pulled). During meetings held in December 2014 and March 2015, industry stated that reducing or eliminating the use of cullet in the oxyfuel furnaces as a way to meet the chromium emission limit was no longer a concern to them. Furthermore, use of cullet in electric furnaces (which are not impacted by the chromium limit) does not seem to increase emissions of chromium as it does in gas-fired furnaces. Therefore, this is not an issue for electric furnaces, which will continue to use cullet. Therefore, we disagree with the commenter that cullet providers will be adversely affected by these final rules.

For the reasons stated above, we disagree with the commenter that there are environmental impacts associated with glass recycling that should be included in the impacts analysis. However, changing the content and mixture of raw materials used in a process can be a viable option for regulated sources to meet emissions limits.

4. What is the rationale for our final approach for the technology review?

In our technology review under CAA section 112(d)(6), for PM we found that while the use of ESPs is not new to this industry, the use of the DESPs in combination with gas-fired furnaces is more prevalent. We found that, in general, baghouses are no longer used for gas-fired glass-melting furnaces. We also found that all glass-melting furnaces were achieving emissions reductions that were well below the existing MACT standards regardless of the control technology in use.

Therefore, we determined that emissions controls on furnaces are capable of reducing PM to levels below those in the MACT standard, and, as previously proposed in our April 2013 supplemental proposal, we are finalizing under CAA section 112(d)(6) the PM limit for new and existing glass-melting furnaces.

Section 112(d)(6) of the CAA provides that the agency must review and revise ''as necessary'' existing MACT standards taking into consideration developments in practices, processes and control technologies by affected sources. The ''as necessary'' language must be read in the context of the provision, which focuses on the review of developments that have occurred in the industry since the time of the original promulgation of the MACT standard. Thus, our technology review was for all glass-melting furnaces located at both area and major sources, since all area sources were originally major sources. As explained in our April 2013 supplemental proposal, the number of area sources is continually increasing as a result of the definition of ''wool fiberglass facility'' in 40 CFR 63, subpart NNN. For example in 2002, two out of 33 facilities were area sources, but by December 2012, 20 facilities were area sources (78 FR 22377). As also previously explained, there are no differences between gas-fired glass-melting furnaces used at major and area sources (78 FR 22377). Therefore, we believe it was appropriate to consider all furnaces in our technology review under CAA section 112(d)(6).

Based on public comments and test data, we found that the DESP achieves an average of 97.5-percent efficiency in reducing PM, a fraction of which is

chromium compounds. Test data indicate that the majority of this chromium is in the hexavalent state, which is the most toxic form of this pollutant. We concluded that, as earlier discussed, the mechanism of formation, the increasing rate of emission release (due to refractory degradation), and the pollutant toxicity warrant additional investigation. Our technology review indicates that options effective in reducing the chromium compound emissions from the furnaces are available to wool fiberglass companies. We, therefore, conclude that it is appropriate for us to set standards for the fraction of chromium in the total PM that is still emitted from the DESP.

Based on comments we received on the November 2014 supplemental proposal, we again reviewed the cost and control options and found using new cost information that the limit as proposed was not as cost effective as we initially believed. We reviewed the data to determine whether a higher limit than previously proposed would be more cost effective while still significantly reducing chromium emissions from wool fiberglass gas-fired glass-melting furnaces. We found that most wool fiberglass gas-fired glass-melting furnaces and all recently rebuilt gas-fired furnaces currently emit chromium compounds at rates below 0.00025 pounds chromium per ton of glass pulled. Two furnaces located at major sources, which together emit 583 pounds of chromium compounds per year after DESP control, would still have to reduce chromium emissions to meet the limit.

We compared the chromium emission reductions that would have resulted under the previously proposed emission limit of 0.00006 pounds chromium per ton of glass pulled to the reductions that result from the final limit of 0.00025 pounds chromium per ton of glass pulled. We found that the proposed limit would have reduced chromium from major sources by 567 pounds per year, and that the final limit reduces chromium by 524 pounds per year. These are comparable and substantial reductions in chromium due to two high-emitting furnaces at major sources. Moreover, the final limit sets a backstop so that another high-chromium-emitting, gas-fired glass-melting furnace cannot be operated again at a major source in this industry.

We revised our technology review to reflect our conclusions on the most cost-effective ways to meet the final chromium limit. We find that two approaches are likely to be used by industry to reduce chromium emissions from gas-fired furnaces. One approach is to rebuild the furnace early (instead of a furnace life of 10 or more years, rebuild the furnace after 7 years of service) at an annualized cost of $462,000 per year, and the other approach is to replace one raw material (cullet) with another material (raw minerals), which the industry stated would result in lower chromium emissions, at an average cost of about $620,000 per year. Industry test data show that major sources will reduce chromium emission by 524 pounds per year to meet the 0.00025 pounds chromium per ton of glass pulled limit. The cost effectiveness of both approaches is reasonable, and the option to rebuild the furnace has a cost effectiveness of approximately $880 per pound of chromium, which appears for most companies to be the most cost-effective option. This cost is extremely affordably compared to costs for chromium control in other rules. For example, in the Chromium Electroplating RTR (77 FR 58226, September 19, 2012), we accepted a cost effectiveness of $11,000 per pound of hexavalent chromium reduced. We also note that section 112(d) neither specifies nor mandates a cost methodology. We note that in *Husqvarna AB* v. *EPA,* 254 F.3d 195, 200 D.C. Cir. 2001), the DC Circuit Court found the EPA's chosen methodology ''reasonable'' because the statute ''did not mandate a specific method of cost analysis.''

Sources may choose a combination of these approaches to meet the final chromium limit: Raw material substitution may be used as the furnace begins to show refractory wear (and associated increase in chromium emissions), and then, toward the end of the useful life of the furnace, sources may choose to rebuild their process equipment. We discuss the technology review in more detail in the November 2011 (76 FR 72803–72804) and the April 2013 (78 FR 22379–382) proposals; in the ''Technology Review Memorandum for the Wool Fiberglass Manufacturing NESHAP''; and in the paper titled, ''Mechanisms of Chromium Emissions From Wool Fiberglass Glass-Melting Furnaces,'' June 2015; which are available in the docket to this rule.

C. MACT Standards for Pollutants Previously Regulated Under a Surrogate and Previously Unregulated Pollutants for the Wool Fiberglass Manufacturing Source Category (Major Sources)

1. What did we propose pursuant to CAA sections 112(d)(2) and (3) for the Wool Fiberglass Manufacturing source category (major sources)?

In the November 2011 proposal, we proposed to establish emissions limits for formaldehyde, methanol, and phenol from FA and RS manufacturing lines that were previously regulated under a surrogate, and previously unregulated HCl and HF from glass-melting furnaces. In the April 2013 supplemental proposal, we retained the proposed emission limits for formaldehyde, methanol, and phenol for FA and RS manufacturing lines; however, we proposed work practice standards under CAA section 112(h) for control of HF and HCl emissions from furnaces, instead of the numeric emission limits in the November 2011 proposal (see section V.D of this preamble). In the November 2014 supplemental proposal, we proposed revised emissions limits for formaldehyde, methanol, and phenol from RS and FA lines for new sources as a result of our updated approach to evaluate limited datasets. The emission limits for existing RS and FA lines in the November 2014 supplemental proposal remained the same as in the April 2013 supplemental proposal because the size of these datasets was sufficiently large that the limits were not changed by the updated approach.

For the sake of simplicity, we discuss these pollutants together in the following sections.

2. How did the formaldehyde, methanol, and phenol emission limits change for the Wool Fiberglass Manufacturing source category?

We have not changed any aspect of the emission limits for formaldehyde, methanol, and phenol for existing and new FA manufacturing lines since the November 2014 supplemental proposal. However, as explained in section V.H of this preamble, we are deferring evaluation of emissions limits for RS lines pending collection of new process and emissions data from the industry.

3. What key comments did we receive on the formaldehyde, methanol, and phenol emission limits, and what are our responses?

We received comments in support of and against our proposed formaldehyde, methanol, and phenol emission limits for FA lines. The following is a summary of the key comments received

regarding the revised formaldehyde, methanol, and phenol emission limits for FA lines in the Wool Fiberglass Manufacturing source category and our responses to these comments. Additional comments on the standards and our responses can be found in the comment summary and response document available in the docket for this action (EPA–HQ–OAR–2010–1042).

Comment: One commenter expressed concern that the EPA is changing the applicability of the MACT standard for products made on FA manufacturing lines, as the 2013 supplemental proposal (78 FR 22370, April 15, 2013) indicated that the limits apply to all products manufactured on an FA line, not only to pipe and heavy density products. The commenter interpreted this to expand applicability of MACT to lines not previously regulated, which is beyond the EPA's authority under section 112 of the CAA. In the commenter's opinion, the limits for FA lines should continue to apply only to pipe and heavy density products, and not to any other product made on an FA line.

Response: The EPA changed the applicability of the MACT standard for products made on FA manufacturing lines for two reasons. First, the EPA determined under this rulemaking that the EPA established the 1999 MACT floor as no control (*i.e.,* no limit was established) for formaldehyde emissions from FA lines producing light density products (new and existing), automotive products (new and existing), and heavy density products (existing). As stated in the March 31, 1997, proposal for the Wool Fiberglass Manufacturing NESHAP (61 FR 15230), we divided FA lines into four subcategories: light density, automotive, heavy density, and pipe products. In that proposal (61 FR 15239), we noted that we did not establish emission limits for existing FA manufacturing lines producing light-density, automotive or heavy-density products or emission limits for new FA manufacturing lines producing light-density or automotive products because the MACT floor was no control and because the cost effectiveness of additional controls beyond the floor was not reasonable. The DC Circuit Court explicitly rejected this approach—establishing the MACT floor as no control—in both *National Lime Association* v. *EPA,* 233 F. 3d at 633–34 and in *Portland Cement Association* v. *EPA,* 665 F.3d 177, 189 (D.C. Cir. 2011). Therefore, the EPA has both the authority and the obligation to change applicability for FA lines to ensure that all sources of HAP are regulated.

Furthermore, we believe that the data for these facilities clearly support the establishment of MACT floors that assure emissions controls. The standards are based on data we received on tested FA lines. The commenter did not provide additional test data or information on ''any other product made on an FA line'' that would lead us to change to the emission limits previously proposed for FA lines.

Second, in our April 2013 supplemental proposal, in response to comments on our November 2011 proposal, and consistent with our intent in the 2011 proposal, we stated that we were eliminating the subcategories for FA bonded lines because we believe that the technical or design differences that distinguished these subcategories in 1999 no longer exist (78 FR 22387). We stated in the 2013 preamble that, as part of rule development, industry provided test data that they claimed were representative of products manufactured on FA lines (refer to industry's May 10, 2010, letter to the EPA, available in the docket). The 2011 and 2012 ICR response data indicate that only one company uses FA processes to manufacture wool fiberglass products. This is the company that provided the test data on which the limits for FA lines are based. In comments, companies asked that the limits for FA lines apply only to pipe and heavy density, and not to ''any other product made on an FA line.'' However, no other companies provided additional data that could serve as a basis for a change to the proposed limits for FA lines for any other products being produced on FA lines. The data provided by industry, therefore, indicate that this one company is the only company engaged in manufacturing wool fiberglass products on an FA line. Because test data exist for multiple products from this one company reporting these activities, we disagree with the commenter that the limits for FA lines should continue to apply only to pipe and heavy density products, and we are finalizing limits developed for FA lines that are representative of all product types made on FA lines. Consistent with our 2013 supplemental proposal, we are establishing standards at the MACT floor level of control for phenol, formaldehyde and methanol emissions from FA bonded lines.

In 2007, the D.C. Circuit Court found that the EPA had erred in establishing emissions standards for sources of HAP in the NESHAP for Brick and Structural Clay Products Manufacturing and Clay Ceramics Manufacturing, 67 FR 26690 (May 16, 2003), and consequently vacated the rules. (*Sierra Club* v. *EPA,* 479 F. 3d 875 (D.C. Cir. March 13, 2007)). Among other things, the Court found the EPA erred by failing to regulate processes that emitted HAP. As required by CAA section 112, we must establish emission limits for all processes that emit HAP based on the information available to us. The data available to the EPA indicate that FA lines producing products other than pipe and heavy density products do emit HAP. Therefore, the EPA is obligated to set limits for formaldehyde, phenol, and methanol for any such FA lines.

Comment: One commenter expressed concerns regarding the EPA's proposed limits for formaldehyde, phenol, and methanol. Regarding the 2011 proposal, the commenter asked the EPA to consider the example of one company whose compliance test data indicate that after switching to a non-phenol/formaldehyde binder, the level of formaldehyde and methanol for its RS line would exceed the 2011 proposed standard of 0.02 pounds per ton for formaldehyde for RS lines and the proposed standard for methanol of 0.00067 pounds per ton for new and reconstructed RS lines. According to the commenter, the data also suggested that an RS line at an existing source using non-phenol/formaldehyde binders would not meet the 2011 proposed formaldehyde standard of 0.17 pounds per ton for RS lines. The commenter also contended that the phenol limit of 0.0011 pounds per ton in the 2011 proposal for RS lines is so low that it cannot be measured with normal test times or with the proposed method if the process is performing close to the limit. The commenter concluded that the sources that switch to non-phenol/formaldehyde binders would not be able to comply with the proposed standards without installing controls such as a thermal oxidizer, which suggested the proposed standards are inappropriate. The commenter objected to the EPA's calculating the MACT floor using data for RS lines using non-phenol/formaldehyde binders. The commenter asserted that non-phenol/formaldehyde binder lines are not representative of emissions in the affected units within the industry, and non-phenol/formaldehyde binder lines should not be used to set the MACT floor for formaldehyde, phenol, and methanol. The commenter requested that the EPA confirm that all test data used to set new and revised limits are based only on data from sources running a bonded product, and to confirm that none of the test data used to set the new and revised limits are based on data from sources

running a non-phenol/formaldehyde binder or unbonded product.

Regarding the 2013 supplemental proposal, the commenter maintained that formaldehyde and methanol standards are not feasible for certain RS lines without installing both non-phenol/formaldehyde binder and additional controls such as thermal oxidizers, because of the formaldehyde created through combustion of natural gas. The commenter specifically mentioned the formaldehyde standard of 0.19 pounds per ton for RS lines as being borderline achievable for non-phenol/formaldehyde binders in RS lines for existing sources.

Regarding the 2014 supplemental proposal, the commenter indicated that the level of formaldehyde and methanol emitted by RS lines would exceed the 2014 proposed standard of 0.087 pounds per ton for formaldehyde and the 2014 proposed standard for methanol of 0.61 pounds per ton for new and reconstructed sources because of the formaldehyde created through combustion of natural gas. The commenter added that the data also suggest that the formaldehyde standard of 0.19 pounds per ton is borderline passing for non-phenol/formaldehyde binder on some existing sources. The commenter explained that formaldehyde is a by-product of natural gas combustion from burners used in the process. The commenter indicated that the proposed phenol limit of 0.26 pounds per ton is greatly improved since the 2011 proposed limit, but that it is still not consistently achievable. The commenter concluded that the proposed standards may not be able to be achieved even after switching to non-phenol/formaldehyde binders without installing controls such as a thermal oxidizer, which themselves will emit additional formaldehyde as a result of the combustion of natural gas to operate the control device.

Response: We agree with the commenter that the data used to calculate MACT for major sources must not include data for RS lines that run a non-phenol/formaldehyde binder or unbonded product. As discussed in the 2013 supplemental proposal (78 FR 22387), in response to the comment on the 2011 proposed emission limits for RS lines, we recalculated the emission limits after removing the emission test data for RS lines using non-phenol/formaldehyde binders, and we re-proposed emission limits for RS lines. However, based on this comment, we determined that our proposed formaldehyde, phenol, and methanol limits for RS lines may not accurately represent the average performance of the best performing sources. In 2015, after considering further information provided by industry representatives, we determined that the limits proposed in 2014 for RS lines likely included RS lines using non-phenol/formaldehyde binders and that the EPA could not determine (based on the 2011 ICR data) which data represented manufacturing lines that were using phenol/formaldehyde binders, and which data represented manufacturing lines that were not using the phenol/formaldehyde binder. As a result, we are not establishing in this final action RTR standards for formaldehyde, phenol, and methanol for RS manufacturing lines at wool fiberglass manufacturing facilities. We have issued an ICR under section 114 of the CAA to collect updated emissions and process information from the industry, and we will analyze the ICR data and evaluate limits for RS lines at wool fiberglass manufacturing facilities at a future date.

Comment: One commenter argued that the EPA should not recalculate the MACT floor for formaldehyde emissions and that the current MACT floor for formaldehyde emissions is still valid. The commenter contended that the EPA should not set a MACT floor for formaldehyde for the second time, explaining that (1) the EPA has not provided an explanation or asserted any rational basis for choosing to calculate a new MACT floor and standard for formaldehyde, as opposed to using its discretion under CAA section 112(d)(6) to make an appropriate adjustment without recalculating the floor and standard; and (2) there is no basis under the technology review to recalculate a MACT floor.

The commenter stated that nothing in CAA section 112(d) suggests that the EPA is required to establish a floor under CAA section 112(d)(3) more than once in issuing or revising MACT standards under CAA section 112(d). The commenter pointed out that this proposal is not consistent with other RTRs, for which the EPA has taken the position that Congress did not intend EPA to establish MACT floors for a second time when it revised a standard. The commenter provided the example of the Coke Oven RTR rulemaking, in which the EPA stated its rationale for CAA section 112(d)(6) not requiring additional floor determinations because this would ''effectively convert existing source standards into new source standards . . . The EPA sees no indication that section 112(d)(6) was intended to have this type of inexorable downward ratcheting effect.'' The commenter further pointed out litigation challenging the Hazardous Organic NESHAP RTR rule, in which the DC Circuit Court upheld the position that there should not be an inexorable downward ratcheting effect for the MACT floors (*NRDC* v. *EPA*, 529 F.3d 1077, 1083–84 (D.C. Cir. 2008)). The commenter urged the EPA to consider the statutorily-prescribed factors in recalculating the MACT floor.

The commenter stated that the EPA is conducting a MACT on MACT analysis by recalculating the MACT floor, citing *NRDC* v. *EPA*, 529 F.3d 1077, 1083–84 (D.C. Cir. 2008), where the U.S. Court of Appeals for the D.C. Circuit upheld the position that there should not be an inexorable downward ratcheting effect for the MACT floors. The commenter agreed that the EPA should calculate the floor for phenol and methanol, since standards for these HAP were missing from the NESHAP.

The commenter urged the EPA to retain the 1999 formaldehyde limit, saying that the 1999 limit is still the MACT floor and lowering the limit would be ''beyond-the-floor'' and would need to be justified accordingly. The commenter noted that in the proposal for the 1999 MACT rule, the EPA found that the floor for FA lines making both heavy density and pipe products was no control. The commenter observed that the EPA had also considered controls beyond-the-floor at the time, but concluded that the cost effectiveness was unreasonable. According to the commenter, nothing has changed since this proposal for FA lines. The commenter noted that because no new HAP controls have been added, the floor is still no control for these products.

Response: The EPA does not agree that CAA section 112(d)(6) provides the exclusive authority to address MACT standards when a MACT determination has already been issued for the source category. The D.C. Circuit Court has held that the EPA may permissibly amend improper MACT determinations, including amendments to improperly promulgated floor determinations, using its authority under CAA sections 112(d)(2) and (3). *Medical Waste Institute and Energy Recovery Council* v. *EPA*, 645 F. 3d 420, 425–27 (D.C. Cir. 2011). The absence of standards for these HAP is not proper. *National Lime Association* v. *EPA*, 233 F. 3d at 633–34; see also *Medical Waste Institute and Energy Recovery Council* v. *EPA*, 645 F. 3d at 426 (resetting MACT floor, based on post-compliance data, is permissible when originally-established floor was improperly established, and permissibility of EPA's action does not turn on whether the prior standard was remanded or vacated). Similarly, the D.C. Circuit Court's December 9, 2011

decision in *Portland Cement Association* v. *EPA*, 665 F.3d 177, 189 (D.C. Cir. 2011) confirms that CAA section 112(d)(6) does not constrain the EPA and it may reassess its standards more often, including revising existing floors if need be. The commenter is, thus, incorrect in arguing that CAA section 112(d)(6) provides the exclusive authority to address MACT standards when a MACT determination has already been issued for the source category. Further, CAA section 112(d)(6) itself provides that the agency must review and revise ''as necessary.'' The ''as necessary'' language must be read in the context of CAA section 112(d)(6), which focuses on the review of developments that have occurred since the time of the original promulgation of the MACT standard and, thus, can be used as an opportunity to correct flaws that existed at the time of the original promulgation.

The EPA is amending the 1999 formaldehyde MACT floor for FA lines because the floor was improperly determined. First, the EPA determined under this rulemaking that the MACT floor for formaldehyde emissions for new FA lines making heavy density products and for new and existing FA lines making pipe products were set at the highest measured value for each of the subcategories. As such, the 1999 MACT floor for formaldehyde was improperly set at a level achievable by all sources within the Wool Fiberglass Manufacturing source category and not at a level defined by the CAA. Again, as explained in the November 2011 proposal, when the EPA had in the past (incorrectly) interpreted CAA section 112(d) as requiring standards that can be achieved by all sources, the D.C. Circuit Court has rejected that interpretation. ''EPA may not deviate from section 7413(d)(3)'s requirement that floors reflect what the best performers actually achieve by claiming that floors must be achievable by all sources using MACT technology.'' *Cement Kiln Recycling Coalition* v. *EPA*, 255 F.3d at 861. ''EPA may not deviate from section 7413(d)(3)'s requirement that floors reflect what the best performers actually achieve by claiming that floors must be achievable by all sources using MACT technology.'' *Cement Kiln Recycling Coalition* v. *EPA*, 255 F.3d at 861 (''EPA cannot circumvent *Cement Kiln's* holding that section 7412(d)(3) requires floors based on the emission level actually *achieved* by the best performers (those with the lowest emission levels), not the emission level achievable by all sources, simply by redefining ''best performing'' to mean those sources with emission levels *achievable* by all sources.'' *Sierra Club* v. *EPA*, 479 F. 3d at 881. (Emphasis in original). In revising the MACT floor for formaldehyde, the EPA is ensuring that the floor reflects the method established in CAA section 112(d) for establishing the MACT floor for major sources of HAP: (1) For existing sources, MACT standards must be at least as stringent as the average emissions limitation achieved by the best performing 12 percent of existing sources (for which the Administrator has emissions information) or the best performing five sources for source categories with less than 30 sources, as is the case here; and (2) for new sources, the MACT standards must be at least as stringent as the control level achieved in practice by the best controlled similar source (CAA section 112(d)(3)).

Second, the EPA determined under this rulemaking that the EPA established the MACT floor for the formaldehyde limits for FA lines producing light density products (new and existing), automotive products (new and existing), and heavy density products (existing) as no control (*i.e.*, no limit was established). Therefore, these sources of HAP emissions are unregulated under the NESHAP, which is an approach soundly rejected by the D.C. Circuit Court in both *National Lime Association* v. *EPA*, 233 F. 3d at 633–34 and in *Portland Cement Association* v. *EPA*, 665 F.3d 177, 189 (D.C. Cir. 2011). The EPA disagrees with the commenter that the EPA should retain the current MACT floor of ''no control'' and that the EPA's recalculating the floor represents a level ''beyond the floor.'' Put another way, since the EPA did not adopt a proper MACT standard initially, it is not amending a MACT standard but adopting one for the first time. Consequently, the EPA is not barred from making MACT floor determinations and issuing MACT standards for formaldehyde pursuant to CAA sections 112(d)(2) and (3).

Third, the EPA is removing formaldehyde as a surrogate for phenol and methanol emissions, as supported by the commenter. The EPA may attribute characteristics of a subclass of substances to an entire class of substances if doing so is scientifically reasonable. *Dithiocarbamate Task Force* v. *EPA*, 98 F.3d 1394, 1399 (D.C. Cir. 1996). We no longer believe that there is a correlation and, therefore, reasonable bases, between formaldehyde and phenol and methanol. Further discussion of the EPA's rationale for removing formaldehyde as a surrogate for phenol and methanol emissions is provided in the preamble to the 2011 proposal (76 FR 72788, 72791, and 72796) for.

Regarding the comment that this proposal is not consistent with other RTRs, we note that in several recent rulemakings we have chosen to fix underlying defects in existing MACT standards under CAA sections 112(d)(2) and (3), provisions that directly govern the initial promulgation of MACT standards (see National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries, October 28, 2009, 74 FR 55670; and National Emission Standards for Hazardous Air Pollutants: Group I Polymers and Resins; Marine Tank Vessel Loading Operations; Pharmaceuticals Production; and the Printing and Publishing Industry, April 21, 2011, 76 FR 22566). Regarding the comment that the EPA had not provided an explanation or asserted any rational basis for choosing to calculate a new MACT floor and standard for formaldehyde, in our 2011 proposal, we explained that the D.C. Circuit Court had found that we erred in establishing emissions standards for sources of HAP in the NESHAP for Brick and Structural Clay Products Manufacturing and Clay Ceramics Manufacturing, and, consequently, vacated the rule. *Sierra Club* v. *EPA*, 479 F. 3d 875 (D.C. Cir. 2007). These errors included incorrectly calculating MACT emissions limit, failure to set emission limits and failure to regulated processes that emitted HAP. We explained that we were taking action to correct similar errors in the 1999 Wool Fiberglass Manufacturing NESHAP. We identified certain HAP that we failed to establish standards for in these rules. We also explained that we had not established standards for phenol and methanol because they were represented by a surrogate (*i.e.*, formaldehyde).

With regard to formaldehyde emissions from the Wool Fiberglass Manufacturing source category, we explained we were proposing MACT limits for existing, new, and reconstructed RS and FA manufacturing lines and presented these limits in Tables 4–6 of the 2011 proposal (76 FR 72791). We also explained that we had a ''clear obligation to set emissions standards for each listed HAP.'' *National Lime Association* v. *EPA*, 233 F. 3d 625, 634 (D.C. Cir. 2000).

4. What is the rationale for our final approach for the formaldehyde, methanol, and phenol emission limits?

As explained elsewhere in this preamble, we are eliminating the subcategories for FA bonded lines because we believe that the technical or

design differences that distinguished these subcategories when the original rule was developed no longer exist (CAA section 112(d)(1)). We are also establishing standards at the MACT floor level of control for formaldehyde, methanol, and phenol emissions from FA bonded lines.

The data available to us at proposal were emissions test data from various products within the heavy density products subcategory only, and industry indicated that the test data for this subcategory were representative of all products manufactured on FA bonded lines. Since our various proposals, no additional source test data have been provided to support continued subcategorization of FA lines. We, therefore, concluded in the various proposals that the limits developed for FA lines were representative of all products made on FA lines and that further subcategorization was no longer supportable.

As also explained in our November 25, 2011 proposal, we examined the 1999 MACT rule and found that it does not include emissions standards for certain products manufactured on FA lines which do not fall into the regulated subcategories ''pipe'' and ''heavy density.'' [21] The EPA has a ''clear statutory obligation to set emission standards for each listed HAP. Although *Sierra Club* v. *EPA* permits the Agency to look at technological controls to set emissions standards, it does not say that the EPA may avoid setting standards for HAP not controlled with technology.'' *National Lime Association* v. *EPA*, 233 F.3d 625, 634 (D.C. Cir. 2000) (internal citation omitted). In our review, we found that the foundation supporting the 1999 MACT standard for formaldehyde was developed incorrectly. Instead of being based upon the emission limit achieved by the average of the best performing 12 percent of existing sources, it was set at a level that was achievable by all existing sources. As explained in our November 25, 2011 proposal, this approach has been consistently rejected by the D.C. Circuit. ''EPA may not deviate from section 7413(d)(3)'s requirement that floors reflect what the best performers actually achieve by claiming that floors must be achievable by all sources using MACT technology.'' *Cement Kiln Recycling Coalition* v. *EPA*, 255 F.3d at 861.

For the reasons provided above, as proposed in the November 2014 supplemental proposal and in the comment summary and response document available in the docket, we are eliminating the subcategories for FA lines and finalizing emissions limits at the MACT level of control for formaldehyde, phenol, and methanol, as shown in Table 3 of this preamble.

D. Work Practice Standards for HCl and HF Emissions From Furnaces in the Wool Fiberglass Manufacturing Source Category (Major Sources)

1. What did we propose pursuant to CAA section 112(h) for wool fiberglass manufacturing (major sources)?

In our November 2011 proposal, we proposed emission limits for HF and HCl from glass-melting furnaces. In our April 2013 supplemental proposal, we proposed work practice standards in lieu of numeric emission limits, under CAA section 112(h), in response to comments and our evaluation of test data from industry regarding our November 2011 proposed limits. We explained that in response to comments on the November 2011 proposed limits, we re-evaluated test data that we used to calculate the MACT floor for the proposed HCl and HF standards and found that most of the test data reflected values below the detection limit of the test method. Specifically, over 80 percent of the test results were values indicating that either HCl or HF, or both pollutants, in the exhaust gas stream were below the detection limit of the test methods. We, therefore, proposed work practice standards for the control of HCl and HF emissions from furnaces. However, in the 2013 supplemental proposal we did not specifically identify the work practice standards. In our November 2014 supplemental proposal, we noted that the source of HF and HCl in furnace emissions was cullet made from glass used in products such as cathode ray tubes (CRTs), microwave ovens, televisions, computer screens, and other electronics. Therefore, we proposed work practice standards that would require owners and operators of wool fiberglass glass-melting furnaces to ensure that the cullet did not contain glass from these types of sources either by conducting their own internal inspection and recordkeeping program, or by receiving certification from their cullet suppliers.

2. How did the work practice standards change for the Wool Fiberglass Manufacturing source category since proposal?

In the November 2014 supplemental proposal, we explained the proposed work practice standards for HF and HCl in the preamble, but received comment that because the rule language did not accurately reflect the preamble language, that it left to interpretation the other sources of fluoride in the cullet (such as municipal water supply used to wash cullet). We did not intend that interpretation, which would be beyond the purposes of the NESHAP. In this final rule, we are correcting that deficiency in the November 2014 supplemental proposal, withdrawing that previously proposed rule language and specifying in the rule text at 40 CFR 63.1382(a)(1)(iii) the correct requirements, as previously proposed and as indicated above.

3. What key comments did we receive on the work practice standards, and what are our responses?

We received comments in support of and against our work practice standards for HCl and HF emissions from furnaces at wool fiberglass facilities. The following is a summary of the key comments received regarding the work practice standards and our responses to these comments. Additional comments on the work practice standards and our responses can be found in the comment summary and response document available in the docket for this action (EPA–HQ–OAR–2010–1042).

Comment: One commenter objected to the EPA establishing work practice standards for HCl and HF instead of numerical emission limits without first establishing that ''measuring emission levels is technologically or economically impracticable'' (*Sierra Club* v. *EPA*, 479 F.3d at 883–84) or that setting work practice standards ''is consistent with the provisions of subsection (d) or (f).'' 42 U.S.C. 7412(h)(1). The commenter understands that 80 percent of emission tests were below the detection limit, but contends that this fact demonstrates that measuring emissions is difficult, not technologically impracticable. The commenter argues that the EPA must explain why it cannot use the 20 percent of the tests above that limit, taking the detection level into account, to set appropriate emission limits.

Another commenter requested that the EPA remove all of these sources from the calculation for the MACT floor because data that are below the minimum detection limit (MDL) of the

[21] We divided the FA lines into four subcategories: 1. Light density, 2. automotive, 3. heavy density and 4. pipe products, but set standards for only two subcategories—heavy density (new) and pipe product (new and existing). We explained that ''[b]ecause no controls are currently used, the MACT floor is no control and because the cost effectiveness of additional controls beyond the floor is not reasonable, the Agency is not setting emission limits for existing FA manufacturing lines producing light-density, automotive or heavy-density products or new FA manufacturing lines producing light-density or automotive products.'' 61 FR 15239 (March 31, 1997).

test method (BDL) are unquantifiable and that using BDL data are likely to set limits so stringent that the best performing sources cannot even meet those limits. The commenter observed that the data for every source in the MACT floor ranking is BDL; and the majority of HCl data points are BDL. The commenter contended that facilities will have difficulty showing compliance with an emission limit that is based on data from testing that was BDL. The commenter cited a memorandum from RMB Consulting about relying on BDL data.[22]

According to the commenter, the EPA should only use values that are above the MDL (*i.e.*, actual values) in calculating the MACT floor, and that the emissions floor must be determined by quantifiable data. According to the commenter, in the Boiler MACT, the EPA reassessed the proposed emission limits for dioxins/furans. The commenter noted that, as explained by the EPA, a large amount of the emission measurement used to set the dioxin/furan limits were below the level that could be accurately measured.

Alternatively, the commenter stated that the EPA could propose a work practice standard in order for facilities to show compliance. Under the Boiler MACT, the commenter noted that the EPA chose to regulate dioxins/furans by using a work practice standard. In that case, the commenter stated that 55 percent of facilities tested had dioxin/furan emissions below the MDL for EPA Method 23. The commenter stated that a work practice standard would allow facilities to decrease HCl and HF emissions and be able to show compliance.

In addition, the commenter stated that the EPA has made no effort to take into account reductions achieved as a result of the original MACT implementation as part of establishing the MACT floor. If a MACT floor is calculated, the commenter contended that it must consider what the emissions would have been at the time of the initial MACT promulgation in establishing the floor.

Response: The EPA did not set any standard for HCl and HF in the original 1999 MACT rule and is rectifying that deficiency (see *National Lime Association* v. *EPA,* 233 F. 3d at 634) here by establishing standards pursuant to CAA sections 112(d)(2) and (3). Sections 112(h)(1) and (2)(B) of the CAA indicate that the EPA may adopt a work practice standard rather than a numeric standard when ''the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.'' We evaluated test data that we originally used to calculate the MACT floor limits for HCl and HF in response to comments such as this one. Industry conducted testing in an attempt to obtain data for the acid gases HF and HCl, under the terms of the voluntary survey. Emissions tests were conducted over three 1-hour test runs, which is, for similar industries, sufficient time to detect these acid gases when they are emitted. However, we found that most of the test data reflected values that were BDL. Specifically, over 80 percent of the test results were values BDL for both HF and HCl, indicating that neither HF nor HCl are present in measurable amounts in the exhaust gas stream for these sources.

Because of the high percentage on non-detect test runs, we proposed work practice standards for HF and HCl in our April 2013 supplemental proposal. As explained in our April 2013 supplemental proposal, the EPA regards situations where, as here, the majority of measurements are BDL as being a situation where measurement is not ''technologically practicable'' within the meaning of CAA section 112(h). The EPA also believes that unreliable measurements raise issues of practicability, feasibility and enforceability. The application of measurement methodology in this situation would also not be ''practicable due to . . . economic limitation'' within the meaning of CAA section 112(h) because it would result in cost expended to produce analytically suspect measurements (78 FR 22387).

As discussed in the preamble to the 2013 supplemental proposal (78 FR 22387, April 15, 2013), under these circumstances, the EPA does not believe that it is technologically and economically practicable to measure HCl and HF emissions from this source category. ''[A]pplication of measurement methodologies'' (CAA section 112(h)(2)(B)) means more than taking a measurement. It must also mean that a measurement has some reasonable relation to what the source is emitting (*i.e.,* that the measurement yields a meaningful value). That is not the case here and the EPA does not believe it reasonable to establish numeric emission limits for HCl and HF in this rule. Therefore, in the final rule, we are promulgating work practice standards consistent with our April 2013 supplemental proposal.

However, we disagree with the comment that in revising or promulgating MACT standards, the EPA may not use current test data showing that sources may have achieved much lower emissions levels as a result of complying with earlier standards. ''EPA acted lawfully, in resetting the MACT floors based on post-compliance emissions data.'' *Medical Waste Institute and Energy Recovery Council* v. *EPA,* 645 F. 3d 420, 426–27 (D.C. Cir. 2011). In addition to the work practice standards in the final rule, control of HCl and HF can also occur as a ''cobenefit'' of conventional control technologies that have been installed for other purposes. These acid gases may be absorbed and neutralized when a scrubber is present. We, thus, believe that the work practice standards will result in the level of control of the exceedingly small amounts of HCl and HF present in wool fiberglass furnace emissions achieved by the best performing facilities in the source category.

When testing for indications that a pollutant is emitted by a source, if the results are below the detection limits of the method, that means that the pollutant was not, in fact, detected. We do not set emission limits for all 188 HAP on the list in CAA section 112(b), but only for those that are emitted from the processes. We required sources to test for HF and HCl, and most (over 80 percent) of sources did not detect either of those HAP in their emissions streams. When this is the case for over half the sources in the category, we believe it is not appropriate to set numerical limits for such pollutants.

Comment: One commenter stated that glass cullet cannot be guaranteed by providers or facilities to be ''free of chloride-, fluoride-, and fluorine-bearing constituents,'' as we proposed because (1) cullet must be cleaned before use and city supplied water contains chloride and fluoride; (2) non-glass materials in cullet (including coatings on the glass) contain fluorides or chlorides; (3) recycled cullet currently used by the industry may contain trace amounts of chlorides and fluorides; and (4) to meet product performance requirements, certain glass formulations require glass fibers to contain small levels of fluoride. The commenter argued that the proposed requirement goes beyond what the industry is currently doing to achieve HF and HCl emissions below the detection limit, and to achieve the requirement, facilities would need to cease cullet use and substitute with other materials.

The commenter recommended revising the rule to require facilities to ''maintain internal documentation that work practices are in place that

[22] RMB Consulting & Research, Inc. Memorandum, Comments on Proposed EGU MACT Rule, July 19, 2011, p. 18.

maintain low HF and HCl emissions,'' for 5 years, including but not limited to the following options:

- Record that cullet is reasonably consistent with previous cullet used that has sustained low to non-detect HF and HCl emissions; or
- Monitor chloride and/or fluoride content of the cullet or finished glass to verify and maintain insignificant trace levels of emissions using standard chemical analytic techniques; or
- Use feedstock of raw materials having a 12-month rolling average of chloride content at or below 0.1 percent as measured once a year using methods similar to ASTM 1152C/1152M or company-developed methods; or
- Maintain glass formulation records that show that no ingredient contains intentionally added chloride; or
- Maintain records from a sampling program, or obtain annual certification from cullet providers verifying that the cullet does not contain excessive CRT glass; or
- Monitor fluoride content of the finished glass to verify that the content is consistent with historic levels of similar glass formulations; or
- In lieu of work practices, measure HF and HCl emissions during emission testing once every 5 years to confirm that the level of HF and HCl emissions is not a statistically significant higher level than the level measured for the furnace during the rulemaking process.

The commenter also expressed support for the proposed requirement that these records would be maintained for inspection by a permitting authority.

Response: We acknowledge that municipal water can contain chloride and fluoride; however, our prohibition on chlorides and fluorides pertains to the cullet composition. In the final rule, we are revising the proposed work practice standards for the Wool Fiberglass Manufacturing source category to address this comment. Specifically, we are replacing the proposed requirement that cullet be ''free of chloride-, fluoride-, and fluorine-bearing constituents'' with work practice standards that require wool fiberglass facilities to maintain records from either cullet suppliers or their internal inspections showing that cullet is free of the following components that would form HF or HCl in the furnace exhaust (*i.e.,* chlorides, fluorides, and fluorine): Glass from industrial (also known as continuous strand, or textile) fiberglass, CRTs, computer monitors that include CRTs, and glass from microwave ovens, televisions or other electronics. Wool fiberglass facilities would ensure their feedstock does not contain chloride-, fluoride-, or fluorine-bearing cullet by one of two approaches: (1) Require the providers of external cullet to verify that the cullet does not include waste glass from the chloride-, fluoride- or fluorine-bearing sources mentioned above, or (2) Sample their raw materials to show the cullet entering the furnace does not contain glass from these types of sources. To demonstrate compliance, facilities would maintain quality assurance records for raw materials and/or records of glass formulations indicating the facility does not process fluoride-, fluorine-, or chloride-bearing materials in their furnaces, and that they thereby maintain low HF and HCl emissions. Major source facilities would be required to make these records available for inspection by the permitting authority upon demand.

4. What is the rationale for our final decisions for the work practice standards?

The EPA may adopt a work practice standard rather than a numeric standard when ''the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.'' CAA sections 112(h)(1) and (2)(B). As previously explained, in response to comments, we had re-evaluated test data that we used to calculate the MACT floor for the proposed HCl and HF standards in our November 2011 proposal, and found that most of the test data reflected values below the detection limit of the test method. Specifically, over 80 percent of the test results were values indicating that both HCl and HF in the exhaust gas stream were below the detection limit of the methods. We believe such values are not a measurement of pollutants but rather an indication that such pollutants are not present in measurable concentrations. The EPA regards situations where, as here, the majority of measurements are below the detection limit as being a situation where measurement is not ''technologically practicable'' within the meaning of CAA section 112(h). The EPA also believes that unreliable measurements raise issues of practicability, feasibility and enforceability. The application of measurement methodology in this situation would also not be ''practicable due to . . . economic limitation'' within the meaning of CAA section 112(h) because it would result in cost expended to produce analytically suspect measurements. Therefore, for the reasons provided above, in the preambles for the 2013 and 2014 supplemental proposals, and in the comment summary and response document available in the docket, we are finalizing the work practice standards for HCl and HF emissions from furnaces at wool fiberglass manufacturing facilities that are major sources.

As we explained in our November 2014 supplemental proposal (79 FR 68012 at 68023), in order to protect furnace components, wool fiberglass facilities identify, isolate and screen out fluoride- and chloride-bearing materials such as glass from industrial (also known as continuous strand, or textile) fiberglass, CRTs, computer monitors that include CRTs, glass from microwave ovens and glass from televisions. The furnace emissions testing shows this is an effective work practice to reduce emissions of these acid gases. HF and HCl emissions occur when recycled glass from these types of materials enters the external cullet stream from the recycling center.

Owners/operators have two options for work practice standards. The first option is to require the providers of the external cullet to verify that the cullet does not include waste glass from the chloride-, fluoride, or fluorine-bearing sources mentioned above. The second option is to sample the raw materials to show the cullet entering the furnace does not contain glass from these types of sources.

We are finalizing work practice standards for the Wool Fiberglass Manufacturing source category that require wool fiberglass facilities to maintain records from either cullet suppliers or their internal inspections showing that the external cullet is free of components that can form HF or HCl in the furnace exhaust (*i.e.,* chlorides, fluorides and fluorine). Facilities are required to maintain quality assurance records for raw materials and/or records of glass formulations indicating the facility does not process fluoride-, fluorine-, or chloride-bearing materials in their furnaces, and that they thereby maintain low HF and HCl emissions. Major source facilities are required to make these records available for inspection by the permitting authority upon demand. Failure to maintain such records constitutes a violation from the requirement.

E. Startup, Shutdown, and Malfunction Provisions for the Wool Fiberglass Manufacturing Source Category (Major and Area Sources)

1. What SSM provisions did we propose for the Wool Fiberglass Manufacturing source category (major and area sources)?

In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the DC Circuit Court vacated portions of

two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously. We proposed eliminating the SSM exemption in the Wool Fiberglass Manufacturing rules for major sources (40 CFR part 63, subpart NNN). Consistent with *Sierra Club* v. *EPA,* the EPA proposed work practice standards in these rules (both 40 CFR part 63, subpart NNN and the new 40 CFR part 63, subpart NN) for periods of startup and shutdown. We proposed the incorporation of work practice standards at startup and shutdown for major sources into the GACT standards for area sources. This would mean that gas-fired glass-melting furnaces at area sources would have to comply with an alternative compliance provision for startup and shutdown that would require sources to keep records showing that emissions were routed to the air pollution control devices and that these control devices were operated at the parameters established during the most recent performance test that showed compliance with the applicable emission limits.

We also provided proposed regulatory text in the General Provisions applicability tables in each subpart in several respects consistent with vacatur of the SSM exemption. For example, we proposed eliminating the incorporation of the General Provisions' requirement in 40 CFR part 63, subpart NNN that the source develop an SSM plan. We also proposed eliminating and revising certain recordkeeping and reporting requirements that are related to the SSM exemption.

In our November 2014 supplemental proposal, we proposed that affected sources comply with practices that are used by the best performers in the source category (7968016).

2. How did the SSM provisions change for the Wool Fiberglass Manufacturing source category (major and area sources)?

We have not changed any aspect of the proposed SSM provisions for 40 CFR part 63, subparts NN and NNN since the 2014 supplemental proposal.

3. What key comments did we receive on the SSM provisions for the Wool Fiberglass Manufacturing source category (major and area sources), and what are our responses?

We received comments for and against the proposed revisions to remove the SSM exemptions for the Wool Fiberglass Manufacturing source category. The commenters who were against the proposed revisions did not provide new information or a basis for the EPA to change the proposed provisions and did not provide sufficient information to show that facilities cannot comply with the work practice standards during periods of startup and shutdown. The comments and our specific responses to those comments can be found in the comment summary and response document available in the docket for this action (EPA–HQ–OAR–2010–1042).

4. What is the rationale for our final decisions for the SSM provisions for the Wool Fiberglass Manufacturing source category (major and area sources)?

For the reasons provided above, in the preamble for the proposed rules, and in the comment summary and response document available in the docket, we have removed the SSM exemption from the Wool Fiberglass Manufacturing NESHAP for major and area sources; eliminated or revised certain recordkeeping and reporting requirements related to the eliminated SSM exemption; and removed or modified inappropriate, unnecessary, or redundant language in the absence of the SSM exemption. We are, therefore, finalizing our proposed determination that facilities comply with the work practice standards for periods of startup and shutdown for gas-fired glass-melting furnaces in 40 CFR part 63, subparts NN and NNN.

F. Other Changes Made to the Wool Fiberglass Manufacturing NESHAP (Major and Area Sources)

1. What other changes did we propose for the Wool Fiberglass Manufacturing NESHAP (major and area sources)?

a. Electronic Reporting (Wool Fiberglass Manufacturing Major and Area Sources)

As stated in the preamble to the November 2011 proposal, the EPA is taking a step to increase the ease and efficiency of data submittal and data accessibility. Specifically, the EPA is requiring owners and operators of wool manufacturing facilities to submit electronic copies of certain required performance test reports. See the discussion in section III.G of this preamble for more detail.

b. Test Methods and Testing Frequency (Wool Fiberglass Manufacturing Major and Area Sources)

For both major and area sources, we are finalizing, as proposed, the addition of EPA Method 29 for measuring the concentrations of chromium.

For major sources only, we are finalizing requirements for methods to measure PM, phenol, formaldehyde, and methanol. We are finalizing the requirement, as proposed, to maintain the filter temperature at 248 ± 25 degrees Fahrenheit when using Method 5 to measure PM emissions from furnaces. We are also amending the NESHAP to allow owners or operators to measure PM emissions from furnaces using either EPA Method 5 or Method 29.

We are finalizing, as proposed, the addition of EPA Method 318 for measuring the concentration of phenol and alternative test methods for measuring the concentration of methanol (EPA Methods 318 or 308). We are finalizing, as proposed, the replacement of a minimum sampling time of 1 hour with the specification to collect 10 spectra when using EPA Method 318. For Method 316, we are finalizing, as proposed, the requirement to collect a minimum sampling volume of 2 dscm; however, we are not finalizing the proposed minimum sampling run time for EPA Method 316 of 2 hours. We are also finalizing editorial changes to the performance testing and compliance procedures to specify formaldehyde, methanol, phenol, and chromium; and compliance procedures for HF and HCl.

Additionally, we are finalizing, as proposed, the requirement for existing sources to conduct performance tests to demonstrate compliance with the chromium emission limit for gas-fired furnaces no later than July 31, 2017, and annually thereafter. We are also finalizing, as proposed, the requirement for existing sources to conduct performance tests to demonstrate compliance with the phenol, formaldehyde, and methanol emissions limits for FA lines no later than July 31, 2017, and every 5 years thereafter. We are finalizing the requirement for new sources to conduct performance tests to demonstrate compliance with the emissions limits no later than January 25, 2016 or 180 days after initial startup, whichever is later. Gas-fired glass-melting furnaces must demonstrate compliance with the chromium emission limits annually after the first compliance test, and whenever the amount of cullet increases from that used in the most recent performance test

showing compliance with the standard, and all other processes must demonstrate compliance with the other emission limits every 5 years after the first successful compliance test.

c. Applicability and Compliance Period (Wool Fiberglass Manufacturing Major and Area Sources)

For major sources, we are clarifying, as proposed, that 40 CFR part 63, NNN applies to FA lines regardless of the product being manufactured on the FA line and we are finalizing the compliance period of 2 years for existing sources subject to the chromium, formaldehyde, HCl, HF, phenol, PM, and methanol emission limits.

For area sources, we are finalizing, as proposed, the compliance period of 2 years for existing sources subject to the chromium emission limits.

d. Definitions (Wool Fiberglass Manufacturing Major and Area Sources)

In this action, we are finalizing, as proposed, definitions that apply to both major and area sources. These include a definition for ''gas-fired glass-melting furnace'', revisions to the definition of ''new source'', and the notification requirements to update the citation to the November 2011 proposal. We are finalizing, as proposed, a definition for ''incinerator'' in 40 CFR part 63, NNN (major sources).

e. Parameter Monitoring (Wool Fiberglass Manufacturing Major and Area Sources)

For both major and area sources, we are finalizing, as proposed, the monitoring requirements for furnaces to provide flexibility in establishing appropriate monitoring parameters. We are also requiring that facilities operating gas-fired furnaces maintain a 30-day rolling average of the percentage of cullet used in the raw materials fed to the furnace. To demonstrate compliance with this operating parameter, owners or operators must record a daily average value of the percentage of cullet used for each operating day and must include all of the daily averages recorded during the previous 30 operating days in calculating the rolling 30-day average.

For major sources only, we are also finalizing, as proposed, the monitoring requirements for FA lines, to provide flexibility in establishing appropriate monitoring parameters.

f. General Provisions Applicability Table (Wool Fiberglass Manufacturing Major and Area Sources)

For major sources, we are also making minor corrections to the citations in Table 1 (40 CFR part 63 General Provision applicability table) to reflect the final amendments in this action, and the revisions that have been made to the General Provisions since 1999.

For area sources, we are identifying the applicability of part 40 CFR part 63 General Provisions to subpart NN.

2. How did the provisions regarding these other changes to the Wool Fiberglass Manufacturing NESHAP (major and area sources) change since proposal?

We have not made any changes to the proposed provisions for electronic reporting; testing methods and frequency; applicability; compliance period; definitions; or the General Provision applicability table. However, we are revising the parameter monitoring standards of 40 CFR part 63, subpart NNN to require daily monitoring and recording of the percentage of cullet used in the raw materials fed to gas-fired glass-melting furnaces and calculation of a rolling 30-day average. The parameter monitoring requirements for area sources regulated by subpart NN reference the same requirements for major sources in 40 CFR part 63, subpart NNN.

3. What key comments did we receive on the other changes to the Wool Fiberglass Manufacturing NESHAP (major and area sources), and what are our responses?

We received several comments received regarding electronic reporting; testing methods and frequency; applicability; compliance period; parameter monitoring; definitions or revisions to the General Provisions applicability table. The following is a summary of the key comments received regarding the technology review and our responses to these comments. Additional comments regarding these changes to the NESHAP and our responses can be found in the comment summary and response document available in the docket for this action (EPA–HQ–OAR–2010–1042).

Comment: For both the major (NNN) and the area (NN) source rules, one commenter requested a one-time performance test, or alternatively a 5-year testing requirement for furnaces, instead of the proposed annual performance tests, and asked that sources be allowed to test one 'representative' furnace instead of having to test every furnace subject to the rule. The commenter contended that the EPA's rationale that chromium emissions increase with age has no factual basis because age is not a causative factor for increased chromium emissions. The commenter also pointed out that annual testing is not consistent with other MACT (the Hazardous Waste MACT requires testing every 5 years), GACT, and NSPS standards, as well as state performance testing requirements.

Response: In our April 2013 supplemental proposal (72 FR 22378), the EPA proposed reduced testing requirements for sources with emissions that are 75 percent or less of the proposed chromium limit. Subsequent to that proposal, the EPA determined that this reduced testing frequency would not provide sufficient information to determine compliance with the rule for either the plant operator or the EPA because chromium emissions increase with furnace age. Refer to the EPA's memorandum ''Chromium Emissions and Furnace Age'' (EPA–HQ–OAR–2010–1042–0332) for a summary of the data and information that EPA used to determine that furnace age causes and increase in chromium emissions for gas-fired furnaces. Regarding the comment that there are some federal and state regulations that require only initial testing, there are also federal and state regulations that require annual testing (*e.g.,* Portland Cement NESHAP, 40 CFR part 63, subpart LLL). Each regulation establishes a testing frequency based on the particular characteristics of the industry that will allow the EPA to ensure compliance with the standards. We have determined that annual testing is appropriate here because the data and the technical literature show that a furnace's chromium emissions can increase over a period of a few years. The wool fiberglass furnace refractory products degrade due to the corrosive and erosive nature of the wool fiberglass furnace environment. The wool fiberglass oxyfuel furnaces operate continuously over the furnace campaign of 10–12 years, and, according to industry statements, as the furnace ages, it loses an average of 20,000 pounds annually from the refractory. The pattern of refractory erosion is semi-spherical, and the exposed refractory surface area increases exponentially because it is constantly being eroded in a curved 3-dimensional surface pattern. This pattern of furnace refractory wear is responsible for the exponential increase in chromium emissions from wool fiberglass furnaces. For more information on the relationship between

wool fiberglass furnace age and increasing chromium emissions, see the paper ''Mechanisms of Chromium Emissions From Wool Fiberglass Furnaces,'' June 2015, in the docket to this rule).

Comment: One commenter disagreed with the EPA's listing all gas-fired furnaces for regulation under the area source rule for chromium emissions, and asserted that for both the major source rule and the area source rule, only certain gas-fired furnaces, oxyfuel furnaces, should be regulated for emissions of chromium compounds. The commenter suggested that the furnace type and design, not the chromium content of furnace refractories, impacts chrome emissions, and only oxyfuel furnaces have the specific design features associated with high chromium emissions. The commenter listed the following factors as responsible for oxyfuel furnaces emitting high hexavalent chromium: Higher flame temperature, high bulk wall temperature (oxyfuel temperatures peak at 5,000 degrees Fahrenheit; other gas furnaces peak at 3,560 degrees Fahrenheit), more chrome refractory brick above glass level, higher water vapor concentration, and an oxidizing atmosphere. The commenter argued that some of the air-gas furnaces that are not oxyfuel have lower surface temperature, and the surface temperature above the glass line is the single most influential variable influencing hexavalent chromium emissions, not the fuel type. In the commenter's opinion, air-gas furnaces should not be regulated in the area source rule alongside oxyfuel furnaces.

The commenter noted that one air-gas furnace was measured emitting high levels of chromium compounds, pointing out that it is different from other non-oxyfuel air-gas furnaces because it is not standard construction and it was at the end of its life. The commenter also added that furnace has now been shut down.

The commenter also indicated that, despite their potential for increased chrome emissions, oxyfuel furnaces will continue to be used for a number of important reasons, including environmental benefits: (1) Oxyfuel furnaces reduce NO_X and CO emissions because they emit less of these pollutants than does combustion with air, and some state and local regulations require reduced NO_X emissions; (2) oxyfuel firing reduces NO_X emissions because it does not introduce nitrogen from combustion air into the furnace; (3) oxyfuel furnaces use less energy than air-gas furnaces by obviating the need to heat nitrogen contained in ambient air and, thus, produce less greenhouse gas emissions; and (4) oxyfuel firing also produces a reduced volume of flue gases which lowers the gas velocity in the furnace combustion zone and lowers the potential to entrain PM.

Response: We note that this is a comment addressing the furnace technology of the wool fiberglass manufacturing industry, and as such applies to both major sources (under NNN) and area sources (under NN). This comment is addressed here as it first applies to major sources. We note that the same principles apply to area sources in this source category.

We disagree with the commenter that air-gas furnaces do not warrant a chromium emission limit. Furnace emissions test data were collected from all wool fiberglass manufacturing facilities to determine the scope and extent of the area source rule limits. The data collected for gas-fired furnaces show that oxyfuel furnaces, as the commenter correctly points out, have the greatest potential to emit chromium compounds, followed by air-gas furnaces. This is because both types of gas-fired furnaces operate at elevated temperatures (exceeding 3,000 degrees Fahrenheit) at and above the level of the glass melt (well in excess of the temperature required to liberate and oxidize chromium compounds from the chromium refractory of the furnace vessel), are heated with natural gas and air (air-gas) or natural gas and oxygen (oxyfuel), and are constructed using chromium refractories that are capable of resisting the corrosive and erosive wear inherent in wool fiberglass furnace environment.

In addition, as the commenter acknowledged, one air-gas furnace constructed using what the commenter described as a ''non-standard design,'' measured chromium emissions at levels higher than most of the oxyfuel furnaces that were tested. Additionally, according to industry comments and the information we collected under the 2012 ICR, all the oxyfuel furnaces in the source category are constructed using materials similar in type and chromium content to those used to construct the highest emitting oxyfuel furnace. There is nothing to prevent a similar furnace from being constructed at any site. However, as required, we set emissions limits based on the information available to us, and we find that both oxyfuel furnaces and air-gas furnaces have greater propensity than electric furnaces, by virtue of their construction, design, and operating temperatures, to form and emit chromium compounds.

As explained in the preamble to the 2013 supplemental proposal, these conditions (high temperatures, available chromium and corrosive furnace gases) are factors that contribute to higher chromium emissions at wool fiberglass furnaces. As stated by the commenter and by other industry representatives, wool fiberglass companies intend to expand their use of chromium refractories in furnace designs.

We disagree with the commenter's view that we should address specific facilities only for this regulation. First, we note that NESHAP are national rules that apply to source categories rather than individual facilities, and while we do have the ability to subcategorize by process size, type, or class, we cannot simply target an individual facility or facilities. Second, nothing prevents an oxyfuel or air-gas furnace similar to the high emitting furnaces to be constructed at any existing or new wool fiberglass facility, and it is incumbent upon the EPA to prevent the danger to public health that would result from such a furnace being located at other sites. As the commenter pointed out, ''Despite their potential for increased chrome emissions, oxyfuel furnaces will continue to be used for a number of important reasons . . ..'', and as discussed in our 2011 proposal, we considered the resulting impact if the same furnace were to be constructed at any other existing wool fiberglass manufacturing site. As documented in our auxiliary risk characterization ''Draft Residual Risk Assessment for the Mineral Wool Production and Wool Fiberglass Manufacturing Source Categories'' and ''Maximum Predicted HEM–3 Chronic Risks (Wool Fiberglass Manufacturing) based on Revised—What If Analysis,'' available in the docket for this rulemaking (EPA–HQ–OAR–2010–1042–0086 and EPA–HQ–OAR–2010–1042–0263, respectively), we found that the CertainTeed facility in Athens, Georgia would have a risk of 400-in-1 million if it were to install a furnace similar to the high-chromium emitting furnace at Kansas City; and that the Athens, GA facility is now an area source that will be subject to the new area source standard (having recently phased out the use of phenol/formaldehyde on the bonded lines). While most wool fiberglass furnaces at area sources currently emit chromium at levels well below the proposed level of the chromium emission limits, the limits serve as a backstop to prevent high emitters from emitting chromium compounds in an uncontrolled manner.

Comment: One commenter expressed concern about the proposed changes to Method 5 that reduced the testing temperature of the probe by 100 degrees to improve the accuracy of the method,

and whether this change will increase the potential for noncompliance with the PM standard. Specifically, the commenter stated that ''what once may have passed through the apparatus now may become filterable'' and, thus, be counted as PM because of the temperature difference. Further, the commenter pointed out that the data used to establish MACT for PM were collected at the higher temperature specified in 40 CFR 63.1385(a)(5) of subpart NNN.

Response: In the final regulation, we are requiring that owners or operators conduct annual emissions tests for chromium, and to test for PM emissions every 5 years. To reduce the testing burden on facilities, the final rule specifies that owners or operators can measure PM emissions from furnaces using either EPA Method 5 or Method 29. Consequently, for the years when the facility must test for both chromium and filterable PM emissions, owners or operators can use Method 29 to obtain measurements for both chromium and filterable PM, rather than having to use Methods 5 and 29 separately.

The 1999 NESHAP specified that owners or operators must use EPA Method 5 with the filter temperature maintained at 350 ± 25 degrees Fahrenheit during for the test. However, Method 29 refers to the filter temperature specifications in Method 5 which requires that the filter be maintained at 248 ± 25 degrees Fahrenheit during testing. To maintain consistency with Method 29, we are amending the NESHAP to specify that owners or operators must maintain the filter temperature at 248 ± 25 degrees Fahrenheit when using Method 5 to measure filterable PM concentrations. We acknowledge that maintaining the Method 5 filter at 248 ± 25 degrees Fahrenheit during testing has the potential capture to more PM than would be captured at the higher filter temperature; however, we do not believe that the change in filter temperature that we are specifying in the final rule will result in wool fiberglass manufacturing facilities being in noncompliance with the final PM standards. As noted in the 2013 supplemental proposal (78 FR 22383), the data submitted to EPA, which includes filterable PM data collected using Method 29 and a filter temperature operating at 248 ± 25 degrees Fahrenheit, show that all gas-fired glass-melting furnaces are currently meeting the PM standard, as proposed, of 0.33 pounds of PM per ton of glass pulled.

Comment: One commenter disagreed with the EPA's proposal to reduce testing frequency to every 3 years. Due to the past history of unknown and unreported chromium emissions, innovation and changes within the wool fiberglass industry, the potential for unpredictable changes in chromium emissions, and the environmental justice impacts of the industry, the commenter requested the EPA to increase the frequency and quality of the monitoring and reporting requirements of the rules.

Response: The EPA is finalizing annual testing, and removing the option proposed in 2013 to test every 3 years. The EPA agrees with the commenter that annual testing is required due to the fact that emission test data show that emissions can significantly increase with furnace age. Refer to section III.D.4 of this preamble and to the 2014 supplemental proposal for further discussion about the EPA's rationale for requiring annual testing.

4. What is the rationale for our final decisions regarding these other changes to the Wool Fiberglass Manufacturing NESHAP (major and area sources)?

For the reasons provided above and in the preamble for the proposed rule, we are finalizing the proposed provisions regarding electronic reporting; testing methods and frequency; applicability; compliance period; parameter monitoring; definitions; and the General Provision applicability table.

VII. What is included in the final Wool Fiberglass Manufacturing Rule for area sources?

A. Generally Available Control Technology (GACT) Analysis for Wool Fiberglass Manufacturing Area Sources

We are finalizing, as described in this final action, the chromium emission limits for both new and existing gas-fired glass-melting furnaces at area sources in the Wool Fiberglass Manufacturing source category (see Table 4 in section V.E of this preamble).

1. What did we propose pursuant to CAA sections 112(c)(3) and (d)(5) for area sources in the Wool Fiberglass Manufacturing source category?

We initially proposed GACT standards for area sources in the Wool Fiberglass Manufacturing source category on April 15, 2013 (78 FR 22377). In that proposal, we proposed emission limits for chromium (0.00006 pounds per ton of glass pulled) and PM (0.33 pounds per ton of glass pulled) for gas-fired glass-melting furnaces at area sources. To maintain consistency with the major source rule, we proposed that facilities use the same requirements for PM and chromium test methods and monitoring, reporting and recordkeeping specified in 40 CFR part 63, subpart NNN. We also proposed to include an affirmative defense to civil penalties for violations of emission limits that are caused by malfunctions. In the 2014 supplemental proposal (79 FR 68024), we proposed removal of the PM emission limit based on public comments the EPA received asserting that setting both PM and chromium limits was not necessary. We reviewed the technologies and emissions test data for controls that are in place at wool fiberglass furnaces. In some test reports, we had both inlet and outlet measurements of both PM and chromium. From these tests we saw that, in order for furnaces to meet the chromium limit, they would have to control PM, a fraction of which is chromium compounds. Because chromium is the specific pollutant of concern from the furnace process, and because under the Strategy we may either address pollutants of concern through an appropriate surrogate, or directly regulate the pollutant of concern, we are setting emission limits only for chromium from area sources. However, affected sources will still need to achieve PM reductions in order to meet the chromium limit. The PM controls in place at gas-fired glass-melting furnaces achieve an average efficiency of 98 percent. PM in the furnace exhaust includes chromium, and due to the high production rate of the continuous furnace process, this can be a significant amount of chromium emitted during the course of a year. Source testing conducted on two wool fiberglass furnaces at one facility [23] measured chromium at both the inlet and the outlet of the DESP. This test showed chromium entering the DESP averaged 1,500 pounds per year. Both PM and chromium were measured at the outlet of the DESP: Emissions of PM averaged 1.5 tons per year, and emissions of chromium averaged 11.4 pounds per year. This indicates to us that if sources attempted to remove their PM controls they would not be able to meet the chromium limit.

In the 2014 supplemental proposal, we also withdrew our proposal to include an affirmative defense to civil penalties for violations of emission limits that are caused by malfunctions (79 FR 68015).

[23] Testing was conducted at the Certainteed, Inc. facility in Mountaintop, PA in December 1991, October 1995, and during several tests conducted during the 1998–1999 time period for the state compliance reports.

2. How did the GACT analysis change for Wool Fiberglass Manufacturing area sources?

In response to comments on our proposed chromium compounds limits, and as discussed in section VI.A of this preamble, we are finalizing a chromium compounds emission limit for gas-fired glass-melting furnaces for major sources at wool fiberglass manufacturing facilities of 0.00025 pounds per ton of glass pulled. Consistent with our November 2014 supplemental proposal, we are not finalizing a PM emissions limit for gas-fired glass-melting furnaces at area sources.

Based on comments we received in response to the November 2014 supplemental proposal, we again reviewed the cost and control options and found using new cost information that the limit as proposed was not as cost effective as we initially believed. We determined that it was appropriate to modify the proposed limit of 0.00006 pounds per ton of glass pulled because the cost effectiveness for the emission reduction option was $660,000 per pound of chromium reduced for the raw material substitution option, and $620,000 per pound chromium reduced for the furnace rebuild option. We believe these costs are not reasonable compared to other cases where the EPA has regulated highly toxic pollutants, such as hexavalent chromium. We, therefore, reviewed the data to determine whether a higher limit than previously proposed would be more cost effective while still significantly reducing chromium emissions from wool fiberglass gas-fired glass-melting furnaces. We found that all gas-fired glass-melting furnaces located at wool fiberglass area sources currently emit chromium compounds at rates below 0.00025 pounds per ton of glass pulled. These area sources together emit 18 pounds of chromium compounds annually.

We compared the chromium emission reductions that would have resulted under the previously proposed emission limit of 0.00006 pounds per ton of glass pulled to the reductions that result from the final limit of 0.00025 pounds per ton of glass pulled. The limit of 0.00006 pounds per ton of glass pulled would have resulted in a chromium emissions reduction of 8.5 pounds per year at area sources. The final limit of 0.00025 pounds per ton of glass pulled does not result in any chromium emissions reductions. This is due to the overall low emissions of chromium at area sources based on the most recent test data. The furnaces at area sources are mostly new furnaces of advanced design. While immediate emission reductions would not be realized, this final limit sets a backstop so that another high-chromium-emitting, gas-fired glass-melting furnace cannot be operated at an area source in this industry. This is important for this industry because certain furnaces have been shown to emit increasing amounts of chromium as their high-chromium refractory lining begins to degrade.

We revised our GACT analysis as two approaches could be used by industry to reduce chromium emissions from gas-fired furnaces. One approach is to rebuild the furnace at an annualized cost of $462,000 per year per furnace, and the other is to replace one raw material (cullet) with another material (raw minerals), which the industry stated would result in lower chromium emissions, at an average cost of about $1.3 million per year, depending on the production rate of each area source facility. Industry test data show that area sources will need to maintain their currently low levels of chromium emissions to meet the 0.00025 pounds per ton limit.

Further, in evaluating available technology at area sources, we also considered the furnace technology for gas-fired glass-melting furnaces in use at major sources. Under CAA section 112(d)(5), we may set the GACT emission limit for area sources that provides for the use of generally available control technologies to reduce HAP, and we are not precluded from setting the limits for area sources equivalent to the limits for major sources. In this instance, as previously explained, there are no differences between gas-fired glass-melting furnaces in use at area and major sources. Moreover, major sources become area sources only by virtue of eliminating formaldehyde from their processes. Therefore, we believe that the control measure for reducing chromium emissions (*i.e.,* furnace rebuild) used by major sources is generally available for area sources, and we are finalizing the same emission limit of 0.00025 pounds total chromium per ton of glass pulled for gas-fired glass-melting furnaces at area sources, under CAA section 112(d)(5).

3. What key comments did we receive on the GACT analysis for Wool Fiberglass Manufacturing area sources, and what are our responses?

We received comments in support of and against our GACT analyses. The following is a summary of the key comments received regarding the GACT analysis for area sources in the Wool Fiberglass Manufacturing source category and our responses to these comments. Additional comments on the risk assessment and our responses can be found in the comment summary and response document available in the docket for this action (EPA–HQ–OAR–2010–1042).

Comment: One commenter asserted that the EPA has not met procedural requirements necessary to regulate area sources under CAA section 112. The commenter contended that the EPA does not have the authority to list or regulate area sources under CAA section 112 unless the agency first finds that the source category presents a threat of adverse effects to human health or the environment. The commenter argued that the EPA's own risk assessment indicates ''risks due to hexavalent chromium and formaldehyde are acceptable.'' In the commenter's opinion ''all the EPA has done is claim that: (1) Because area sources, like major sources, contribute chromium compounds, and (2) because many sources that once were major sources have since become area sources, it follows that area sources should also be regulated.'' Further, the commenter stated that the EPA, in listing area sources, has not complied with section 307 of the CAA, which requires the EPA to provide to the public a summary of the basis for its decision to list the wool fiberglass industry as an area source (*i.e.,* factual data underlying the decision, methodology used in obtaining data, and the major legal interpretations and policy considerations underlying the proposal). The commenter also argued that section 553 of the Administrative Procedures Act (APA) mandates a ''notice and comment'' period for the EPA's decision to list this industry as an area source due to an ''adverse effects'' finding, to give stakeholders an opportunity to comment on findings that form the basis of the proposed rulemaking.

Response: In section II.D of the preamble to our 2013 supplemental proposal (78 FR 22375, April 15, 2013), we presented the legal basis for our decision to add gas-fired glass-melting furnaces to the list of area source categories to be regulated. Sections 112(c) and 112(k) of the CAA require the EPA to identify and list the area source categories that represent not less than 90 percent of the emissions of the 30 urban air toxics associated with area sources and subject them to standards under the CAA section 112(d). Specifically, sections 112(c)(3) and 112(k)(3)(B)(ii) of the CAA require the EPA to list area sources representing 90 percent or more of emissions of the 30 urban HAP regardless of whether the EPA has

issued an adverse effects finding for each individual area source category that contributes to achieving the 90 percent emissions goal.

As documented in the preamble to the 2013 supplemental proposal (78 FR 22375, April 15, 2013) and in the memorandum ''Technical Memorandum—Emission Standards for Meeting the 90 Percent Requirement under Section 112(c)(3) and Section 112(k)(3)(B) of the Clean Air Act'' (February 18, 2011; EPA–HQ–OAR–2010–1042–0262), the EPA has achieved the 90 percent reduction of national chromium emissions required by the Strategy; however, as further stated in the 2013 supplemental proposal, nothing in the CAA prevents the agency from going beyond the statutory minimum of 90 percent, especially if generally available control technology for the source category is available at a reasonable cost. Indeed, to date, we have established emission standards for sources accounting for almost 100 percent of area source emissions of certain urban HAP (*e.g.,* 99 percent of arsenic and beryllium compound emissions).

Regarding the commenter's opinion that the reason the EPA is regulating gas-fired glass-melting furnaces as area sources is that these sources were once regulated under the NESHAP and that they are similar to major sources, the EPA did discuss these facts in the preamble to the 2013 supplemental proposal (78 FR 22382, April 15, 2013). These facts serve to inform the EPA's understanding of this area source category, but they are not the reason the EPA is regulating these area sources. The EPA is regulating gas-fired furnaces located at area sources to comply with the Strategy to address the annual emissions of chromium from these sources, as the EPA explained in the preamble to the 2013 supplemental proposal (78 FR 22375, April 15, 2013). In doing so, the EPA is addressing the high levels of chromium emissions, in particular hexavalent chromium emissions. As explained in the 2013 supplemental proposal preamble, gas-fired glass-melting furnaces in this source category have the potential to emit high emissions of chromium and to experience emission increases in the future:

''. . . we have determined that gas-fired glass-melting furnaces at wool fiberglass manufacturing facilities can emit higher levels of metal HAP, and also higher than expected levels of chromium than electric glass-melting furnaces. This is due to the use of high chromium refractories above the glass melt line, and use of these refractories is essential to obtain the desired glass-melting furnace life. Also, the industry has indicated that the current trend is to replace air-gas glass-melting furnaces with oxyfuel glass-melting furnaces. Oxyfuel glass-melting furnaces have the highest potential for elevated chromium emissions as discussed further in section IV.A of this preamble. Accordingly, we believe it is appropriate to add gas-fired glass-melting furnaces at wool fiberglass manufacturing facilities that are located at area sources to the list of area sources regulated in the Urban Air Toxics Program.'' (78 FR 22377, April 15, 2013)

Based on the chromium emissions data for gas-fired glass-melting furnaces in the source category available to the EPA, we have established that emissions for a furnace can vary according to its type, design, operation, and age. The EPA provided an example in the preamble to the 2013 supplemental proposal of such variability for the CertainTeed's Kansas City facility, the highest-emitting glass-melting furnace, for which chromium emissions (93 percent of which were in the hexavalent state) increased from 5 pounds per year to 540 pounds per year over a period of 7 years (78 FR 22381). These facts demonstrate the current and potential future high levels of chromium emitted from area sources. Further, the EPA has clearly indicated the high level of health risk associated with chromium emissions. In the preamble to the 2013 supplemental proposal, the EPA stated ''Hexavalent chromium inhalation is associated with lung cancer, and EPA has classified it as a Class A known human carcinogen, per EPA's classification system for the characterization of the overall weight of evidence for carcinogenicity'' (78 FR 22374, April 15, 2013).

Regarding the comment that the EPA has not complied with section 307 of the CAA because it has not provided to the public a summary of the basis for its decision to list gas-fired glass-melting furnaces as area sources (*i.e.,* factual data underlying the decision, methodology used in obtaining data, and the major legal interpretations and policy considerations underlying the proposal), the EPA disagrees. We stated our intention in our 2013 supplemental proposal to exceed the 90 percent threshold for chromium emissions under the Strategy by listing gas-fired glass-melting furnaces at area sources (78 FR 22376, April 15, 2013), and we made clear our intent to regulate chromium due to the toxicity of the substance (78 FR 22374, April 15, 2013). We did not conduct a health assessment and finding for chromium from this area source category because we are not obligated to do so under sections 112(c)(3), (d)(5), or (k) of the CAA. For example, in our notice of revision to the area source category list in 2002 (67 FR 70427, November 22, 2002), we listed 23 new source categories as area sources to meet or exceed the 90 percent threshold for all 30 HAP addressed by the Strategy, and the document included no risk-based rationale for listing each source category that exceeded the 90 percent target.

Further, regarding the comment that the EPA has not complied with APA section 553 and section 307 of the CAA, we described our methodology for collecting these emissions data, as described in section II.E of the 2013 supplemental proposal preamble (78 FR 22376, April 15, 2013), and provided an opportunity for comment following that supplemental proposal. Regarding the legal basis for our listing area sources in section II.D, we presented this information in section II.E of the preamble to the 2013 supplemental proposal (78 FR 22376, April 15, 2013) in compliance with section 307.

Comment: One commenter objected to the proposed regulation of area sources because it is inappropriate and unjustified for the EPA to draw firm conclusions at this time about the need to regulate area sources, in particular regarding a threat of adverse effects to human health from area sources. The commenter contended that the EPA's assessment of chromium emissions from the major source category in the 2011 proposal was fundamentally flawed and did not support the 2011 proposal, and that the EPA admitted in the 2011 proposal preamble that it must collect more information before drawing a conclusion regarding the wool fiberglass area source category and ''a threat of adverse effects to human health or the environment.'' The commenter argued that both of these facts reflect on the EPA's readiness to regulate area sources. The commenter further observed that the EPA may regulate a category of area sources only after making a finding under CAA section 112(c)(3) that HAP emissions from such source category present ''a threat of adverse effects to human health or the environment'' that warrant regulation.

Another commenter objected to the proposed regulation of area sources, given the limited value such a rule would provide. The commenter stated that the majority of wool fiberglass manufacturers are no longer major sources, observing that the most significant change since 1999 is the voluntary substitution of phenol/formaldehyde binders with non-phenol/formaldehyde binders, resulting in reduction in HAP emissions from this industry of the chief HAP regulated by the Wool Fiberglass MACT Standard.

The commenter suggested that the health risk arising from the production of wool fiber glass insulation products has been significantly and sufficiently reduced and that any remaining residual risk does not justify subjecting the industry to additional regulatory requirements in the form of an area source standard.

Response: As described in the preamble to the April 2013 supplemental proposal (78 FR 22379), the EPA conducted a CAA section 114 survey to collect additional test data on chromium emissions from glass-melting furnaces, so that the EPA would have test data for all glass-melting furnaces. The area source standards proposed in 2013 and being finalized in this rulemaking are based on this complete set of emission data. Regarding the comments that there is insufficient health risk to warrant regulation of area sources and that the EPA is required to establish a ''threat of adverse health effects'' to regulate area sources, as noted in the comment above, the legal basis for our decision to add gas-fired glass-melting furnaces to the list of area source categories to be regulated is based on sections 112(c) and 112(k) of the CAA which require the EPA to identify and list the area source categories that represent not less than 90 percent of the emissions of the 30 urban air toxics associated with area sources and subject them to standards under the CAA section 112(d), and is not based on CAA section 112(c)(3).

4. What is the rationale for our final approach for the GACT analysis for Wool Fiberglass Manufacturing area sources?

Because of the considerations discussed above in this preamble, as well as in the preamble for the November 2014 supplemental proposal and in the comment summary and response document available in the docket (EPA–HQ–OAR–2010–1042), we are finalizing revised GACT standards.

B. What are the final requirements for the Wool Fiberglass Manufacturing area sources?

In this action, we are revising the proposed chromium emission limit for gas-fired, glass-melting furnaces from 0.00006 to 0.00025 pounds of total chromium per ton of glass pulled, based on our re-assessment of emissions data for newly-rebuilt furnaces (see section VI.A.2 of this preamble for a discussion of the basis of the revised emission limit for chromium compounds). We are also requiring that facilities at both major and area sources establish the materials mix, including the percentages of raw minerals and cullet used in gas-fired glass-melting furnaces during the performance test conducted to demonstrate compliance with the chromium emission limit. The source must maintain the percentage of cullet in the raw material mixture at or below the level established during the most recent performance test showing compliance with the standard. If the gas-fired glass-melting furnace uses 100-percent cullet during the performance test and is in compliance with the chromium emissions limit, then the source is not required to monitor cullet usage. Other requirements for Wool Fiberglass Manufacturing area sources, including startup and shutdown, compliance dates, test methods, monitoring, recordkeeping, and reporting are the same requirements as those specified for major source facilities in 40 CFR part 63, subpart NNN. Therefore, 40 CFR part 63, subpart NN cites 40 CFR part 63, subpart NNN, for these requirements.

C. What are the effective and compliance dates of the standards for Wool Fiberglass Manufacturing area sources?

The GACT standards for gas-fired glass-melting furnaces located at Wool Fiberglass Manufacturing area sources being promulgated in this action are effective on July 29, 2015. The compliance date for existing sources is July 31, 2017. New sources must comply with the all of the standards immediately upon the effective date of the standard, July 29, 2015, or upon initial startup, whichever is later.

The effective and compliance dates finalized in this action are consistent with the dates we presented in the 2014 supplemental proposal.

D. What are the requirements for submission of performance test data to the EPA for Wool Fiberglass Manufacturing area sources?

The requirements for electronic reporting of performance test data for wool fiberglass manufacturing area sources are the same as the requirements for the mineral wool production source category. See section III.G of this preamble for a description of the requirements.

VIII. Summary of Cost, Environmental and Economic Impacts and Additional Analyses Conducted

A. What are the affected facilities?

1. Mineral Wool Production Source Category

We estimate that there are eight mineral wool facilities that are major sources and, therefore, would be subject to the final NESHAP provisions.

2. Wool Fiberglass Manufacturing Source Category (Major and Area Sources)

We estimate that there are 30 facilities in this source category (10 major sources and 20 area sources). Based on the responses to the CAA section 114 ICR, we believe that two of the 10 wool fiberglass manufacturing facilities that are major sources would rebuild two furnaces before the end of their operational lifecycles. We believe that all furnaces at area sources can comply with the final chromium emission limit without rebuilding before the end of their operational lifecycles.

B. What are the air quality impacts?

1. Mineral Wool Production Source Category

Emissions of HAP from mineral wool production facilities have declined over the last decade as a result of federal and state rules and the industry's own initiatives. The amendments we are finalizing in this action would maintain COS, formaldehyde, phenol, and methanol emissions at their current low levels.

2. Wool Fiberglass Manufacturing Source Category (Major and Area Sources)

We expect that these final RTR amendments would result in reductions of 524 pounds of chromium compounds, 490 pounds of which is in the hexavalent form. Available information indicates that all affected facilities will be able to comply with the final work practice standards for HF and HCl without additional controls, and that there will be no measurable reduction in emissions of these gases.

Also, we anticipate that there will be continued reductions in PM emissions due to these final PM standards, which all sources currently are meeting due to the use of well-performing PM controls. Industry comments, statements, and sources in the technical literature indicate that as sources of industrial oxygen become available in areas proximate to wool fiberglass facilities, such sources will convert their existing furnaces to oxyfuel technology. As described in the ''Mechanisms of Chromium Emissions From Wool Fiberglass Glass-Melting Furnaces,'' June 2015, PM emissions are greatly reduced compared to electric furnaces and air-gas furnace technology.

Indirect or secondary air quality impacts include impacts that will result from the increased electricity usage

associated with the operation of control devices. We do not anticipate significant secondary impacts from the final amendments to the Wool Fiberglass Manufacturing MACT.

C. What are the cost impacts?

1. Mineral Wool Production Source Category

All lines currently in operation can meet the emission limits finalized in this action without installing new control equipment or using different input materials. The total annualized costs for these final amendments are estimated at $48,800 (2013 dollars) for additional testing and monitoring.

2. Wool Fiberglass Manufacturing Source Category (Major and Area Sources)

The capital costs for each facility were estimated based on the ability of each facility to meet the final emissions limits for PM, chromium compounds, formaldehyde, phenol, and methanol. The memorandum, ''Cost Impacts of the Final NESHAP RTR Amendments for the Wool Fiberglass Manufacturing Source Category,'' includes a complete description of the cost estimate methods used for this analysis and is available in the docket.

There are a total of eight gas-fired glass-melting furnaces located at five major source facilities. Compliance testing is $10,000 per furnace, resulting in total testing costs for glass-melting furnaces of $80,000. At this time, there are two facilities with a total of two gas-fired glass-melting furnaces that do not meet the final emissions limit for chromium compounds. We anticipate that these facilities would opt to reduce the operational lifecycle for both of the gas-fired glass-melting furnaces.

Based on the public comments and information received in response to November 2014 supplemental proposal, we revised our cost estimate from reducing the operational furnace lifecycle (from 10 to 7 years), to a cost estimate for rebuilding gas-fired glass-melting furnaces. In this cost estimate, we included the cost of transferring production to another facility while the furnace is being rebuilt.

For major sources, the estimated capital cost of rebuilding the furnace is $10.7 million per furnace with a total annualized cost of $462,000 per furnace.

Two major source facilities operate 13 FA manufacturing lines, and, therefore, would incur testing costs (annualized cost of $10,400 in 2013 dollars). The total annualized costs for the final amendments to the Wool Fiberglass Manufacturing NESHAP for major sources are estimated at $1.01 million (2013 dollars).

Of the 20 area source facilities, five facilities operate a total of eight gas-fired glass-melting furnaces. Under these final amendments, none of the area source wool fiberglass facilities will incur any capital costs to comply with the final chromium compounds emissions limit. Five area source facilities would be subject to new costs for compliance testing on gas-fired glass-melting furnaces, which will total $80,000 annually (2013 dollars).

D. What are the economic impacts?

1. Mineral Wool Production Source Category

As noted in the November 2014 supplemental proposal (79 FR 68025), we performed an economic impact analysis for mineral wool consumers and producers nationally. The impacts to producers affected by this final rule are annualized costs of less than 0.01 percent of their revenues, using 2013 year revenue data to be consistent with the cost year for our analysis. Prices and output for mineral wool products should increase by no more than the impact of cost to revenues for producers; thus, mineral wool prices should increase by less than 0.01 percent. Hence, the overall economic impact of this final rule would be negligible to the affected industries and their consumers. For more information, please refer to the ''Economic Impact and Small Business Analysis'' for this final rulemaking that is in the docket (EPA–HQ–OAR–2010–1042).

2. Wool Fiberglass Manufacturing Source Category (Major and Area Sources)

We performed an economic impact analysis for wool fiberglass consumers and producers nationally, using the annual compliance costs estimated for both the RTR and area source final rules. The impacts to producers affected by this final rule are annualized costs of less than 0.01 percent of their revenues, using 2013 revenue data to be consistent with the cost year for our analysis. Prices and output for wool fiberglass products should increase by no more than the impact on cost to revenues for producers; thus, wool fiberglass prices should increase by less than 0.01 percent. Hence, the overall economic impact of this final rule would be negligible on the affected industries and their consumers. For more information, please refer to the ''Economic Impact and Small Business Analysis'' for this final rulemaking that is in the docket (EPA–HQ–OAR–2010–1042).

E. What are the benefits?

1. Mineral Wool Production Source Category

The amendments we are finalizing in this action will maintain the reductions in COS, formaldehyde, phenol, and methanol emissions that the industry has achieved over time at their currently low levels.

2. Wool Fiberglass Manufacturing Source Category (Major and Area Sources)

We estimate that this action will achieve HAP emissions reduction of 524 pounds per year of chromium compounds from the Wool Fiberglass Manufacturing source category. The final standards will result in significant reductions in the actual and MACT-allowable emissions of chromium compounds and will reduce the actual and potential cancer risks and non-cancer health effects due to emissions of chromium compounds from this source category.

In the November 2014 supplemental proposal (79 FR 68026), we estimated that the proposed emission limits for FA and RS manufacturing lines would reduce organic HAP emissions by 123 tons per year. Based on the available data, we believe that all FA lines currently meet the final emission limits; therefore, all of the emission reductions of organic HAP presented in the 2014 supplemental proposal were attributed to RS lines. As discussed in section V.H of this preamble, we are not establishing emission limits for RS manufacturing lines in this final action. Consequently, the emissions limits for formaldehyde, methanol, and phenol finalized in this action do not achieve reductions of organic HAP; however, the emission limits codify the reductions in organic HAP from FA lines that have been achieved by the industry since the 1999 NESHAP was promulgated. We have issued a CAA section 114 ICR to obtain process and emissions data for RS manufacturing lines and we will evaluate RTR limits for these sources, based on the CAA section 114 ICR data, at a future date.

F. What analysis of environmental justice did we conduct?

The EPA is making environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low income populations in the United States. The EPA has established policies regarding the integration of

environmental justice into the agency's rulemaking efforts, including recommendations for the consideration and conduct of analyses to evaluate potential environmental justice concerns during the development of a rule.

Following these recommendations, to gain a better understanding of the source category and near source populations, the EPA conducted a proximity analysis for mineral wool production and wool fiberglass manufacturing facilities prior to proposal to identify any overrepresentation of minority, low income, or indigenous populations. This analysis gives an indication of the prevalence of sub-populations that may be exposed to air pollution from the sources.

The EPA also conducted a risk-based socio-economic analysis for populations living near wool fiberglass facilities titled ''Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near Wool Fiberglass Facilities,'' which is available in the docket. The analysis indicated that 1,207,000 individuals living within 50 km of the wool fiberglass facilities have a cancer risk of 1-in-1 million or greater due to emissions from wool fiberglass facilities. The specific demographic results indicate that the percentage of minority population potentially impacted by emissions from wool fiberglass facilities (*i.e.,* within 50 km) is greater than the national minority percentage (44 percent for the source category compared to 28-percent nationwide). Furthermore, other demographic groups with source category percentages greater than the corresponding national percentage include: The population over 25 without a high school diploma (18 percent compared to 15 percent); the population from 18 to 64 years of age (66 percent compared to 63 percent), and the population below the poverty level (15 percent compared to 14 percent). The other demographic categories potentially impacted by emissions from wool fiberglass facilities (*i.e.,* African American, Native American, ages less than 18, and ages 65 and up) are less than or equal to the corresponding national percentage.

The EPA's integration of environmental justice into the agency's rulemaking efforts was also thoroughly demonstrated by EPA's Region 7 response to emissions data obtained through this rulemaking. Region 7 proactively engaged the local community and identified potential environmental concerns; conducted air monitoring and modeling; and opened lines of communication and launched several opportunities for the community to voice concerns, ask questions, and receive additional information. Additionally, EPA Headquarters and Region 7 worked together to provide resources for communities, as well as to ensure that feedback received from the Region 7 communities was being considered in this rulemaking.

Through our analyses, the EPA has determined that these final rules for 40 CFR part 63, subparts NN, DDD, and NNN will not have disproportionately high and adverse human health or environmental effects on minority, low income, or indigenous populations. Additionally, the final changes to the NESHAP for Mineral Wool Production and Wool Fiberglass Manufacturing source categories increase the level of environmental protection for all affected populations by reducing emissions of chromium compounds by over 524 pounds per year and will not cause any disproportionately high and adverse human health or environmental effects on any population, including any minority, low income, or indigenous populations. Our demographic analysis shows that disproportionately impacted minority areas will benefit from the lower emissions. Further details concerning this analysis are presented in the memorandum titled, ''Updated Environmental Justice Review: Mineral Wool Production and Wool Fiberglass Manufacturing RTR,'' a copy of which is available in the dockets for this action.

G. What analysis of children's environmental health did we conduct?

As part of the health and risk assessments, risk-based demographic analysis conducted for this action, risks to infants and children were assessed. This analysis is documented in the following memoranda which are available in the dockets for this action:

- ''Residual Risk Assessment for the Mineral Wool Production and Wool Fiberglass Manufacturing Source Categories in Support of the June 2015 Final Rule''
- ''Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near Wool Fiberglass Facilities''

The results of the risk-based socio-economic analysis for populations living near wool fiberglass facilities indicates that there are 1,207,000 individuals living within 50 km of the wool fiberglass facilities have a cancer risk of 1-in-1-million or greater (based on actual emissions). The distribution of the population with risks above 1-in-1 million is 24 percent for ages 0 to 17, 66 percent for ages 18 to 64, and 10 percent for ages 65 and up. Children ages 0 to 17 also constitute 24 percent of the population nationwide. Therefore, the analysis shows that actual emissions from wool fiberglass facilities do not have a disproportionate impacts on children ages 0 to 17.

The results of the demographic analysis show that the average percentage of children 17 years and younger in close proximity to mineral wool production and wool fiberglass manufacturing facilities is similar to the percentage of the national population in this age group. The difference in the absolute number of percentage points of the population 17 years and younger from the national average indicates a 7-percent over-representation near mineral wool production and wool fiberglass manufacturing facilities.

Consistent with the EPA's ''Policy on Evaluating Health Risks to Children'', we conducted inhalation and multipathway risk assessments for the Mineral Wool Production and Wool Fiberglass Manufacturing source categories considering risk to infants and children.[24] Children are exposed to chemicals emitted to the atmosphere via two primary routes: Either directly via inhalation, or indirectly via ingestion or dermal contact with various media that have been contaminated with the emitted chemicals. The EPA considers the possibility that children might be more sensitive than adults might be to toxic chemicals, including chemical carcinogens.

For our multipathway screening assessment (*i.e.,* ingestion), we assessed risks for adults and various age groups of children to determine what age group was most at risk for purposes of developing the screening/emission threshold for each persistent and bioaccumulative—HAP (PB–HAP). Childrens' exposures are expected to differ from exposures of adults due to differences in body weights, ingestion rates, dietary preferences, and other factors. It is important, therefore, to evaluate the contribution of exposures during childhood to total lifetime risk using appropriate exposure factor values, applying age-dependent adjustment factors (ADAF) as appropriate. The EPA developed a health protective exposure scenario whereby the receptor, at various lifestages, receives ingestion exposure via both the farm food chain and the fish ingestion pathways.

Based on the analyses described above, the EPA has determined that the

[24] Policy on Evaluating Health Risks to Children, U.S. Environmental Protection Agency, Washington, DC. May 2014. Available at *http://www2.epa.gov/sites/production/files/2014-05/documents/1995_childrens_health_policy_statement.pdf.*

changes to these rules, which will reduce emissions of chromium compounds by over 524 pounds per year, will lead to reduced risk to children and infants. The final amendments will also codify the reductions in emissions (COS, formaldehyde, phenol, and methanol from mineral wool facilities, and formaldehyde, methanol, and phenol from wool fiberglass facilities) that the industries have achieved since the NESHAP for the respective source categories were promulgated in 1999.

IX. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/lawsregulations/laws-and-executive-order.*

A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

The information collection activities in these rules have been submitted for approval to the OMB under the PRA. The ICR document that the EPA prepared for the Mineral Wool Production source category has been assigned EPA ICR number 1799.06. The ICR document that the EPA prepared for the Wool Fiberglass Manufacturing source category has been assigned EPA ICR number 1160.10. You can find a copy of these ICRs in the dockets for these rules, and they are briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The information requirements in these rulemakings are based on the notification, recordkeeping and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These notifications, reports and records are essential in determining compliance, and are specifically authorized by CAA section 114 (42 U.S.C. 7414).

Mineral Wool Production source category:

Respondents/affected entities: Existing, new, or reconstructed mineral wool production facilities that are major sources.

Respondent's obligation to respond: Mandatory (42 U.S.C 7414).

Estimated number of respondents: 8.

Frequency of response: Annual.

Total estimated burden: 123 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $25,150 (per year), includes $0 annualized capital or operation and maintenance costs.

Wool Fiberglass Manufacturing source category (major sources):

Respondents/affected entities: Existing, new, or reconstructed wool fiberglass manufacturing facilities that are major sources.

Respondent's obligation to respond: Mandatory (42 U.S.C 7414).

Estimated number of respondents: 10.

Frequency of response: Annual.

Total estimated burden: 156 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $46,142 (per year), includes $0 annualized capital or operation & maintenance costs.

Wool Fiberglass Manufacturing source category (area sources):

Respondents/affected entities: Existing, new, or reconstructed gas-fired glass-melting furnaces at a wool fiberglass manufacturing facility that are located at a plant site that is an area source.

Respondent's obligation to respond: Mandatory (42 U.S.C 7414).

Estimated number of respondents: 5.

Frequency of response: Annual.

Total estimated burden: 78 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $32,334 (per year), includes $0 annualized capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. Five of the eight mineral wool production parent companies affected in the final rule are considered to be small entities per the definition provided in this section. There are no small businesses in the Wool Fiberglass Manufacturing source category. We estimate that these final rules will not have a significant economic impact on any of those companies.

While there are some costs imposed on affected small businesses as a result of these rulemakings, the costs associated with this action are less than the costs associated with the limits proposed on November 25, 2011. Specifically, the cost to small entities in the Mineral Wool Production source category due to the changes in COS, HF, and HCl are lower as compared to the limits proposed on November 25, 2011, and April 15, 2013. None of the five small mineral wool parent companies is expected to have an annualized compliance cost of greater than 1 percent of its revenues. All other affected parent companies are not small businesses according to the SBA small business size standard for the affected NAICS code (NAICS 327993). Therefore, we have determined that the impacts for this final rule do not constitute a significant economic impact on a substantial number of small entities.

Although these final rules would not have a significant economic impact on a substantial number of small entities, the EPA nonetheless has tried to mitigate the impact that these rules would have on small entities. The actions we took to mitigate impacts on small businesses include less frequent compliance testing for the entire mineral wool industry and subcategorizing the Mineral Wool Production source category in developing the proposed COS, HF and HCl emissions limits. For more information, please refer to the economic impact and small business analysis that is in the docket.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments, or on the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. These final rules impose requirements on owners and operators of specified area and major sources, and not tribal governments. There are no wool fiberglass manufacturing facilities or mineral wool production facilities owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections IV.A, VI.A, VIII.F, VIII.G of this preamble and in the ''Residual Risk Assessment for the Mineral Wool Production and Wool Fiberglass Manufacturing Source Categories'' memorandum available in the dockets for this rulemaking.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking involves technical standards. Therefore, the EPA conducted searches for the Wool Fiberglass Manufacturing Area Source NESHAP through the Enhanced National Standards Systems Network (NSSN) Database managed by the American National Standards Institute (ANSI). We also contacted voluntary consensus standards (VCS) organizations and accessed and searched their databases.

As discussed in the November 2014 supplemental proposal (79 FR 68029), under 40 CFR part 63 subpart DDD, we conducted searches for EPA Methods 5, 318, and 320 of 40 CFR part 60, Appendix A. Under 40 CFR part 63, subpart NNN, we conducted searches for EPA Methods 5, 318, 320, 29, and 0061 of 40 CFR part 60, Appendix A. Under 40 CFR part 63, subpart NN, we conducted searches for EPA Methods 5 and 29. These searches did not identify any VCS that were potentially applicable for this rule in lieu of EPA reference methods. The EPA solicited comments on VCS and invited the public to identify potentially-applicable VCS; however, we did not receive comments regarding this aspect of 40 CFR part 63, subparts NN, DDD, or NNN.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations because it does not affect the level of protection provided to human health or the environment. As explained in the November 2014 supplemental proposal (79 FR 68029), the EPA determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Further details concerning this analysis are presented in the memorandum titled, ''Updated Environmental Justice Review: Mineral Wool Production and Wool Fiberglass Manufacturing RTR'', a copy of which is available in the dockets for this action. Additionally, the EPA engaged meaningfully with communities throughout this rulemaking process, to help them engage in the rulemaking process and to get their feedback on the proposed rulemaking. Also, EPA worked closely with Region 7, to ensure that communities that raised concerns by the sectors covered in this rulemaking, were being adequately engaged throughout this process.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Mineral wool production, Reporting and recordkeeping requirements, Wool fiberglass manufacturing.

Dated: June 25, 2015.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

■ 2. Subpart NN is added to part 63 to read as follows:

Subpart NN—National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing at Area Sources

Sec.
63.880 Applicability.
63.881 Definitions.
63.882 Emission standards.
63.883 Monitoring requirements.
63.884 Performance test requirements.
63.885 Test methods and procedures.
63.886 Notification, recordkeeping, and reporting requirements.
63.887 Compliance dates.
63.888 Startups and shutdowns.
63.889–63.899 [Reserved]
Table 1 to Subpart NN of Part 63—Applicability of General Provisions (40 CFR part 63, Subpart A) to Subpart NN

Subpart NN—National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing at Area Sources

§ 63.880 Applicability.

(a) The requirements of this subpart apply to the owner or operator of each wool fiberglass manufacturing facility that is an area source or is located at a facility that is an area source.

(b) The requirements of this subpart apply to emissions of chromium compounds, as measured according to the methods and procedures in this subpart, emitted from each new and existing gas-fired glass-melting furnace located at a wool fiberglass manufacturing facility that is an area source.

(c) The provisions of subpart A of this part that apply and those that do not apply to this subpart are specified in Table 1 to this subpart.

(d) Gas-fired glass-melting furnaces that are not subject to subpart NNN of this part are subject to this subpart.

(e) Gas-fired glass-melting furnaces using electricity as a supplemental energy source are subject to this subpart.

§ 63.881 Definitions.

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, or in this section as follows:

Bag leak detection system means systems that include, but are not limited to, devices using triboelectric, light scattering, and other effects to monitor relative or absolute particulate matter emissions.

Gas-fired glass-melting furnace means a unit comprising a refractory vessel in which raw materials are charged, melted at high temperature using natural gas and other fuels, refined, and conditioned to produce molten glass. The unit includes foundations, superstructure and retaining walls, raw material charger systems, heat exchangers, exhaust system, refractory brick work, fuel supply and electrical boosting equipment, integral control systems and instrumentation, and appendages for conditioning and distributing molten glass to forming processes. The forming apparatus, including flow channels, is not considered part of the gas-fired glass-melting furnace. Cold-top electric glass-melting furnaces as defined in subpart NNN of this part are not gas-fired glass-melting furnaces.

Glass pull rate means the mass of molten glass that is produced by a single glass-melting furnace or that is used in the manufacture of wool fiberglass at a single manufacturing line in a specified time period.

Incinerator means an enclosed air pollution control device that uses controlled flame combustion to convert combustible materials to noncombustible gases. For the purposes of this subpart, the term ''incinerator'' means ''regenerative thermal oxidizer''.

Manufacturing line means the manufacturing equipment for the production of wool fiberglass that consists of a forming section where molten glass is fiberized and a fiberglass mat is formed and which may include a curing section where binder resin in the mat is thermally set and a cooling section where the mat is cooled.

New source means any affected source the construction or reconstruction of which is commenced after April 15, 2013.

Wool fiberglass means insulation materials composed of glass fibers made from glass produced or melted at the same facility where the manufacturing line is located.

Wool fiberglass manufacturing facility means any facility manufacturing wool fiberglass.

§ 63.882 Emission standards.

(a) *Emission limits for gas-fired glass-melting furnaces.* For each existing, new, or reconstructed gas-fired glass-melting furnace, on and after the compliance date specified in § 63.887 whichever date is earlier, you must not discharge or cause to be discharged into the atmosphere emissions in excess of 0.00025 lb of chromium compounds per ton of glass pulled (0.25 lb per thousand tons glass pulled).

(b) *Operating limits.* On and after the date on which the performance test required by §§ 63.7 and 63.1384 is completed, you must operate all affected control equipment and processes according to the following requirements.

(1)(i) You must initiate corrective action within one hour of an alarm from a bag leak detection system and complete corrective actions in a timely manner according to the procedures in the operations, maintenance, and monitoring plan.

(ii) You must implement a Quality Improvement Plan consistent with the compliance assurance monitoring provisions of 40 CFR part 64, subpart D when the bag leak detection system alarm is sounded for more than 5 percent of the total operating time in a 6-month block reporting period.

(2)(i) You must initiate corrective action within one hour when any 3-hour block average of the monitored electrostatic precipitator (ESP) parameter is outside the limit(s) established during the performance test as specified in § 63.884 and complete corrective actions in a timely manner according to the procedures in the operations, maintenance, and monitoring plan.

(ii) You must implement a Quality Improvement Plan consistent with the compliance assurance monitoring provisions of 40 CFR part 64, subpart D when the monitored ESP parameter is outside the limit(s) established during the performance test as specified in § 63.884 for more than 5 percent of the total operating time in a 6-month block reporting period.

(iii) You must operate the ESP such that the monitored ESP parameter is not outside the limit(s) established during the performance test as specified in § 63.884 for more than 10 percent of the total operating time in a 6-month block reporting period.

(3)(i) You must initiate corrective action within one hour when any 3-hour block average value for the monitored parameter(s) for a gas-fired glass-melting furnace, which uses no add-on controls, is outside the limit(s) established during the performance test as specified in § 63.884 and complete corrective actions in a timely manner according to the procedures in the operations, maintenance, and monitoring plan.

(ii) You must implement a Quality Improvement Plan consistent with the compliance assurance monitoring provisions of 40 CFR part 64, subpart D when the monitored parameter(s) is outside the limit(s) established during the performance test as specified in § 63.884 for more than 5 percent of the total operating time in a 6-month block reporting period.

(iii) You must operate a gas-fired glass-melting furnace, which uses no add-on technology, such that the monitored parameter(s) is not outside the limit(s) established during the performance test as specified in § 63.884 for more than 10 percent of the total operating time in a 6-month block reporting period.

(4)(i) You must initiate corrective action within one hour when the average glass pull rate of any 4-hour block period for gas-fired glass-melting furnaces equipped with continuous glass pull rate monitors, or daily glass pull rate for glass-melting furnaces not so equipped, exceeds the average glass pull rate established during the performance test as specified in § 63.884, by greater than 20 percent and complete corrective actions in a timely manner according to the procedures in the operations, maintenance, and monitoring plan.

(ii) You must implement a Quality Improvement Plan consistent with the compliance assurance monitoring provisions of 40 CFR part 64, subpart D when the glass pull rate exceeds, by more than 20 percent, the average glass pull rate established during the performance test as specified in § 63.884 for more than 5 percent of the total operating time in a 6-month block reporting period.

(iii) You must operate each gas-fired glass-melting furnace such that the glass pull rate does not exceed, by more than 20 percent, the average glass pull rate established during the most recent successful performance test as specified in § 63.884 for more than 10 percent of the total operating time in a 6-month block reporting period.

(5)(i) You must initiate corrective action within one hour when the average pH (for a caustic scrubber) or pressure drop (for a venturi scrubber) for any 3-hour block period is outside the limits established during the performance tests as specified in § 63.884 for each wet scrubbing control

device and complete corrective actions in a timely manner according to the procedures in the operations, maintenance, and monitoring plan.

(ii) You must implement a Quality Improvement Plan consistent with the compliance assurance monitoring provisions of 40 CFR part 64, subpart D when any scrubber parameter is outside the limit(s) established during the performance test as specified in § 63.884 for more than 5 percent of the total operating time in a 6-month block reporting period.

(iii) You must operate each scrubber such that each monitored parameter is not outside the limit(s) established during the performance test as specified in § 63.884 for more than 10 percent of the total operating time in a 6-month block reporting period.

§ 63.883 Monitoring requirements.

You must meet all applicable monitoring requirements contained in subpart NNN of this part.

§ 63.884 Performance test requirements.

(a) If you are subject to the provisions of this subpart you must conduct a performance test to demonstrate compliance with the applicable emission limits in § 63.882. For existing sources, compliance is demonstrated when the emission rate of the pollutant is equal to or less than each of the applicable emission limits in § 63.882 by July 31, 2017. For new sources compliance is demonstrated when the emission rate of the pollutant is equal to or less than each of the applicable emission limits in § 63.882 by January 25, 2016 or 180 days after initial startup, whichever is later. You must conduct the performance test according to the procedures in subpart A of this part and in this section.

(b) You must meet all applicable performance test requirements contained in subpart NNN of this part.

§ 63.885 Test methods and procedures.

(a) You must use the following methods to determine compliance with the applicable emission limits:

(1) Method 1 at 40 CFR part 60, appendix A–1 for the selection of the sampling port location and number of sampling ports;

(2) Method 2 at 40 CFR part 60, appendix A–1 for volumetric flow rate;

(3) Method 3 or 3A (40 CFR part 60, appendix A–2) for oxygen and carbon dioxide for diluent measurements needed to correct the concentration measurements to a standard basis;

(4) Method 4 at 40 CFR part 60, appendix A–4 for moisture content of the stack gas;

(5) Method 29 (40 CFR part 60, appendix A–8) for the concentration of chromium compounds. Each run must consist of a minimum sample volume of two dry standard cubic meters.

(6) An alternative method, subject to approval by the Administrator.

(b) Each performance test must consist of three runs. You must use the average of the three runs in the applicable equation for determining compliance.

§ 63.886 Notification, recordkeeping, and reporting requirements.

You must meet all applicable notification, recordkeeping and reporting requirements contained in subpart NNN of this part.

§ 63.887 Compliance dates.

(a) *Compliance dates.* The owner or operator subject to the provisions of this subpart must be in compliance with the requirements of this subpart by no later than:

(1) Except as noted in paragraph (a)(3) of this section, the compliance date for an owner or operator of an existing source subject to the provisions in this subpart would be July 31, 2017.

(2) Except as noted in paragraph (a)(3) of this section, the compliance date for new and reconstructed sources is upon initial startup of a new gas-fired glass-melting furnace or on July 29, 2015, whichever is later.

(3) The compliance date for the provisions related to the electronic reporting provisions of § 63.886 is on July 29, 2015.

(b) *Compliance extension.* The owner or operator of an existing source subject to this subpart may request from the Administrator an extension of the compliance date for the emission standards for one additional year if such additional period is necessary for the installation of controls. You must submit a request for an extension according to the procedures in § 63.6(i)(3).

§ 63.888 Startups and shutdowns.

You must meet all applicable startup and shutdown provisions contained in subpart NNN of this part.

§§ 63.889–63.899 [Reserved]

TABLE 1 TO SUBPART NN OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART NN

General provisions citation	Requirement	Applies to subpart NN	Explanation
§ 63.1(a)(1)–(5)	Applicability	Yes	
§ 63.1(a)(6)		Yes	
§ 63.1(a)(7)–(9)		No	[Reserved].
§ 63.1(a)(10)–(12)		Yes	
§ 63.1(b)(1)	Initial Applicability Determination	Yes	
§ 63.1(b)(2)		No	[Reserved].
§ 63.1(b)(3)		Yes	
§ 63.1(c)(1)–(2)		Yes	
§ 63.1(c)(3)–(4)		No	[Reserved].
§ 63.1(c)(5)–(e)		Yes	
§ 63.2	Definitions	Yes	Additional definitions in § 63.881.
§ 63.3	Units and Abbreviations	Yes	
§ 63.4(a)(1)–(2)	Prohibited Activities	Yes	
§ 63.4(a)(3)–(5)		No	[Reserved].
§ 63.4(b)–(c)		Yes	
§ 63.5(a)–(b)(2)	Construction/Reconstruction Applicability	Yes	
§ 63.5(b)(3)–(4)		Yes	
§ 63.5(b)(5)		No	[Reserved].
§ 63.5(b)(6)		Yes	
§ 63.5(c)		No	[Reserved].
§ 63.5(d)	Application for Approval of Construction/Reconstruction.	Yes	

TABLE 1 TO SUBPART NN OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART NN—Continued

General provisions citation	Requirement	Applies to subpart NN	Explanation
§ 63.5(e)	Approval of Construction/Reconstruction	Yes	
§ 63.5(f)	Approval of Construction/Reconstruction Based on State Review.	Yes	
§ 63.6(a)–(d)	Compliance with Standards and Maintenance Requirements.	Yes	
§ 63.6(e)(1)(i)	General Duty to Minimize Emissions	No	See § 63.882 for general duty requirements.
§ 63.6(e)(1)(ii)	Requirement to Correct Malfunctions As Soon As Possible.	No	
§ 63.6(e)(1)(iii)		Yes	
§ 63.6(e)(2)		No	[Reserved].
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction (SSM) Plan.	No	Startups and shutdowns addressed in § 63.888.
§ 63.6(f)(1)	SSM Exemption	No	
§ 63.6(f)(2)–(3)	Methods for Determining Compliance	Yes	
§ 63.6(g)	Use of an Alternative Nonopacity Emission	Yes	
§ 63.6(h)(1)	SSM Exemption	No	
§ 63.6(h)(2)–(j)		Yes	
§ 63.7(a)–(d)		Yes	§ 63.884 has specific requirements.
§ 63.7(e)(1)	Performance Testing	No	See § 63.882.
§ 63.7(e)(2)–(4)		Yes	
§ 63.7(f)	Alternative Test Method	Yes	
§ 63.7(g)(1)	Data Analysis	Yes	
§ 63.7(g)(2)		No	[Reserved].
§ 63.7(g)(3)		Yes	
§ 63.7(h)	Waiver of Performance Test	Yes	
§ 63.8(a)–(b)	Monitoring Requirements	Yes	
§ 63.8(c)(1)(i)	General Duty to Minimize Emissions and CMS Operation.	No	See § 63.882(b) for general duty requirement.
§ 63.8(c)(1)(ii)		Yes	
§ 63.8(c)(1)(iii)	Requirement to Develop SSM Plan for CMS	No	
§ 63.8(c)(2)–(d)(2)		Yes	
§ 63.8(d)(3)	Written Procedures for CMS	Yes, except for last sentence, which refers to SSM plan. SSM plans are not required	
§ 63.8(e)–(g)		Yes	
§ 63.9(a)	Notification Requirements	Yes	
§ 63.9(b)(1)–(2)	Initial Notifications	Yes	
§ 63.9(b)(3)		No	[Reserved].
§ 63.9(b)(4)–(5)		Yes	
§ 63.9(c)–(j)		Yes	
§ 63.10(a)	Recordkeeping and Reporting-Requirements	Yes	
§ 63.10(b)(1)	General Recordkeeping Requirements	Yes	
§ 63.10(b)(2)(i)	Recordkeeping of Occurrence and Duration of Startups and Shutdowns.	No	
§ 63.10(b)(2)(ii)	Recordkeeping of Malfunctions	No	See § 63.886 for recordkeeping of occurrence and duration of malfunctions and recordkeeping of actions taken during malfunction.
§ 63.10(b)(2)(iii)	Maintenance Records	Yes	
§ 63.10(b)(2)(iv)–(v)	Actions Taken to Minimize Emissions During SSM.	No	
§ 63.10(b)(2)(vi)	Recordkeeping for CMS Malfunctions	Yes	
§ 63.10(b)(2)(vii)–(xiv)	Other CMS Requirements	Yes	
§ 63.10(b)(3)	Recordkeeping Requirement for Applicability Determinations.	Yes	
§ 63.10(c)(1)–(6)	Additional Recordkeeping Requirements for Sources with CMS.	Yes	
§ 63.10(c)(7)–(8)	Additional Recordkeeping Requirements for CMS—Identifying Exceedances and Excess Emissions.	Yes	
§ 63.10(c)(9)		No	[Reserved].
§ 63.10(c)(10)–(11)		No	See § 63.886 for recordkeeping of malfunctions.
§ 63.10(c)(12)–(14)		Yes	
§ 63.10(c)(15)	Use of SSM Plan	No	
§ 63.10(d)(1)–(4)	General Reporting Requirements	Yes	
§ 63.10(d)(5)	SSM Reports	No	See § 63.886(c)(2) for reporting of malfunctions.

TABLE 1 TO SUBPART NN OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART NN—Continued

General provisions citation	Requirement	Applies to subpart NN	Explanation
§ 63.10(e)–(f)	Additional CMS Reports Excess Emission/ CMS Performance Reports COMS Data Reports Recordkeeping/Reporting Waiver.	Yes	
§ 63.11(a)–(b)	Control Device Requirements Applicability Flares.	No	Flares will not be used to comply with the emissions limits.
§ 63.11(c)	Alternative Work Practice for Monitoring Equipment for Leaks.	Yes	
§ 63.11(d)	Alternative Work Practice Standard	Yes	
§ 63.11(e)	Alternative Work Practice Requirements	Yes	
§ 63.12	State Authority and Delegations	Yes	
§ 63.13	Addresses	Yes	
§ 63.14	Incorporation by Reference	Yes	
§ 63.15	Information Availability/Confidentiality	Yes	
§ 63.16	Performance Track Provisions	Yes	

Subpart DDD—National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production

■ 3. Section 63.1178 is amended by revising paragraphs (a) and (b)(3) to read as follows:

§ 63.1178 For cupolas, what standards must I meet?

(a) You must control emissions from each cupola as specified in Table 2 to this subpart.

(b) * * *

(3) Additionally, on or after the applicable compliance date for each new or reconstructed cupola, you must either:

(i) Maintain the operating temperature of the incinerator so that the average operating temperature for each three-hour block period never falls below the average temperature established during the performance test, or

(ii) Maintain the percent excess oxygen in the cupola at or above the level established during the performance test. You must determine the percent excess oxygen using the following equation:

$$\text{Percent excess oxygen} = \left(\left(\frac{\text{Oxygen available}}{\text{Fuel demand for oxygen}}\right) - 1\right) * 100$$

Where:

Percent excess oxygen = Percentage of excess oxygen present above the stoichiometric balance of 1.00, (%).

1.00 = Ratio of oxygen in a cupola combustion chamber divided by the stoichiometric quantity of oxygen required to obtain complete combustion of fuel.

Oxygen available = Quantity of oxygen introduced into the cupola combustion zone.

Fuel demand for oxygen = Required quantity of oxygen for stoichiometric combustion of the quantity of fuel present.

■ 4. Section 63.1179 is amended by revising the section heading, paragraph (a), and paragraph (b) introductory text to read as follows:

§ 63.1179 For curing ovens or combined collection/curing operations, what standards must I meet?

(a) You must control emissions from each curing oven or combined collection/curing operations as specified in Table 2 to this subpart.

(b) You must meet the following operating limits for each curing oven or combined collection/curing operation:

* * * * *

■ 5. Section 63.1180 is revised to read as follows:

§ 63.1180 When must I meet these standards?

(a) Cupolas and curing ovens or combined collection/curing operations. You must comply with the emissions limits specified in Table 2 to this subpart no later than the dates specified in Table 2 to this subpart.

(b) At all times, you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

■ 6. Section 63.1182 is amended by revising the section heading, the introductory text, and paragraphs (a) and (b) to read as follows:

§ 63.1182 How do I comply with the carbon monoxide, carbonyl sulfide, hydrogen fluoride, and hydrogen chloride standards for existing, new, and reconstructed cupolas?

To comply with the carbon monoxide, carbonyl sulfide, hydrogen fluoride, and hydrogen chloride standards, you must meet the following:

(a) Install, calibrate, maintain, and operate a device that continuously measures the operating temperature in the firebox of each thermal incinerator.

(b) Conduct a performance test as specified in § 63.1188 that shows compliance with the carbon monoxide, carbonyl sulfide, hydrogen fluoride, and hydrogen chloride emissions limits specified in Table 2 to this subpart, while the device for measuring incinerator operating temperature is installed, operational, and properly calibrated. Establish the average operating temperature based on the performance test as specified in § 63.1185(a).

* * * * *

■ 7. Section 63.1183 is amended by revising the section heading, the introductory text, and paragraphs (b) and (d) to read as follows:

§ 63.1183 How do I comply with the formaldehyde, phenol, and methanol standards for existing, new, and reconstructed combined collection/curing operations?

To comply with the formaldehyde, phenol, and methanol standards, you must meet all of the following:

* * * * *

(b) Conduct a performance test as specified in § 63.1188 while manufacturing the product that requires a binder formulation made with the resin containing the highest free-formaldehyde content specification range. Show compliance with the formaldehyde, phenol, and methanol emissions limits, specified in Table 2 to this subpart, while the device for measuring the control device operating parameter is installed, operational, and properly calibrated. Establish the average operating parameter based on the performance test as specified in § 63.1185(a).

* * * * *

(d) Following the performance test, monitor and record the free-formaldehyde content of each resin lot and the formulation of each batch of binder used, including the formaldehyde, phenol, and methanol content.

* * * * *

■ 8. Section 63.1188 is amended by revising paragraphs (b), (c), (d), (e), and (f) to read as follows:

§ 63.1188 What performance test requirements must I meet?

* * * * *

(b) Conduct a performance test, consisting of three test runs, for each cupola and curing oven or combined collection/curing operation subject to this subpart at the maximum production rate to demonstrate compliance with each of the applicable emissions limits specified in Table 2 to this subpart.

(c) Following the initial performance or compliance test to be conducted within 180 days of the effective date of this rule, you must conduct a performance test to demonstrate compliance with each of the applicable emissions limits specified in Table 2 to this subpart, at least once every 5 years.

(d) To demonstrate compliance with the applicable emission limits specified in Table 2 to this subpart, measure emissions of PM, carbon monoxide, carbonyl sulfide, hydrogen fluoride, and hydrogen chloride from each existing, new, or reconstructed cupola.

(e) To demonstrate compliance with the applicable emission limits specified in Table 2 to this subpart, measure emissions of formaldehyde, phenol, and methanol from each existing, new, or reconstructed curing oven or combined collection/curing operation.

(f) To demonstrate compliance with the applicable emission limits specified in Table 2 to this subpart, measure emissions at the outlet of the control device for PM, carbon monoxide, carbonyl sulfide, hydrogen fluoride, hydrogen chloride, formaldehyde, phenol, and methanol.

* * * * *

■ 9. Section 63.1189 is amended by revising paragraph (g) and adding paragraph (i) to read as follows:

§ 63.1189 What test methods do I use?

* * * * *

(g) Method 318 at 40 CFR part 60, appendix A to this part for the concentration of formaldehyde, phenol, methanol, and carbonyl sulfide.

* * * * *

(i) Method 26A or 320 at 40 CFR part 60, appendix A to this part for the concentration of hydrogen fluoride and hydrogen chloride.

■ 10. Section 63.1190 is amended by revising paragraph (b) introductory text and the definition of ''MW,'' and by removing paragraph (c) to read as follows:

§ 63.1190 How do I determine compliance?

* * * * *

(b) Using the results from the performance tests, you must use the following equation to determine compliance with the carbon monoxide, carbonyl sulfide, hydrogen fluoride, hydrogen chloride, formaldehyde, phenol, and methanol numerical emissions limits as specified in Table 2 to this subpart:

* * * * *

MW = Molecular weight of measured pollutant, g/g-mole: Carbon monoxide = 28.01, carbonyl sulfide = 60.07, hydrogen fluoride = 20.01, hydrogen chloride = 36.46, Formaldehyde = 30.03, Phenol = 94.11, Methanol = 32.04.

* * * * *

■ 11. Section 63.1191 is amended by revising the introductory text to read as follows:

§ 63.1191 What notifications must I submit?

You must submit written or electronic notifications to the Administrator as required by § 63.9(b) through (h). Electronic notifications are encouraged when possible. These notifications include, but are not limited to, the following:

* * * * *

■ 12. Section 63.1192 is amended by revising paragraph (d) to read as follows:

§ 63.1192 What recordkeeping requirements must I meet?

* * * * *

(d) Records must be maintained in a form suitable and readily available for expeditious review, according to § 63.10 of the General Provisions that are referenced in Table 1 to this subpart. Electronic recordkeeping is encouraged.

* * * * *

■ 13. Section 63.1193 is amended by revising paragraph (a), removing and reserving paragraph (b), and adding a new paragraph (g) to read as follows:

§ 63.1193 What reports must I submit?

* * * * *

(a) Within 60 days after the date of completing each performance test (as defined in § 63.2) required by this subpart, you must submit the results of the performance tests, including any associated fuel analyses, following the procedure specified in either paragraph (a)(1) or (2) of this section.

(1) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT Web site (*http://www.epa.gov/ttn/chief/ert/index.html*), you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (*http://cdx.epa.gov/epa_home.asp*). Performance test data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit performance test data in an electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT Web site, once the XML schema is available. If you claim that some of the performance test information being submitted is confidential business information (CBI), you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT Web site, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–

02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(2) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT Web site, you must submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13.

(b) [Reserved]

* * * * *

(g) All reports required by this subpart not subject to the requirements in paragraph (a) of this section must be sent to the Administrator at the appropriate address listed in § 63.13. If acceptable to both the Administrator and the owner or operator of a source, these reports may be submitted on electronic media. The Administrator retains the right to require submittal of reports subject to paragraph (a) of this section in paper format.

■ 14. Section 63.1196 is amended by:

■ a. Adding in alphabetical order definitions for ''Closed-top cupola'', ''Combined collection/curing operations'', ''Open-top cupola'', and ''Slag''; and

■ b. Revising the definition of ''Incinerator'' and ''New Source''.

The additions and revision read as follows:

§ 63.1196 What definitions should I be aware of?

* * * * *

Closed-top cupola means a cupola that operates as a closed (process) system and has a restricted air flow rate.

* * * * *

Combined collection/curing operations means the combination of fiber collection operations and curing ovens used to make bonded products.

* * * * *

Incinerator means an enclosed air pollution control device that uses controlled flame combustion to convert combustible materials to noncombustible gases. For the purposes of this subpart, the term ''incinerator'' means ''regenerative thermal oxidizer''.

* * * * *

New Source means any affected source that commences construction or reconstruction after May 8, 1997 for purposes of determining the applicability of the emissions limits in Rows 1–4 of Table 2. For all other emission limits new source means any affected source that commences construction or reconstruction after November 25, 2011.

* * * * *

Open-top cupola means a cupola that is open to the outside air and operates with an air flow rate that is unrestricted and at low pressure.

* * * * *

Slag means the by-product materials separated from metals during smelting and refining of raw ore.

* * * * *

■ 15. Section 63.1197 is added to read as follows:

§ 63.1197 Startups and shutdowns.

(a) The provisions set forth in this subpart apply at all times.

(b) You must not shut down items of equipment that are utilized for compliance with this subpart during times when emissions are being, or are otherwise required to be, routed to such items of equipment.

(c) Startup begins when fuels are ignited in the cupola. Startup ends when the cupola produces molten material.

(d) Shutdown begins when the cupola has reached the end of the melting campaign and is empty. No molten material continues to flow from the cupola during shutdown.

(e) During periods of startups and shutdowns you must operate your cupola according to one of the following methods:

(1) You must keep records showing that your emissions were controlled using air pollution control devices operated at the parameters established by the most recent performance test that showed compliance with the standard; or

(2) You must keep records showing the following:

(i) You used only clean fuels during startup and shutdown; and

(ii) You operate the cupola during startup and shutdown with three percent oxygen over the fuel demand for oxygen.

■ 16. Table 1 to subpart DDD of part 63 is revised to read as follows:

TABLE 1 TO SUBPART DDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART DDD

General provisions citation	Requirement	Applies to subpart DDD?	Explanation
§ 63.1(a)(1)–(6)	General Applicability	Yes.	
§ 63.1(a)(7)–(9)		No	[Reserved].
§ 63.1(a)(10)–(12)		Yes.	
§ 63.1(b)(1)	Initial Applicability Determination	Yes.	
§ 63.1(b)(2)		No	[Reserved].
§ 63.1(b)(3)		Yes.	
§ 63.1(c)(1)–(2)	Applicability After Standard Established	Yes.	
§ 63.1(c)(3)–(4)		No	[Reserved].
§ 63.1(c)(5)–(e)		Yes.	
§ 63.2	Definitions	Yes.	
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(2)	Prohibited Activities	Yes.	
§ 63.4(a)(3)–(5)		No	[Reserved].
§ 63.4(b)–(c)		Yes.	
§ 63.5(a)(1)–(b)(2)	Construction/Reconstruction Applicability	Yes.	
§ 63.5(b)(3)–(4)		Yes.	
§ 63.5(b)(5)		No	[Reserved].
§ 63.5(b)(6)		Yes.	
§ 63.5(c)		No	[Reserved].
§ 63.5(d)–(f)		Yes.	
§ 63.6(a)–(d)		Yes.	
§ 63.6(e)(1)(i)	General Duty to Minimize Emissions	No	See § 63.1180(d) for general duty requirement.

TABLE 1 TO SUBPART DDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART DDD—Continued

General provisions citation	Requirement	Applies to subpart DDD?	Explanation
§ 63.6(e)(1)(ii)	Requirement to Correct Malfunctions As Soon As Possible.	No	§ 63.1187(b) specifies additional requirements.
§ 63.6(e)(1)(iii)		Yes.	
§ 63.6(e)(2)		No	[Reserved].
§ 63.6(e)(3)	Startup, Shutdown, Malfunction (SSM) Plan	No	Startups and shutdowns addressed in § 63.1197.
§ 63.6(f)(1)	SSM Exemption	No.	
§ 63.6(f)(2)–(g)		Yes.	
§ 63.6(h)(1)	SSM Exemption	No.	
§ 63.6(h)(2)–(j)		Yes.	
§ 63.7(a)–(d)	Performance Testing Requirements	Yes.	
§ 63.7(e)(1)	Conduct of Performance Tests	No	See § 63.1180.
§ 63.7(e)(2)–(f)		Yes.	
§ 63.7(g)(1)	Data Analysis, Recordkeeping, and Reporting	Yes.	
§ 63.7(g)(2)		No	[Reserved].
§ 63.7(g)(3)–(h)		Yes.	
§ 63.8(a)–(b)	Monitoring Requirements	Yes.	
§ 63.8(c)(1)(i)	General Duty to Minimize Emissions and CMS Operation.	No	See § 63.1180(e) for general duty requirement.
§ 63.8(c)(1)(ii)		Yes.	
§ 63.8(c)(1)(iii)	Requirement to Develop SSM Plan for CMS	No.	
§ 63.8(c)(2)–(d)(2)		Yes.	
§ 63.8(d)(3)	Written Procedures for CMS	Yes, except for last sentence, which refers to SSM plan. SSM plans are not required..	
§ 63.8(e)–(g)		Yes.	
§ 63.9(a)	Applicability and General Information	Yes.	
§ 63.9(b)(1)–(2)	Initial Notifications	Yes.	
§ 63.9(b)(3)		No	[Reserved].
§ 63.9(b)(4)–(b)(5)		Yes.	
§ 63.9(c)–(j)		Yes.	
§ 63.10(a)	Recordkeeping and Reporting Requirements	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements	Yes.	
§ 63.10(b)(2)(i)	Recordkeeping of Occurrence and Duration of Startups and Shutdowns.	No.	
§ 63.10(b)(2)(ii)	Recordkeeping of Malfunctions	No	See § 63.1193(c) for recordkeeping of (ii) occurrence and duration and (iii) actions taken during malfunction.
§ 63.10(b)(2)(iii)	Maintenance Records	Yes.	
§ 63.10(b)(2)(iv)–(v)	Actions Taken to Minimize Emissions During SSM.	No.	
§ 63.10(b)(2)(vi)	Recordkeeping for CMS Malfunctions	Yes.	
§ 63.10(b)(2)(vii)–(xiv)	Other CMS Requirements	Yes.	
§ 63.10(b)(3)	Recordkeeping Requirement for Applicability Determinations.	Yes.	
§ 63.10(c)(1)–(6)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(7)–(8)	Additional Recordkeeping Requirements for CMS—Identifying Exceedances and Excess Emissions.	Yes.	
§ 63.10(c)(9)		No	[Reserved].
§ 63.10(c)(10)–(11)		No	See § 63.1192 for recordkeeping of malfunctions.
§ 63.10(c)(12)–(14)		Yes.	
§ 63.10(c)(15)	Use of SSM Plan	No.	
§ 63.10(d)(1)–(4)	General Reporting Requirements	Yes.	
§ 63.10(d)(5)	SSM Reports	No	See § 63.1193(f) for reporting of malfunctions.
§ 63.10(e)–(f)	Additional CMS Reports Excess Emission/CMS Performance Reports COMS Data Reports Recordkeeping/Reporting Waiver.	Yes.	
§ 63.11(a)–(b)	Control Device Requirements Applicability Flares.	No	Flares will not be used to comply with the emissions limits.
§ 63.11(c)	Alternative Work Practice for Monitoring Equipment for Leaks.	Yes.	
§ 63.11(d)	Alternative Work Practice Standard	Yes.	
§ 63.11(e)		Yes.	
§ 63.12	State Authority and Delegations	Yes.	
§ 63.13	Addresses	Yes.	

TABLE 1 TO SUBPART DDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART DDD—Continued

General provisions citation	Requirement	Applies to subpart DDD?	Explanation
§ 63.14	Incorporation by Reference	Yes.	
§ 63.15	Information Availability/Confidentiality	Yes.	
§ 63.16	Performance Track Provisions	Yes.	

■ 17. Subpart DDD is amended by adding Table 2 to read as follows:

TABLE 2 TO SUBPART DDD OF PART 63—EMISSIONS LIMITS AND COMPLIANCE DATES

If your source is a:	And you commenced construction:	Your emission limits are: [1]	And you must comply by: [2]
1. Cupola	On or before May 8, 1997	0.10 lb PM per ton of melt	June 2, 2002.
2. Cupola	After May 8, 1997	0.10 lb PM per ton of melt	June 1, 1999.
3. Cupola	On or before May 8, 1997	a. 0.10 lb carbon monoxide (CO) per ton of melt,[3] or b. Reduction of uncontrolled CO by at least 99 percent [3].	June 2, 2002.
4. Cupola	After May 8, 1997 but on or before November 25, 2011.	a. 0.10 lb CO per ton of melt,[3] or b. Reduction of uncontrolled CO by at least 99 percent.[3]	June 1, 1999.
5. Closed-top cupola	On or before November 25, 2011	3.4 lb of carbonyl sulfide (COS) per ton melt.	July 30, 2018.
6. Closed-top cupola	After November 25, 2011	0.062 lb of COS per ton melt	July 29, 2015.[4]
7. Open-top cupola	On or before November 25, 2011	6.8 lb of COS per ton melt	July 30, 2018.
8. Open-top cupola	After November 25, 2011	3.2 lb of COS per ton melt	July 29, 2015.[4]
9. Cupola using slag as a raw material	On or before November 25, 2011	0.16 lb of hydrogen fluoride (HF) per ton melt. 0.44 lb of hydrogen chloride (HCl) per ton melt.	July 30, 2018.
10. Cupola using slag as a raw material.	After November 25, 2011	0.015 lb of HF per ton melt 0.012 lb of HCl per ton melt.	July 29, 2015.[4]
11. Cupola not using slag as a raw material.	On or before November 25, 2011	0.13 lb of HF per ton melt 0.43 lb of HCl per ton melt.	July 30, 2018.
12. Cupola not using slag as a raw material.	After November 25, 2011	0.018 lb of HF per ton melt 0.015 lb of HCl per ton melt.	July 29, 2015.[4]
17. Curing oven	On or before May 8, 1997	a. 0.06 lb of formaldehyde per ton of melt,[3] or b. Reduction of uncontrolled formaldehyde by at least 80 percent.[3]	June 2, 2002.
18. Curing oven	After May 8, 1997 but before November 25, 2011.	a. 0.06 lb of formaldehyde per ton of melt,[3] or b. Reduction of uncontrolled formaldehyde by at least 80 percent.[3]	June 1, 1999.
19. Combined drum collection/curing operation.	On or before November 25, 2011	0.17 lb of formaldehyde per ton of melt. 0.28 lb of methanol per ton melt. 0.85 lb of phenol per ton melt.	July 30, 2018.
20. Combined drum collection/curing operation.	After November 25, 2011	0.17 lb of formaldehyde per ton of melt. 0.28 lb of methanol per ton melt. 0.85 lb of phenol per ton melt.	July 29, 2015.[4]
21. Combined horizontal collection/curing operation.	On or before November 25, 2011	0.63 lb of formaldehyde per ton of melt. 0.049 lb of methanol per ton melt. 0.12 lb of phenol per ton melt.	July 30, 2018.
22. Combined horizontal collection/curing operation.	After November 25, 2011	0.63 lb of formaldehyde per ton of melt. 0.049 lb of methanol per ton melt. 0.12 lb of phenol per ton melt.	July 29, 2015.[4]
23. Combined vertical collection/curing operation.	On or before November 25, 2011	2.4 lb of formaldehyde per ton melt 0.92 lb of methanol per ton melt. 0.71 lb of phenol per ton melt.	July 30, 2018.
24. Combined vertical collection/curing operation.	After November 25, 2011	2.4 lb of formaldehyde per ton melt 0.92 lb of methanol per ton melt. 0.71 lb of phenol per ton melt.	July 29, 2015.[4]

[1] The numeric emissions limits do not apply during startup and shutdown.

[2] Existing sources must demonstrate compliance by the compliance dates specified in this table. New sources have 180 days after the applicable compliance date to demonstrate compliance.

[3] This emissions limit does not apply after July 30, 2018.

[4] Or upon initial startup, whichever is later.

Subpart NNN—National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing

■ 18. Section 63.1380 is amended by revising paragraph (b)(3) to read as follows:

§ 63.1380 Applicability.

* * * * *

(b) * * *

(3) Each new and existing flame attenuation wool fiberglass manufacturing line producing a bonded product.

* * * * *

■ 19. Section 63.1381 is amended by:

■ a. Adding in alphabetical order a definition for ''Gas-fired glass-melting furnace''; and

■ b. Revising the definitions of ''Incinerator'' and ''New source''.

The addition and revisions read as follows:

§ 63.1381 Definitions.

* * * * *

Gas-fired glass-melting furnace means a unit comprising a refractory vessel in which raw materials are charged, melted at high temperature using natural gas and other fuels, refined, and conditioned to produce molten glass. The unit includes foundations, superstructure and retaining walls, raw material charger systems, heat exchangers, exhaust system, refractory brick work, fuel supply and electrical boosting equipment, integral control systems and instrumentation, and appendages for conditioning and distributing molten glass to forming processes. The forming apparatus, including flow channels, is not considered part of the gas-fired glass-melting furnace. Cold-top electric furnaces as defined in this subpart are not gas-fired glass-melting furnaces.

* * * * *

Incinerator means an enclosed air pollution control device that uses controlled flame combustion to convert combustible materials to noncombustible gases. For the purposes of this subpart, the term ''incinerator'' means ''regenerative thermal oxidizer''.

* * * * *

New source means any affected source that commences construction or reconstruction after March 31, 1997 for purposes of determining the applicability of the emission limits in rows 1, 2 and 7 through 11 in Table 2. New source means any affected source that commences construction or reconstruction after November 25, 2011 for purposes of determining the applicability of all other emissions limits.

* * * * *

■ 20. Section 63.1382 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (c), and adding new pargraph (b) and paragraph (c)(11) to read as follows:

§ 63.1382 Emission standards.

(a) You must control emissions from each glass-melting furnace, rotary spin manufacturing line, and flame attenuation manufacturing line as specified in Table 2 to this subpart.

(b) On or after July 29, 2015 to reduce emissions of hydrogen chloride and hydrogen fluoride from each existing, new, or reconstructed glass-melting furnace, you must either:

(1) Require cullet providers to provide records of their inspections showing that no glass from industrial (also known as continuous strand, or textile) fiberglass, cathode ray tubes (CRT), computer monitors that include CRT, and glass from microwave ovens, televisions or other electronics is included in the cullet; or

(2) Sample your raw materials and maintain records of your sampling showing that the cullet is free of glass from industrial fiberglass, cathode ray tubes, computer monitors that include cathode ray tubes, and glass from microwave ovens, televisions or other electronics.

(c) * * *

(11) The owner or operator must maintain the percentage of cullet in the materials mix for each gas-fired glass-melting furnace at or below the level established during the performance test as specified in § 63.1384(a)(4).

■ 21. Section 63.1383 is amended by revising paragraphs (f) and (m) to read as follows:

§ 63.1383 Monitoring requirements.

* * * * *

(f) If you use a control device to control HAP emissions from a glass-melting furnace, RS manufacturing line, or FA manufacturing line, you must install, calibrate, maintain, and operate a monitoring device that continuously measures an appropriate parameter for the control device. You must establish the value of that parameter during the performance test conducted to demonstrate compliance with the applicable emission limit as specified in Table 2 to this subpart.

* * * * *

(m) For all control device and process operating parameters measured during the initial performance tests, including the materials mix used in the test, you may change the limits established during the initial performance tests if you conduct additional performance testing to verify that, at the new control device or process parameter levels, you comply with the applicable emission limits specified in Table 2 to this subpart. You must conduct all additional performance tests according to the procedures in this part 63, subpart A and in § 63.1384.

■ 22. Section 63.1384 is amended by revising paragraphs (a)(4) and (c) introductory text, and the definitions of ''E'', ''C'', and ''MW'', and adding paragraphs (d) and (e) to read as follows:

§ 63.1384 Performance test requirements.

(a) * * *

(4) The owner or operator shall conduct a performance test for each existing and new gas-fired glass-melting furnace. During the performance test of each gas-fired glass-melting furnace, the owner or operator must measure and record the materials mix, including the percentages of raw materials and cullet, melted in the furnace during the performance test.

* * * * *

(c) To determine compliance with the emission limits specified in Table 2 to this subpart, for formaldehyde for RS manufacturing lines; formaldehyde, phenol, and methanol for FA manufacturing lines; and chromium compounds for gas-fired glass-melting furnaces, use the following equation:

* * * * *

E = Emission rate of formaldehyde, phenol, methanol, chromium compounds, kg/Mg (lb/ton) of glass pulled;

C = Measured volume fraction of formaldehyde, phenol, methanol, chromium compounds, ppm;

MW = Molecular weight of formaldehyde, 30.03 g/g-mol; molecular weight of phenol, 94.11 g/g-mol; molecular weight of methanol, 32.04 g/g-mol; molecular weight of chromium compounds tested in g/g-mol.

* * * * *

(d) Following the initial performance or compliance test conducted to demonstrate compliance with the chromium compounds emissions limit specified in Table 2 to this subpart, you must conduct an annual performance test for chromium compounds emissions from each gas-fired glass-melting furnace (no later than 12 calendar months following the previous compliance test).

(e) Following the initial performance or compliance test to demonstrate compliance with the PM, formaldehyde, phenol, and methanol emissions limits specified in Table 2 to this subpart, you must conduct a performance test to

demonstrate compliance with each of the applicable PM, formaldehyde, phenol, and methanol emissions limits in § 63.1382 at least once every five years.

■ 23. Section 63.1385 is amended by revising paragraphs (a)(5) and (6), redesignating paragraph (a)(10) as paragraph (a)(13), and adding paragraphs (a)(10) through (12) to read as follows:

§ 63.1385 Test methods and procedures.

(a) * * *

(5) Method 5 or Method 29 (40 CFR part 60, appendix A–3) for the concentration of total PM. When using Method 5, each run must consist of a minimum sample volume of 2 dry standard cubic meters (dscm). When using Method 29, each run must consist of a minimum sample volume of 3 dscm. When measuring PM concentration using either Method 5 or 29, the probe and filter holder heating system must be set to provide a gas temperature no greater than 120±14°C (248±25 °F).

(6) For measuring the concentration of formaldehyde, use one of the following test methods:

(i) Method 318 (appendix A of this part). Each test run must consist of a minimum of 10 spectra.

(ii) Method 316 (appendix A of this part). Each test run must consist of a minimum of 2 dry standard cubic meters (dscm) of sample volume.

* * * * *

(10) For measuring the concentration of phenol, use Method 318 (appendix A of this part). Each test run must consist of a minimum of 10 spectra.

(11) For measuring the concentration of methanol, use one of the following test methods:

(i) Method 318 (appendix A of this part). Each test run must consist of a minimum of 10 spectra.

(ii) Method 308 (appendix A of this part). Each test run must consist of a minimum of 2 hours.

(12) Method 29 (40 CFR part 60, appendix A–8) for the concentration of chromium compounds. Each test run must consist of a minimum sample volume of 3 dscm.

* * * * *

■ 24. Section 63.1386 is amended by revising paragraphs (a)(2) through (4), removing and reserving paragraph (b), revising paragraph (c), and adding paragraphs (d)(2)(x) and (xi), (f) and (g) to read as follows:

§ 63.1386 Notification, recordkeeping, and reporting requirements.

(a) * * *

(2) Notification that a source is subject to the standard, where the initial startup is before November 25, 2011.

(3) Notification that a source is subject to the standard, where the source is new or has been reconstructed the initial startup is after November 25, 2011, and for which an application for approval of construction or reconstruction is not required;

(4) Notification of intention to construct a new affected source or reconstruct an affected source; of the date construction or reconstruction commenced; of the anticipated date of startup; of the actual date of startup, where the initial startup of a new or reconstructed source occurs after November 25, 2011, and for which an application for approval or construction or reconstruction is required (See § 63.9(b)(4) and (5));

* * * * *

(c) *Records and reports for a failure to meet a standard.* (1) In the event that an affected unit fails to meet a standard, record the number of failures since the prior notification of compliance status. For each failure record the date, time, and duration of each failure.

(2) For each failure to meet a standard record and retain a list of the affected source or equipment, an estimate of the volume of each regulated pollutant emitted over the standard for which the source failed to meet the standard, and a description of the method used to estimate the emissions.

(3) Record actions taken to minimize emissions in accordance with § 63.1382, including corrective actions to restore process and air pollution control and monitoring equipment to its normal or usual manner of operation.

(4) If an affected unit fails to meet a standard, report such events in the notification of compliance status required by § 63.1386(a)(7). Report the number of failures to meet a standard since the prior notification. For each instance, report the date, time, and duration of each failure. For each failure the report must include a list of the affected units or equipment, an estimate of the volume of each regulated pollutant emitted over the standard, and a description of the method used to estimate the emissions.

(d) * * *

(2) * * *

(x) Records of your cullet sampling or records of inspections from cullet providers.

(xi) For each gas-fired glass-melting furnace that uses cullet, records of the daily average cullet percentage, and the 30-day rolling average percent cullet in the materials mix charged to the furnace. The initial daily average should be recorded on the compliance date and the first 30-day rolling average should be calculated 30 days after the compliance date.

* * * * *

(f) Within 60 days after the date of completing each performance test (as defined in § 63.2) required in this subpart, you must submit the results of the performance tests, including any associated fuel analyses, following the procedure specified in either paragraph (f)(1) or (2) of this section.

(1) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT Web site (*http://www.epa.gov/ttn/chief/ert/index.html*), you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (*http://cdx.epa.gov/epa_home.asp*). Performance test data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit performance test data in an electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT Web site, once the XML schema is available. If you claim that some of the performance test information being submitted is confidential business information (CBI), you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT Web site, including information claimed to be CBI, on a compact disc, flash drive or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(2) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT Web site, you must submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13.

(g) All reports required by this subpart not subject to the requirements in paragraph (f) of this section must be sent to the Administrator at the appropriate address listed in § 63.13. If acceptable to both the Administrator and the owner or

operator of a source, these reports may be submitted on electronic media. The Administrator retains the right to require submittal of reports subject to paragraph (f) of this section in paper format.

■ 25. Section 63.1387 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 63.1387 Compliance dates.

(a) *Compliance dates.* You must comply with the emissions limits by the dates specified in Table 2 to this subpart.

* * * * *

(c) At all times, you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

■ 26. Section 63.1389 is added to read as follows:

§ 63.1389 Startups and shutdowns.

(a) The provisions set forth in this subpart apply at all times.

(b) You must not shut down items of equipment that are required or utilized for compliance with the provisions of this subpart during times when emissions are being, or are otherwise required to be, routed to such items of equipment.

(c) Startup begins when the wool fiberglass glass-melting furnace has any raw materials added and reaches 50 percent of its typical operating temperature. Startup ends when molten glass begins to flow from the wool fiberglass glass-melting furnace. For cold-top electric furnaces, startup ends when the batch cover is established and the temperature of the glass batch-cover surface is below 300 °F.

(d) Shutdown begins when the heat sources to the glass-melting furnace are reduced to begin the glass-melting furnace shut down process. Shutdown ends when the glass-melting furnace is empty or the contents are sufficiently viscous to preclude glass flow from the glass-melting furnace.

(e) During periods of startup and shutdown in a cold-top furnace that is routed to a baghouse during normal operation, you must establish the batch cover and operate your furnace according to the following requirements during startup and shutdown:

(1) You must keep records showing that you used only natural gas or other clean fuels to heat each furnace; and

(2) Except after batch cover is established, you must keep records showing that you used only cullet as a raw material during the startup of each cold-top furnace; and

(3) Once a batch cover is established and a control device can be safely operated, you must keep records showing that furnace emissions were controlled using air pollution control devices operated at the parameters established by the most recent performance test that showed compliance with the standard.

(4) During periods of shutdown in a cold-top furnace, until the conditions above the glass reach a point at which the control device may be damaged if it continues to operate, you must keep records showing furnace emissions were controlled using air pollution control devices operated at the parameters established by the most recent performance test that showed compliance with the standard.

(f) During both periods of startups and shutdowns for all furnace types other than cold-top furnaces, you must operate each furnace according to the following requirements:

(1) You must record the type of fuel used to heat the furnace during startup and shutdown to demonstrate that you used only natural gas or other clean fuels; and

(2) You must keep records showing that furnace emissions were controlled using air pollution control devices operated at the parameters established by the most recent performance test that showed compliance with the standard.

■ 27. Table 1 to subpart NNN of part 63 is revised to read as follows:

TABLE 1 TO SUBPART NNN OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART NNN

General provisions citation	Requirement	Applies to subpart NNN?	Explanation
§ 63.1(a)(1)–(5)	Applicability	Yes.	
§ 63.1(a)(6)		Yes.	
§ 63.1(a)(7)–(9)		No	[Reserved].
§ 63.1(a)(10)–(12)		Yes.	
§ 63.1(b)(1)	Initial Applicability Determination	Yes.	
§ 63.1(b)(2)		No	[Reserved].
§ 63.1(b)(3)		Yes.	
§ 63.1(c)(1)–(2)		Yes.	
§ 63.1(c)(3)–(4)		No	[Reserved].
§ 63.1(c)(5)–(e)		Yes.	
§ 63.2	Definitions	Yes.	
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(2)	Prohibited Activities	Yes.	
§ 63.4(a)(3)–(5)		No	[Reserved].
§ 63.4(b)–(c)		Yes.	
§ 63.5(a)–(b)(2)	Construction/Reconstruction Applicability	Yes.	
§ 63.5(b)(3)–(4)		Yes.	
§ 63.5(b)(5)		No	[Reserved].
§ 63.5(b)(6)		Yes.	
§ 63.5(c)		No	[Reserved].
§ 63.5(d)	Application for Approval of Construction or Reconstruction.	Yes.	
§ 63.5(e)	Approval of Construction/Reconstruction	Yes.	
§ 63.5(f)	Approval of Construction/Reconstruction Based on State Review.	Yes.	

TABLE 1 TO SUBPART NNN OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART NNN—Continued

General provisions citation	Requirement	Applies to subpart NNN?	Explanation
§ 63.6(a)–(d)	Compliance with Standards and Maintenance Requirements.	Yes.	
§ 63.6(e)(1)(i)	General Duty to Minimize Emissions	No	See § 63.1382(b) for general duty requirement.
§ 63.6(e)(1)(ii)	Requirement to Correct Malfunctions As Soon As Possible.	No	§ 63.1382(b) specifies additional requirements.
§ 63.6(e)(1)(iii)		Yes.	
§ 63.6(e)(2)		No	[Reserved].
§ 63.6(e)(3)	Startup, Shutdown, Malfunction (SSM) Plan	No	Startups and shutdowns addressed in § 63.1388.
§ 63.6(f)(1)	SSM Exemption	No.	
§ 63.6(f)(2)–(3)	Methods for Determining Compliance	Yes.	
§ 63.6(g)	Use of an Alternative Nonopacity Emission Standard.	Yes.	
§ 63.6(h)(1)	SSM Exemption	No.	
§ 63.6(h)(2)–(j)		Yes.	
§ 63.7(a)–(d)		Yes.	
§ 63.7(e)(1)	Performance Testing	No	See § 63.1382(b).
§ 63.7(e)(2)–(e)(4)		Yes.	
§ 63.7(f)	Alternative Test Method	Yes.	
§ 63.7(g)(1)	Data Analysis	Yes.	
§ 63.7(g)(2)		No	[Reserved].
§ 63.7(g)(3)		Yes.	
§ 63.7(h)	Waiver of Performance Test	Yes.	
§ 63.8(a)–(b)	Monitoring Requirements	Yes.	
§ 63.8(c)(1)(i)	General Duty to Minimize Emissions and CMS Operation.	No	See § 63.1382(c) for general duty requirement.
§ 63.8(c)(1)(ii)		Yes.	
§ 63.8(c)(1)(iii)	Requirement to Develop SSM Plan for CMS	No.	
§ 63.8(d)(1)–(2)	Quality Control Program	Yes.	
§ 63.8(d)(3)	Written Procedures for CMS	Yes, except for last sentence, which refers to SSM plan. SSM plans are not required.	
§ 63.8(e)–(g)		Yes.	
§ 63.9(a)	Notification Requirements	Yes.	
§ 63.9(b)(1)–(2)	Initial Notifications	Yes.	
§ 63.9(b)(3)		No	[Reserved].
§ 63.9(b)(4)–(j)		Yes.	
§ 63.10(a)	Recordkeeping and Reporting Requirements	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements	Yes.	
§ 63.10(b)(2)(i)	Recordkeeping of Occurrence and Duration of Startups and Shutdowns.	No.	
§ 63.10(b)(2)(ii)	Recordkeeping of Malfunctions	No	See § 63.1386 (c)(1) through (3) for recordkeeping of occurrence and duration and actions taken during a failure to meet a standard.
§ 63.10(b)(2)(iii)	Maintenance Records	Yes.	
§ 63.10(b)(2)(iv)–(v)	Actions Taken to Minimize Emissions During SSM.	No.	
§ 63.10(b)(2)(vi)	Recordkeeping for CMS Malfunctions	Yes.	
§ 63.10(b)(2)(vii)–(xiv)	Other CMS Requirements	Yes.	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§ 63.10(c)(1)–(6)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(7)–(8)	Additional Recordkeeping Requirements for CMS—Identifying Exceedances and Excess Emissions.	Yes.	
§ 63.10(c)(9)		No	[Reserved].
§ 63.10(c)(10)–(11)		No	See § 63.1386 for recordkeeping of malfunctions.
§ 63.10(c)(12)–(c)(14)		Yes.	
§ 63.10(c)(15)	Use of SSM Plan	No.	
§ 63.10(d)(1)–(4)	General Reporting Requirements	Yes.	
§ 63.10(d)(5)	SSM Reports	No	See § 63.1386(c)(iii) for reporting of malfunctions.

TABLE 1 TO SUBPART NNN OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART NNN—Continued

General provisions citation	Requirement	Applies to subpart NNN?	Explanation
§ 63.10(e)–(f)	Additional CMS Reports Excess Emission/ CMS Performance Reports COMS Data Reports Recordkeeping/Reporting Waiver.	Yes.	
§ 63.11(a)–(b)	Control Device Requirements Applicability Flares.	No	Flares will not be used to comply with the emissions limits.
§ 63.11(c)	Alternative Work Practice for Monitoring Equipment for Leaks.	Yes.	
§ 63.11(d)	Alternative Work Practice Standard	Yes.	
§ 63.11(e)	Alternative Work Practice Requirements	Yes.	
§ 63.12	State Authority and Delegations	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes.	
§ 63.15	Availability of Information/Confidentiality	Yes.	
§ 63.16	Performance Track Provisions	Yes.	

■ 28. Subpart NNN is amended by adding Table 2 to read as follows:

TABLE 2 TO SUBPART NNN OF PART 63—EMISSIONS LIMITS AND COMPLIANCE DATES

If your source is a:	And you commenced construction:	Your emission limits are: [1]	And you must comply by: [2]
1. Glass-melting furnace	On or before March 31, 1997	0.5 lb PM per ton of glass pulled [3]	June 14, 2002.
2. Glass-melting furnace	After March 31, 1997 but on or before November 25, 2011.	0.5 lb PM per ton of glass pulled [3]	June 14, 1999.
3. Glass-melting furnace	On or before November 25, 2011	0.33 lb PM per ton of glass pulled	July 31, 2017.
4. Glass-melting furnace	After November 25, 2011	0.33 lb PM per ton of glass pulled	July 29, 2015.[4]
5. Gas-fired glass-melting furnace	On or before November 25, 2011	0.00025 lb chromium compounds per ton of glass pulled.	July 31, 2017.
6. Gas-fired glass-melting furnace	After November 25, 2011	0.00025 lb chromium compounds per ton of glass pulled.	July 29, 2015.[4]
7. Rotary spin manufacturing line	On or before March 31, 1997	1.2 lb Formaldehyde per ton of glass pulled.	June 14, 2002.
8. Rotary spin manufacturing line	After March 31, 1997	0.8 lb Formaldehyde per ton of glass pulled.	June 14, 1999.
9. Flame-attenuation line manufacturing a heavy-density product.	After March 31, 1997 but on or before November 25, 2011.	7.8 lb formaldehyde per ton of glass pulled [3].	June 14, 1999.
10. Flame-attenuation line manufacturing a pipe product.	On or before March 31, 1997	6.8 lb formaldehyde per ton of glass pulled [3].	June 14, 2002.
11. Flame-attenuation line manufacturing a pipe product.	After March 31, 1997 but before November 25, 2011.	6.8 lb formaldehyde per ton of glass pulled [3].	June 14, 1999.
12. Flame-attenuation line manufacturing any product.	On or before November 25, 2011	1.4 lb phenol per ton of glass pulled 5.6 lb formaldehyde per ton of glass pulled. 0.50 lb methanol per ton of glass pulled.	July 31, 2017.
13. Flame-attenuation line manufacturing any product.	After November 25, 2011	0.44 lb phenol per ton of glass pulled 2.6 lb formaldehyde per ton of glass pulled. 0.35 lb methanol per ton of glass pulled.	July 29, 2015.[4]

[1] The numeric limits do not apply during startup and shutdown.
[2] Existing sources must demonstrate compliance by the compliance dates specified in this table. New sources have 180 days after the applicable compliance date to demonstrate compliance.
[3] This limit does not apply after July 31, 2017.
[4] Or initial startup, whichever is later.

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Part III

Environmental Protection Agency

40 CFR Part 51

Revision to the Guideline on Air Quality Models: Enhancements to the AERMOD Dispersion Modeling System and Incorporation of Approaches To Address Ozone and Fine Particulate Matter; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2015–0310; FRL–9930–11–OAR]

RIN 2060–AS54

Revision to the Guideline on Air Quality Models: Enhancements to the AERMOD Dispersion Modeling System and Incorporation of Approaches To Address Ozone and Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of conference.

SUMMARY: In this action, the Environmental Protection Agency (EPA) proposes to revise the *Guideline on Air Quality Models* (''*Guideline*''). The *Guideline* has been incorporated into EPA's regulations, satisfying a requirement under the Clean Air Act (CAA) section 165(e)(3) for the EPA to specify, with reasonable particularity models to be used in the Prevention of Significant Deterioration (PSD) program. It provides EPA-preferred models and other recommended techniques, as well as guidance for their use in predicting ambient concentrations of air pollutants. The proposed revisions to the *Guideline* include enhancements to the formulation and application of the EPA's AERMOD near-field dispersion modeling system and the incorporation of a tiered demonstration approach to address the secondary chemical formation of ozone and fine particulate matter ($PM_{2.5}$) associated with precursor emissions from single sources. Additionally, the EPA proposes various editorial changes to update and reorganize information throughout the *Guideline* to streamline the compliance assessment process.

Within this action, the EPA is also announcing the Eleventh Conference on Air Quality Modeling and invites the public to participate in the conference. The conference will focus on the proposed revisions to the *Guideline* and part of the conference will also serve as the public hearing for these revisions.

DATES: Comments must be received on or before October 27, 2015.

Public hearing and conference: The public hearing for this action and the Eleventh Conference on Air Quality Modeling will be held August 12–13, 2015, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2015–0310, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Email: A-and-R-Docket@epa.gov*. Include docket ID No. EPA–HQ–OAR–2015–0310 in the subject line of the message.
- *Fax:* (202) 566–9744.
- *Mail:* Environmental Protection Agency, Mail code 28221T, Attention Docket No. EPA–HQ–OAR–2015–0310, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Please include a total of two copies.
- *Hand/Courier Delivery:* EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Ave. NW., Washington, DC. 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–HQ–OAR–2015–0310. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be 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 *http://www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* 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 Air and Radiation Docket and Information Center, EPA/DC, Room 3334, WJC West Building, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

Public hearing and conference: The public hearing for this action and the Eleventh Conference on Air Quality Modeling will be held in the EPA Auditorium, Room C111, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: Mr. George M. Bridgers, Air Quality Assessment Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail code C439–01, Research Triangle Park, NC 27711; telephone: (919) 541–5563; fax: (919) 541–0044; email: *Bridgers.George@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. General Information

A. Does this action apply to me?

This action applies to federal, state, territorial, and local air quality management programs that conduct air quality modeling as part of State Implementation Plan (SIP) submittals and revisions, New Source Review (NSR), including new or modifying industrial sources under Prevention of Significant Deterioration (PSD), Conformity, and other air quality assessments required under EPA regulation. Categories and entities potentially regulated by this action include:

Category	NAICS [a] Code
Federal/state/territorial/local/tribal government	924110

[a] North American Industry Classification System.

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

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

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

- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposed rule will also be available on the Worldwide Web (WWW) through the EPA's Technology Transfer Network (TTN). Following signature, a copy of this proposed rule will be posted on the TTN's Support Center for Regulatory Atmospheric Modeling (SCRAM) Web site at the following address: *http://www.epa.gov/ttn/scram*. The TTN provides information and technology exchange in various areas of air pollution control.

II. Background

A. The Guideline on Air Quality Models and EPA Modeling Conferences

The *Guideline* is used by the EPA, other federal, state, territorial, and local air quality agencies, and industry to prepare and review new source permits, source permit modifications, SIP submittals and revisions, conformity, and other air quality assessments required under EPA regulation. The *Guideline* serves as a means by which national consistency is maintained in air quality analyses for regulatory activities under 40 CFR 51.112, 51.117, 51.150, 51.160, 51.165, 51.166, 52.21, 93.116, 93.123, and 93.150.

The EPA originally published the *Guideline* in April 1978 (EPA–450/2–78–027), and it was incorporated by reference in the regulations for the PSD program in June 1978. The EPA revised the *Guideline* in 1986 (51 FR 32176), and updated it with supplement A in 1987 (53 FR 32081), supplement B in July 1993 (58 FR 38816), and supplement C in August 1995 (60 FR 40465). The EPA published the *Guideline* as appendix W to 40 CFR part 51 when the EPA issued supplement B. The EPA republished the *Guideline* in August 1996 (61 FR 41838) to adopt the CFR system for labeling paragraphs. The publication and incorporation of the *Guideline* by reference into the EPA's PSD regulations satisfies the requirement under the CAA section 165(e)(3) for the EPA to promulgate regulations that specify with reasonable particularity models to be used under specified sets of conditions for purposes of the PSD program.

To support the process of developing and revising the *Guideline* during the period of 1977–1988, we held the First, Second, and Third Conferences on Air Quality Modeling as required by CAA section 320 to help standardize modeling procedures. These modeling conferences provided a forum for comments on the *Guideline* and associated revisions, thereby helping us introduce improved modeling techniques into the regulatory process.

In October 1988, we held the Fourth Conference on Air Quality Modeling to advise the public on new modeling techniques and to solicit comments to guide our consideration of any rulemaking needed to further revise the *Guideline*. We held the Fifth Conference in March 1991, which also served as a public hearing for the proposed revisions to the *Guideline.* In August 1995, we held the Sixth Conference as a forum to update our available modeling tools with state-of-the-science techniques and for the public to offer new ideas.

The Seventh Conference was held in June 2000, and also served as a public hearing for another round of proposed changes to the recommended air quality models in the *Guideline.* These changes included the CALPUFF modeling system, AERMOD modeling system, and ISC–PRIME model.

Subsequently, the EPA revised the *Guideline* on April 15, 2003 (68 FR 18440), to adopt CALPUFF as the preferred model for long-range transport

of emissions from 50 to several hundred kilometers and to make various editorial changes to update and reorganize information and remove obsolete models.

We held the Eighth Conference on Air Quality Modeling in September 2005. This conference provided details on changes to the preferred air quality models, including available methods for model performance evaluation and the notice of data availability that the EPA published in September 2003, related to the incorporation of the PRIME downwash algorithm in the AERMOD dispersion model (in response to comments received from the Seventh Conference). Additionally, at the Eighth Conference, a panel of experts discussed the use of state-of-the-science prognostic meteorological data for informing the dispersion models.

The EPA further revised the *Guideline* on November 9, 2005 (70 FR 68218), to adopt AERMOD as the preferred model for near-field dispersion of emissions for distances up to 50 kilometers.

The Ninth Conference on Air Quality Modeling was held in October 2008, and emphasized the following topics: Reinstituting the Model Clearinghouse, review of non-guideline applications of dispersion models, regulatory status updates of AERMOD and CALPUFF, continued discussions on the use of prognostic meteorological data for informing dispersion models, and presentations reviewing the available model evaluation methods.

B. The Tenth Conference on Air Quality Modeling

The most recent EPA modeling conference was the Tenth Conference on Air Quality Modeling held in March 2012. This conference covered multiple topics which have been vital in the development of the proposed revisions to the *Guideline.* The conference addressed updates on the regulatory status and future development of AERMOD and CALPUFF, review of the Mesoscale Model Interface (MMIF) prognostic meteorological data processing tool for dispersion models, draft modeling guidance for compliance demonstrations of the $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS), modeling for compliance demonstration of the 1-hour nitrogen dioxide (NO_2) and sulfur dioxide (SO_2) NAAQS, and new and emerging models/techniques for future consideration under the *Guideline* to address single-source modeling for ozone and secondary $PM_{2.5}$, as well as long-range transport and chemistry. A transcript of the conference proceedings and a document that summarizes the public comments received are available at EPA's SCRAM Web site at *http://www.epa.gov/ttn/scram/10thmodconf.htm.*

The EPA promulgated a new 1-hour NAAQS for NO_2 in January 2010, and a new 1-hour NAAQS for SO_2 in June 2010. Although AERMOD evaluations that formed the basis of its promulgation as the EPA's preferred dispersion model demonstrated that AERMOD provides generally unbiased estimates of ambient concentrations, the increased stringency of these new standards resulted in increased scrutiny by the modeling community of AERMOD model performance. In response, the EPA issued several guidance memoranda to clarify the applicability of the *Guideline* and address initial issues with use of current models and procedures under PSD permitting.[1 2 3 4] However, the situation also necessitated the EPA and the modeling community to more closely evaluate the science and model formulation of AERMOD to better understand the issues being experienced by stakeholders and to address performance issues in its use for PSD permitting under these new standards. As part of this effort, the EPA reconvened the AERMOD Implementation Workgroup (AIWG) with state and local agency modelers to evaluate AERMOD across a variety of hypothetical sources and results from this assessment were also presented at this conference to inform the modeling community of potential implications and areas for improvement in the model and guidance on their use.

Several presentations at the Tenth Modeling Conference addressed issues and challenges associated with demonstrating compliance with these new 1-hour NAAQS for NO_2 and SO_2. This included results from a study sponsored by the American Petroleum Institute (API) that evaluated AERMOD model performance under low wind speed conditions using additional National Oceanic and Atmospheric Administration (NOAA) field studies at Oak Ridge, TN, and Idaho Falls, ID, which were not included in the original 17 databases used to support AERMOD's promulgation in 2005. The API low wind study[5] showed significant overprediction of observed concentrations, especially for the Oak Ridge study where observed wind speeds were below 0.5 m/s for 10 of the 11 tracer tests, and included wind speeds as low as 0.15 m/s. The API low wind study also included proposed modifications to the AERMET meteorological processor and AERMOD model to address this bias toward overprediction under stable/light wind conditions.

Prior to the promulgation of the 1-hour NO_2 NAAQS, compliance with the previous annual NO_2 NAAQS was routinely demonstrated based on the Tier 1 assumption of full conversion or a Tier 2 option based on an ambient ratio of 75 percent conversion of nitrogen oxides (NO_X) to NO_2, referred to as the Ambient Ratio Method (ARM). However, compliance with the new 1-hour NAAQS has typically required a more refined treatment of NO_X conversion to NO_2. Therefore, several presentations at the Tenth Modeling Conference focused on issues associated with demonstrating compliance with the new 1-hour NO_2 NAAQS.

These presentations included an overview of an API funded study to develop a Tier 2 ambient ratio method for the 1-hour NO_2 NAAQS, referred to as ARM2. The ARM2 approach was developed based on an extensive analysis of ambient ratios of NO_2/NO_X that were analyzed by land use (urban vs. rural) and geographical areas. Based on these analyses of the ambient NO_2/NO_X ratios, an empirical relationship between ambient concentrations of NO_2 and NO_X was developed. The EPA subsequently reviewed and evaluated this ARM2 approach and then

[1] U.S. EPA, 2010. Applicability of Appendix W Modeling Guidance for the 1-hour NO_2 NAAQS. Tyler Fox Memorandum dated June 28, 2010, Office of Air Quality Planning & Standards, Research Triangle Park, North Carolina 27711. *http://www.epa.gov/ttn/scram/guidance/clarification/ClarificationMemo_AppendixW_Hourly-NO2-NAAQS_FINAL_06-28-2010.pdf.*

[2] U.S. EPA, 2010. Applicability of Appendix W Modeling Guidance for the 1-hour SO_2 NAAQS. Tyler Fox Memorandum dated August 23, 2010, Office of Air Quality Planning & Standards, Research Triangle Park, North Carolina 27711. *http://www.epa.gov/ttn/scram/guidance/clarification/ClarificationMemo_AppendixW_Hourly-SO2-NAAQS_FINAL_08-23-2010.pdf.*

[3] U.S. EPA, 2010. Guidance Concerning the Implementation of the 1-hour SO_2 NAAQS for the Prevention of Significant Deterioration Program. Stephen D. Page, Memorandum dated August 23, 2010, Office of Air Quality Planning & Standards, Research Triangle Park, North Carolina 27711. *http://www.epa.gov/region07/air/nsr/nsrmemos/appwso2.pdf.*

[4] U.S. EPA, 2010. Guidance Concerning the Implementation of the 1-hour NO_2 NAAQS for the Prevention of Significant Deterioration Program. Stephen D. Page, Memorandum dated June 29, 2010, Office of Air Quality Planning & Standards, Research Triangle Park, North Carolina 27711. *http://www.epa.gov/ttn/scram/guidance/clarification/ClarificationMemo_AppendixW_Hourly-SO2-NAAQS_FINAL_08-23-2010.pdf.*

[5] AECOM, 2010. AERMOD low wind speed evaluation study results, *http://mycommittees.api.org/rasa/amp/Modeling%20Documents/AECOM%202009%20Low%20Wind%20Speed%20Evaluation%20Study%20Report.pdf.*

incorporated this screening technique as a non-Default/Beta option in version 13350 of AERMOD in December 2013. Another issue associated with NO_2 NAAQS compliance presented at this conference focused on the use of relative (instantaneous) dispersion coefficients to define the plume volume which determines the amount of ozone available to convert nitrogen (NO) to NO_2 using the Plume Volume Molar Ratio Method (PVMRM) option in AERMOD. The relative dispersion coefficients originally incorporated in AERMOD for PVMRM are best representative of daytime convective conditions and may tend to overestimate plume volumes during stable conditions. Such overestimation of the plume volume will tend to result in PVMRM to overestimate concentrations of NO_2.

In addition, modeling of single-source impacts for ozone and secondarily formed $PM_{2.5}$ was a topic of discussion at the Tenth Modeling Conference. On January 4, 2012, the EPA granted a petition submitted on behalf of the Sierra Club on July 28, 2010 [6] and committed to engage in rulemaking to evaluate whether updates to the *Guideline* are warranted and, as appropriate, incorporate new analytical techniques or models for ozone and secondarily formed $PM_{2.5}$. As a part of satisfying this commitment, there were presentations of ongoing research at the Tenth Modeling Conference regarding single-source plume chemistry and photochemical grid modeling techniques, as well as several public forums. In addition, the EPA presented an overview along with a panel discussion of its *Draft Guideline for $PM_{2.5}$ Permit Modeling* that addressed the need for consideration of secondary $PM_{2.5}$ in demonstrating compliance with the $PM_{2.5}$ NAAQS.[7] Subsequently, written comments pertaining to such modeling were submitted to the EPA.

As introduced at the Tenth Modeling Conference, the Interagency Workgroup on Air Quality Modeling (IWAQM) process was formally reinitiated in June 2013 to inform the EPA's process of updating the *Guideline* to address chemically reactive pollutants in near-field and long-range transport applications. The IWAQM, which consists of representatives from the EPA, the U.S. Forest Service, the National Park Service, and the U.S. Fish and Wildlife Service, was initially formed to support development of technically sound recommendations regarding assessment of air pollutant source impacts on Federal Class I parks and wilderness areas. Comments received from stakeholders at the Tenth Modeling Conference supported reinitiating this interagency collaborative effort (as ''Phase 3'') to provide additional guidance for modeling single-source impacts on secondarily formed pollutants (*e.g.,* ozone and $PM_{2.5}$) in the near-field and for long-range transport. Stakeholder comments also support the idea of this collaborative effort working in parallel with stakeholders to further model development and evaluation. This renewed [8] effort included the establishment of two separate working groups, one focused on long-range transport of primary and secondary pollutants and the other on near-field single-source impacts of secondary pollutants. The primary objectives of this phase of IWAQM include reviewing existing approaches for estimating single-source secondary pollutant impacts, developing revisions to the *Guideline,* and the development of guidance for using technical methods to estimate downwind secondary pollutant impacts.

III. Public Participation Regarding Revisions to the Guideline and Notice of Eleventh Conference on Air Quality Modeling

Interested persons may provide the EPA with their views on the proposed revisions to the *Guideline* in several ways. This includes submitting written comments to the EPA, participating in the Eleventh Conference on Air Quality Modeling, and speaking at the public hearing that will be conducted as part of the conference. Additional information on how to submit written comments on the proposed revisions to the *Guideline* is provided in the **ADDRESSES** section above.

The public hearing for this action and the Eleventh Conference on Air Quality Modeling will be held August 12–13, 2015, from 8:30 a.m. to 5:00 p.m., in the EPA Auditorium, Room C111, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711. On August 12, 2015, the first half of the conference will consist of a structured agenda with presentations. The second half of the first and all of the second day (August 13, 2015), is reserved for the public hearing on this proposed rule. Advance requests for reserved time to speak during the public hearing should be submitted by August 7, 2015, to Mr. George M. Bridgers, Air Quality Assessment Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail code C439–01, Research Triangle Park, NC 27711; telephone: (919) 541–5563; fax: (919) 541–0044; email: *Bridgers.George@epa.gov*. The EPA will also provide an opportunity for oral presentations by individuals that sign up at the public hearing. Information submitted to the EPA during the conference will be placed in the docket for this rule proposing revisions to the *Guideline.*

Background information: Preregistration details, additional background information, and a more detailed agenda for the Eleventh Conference on Air Quality Modeling are electronically available at *http://www.epa.gov/ttn/scram/11thmodconf.htm*. Preregistration for the conference, while not required, is strongly recommended due to heightened security protocols at the EPA–RTP facility.

REAL ID Act: Because this hearing is being held at a U.S. government facility, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. These requirements took effect July 21, 2014. If your driver's license is issued by Alaska, American Samoa, Arizona, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Montana, New York, Oklahoma, or the state of Washington, you must present an additional form of identification to enter the federal buildings where the public hearings will be held. Acceptable alternative forms of identification include: Federal employee badges, passports, enhanced driver's licenses and military identification cards. We will list any additional acceptable forms of identification at: *http://www.epa.gov/*

[6] U.S. EPA, 2012. Gina McCarthy Letter to Robert Ukeiley dated January 4, 2012, Washington, DC 20460. *http://www.epa.gov/ttn/scram/10thmodconf/review_material/Sierra_Club_Petition_OAR-11-002-1093.pdf.*

[7] U.S. EPA, 2014. Guidance for $PM_{2.5}$ Modeling. May 20, 2014, EPA–454/B–14–001. Office of Air Quality Planning & Standards, Research Triangle Park, NC. *http://www.epa.gov/ttn/scram/guidance/guide/Guidance_for_PM25_Permit_Modeling.pdf.*

[8] Phase 1 of the IWAQM effort focused on review of respective regional modeling programs, development of an organizational framework, and formulating reasonable objectives and plans that were presented to EPA management for support and commitment. Phase 2 of the IWAQM process continued this work and largely concluded in 1998 with the publication of the Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 Summary Report and Recommendations for Modeling Long Range Transport Impacts (EPA–454/R–98–019) (USEPA, 1998). This report provided a series of recommendations concerning the application of the CALPUFF model for use in regulatory long-range transport (LRT) modeling that supported the revisions in 2003 to the *Guideline.*

ttn/scram/11thmodconf.htm. In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building and demonstrations will not be allowed on federal property for security reasons.

Conference and Public Hearing: The Eleventh Conference on Air Quality Modeling will be open to the public. No registration fee is charged. The conference will be conducted informally and chaired by an EPA official. As required under CAA section 320, a verbatim transcript of the conference proceedings will be produced and placed in the docket for this proposed rule.

The Eleventh Conference on Air Quality Modeling will begin with introductory remarks by the presiding EPA official. The EPA staff will then provide an overview of the revisions to the *Guideline* as proposed in this document and present on the research that supports those revisions and supports formulation updates to the preferred models. The following topics will be presented:

I. Overview of the Eleventh Conference on Air Quality Modeling;
II. Review of the proposed revisions to the *Guideline;* and
III. Review of the proposed revisions to the preferred air quality models.

At the conclusion of the presentations, the EPA will convene the public hearing on the proposed revisions to the *Guideline.* The public hearing will span the second half of the first day and throughout the second day of the conference.

Those wishing to reserve time to speak at the public hearing, whether to volunteer a presentation on a special topic or to offer general comment on any of the modeling techniques scheduled for presentation, should contact us at the address given in the **FOR FURTHER INFORMATION CONTACT** section (note the cutoff date). Such persons should identify the organization (if any) on whose behalf they are speaking and the length of the presentation. If a scheduled presentation is projected to be longer than 10 minutes, the presenter should also state why a longer period is needed. Scheduled speakers should bring extra copies of their presentation for inclusion in the docket and for the convenience of the recorder. Scheduled speakers will also be permitted to enter additional written comments into the record.

Any person in attendance wishing to speak at the public hearing who has not reserved time prior to the conference may provide oral comments on the proposed revisions to the *Guideline* during time allotted on the last day of the conference. These parties will need to sign up to speak on the second day of the hearing and the EPA may need to limit the duration of presentations to allow all participants to be heard.

Additional written statements or comments on the proposed revisions should be sent to the OAR Regulatory Docket (*see* **ADDRESSES** section). A transcript of the conference proceedings and a copy of all written comments will be maintained in Docket ID No. EPA–HQ–OAR–2015–0310, which will remain open until October 27, 2015, for the purpose of receiving additional comments after the conference and the public hearing on the proposed revisions to the *Guideline.*

IV. Proposed Changes to the Guideline

In this action, the EPA is proposing two type of revisions to the *Guideline.* The first involve substantive changes to address various topics, including those presented and discussed at the Tenth Modeling Conference. These proposed revisions to the *Guideline* include enhancements to the formulation and application of the EPA's preferred dispersion modeling system, AERMOD, and the incorporation of a tiered demonstration approach to address the secondary chemical formation of ozone and $PM_{2.5}$ associated with precursor emissions from single sources. The second type of revision involves editorial changes to update and reorganize information throughout the *Guideline.* These revisions are not intended to meaningfully change the substance of the *Guideline,* but rather to make the *Guideline* easier to use and to streamline the compliance assessment process.

A. Proposed Actions

This section provides a detailed overview of the substantive proposed changes to the *Guideline* that are intended to improve the science of the models and approaches used in regulatory assessments.

1. Clarifications To Distinguish Requirements From Recommendations

The EPA's PSD permitting regulations specify that ''[a]ll applications of air quality modeling involved in this subpart shall be based on the applicable models, data bases, and other requirements specified in appendix W of this part (*Guideline on Air Quality Models*).'' 40 CFR 51.166(l); see also 40 CFR 52.21(l). The applicable models are the preferred models listed in appendix A to appendix W to 40 CFR part 51. However, there has been some ambiguity in the past with respect to the ''other requirements'' specified in the *Guideline* that must be used in PSD permitting analysis and other regulatory modeling assessments.

Ambiguity can result because the *Guideline* generally contains ''recommendations'' and these recommendations are expressed in non-mandatory language. For instance, the *Guideline* frequently uses ''should'' and ''may'' rather than ''shall'' and ''must.'' This approach is generally preferred throughout the *Guideline* because of the need to exercise expert judgment in air quality analysis and the reasons discussed in the *Guideline* that ''dictate against a strict modeling 'cookbook'.'' (40 CFR part 51, appendix W, section 1.0(c))

Considering the non-mandatory language used throughout the *Guideline,* the EPA's Environmental Appeals Board has correctly observed the following:

> ''Although appendix W has been promulgated as codified regulatory text, appendix W provides permit issuers broad latitude and considerable flexibility in application of air quality modeling. Appendix W is replete with references to ''recommendations,'' ''guidelines,'' and reviewing authority discretion.''

In Re Prairie State Generating Company, 13 E.A.D. 1, 99 (EAB 2005) (internal citations omitted).

Although this approach is typical throughout the *Guideline,* there are instances where the EPA does not believe permit issues should have broad latitude. Some principles of air quality modeling described in the *Guideline* must always be applied to produce an acceptable analysis. Thus, to promote clarity in the use and interpretation of the revised *Guideline,* we have, in these cases used mandatory language, and made specific reference to ''requirements'' throughout the proposed text where appropriate to distinguish requirements from recommendations in the application of models for regulatory purposes. We solicit comment regarding the appropriateness of these revisions in providing the necessary clarity on the requirements under the proposed revisions to the *Guideline* as distinct from the recommendations in the revised text while noting the continued flexibilities provided for within the Guideline including but not limited to use and approval of alternative models.

2. Updates to EPA's AERMOD Modeling System

Based on studies presented and discussed at the Tenth Modeling Conference, and additional relevant research since 2010, the EPA and other researchers have conducted additional model evaluations and developed changes to the model formulation of the AERMOD modeling system to improve model performance in its regulatory applications. We propose the following updates to the AERMOD modeling system to address a number of technical concerns expressed by stakeholders:

1. A proposed option incorporated in AERMET to adjust the surface friction velocity (u*) to address issues with AERMOD model overprediction under stable, low wind speed conditions. This proposed option is selected by the user with the METHOD STABLEBL ADJ_U* record in the AERMET Stage 3 input file.

2. A proposed low wind option in AERMOD to address issues with model overprediction under low wind speed conditions. The low wind option will increase the minimum value of the lateral turbulence intensity (sigma-v) from 0.2 to 0.3 and adjusts the dispersion coefficient to account for the effects of horizontal plume meander on the plume centerline concentration. It also eliminates upwind dispersion which is incongruous with a straight-line, steady-state plume dispersion model such as AERMOD. The proposed option is selected by specifying ''LOWWIND3'' on the CO MODELOPT keyword in the AERMOD input file.

3. Modifications to AERMOD formulation to address issues with overprediction for applications involving relatively tall stacks located near relatively small urban areas (no user input is required).

4. Proposed regulatory default options in AERMOD to address plume rise for horizontal and capped stacks based on the July 9, 1993, Model Clearinghouse memorandum,[9] with adjustments to account for the PRIME algorithm for sources subject to building downwash. These options are selected by the model user specifying ''POINTCAP'' or ''POINTHOR'' for source type on the SO LOCATION keyword in the AERMOD input file.

5. A proposed buoyant line source option, based on the BLP model, has been incorporated in AERMOD. This proposed option is selected by the model user with the SOURCE type ''BOUYLINE'' to specify the individual buoyant line source locations and emissions and the new ''BLAVGVAL'' keyword to specify average parameters for a composite buoyant line.

6. Proposed updates to the NO_2 Tier 2 and Tier 3 screening techniques coded within AERMOD as described more fully later in this preamble section.

Model performance evaluation and peer scientific review references for the updated AERMOD modeling system are cited, as appropriate. An updated user's guide and model formulation documents for version 15181 have been placed in the docket. We have updated the summary description of the AERMOD modeling system to appendix A of the *Guideline* to reflect these proposed updates. The essential codes, preprocessors, and test cases have been updated and posted to the EPA's SCRAM Web site, *http://www.epa.gov/ttn/scram*.

We invite comments on whether we have reasonably addressed the technical concerns expressed by the stakeholder community and are on sound footing to recommend these updates to the regulatory default version of the AERMOD modeling system which includes its replacement of BLP as an appendix A model for the intended regulatory applications.

3. Status of AERSCREEN

In the preamble of the 2005 *Guideline,* we stated that a screening version of AERMOD called AERSCREEN was being developed and, in the meantime, SCREEN3 may be used until AERSCREEN was available. In 2011, the EPA released AERSCREEN, a program that creates inputs and runs AERMOD in screening mode. AERSCREEN also interfaces with AERMOD's terrain processor, AERMAP, the building processor for AERMOD, BPIPPRIME, and can use AERSURFACE surface characteristics in the generation of meteorological data for AERMOD via the MAKEMET utility. In an April 2011 memorandum, the EPA stated that AERSCREEN was the recommended screening model for simple and complex terrain and replaced SCREEN3. Since AERSCREEN invokes AERMOD, AERSCREEN represents the state of the science in screening dispersion models. As part of this proposed update to AERSCREEN, AERSCREEN now includes inversion break-up and coastal fumigation, features that were part of SCREEN3. These fumigation algorithms also take advantage of AERMOD's boundary layer parameterizations for calculating variables needed by the algorithms.

We invite comment on incorporation of AERSCREEN into the *Guideline* as the screening model for AERMOD that may be applicable in applications in all types of terrain and for applications involving building downwash.

4. Updates to 3-Tiered Demonstration Approach for NO_2

Section 5.2.4 of the 2005 *Guideline* details a 3-tiered approach for assessing NO_X sources, which was recommended to obtain annual average estimates of NO_2 from point sources for purposes of NSR analysis, including the PSD program and SIP planning purposes. This 3-tiered approach addresses the co-emissions of NO and NO_2 and the subsequent conversion of NO to NO_2 in the atmosphere. The tiered levels include: (1) Assuming that all NO is converted to NO_2 (full conversion), (2) using the Ambient Ratio Method (ARM), which applies an assumed equilibrium ratio of NO_2 to NO_X, based on observed ambient conditions, to the annual results from the Tier 1 full conversion, and (3) detailed screening options focused on determining site-specific ratios of NO_2 to NO_X.

In January 2010, a new 1-hour NO_2 standard was promulgated. Prior to the adoption of the 1-hour NO_2 standard, few PSD permit applications required the use of Tier 3 options and guidance available at the time did not fully address the modeling needs for a 1-hour standard, *i.e.,* tiered approaches for NO_2 in the 2005 *Guideline* specifically targeted an annual standard. As a result, several guidance memoranda have been issued by the EPA to further inform modeling procedures for sources demonstrating compliance with the new 1-hour standard.[1 2 3 4]. In response to the 1-hour NO_2 standard, the EPA is proposing several modifications to the Tier 2 and 3 NO_2 screening techniques incorporated into AERMOD.

For the Tier 2 technique, the EPA is proposing to replace the existing ARM with a revised Ambient Ratio Method 2 (ARM2). The existing Tier 2 technique, ARM, was based on a study that focused exclusively on long-term averages.[10] A recently published study [11] presented a new analysis of national levels of ambient ratios of NO_2 to NO_X based on

[9] U.S. EPA, 1993. ''Proposal for Calculating Plume Rise for Stacks with Horizontal Releases or Rain Caps for Cookson Pigment, Newark, New Jersey'', Memorandum from Joseph A. Tikvart, U.S. EPA/OAQPS, Research Triangle Park, NC. July 9, 1993. *http://www.epa.gov/ttn/scram/guidance/mch/new_mch/R1076_TIKVART_9_JUL_93.pdf.*

[10] Chu, S.H. and E.L. Meyer, 1991. Use of Ambient Ratios to Estimate Impact of NO_X Sources on Annual NO2 Concentrations. Proceedings, 84th Annual Meeting & Exhibition of the Air & Waste Management Association, Vancouver, B.C.; 16–21 June 1991. (16pp.) (Docket No. A–92–65, II–A–9).

[11] Podrez, M. 2015. An Update to the Ambient Ratio Method for 1-h NO2 Air Quality Standards Dispersion Modeling. *Atmospheric Environment,* 103: 163–170.

hourly data from the EPA's Air Quality System (AQS). Based on this analysis, a new second tier NO_2 screening technique, ARM2, has been developed and incorporated into AERMOD. Because ARM2 is based on hourly measurements of the NO_2 to NO_X ratios and provides more detailed estimates of this ratio based on the total NO_X present, the EPA is proposing to incorporate a modified version of ARM2 as the new preferred second tier NO_X modeling approach.

For the Tier 3 technique, the EPA proposes that the existing detailed screening options of the Ozone Limiting Method (OLM) [12] and PVMRM [13] be formally incorporated into the regulatory version of AERMOD. Both OLM and PVMRM have been available as non-regulatory, non-default options in AERMOD for many years, but their usage in a NAAQS compliance demonstration required approval by the reviewing authority. Based on the EPA's evaluation and external studies available on their performance, which show that OLM and PVMRM are capable of modeling 1-hour NO_2 impacts and NO and NO_2 speciation with reasonable accuracy when applied appropriately, both OLM and PVMRM are being proposed as preferred Tier 3 screening methods for NO_2 modeling. In addition, the EPA is proposing to incorporate a revised version of the PVMRM option, referred to as PVMRM2, that utilizes relative dispersion coefficients to estimate plume volume during convective conditions and total dispersion coefficients during stable conditions. These adjustments to the calculation of plume volume are intended to mitigate potential overprediction of NO_2 conversion in multisource applications, especially during stable meteorological conditions. The EPA is proposing to replace the existing PVMRM with the new PVMRM2 with both versions being made available in the proposed version of AERMOD to facilitate testing and evaluation of the EPA's proposed replacement of PVMRM option with new PVMRMR2 option.

We invite comments on whether we have reasonably addressed technical concerns regarding the 3-tiered demonstration approach and specific NO_2 screening techniques within AERMOD and whether we are on sound foundation to recommend the updates described above.

5. Status of CALINE3 Models

The 2005 *Guideline* identified CALINE3 [14] and its variants (CAL3QHC and CAL3QHCR) as the preferred model for mobile source modeling for carbon monoxide (CO), particulate matter (PM), and lead. CALINE3 was developed in the late 1970's using P–G stability classes as the basis for the dispersion algorithms. AERMOD, on the other hand, uses a planetary boundary layer scaling parameter to characterize stability and determine dispersion rates, which has been found to be superior to dispersion parameterizations based on P–G stability classes.[15] In addition, the LINE and AREA source options in AERMOD implement a full numerical integration of emissions across the LINE or AREA sources, whereas the CALINE3 family of models incorporate a much less refined approach. Thus, AERMOD provides a more scientifically credible and accurate characterization of plume dispersion than CALINE3. Recent model performance studies [16] have shown that the CALINE models performed poorly when compared to AERMOD and other modern dispersion models which also employ state-of-the-science dispersion parameters. AERMOD is also able to model multiple years in a single model run, while the CALINE3 variants are limited to either a single meteorological condition (CALINE3 and CAL3QHC) or a single year of meteorological data (CAL3QHCR). Additionally, AERMOD is able to utilize more recent, and more representative, meteorological observations than are readily available for modeling with CAL3QHCR. Based on the more scientifically sound basis for AERMOD, improved model performance over CALINE3, and the availability of more representative meteorological data, the EPA proposes replacing CALINE3 with AERMOD as the preferred appendix A model for determining near-field impacts for primary emissions from mobile sources, including $PM_{2.5}$, PM_{10}, and CO hot-spot analyses.[17]

We solicit comments on our proposal to identify AERMOD as a replacement for CALINE3 as an appendix A model for its intended regulatory applications.

6. Addressing Single-Source Impacts on Ozone and Secondary $PM_{2.5}$

On January 4, 2012, the EPA granted a petition submitted on behalf of the Sierra Club on July 28, 2010,[18] that requested the EPA initiate rulemaking to establish air quality models for ozone and $PM_{2.5}$ for use by all major sources applying for a PSD permit. In granting that petition, the EPA explained that the ''complex chemistry of ozone and secondary formation of $PM_{2.5}$ are well-documented and have historically presented significant challenges to the designation of particular models for assessing the impacts of individual stationary sources on the formation of these air pollutants'' and further explained that ''[b]ecause of these considerations, the EPA's judgment in the past has been that it was not technically sound to designate with particularity specific models that must be used to assess the impacts of a single source on ozone concentrations,'' but rather the EPA had established a process for determining on a case-by-case basis the analytical techniques that should be used for ozone, as well as for secondary formation of $PM_{2.5}$.

In the petition grant, the EPA committed to engage in rulemaking to evaluate whether updates to the *Guideline* are warranted and, as appropriate, incorporate new analytical techniques or models for ozone and secondarily formed $PM_{2.5}$. This rulemaking satisfies the EPA's commitment in the petition grant. As a part of this commitment and in compliance with CAA section 320, the EPA conducted the Tenth Modeling Conference in March 2012, where there were presentations of ongoing research of single-source plume chemistry and photochemical grid modeling techniques, as well as several public forums, and the EPA subsequently received written comments pertaining to such modeling.

[12] Cole, H.S. and J.E. Summerhays, 1979. A Review of Techniques Available for Estimation of Short-Term NO2 Concentrations. *Journal of the Air Pollution Control Association,* 29(8): 812–817.

[13] Hanrahan, P.L., 1999. The Polar Volume Polar Ratio Method for Determining NO2/NOX Ratios in Modeling—Part I: Methodology. *Journal of the Air & Waste Management Association,* 49: 1324–1331.

[14] Benson, Paul E., 1979. CALINE3—A Versatile Dispersion Model for Predicting Air Pollutant Levels Near Highways and Arterial Streets. Interim Report, Report Number FHWA/CA/TL–79/23. Federal Highway Administration, Washington, DC (NTIS No. PB 80–220841).

[15] Cimorelli, A. et al., 2005. AERMOD: A Dispersion Model for Industrial Source Applications. Part I: General Model Formulation and Boundary Layer Characterization. *Journal of Applied Meteorology,* 44(5): 682–693.

[16] Heist, D., V. Isakov, S. Perry, M. Snyder, A. Venkatram, C. Hood, J. Stocker, D. Carruthers, S. Arunachalam, AND C. Owen. Estimating near-road pollutant dispersion: a model inter-comparison. *Transportation Research Part D: Transport and Environment.* Elsevier BV, AMSTERDAM, Netherlands, 25:93–105, (2013).

[17] U.S. EPA, 2013, Transportation Conformity Guidance for Quantitative Hot-Spot Analyses in $PM_{2.5}$ and PM_{10} Nonattainment and Maintenance Areas. Publication No. EPA–420–B–13–053, Office of Transportation and Air Quality, Ann Arbor, MI. *http://www.epa.gov/otaq/stateresources/transconf/policy/420b13053-sec.pdf.*

[18] U.S. EPA, 2012. Gina McCarthy Letter to Robert Ukeiley dated January 4, 2012, Washington, DC 20460. *http://www.epa.gov/ttn/scram/10thmodconf/review_material/Sierra_Club_Petition_OAR-11-002-1093.pdf.*

The EPA initiated Phase 3 of the IWAQM process in June 2013 to inform this process to update the *Guideline* to address chemically reactive pollutants for near-field and long-range transport applications. Comments received from stakeholders at the Tenth Modeling Conference supported this collaborative effort to provide additional guidance for modeling single-source impacts of secondarily formed pollutants in the near-field and for long-range transport. Stakeholder comments also supported the idea of this collaborative effort occurring in parallel with stakeholders' efforts to further model development and evaluation. The EPA's recommended revisions to the *Guideline* are largely based on detailed review and assessment of this input.

For this proposed revision to the *Guideline,* the EPA has determined that advances in photochemical modeling science indicate it is now reasonable to provide more specific, generally-applicable guidance that identifies particular models or analytical techniques that may be used under specific circumstances for assessing the impacts of an individual source on ozone and secondary $PM_{2.5}$.

Quantifying secondary pollutant formation requires simulating chemical reactions and thermodynamic partitioning in a realistic chemical and physical environment. Chemical transport models treat atmospheric chemical and physical processes such as deposition and transport. There are two types of chemical transport models, which are differentiated based on a fixed frame of reference (*i.e.,* Eulerian models, specifically photochemical grid models) or a frame of reference that moves with parcels of air between the source and receptor point (*i.e.,* Lagrangian models).[19]

Comparing these two types of chemical transport models, photochemical grid models are integrated, three-dimensional grid-based models that treat chemical and physical processes in each grid cell and use Eulerian diffusion and transport processes to move chemical species to other grid cells.[19] While some Lagrangian models also treat in-plume gas and particulate chemistry, to do so these models require time and space varying oxidant concentrations, and in the case of $PM_{2.5}$, neutralizing agents such as ammonia, because important secondary impacts happen when plume edges start to interact with the surrounding chemical environment.[20 21] These oxidant and neutralizing agents are not routinely measured, but can be generated with a three-dimensional photochemical transport model and subsequently input to a Lagrangian modeling system.

In light of these differences between photochemical grid models and Lagrangian models that address chemistry, the EPA believes photochemical grid models are generally most appropriate for addressing ozone and secondary $PM_{2.5}$ because they provide a spatially and temporally dynamic realistic chemical and physical environment for plume growth and chemical transformation.[20 22] Publically available and documented Eulerian photochemical grid models such as the Comprehensive Air Quality Model with Extensions (CAMx)[23] and the Community Multiscale Air Quality (CMAQ)[24] model treat emissions, chemical transformation, transport, and deposition using time and space variant meteorology. These modeling systems include primarily emitted species and secondarily formed pollutants such as ozone and $PM_{2.5}$.[25 26 27 28] These models have been used extensively to support ozone and $PM_{2.5}$ SIPs and to explore relationships between inputs and air quality impacts in the United States and elsewhere.[26 29 30]

For assessing secondary pollutant impacts from single sources, the degree of complexity required to assess potential impacts varies depending on the nature of the source, its emissions, and the background environment. In order to provide the user community flexibility in estimating single-source secondary pollutant impacts and given the emphasis on the use of photochemical grid models for these purposes, the EPA is proposing a two-tiered demonstration approach for addressing single-source impacts on ozone and secondary $PM_{2.5}$. The first tier involves use of technically credible relationships between precursor emissions and a source's impacts that may be published in the peer-reviewed literature; developed from modeling that was previously conducted for an area by a source, a governmental agency, or some other entity and that is deemed sufficient; or generated by a peer-reviewed reduced form model. The second tier involves application of more sophisticated case-specific chemical transport models (*e.g.,* photochemical grid models) to be determined in consultation with the EPA Regional Office and conducted consistent with new EPA single-source modeling guidance.[31] The appropriate tier for a given application should be selected in consultation with the appropriate reviewing authority and be consistent with EPA guidance.

To fully implement these proposed changes to the *Guideline* related to addressing ozone and secondary $PM_{2.5}$ impacts, the EPA intends to pursue a separate rulemaking to establish a technical basis and new values for $PM_{2.5}$ Significant Impact Levels (SILs) and to introduce a new demonstration tool for ozone and $PM_{2.5}$ precursors referred to as Model Emissions Rates for Precursors (MERP). When completed, this rule

[19] McMurry, P.H., Shepherd, M.F., Vickery, J.S., 2004. Particulate matter science for policy makers: A NARSTO assessment. Cambridge University Press.

[20] Baker, K.R., Kelly, J.T., 2014. Single source impacts estimated with photochemical model source sensitivity and apportionment approaches. *Atmospheric Environment,* 96: 266–274.

[21] ENVIRON, 2012. Evaluation of chemical dispersion models using atmospheric plume measurements from field experiments, EPA Contract No: EP–D–07–102. September 2012. 06–20443M6. *http://www.epa.gov/ttn/scram/reports/Plume_Eval_Final_Sep_2012v5.pdf.*

[22] Zhou, W., Cohan, D.S., Pinder, R.W., Neuman, J.A., Holloway, J.S., Peischl, J., Ryerson, T.B., Nowak, J.B., Flocke, F., Zheng, W.G., 2012. Observation and modeling of the evolution of Texas power plant plumes. *Atmospheric Chemistry and Physics,* 12: 455–468.

[23] ENVIRON, 2014. User's Guide Comprehensive Air Quality Model with Extensions version 6, *http://www.camx.com.* ENVIRON International Corporation, Novato.

[24] Byun, D., Schere, K.L., 2006. Review of the governing equations, computational algorithms, and other components of the models-3 Community Multiscale Air Quality (CMAQ) modeling system. *Applied Mechanics Reviews,* 59: 51–77.

[25] Chen, J., Lu, J., Avise, J.C., DaMassa, J.A., Kleeman, M.J., Kaduwela, A.P., 2014. Seasonal modeling of PM 2.5 in California's San Joaquin Valley. *Atmospheric Environment,* 92: 182–190.

[26] Civerolo, K., Hogrefe, C., Zalewsky, E., Hao, W., Sistla, G., Lynn, B., Rosenzweig, C., Kinney, P.L., 2010. Evaluation of an 18-year CMAQ simulation: Seasonal variations and long-term temporal changes in sulfate and nitrate. *Atmospheric Environment,* 44: 3745–3752.

[27] Russell, A.G., 2008. EPA Supersites program-related emissions-based particulate matter modeling: initial applications and advances. *Journal of the Air & Waste Management Association,* 58: 289–302.

[28] Tesche, T., Morris, R., Tonnesen, G., McNally, D., Boylan, J., Brewer, P., 2006. CMAQ/CAMx annual 2002 performance evaluation over the eastern US. *Atmospheric Environment,* 40: 4906–4919.

[29] Cai, C., Kelly, J.T., Avise, J.C., Kaduwela, A.P., Stockwell, W.R., 2011. Photochemical modeling in California with two chemical mechanisms: model intercomparison and response to emission reductions. *Journal of the Air & Waste Management Association,* 61: 559–572.

[30] Hogrefe, C., Hao, W., Zalewsky, E., Ku, J.-Y., Lynn, B., Rosenzweig, C., Schultz, M., Rast, S., Newchurch, M., Wang, L., 2011. An analysis of long-term regional-scale ozone simulations over the Northeastern United States: variability and trends. *Atmospheric Chemistry and Physics,* 11: 567–582.

[31] U.S. EPA, 2015. Guidance on the use of models for assessing the impacts from single sources on secondarily formed pollutants ozone and $PM_{2.5}$. Publication No. EPA 454/P–15–001. Office of Air Quality Planning & Standards, Research Triangle Park, North Carolina 27711.

would differ from the current process recommended in the EPA's *Guidance for $PM_{2.5}$ Permit Modeling.*[7] A MERP would neither replace the existing Significant Emissions Rates (SERs) for these pollutants nor serve as the basis for the applicability of PSD requirements to sources with emissions above the SER. However, a MERP would represent a level of emissions of precursors that is not expected to contribute significantly to concentrations of ozone or secondarily-formed $PM_{2.5}$. Our present understanding of the atmospheric science of ozone and secondary $PM_{2.5}$ formation indicates that MERP values will likely be higher than the SERs and more appropriate for evaluating the impacts of these criteria pollutants as precursors to ozone and $PM_{2.5}$ formation. As part of the separate rulemaking, the EPA intends to demonstrate that a source with precursor emissions (*e.g.,* NO_X and SO_2 for $PM_{2.5}$) below the MERP level will have ambient impacts that will be less than the SIL and, thereby, provide a sufficient demonstration that the source will not cause or contribute to a violation of the $PM_{2.5}$ NAAQS or PSD increments. The EPA's *Guidance for $PM_{2.5}$ Permit Modeling*[7] provides for a three-tiered approach to address secondary $PM_{2.5}$ with (1) a qualitative assessment; (2) a hybrid qualitative/quantitative assessment utilizing existing technical work; and (3) a full quantitative modeling exercise. The EPA expects that MERPs as a demonstration tool will replace the first tier of a qualitative assessment as sources that currently would provide a qualitative assessment are expected to have precursor emissions levels below the MERP. The second and third tier of assessment will then be consistent with the EPA's proposed two-tiered demonstration approach for $PM_{2.5}$ reflected in this proposed revisions to the *Guideline.* To specifically assist the public in commenting on this rule within the overall context of the NSR program, including PSD, the EPA has added two separate memoranda to the docket of this proposed rule. These memoranda provide more details on how this future approach to PSD compliance demonstrations will work for secondary $PM_{2.5}$ and also describe our expectations for how such an approach might work for ozone based on a future, separate action to similarly establish a SIL and MERPs (for VOC and NO_X precursors) for ozone using approaches similar to those for $PM_{2.5}$.[32 33]

While the development of MERPs for ozone and secondary $PM_{2.5}$ precursors is expected to address a number of PSD permitting situations, the EPA believes that most of the remaining situations in which a source must demonstrate compliance under the proposed *Guideline* will be addressed sufficiently under the proposed first tier where existing technical information could be used in combination with other supportive information and analysis for the purposes of estimating secondary impacts from a particular source. The existing technical information should provide a credible and representative estimate of the secondary impacts from the project source. In these situations, a more refined approach for estimating secondary pollutant impacts from project sources may not be necessary. The EPA has been compiling and reviewing screening approaches that are based on technically credible tools (*e.g.,* photochemical grid models) that relate source precursor emissions to secondary impacts. In review of existing approaches detailed in peer reviewed journal articles and non-peer reviewed forms (*e.g.,* technical reports, conference presentations), it is not clear that a single approach has been clearly proposed to and evaluated by the modeling community for estimating screening level secondary impacts from single sources. Other screening level alternatives to photochemical grid model application may include the use of existing credible photochemical model impacts for sources deemed to be similar in terms of emission rates, release parameters, and background environment. The EPA will continue to engage with the modeling community to identify credible alternative approaches for estimating single-source secondary pollutant impacts which provide flexibility and are less resource intensive for permit demonstration purposes.

For those situations for which existing modeling or screening estimates are not available or appropriate, the second tier proposed by the EPA would apply and involve use of more sophisticated case-specific chemical transport models (*e.g.,* photochemical grid models) to be determined in consultation with the appropriate EPA Regional Office based upon new EPA single-source modeling guidance.[31] Based on several scientific studies, the EPA proposes to determine that photochemical grid models are appropriate for assessment of near-field and regional scale reactive pollutant impacts from specific sources [20 22 34 35] or a group of multiple sources impacting an area.[25 27 28] Even though single-source emissions are injected into a grid volume, photochemical transport models have been shown to adequately capture single-source impacts when compared with downwind in-plume measurements.[20 22] Where set up appropriately for the purposes of assessing the contribution of single sources to primary and secondarily formed pollutants, photochemical grid models can be used with a variety of approaches to estimate these impacts. These approaches generally fall into the category of source sensitivity (how air quality changes due to changes in emissions) and source apportionment (what air quality impacts are related to certain emissions). Source apportionment has been used to differentiate the contribution from single sources on model predicted ozone and $PM_{2.5}$ concentrations.[20 34] The direct decoupled method (DDM) has also been used to estimate ozone and $PM_{2.5}$ impacts from specific sources [20 35] as well as the simpler brute-force sensitivity approach.[20 22 35] Limited comparison of single-source impacts between models [36] and approaches to differentiate single-source impacts [20 36] show generally similar downwind spatial gradients and impacts.

Near-source in-plume aircraft based measurement field studies provide an opportunity for evaluating model estimates of (near-source) downwind transport and chemical impacts from single stationary point sources.[21] Photochemical grid model source apportionment and source sensitivity simulation of a single source downwind impacts compare well against field study primary and secondary ambient measurements made in Tennessee and Texas.[20 21] This work indicates photochemical grid models and source

[32] U.S. EPA, 2015. ''Proposed Approach for Demonstrating $PM_{2.5}$ PSD Compliance'', Memorandum to Docket No. EPA–HQ–OAR–2015–0310 by Tyler J Fox, U.S. EPA/OAQPS, Research Triangle Park, NC. June 30, 2015.

[33] U.S. EPA, 2015. ''Proposed Approach for Demonstrating Ozone PSD Compliance'', Memorandum to Docket No. EPA–HQ–OAR–2015–0310 by Tyler J Fox, U.S. EPA/OAQPS, Research Triangle Park, NC. June 30, 2015.

[34] Baker, K.R., Foley, K.M., 2011. A nonlinear regression model estimating single source concentrations of primary and secondarily formed $PM_{2.5}$. *Atmospheric Environment,* 45: 3758–3767.

[35] Bergin, M.S., Russell, A.G., Odman, M.T., Cohan, D.S., Chameldes, W.L., 2008. Single-Source Impact Analysis Using Three-Dimensional Air Quality Models. *Journal of the Air & Waste Management Association,* 58: 1351–1359.

[36] Baker, K.R., Kelly, J.T., Fox, T., 2013. Estimating second pollutant impacts from single sources (control #27). *http://aqmodels.awma.org/conference-proceedings.*

apportionment and source sensitivity approaches provide meaningful estimates of single-source impacts on ozone and secondarily-formed $PM_{2.5}$. Additional evaluations for longer time periods and more diverse environments, both physical and chemical, would be valuable to generate broader confidence in these approaches for this purpose.

We invite comments on whether the proposed two-tiered demonstration approach and related EPA guidance is appropriately based on sound science and practical application of available models and tools to address single-source impacts on ozone and secondary $PM_{2.5}$.

7. Status of CALPUFF and Assessing Long-Range Transport for PSD Increment and Regional Haze

The 2003 *Guideline* recommended CALPUFF as the preferred model for long-range transport (*i.e.,* source-receptor distances of 50 to several hundred kilometers) of emissions from point, volume, area, and line sources for primary criteria pollutants (*e.g.,* PM and SO_2). Since that time, as discussed previously in this preamble, the EPA has received input from stakeholders and has worked through the IWAQM process on analytical techniques to address chemically reactive pollutants for near-field and long-range transport applications. As a result, in order to provide the user community flexibility in estimating single-source secondary pollutant impacts and given the availability of more appropriate modeling techniques, such as photochemical transport models (which address limitations of models like CALPUFF [37]), the EPA is proposing that the *Guideline* no longer contain language that requires the use of CALPUFF or another Lagrangian puff model for long-range transport assessments. Additionally, the EPA is proposing to remove the CALPUFF modeling system as an EPA-preferred model for long-range transport due to concerns about the management and maintenance of the model code given the frequent change in ownership of the model code since promulgation in the previous version of the *Guideline.*[38] The EPA recognizes that long-range transport assessments may be necessary in certain limited situations for PSD increment. For these situations, the EPA is proposing a screening approach where CALPUFF along with other appropriate screening tools and methods may be used to support long-range transport PSD increment assessments.

To determine if a Class I PSD increment analyses may be necessary beyond 50 km (*i.e.,* long-range transport assessment), the EPA is recommending a screening approach to determine if a significant impact will occur with particular focus on Class I areas that may be threatened at such distances. The first step relies upon the near-field application of the appropriate screening and/or preferred model to determine the significance of ambient impact at or about 50 km from the new of modifying source. If this initial analysis indicates there may be significant ambient impacts at that distance, then further analysis is necessary. For assessment of Class I ambient impacts, under the proposed *Guideline,* there will not a preferred model for distances beyond 50 km. Typically, a Lagrangian model is the type of model appropriate to use for these screening assessments; however, applicants should establish approaches (models and modeling parameters) on a case-by-case basis in consultation with the appropriate reviewing authority, Regional Office, and the affected Federal Land Manager(s) (FLM(s)). If a cumulative increment analysis is necessary, for these limited situations, the selection and use of an alternative model shall occur in agreement with the appropriate reviewing authority (paragraph 3.0(b)) and approval by the EPA Regional Office based on the requirements of section 3.2.2(e).

As previously noted, Phase 3 of the IWAQM process was reinitiated in June 2013 to inform the EPA's commitment to update the *Guideline* to address chemically reactive pollutants in near-field and long-range transport applications. This Phase 3 effort included the establishment of a working group composed of EPA and FLM technical staff focused on long-range transport of primary and secondary pollutants with an emphasis on use of consistent approaches to those being developed and applied to meet near-field assessment needs for ozone and secondarily-formed $PM_{2.5}$. The EPA expects that such approaches will be focused on state of the science chemical transport models (CTMs) as detailed in IWAQM reports [39] [40] and published literature.

To inform future consideration of visibility modeling in regulatory applications consistent with proposed changes for addressing chemistry for single-source impact on ozone and secondary $PM_{2.5}$, the final report [40] of the IWAQM long-range transport subgroup identified that modern CTMs have evolved sufficiently and provide a credible platform for estimating potential visibility impacts from a single or small group of emission sources. Chemical transport models are well suited for the purpose of estimating long-range impacts of secondary pollutants, such as $PM_{2.5}$, that contribute to regional haze and other secondary pollutants, such as ozone, that contribute to negative impacts on vegetation through deposition processes. These multiple needs require a full chemistry photochemical model capable of representing both gas, particle, and aqueous phase chemistry for $PM_{2.5}$, haze, and ozone.

Photochemical transport models are suitable for estimating visibility and deposition since important physical and chemical processes related to the formation and transport of PM are realistically treated. Source sensitivity and apportionment techniques implemented in photochemical grid models have evolved sufficiently and provide the opportunity for estimating potential visibility and deposition impacts from one or a small group of emission sources using a full science photochemical grid model. Photochemical grid models using meteorology output from prognostic meteorological models have demonstrated skill in estimating source-receptor relationships in the near-field [20] [21] and over long distances.[41]

It is important that modeling tools used for single-source long-range transport impacts assessments demonstrate skill in adequately replicating source-receptor relationships that are not in close proximity. For

[37] U.S. EPA, 2009. Reassessment of the Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 Summary Report; Revisions to Phase 2 Recommendations. Draft. Office of Air Quality Planning & Standards, Research Triangle Park, North Carolina 27711. *http://www.epa.gov/ttn/scram/guidance/reports/Draft_IWAQM_Reassessment_052709.pdf.*

[38] U.S. EPA, 2015. ''Summary of CALPUFF Ownership Since 2003 Promulgation'', Memorandum to Docket No. EPA–HQ–OAR–2015–0310 by Tyler J Fox, U.S. EPA/OAQPS, Research Triangle Park, NC. June 30, 2015.

[39] U.S. EPA, 2015. Interagency Workgroup on Air Quality Modeling Phase 3 Summary Report: Near-Field Single Source Secondary Impacts. Publication No. EPA 454/P–15–002. Office of Air Quality Planning & Standards, Research Triangle Park, North Carolina 27711.

[40] U.S. EPA, 2015. Interagency Workgroup on Air Quality Modeling Phase 3 Summary Report: Long Range Transport and Air Quality Related Values. Publication No. EPA 454/P–15–003. Office of Air Quality Planning & Standards, Research Triangle Park, North Carolina 27711.

[41] ENVIRON, 2012. Documentation of the Evaluation of CALPUFF and Other Long Range Transport Models using Tracer Field Experiment Data, EPA Contract No: EP–D–07–102. February 2012. 06–20443M4. *http://www.epa.gov/ttn/scram/reports/EPA-454_R-12-003.pdf.*

source-receptor distances greater than 50 km, regional scale photochemical grid models may be applied for the assessment of visibility impacts due to one or a small group of sources. Skill in estimating source-receptor relationships on this scale can be illustrated by evaluating modeling systems against regional scale inert tracer release experiments. Historically, several regional tracer release experiments have been used to demonstrate skill in long-range transport of inert pollutants: 1980 Great Plains Mesoscale Tracer Field Experiment, the 1983 Cross-Appalachian Tracer Experiment (CAPTEX), the 1987 Across North American Tracer Experiment (ANATEX), and 1994 European Tracer Experiment (ETEX).[41] [42] Photochemical grid models have been shown to demonstrate similar skill to Lagrangian models for pollutant transport when compared to measurements made from multiple mesoscale field experiments.[41] Use of CTMs for Air Quality Related Values (AQRV) analysis requirements, while not subject to specific EPA model approval requirements outlined in 40 CFR 51.166(l)(2) and 40 CFR 52.21(l)(2), should be justified for each application following the general recommendations outlined in section 3.2, and concurrence sought with the affected FLM(s).

In 2005, the EPA issued guidelines for implementation of the best available retrofit technology (BART) requirements under the Regional Haze Rule. In these BART Guidelines, the EPA addressed the question of how states could best predict a single source's contribution to visibility impairment.[43] At the time, the EPA recognized that CALPUFF had not yet been fully evaluated for secondary pollutant formation, but the EPA still considered CALPUFF to be the best application for assessing a single source's impact on visibility in a Class I area for purposes of the regional haze program. The EPA took note of the limitations of CALPUFF for this purpose but concluded that CALPUFF was the best modeling application for use in evaluating BART, especially given how the modeling results would be used. Based on this assessment, the EPA recommended that the states use CALPUFF. The EPA also made clear, however, that states could use other alternative approaches, including photochemical grid models, if done in consultation with the appropriate EPA Regional Office.

The current version of the *Guideline* does not contain any explicit recommendation regarding the use of CALPUFF in the regional haze program, but in advising states and in making its own BART determinations, the EPA has looked to the *Guideline* to resolve questions regarding the proper application of the model. In particular, the EPA has guided states to use the applicable regulatory version of CALPUFF for such assessments. Following the EPA's recommendations, states have used the EPA-preferred version of CALPUFF in hundreds of BART determinations since 2005. Although most assessments of BART are now complete, a handful of BART determinations remain outstanding. We expect most of the remaining actions addressing the BART requirements to be completed within the next two years.

The proposed changes to the *Guideline* do not affect the EPA's recommendation in the 2005 BART Guidelines to use CALPUFF in the BART determination process. Given that the overwhelming majority of BART determinations have been made using CALPUFF, we consider it appropriate for states (or the EPA) to continue to use this application for the remaining assessments under the current *Guideline* with approved protocols. This approach assures consistency across and within states in the regional haze program. In addition, in many instances, the modeling of visibility impacts has already been completed even though the BART determination process is not yet done. Allowing states to continue to rely on CALPUFF avoids additional time and expense in developing a new assessment of visibility impacts for a SIP initially due in 2007. We intend to continue to advise states with respect to the EPA-preferred version of CALPUFF that should be used in specific BART cases. Consistent with the BART Guidelines, states may also use alternative modeling approaches, in consultation with the appropriate EPA Regional Office.

The EPA is seeking comment on its proposed screening approach to address long-range transport for purposes of assessing PSD increments; its decision to remove CALPUFF as a preferred model in appendix A for such long-range transport assessments; and its decision to consider CALPUFF as a screening technique along with other Lagrangian models to be used in consultation with the appropriate reviewing authority. It is important to note that the EPA's proposed action to remove CALPUFF as an appendix A model in this *Guideline* does not affect its use under the FLM's guidance regarding AQRV assessments (FLAG 2010) nor previous use of this model as part of regulatory modeling applications required under the CAA. Similarly, this proposed action does not affect EPA's recommendation that States use CALPUFF to determine the applicability and level of BART in regional haze implementation plans.[43]

8. Role of EPA's Model Clearinghouse

The EPA's Model Clearinghouse has been a fundamental aspect of communication between the EPA Region Offices and with the broader permitting community on technical modeling and compliance demonstration issues for almost three decades. The Model Clearinghouse serves a critical role in helping resolve issues that arise from unique situations that are not specifically addressed in the *Guideline* or necessitate the consideration of an alternative model or technique for a specific application or range of applications. The Model Clearinghouse ensures that fairness, consistency, and transparency in modeling decisions are fostered among the Regional Offices and the state, local, and tribal agencies.

In this action, we are proposing to codify the long-standing process of the Regional Offices consulting and coordinating with the Model Clearinghouse on all approvals of alternative models or techniques. While the Regional Administrators are the delegated authority to issue such approvals under section 3.2 of the *Guideline,* all alternative model approvals will only be issued after consultation with the EPA's Model Clearinghouse and formal documentation through a concurrence memorandum which demonstrates that the requirements within section 3.2 for use of an alternative model have been met.

We invite comment on our proposal to codify existing practice of requiring consultation and coordination between the EPA Regional Offices and the EPA's Model Clearinghouse on all approvals under section 3.2 of alternative models or techniques.

9. Updates to Modeling Procedures for Cumulative Impact Analysis

Based on input from the Tenth Modeling Conference and recent permit modeling experiences under new short-term NAAQS for SO_2 and NO_2, the EPA is proposing to make modifications to section 8 of the *Guideline* regarding model inputs and background concentrations to provide much needed

[42] Hegarty, J., Draxler, R.R., Stein, A.F., Brioude, J., Mountain, M., Eluszkiewicz, J., Nehrkorn, T., Ngan, F., Andrews, A., 2013. Evaluation of Lagrangian particle dispersion models with measurements from controlled tracer releases. *Journal of Applied Meteorology and Climatology,* 52: 2623–2637.

[43] *See* 70 FR 39104, 39122–23 (July 6, 2005).

clarity associated with input and database selection for use in PSD and SIP modeling. Many of these revisions are based on the EPA clarification memoranda issued since 2010 that were intended to provide the necessary clarification regarding applicability of the *Guideline* to PSD modeling for these new standards.[1 2 44 45] The EPA has specifically cautioned against the literal and uncritical application of very prescriptive procedures for conducting NAAQS and PSD modeling compliance demonstrations as described in chapter C of the draft New Source Review Workshop Manual.[46] Our main concern is that following such procedures in a literal and uncritical manner has led to practices that are overly conservative and unnecessarily complicate the permitting process. The proposed changes to section 8 are intended to modify these practices and provide a more appropriate basis for selection and use of modeling inputs through the *Guideline* itself and supporting guidance.

We have provided a more definitive definition of the appropriate modeling domain and how to best characterize the various contributions to air quality concentrations within that domain. Specifically, we provide the following recommendations:

- Definition and/or factors to consider in determining appropriate modeling domain for NAAQS and PSD increment assessments and for SIP attainment demonstrations (*see* section 8.1).
- Revised requirements on how to characterize emissions from nearby sources to be explicitly modeled for purposes of a cumulative impact assessment under PSD and new language regarding how to characterize direct and precursor emissions from modeled sources for SIP attainment demonstrations for ozone, $PM_{2.5}$, and regional haze (*see* section 8.2).
- Revised recommendations on how to determine background concentrations in constructing the design concentration, or total air quality concentration, as part of a cumulative impact analysis for NAAQS and PSD increments. Specific recommendations are proposed for situations involving isolated single-source(s) and multi-source areas (*see* section 8.3) with an emphasis on how to determine which nearby sources to explicitly model based on the concept of significant concentration gradients and the use of monitored background to adequately represent ''other sources'' (*i.e.,* that portion of the background attributable to natural sources, other unidentified sources in the vicinity of the project, and regional transport contributions from more distant sources (domestic and international)). It is important to note the interconnectedness of these issues as the question of which nearby sources to include in cumulative modeling is inextricably linked with the question of what ambient monitoring data are available and what these data represent for a specific application.

More specific data requirements and the format required for the individual models are described in detail in the users' guide and/or associated documentation for each model.

Given the added complexity of the technical issues that arise in the context of demonstrating compliance with NAAQS through dispersion modeling, we strongly encourage adherence to the recommendations in section 9.2.1 of the proposed *Guideline* regarding development of a modeling protocol, *i.e.,* that ''[e]very effort should be made by the Regional Office to meet with all parties involved in either a SIP revision or a PSD permit application prior to the start of any work on such a project. During this meeting, a protocol should be established between the preparing and reviewing parties to define the procedures to be followed, the data to be collected, the model to be used, and the analysis of the source and concentration data.'' We expect by providing more clarity in the *Guideline* of the factors to be considered in the cumulative impact assessment, permit applicants and permitting authorities will be able to find the proper balance of the competing factors that contribute to these analyses.

We invite comments on whether the updates proposed in section 8 of the *Guideline* and associated guidance are appropriate and sufficient to provide the necessary clarification in selecting and establishing the model inputs for conducting the regulatory modeling for PSD and SIP applications.

10. Updates on Use of Meteorological Input Data for Regulatory Dispersion Modeling

For near-field dispersion modeling applications using National Weather Service (NWS) Automated Surface Observing Stations (ASOS), the EPA released a pre-processor to AERMET, called AERMINUTE, in 2011 that calculates hourly averaged winds from 2-minute winds reported every minute at NWS ASOS sites. AERMET substitutes these hourly averaged winds for the standard hourly observations, thus reducing the number of calms and missing winds for input into AERMOD. The presence of calms and missing winds were due to the METAR reporting methodology of surface observations. In March 2013, the EPA released a memorandum regarding the use of ASOS data in AERMOD as well as the use of AERMINUTE. When using meteorological data from ASOS sites for input to AERMOD, hourly averaged winds from AERMINUTE should be used in most cases.

For a near-field dispersion modeling application where there is no representative NWS station, and it is prohibitive or not feasible to collect adequately representative site-specific data, it may be necessary to use prognostic meteorological data for the application. The EPA released the MMIF program that converts the prognostic meteorological data into a format suitable for dispersion modeling applications. The most recent 3 years of prognostic data are preferred. Use of the prognostic data is contingent on the concurrence of the appropriate reviewing authorities and collaborating agencies that the data are of acceptable quality and representative of the modeling application.

We solicit comments on our proposed updates regarding use of meteorological input data for regulatory application of dispersion models.

11. Transition Period for Applicability of Revisions to the Guideline

In previous rulemakings to revise the *Guideline,* we have traditionally communicated that it would be appropriate to provide 1 year to transition to the use of new models, techniques and procedures in the context of PSD permit applications and other regulatory modeling applications. We invite comments whether it would be appropriate to apply a 1-year transition after promulgation of the revised *Guideline* (*i.e.,* from its effective

[44] U.S. EPA, 2011. Additional Clarification Regarding Applicability of Appendix W Modeling Guidance for the 1-hour NO2 NAAQS. Tyler Fox Memorandum dated March 1, 2011, Office of Air Quality Planning & Standards, Research Triangle Park, North Carolina 27711.*http://www.epa.gov/ttn/scram/guidance/clarification/NO2_Clarification_Memo-20140930.pdf.*

[45] U.S. EPA, 2014. Clarification on the Use of AERMOD Dispersion Modeling for Demonstrating Compliance with the NO_2 National Ambient Air Quality Standard. R. Chris Owen and Roger Brode Memorandum dated September 30, 2014, Office of Air Quality Planning & Standards, Research Triangle Park, North Carolina 27711. *http://www.epa.gov/ttn/scram/guidance/clarification/NO2_Clarification_Memo-20140930.pdf.*

[46] U.S. EPA, 1990. New Source Review Workshop Manual: Prevention of Significant Deterioration and Nonattainment Area Permitting (Draft). Office of Air Quality Planning & Standards, Research Triangle Park, North Carolina 27711. *http://www.epa.gov/nsr.*

date) such that applications conducted under the current *Guideline* with approved protocols would be acceptable during that period, but new requirements and recommendations should be used for applications submitted after that period or protocols approved after that period.

The EPA believes such a transition period is appropriate to avoid the time and expense of revisiting modeling that is substantially complete, which would cause undue delays to permit applications that are pending when the proposed revisions to the *Guideline* are finalized. The revisions that the EPA is proposing to the *Guideline* are intended as incremental improvements to the *Guideline,* and such improvements do not necessarily invalidate past practices under the previous edition of the *Guideline.* The requirements and recommendations in the current (2005) version of the *Guideline* were previously identified as acceptable by the EPA, and they will continue to be acceptable for air quality assessments during the period of transition to the revised version of the *Guideline.*

Where a proposed revision to the *Guideline* does raise questions about the acceptability of a requirement or recommendation that it replaces, model users and applicants are encouraged to consult with the appropriate reviewing authority as soon as possible to assure the acceptability of modeling used to support permit applications during this period.

B. Proposed Editorial Changes

The EPA is proposing to make editorial changes to update and reorganize information throughout the *Guideline.* These revisions are not intended to meaningfully change the substance of the *Guideline,* but rather to make the *Guideline* easier to use. One way this is accomplished is by grouping topics together in a more logical manner to make related content easier to find. This in turn should streamline the compliance assessment process.

Editorial changes are described below for each affected section. We invite comment on any of the changes proposed below for the *Guideline* text.

1. Preface

Only a few minor text revisions are proposed to this section for consistency with the remainder of the *Guideline.*

2. Section 1

The EPA propose to update the introduction section to reflect the reorganized nature of the revised *Guideline.* Minor text revisions are proposed throughout this section for additional clarity. Additional information is provided regarding the importance of CAA section 320 to amendments of the *Guideline.*

3. Section 2

The EPA proposes to revise section 2 to more appropriately discuss the process by which models are evaluated and considered for use in particular applications. We propose to incorporate information from the previous section 9 pertaining to model accuracy and uncertainty within this section to clarify how model performance evaluation is critical in determining the suitability of models for particular application.

We also propose to provide a discussion in section 2.1 (Model Accuracy and Uncertainty) of the three types of models historically used for regulatory demonstrations. For each type of model, some strengths and weaknesses are listed to assist readers in the understanding of the particular regulatory applications to which they are most appropriate.

In addition, the EPA proposes revisions to section 2.2 with respect to the recommended practice of progressing from simplified and conservative air quality analysis toward more complex and refined analysis. In this section, the EPA proposes to clarify distinctions between various types of models that have previously been described as screening models. In addition, this section clarifies distinctions between models used for screening purposes and screening techniques and demonstration tools that may be acceptable in certain applications.

4. Section 3

The EPA proposes minor modifications to section 3 to more accurately reflect current EPA practices and by moving the discussion of the EPA's Model Clearinghouse to a revised section 3.3 for ease of reference and prominence within the *Guideline.* A change is proposed to require Regional Office consultation with the Model Clearinghouse on all alternative model approvals. Previously, section 3 included various requirements under recommendation subheading that were not clearly identified as requirements. Accordingly, the EPA is proposing to modify section 3 with the incorporation of requirement subsections to eliminate any ambiguity.

5. Section 4

The EPA proposes to significantly revise section 4 to incorporate the modeling approaches recommended for air quality impact analyses for the criteria pollutants of CO, lead, SO_2, NO_2, and primary $PM_{2.5}$ and PM_{10}. In many respects, the proposed revisions to section 4 are a combination of the previous sections 4 and 5, reflecting inert criteria pollutants only. The EPA also proposes to modify section 4 to incorporate requirement subsections to provide clarity of the various requirements where previously sections 4 and 5 included various requirements under recommendation subheadings.

As proposed, this section provides an in-depth discussion of screening and refined models, including the introduction of AERSCREEN as the recommended screening model for simple and complex terrain for single sources and options for multi-source screening with AERMOD.[47] The EPA proposes to include a clear discussion of each appendix A preferred model in section 4.3 (Refined Models). The EPA also proposes to modify the discussion for each preferred model (*i.e.,* AERMOD Modeling System, CTDMPLUS, and OCD) from the previous section 4 with appropriate edits and some streamlining based on information available in the respective model formulation documentation and users guides.

The EPA is proposing to add a subsection specifically addressing the modeling recommendations for SO_2 where, previously, section 4 of the *Guideline* was generally understood to be applicable for SO_2. Minor updates are proposed with respect to the modeling recommendations for each of the other inert criteria pollutants that were previously found in section 5. For NO_2, the ARM2 is proposed to be added as a Tier 2 option, and the Tier 3 options of OLM and PVMRM are proposed to become part of the regulatory version of AERMOD. For any pollutant that had significant emissions from mobile sources, our previous recommendation to use the CALINE3 models is proposed to be replaced with AERMOD.

6. Section 5

As already stated, much of the previous section 5 with respect to the inert criteria pollutants is proposed to be incorporated into the revised section 4. As proposed, the revised section 5 is now focused only on the modeling approaches recommended for ozone and secondary $PM_{2.5}$.

Both ozone and secondary $PM_{2.5}$ are formed through chemical reactions in the atmosphere and are not

[47] U.S. EPA, 2015. Technical Support Document (TSD) for Replacement of CALINE3 with AERMOD for Transportation Related Air Quality Analyses. Publication No. EPA–454/B–15–002. Office of Air Quality Planning & Standards, Research Triangle Park, NC.

appropriately modeled with traditional steady-state Gaussian plume models, such as AERMOD. Chemical transport models are necessary to appropriately assess the single-source air quality impacts of precursor pollutants on the formation of ozone or secondary $PM_{2.5}$.

While the proposed revision to section 5 do not specify a particular EPA-preferred model or technique for use in air quality assessments, a two-tiered screening approach is proposed for ozone and secondary $PM_{2.5}$ with appropriate references to the EPA's new single-source modeling guidance. The first tier consists of technically credible and appropriate relationships between emissions and the impacts developed from existing modeling simulations. If existing technical information is not available or appropriate, then a second tier approach would apply, involving use of sophisticated chemical transport models (*e.g.,* photochemical grid models) as determined in consultation with the appropriate EPA Regional Office on a case-by-case basis based upon the EPA's new single-source modeling guidance.

7. Section 6

Revisions to section 6 are proposed to more clearly address the modeling recommendations of other federal agencies, such as the FLM(s), that have been developed in response to EPA rules or standards. While no attempt is made to comprehensively discuss each topic, the EPA proposes to provide appropriate references to the respective federal agency guidance documents.

The proposed revision to section 6 focus primarily on AQRVs, including near-field and long-range transport assessments for visibility impairment and deposition. The interests of the Bureau of Ocean Energy and Management for Outer Continental Shelf permitting situations and of the Federal Aviation Administration for airport and air base permitting situations are represented in proposed section 6.3 (Modeling Guidance for Other Governmental Programs).

The discussion of Good Engineering Practices (GEP) for stack height consideration is proposed to be modified and moved to section 7. The EPA proposed to remove the discussion of long-range transport for PSD Class I increment and references to the previously preferred long-range transport model, CALPUFF, in accordance with the more detailed discussion in the Proposed Actions section of this Preamble.

8. Section 7

We propose to revise section 7 to be more streamlined and appropriate to the variety of general modeling issues and considerations that are not already been covered in sections 4, 5, and 6 of the *Guideline.* The EPA proposes to move the information concerning design concentrations and receptor sites to section 9. The discussion of stability categories is proposed to be removed from section 7 since it is specifically addressed in the model formulation documentation and guidance for the dispersion models that require stability categories to be defined. As already stated, the GEP discussion from the previous section 6 is proposed to be incorporated into this section.

The EPA proposes to expand the recommendations for determining rural or urban dispersion coefficients to provide more clarity with respect to appropriate characterization within AERMOD, including a discussion on the existence of highly industrialized areas where population density is low that may be best treated with urban rather than rural dispersion coefficients. References to CALPUFF in the Complex Winds subsection are proposed to be removed due to technical issues described in the Proposed Actions section of this preamble. As proposed, if necessary for special complex wind situations, the setup and application of an alternative model should now be determined in consultation with the appropriate reviewing authority. Finally, the EPA proposes to revise section 7 to include a new discussion of modeling considerations specific to mobile sources.

9. Section 8

The EPA propose extensive updates and modifications to section 8 to reflect current EPA practices, requirements, and recommendations for determining the appropriate modeling domain and model input data from new or modifying source(s) or sources under consideration for a revised permit limit, from background concentrations (including air quality monitoring data and nearby and others sources), and from meteorology. As with earlier sections, the EPA proposes to modify section 8 to incorporate requirement subsections where previously section 8 ambiguously included various requirements under recommendation subheadings.

The Background Concentration subsection is proposed to be significantly modified from the existing *Guideline* to include a more clear and comprehensive discussion of nearby and other sources. This is intended to eliminate confusion of how to identify nearby sources that should be explicitly modeled and all other sources that should be generally represented by air quality monitoring data. In addition to air quality monitoring data, a brief discussion on the use of photochemical grid modeling to appropriately characterize background concentrations has been included in this proposed section. Updates to Tables 8–1 and 8–2 are proposed per changes in the considerations for nearby sources, as discussed in the Proposed Actions section of this Preamble.

The use of prognostic mesoscale meteorological models to provide meteorological input for regulatory dispersion modeling applications is proposed to be incorporated throughout the Meteorological Input Data subsection, including the introduction of the MMIF as a tool to inform regulatory model applications. Other than additional minor modifications to the recommendations through this subsection based on current EPA practices, the most substantive proposed edits relate to the recommendation to use the AERMINUTE meteorological data processor to calculate hourly average wind speed and direction when processing NWS ASOS data for developing AERMET meteorological inputs to the AERMOD dispersion model.

10. Section 9

The EPA proposes to move all of the information previously in section 9 related to model accuracy and evaluation into other sections in the revised *Guideline* (primarily to the revised section 2 and some to the revised section 4). This provides for greater clarity in those topics as applied to selection of models under the *Guideline.* However, the EPA proposes to remove subsection on the ''Use of Uncertainty in Decision Making.''. After removing this content, the EPA proposes to totally revise section 9 to focus on the regulatory application of models, which would include the majority of the information found previously in section 10.

The EPA proposes to revise the discussion portion of section 9 to more clearly summarize the general concepts presented in earlier sections of the *Guideline* and to set the stage for the appropriate regulatory application of models and/or, in rare circumstances, air quality monitoring data. The importance of developing and vetting a modeling protocol is more prominently presented in a separate subsection.

The information related to design concentrations is proposed to be updated and unified from previous language found in sections 7 and 10. An expanded discussion of receptor sites is proposed based on language from the previous section 7 and new considerations given past practices of model users tending to define an excessively large and inappropriate number of receptors based on vague guidance.

The recommendations for NAAQS and PSD increment compliance demonstrations are proposed to be overhauled to more clearly and accurately reflect the long-standing EPA recommendation and practice of performing a single-source impact analysis as a first stage of the NAAQS and PSD increment compliance demonstration and, as necessary, conducting a more comprehensive cumulative impact analysis as the second stage. The appropriate considerations and applications of screening and/or refined model are described in each stage.

Finally, the section on Use of Measured Data in Lieu of Model Estimates subsection is proposed to be revised to provide more details on the process for determining the rare circumstances in which air quality monitoring data may be considered for determining the most appropriate emissions limit for a modification to an existing source. As with other portions of the revised section 9, the language throughout this subsection is proposed to be updated to reflect current EPA practices, as appropriate.

11. Section 10

As discussed, the majority of the information found previously in section 10 is proposed to be incorporated into the revised section 9. As proposed, section 10 consists of the references that were in the previous section 12. We also propose to update each reference, as appropriate, based on the text revisions throughout the *Guideline.*

12. Section 11

In a streamlining effort, the EPA proposes to remove this bibliography section from the *Guideline.*

13. Section 12

As stated earlier, this references section is now proposed as section 10 with appropriate updates.

14. Appendix A to the Guideline

The EPA proposes to revise appendix A to the *Guideline* to remove the Buoyant Line and Point Source Dispersion Model (BLP), CALINE3, and CALPUFF as refined air quality models preferred for specific regulator applications. The rational for the removal of these air quality models from the preferred status can be found in the Proposed Actions section of this Preamble.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is, therefore not subject to OMB review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden subject to OMB review under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The modeling techniques described in this proposed action are primarily used by air agencies and by industries owning major sources subject to NSR permitting requirements. To the extent that any small entities would have to conduct air quality assessments, using the models and/or techniques described in this proposed action are not expect to pose any additional burden (compared to the existing models and/or techniques) on these entities. The proposal features updates to the existing EPA-preferred model, AERMOD, that serves to increase efficiency and accuracy by changing only mathematical formulations and specific data elements. Also, this proposed action will streamline resources necessary to conduct necessary modeling with AERMOD by incorporating model algorithms from the BLP model and replacing CALINE3 for mobile source applications. Although this proposed action calls for new models and/or techniques for use in addressing ozone and secondary $PM_{2.5}$, we expect most small entities will generally be able to rely on existing modeling simulations; so, we expect minimal burden associated with these assessments. Therefore, we do not believe that that this proposal poses a significant or unreasonable burden on any small entities.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This proposed action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This proposed action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule does not create a mandate on state, local or tribal governments nor does it impose any enforceable duties on these entities. This action would add better, more accurate techniques for conducting air quality assessments and does not add

any additional requirements for any of the affected parties covered under Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this proposal. In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed rule from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed rule imposes no requirements on tribal governments. Accordingly, Executive Order 13175 does not apply to this action. In the spirit of Executive Order 13175, the EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate Matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: July 14, 2015.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 2. Appendix W to part 51 is revised to read as follows:

APPENDIX W TO PART 51—Guideline on Air Quality Models Preface

a. Industry and control agencies have long expressed a need for consistency in the application of air quality models for regulatory purposes. In the 1977 Clean Air Act (CAA), Congress mandated such consistency and encouraged the standardization of model applications. The *Guideline on Air Quality Models* (hereafter, *Guideline*) was first published in April 1978 to satisfy these requirements by specifying models and providing guidance for their use. The *Guideline* provides a common basis for estimating the air quality concentrations of criteria pollutants used in assessing control strategies and developing emissions limits.

b. The continuing development of new air quality models in response to regulatory requirements and the expanded requirements for models to cover even more complex problems have emphasized the need for periodic review and update of guidance on these techniques. Historically, three primary activities have provided direct input to revisions of the *Guideline.* The first is a series of periodic EPA workshops and modeling conferences conducted for the purpose of ensuring consistency and providing clarification in the application of models. The second activity was the solicitation and review of new models from the technical and user community. In the March 27, 1980, **Federal Register**, a procedure was outlined for the submittal to the EPA of privately developed models. After extensive evaluation and scientific review, these models, as well as those made available by the EPA, have been considered for recognition in the *Guideline.* The third activity is the extensive on-going research efforts by the EPA and others in air quality and meteorological modeling.

c. Based primarily on these three activities, new sections and topics have been included as needed. The EPA does not make changes to the guidance on a predetermined schedule, but rather on an as-needed basis. The EPA believes that revisions of the *Guideline* should be timely and responsive to user needs and should involve public participation to the greatest possible extent. All future changes to the guidance will be proposed and finalized in the **Federal Register**. Information on the current status of modeling guidance can always be obtained from EPA's Regional Offices.

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1.0 Introduction

a. The *Guideline* recommends air quality modeling techniques that should be applied to State Implementation Plan (SIP) submittals and revisions, to New Source Review (NSR), including new or modifying sources under Prevention of Significant Deterioration (PSD),[1 2 3] conformity analyses,[4] and other air quality assessments required under EPA regulation. Applicable only to criteria air pollutants, the *Guideline* is intended for use by the EPA Regional Offices in judging the adequacy of modeling analyses performed by the EPA, by state, local, and tribal permitting authorities, and by industry. It is appropriate for use by other federal government agencies and by state, local, and tribal agencies with air quality and land management responsibilities. The *Guideline* serves to identify, for all interested parties, those modeling techniques and databases that the EPA considers acceptable. The *Guideline* is not intended to be a compendium of modeling techniques. Rather, it should serve as a common measure of acceptable technical analysis when supported by sound scientific judgment.

b. Air quality measurements [5] are routinely used to characterize ambient concentrations of criteria pollutants throughout the nation but are rarely sufficient for characterizing the ambient impacts of individual sources or demonstrating adequacy of emissions limits for an existing source due to limitations in spatial and temporal coverage of ambient monitoring networks. The impacts of new sources that do not yet exist and modifications to existing sources that have yet to be implemented can only be determined through modeling. Thus, models have become a primary analytical tool in most air quality assessments. Air quality measurements can be used in a complementary manner to air quality models, with due regard for the strengths and weaknesses of both analysis techniques, and are particularly useful in assessing the accuracy of model estimates.

c. It would be advantageous to categorize the various regulatory programs and to apply a designated model to each proposed source needing analysis under a given program. However, the diversity of the nation's topography and climate, and variations in source configurations and operating characteristics dictate against a strict modeling ''cookbook.'' There is no one model capable of properly addressing all conceivable situations even within a broad category such as point sources. Meteorological phenomena associated with threats to air quality standards are rarely amenable to a single mathematical treatment; thus, case-by-case analysis and judgment are frequently required. As modeling efforts become more complex, it is increasingly important that they be directed by highly competent individuals with a broad range of experience and knowledge in air quality meteorology. Further, they should be coordinated closely with specialists in emissions characteristics, air monitoring and data processing. The judgment of experienced meteorologists, atmospheric scientists, and analysts is essential.

d. The model that most accurately estimates concentrations in the area of interest is always sought. However, it is clear from the needs expressed by the EPA Regional Offices, by state, local, and tribal agencies, by many industries and trade associations, and also by the deliberations of Congress that consistency in the selection and application of models and databases should also be sought, even in case-by-case analyses. Consistency ensures that air quality control agencies and the general public have a common basis for estimating pollutant concentrations, assessing control strategies, and specifying emissions limits. Such consistency is not, however, promoted at the expense of model and database accuracy. The *Guideline* provides a consistent basis for selection of the most accurate models and databases for use in air quality assessments.

e. Recommendations are made in the *Guideline* concerning air quality models and techniques, model evaluation procedures, and model input databases and related requirements. The guidance provided here should be followed in air quality analyses relative to SIPs, NSR, and in supporting analyses required by the EPA and by state, local, and tribal permitting authorities. Specific models are identified for particular applications. The EPA may approve the use of an alternative model or technique that can be demonstrated to be more appropriate than those recommended in the *Guideline.* In all cases, the model or technique applied to a given situation should be the one that provides the most accurate representation of atmospheric transport, dispersion, and chemical transformations in the area of interest. However, to ensure consistency, deviations from the *Guideline* should be carefully documented as part of the public record and fully supported by the appropriate reviewing authority, as discussed later.

f. From time to time, situations arise requiring clarification of the intent of the guidance on a specific topic. Periodic workshops are held with EPA headquarters, EPA Regional Office, and state, local, and tribal agency modeling representatives to ensure consistency in modeling guidance and to promote the use of more accurate air quality models, techniques, and databases. The workshops serve to provide further explanations of *Guideline* requirements to the EPA Regional Offices and workshop materials are issued with this clarifying information. In addition, findings from ongoing research programs, new model development, or results from model evaluations and applications are continuously evaluated. Based on this information, changes in the applicable guidance may be indicated and appropriate revisions to the *Guideline* may be considered.

g. All changes to the *Guideline* must follow rulemaking requirements since the *Guideline* is codified in appendix W to 40 Code of Federal Regulations (CFR) part 51. The EPA will promulgate proposed and final rules in the **Federal Register** to amend this appendix. The EPA utilizes the existing procedures under CAA section 320 that requires EPA to conduct a Conference on Air Quality Modeling at least every 3 years. These modeling conferences are intended to develop standardized air quality modeling procedures and form the basis for associated revisions to this *Guideline* in support of the EPA's continuing effort to prescribe with ''reasonable particularity'' air quality models and meteorological and emission databases suitable for modeling National Ambient Air Quality Standards (NAAQS) [6] and PSD increments (CAA 320, 42 U.S.C. 7620). Ample opportunity for public comment will be provided for each proposed change and public hearings scheduled.

h. A wide range of topics on modeling and databases are discussed in the *Guideline.* Section 2 gives an overview of models and their suitability for use in regulatory applications. Section 3 provides specific guidance on the determination of preferred air quality models and on the selection of alternative models or techniques. Sections 4 through 6 provide recommendations on modeling techniques for assessing criteria pollutant impacts from single and multiple sources with specific modeling requirements for selected regulatory applications. Section 7 discusses general considerations common to many modeling analyses for stationary and mobile sources. Section 8 makes recommendations for data inputs to models including source, background air quality, and meteorological data. Section 9 summarizes how estimates and measurements of air quality are used in assessing source impact and in evaluating control strategies.

i. Appendix W to 40 CFR part 51 contains an appendix: Appendix A. Thus, when reference is made to ''appendix A'' in this document, it refers to appendix A to appendix W to 40 CFR part 51. Appendix A contains summaries of refined air quality models that are ''preferred'' for particular applications; both EPA models and models developed by others are included.

2.0 Overview of Model Use

a. Increasing reliance has been placed on concentration estimates from air quality models as the primary basis for regulatory decisions concerning source permits and emission control requirements. In many situations, such as review of a proposed new source, no practical alternative exists. Before attempting to implement the guidance contained in this document, the reader should be aware of certain general information concerning air quality models and their evaluation and use. Such information is provided in this section.

2.1 Suitability of Models

a. The extent to which a specific air quality model is suitable for the assessment of source impacts depends upon several factors. These include: (1) The topographic and meteorological complexities of the area; (2) the detail and accuracy of the input databases, *i.e.,* emissions inventory, meteorological data, and air quality data; (3) the manner in which complexities of atmospheric processes are handled in the model; (4) the technical competence of those undertaking such simulation modeling; and (5) the resources available to apply the model. Any of these factors can have a significant influence on the overall model performance, which must be thoroughly evaluated to determine the suitability of an air quality model to a particular application or range of applications.

b. Air quality models are most accurate and reliable in areas that have gradual transitions of land use and topography. Meteorological conditions in these areas are spatially uniform such that observations are broadly representative and air quality model projections are not further complicated by a heterogeneous environment. Areas subject to major topographic influences experience meteorological complexities that are often difficult to measure and simulate. Models with adequate performance are available for increasingly complex environments. However, they are resource intensive and frequently require site-specific observations and formulations. Such complexities and the related challenges for the air quality simulation should be considered when selecting the most appropriate air quality model for an application.

c. Appropriate model input data should be available before an attempt is made to evaluate or apply an air quality model. Assuming the data are adequate, the greater the detail with which a model considers the spatial and temporal variations in meteorological conditions and permit-enforceable emissions, the greater the ability to evaluate the source impact and to distinguish the effects of various control strategies.

d. There are three types of models that have historically been used in the regulatory demonstrations applicable in the *Guideline,* each having strengths and weaknesses that lend themselves to particular regulatory applications.

i. Gaussian plume models use a ''steady-state'' approximation, which assumes that over the model time step, the emissions, meteorology and other model inputs, are constant throughout the model domain, resulting in a resolved plume with the emissions distributed throughout the plume according to a Gaussian distribution. This formulation allows Gaussian models to estimate near-field impacts of a limited number of sources at a relatively high resolution, with temporal scales of an hour and spatial scales of meters. However, this formulation allows for only relatively inert pollutants, with very limited considerations of transformation and removal (*e.g.,* deposition), and further limits the domain for which the model may be used. Thus, Gaussian models may not be appropriate if model inputs are changing sharply over the model time step or within the desired model domain or if more advanced considerations of chemistry are needed.

ii. Lagrangian puff models, on the other hand, are non-steady-state, and assume that model input conditions are changing over the model domain and model time step. Lagrangian models can also be used to determine near and far-field impacts from a limited number of sources at a high resolution. Traditionally, Lagrangian models have been used for relatively inert pollutants, with slightly more complex considerations of removal than Gaussian models. Some Lagrangian models treat in-plume gas and particulate chemistry. However, these models require time and space varying concentration fields of oxidants and, in the case of fine particulate matter ($PM_{2.5}$), neutralizing agents, such as ammonia. Reliable background fields are critical for applications involving secondary pollutant formation because secondary impacts generally occur when in-plume precursors mix and react with species in the background atmosphere.[7 8] These oxidant and neutralizing agents are not routinely measured, but can be generated with a three-dimensional photochemical grid model.

iii. Photochemical grid models are three-dimensional Eulerian grid-based models that treat chemical and physical processes in each grid cell and use diffusion and transport processes to move chemical species between grid cells.[9] Eulerian models assume that emissions are spread evenly throughout each model grid cell. Typically, Eulerian models have difficulty with fine scale resolution of individual plumes. However, these types of models can be appropriately applied for assessment of near-field and regional scale reactive pollutant impacts from specific sources [7 10 11 12] or all sources.[13 14 15] Photochemical gird models simulate a more realistic environment for chemical transformation,[7 12] but simulations can be more resource intensive than Lagrangian or Gaussian plume models.

e. Competent and experienced meteorologists, atmospheric scientists, and analysts are an essential prerequisite to the successful application of air quality models. The need for such specialists is critical when the more sophisticated models are used or the area being investigated has complicated meteorological or topographic features. It is important to note that a model applied improperly or with inappropriate data can lead to serious misjudgments regarding the source impact or the effectiveness of a control strategy.

f. The resource demands generated by use of air quality models vary widely depending on the specific application. The resources required may be important factors in the selection and use of a model or technique for a specific analysis. These resources depend on the nature of the model and its complexity, the detail of the databases, the difficulty of the application, the amount and level of expertise required, and the costs of manpower and computational facilities.

2.1.1 Model Accuracy and Uncertainty

a. The formulation and application of air quality models are accompanied by several sources of uncertainty. ''Irreducible'' uncertainty stems from the ''unknown'' conditions, which may not be explicitly accounted for in the model (*e.g.,* the turbulent velocity field). Thus, there are likely to be deviations from the observed

concentrations in individual events due to variations in the unknown conditions. ''Reducible'' uncertainties [16] are caused by: (1) Uncertainties in the ''known'' input conditions (*e.g.,* emission characteristics and meteorological data); (2) errors in the measured concentrations; and (3) inadequate model physics and formulation.

b. Evaluations of model accuracy should focus on the reducible uncertainty associated with physics and the formulation of the model. The accuracy of the model is normally determined by an evaluation procedure which involves the comparison of model concentration estimates with measured air quality data.[17] The statement of model accuracy is based on statistical tests or performance measures such as bias, noise, correlation, etc.[18 19]

c. Since the 1980's, the EPA has worked with the modeling community to encourage development of standardized model evaluation methods and the development of continually improved methods for the characterization of model performance.[16 18 20 21 22] There is general consensus on what should be considered in the evaluation of air quality models; namely, quality assurance planning, documentation and scrutiny should be consistent with the intended use and should include:

- Scientific peer review;
- Supportive analyses (diagnostic evaluations, code verification, sensitivity analyses);
- Diagnostic and performance evaluations with data obtained in trial locations; and
- Statistical performance evaluations in the circumstances of the intended applications.

Performance evaluations and diagnostic evaluations assess different qualities of how well a model is performing, and both are needed to establish credibility within the client and scientific community.

d. Performance evaluations allow the EPA and model users to determine the relative performance of a model in comparison with alternative modeling systems. Diagnostic evaluations allow determination of a model capability to simulate individual processes that affect the results, and usually employ smaller spatial/temporal scale date sets (*e.g.,* field studies). Diagnostic evaluations enable the EPA and model users to build confidence that model predictions are accurate for the right reasons. However, the objective comparison of modeled concentrations with observed field data provides only a partial means for assessing model performance. Due to the limited supply of evaluation datasets, there are practical limits in assessing model performance. For this reason, the conclusions reached in the science peer reviews and the supportive analyses have particular relevance in deciding whether a model will be useful for its intended purposes.

2.2 Levels of Sophistication of Air Quality Analyses and Models

a. It is desirable to begin an air quality analysis by using simplified or conservative methods (or both) followed, as appropriate, by more complex and refined methods. The purpose of this approach is to streamline the process and sufficiently address regulatory requirements by eliminating the need of more detailed modeling when it is not necessary in a specific regulatory application. For example, in the context of a PSD permit application, a simplified or conservative analysis may be sufficient where it shows the proposed construction clearly will not cause or contribute to ambient concentrations in excess of either the NAAQS or the PSD increments.[2 3]

b. There are two general levels of sophistication of air quality models. The first level consists of screening models that provide conservative modeled estimates of the air quality impact of a specific source or source category based on simplified assumptions of the model inputs (*e.g.,* preset, worst-case meteorological conditions). In the case of a PSD assessment, if a screening model indicates that the concentration contributed by the source could cause or contribute to a violation of any NAAQS or PSD increment, then the second level of more sophisticated models should be applied.

c. The second level consists of refined models that provide more detailed treatment of physical and chemical atmospheric processes, require more detailed and precise input data, and provide spatially and temporally resolved concentration estimates. As a result they provide a more sophisticated and, at least theoretically, a more accurate estimate of source impact and the effectiveness of control strategies.

d. There are situations where a screening model or a refined model is not available such that screening and refined modeling are not viable options to determine source-specific air quality impacts. In such situations, a screening technique or reduced-form model may be viable options for estimating source impacts.

i. Screening techniques are differentiated from a screening model in that screening techniques are approaches that make simplified and conservative assumptions about the physical and chemical atmospheric processes important to determining source impacts while screening models make assumptions about conservative inputs to a specific model. The complexity of screening techniques ranges from simplified assumptions of chemistry applied to refined or screening model output to sophisticated approximations of the chemistry applied within a refined model.

ii. Reduced-form models are computationally efficient simulation tools for characterizing the pollutant response to specific types of emission reductions for a particular geographic area or background environmental conditions that reflect underlying atmospheric science of a refined model but reduce the computational resources of running a complex, numerical air quality model such as a photochemical grid model.

In such situations, an attempt should be made to acquire or improve the necessary databases and to develop appropriate analytical techniques, but the screening technique or reduced-form model may be sufficient in conducting regulatory modeling applications when applied in consultation with the EPA Regional Office.

e. Consistent with the general principle described in paragraph 2.2(a), the EPA may establish a demonstration tool or method as a sufficient means for a user or applicant to make a demonstration required by regulation, either by itself or as part of a modeling demonstration. To be used for such regulatory purposes, such a tool or method must be reflected in a codified regulation or have a well-documented technical basis and reasoning that is contained or incorporated in the record of the regulatory decision in which it is applied.

2.3 Availability of Models

a. For most of the screening and refined models discussed in the *Guideline,* codes, associated documentation and other useful information are publicly available for download from the EPA's Support Center for Regulatory Atmospheric Modeling (SCRAM) Web site at *http://www.epa.gov/ttn/scram.* This is a Web site with which air quality modelers should become familiar and regularly visit for important model updates and additional clarifications and revisions to modeling guidance documents that are applicable to EPA programs and regulations. Codes and documentation may also available from the National Technical Information Service (NTIS), *http://www.ntis.gov*, and, when available, is referenced with the appropriate NTIS accession number.

3.0 Preferred and Alternative Air Quality Models

a. This section specifies the approach to be taken in determining preferred models for use in regulatory air quality programs. The status of models developed by the EPA, as well as those submitted to the EPA for review and possible inclusion in this *Guideline,* is discussed in this section. The section also provides the criteria and process for obtaining EPA approval for use of alternative models for individual cases in situations where the preferred models are not applicable or available. Additional sources of relevant modeling information are the EPA's Model Clearinghouse [23] (section 3.3), EPA modeling conferences, periodic Regional, State, and Local Modelers' Workshops, and the EPA's SCRAM Web site (section 2.3).

b. When approval is required for a specific modeling technique or analytical procedure in this *Guideline,* we refer to the *''appropriate reviewing authority.''* Many states and some local agencies administer NSR and PSD permitting under programs approved into SIPs. In some EPA regions, federal authority to administer NSR and PSD permitting and related activities has been delegated to state or local agencies. In these cases, such agencies *''stand in the shoes''* of the respective EPA regions. Therefore, depending on the circumstances, the appropriate reviewing authority may be an EPA Regional Office, a state, local, or tribal agency, or perhaps the Federal Land Manager (FLM). In some cases, the *Guideline* requires review and approval of the use of an alternative model by the EPA Regional Office (sometimes stated as *''Regional Administrator''*). For all approvals of alternative models or techniques, the EPA Regional Office will coordinate and shall seek concurrence with the EPA's Model Clearinghouse. If there is any question as to

the appropriate reviewing authority, you should contact the EPA Regional Office modeling contact (*http://www.epa.gov/ttn/scram/guidance_cont_regions.htm*), whose jurisdiction generally includes the physical location of the source in question and its expected impacts.

c. In all regulatory analyses, early discussions among the EPA Regional Office staff, state, local, and tribal agency staff, industry representatives, and where appropriate, the FLM, are invaluable and are strongly encouraged. Prior to the actual analyses, agreement on the databases to be used, modeling techniques to be applied, and the overall technical approach helps avoid misunderstandings concerning the final results and may reduce the later need for additional analyses. The preparation of a written modeling protocol that is vetted with the appropriate reviewing authority helps to keep misunderstandings and resource expenditures at a minimum.

d. The identification of preferred models in this *Guideline* should not be construed as a determination that the preferred models identified here are to be permanently used to the exclusion of all others or that they are the only models available for relating emissions to air quality. The model that most accurately estimates concentrations in the area of interest is always sought. However, designation of specific preferred models is needed to promote consistency in model selection and application.

3.1 Preferred Models

3.1.1 Discussion

a. The EPA has developed some models suitable for regulatory application, while other models have been submitted by private developers for possible inclusion in the *Guideline.* Refined models that are preferred and required by the EPA for particular applications have undergone the necessary peer scientific reviews [24 25] and model performance evaluation exercises [26 27] that include statistical measures of model performance in comparison with measured air quality data as described in section 2.1.1.

b. An American Society for Testing and Materials (ASTM) reference [28] provides a general philosophy for developing and implementing advanced statistical evaluations of atmospheric dispersion models, and provides an example statistical technique to illustrate the application of this philosophy. Consistent with this approach, the EPA has determined and applied a specific evaluation protocol that provides a statistical technique for evaluating model performance for predicting peak concentration values, as might be observed at individual monitoring locations.[29]

c. When a single model is found to perform better than others, it is recommended for application as a preferred model and listed in appendix A. If no one model is found to clearly perform better through the evaluation exercise, then the preferred model listed in appendix A may be selected on the basis of other factors such as past use, public familiarity, resource requirements, and availability. Accordingly, the models listed in appendix A meet these conditions:

i. The model must be written in a common programming language, and the executable(s) must run on a common computer platform.

ii. The model must be documented in a user's guide or model formulation report which identifies the mathematics of the model, data requirements and program operating characteristics at a level of detail comparable to that available for other recommended models in appendix A.

iii. The model must be accompanied by a complete test dataset including input parameters and output results. The test data must be packaged with the model in computer-readable form.

iv. The model must be useful to typical users, *e.g.,* state air agencies, for specific air quality control problems. Such users should be able to operate the computer program(s) from available documentation.

v. The model documentation must include a robust comparison with air quality data (and/or tracer measurements) or with other well- established analytical techniques.

vi. The developer must be willing to make the model and source code available to users at reasonable cost or make them available for public access through the Internet or National Technical Information Service. The model and its code cannot be proprietary.

d. The EPA's process of establishing a preferred model includes a determination of technical merit, in accordance with the above six items including the practicality of the model for use in ongoing regulatory programs. Each model will also be subjected to a performance evaluation for an appropriate database and to a peer scientific review. Models for wide use (not just an isolated case) that are found to perform better will be proposed for inclusion as preferred models in future *Guideline* revisions.

e. No further evaluation of a preferred model is required for a particular application if the EPA requirements for regulatory use specified for the model in the *Guideline* are followed. Alternative models to those listed in appendix A should generally be compared with measured air quality data when they are used for regulatory applications consistent with recommendations in section 3.2.

3.1.2 Requirements

a. Appendix A identifies refined models that are preferred for use in regulatory applications. If a model is required for a particular application, the user must select a model from appendix A or follow procedures in section 3.2.2 for use of an alternative model or technique. Preferred models may be used without a formal demonstration of applicability as long as they are used as indicated in each model summary in appendix A. Further recommendations for the application of preferred models to specific source applications are found in subsequent sections of the *Guideline.*

b. If changes are made to a preferred model without affecting the modeled concentrations, the preferred status of the model is unchanged. Examples of modifications that do not affect concentrations are those made to enable use of a different computer platform or those that only affect the format or averaging time of the model results. The integration of a graphical user interface (GUI) to facilitate setting up the model inputs and/or analyzing the model results without otherwise altering the model kernel is another example of a modification that does not affect concentrations. However, when any changes are made, the Regional Administrator must require a test case example to demonstrate that the modeled concentration are not affected.

c. A preferred model must be operated with the options listed in appendix A for its intended regulatory application. If other options are exercised, the model is no longer ''preferred.'' Any other modification to a preferred model that would result in a change in the concentration estimates likewise alters its status so that it is no longer a preferred model. Use of the modified model must then be justified as an alternative model on a case-by-case basis to the appropriate reviewing authority and approved by the Regional Administrator.

d. Where the EPA has not identified a preferred model for a particular pollutant or situation, the EPA may establish a multi-tiered approach for making a demonstration required under PSD or another CAA program. The initial tier or tiers may involve use of demonstration tools, screening models, screening techniques, or reduced-form models; while the last tier may involve the use of demonstration tools, refinded models or techniques, or alternative models approved under section 3.2.

3.2 Alternative Models

3.2.1 Discussion

a. Selection of the best model or techniques for each individual air quality analysis is always encouraged, but the selection should be done in a consistent manner. A simple listing of models in this *Guideline* cannot alone achieve that consistency nor can it necessarily provide the best model for all possible situations. As discussed in section 3.1.1, the EPA has determined and applied a specific evaluation protocol that provides a statistical technique for evaluating model performance for predicting peak concentration values, as might be observed at individual monitoring locations.[29] This protocol is available to assist in developing a consistent approach when justifying the use of other-than-preferred models recommended in the *Guideline* (*i.e.,* alternative models). The procedures in this protocol provide a general framework for objective decision-making on the acceptability of an alternative model for a given regulatory application. These objective procedures may be used for conducting both the technical evaluation of the model and the field test or performance evaluation.

b. This subsection discusses the use of alternate models and defines three situations when alternative models may be used. This subsection also provides a procedure for implementing 40 CFR 51.166(l)(2) in PSD permitting. This provision requires written approval of the Administrator for any modification or substitution of an applicable model. An applicable model for purposes of 40 CFR 51.166(l) is a preferred model in appendix A to the *Guideline.* Approval to use an alternative model under section 3.2 of the *Guideline* qualifies as approval for the modification or substitution of a model under

40 CFR 51.166(l)(2). The Regional Administrators are delegated authority to issue such approvals under section 3.2 of the *Guideline,* provided that such approval is issued after consultation with EPA's Model Clearinghouse and formally documented in a concurrence memorandum from EPA's Model Clearinghouse which demonstrates that the requirements within section 3.2 for use of an alternative model have been met.

3.2.2 Requirements

a. Determination of acceptability of an alternative model is an EPA Regional Office responsibility in consultation with EPA's Model Clearinghouse as discussed in paragraphs 3.0(b) and 3.2.1(b). Where the Regional Administrator finds that an alternative model is more appropriate than a preferred model, that model may be used subject to the approval of the EPA Regional Office based on the requirements of this subsection. This finding will normally result from a determination that (1) a preferred air quality model is not appropriate for the particular application; or (2) a more appropriate model or technique is available and applicable.

b. An alternative model shall be evaluated from both a theoretical and a performance perspective before it is selected for use. There are three separate conditions under which such a model may be approved for use:

1. If a demonstration can be made that the model produces concentration estimates equivalent to the estimates obtained using a preferred model;

2. If a statistical performance evaluation has been conducted using measured air quality data and the results of that evaluation indicate the alternative model performs better for the given application than a comparable model in appendix A; or

3. If there is no preferred model.

Any one of these three separate conditions may justify use of an alternative model. Some known alternative models that are applicable for selected situations are listed on the EPA's SCRAM Web site (section 2.3). However, inclusion there does not confer any unique status relative to other alternative models that are being or will be developed in the future.

c. Equivalency, condition (1) in paragraph (b) of this subsection, is established by demonstrating that the maximum or highest, second highest concentrations are within +/− 2 percent of the estimates obtained from the preferred model. The option to show equivalency is intended as a simple demonstration of acceptability for an alternative model that is so nearly identical (or contains options that can make it identical) to a preferred model that it can be treated for practical purposes as the preferred model. However, notwithstanding this demonstration, models that are not equivalent may be used when one of the two other conditions described in paragraphs (d) and (e) of this subsection are satisfied.

d. For condition (2) in paragraph (b) of this subsection, established statistical performance evaluation procedures and techniques [28] [29] for determining the acceptability of a model for an individual case based on superior performance should be followed, as appropriate. Preparation and implementation of an evaluation protocol which is acceptable to both control agencies and regulated industry is an important element in such an evaluation.

e. Finally, for condition (3) in paragraph (b) of this subsection, an alternative model or technique may be approved for use provided that:

i. The model or technique has received a scientific peer review;

ii. The model or technique can be demonstrated to be applicable to the problem on a theoretical basis;

iii. The databases which are necessary to perform the analysis are available and adequate;

iv. Appropriate performance evaluations of the model or technique have shown that the model or technique is not inappropriately biased for regulatory application; [a] and

v. A protocol on methods and procedures to be followed has been established.

f. To formally document that the requirements of section 3.2 for use of an alternative model are satisfied for a particular application or range of applications, a memorandum will be prepared by the EPA's Model Clearinghouse through a consultative process with the Region Office.

3.3 EPA's Model Clearinghouse

a. The Regional Administrator has the authority to select models that are appropriate for use in a given situation. However, there is a need for assistance and guidance in the selection process so that fairness, consistency, and transparency in modeling decisions are fostered among the EPA Regional Offices and the state, local, and tribal agencies. To satisfy that need, the EPA established the Model Clearinghouse [23] to serve a central role of coordination and collaboration between EPA headquarters and the EPA Regional Offices. Additionally, the EPA holds periodic workshops with EPA headquarters, EPA Regional Office, and state, local, and tribal agency modeling representatives.

b. The EPA Regional Office should always be consulted for information and guidance concerning modeling methods and interpretations of modeling guidance, and to ensure that the air quality model user has available the latest most up-to-date policy and procedures. As appropriate, the EPA Regional Office may also request assistance from the EPA's Model Clearinghouse on other applications of models, analytical techniques, or databases or to clarify interpretation of the *Guideline* or related modeling guidance.

c. The EPA Regional Office will coordinate with the EPA's Model Clearinghouse after an initial evaluation and decision has been developed concerning the application of an alternative model. The acceptability and formal approval process for an alternative model is described in section 3.2.

[a] For PSD and other applications that use the model results in an absolute sense, the model should not be biased toward underestimates. Alternatively, for ozone and $PM_{2.5}$ SIP attainment demonstrations and other applications that use the model results in a relative sense, the model should note be biased toward overestimates.

4.0 Models for Carbon Monoxide, Lead, Sulfur Dioxide, Nitrogen Dioxide and Primary Particulate Matter

4.1 Discussion

a. This section identifies modeling approaches generally used in the air quality impact analysis of sources that emit the criteria pollutants carbon monoxide (CO), lead, sulfur dioxide (SO_2), nitrogen dioxide (NO_2), and primary particulates ($PM_{2.5}$ and PM_{10}).

b. The guidance in this section is specific to the application of the Gaussian plume models identified in appendix A. Gaussian plume models assume that emissions and meteorology are in a steady-state, which is typically based on an hourly time step. This approach results in a plume that has an hourly-averaged distribution of emission mass according to a Gaussian curve through the plume. Though Gaussian steady-state models conserve the mass of the primary pollutant throughout the plume, they can still take into account a limited consideration of first-order removal processes (*e.g.,* wet and dry deposition) and limited chemical conversion (*e.g.,* OH oxidation).

c. Due to the steady-state assumption, Gaussian plume models are generally considered applicable to distances less than 50 km, beyond which, modeled predictions of plume impact are likely conservative. The locations of these impacts are expected to be unreliable due to changes in meteorology that are likely to occur during the travel time.

d. The applicability of Gaussian plume models may vary depending on the topography of the modeling domain, *i.e.,* simple or complex. Simple terrain, as used here, is considered to be an area where terrain features are all lower in elevation than the top of the stack of the source(s) in question. Complex terrain is defined as terrain exceeding the height of the stack being modeled.

e. Gaussian models determine source impacts at discrete locations (receptors) for each meteorological and emission scenario, and generally attempt to estimate concentrations at specific sites that represent an ensemble average of numerous repetitions of the same ''event.'' Uncertainties in model estimates are driven by this formulation, and as noted in section 2.1.1, evaluations of model accuracy should focus on the reducible uncertainty associated with physics and the formulation of the model. The ''irreducible'' uncertainty associated with Gaussian plume models may be responsible for variation in concentrations of as much as +/− 50 percent.[30] ''Reducible'' uncertainties [16] can be on a similar scale. For example, Pasquill [31] estimates that, apart from data input errors, maximum ground-level concentrations at a given hour for a point source in flat terrain could be in error by 50 percent due to these uncertainties. Errors of 5 to 10 degrees in the measured wind direction can result in concentration errors of 20 to 70 percent for a particular time and location, depending on stability and station location. Such uncertainties do not indicate that an estimated concentration does not occur, only that the precise time and locations are in doubt. Composite errors in

highest estimated concentrations of 10 to 40 percent are found to be typical.[32 33] However, estimates of concentrations paired in time and space with observed concentrations are less certain.

f. Model evaluations and inter-comparisons should take these aspects of uncertainty into account. For a regulatory application of a model, the emphasis of model evaluations is generally placed on the highest modeled impacts. Thus, the Cox-Tikvart model evaluation approach, which compares the highest modeled impacts on several timescales, is recommended for comparisons of models and measurements and model inter-comparisons. The approach includes bootstrap techniques to determine the significance of various modeled predictions and increases the robustness of such comparisons when the number of available measurements are limited.[34 35] Because of the uncertainty in paired modeled and observed concentrations, any attempts at calibration of models based on these comparisons is of questionable benefit and shall not be done.

4.2 Requirements

a. For NAAQS compliance demonstrations under PSD, use of the screening and preferred models for the pollutants listed in this subsection shall be limited to the near-field at a nominal distance of 50 km or less. Near-field application is consistent with capabilities of Gaussian plume models and, based on the EPA's assessment, is sufficient to address whether a source will cause or contribution to ambient concentrations in excess to a NAAQS. In most cases, maximum source impacts of inert pollutant are anticipated to occur within 10 to 20 km from the source. Therefore, the EPA does not consider a long-range transport assessment beyond 50 km necessary for these pollutants.[36]

b. For assessment of PSD increments within the near-field nominal distance of 50 km or less, use of the screening and preferred models for the pollutants listed in this subsection shall be limited to the same screening and preferred models approved for NAAQS compliance demonstrations.

c. To determine if a Class I PSD increment analyses may be necessary beyond 50 km (*i.e.,* long-range transport assessment), the following screening approach shall be used to determine if a significant impact will occur with particular focus on Class I areas that may be threatened at such distances.

i. Based on application in the near-field of the appropriate screening and/or preferred model, determine the significance of the ambient impacts at or about 50 km from the new or modifying source. If this initial step indicates there may be significant ambient impacts at that distance or such near-field assessment is not available, then further assessment is necessary.

ii. For assessment of Class I significance of ambient impacts and cumulative increment analyses, there is not a preferred model or screening approach for distances beyond 50 km. Thus, the EPA Regional Office shall be consulted in determining the appropriate and agreed upon modeling approach to conduct the second level assessment. Typically a Lagrangian model may be the type of model used for this second level assessment, but applicants shall reach agreed upon approaches (models and modeling parameters) on a case-by-case basis. When Lagrangian models are used in this manner, they shall not include plume-depleting reactions, such that model estimates are considered conservative, as is generally appropriate for screening assessments.

d. In those limited situations where a cumulative increment analysis beyond 50 km is necessary, the selection and use of an alternative model shall occur in agreement with the appropriate reviewing authority (paragraph 3.0(b)) and approval by the EPA Regional Office based on the requirements of paragraph 3.2.2(e).

4.2.1 Screening Models and Techniques

a. Where a preliminary or conservative estimate is desired, point source screening techniques are an acceptable approach to air quality analyses.

b. As discussed in paragraph 2.2(a), screening models or techniques are designed to provide a conservative estimate of concentrations. The screening models used in most applications are the screening versions of the preferred models for refined applications. The two screening models, AERSCREEN[37 38] and CTSCREEN, are screening versions of AERMOD (American Meteorological Society (AMS)/EPA Regulatory Model) and CTDMPLUS (Complex Terrain Dispersion Model Plus Algorithms for Unstable Situations), respectively. AERSCREEN is the preferred screening model for most applications in all types of terrain and for applications involving building downwash. For those applications in complex terrain where the application involves a well-defined hill or ridge, CTSCREEN[39] can be used.

c. Although AERSCREEN and CTSCREEN are designed to address a single-source scenario, there are approaches that can be used on a case-by-case basis to address multi-source situations using screening meteorology or other conservative model assumptions. However, the appropriate reviewing authority (paragraph 3.0(b)) shall be consulted, and concurrence obtained, on the protocol for modeling multiple sources with AERSCREEN or CTSCREEN to ensure that the worst case is identified and assessed.

d. As discussed in section 4.2.3.4, there are also screening techniques built into AERMOD that use simplified or limited chemistry assumptions for determining the partitioning of NO and NO_2 for NO_2 modeling. These screening techniques are part of the EPA's preferred modeling approach for NO_2 and do not need to be approved as an alternative model. However, as with other screening models and techniques, their usage shall occur in agreement with the appropriate reviewing authority (paragraph 3.0(b)).

e. All screening models and techniques shall be configured to appropriately address the site and problem at hand. Close attention must be paid to whether the area should be classified urban or rural in accordance with section 7.2.1.1. The climatology of the area must be studied to help define the worst-case meteorological conditions. Agreement shall be reached between the model user and the appropriate reviewing authority (paragraph 3.0(b)) on the choice of the screening model or technique for each analysis, on the input data and model settings, and the appropriate metric for satisfying regulatory requirements.

4.2.1.1 AERSCREEN

a. Released in 2011, AERSCREEN is the EPA's recommended screening model for simple and complex terrain for single sources including point sources, area sources, horizontal stacks, capped stacks, and flares. AERSCREEN runs AERMOD in a screening mode and consists of two main components: (1) The MAKEMET program which generates a site-specific matrix of meteorological conditions for input into the AERMOD model; and (2) the AERSCREEN command-prompt interface.

b. The MAKEMET program generates a matrix of meteorological conditions, in the form of AERMOD-ready surface and profile files, based on user-specified surface characteristics, ambient temperatures, minimum wind speed, and anemometer height. The meteorological matrix is generated based on looping through a range of wind speeds, cloud covers, ambient temperatures, solar elevation angles, and convective velocity scales (w*, for convective conditions only) based on user-specified surface characteristics (Z_o, Bo, r). For unstable cases, the convective mixing height (Z_{ic}) is calculated based on w*, and the mechanical mixing height (Z_{im}) is calculated for unstable and stable conditions based on the friction velocity, u*.

c. For applications involving simple or complex terrain, AERSCREEN interfaces with AERMAP. AERSCREEN also interfaces with BIPPRM to provide the necessary building parameters for applications involving building downwash using the PRIME downwash algorithm. AERSCREEN generates inputs to AERMOD via MAKEMET, AERMAP, and BPIPPRM and invokes AERMOD in a screening mode. The screening mode of AERMOD forces the AERMOD model calculations to represent values for the plume centerline, regardless of the source-receptor-wind direction orientation. The maximum concentration output from AERSCREEN represents a worst-case 1-hour concentration. Averaging-time scaling factors of 0.9 for 3-hour, 0.7 for 8-hour, 0.40 for 24-hour, and 0.08 for annual concentration averages are applied internally by AERSCREEN to the highest 1-hour concentration calculated by the model for non-area type sources. For area type source concentrations for averaging times greater than one hour, the concentrations are equal to the 1-hour estimates.[37 40]

4.2.1.2 CTSCREEN

a. CTSCREEN[39 41] can be used to obtain conservative, yet realistic, worst-case estimates for receptors located on terrain above stack height. CTSCREEN accounts for the three-dimensional nature of plume and terrain interaction and requires detailed terrain data representative of the modeling domain. The terrain data must be digitized in the same manner as for CTDMPLUS and a terrain processor is available.[42] CTSCREEN is designed to execute a fixed matrix of meteorological values for wind speed (u),

standard deviation of horizontal and vertical wind speeds (σv, σw), vertical potential temperature gradient ($d\theta/dz$), friction velocity (u^*), Monin-Obukhov length (L), mixing height (z_i) as a function of terrain height, and wind directions for both neutral/stable conditions and unstable convective conditions. The maximum concentration output from CTSCREEN represents a worst-case 1-hour concentration. Time-scaling factors of 0.7 for 3-hour, 0.15 for 24-hour and 0.03 for annual concentration averages are applied internally by CTSCREEN to the highest 1-hour concentration calculated by the model.

4.2.1.3 Screening in Complex Terrain

a. For applications utilizing AERSCREEN, AERSCREEN automatically generates a polar-grid receptor network with spacing determined by the maximum distance to model. If the application warrants a different receptor network than that generated by AERSCREEN, it may be necessary to run AERMOD in screening mode with a user-defined network. For CTSCREEN applications or AERMOD in screening mode outside of AERSCREEN, placement of receptors requires very careful attention when modeling in complex terrain. Often the highest concentrations are predicted to occur under very stable conditions, when the plume is near, or impinges on, the terrain. The plume under such conditions may be quite narrow in the vertical, so that even relatively small changes in a receptor's location may substantially affect the predicted concentration. Receptors within about a kilometer of the source may be even more sensitive to location. Thus, a dense array of receptors may be required in some cases.

b. For applications involving AERSCREEN, AERSCREEN interfaces with AERMAP to generate the receptor elevations. For applications involving CTSCREEN, digitized contour data must be preprocessed [42] to provide hill shape parameters in suitable input format. The user then supplies receptors either through an interactive program that is part of the model or directly, by using a text editor; using both methods to select receptors will generally be necessary to assure that the maximum concentrations are estimated by either model. In cases where a terrain feature may ''appear to the plume'' as smaller, multiple hills, it may be necessary to model the terrain both as a single feature and as multiple hills to determine design concentrations.

c. Other screening techniques may be acceptable for complex terrain cases where established procedures [43] are used. The user is encouraged to confer with the appropriate reviewing authority (paragraph 3.0(b)) if any unresolvable problems are encountered, *e.g.,* applicability, meteorological data, receptor siting, or terrain contour processing issues.

4.2.2 Refined Models

a. A brief description of each preferred model for refined applications is found in appendix A. Also listed in that appendix are availability, the model input requirements, the standard options that shall be selected when running the program, and output options.

4.2.2.1 AERMOD

a. For a wide range of regulatory applications in all types of terrain, and for aerodynamic building downwash, the recommended model is AERMOD.[44 45] The AERMOD regulatory modeling system consists of the AERMOD dispersion model, the AERMET meteorological processor, and the AERMAP terrain processor. AERMOD is a steady-state Gaussian plume model applicable to directly emitted air pollutants that employs best state-of-practice parameterizations for characterizing the meteorological influences and dispersion. Differentiation of simple versus complex terrain is unnecessary with AERMOD. In complex terrain, AERMOD employs the well-known dividing-streamline concept in a simplified simulation of the effects of plume-terrain interactions.

b. The AERMOD modeling system has been extensively evaluated across a wide range of scenarios based on numerous field studies, including tall stacks in flat and complex terrain settings, sources subject to building downwash influences, and low-level non-buoyant sources.[27] These evaluations included several long-term field studies associated with operating plants as well as several intensive tracer studies. Based on these evaluations, AERMOD has shown consistently good performance, with ''errors'' in predicted vs. observed peak concentrations, based on the Robust Highest Concentration (RHC) metric, consistently within the range of 10 to 40 percent cited in paragraph 4.1(g).

c. AERMOD incorporates the Plume Rise Model Enhancements (PRIME) algorithm to account for enhanced plume growth and restricted plume rise for plumes affected by building wake effects.[46] The PRIME algorithm accounts for entrainment of plume mass into the cavity recirculation region, including re-entrainment of plume mass into the wake region beyond the cavity.

d. AERMOD incorporates the Buoyant Line and Point Source (BLP) Dispersion model to account for buoyant plume rise from line sources. The BLP option within AERMOD utilizes the standard meteorological inputs provided by the AERMET meteorological processor.

e. The state-of-the-science for modeling atmospheric deposition is evolving and new modeling techniques are continually being assessed and their results are being compared with observations. Consequently, while deposition treatment is available in AERMOD, the approach taken for any purpose shall be coordinated with the appropriate reviewing authority (paragraph 3.0(b)).

4.2.2.2 CTDMPLUS

a. If the modeling application involves an elevated point source with a well-defined hill or ridge and a detailed dispersion analysis of the spatial pattern of plume impacts is of interest, CTDMPLUS is available. CTDMPLUS provides greater resolution of concentrations about the contour of the hill feature than does AERMOD through a different plume-terrain interaction algorithm.

4.2.2.3 OCD

a. If the modeling application involves determining the impact of offshore emissions from point, area, or line sources on the air quality of coastal regions, the recommended model is the OCD (Offshore and Coastal Dispersion) Model. OCD is a straight-line Gaussian model that incorporates overwater plume transport and dispersion as well as changes that occur as the plume crosses the shoreline. OCD is also applicable for situations that involve platform building downwash.

4.2.3 Pollutant Specific Modeling Requirements

4.2.3.1 Models for Carbon Monoxide

a. Models for assessing the impact of CO emissions are needed to meet NSR requirements, including PSD, to address compliance with the CO NAAQS and to determine localized impacts from transportations projects. Examples include evaluating effects of point sources, congested roadway intersections, and highways, as well as the cumulative effect of numerous sources of CO in an urban area.

b. The general modeling recommendations and requirements for screening models in section 4.2.1 and refined models in section 4.2.2 shall be applied for CO modeling. Given the relatively low CO background concentrations, screening techniques are likely to be adequate in most cases. However, since the screening model specified in section 4.2.1 (AERSCREEN) can only handle one source at a time, a section 4.2.2 model may be used with screening meteorology (*e.g.,* generated with MAKEMET) to conduct screening assessments of CO projects involving more than one source (*e.g.,* roadway hotspot assessments).[47]

4.2.3.2 Models for Lead

a. In January 1999 (40 CFR part 58, appendix D), the EPA gave notice that concern about ambient lead impacts was being shifted away from roadways and toward a focus on stationary point sources. Thus, models for assessing the impact of lead emissions are needed to meet NSR requirements, including PSD, to address compliance with the lead NAAQS and for SIP attainment demonstrations. The EPA has also issued guidance on siting ambient monitors in the vicinity of stationary point sources.[48] For lead, the SIP should contain an air quality analysis to determine the maximum rolling 3-month average lead concentration resulting from major lead point sources, such as smelters, gasoline additive plants, etc. The EPA has developed a post-processor to calculate rolling 3-month average concentrations from model output.[49] General guidance for lead SIP development is also available.[50]

b. For major lead point sources, such as smelters, which contribute fugitive emissions and for which deposition is important, professional judgment should be used, and there shall be coordination with the appropriate reviewing authority (paragraph 3.0(b)). For most applications, the general requirements for screening and refined models of section 4.2.1 and 4.2.2 are applicable to lead modeling.

4.2.3.3 Models for Sulfur Dioxide

a. Models for SO_2 are needed to meet NSR requirements, including PSD, to address compliance with the SO_2 NAAQS and PSD increments, for SIP attainment demonstrations,[51] and for characterizing current air quality via modeling.[52] SO_2 is one of a group of highly reactive gasses known as ''oxides of sulfur'' with largest emissions sources being fossil fuel combustion at power plants and other industrial facilities.

b. Given the relatively inert nature of SO_2 on the short-term time scales of interest (*i.e.,* 1-hour) and the sources of SO_2 (*i.e.,* stationary point sources), the general modeling requirements for screening models in section 4.2.1 and refined models in section 4.2.2 are applicable for SO_2 modeling applications. For urban areas, AERMOD automatically invokes a half-life of 4 hours [53] to SO_2. Therefore, care must be taken when determining whether a source is urban or rural (*see* section 7.2.1.1 for urban/rural determination methodology).

4.2.3.4 Models for Nitrogen Dioxide

a. Models for assessing the impact of sources on ambient NO_2 concentrations are needed to meet NSR requirements, including PSD, to address compliance with the NO_2 NAAQS and PSD increments. Impact of an individual source on ambient NO_2 depends, in part, on the chemical environment into which the source's plume is to be emitted. This is due to the fact that NO_2 sources co-emit NO along with NO_2 and any emitted NO may react with ambient ozone to convert to additional NO_2 downwind. Thus, comprehensive modeling of NO_2 would need to consider the ratio of emitted NO and NO_2, the ambient levels of ozone and subsequent reactions between ozone and NO, and the photolysis of NO_2 to NO.

b. Due to the complexity of NO_2 modeling, a multi-tiered approach is required to obtain hourly and annual average estimates of NO_2.[54] Since these methods are considered screening, their usage shall occur in agreement with the appropriate reviewing authority (paragraph 3.0(b)). Additionally, since screening techniques are conservative by their nature, there are limitations to how these options can be used. Specifically, negative emissions should not be modeled because decreases in concentrations would be overestimated. Each tiered approach (*see* Figure 4–1) accounts for increasing complex considerations of NO_2 chemistry and is described in paragraphs b through d of this subsection. The tiers of NO_2 modeling include:

i. A first-tier (most conservative) ''full'' conversion approach;

ii. A second-tier approach that assumes ambient equilibrium between NO and NO_2; and

iii. A third-tier consisting of several detailed screening techniques that account for ambient ozone and the relative amount of NO and NO_2 emitted from a source.

c. For Tier 1, use an appropriate section 4.2.2 refined model to estimate nitrogen oxides (NO_X) concentrations and assume a total conversion of NO to NO_2. If the resulting design concentrations exceed the NAAQS or PSD increments for NO_2, proceed to Tier 2.

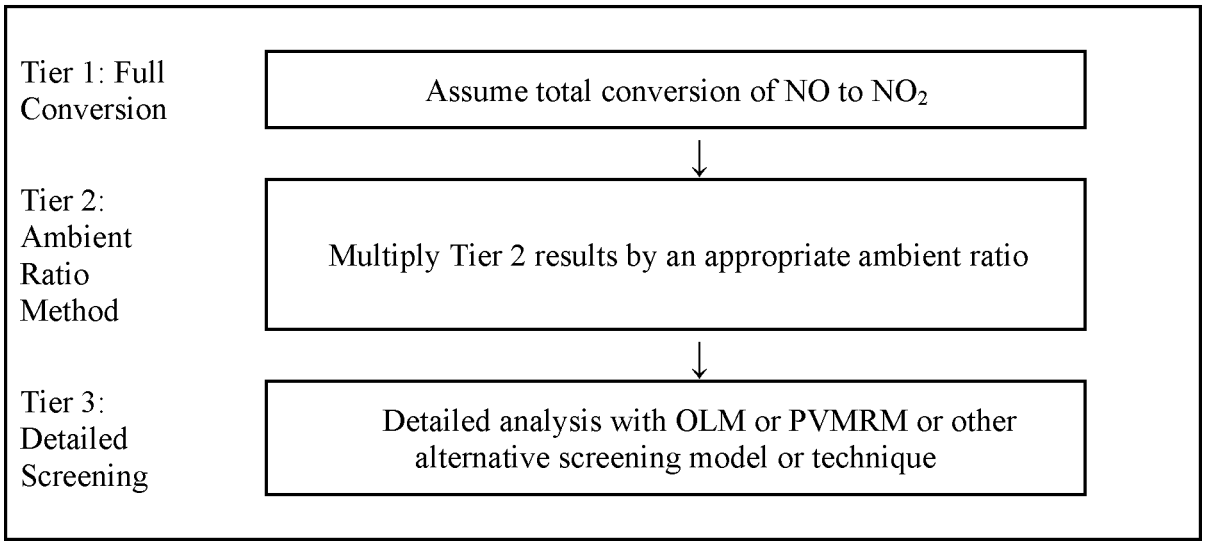
d. For Tier 2, multiply the Tier 1 result(s) by the Ambient Ratio Method 2 (ARM2), which provides estimates of representative equilibrium ratios of NO_2/NO_X value based ambient levels of NO_2 and NO_X derived from national data from the EPA's Air Quality System (AQS).[55] The national default for ARM2 will include a minimum NO_2/NO_X ratio of 0.5 and a maximum ratio of 0.9. The reviewing agency may establish alternative default minimum NO_2/NO_X values based on the source's in-stack emissions ratios, with alternative minimum values reflecting the source's in-stack NO_2/NO_X ratios. Preferably, alternative default NO_2/NO_X values should be based on source-specific data which satisfies all quality assurance procedures that ensure data accuracy for both NO_2 and NO_X within the typical range of measured values. However, alternate information may be used to justify a source's anticipated NO_2/NO_X in-stack ratios, such as manufacturer test data, state or local agency guidance, peer-reviewed literature, the EPA's NO_2/NO_X ratio database.

e. For Tier 3, a detailed screening technique shall be applied on a case-by-case basis. Because of the additional input data requirements and complexities associated with the Tier 3 options, their usage shall occur in consultation with the EPA Regional Office in addition to the appropriate reviewing authority. The Ozone Limiting Method (OLM) [56] and the Plume Volume Molar Ratio Method (PVMRM) [57] are two detailed screening techniques that may be used for most sources. These two techniques use an appropriate section 4.2.2 model to estimate NO_X concentrations and then estimate the conversion of primary NO emissions to NO_2 based on the ambient levels of ozone and the plume characteristics. OLM only accounts for NO_2 formation based on the ambient levels of ozone while PVMRM also accommodates distance-dependent conversion ratios based on ambient ozone. Both PVMRM and OLM require that ambient ozone concentrations be provided on an hourly basis and explicit specification of the speciation of the NO_2/NO_X in-stack ratios. PVMRM works best for relatively isolated and elevated point source modeling while OLM works best for large groups of sources, area sources, and near-surface releases, including road-way sources.

f. Alternative models or techniques may be considered on a case-by-case basis and their usage shall be approved by the EPA Regional Office (section 3.2). Such techniques should consider individual quantities of NO and NO_2 emissions, atmospheric transport and dispersion, and atmospheric transformation of NO to NO_2. Dispersion models that account for more explicit photochemistry may also be applied to estimate ambient impacts of NO_X sources.

Figure 4-1

Multi-tiered Approach for Estimating NO_2 Concentrations



4.2.3.5 Models for $PM_{2.5}$

a. The $PM_{2.5}$ NAAQS, promulgated on July 18, 1997, includes particles with an aerodynamic diameter nominally less than or equal to 2.5 micrometers. $PM_{2.5}$ is a mixture consisting of several diverse components[58]. Ambient $PM_{2.5}$ generally consists of two components, the primary component, emitted directly from a source, and the secondary component, which is formed in the atmosphere from other pollutants emitted from the source. Models for $PM_{2.5}$ are needed to meet NSR requirements, including PSD, to address compliance with the $PM_{2.5}$ NAAQS and PSD increments and for SIP attainment demonstrations.

b. For NSR, including PSD, modeling assessments, the refined methods in section 4.2.2 are required for modeling the primary component of $PM_{2.5}$, while the methods in section 5.4 are recommended for addressing the secondary component of $PM_{2.5}$. Guidance for PSD assessments is available for determining the best approach to handling sources of primary and secondary $PM_{2.5}$.[59]

c. For SIP attainment demonstrations and regional haze reasonable progress goal analyses, effects of a control strategy on $PM_{2.5}$ are estimated from the sum of the effects on the primary and secondary components composing $PM_{2.5}$. Model users should refer to section 5.4.1 and associated SIP modeling guidance[60] for further details concerning appropriate modeling approaches.

d. The general modeling requirements for the refined models discussed in section 4.2.2 should be applied for $PM_{2.5}$ hot-spot modeling for mobile sources. Specific guidance is available for analyzing direct $PM_{2.5}$ impacts from highways, terminals, and other projects.[61]

4.2.3.6 Models for PM_{10}

a. The NAAQS for PM_{10} was promulgated on July 1, 1987. The EPA promulgated regulations for PSD increment measured as PM_{10} in a document published on June 3, 1993. Models for PM_{10} are needed to meet NSR requirements, including PSD, to address compliance with the PM_{10} NAAQS and PSD increments and for SIP attainment demonstrations.

b. For most sources, the general modeling requirements for screening models in section 4.2.1 and refined models in section 4.2.2 shall be applied for PM_{10} modeling. In cases where the particle size and its effect on ambient concentrations need to be considered, particle deposition may be used in on a case-by-case basis and their usage shall be approved by the EPA Regional Office (section 3.2). A SIP development guide[62] is also available to assist in PM_{10} analyses and control strategy development.

c. Fugitive dust usually refers to dust put into the atmosphere by the wind blowing over plowed fields, dirt roads or desert or sandy areas with little or no vegetation. Fugitive emissions include the emissions resulting from the industrial process that are not captured and vented through a stack but may be released from various locations within the complex. In some unique cases, a model developed specifically for the situation may be needed. Due to the difficult nature of characterizing and modeling fugitive dust and fugitive emissions, the proposed procedure shall be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)) for each specific situation before the modeling exercise is begun. Re-entrained dust is created by vehicles driving over dirt roads (*e.g.,* haul roads) and dust-covered roads typically found in arid areas. Such sources can be characterized as line, area or volume sources.[61 63] Emission rates may be based on site-specific data or values from the general literature.

d. Under certain conditions, recommended dispersion models may not be suitable to appropriately address the nature of ambient PM_{10}. In these circumstances, the alternative modeling approach shall be approved by the EPA Regional Office (section 3.2).

e. The general modeling requirements for the refined models discussed in section 4.2.2 should be applied for PM_{10} hot-spot modeling for mobile sources. Specific guidance is available for analyzing direct PM_{10} impacts from highways, terminals, and other projects.[61]

5.0 Models for Ozone and Secondarily Formed Particulate Matter

5.1 Discussion

a. Air pollutants formed through chemical reactions in the atmosphere are referred to as secondary pollutants. For example, ground-level ozone and a portion of particulate matter with aerodynamic diameter less than 2.5 μm ($PM_{2.5}$ or fine PM) are secondary pollutants formed through photochemical reactions. Ozone and secondarily formed particulate matter are closely related to each other in that they share common sources of emissions or are formed in the atmosphere from chemical reactions with similar precursors.

b. Ozone formation is driven by emissions of NO_X and volatile organic compounds (VOCs). Ozone formation is a complicated nonlinear process that requires favorable meteorological conditions in addition to VOC and NO_X emissions. Sometimes complex terrain features also contribute to the build-up of precursors and subsequent ozone formation or destruction.

c. $PM_{2.5}$ can be either primary (*i.e.,* emitted directly from sources) or secondary in nature. The fraction of $PM_{2.5}$ which is primary versus secondary varies by location and season. In the United States, $PM_{2.5}$ is dominated by a variety of chemical species or components of atmospheric particles, such as ammonium sulfate, ammonium nitrate, organic carbon (OC) mass, elemental carbon (EC), and other soil compounds and oxidized metals. $PM_{2.5}$

sulfate, nitrate, and ammonium ions are predominantly the result of chemical reactions of the oxidized products of sulfur dioxide (SO_2) and NO_X emissions with direct ammonia (NH_3) emissions.[64]

d. Modeled strategies designed to reduce ozone or $PM_{2.5}$ levels typically need to consider the chemical coupling between these pollutants. Control measures reducing ozone and $PM_{2.5}$ precursor emissions may not lead to proportional reductions in ozone and $PM_{2.5}$. This coupling is important in understanding processes that control the levels of both pollutants. Thus, when feasible, it is important to use models that take into account the chemical coupling between ozone and $PM_{2.5}$. In addition, using such a multi-pollutant modeling system can reduce the resource burden associated with applying and evaluating separate models for each pollutant and promotes consistency among the strategies themselves.

e. $PM_{2.5}$ is a mixture consisting of several diverse chemical species or components of atmospheric particles. Because chemical and physical properties and origins of each component differ, it may be appropriate to use either a single model capable of addressing several of the important components or to model primary and secondary components using different models. Effects of a control strategy on $PM_{2.5}$ is estimated from the sum of the effects on the specific components composing $PM_{2.5}$.

5.2 Recommendations

a. Chemical transformations can play an important role in defining the concentrations and properties of certain air pollutants. Models that take into account chemical reactions and physical processes of various pollutants (including precursors) are needed for determining the current state of air quality, as well as predicting and projecting the future evolution of these pollutants. It is important that a modeling system provide a realistic representation of chemical and physical processes leading to secondary pollutant formation and removal from the atmosphere.

b. Chemical transport models treat atmospheric chemical and physical processes such as deposition and motion. There are two types of chemical transport models, Eulerian (grid based) and Lagrangian. These types of models are differentiated from each other by their frame of reference. Eulerian models are based on a fixed frame of reference and Lagrangian models use a frame of reference that moves with parcels of air between the source and receptor point.[9] Photochemical grid models are three-dimensional Eulerian grid-based models that treat chemical and physical processes in each grid cell and use diffusion and transport processes to move chemical species between grid cells. These types of models are appropriate for assessment of near-field and regional scale reactive pollutant impacts from specific sources[7 10 11 12] or all sources.[13 14 15] In some limited cases, the secondary processes can be treated with a box model, potentially in combination with a number of other modeling techniques and/or analyses to treat individual source sectors.

c. Regardless of the modeling system used to estimate secondary impacts of ozone and/or $PM_{2.5}$, model results should be compared to observation data to generate confidence that the modeling system is representative of the local and regional air quality. For ozone related projects, model estimates of ozone should be compared with observations in both time and space. For $PM_{2.5}$, model estimates of speciated $PM_{2.5}$ components (such as sulfate ion, nitrate ion, etc.) should be compared with observations in both time and space.[65]

d. Model performance metrics comparing observations and predictions are often used to summarize model performance. These metrics include mean bias, mean error, fractional bias, fractional error, and correlation coefficient.[65] There are no specific levels of any model performance metric that indicate ''acceptable'' model performance. The EPA's preferred approach for providing context about model performance is to compare model performance metrics with similar contemporary applications.[60 65] Because model application purpose and scope vary, model users should consult with the appropriate reviewing authority (paragraph 3.0(b)) to determine what model performance elements should be emphasized and presented to provide confidence in the regulatory model application.

e. There is no preferred modeling system or technique for estimating ozone or secondary $PM_{2.5}$ for specific source impacts or to assess impacts from multiple sources. For assessing secondary pollutant impacts from single sources, the degree of complexity required to assess potential impacts varies depending on the nature of the source, its emissions, and the background environment. The EPA recommends a two-tiered approach where the first tier consists of using existing technically credible and appropriate relationships between emissions and impacts developed from previous modeling that is deemed sufficient for evaluating a source's impacts. The second tier consists of more sophisticated case-specific modeling analyses. The appropriate tier for a given application should be selected in consultation with the appropriate reviewing authority (paragraph 3.0(b)) and be consistent with EPA guidance.[66]

5.3 Recommended Models and Approaches for Ozone

a. Models that estimate ozone concentrations are needed to guide the choice of strategies for the purposes of a nonattainment area demonstrating future year attainment of the ozone NAAQS. Additionally, models that estimate ozone concentrations are needed to assess impacts from specific sources or source complexes to satisfy requirements for NSR, including PSD, and other regulatory programs. Other purposes for ozone modeling include estimating the impacts of specific events on air quality, ozone deposition impacts, and planning for areas that may be attaining the ozone NAAQS.

5.3.1 Models for NAAQS Attainment Demonstrations and Multi-Source Air Quality Assessments

a. Simulation of ozone formation and transport is a complex exercise. Control agencies with jurisdiction over areas with ozone problems should use photochemical grid models to evaluate the relationship between precursor species and ozone. Use of photochemical grid models is the recommended means for identifying control strategies needed to address high ozone concentrations in such areas. Judgment on the suitability of a model for a given application should consider factors that include use of the model in an attainment test, development of emissions and meteorological inputs to the model, and choice of episodes to model. Guidance on the use of models and other analyses for demonstrating attainment of the air quality goals for ozone is available.[60] Users should consult with the appropriate reviewing authority (paragraph 3.0(b)) to ensure the most current modeling guidance is applied.

5.3.2 Models for Single-Source Air Quality Assessments

a. Depending on the magnitude of emissions, estimating the impact of an individual source's emissions of NO_X and VOC on ozone concentrations is necessary for obtaining a permit. The simulation of ozone formation and transport requires realistic treatment of atmospheric chemistry and deposition. Models should be applied which integrate chemical and physical processes important in the formation, decay, and transport of ozone and important precursor species (*e.g.,* Lagrangian and photochemical grid models). Photochemical grid models are primarily designed to characterize precursor emissions and impacts from a wide variety of sources over a large geographic area but can also be used to assess the impacts from specific sources.[7 11 12]

b. The first tier of assessment for ozone impacts involves those situations where existing technical information is available (*e.g.,* results from existing photochemical grid modeling, published empirical estimates of source specific impacts, or reduced-form models) in combination with other supportive information and analysis for the purposes of estimating secondary impacts from a particular source. The existing technical information should provide a credible and representative estimate of the secondary impacts from the project source. The appropriate reviewing authority (paragraph 3.0(b)) and appropriate EPA guidance[66] should be consulted to determine what types of assessments may be appropriate on a case-by-case basis.

c. The second tier of assessment for ozone impacts involves those situations where existing technical information is not available such that chemical transport models (*e.g.,* photochemical grid models) should be used to address single-source impacts. Special considerations are needed when using these models to evaluate the ozone impact from an individual source. Guidance on the use of models and other analyses for demonstrating the impacts of single sources for ozone is available.[66] This document provides a more detailed discussion of the appropriate approaches to obtaining estimates of ozone impacts from a single source. Model users should use the latest version of this guidance in consultation with the appropriate reviewing authority

(paragraph 3.0(b)) to determine the most suitable single-source ozone modeling approach on a case-by-case basis.

5.4 Recommended Models and Approaches for Secondarily Formed $PM_{2.5}$

a. Models are needed to guide the choice of strategies to address an observed $PM_{2.5}$ problem in an area not attaining the $PM_{2.5}$ NAAQS. Additionally, models are needed to assess $PM_{2.5}$ impacts from specific sources or industrial source complexes to satisfy requirements for NSR, including PSD, and other regulatory programs. Other purposes for $PM_{2.5}$ modeling include estimating the impacts of specific events on air quality, visibility, deposition impacts, and planning for areas that may be attaining the $PM_{2.5}$ NAAQS.

5.4.1 Models for NAAQS Attainment Demonstrations and Multi-Source Air Quality Assessments

a. Models for $PM_{2.5}$ are needed to assess the adequacy of a proposed strategy for meeting the annual and/or 24-hour $PM_{2.5}$ NAAQS. Modeling primary and secondary $PM_{2.5}$ can be a multi-faceted and complex problem, especially for secondary components of $PM_{2.5}$ such as sulfates and nitrates. Control agencies with jurisdiction over areas with secondary $PM_{2.5}$ problems should use models which integrate chemical and physical processes important in the formation, decay, and transport of these species (*e.g.,* photochemical grid models). Suitability of a modeling approach or mix of modeling approaches for a given application requires technical judgment as well as professional experience in choice of models, use of the model(s) in an attainment test, development of emissions and meteorological inputs to the model, and selection of days to model. Guidance on the use of models and other analyses for demonstrating attainment of the air quality goals for $PM_{2.5}$ is available.[59 60] Users should consult with the appropriate reviewing authority (paragraph 3.0(b)) to ensure the most current modeling guidance is applied.

5.4.2 Models for Single-Source Air Quality Assessments

a. Depending on the magnitude of emissions, estimating the impact of an individual source's emissions on secondary particulate matter concentrations is necessary for obtaining a permit. Primary $PM_{2.5}$ components shall be simulated using AERMOD (*see* section 4.2.2). The simulation of secondary particulate matter formation and transport is a complex exercise requiring realistic treatment of atmospheric chemistry and deposition. Models should be applied which integrate chemical and physical processes important in the formation, decay, and transport of these species (*e.g.,* Lagrangian and photochemical grid models). Photochemical grid models are primarily designed to characterize precursor emissions and impacts from a wide variety of sources over a large geographic area and can also be used to assess the impacts from specific sources.[7 10]

b. The first tier of assessment for secondary $PM_{2.5}$ impacts involves those situations where existing technical information is available (*e.g.,* results from existing photochemical grid modeling, published empirical estimates of source specific impacts, or reduced-form models) in combination with other supportive information and analysis for the purposes of estimating secondary impacts from a particular source. The existing technical information should provide a credible and representative estimate of the secondary impacts from the project source. The appropriate reviewing authority (paragraph 3.0(b)) and appropriate EPA guidance[66] should be consulted to determine what types of assessments may be appropriate on a case-by-case basis.

c. The second tier of assessment for secondary $PM_{2.5}$ impacts involves those situations where existing technical information is not available such that chemical transport models (*e.g.,* photochemical grid models) should be used for assessments of single-source impacts. Special considerations are needed when using these models to evaluate the secondary particulate matter impact from an individual source. Guidance on the use of models and other analyses for demonstrating the impacts of single sources for secondary $PM_{2.5}$ is available.[66] This document provides a more detailed discussion of the appropriate approaches to obtaining estimates of secondary particulate matter concentrations from a single source. Model users should use the latest version of this guidance in consultation with the appropriate reviewing authority (paragraph 3.0(b)) to determine the most suitable single-source modeling approach for secondary $PM_{2.5}$ on a case-by-case basis.

6.0 Modeling for Air Quality Related Values and Other Governmental Programs

6.1 Discussion

a. Other federal agencies have also developed specific modeling approaches for their own regulatory or other requirements. Although such regulatory requirements and guidance have come about because of EPA rules or standards, the implementation of such regulations and the use of the modeling techniques is under the jurisdiction of the agency issuing the guidance or directive. This section covers such situations with reference to those guidance documents, when they are available.

b. When using the model recommended or discussed in the *Guideline* in support of programmatic requirements not specifically covered by EPA regulations, the model user should consult the appropriate federal or state agency to ensure the proper application and use of the models and/or techniques. Other federal agencies have developed specific modeling approaches for their own regulatory or other requirements. Most of the programs have, or will have when fully developed, separate guidance documents that cover the program and a discussion of the tools that are needed. The following paragraphs reference those guidance documents, when they are available. No attempt has been made to provide a comprehensive discussion of each topic since the reference documents were designed to do that.

6.2 Air Quality Related Values

a. The 1997 CAA Amendments give FLMs an ''affirmative responsibility'' to protect the natural and cultural resources of Class I areas from the adverse impacts of air pollution and to provide the appropriate procedures and analysis techniques. The Act identifies the FLM as the Secretary of the department, or their designee, with authority over these lands. Mandatory Federal Class I areas are defined in the CAA as international parks, national parks over 6,000 acres and wilderness areas and memorial parks over 5,000 acres, established as of 1977. The FLMs are also concerned with the protection of resources in federally managed Class II areas because of other statutory mandates to protect these areas.

b. The FLM agency responsibilities include the review of air quality permit applications from proposed new or modified major pollution sources that may affect these Class I areas to determine if emissions from a proposed or modified source will cause or contribute to adverse impacts on air quality related values (AQRVs) of a Class I area and making recommendations to the FLM. AQRVs are resources identified by the FLM agencies, which have the potential to be affected by air pollution. These resources may include visibility, scenic, cultural, physical, or ecological resources for a particular area. The FLM agencies take into account the particular resources and AQRVs that would be affected; the frequency and magnitude of any potential impacts; and the direct, indirect, and cumulative effects of any potential impacts in making their recommendations.

c. While the AQRV notification and impact analysis requirements are outlined in the PSD regulations at 40 CFR 51.166(p) and 40 CFR 52.21(p), determination of appropriate analytical methods and metrics for AQRV's are determined by the FLM agencies and are published in guidance external to the general recommendations of this paragraph.

d. To develop greater consistency in the application of air quality models to assess potential AQRV impacts in both Class I areas and protected Class II areas, the FLM agencies have developed the Federal Land Managers' Air Quality Related Values Work Group Phase I Report (FLAG)[67]. FLAG focuses upon specific technical and policy issues associated with visibility impairment, effects of pollutant deposition on soils and surface waters, and ozone effects on vegetation. Model users should consult the latest version of the FLAG report for current modeling guidance and with affected FLM agency representatives for any application specific guidance which is beyond the scope of the *Guideline.*

6.2.1 Visibility

a. Visibility in important natural areas (*e.g.,* Federal Class I areas) is protected under a number of provisions of the CAA, including sections 169A and 169B (addressing impacts primarily from existing sources) and section 165 (new source review). Visibility impairment is caused by light scattering and light absorption associated with particles and gases in the atmosphere. In most areas of the country, light scattering by $PM_{2.5}$ is the most

significant component of visibility impairment. The key components of $PM_{2.5}$ contributing to visibility impairment include sulfates, nitrates, organic carbon, elemental carbon, and crustal material.[67]

b. Visibility regulations (40 CFR 51.300 through 51.309) require state, local, and tribal agencies to mitigate current and prevent future visibility impairment in any of the 156 mandatory Federal Class I areas where visibility is considered an important attribute. In 1999, the EPA issued revisions to the regulations to address visibility impairment in the form of regional haze, which is caused by numerous, diverse sources (*e.g.,* stationary, mobile, and area sources) located across a broad region (40 CFR 51.308 through 51.309). The state of relevant scientific knowledge has expanded significantly since the 1997 CAA Amendments. A number of studies and reports [68 69] have concluded that long-range transport (*e.g.,* up to hundreds of kilometers) of fine particulate matter plays a significant role in visibility impairment across the country. CAA section 169A requires states to develop SIPs containing long-term strategies for remedying existing and preventing future visibility impairment in the 156 mandatory Class I Federal areas, where visibility is considered an important attribute. In order to develop long-term strategies to address regional haze, many state, local, and tribal agencies will need to conduct regional-scale modeling of fine particulate concentrations and associated visibility impairment.

c. The FLAG visibility modeling recommendations are divided into two distinct sections to address different requirements for (1) near field modeling where plumes or layers are compared against a viewing background and (2) distant/multi-source modeling for plumes and aggregations of plumes that affect the general appearance of a scene.[67] The recommendations separately address visibility assessments for sources proposing to locate relatively near and at farther distances from these areas.[67]

6.2.1.1 Models for Estimating Near-Field Visibility Impairment

a. To calculate the potential impact of a plume of specified emissions for specific transport and dispersion conditions (''plume blight'') for source-receptor distances less than 50 km, a screening model and guidance are available.[67 70] If a more comprehensive analysis is necessary, a refined model should be selected. The model selection, procedures, and analyses should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)) and the affected FLM(s).

6.2.1.2 Models for Estimating Visibility Impairment for Long-Range Transport

a. Chemical transformations can play an important role in defining the concentrations and properties of certain air pollutants. Models that take into account chemical reactions and physical processes of various pollutants (including precursors) are needed for determining the current state of air quality, as well as predicting and projecting the future evolution of these pollutants. It is important that a modeling system provide a realistic representation of chemical and physical processes leading to secondary pollutant formation and removal from the atmosphere.

b. Chemical transport models treat atmospheric chemical and physical processes such as deposition and motion. There are two types of chemical transport models, Eulerian (grid based) and Lagrangian. These types of models are differentiated from each other by their frame of reference. Eulerian models are based on a fixed frame of reference and Lagrangian models use a frame of reference that moves with parcels of air between the source and receptor point.[9] Photochemical grid models are three-dimensional Eulerian grid-based models that treat chemical and physical processes in each grid cell and use diffusion and transport processes to move chemical species between grid cells.[9] These types of models are appropriate for assessment of near-field and regional scale reactive pollutant impacts from specific sources [7 10 11 12] or all sources.[13 14 15]

c. Development of the requisite meteorological and emissions databases necessary for use of photochemical grid models to estimate AQRVs should conform to recommendations in section 8 and those outlined in the EPA's Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze.[60] Demonstration of the adequacy of prognostic meteorological fields can be established through appropriate diagnostic and statistical performance evaluations consistent with recommendations provided in the appropriate guidance.[60] Model users should consult the latest version of this guidance and with the appropriate reviewing authority (paragraph 3.0(b)) for any application specific guidance which is beyond the scope of this subsection.

6.2.2 Models for Estimating Deposition Impacts

a. For many Class I areas, AQRVs have been identified that are sensitive to atmospheric deposition of air pollutants. Emissions of NO_X, sulfur oxides, NH_3, mercury, and secondary pollutants such as ozone and particulate matter affect components of ecosystems. In sensitive ecosystems, these compounds can acidify soils and surface waters, add nutrients that change biodiversity, and affect the ecosystem services provided by forests and natural areas.[67] To address the relationship between deposition and ecosystem effects the FLM agencies have developed estimates of critical loads. A critical load is defined as ''A quantitative estimate of an exposure to one or more pollutants below which significant harmful effects on specified sensitive elements of the environment do not occur according to present knowledge.'' [71]

b. The FLM deposition modeling recommendations are divided into two distinct sections to address different requirements for (1) near field modeling, and (2) distant/multi-source modeling for cumulative effects. The recommendations separately address deposition assessments for sources proposing to locate relatively near and at farther distances from these areas.[67] Where the source and receptors are not in close proximity, chemical transport (*e.g.,* photochemical grid) models generally should be applied for an assessment of deposition impacts due to one or a small group of sources. Over these distances chemical and physical transformations can change atmospheric residence time due to different propensity for deposition to the surface of different forms of nitrate and sulfate. Users should consult the latest version of the FLAG report [67] and relevant FLM representatives for guidance on the use of models for deposition. Where source and receptors are in close proximity, users should contact the appropriate FLM for application specific guidance.

6.3 Modeling Guidance for Other Governmental Programs

a. Dispersion and photochemical grid modeling need to be conducted to ensure that individual and cumulative offshore oil and gas exploration, development, and production plans and activities do not significantly affect the air quality of any state as required under the Outer Continental Shelf Lands Act (OCSLA). Air quality modeling requires various input datasets, including emissions sources, meteorology, and pre-existing pollutant concentrations. For sources under the reviewing authority of the Department of Interior, Bureau of Ocean Energy Management (BOEM), guidance for the development of all necessary Outer Continental Shelf (OCS) air quality modeling inputs and appropriate model selection and application is available from the BOEMS's Web site: *http://www.boem.gov/Environmental-Stewardship/Environmental-Studies/Gulf-of-Mexico-Region/Approved-Air-Quality-Models-for-the-GOMR.aspx.*

b. The Federal Aviation Administration (FAA) is the appropriate reviewing authority for air quality assessments of primary pollutant impacts at airports and air bases. Air quality application for this purpose is intended for estimating the collective impact of changes in aircraft operations, point source, and mobile source emissions at airports on pollutant concentrations. The latest version of the Aviation Environmental Design Tool (AEDT), is developed and is supported by the FAA, and is appropriate for air quality assessment of primary pollutant impacts at airports or air bases. AEDT has adopted AERMOD for treating dispersion. Application of AEDT is intended for estimating the collective impact of changes in aircraft operations, point source, and mobile source emissions on pollutant concentrations. It is not intended for PSD, SIP, or other regulatory air quality analyses of point or mobile sources at or peripheral to airport property that are unrelated to airport operations. The latest version of AEDT may be obtained from FAA at its Web site: *https://aedt.faa.gov.*

7.0 General Modeling Considerations

7.1 Discussion

a. This section contains recommendations concerning a number of different issues not explicitly covered in other sections of the *Guideline.* The topics covered here are not specific to any one program or modeling area but are common to dispersion modeling analyses for criteria pollutants.

7.2 Recommendations

7.2.1 All Sources

7.2.1.1 Dispersion Coefficients

a. For any dispersion modeling exercise, the urban or rural determination of a source is critical in determining the boundary layer characteristics that affect the model's prediction of downwind concentrations. Historically, steady-state Gaussian plume models used in most applications have employed dispersion coefficients based on Pasquill-Gifford [72] in rural areas and McElroy- Pooler [73] in urban areas. These coefficients are still incorporated in the BLP and OCD models. However, the AERMOD model incorporates a more up-to-date characterization of the atmospheric boundary layer using continuous functions of parameterized horizontal and vertical turbulence based on Monin-Obukhov similarity (scaling) relationships.[44] Another key feature of AERMOD's formulation is the option to use directly observed variables of the boundary layer to parameterize dispersion.[44 45]

b. The selection of rural or urban dispersion coefficients in a specific application should follow one of the procedures suggested by Irwin [74] to determine whether the character of an area is primarily urban or rural:

i. Land Use Procedure: (1) Classify the land use within the total area, A_o, circumscribed by a 3km radius circle about the source using the meteorological land use typing scheme proposed by Auer; [75] (2) if land use types I1, I2, C1, R2, and R3 account for 50 percent or more of A_o, use urban dispersion coefficients; otherwise, use appropriate rural dispersion coefficients.

ii. Population Density Procedure: (1) Compute the average population density, $\bar{p}$ per square kilometer with A_o as defined above; (2) If $\bar{p}$ is greater than 750 people/km^2, use urban dispersion coefficients; otherwise use appropriate rural dispersion coefficients. (Of the two methods, the land use procedure is considered more definitive.)

c. Population density should be used with caution and generally not be applied to highly industrialized areas where the population density may be low and thus a rural classification would be indicated. However, the area is likely to be sufficiently built-up so that the urban land use criteria would be satisfied. Therefore, in this case, the classification should be ''urban'' and urban dispersion parameters should be used.

d. For applications of AERMOD in urban areas, under either the Land Use Procedure or the Population Density Procedure, the user needs to estimate the population of the urban area affecting the modeling domain because the urban influence in AERMOD is scaled based on a user-specified population. For non-population oriented urban areas, or areas influenced by both population and industrial activity, the user will need to estimate an equivalent population to adequately account for the combined effects of industrialized areas and populated areas within the modeling domain. Selection of the appropriate population for these applications should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)) and the latest version of the AERMOD Implementation Guide.[76]

e. It should be noted that AERMOD allows for modeling rural and urban sources in a single model run. For analyses of whole urban complexes, the entire area should be modeled as an urban region if most of the sources are located in areas classified as urban. For tall stacks located within or adjacent to small or moderate sized urban areas, the stack height or effective plume height may extend above the urban boundary layer and, therefore, may be more appropriately modeled using rural coefficients. Model users should consult with the appropriate reviewing authority (paragraph 3.0(b)) when evaluating this situation and the latest version of the AERMOD Implementation Guide.[76]

f. Buoyancy-induced dispersion (BID), as identified by Pasquill,[77] is included in the preferred models and should be used where buoyant sources, *e.g.,* those involving fuel combustion, are involved.

7.2.1.2 Complex Winds

a. *Inhomogeneous local winds.* In many parts of the United States, the ground is neither flat nor is the ground cover (or land use) uniform. These geographical variations can generate local winds and circulations, and modify the prevailing ambient winds and circulations. Geographic effects are most apparent when the ambient winds are light or calm.[78] In general these geographically induced wind circulation effects are named after the source location of the winds, *e.g.,* lake and sea breezes, and mountain and valley winds. In very rugged hilly or mountainous terrain, along coastlines, or near large land use variations, the characterization of the winds is a balance of various forces, such that the assumptions of steady-state straight-line transport both in time and space are inappropriate. In such cases, a model should be chosen to fully treat the time and space variations of meteorology effects on transport and dispersion. The setup and application of such a model should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)) consistent with limitations of paragraph 3.2.2(e). The meteorological input data requirements for developing the time and space varying three-dimensional winds and dispersion meteorology for these situations are discussed in paragraph 8.4.1.2(c). Examples of inhomogeneous winds include, but are not limited to, situations described in the following paragraphs:

i. *Inversion breakup fumigation.* Inversion breakup fumigation occurs when a plume (or multiple plumes) is emitted into a stable layer of air and that layer is subsequently mixed to the ground through convective transfer of heat from the surface or because of advection to less stable surroundings. Fumigation may cause excessively high concentrations but is usually rather short-lived at a given receptor. There are no recommended refined techniques to model this phenomenon. There are, however, screening procedures [40] that may be used to approximate the concentrations. Considerable care should be exercised in using the results obtained from the screening techniques.

ii. *Shoreline fumigation.* Fumigation can be an important phenomenon on and near the shoreline of bodies of water. This can affect both individual plumes and area-wide emissions. When fumigation conditions are expected to occur from a source or sources with tall stacks located on or just inland of a shoreline, this should be addressed in the air quality modeling analysis. EPA has evaluated several coastal fumigation models, and the evaluation results of these models are available for their possible application on a case-by-case basis when air quality estimates under shoreline fumigation conditions are needed.[79] Selection of the appropriate model for applications where shoreline fumigation is of concern should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

iii. *Stagnation.* Stagnation conditions are characterized by calm or very low wind speeds, and variable wind directions. These stagnant meteorological conditions may persist for several hours to several days. During stagnation conditions, the dispersion of air pollutants, especially those from low-level emissions sources, tends to be minimized, potentially leading to relatively high ground-level concentrations. If point sources are of interest, users should note the guidance provided in paragraph (a) of this subsection. Selection of the appropriate model for applications where stagnation is of concern should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

7.2.1.3 Gravitational Settling and Deposition

a. Gravitational settling and deposition may be directly included in a model if either is a significant factor. When particulate matter sources can be quantified and settling and dry deposition are problems, professional judgment should be used, and there should be coordination with the appropriate reviewing authority (paragraph 3.0(b)). AERMOD contains algorithms for dry and wet deposition of gases and particles.[80] For other Gaussian plume models, an ''infinite half-life'' may be used for estimates of particle concentrations when only exponential decay terms are used for treating settling and deposition. Lagrangian models have varying degrees of complexity for dealing with settling and deposition and the selection of a parameterization for such should be included in the approval process for selecting a Lagrangian model. Eulerian grid models tend to have explicit parameterizations for gravitational settling and deposition as well as wet deposition parameters already included as part of the chemistry scheme.

7.2.2 Stationary Sources

7.2.2.1 Good Engineering Practice Stack Height

a. The use of stack height credit in excess of Good Engineering Practice (GEP) stack height or credit resulting from any other dispersion technique is prohibited in the development of emissions limits by 40 CFR 51.118 and 40 CFR 51.164. The definition of

GEP stack height and dispersion technique are contained in 40 CFR 51.100. Methods and procedures for making the appropriate stack height calculations, determining stack height credits and an example of applying those techniques are found in several references,[81 82 83 84] which provide a great deal of additional information for evaluating and describing building cavity and wake effects.

b. If stacks for new or existing major sources are found to be less than the height defined by the EPA's refined formula for determining GEP height, then air quality impacts associated with cavity or wake effects due to the nearby building structures should be determined. The EPA refined formula height is defined as H + 1.5L.[83] Since the definition of GEP stack height defines excessive concentrations as a maximum ground-level concentration due in whole or in part to downwash of at least 40 percent in excess of the maximum concentration without downwash, the potential air quality impacts associated with cavity and wake effects should also be considered for stacks that equal or exceed the EPA formula height for GEP. The AERSCREEN model can be used to obtain screening estimates of potential downwash influences, based on the PRIME downwash algorithm incorporated in the AERMOD model. If more refined concentration estimates are required, the recommended steady-state plume dispersion model in section 4.2.2, AERMOD, should be used.

7.2.2.2 Plume Rise

a. The plume rise methods of Briggs [85 86] are incorporated in many of the preferred models and are recommended for use in many modeling applications. In AERMOD,[44 45] for the stable boundary layer, plume rise is estimated using an iterative approach, similar to that in the CTDMPLUS model. In the convective boundary layer, plume rise is superposed on the displacements by random convective velocities.[87] In AERMOD, plume rise is computed using the methods of Briggs except cases involving building downwash, in which a numerical solution of the mass, energy, and momentum conservation laws is performed.[88] No explicit provisions in these models are made for multistack plume rise enhancement or the handling of such special plumes as flares; these problems should be considered on a case-by-case basis.

b. Gradual plume rise is generally recommended where its use is appropriate: (1) In AERMOD; (2) in complex terrain screening procedures to determine close-in impacts and (3) when calculating the effects of building wakes. The building wake algorithm in AERMOD incorporates and exercises the thermodynamically based gradual plume rise calculations as described in paragraph (a) of this subsection. If the building wake is calculated to affect the plume for any hour, gradual plume rise is also used in downwind dispersion calculations to the distance of final plume rise, after which final plume rise is used. Plumes captured by the near wake are re-emitted to the far wake as a ground-level volume source.

c. Stack tip downwash generally occurs with poorly constructed stacks and when the ratio of the stack exit velocity to wind speed is small. An algorithm developed by Briggs [86] is the recommended technique for this situation and is used in preferred models for point sources.

7.2.3 Mobile Sources

a. Emissions of primary pollutants from mobile sources can be modeled with an appropriate model identified in section 4.2. Screening of mobile sources can be accomplished by using screening meteorology, such as that generated by the MAKEMET component of AERSCREEN, which can generate a range of meteorological scenarios using site-specific characteristics, such as albedo, Bowen ratio, and surface roughness. Maximum hourly concentrations computed from screening runs can be converted to longer averaging periods using the scaling ratios specific in the AERSCREEN User's Guide.[37]

b. Mobile sources can be modeled in AERMOD as either line (*i.e.,* elongated area) sources or as a series of volume sources. However, since mobile source modeling usually includes an analysis of very near-source impacts (*e.g.,* hot-spot modeling, which can include receptors within 5–10 meters of the roadway), the results can be highly sensitive to the characterization of the mobile emissions. When modeling roadway links, such as highway and arterial links, the EPA recommends that line/area sources instead of volume sources be used whenever possible, as it is easier to characterize them correctly. Important characteristics for both line/area and volume sources include the plume release height, source width, and initial dispersion characteristics, which should also take into account the impact of traffic-induced turbulence, which can cause roadway sources to have larger initial dimensions than might normally be used for representing line sources.

c. The EPA's quantitative PM hot-spot guidance [61] and Haul Road Workgroup Final Report [63] provide guidance on the appropriate characterization of mobile sources as a function of the roadway and vehicle characteristics. The EPA's quantitative PM hot-spot guidance includes important considerations and should be consulted when modeling roadway links. Line or area sources are recommended for mobile sources. However, if volume sources are used, it is particularly important to insure that roadway emissions are appropriately spaced when using volume source so that the emissions field is uniform across the roadway. Additionally, receptor placement is particularly important for volume sources, which have ''exclusion zones'', where concentrations are not calculated for receptors located ''within'' the volume sources, *i.e.,* less than 2.15 times the initial lateral dispersion coefficient from the center of the volume.[61] Placing receptors in these ''exclusion zones'' will result in underestimates of roadway impacts.

8.0 Model Input Data

a. Databases and related procedures for estimating input parameters are an integral part of the modeling process. The most appropriate input data available should always be selected for use in modeling analyses. Modeled concentrations can vary widely depending on the source data or meteorological data used. This section attempts to minimize the uncertainty associated with database selection and use by identifying requirements for input data used in modeling. More specific data requirements and the format required for the individual models are described in detail in the users' guide and/or associated documentation for each model.

8.1 Modeling Domain

8.1.1 Discussion

a. The modeling domain is the geographic area for which the required air quality analyses for the NAAQS and PSD increments are conducted.

8.1.2 Requirements

a. For a NAAQS or PSD increment assessment, the modeling domain or project's impact area shall include all locations where the emissions of a pollutant from the new or modifying source(s) may cause a significant ambient impact. This impact area is defined as an area with a radius extending from the new or modifying source to: (1) The most distant point source where air quality modeling predicts a significant ambient impact will occur, or (2) the nominal 50 km distance considered applicable for Gaussian dispersion models, whichever is less. The required air quality analysis shall be carried out within this geographical area with characterization of source impacts, nearby source impacts, and background concentrations, as recommended later in this section.

b. For SIP attainment demonstrations for ozone and $PM_{2.5}$, or regional haze reasonable progress goal analyses, the modeling domain is determined by the nature of the problem being modeled and the spatial scale of the emissions which impact the nonattainment or Class I area(s). The modeling domain shall be designed so that all major upwind source areas that influence the downwind nonattainment area are included in addition to all monitor locations that are currently or recently violating the NAAQS or close to violating the NAAQS in the nonattainment area. Similarly, all Class I areas to be evaluated in a regional haze modeling application shall be included and sufficiently distant from the edge of the modeling domain. Guidance on the determination of the appropriate modeling domain for photochemical grid models in demonstrating attainment of these air quality goals is available.[60] Users should consult the latest version of this guidance for the most current modeling guidance and with the appropriate reviewing authority (paragraph 3.0(b)) for any application specific guidance which is beyond the scope of this section.

8.2 Source Data

8.2.1 Discussion

a. Sources of pollutants can be classified as point, line, area, and volume sources. Point sources are defined in terms of size and may vary between regulatory programs. The line sources most frequently considered are

roadways and streets along which there are well-defined movements of motor vehicles. They may also be lines of roof vents or stacks, such as in aluminum refineries. Area and volume sources are often collections of a multitude of minor sources with individually small emissions that are impractical to consider as separate point or line sources. Large area sources are typically treated as a grid network of square areas, with pollutant emissions distributed uniformly within each grid square. Generally, input data requirements for air quality models necessitate the use of metric units. As necessary, any English units common to engineering applications should be appropriately converted to metric.

b. For point sources, there are many source characteristics and operating conditions that may be needed to appropriately model the facility. For example, the plant layout (*e.g.,* location of stacks and buildings), stack parameters (*e.g.,* height and diameter), boiler size and type, potential operating conditions, and pollution control equipment parameters. Such details are required inputs to air quality models and are needed to determine maximum potential impacts.

c. Modeling mobile emissions from streets and highways requires data on the road layout, including the width of each traveled lane, the number of lanes, and the width of the median strip. Additionally, traffic patterns should be taken into account (*e.g.,* daily cycles of rush hour, differences in weekday and weekend traffic volumes, and changes in the distribution of heavy-duty trucks and light-duty passenger vehicles), as these patterns will affect the types and amounts of pollutant emissions allocated to each lane, and the height of emissions.

d. Emission factors can be determined through source specific testing and measurements (*e.g.,* stack test data) from existing sources or provided from a manufacturing association or vendor. Additionally, emissions factors for a variety of source types are compiled in an EPA publication commonly known as AP–42.[89] AP–42 also provides an indication of the quality and amount of data on which many of the factors are based. Other information concerning emissions is available in EPA publications relating to specific source categories. The appropriate reviewing authority (paragraph 3.0(b)) should be consulted to determine appropriate source definitions and for guidance concerning the determination of emissions from and techniques for modeling the various source types.

8.2.2 Requirements

a. For SIP attainment demonstrations for the purpose of projecting future year NAAQS attainment for ozone, $PM_{2.5}$, and regional haze reasonable progress goal analyses, emissions which reflect actual emissions during the base modeling year time period should be input to models for base year modeling. Emissions projections to future years should account for key variables such as growth due to increased or decreased activity, expected emissions controls due to regulations, settlement agreements or consent decrees, fuel switches, and any other relevant information. Guidance on emissions estimation techniques (including future year projections) for SIP attainment demonstrations is available.[60 90]

b. For the purpose of SIP revisions for stationary point sources, the regulatory modeling of inert pollutants shall use the emissions input data shown in Table 8–1 for short-term and long-term NAAQS. To demonstrate compliance and/or establish the appropriate SIP emissions limits, Table 8–1 generally provides for the use of ''allowable'' emissions in the regulatory dispersion modeling of the stationary point source(s) of interest. In such modeling, these source(s) should be modeled sequentially with these loads for every hour of the year. As part of a cumulative impact analysis, Table 8–1 allows for the model user to account for actual operations in developing the emissions inputs for dispersion modeling of nearby sources, while other sources are best represented by air quality monitoring data. Consultation with the appropriate reviewing authority (paragraph 3.0(b)) is advisable on the establishment of the appropriate emissions inputs for regulatory modeling applications with respect to SIP revisions for stationary point sources.

c. For the purposes of demonstrating NAAQS compliance in a PSD assessment, the regulatory modeling of inert pollutants shall use the emissions input data shown in Table 8–2 for short and long-term NAAQS. The new or modifying stationary point source shall be modeled with ''allowable'' emission in the regulatory dispersion modeling. As part of a cumulative impact analysis, Table 8–2 allows for the model user to account for actual operations in developing the emissions inputs for dispersion modeling of nearby sources, while other sources are best represented by air quality monitoring data. For purposes of situations involving emissions trading refer to current EPA policy and guidance to establish input data. Consultation with the appropriate reviewing authority (paragraph 3.0(b)) is advisable on the establishment of the appropriate emissions inputs for regulatory modeling applications with respect to PSD assessments for a proposed new or modifying source.

d. For stationary source applications, changes in operating conditions that affect the physical emission parameters (*e.g.,* release height, initial plume volume, and exit velocity) shall be considered to ensure that maximum potential impacts are appropriately determined in the assessment. For example, the load or operating condition for point sources that causes maximum ground-level concentrations shall be established. As a minimum, the source should be modeled using the design capacity (100 percent load). If a source operates at greater than design capacity for periods that could result in violations of the NAAQS or PSD increment, this load should be modeled. Where the source operates at substantially less than design capacity, and the changes in the stack parameters associated with the operating conditions could lead to higher ground level concentrations, loads such as 50 percent and 75 percent of capacity should also be modeled. Malfunctions which may result in excess emissions are not considered to be a normal operating condition. They generally should not be considered in determining allowable emissions. However, if the excess emissions are the result of poor maintenance, careless operation, or other preventable conditions, it may be necessary to consider them in determining source impact. A range of operating conditions should be considered in screening analyses; the load causing the highest concentration, in addition to the design load, should be included in refined modeling.

e. Emissions from mobile sources also have physical and temporal characteristics that should be appropriately accounted for. For example, an appropriate emissions model shall be used to determine emissions profiles. Such emissions should include speciation specific for the vehicle types used on the roadway (*e.g.,* light duty and heavy duty trucks) and subsequent parameterizations of the physical emissions characteristics (*e.g.,* release height) should reflect those emissions sources. For long-term standards, annual average emissions may be appropriate, but for short-term standards, discrete temporal representation of emissions should be used (*e.g.,* variations in weekday and weekend traffic or the diurnal rush-hour profile typical of many cities). Detailed information and data requirements for modeling mobile sources of pollution are provided in the user's manuals for each of the models applicable to mobile sources.[61 63]

TABLE 8–1—POINT SOURCE MODEL EMISSION INPUT FOR SIP REVISIONS OF INERT POLLUTANTS [1]

Averaging time	Emissions limit (lb/MMBtu) [2]	×	Operating level (lb/MMBtu) [2]	×	Operating factor (e.g., hr/yr. hr/day)
Stationary Point Source(s) Subject to SIP Emissions Limit(s) Evaluation for Compliance With Ambient Standards *(Including Areawide Demonstrations)*					
Annual & quarterly	Maximum allowable emission limit or federal enforceable permit limit.		Actual or design capacity (whichever is greater), or federally permit enforceable permit condition.		Actual operating factor averaged over the most recent 2 years.[3]

TABLE 8–1—POINT SOURCE MODEL EMISSION INPUT FOR SIP REVISIONS OF INERT POLLUTANTS [1]—Continued

Averaging time	Emissions limit (lb/MMBtu) [2]	×	Operating level (lb/MMBtu) [2]	×	Operating factor (e.g., hr/yr. hr/day)
Short term (≤24 hours)	Maximum allowable emission limit or federally enforceable permit limit.		Actual or design capacity (whichever is greater), or federally enforceable permit condition.[4]		Continuous operation, i.e., all hours of each time period under consideration (for all hours of the meteorological database).[5]
Nearby Source(s).[6]					
Annual & quarterly	Maximum allowable emission limit or federal enforceable permit limit.[5]		Annual level when actually operating, averaged over the most recent 2 years.[3]		Actual operating factor averaged over the most recent 2 years.[3 8]
Short term (≤24 hours)	Maximum allowable emission limit or federal enforceable permit limit.[6]		Temporally representative level when actually operating, reflective of the most recent 2 years.[3 7]		Continuous operation, i.e., all hours of each time period under consideration (for all hours of the meteorological database).[5]
Other Source(s)[8 9]					
The ambient impacts from Non-nearby or Other Sources (e.g., natural sources, minor sources and, distant major source and unidentified sources) can be represented by air quality monitoring data unless adequate data do not exist.					

[1] For purposes of emissions trading, NSR, or PSD, other model input criteria may apply. See Section 8.2 for more information regarding attainment demonstrations of primary $PM_{2.5}$.
[2] Terminology applicable to fuel burning sources; analogous terminology (e.g., lb/throughput) may be used for other types of sources.
[3] Unless it is determined that this period is not representative.
[4] Operating levels such as 50 percent and 75 percent of capacity should also be modeled to determine the load causing the highest concentration.
[5] If operation does not occur for all hours of the time period of consideration (e.g., 3 or 24–hours) and the source operation is constrained by a federally enforceable permit condition, an appropriate adjustment to the modeled emission rate may be made (e.g., if operation is only 8 a.m. to 4 p.m. each day, only these hours will be modeled with emissions from the source. Modeled emissions should not be averaged across non-operating
[6] See Section 8.3.3.
[7] Temporally representative operating level could be based on Continuous Emissions Monitoring (CEM) data or other information and should be determined through consultation with the appropriate reviewing authority (Paragraph 3.0(b)).
[8] For those permitted sources not in operation or that have not established an appropriate factor, continuous operation (i.e., 8760) should be used.
[9] See Section 8.3.2.

TABLE 8–2—POINT SOURCE MODEL EMISSION INPUT FOR NAAQS COMPLIANCE IN PSD DEMONSTRATIONS

Averaging time	Emissions limit (lb/MMBtu) [1]	×	Operating level (lb/MMBtu) [2]	×	Operating factor (e.g., hr/yr. hr/day)
Proposed Major New or Modified Source					
Annual & quarterly	Maximum allowable emission limit or federal enforceable permit limit.		Design capacity or federally enforceable permit condition.		Continuous operation (i.e., 8760 hours).[2]
Short term (≤24 hours)	Maximum allowable emission limit or federal enforceable permit limit.		Design capacity or federally enforceable permit condition.[3]		Continuous operation, i.e., all hours of each time period under consideration (for all hours of the meteorological database).[2]
Nearby Source(s)[4 5]					
Annual & quarterly	Maximum allowable emission limit or federal enforceable permit limit.[5]		Annual level when actually operating, averaged over the most recent 2 years.[6]		Actual operating factor averaged over the most recent 2 years.[6 8]
Short term (≤24 hours)	Maximum allowable emission limit or federal enforceable permit limit.[5]		Annual level when actually operating, averaged over the most recent 2 years.[6 7]		Continuous operation, i.e., all hours of each time period under consideration (for all hours of the meteorological database).[2]
Other Source(s)[5 9]					
The ambient impacts from Non-nearby or Other Sources (e.g., natural sources, minor sources and,distant major sources, and unidentified sources) can be represented by air quality monitoring data unless adequate data do not exist.					

[1] Terminology applicable to fuel burning sources; analogous terminology (e.g., lb/throughput) may be used for other types of sources.

[2] If operation does not occur for all hours of the time period of consideration (e.g., 3 or 24–hours) and the source operation is constrained by a federally enforceable permit condition, an appropriate adjustment to the modeled emission rate may be made (e.g., if operation is only 8 a.m. to 4 p.m. each day, only these hours will be modeled with emissions from the source. Modeled emissions should not be averaged across non-operating

[3] Operating levels such as 50 percent and 75 percent of capacity should also be modeled to determine the load causing the highest concentration.

[4] Includes existing facility to which modification is proposed if the emissions from the existing facility will not be affected by the modification. Otherwise use the same parameters as for major modification.

[5] See Section 8.3.3.

[6] Unless it is determined that this period is not representative.

[7] Temporally representative operating level could be based on Continuous Emissions Monitoring (CEM) data or other information and should be determined through consultation with the appropriate reviewing authority (Paragraph 3.0(b)).

[8] For those permitted sources not in operation or that have not established an appropriate factor, continuous operation (i.e., 8760) should be used.

[9] See Section 8.3.2.

8.3 Background Concentrations

8.3.1 Discussion

a. Background concentrations are essential in constructing the design concentration, or total air quality concentration, as part of a cumulative impact analysis for NAAQS and PSD increments (section 9.2.4). Background air quality should not include the ambient impacts of the project source under consideration. Instead, it should include:

i. Nearby sources: These are individual sources in the vicinity of the source(s) under consideration for emissions limits that are not adequately represented by ambient monitoring data. Typically, sources that cause a significant concentration gradient in the vicinity of the source(s) under consideration for emissions limits are not adequately represented by background ambient monitoring. The ambient contributions from these nearby sources are thereby accounted for by explicitly modeling their emissions (section 8.2).

ii. Other sources: That portion of the background attributable to natural sources, other unidentified sources in the vicinity of the project, and regional transport contributions from more distant sources (domestic and international). The ambient contributions from these sources are typically accounted for through use of ambient monitoring data or, in some cases, regional-scale photochemical grid modeling results.

b. The monitoring network used for developing background concentrations is expected to conform to the same quality assurance and other requirements as those networks established for PSD purposes.[91] Accordingly, the air quality monitoring data should be of sufficient completeness and follow appropriate data validation procedures. These data should be adequately representative of the area to inform calculation of the design concentration for comparison to the applicable NAAQS (section 9.2.2)

c. For photochemical grid modeling conducted in SIP attainment demonstrations for ozone, $PM_{2.5}$ and regional haze, the emissions from nearby and other sources are included as model inputs and fully accounted for in the modeling application and predicted concentrations. The concept of adding individual components to develop a design concentration, therefore, do not apply in these SIP applications. However, such modeling results may then be appropriate for consideration in characterizing background concentrations for other regulatory applications. Also, as noted in section 5, this modeling approach does provide for an appropriate atmospheric environment to assess single-sources impacts for ozone and secondary $PM_{2.5}$.

d. For PSD assessments in general and SIP attainment demonstrations for inert pollutants, the development of the appropriate background concentration for a cumulative impact analysis involves proper accounting of each contribution to the design concentration and will depend upon whether the project area's situation consists of either an isolated single source(s) or a multitude of sources.

8.3.2 Recommendations for Isolated Single Source

a. In areas with an isolated source(s), determining the appropriate background concentration should focus on characterization of contributions from all other sources through adequately representative ambient monitoring data.

b. The EPA recommends use of the most recent quality assured air quality monitoring data collected in the vicinity of the source to determine the background concentration for the averaging times of concern. In most cases, the EPA recommends using data from the monitor closest to and upwind of the project area. If several monitors are available, preference should be given to the monitor with the most similar characteristics as the project area. If there are no monitors located in the vicinity of the new or modify source, a ''regional site'' may be used to determine background concentrations. A regional site is one that is located away from the area of interest but is impacted by similar or adequately representative sources.

c. Many of the challenges related to cumulative impact analyses arise in the context of defining the appropriate metric to characterize background concentrations from ambient monitoring data and determining the appropriate method for combining this monitor-based background contribution to the modeled impact of the project and other nearby sources. For many cases, the best starting point would be use of the current design value for the applicable NAAQS as a uniform monitored background contribution across the project area. However, there are cases in which the current design value may not be appropriate. Such cases include but are not limited to:

i. For situations involving a modifying source where the existing facility is determined to impact the ambient monitor, the background concentration at each monitor can be determined by excluding values when the source in question is impacting the monitor. In such cases, monitoring sites inside a 90° sector downwind of the source may be used to determine the area of impact.

ii. There may be other circumstances which would necessitate modifications to the ambient data record. Such cases could include removal of data from specific days or hours when a monitor is being impacted activities that are not typical or expected to occur again in the future (*e.g.,* construction, roadway repairs, forest fires, or unusual agricultural activities). There may also be cases where scaling (multiplying the monitored concentrations with a scaling factor) or adjusting (adding or subtracting a constant value the monitored concentrations) of data from specific days or hours. Such adjustments would make the monitored background concentrations more temporally and/or spatially representative of area around the new or modifying source for the purposes of the regulator assessment.

iii. For short-term standards, the diurnal or seasonal patterns of the air quality monitoring data may differ significantly from the patterns associated with the modeled concentrations. When this occurs, it may be appropriate to pair the air quality monitoring data in a temporal manner that reflects these patterns (*e.g.,* pairing by season and/or hour of day).[92]

iv. For situations where monitored air quality concentrations vary across the modeling domain, it may be appropriate to consider air quality monitoring data from multiple monitors within the project area.

d. Determination of the appropriate background concentrations should be consistent with appropriate EPA modeling guidance [59 92] and justified in the modeling protocol that is vetted with the appropriate reviewing authority (paragraph 3.0(b)).

e. Considering the spatial and temporal variability throughout a typical modeling domain on an hourly basis and the complexities and limitations of hourly observations from the ambient monitoring network, the EPA does not recommend hourly or daily pairing of monitored background and modeled concentrations except in rare cases of relatively isolated sources where the available monitor can be shown to be representative of the ambient concentration levels in the areas of maximum impact from the proposed new source. The implicit assumption underlying hourly pairing is that the background monitored levels for each hour are spatially uniform and that the monitored values are fully

representative of background levels at each receptor for each hour. Such an assumption clearly ignores the many factors that contribute to the temporal and spatial variability of ambient concentrations across a typical modeling domain on an hourly basis. In most cases, the seasonal (or quarterly) pairing of monitored and modeled concentrations should sufficiently address situations to which the impacts from modeled emissions are not temporally correlated with background monitored levels.

f. In those cases where adequately representative monitoring data to characterize background concentrations are not available, it may be appropriate to use results from a regional-scale photochemical grid model or other representative model application as background concentrations consistent with the considerations discussed above and in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

8.3.3 Recommendations for Multi-Source Areas

a. In multi-source areas, determining the appropriate background concentration involves: (1) identification and characterization of contributions from nearby sources through explicit modeling, and (2) characterization of contributions from other sources through adequately representative ambient monitoring data. A key point here is the interconnectedness of each component in that the question of which nearby sources to include in the cumulative modeling is inextricably linked to the question of what the ambient monitoring data represents within the project area.

b. *Nearby sources:* All sources in the vicinity of the source(s) under consideration for emissions limits that are not adequately represented by ambient monitoring data should be explicitly modeled. Since an ambient monitor is limited to characterizing air quality at a fixed location, sources that causes a significant concentration gradient in the vicinity of the source(s) under consideration for emissions limits are not likely to be adequately characterized by the monitored data due to the high degree of variability of the source's impact.

i. The pattern of concentration gradients can vary significantly based on the averaging period being assessed. In general, concentration gradients will be smaller and more spatially uniform for annual averages than for short-term averages, especially for hourly averages. The spatial distribution of annual impacts around a source will often have a single peak downwind of the source based on the prevailing wind direction, except in cases where terrain or other geographic effects are important. By contrast, the spatial distribution of peak short-term impacts will typically show several localized concentration peaks with more significant gradient.

ii. Concentration gradients associated with a particular source will generally be largest between that source's location and the distance to the maximum ground-level concentrations from that source. Beyond the maximum impact distance, concentration gradients will generally be much smaller and more spatially uniform. Thus, the magnitude of a concentration gradient will be greatest in the proximity of the source and will generally not be significant at distances greater than 10 times the height of the stack(s) at that source without consideration of terrain influences.

iii. The number of nearby sources to be explicitly modeled in the air quality analysis is expected to be few except in unusual situations. In most cases, the few nearby sources will be located within 10 to 20 km from the source(s) under consideration. Owing to both the uniqueness of each modeling situation and the large number of variables involved in identifying nearby sources, no attempt is made here to comprehensively define a ''significant concentration gradient.'' Rather, identification of nearby sources calls for the exercise of professional judgement by the appropriate reviewing authority (paragraph 3.0(b)). This guidance is not intended to alter the exercise of that judgement or to comprehensively prescribe which sources should be included as nearby sources.

c. For cumulative impact analyses of short-term and annual ambient standards, the nearby sources as well as the project source(s) must be evaluated using an appropriate appendix A model or approved alternative model with the emission input data shown in Table 8–1 or 8–2.

i. When modeling a nearby source that does not have a permit and the emissions limits contained in the SIP for a particular source category is greater than the emissions possible given the source's maximum physical capacity to emit, the ''maximum allowable emissions limit'' for such a nearby source may be calculated as the emissions rate representative of the nearby source's maximum physical capacity to emit, considering its design specifications and allowable fuels and process materials. However, the burden is on the permit applicant to sufficiently document what the maximum physical capacity to emit is for such a nearby source.

ii. It is appropriate to model nearby sources only during those times when they, by their nature, operate at the same time as the primary source(s). Accordingly, it is not necessary to model impacts of a nearby source that does not, by its nature, operate at the same time as the primary source, regardless of an identified significant concentration gradient from the nearby source. The burden is on the permit applicant to adequately justify the exclusion of nearby sources to the satisfaction of the appropriate reviewing authority (paragraph 3.0(b)). The following examples illustrate two cases in which a nearby source may be shown not to operate at the same time as the primary source(s) being modeled: (1) Seasonal sources (only used during certain seasons of the year). Such sources would not be modeled as nearby sources during times in which they do not operate; and (2) Emergency backup generators, to the extent that they do not operate simultaneously with the sources that they back up. Such emergency equipment would not be modeled as nearby sources.

d. *Other sources.* That portion of the background attributable to all other sources (*e.g.,* natural sources, minor and distance major sources) should be accounted for through use of ambient monitoring data and determined by the procedures found in section 8.3.2 in keeping with eliminating or reducing the source-oriented impacts from nearby sources to avoid potential double-counting of modeled and monitored contributions.

8.4 Meteorological Input Data

8.4.1 Discussion

a. This subsection covers meteorological input data for use in dispersion modeling for regulatory applications and is separate from recommendations made for photochemical grid modeling. Recommendations for meteorological data for photochemical grid modeling applications are outlined in the latest version of EPA's Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze [93]. In cases where Lagrangian models are applied for regulatory purposes, appropriate meteorological inputs should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

b. The meteorological data used as input to a dispersion model should be selected on the basis of spatial and climatological (temporal) representativeness as well as the ability of the individual parameters selected to characterize the transport and dispersion conditions in the area of concern. The representativeness of the measured data is dependent on numerous factors including but not limited to: (1) The proximity of the meteorological monitoring site to the area under consideration; (2) The complexity of the terrain; (3) The exposure of the meteorological monitoring site; and (4) The period of time during which data are collected. The spatial representativeness of the data can be adversely affected by large distances between the source and receptors of interest and the complex topographic characteristics of the area. Temporal representativeness is a function of the year-to-year variations in weather conditions. Where appropriate, data representativeness should be viewed in terms of the appropriateness of the data for constructing realistic boundary layer profiles and, where applicable, three-dimensional meteorological fields, as described in paragraphs (c) and (d) of this subsection.

c. The meteorological data should be adequately representative and may be site-specific data, data from a nearby National Weather Service (NWS) or comparable station, or prognostic meteorological data. The implementation of ASOS (automated surface observing stations) in recent years should not preclude the use of NWS–ASOS data if such a station is determined to be representative of the modeled area.[94]

d. Model input data are normally obtained either from the NWS or as part of a site-specific measurement program. State climatology offices, local universities, FAA, military stations, industry and pollution control agencies may also be sources of such data. In specific cases, prognostic meteorological data may be appropriate for use and obtained from similar sources. Some

recommendations and requirements for the use of each type of data are included in this subsection.

8.4.2 Recommendations and Requirements

a. AERMET [95] shall be used to preprocess all meteorological data, be it observed or prognostic, for use with AERMOD in regulatory applications. The AERMINUTE [96] processor, in most cases, should be used to process 1-minute ASOS wind data for input into AERMET when processing NWS ASOS sites in AERMET. When processing prognostic meteorological data for AERMOD, the Mesoscale Model Interface Program (MMIF) [93] should be used to process data for input into AERMET. Other methods of processing prognostic meteorological data for input into AERMET should be approved by the appropriate reviewing authority. Additionally, the following meteorological preprocessors are recommended by the EPA: PCRAMMET [97], MPRM [98], and METPRO [99]. PCRAMMET is the recommended meteorological data preprocessor for use in applications of OCD employing hourly NWS data. MPRM is the recommended meteorological data preprocessor for applications of OCD employing site-specific meteorological data. METPRO is the recommended meteorological data preprocessor for use with CTDMPLUS.[100]

b. Regulatory application of AERMOD necessitates careful consideration of the meteorological data for input to AERMET. Data representativeness, in the case of AERMOD, means utilizing data of an appropriate type for constructing realistic boundary layer profiles. Of particular importance is the requirement that all meteorological data used as input to AERMOD should be adequately representative of the transport and dispersion within the analysis domain. Where surface conditions vary significantly over the analysis domain, the emphasis in assessing representativeness should be given to adequate characterization of transport and dispersion between the source(s) of concern and areas where maximum design concentrations are anticipated to occur. The EPA recommends that the surface characteristics input to AERMET should be representative of the land cover in the vicinity of the meteorological data, *i.e.,* the location of the meteorological tower for measured data or the representative grid cell for prognostic data. Therefore, the model user should apply the latest version AERSURFACE [101] [102], where applicable, for determining surface characteristics when processing measured meteorological data through AERMET. In areas where it is not possible to use AERSURFACE output, surface characteristics can determined using techniques that apply the same analysis as AERSURFACE. In the case of prognostic meteorological data, the surface characteristics associated with the prognostic meteorological model output for the representative grid cell should be used.[103] [104] Furthermore, since the spatial scope of each variable could be different, representativeness should be judged for each variable separately. For example, for a variable such as wind direction, the data should ideally be collected near plume height to be adequately representative, especially for sources located in complex terrain. Whereas, for a variable such as temperature, data from a station several kilometers away from the source may be considered to be adequately representative. More information about meteorological data, representativeness, and surface characteristics can be found in the AERMOD Implementation Guide [76].

c. Regulatory application of CTDMPLUS requires the input of multi-level measurements of wind speed, direction, temperature, and turbulence from an appropriately sited meteorological tower. The measurements should be obtained up to the representative plume height(s) of interest. Plume heights of interest can be determined by use of screening procedures such as CTSCREEN.

d. Regulatory application of OCD requires meteorological data over land and over water. The over land or surface data processed through PCRAMMET [97] which provides hourly stability class, wind direction and speed, ambient temperature, and mixing height are required. Data over water requires hourly mixing height, relative humidity, air temperature, and water surface temperature. Missing winds are substituted with the surface winds. Vertical wind direction shear, vertical temperature gradient, and turbulence intensities are optional.

e. The model user should acquire enough meteorological data to ensure that worst-case meteorological conditions are adequately represented in the model results. The use of 5 years of adequately representative NWS meteorological data, at least 1 year of site-specific, or at least 3 years of prognostic meteorological data are required. If 1 year or more, up to 5 years, of site-specific data is available, these data are preferred for use in air quality analyses. Such data should have been subjected to quality assurance procedures as described in section 8.4.4.2.

f. Objective analysis in meteorological modeling is to improve meteorological analyses (the ''*first guess field*'') used as initial conditions for prognostic meteorological models by incorporating information from meteorological observations. Direct and indirect (using remote sensing techniques) observations of temperature, humidity, and wind from surface and radiosonde reports are commonly employed to improve these analysis fields. For LRT applications, it is recommended that objective analysis procedures using direct and indirect meteorological observations be employed in preparing input fields to produce prognostic meteorological datasets. The length of record of observations should conform to recommendations outlined in paragraph 8.4.2(e) for prognostic meteorological model datasets.

8.4.3 National Weather Service Data

8.4.3.1 Discussion

a. The NWS meteorological data are routinely available and familiar to most model users. Although the NWS does not provide direct measurements of all the needed dispersion model input variables, methods have been developed and successfully used to translate the basic NWS data to the needed model input. Site-specific measurements of model input parameters have been made for many modeling studies, and those methods and techniques are becoming more widely applied, especially in situations such as complex terrain applications, where available NWS data are not adequately representative. However, there are many modeling applications where NWS data are adequately representative, and the applications still rely heavily on the NWS data.

b. Many models use the standard hourly weather observations available from the National Centers for Environmental Information (NCEI) [b]. These observations are then preprocessed before they can be used in the models. Prior to the advent of ASOS in the early 1990's, the ''hourly'' weather observation was a human observer-based observation reflecting a single 2-minute average generally taken about 10 minutes before the hour. However, beginning with January 2000 for first-order stations and March 2005 for all stations, NCEI has archived the rolling 2-minute average winds at every minute for ASOS sites. The AERMINUTE processor [96] was developed to reduce calm and missing hours by taking advantage of the availability of the 1-minute ASOS wind data to calculate full hourly average winds to replace standard hourly observations and reduce the number of calm and missing winds in AERMET processing.

8.4.3.2 Recommendations

a. The preferred models listed in appendix A all accept as input the NWS meteorological data preprocessed into model compatible form. If NWS data are judged to be adequately representative for a specific modeling application, they may be used. NEIS makes available surface [105] [106] and upper air [107] meteorological data online and in CD–ROM format. Upper air data are also available at the Earth System Research Laboratory Global Systems Divisions Web site (*http://esrl.noaa.gov/gsd*).

b. Although most NWS wind measurements are made at a standard height of 10 meters, the actual anemometer height should be used as input to the preferred meteorological processor and model.

c. Standard hourly NWS wind directions are reported to the nearest 10 degrees. A specific set of randomly generated numbers has been developed for use with the preferred EPA models and should be used with standard NWS data to ensure a lack of bias in wind direction assignments within the models.

d. Beginning with year 2000, NCDC began archiving 2-minute winds, reported every minute for NWS ASOS sites. The AERMINUTE processor was developed to read those winds and calculate hourly average winds for input into AERMET. When such data are available for the NWS ASOS site being processed, the AERMINUTE processor should be used in most cases to calculate hourly average wind speed and direction when processing NWS ASOS data for input to AERMOD.[94]

[b] Formerly the National Climatic Data Center (NCDC).

e. Data from universities, FAA, military stations, industry and pollution control agencies may be used if such data are equivalent in accuracy and detail (*e.g.,* siting criteria, frequency of observations, data completeness, etc.) to the NWS data, they are judged to be adequately representative for the particular application and have undergone quality assurance checks.

f. After valid data retrieval requirements have been met,[108] large number of hours in the record having missing data should be treated according to an established data substitution protocol provided that adequately representative alternative data are available. Data substitution guidance is provided in section 5.3 of reference 108. If no representative alternative data are available for substitution, the absent data should be coded as missing using missing data codes appropriate to the applicable meteorological pre-processor. Appropriate model options for treating missing data, if available in the model, should be employed.

8.4.4 Site-Specific data

8.4.4.1 Discussion

a. Spatial or geographical representativeness is best achieved by collection of all of the needed model input data in close proximity to the actual site of the source(s). Site-specific measured data are therefore preferred as model input, provided that appropriate instrumentation and quality assurance procedures are followed and that the data collected are adequately representative (free from inappropriate local or microscale influences) and compatible with the input requirements of the model to be used. It should be noted that, while site-specific measurements are frequently made ''on-property'' (*i.e.,* on the source's premises), acquisition of adequately representative site-specific data does not preclude collection of data from a location off property. Conversely, collection of meteorological data on a source's property does not of itself guarantee adequate representativeness. For help in determining representativeness of site-specific measurements, technical guidance [108] is available. Site-specific data should always be reviewed for representativeness and adequacy by an experienced meteorologist, atmospheric scientist, or other qualified scientist.

8.4.4.2 Recommendations

a. The EPA guidance [108] provides recommendations on the collection and use of site-specific meteorological data. Recommendations on characteristics, siting, and exposure of meteorological instruments and on data recording, processing, completeness requirements, reporting, and archiving are also included. This publication should be used as a supplement to other limited guidance on these subjects.[5 91 109 110] Detailed information on quality assurance is also available.[111] As a minimum, site-specific measurements of ambient air temperature, transport wind speed and direction, and the variables necessary to estimate atmospheric dispersion should be available in meteorological datasets to be used in modeling. Care should be taken to ensure that meteorological instruments are located to provide an adequately representative characterization of pollutant transport between sources and receptors of interest. The appropriate reviewing authority (paragraph 3.0(b)) is available to help determine the appropriateness of the measurement locations.

b. All processed site-specific data should be in the form of hourly averages for input into the dispersion model. These data include surface wind speed, transport direction, dilution wind speed, and turbulence measurements σ_A and σ_E (for use in stability determinations and direct input into the dispersion model). The hourly average turbulence measurements should be the square root of the arithmetic average of the 15-minute average variances (square of σ_A or σ_E).

c. *Missing data substitution.* After valid data retrieval requirements have been met,[108] hours in the record having missing data should be treated according to an established data substitution protocol provided that adequately representative alternative data are available. Such protocols are usually part of the approved monitoring program plan. Data substitution guidance is provided in section 5.3 of reference 108. If no representative alternative data are available for substitution, the absent data should be coded as missing using missing data codes appropriate to the applicable meteorological pre-processor. Appropriate model options for treating missing data, if available in the model, should be employed.

d. *Solar radiation measurements.* Total solar radiation or net radiation should be measured with a reliable pyranometer or net radiometer, sited and operated in accordance with established site-specific meteorological guidance.[108 111]

e. *Temperature measurements.* Temperature measurements should be made at standard shelter height (2m) in accordance with established site-specific meteorological guidance.[108]

f. *Temperature difference measurements.* Temperature difference (DT) measurements should be obtained using matched thermometers or a reliable thermocouple system to achieve adequate accuracy. Siting, probe placement, and operation of DT systems should be based on guidance found in Chapter 3 of reference 108 and such guidance should be followed when obtaining vertical temperature gradient data. AERMET may employ the Bulk Richardson scheme, which requires measurements of temperature difference, in lieu of cloud cover or insolation data. To ensure correct application and acceptance, AERMOD users should consult with the appropriate reviewing authority (paragraph 3.0(b)) before using the Bulk Richardson scheme for their analysis.

g. *Wind measurements.* For simulation of plume rise and dispersion of a plume emitted from a stack, characterization of the wind profile up through the layer in which the plume disperses is desirable. This is especially important in complex terrain and/or complex wind situations where wind measurements at heights up to hundreds of meters above stack base may be required in some circumstances. For tall stacks when site-specific data are needed, these winds have been obtained traditionally using meteorological sensors mounted on tall towers. A feasible alternative to tall towers is the use of meteorological remote sensing instruments (*e.g.,* acoustic sounders or radar wind profilers) to provide winds aloft, coupled with 10-meter towers to provide the near-surface winds. Note that when site-specific wind measurements are used, AERMOD, at a minimum, requires wind observations at a height above ground between seven times the local surface roughness height and 100 meters. (For additional requirements for AERMOD and CTDMPLUS, *see* appendix A.) Specifications for wind measuring instruments and systems are contained in reference 108.

h. *Turbulence.* There are several dispersion models that are capable of using direct measurements of turbulence (wind fluctuations) in the characterization of the vertical and lateral dispersion (*e.g.,* CTDMPLUS, AERMOD). For specific requirements for CTDMPLUS, AERMOD, *see* appendix A. For technical guidance on measurement and processing of turbulence parameters, *see* reference 108. When turbulence data are used in this manner to directly characterize the vertical and lateral dispersion, the averaging time for the turbulence measurements should be 1 hour. However, since AERMOD incorporates an algorithm to account for horizontal plume meander under low wind conditions, the methodology outlined in paragraph 8.4.4.2(b) should be used to calculate hourly averages of $\sigma\theta$, based on four 15-minuite values, to minimize ''double counting'' of plume spread associated with meander. The calculation of hourly $\sigma\theta$ discussed above is automatically applied within AERMET when sub-hourly data are processed. There are other dispersion models that employ P–G stability categories for the characterization of the vertical and lateral dispersion. Methods for using site-specific turbulence data for the characterization of P–G stability categories are discussed in reference 108. When turbulence data are used in this manner to determine the P–G stability category, the averaging time for the turbulence measurements should be 15 minutes, with hourly averaged values based on methodology in paragraph 8.4.4.2(b).

i. *Stability categories.* For dispersion models that employ P–G stability categories for the characterization of the vertical and lateral dispersion, the P–G stability categories, as originally defined, couple near-surface measurements of wind speed with subjectively determined insolation assessments based on hourly cloud cover and ceiling height observations. The wind speed measurements are made at or near 10m. The insolation rate is typically assessed using observations of cloud cover and ceiling height based on criteria outlined by Turner.[72] It is recommended that the P–G stability category be estimated using the Turner method with site-specific wind speed measured at or near 10m and representative cloud cover and ceiling height. Implementation of the Turner method, as well as considerations in determining representativeness of cloud cover and ceiling height in cases for which site-specific cloud

observations are unavailable, may be found in section 6 of reference 108. In the absence of requisite data to implement the Turner method, the solar radiation/delta-T (SRDT) method or wind fluctuation statistics (*i.e.,* the σ_E and σ_A methods) may be used.

j. The SRDT method, described in section 6.4.4.2 of reference 108, is modified slightly from that published from earlier work [112] and has been evaluated with three site-specific databases.[113] The two methods of stability classification which use wind fluctuation statistics, the σ_E and σ_A methods, are also described in detail in section 6.4.4 of reference 108 (note applicable tables in section 6). For additional information on the wind fluctuation methods, several references are available.[114 115 116 117]

8.4.5 Prognostic Meteorological Data

8.4.5.1 Discussion

a. For some modeling applications, there may not be a representative NWS or comparable meteorological station available (*e.g.,* complex terrain), and it may be cost prohibitive or infeasible to collect adequately representative site-specific data. For these cases, it may be necessary to use prognostic meteorological data in a regulatory modeling application.

b. The EPA has developed a processor, the MMIF (Mesoscale Model Interface Program) to process MM5 (Mesoscale Model 5) or WRF (Weather Research and Forecasting) model data for input into various models including AERMOD. MMIF can process data for input into AERMET or AERMOD for a single grid cell or multiple grid cells. MMIF output has been found to compare favorably against observed data (site-specific or NWS).[118] Specific guidance on processing MMIF for AERMOD can be found in reference 104. When using MMIF to process prognostic data for regulatory applications, the data should be processed to generate AERMET inputs and the data subsequently processed through AERMET for input into AERMOD. If an alternative method of processing data for input into AERMET is used, it must be approved by the appropriate reviewing authority (paragraph 3.0(b)).

8.4.5.2 Recommendations

a. *Prognostic model evaluation.* Appropriate effort should be devoted to the process of evaluating the prognostic meteorological data. The modeling data should be compared to NWS observational data in an effort to show that the data are accurately replicating the observed meteorological conditions of the time periods modeled. An operational evaluation of the modeling data for all model years (*i.e.,* statistical, graphical) should be completed.[93] The use of output from prognostic mesoscale meteorological models is contingent upon the concurrence with the appropriate reviewing authority (paragraph 3.0(b)) that the data are of acceptable quality, which can be demonstrated through statistical comparisons with meteorological observations aloft and at the surface at several appropriate locations.[93]

b. *Representativeness.* When processing MMIF data for use with AERMOD, the grid cell used for the dispersion modeling should be adequately spatially representative of the analysis domain. In most cases, this may be the grid cell containing the emission source of interest. Since the dispersion modeling may involve multiple sources and the domain may cover several grid cells, depending on grid resolution of the prognostic model, professional judgement may be needed to select the appropriate grid cell to use. In such cases, the selected grid cell should be adequately representative of the entire domain.

c. *Grid resolution.* The grid resolution of the prognostic meteorological data should be considered and evaluated appropriately, particularly for projects involving complex terrain. The operational evaluation of the modeling data should consider whether a finer grid resolution is needed to ensure that the data are representative. The use of output from prognostic mesoscale meteorological models is contingent upon the concurrence with the appropriate reviewing authority (paragraph 3.0(b)) that the data are of acceptable quality.

8.4.6 Treatment of Near-Calms and Calms

8.4.6.1 Discussion

a. Treatment of calm or light and variable wind poses a special problem in modeling applications since steady-state Gaussian plume models assume that concentration is inversely proportional to wind speed, depending on model formulations. Procedures have been developed to prevent the occurrence of overly conservative concentration estimates during periods of calms. These procedures acknowledge that a steady-state Gaussian plume model does not apply during calm conditions, and that our knowledge of wind patterns and plume behavior during these conditions does not, at present, permit the development of a better technique. Therefore, the procedures disregard hours which are identified as calm. The hour is treated as missing and a convention for handling missing hours is recommended. With the advent of the AERMINUTE processor, when processing NWS ASOS data, the inclusion of hourly averaged winds from AERMINUTE will, in some instances, dramatically reduce the number of calm and missing hours, especially when the ASOS wind are derived from a sonic anemometer. To alleviate concerns about low winds, especially those introduced with AERMINUTE, the EPA implemented a wind speed threshold in AERMET for use with ASOS derived winds.[96] Winds below the threshold will be treated as calms.

b. AERMOD, while fundamentally a steady-state Gaussian plume model, contains algorithms for dealing with low wind speed (near calm) conditions. As a result, AERMOD can produce model estimates for conditions when the wind speed may be less than 1 m/s, but still greater than the instrument threshold. Required input to AERMET for site-specific data, the meteorological processor for AERMOD, includes a threshold wind speed and a reference wind speed. The threshold wind speed is typically the threshold of the instrument used to collect the wind speed data. The reference wind speed is selected by the model as the lowest level of non-missing wind speed and direction data where the speed is greater than the wind speed threshold, and the height of the measurement is between seven times the local surface roughness and 100 meters. If the only valid observation of the reference wind speed between these heights is less than the threshold, the hour is considered calm, and no concentration is calculated. None of the observed wind speeds in a measured wind profile that are less than the threshold speed are used in construction of the modeled wind speed profile in AERMOD.

8.4.6.2 Recommendations

a. Hourly concentrations calculated with steady-state Gaussian plume models using calms should not be considered valid; the wind and concentration estimates for these hours should be disregarded and considered to be missing. Critical concentrations for 3-, 8-, and 24-hour averages should be calculated by dividing the sum of the hourly concentrations for the period by the number of valid or non-missing hours. If the total number of valid hours is less than 18 for 24-hour averages, less than 6 for 8-hour averages or less than 3 for 3-hour averages, the total concentration should be divided by 18 for the 24-hour average, 6 for the 8-hour average and 3 for the 3-hour average. For annual averages, the sum of all valid hourly concentrations is divided by the number of non-calm hours during the year. AERMOD has been coded to implement these instructions. For hours that are calm or missing, the AERMOD hourly concentrations will be zero. For other models listed in appendix A, a post-processor computer program, CALMPRO [119] has been prepared, is available on the EPA's SCRAM Web site (section 2.3), and should be used.

b. Stagnant conditions that include extended periods of calms often produce high concentrations over wide areas for relatively long averaging periods. The standard steady-state Gaussian plume models are often not applicable to such situations. When stagnation conditions are of concern, other modeling techniques should be considered on a case-by-case basis (*see* also section 7.2.1.2).

c. When used in steady-state Gaussian plume models, measured site-specific wind speeds of less than 1 m/s but higher than the response threshold of the instrument should be input as 1 m/s; the corresponding wind direction should also be input. Wind observations below the response threshold of the instrument should be set to zero, with the input file in ASCII format. For input to AERMOD, no adjustment should be made to the site-specific wind data. For NWS ASOS data, especially data using the 1-minute ASOS winds, a wind speed threshold option is allowed with a recommended speed of 0.5 m/s. [94] When using prognostic data processed by MMIF, a 0.5 m/s threshold is also invoked by MMIF for input into AERMET. Observations with wind speeds less than the threshold are considered calm, and no concentration is calculated. In all cases involving steady-state Gaussian plume models, calm hours should be treated as missing, and concentrations should be calculated as in paragraph (a) of this subsection.

9.0 Regulatory Application of Models

9.1 Discussion

a. Standardized procedures are valuable in the review of air quality modeling and data analyses conducted to support SIP submittals and revisions, NSR, including PSD, or other EPA requirements to ensure consistency in their regulatory application. This section recommends procedures specific to NSR, including PSD, that facilitate some degree of standardization while at the same time allowing the flexibility needed to assure the technically best analysis for each regulatory application. For SIP attainment demonstrations, refer to the appropriate EPA guidance [51 60] for the recommended procedures.

b. Air quality model estimates, especially with the support of measured air quality data, are the preferred basis for air quality demonstrations. A number of actions have been taken to ensure that the best air quality model is used correctly for each regulatory application and that it is not arbitrarily imposed.

- First, the *Guideline* clearly recommends that the most appropriate model be used in each case. Preferred models are identified, based on a number of factors, for many uses.
- Second, the preferred models have been subjected to a systematic performance evaluation and a peer scientific review. Statistical performance measures, including measures of difference (or residuals) such as bias, variance of difference and gross variability of the difference, and measures of correlation such as time, space, and time and space combined as described in section 2.1.1, were generally followed.
- Third, more specific information has been provided for considering the incorporation of new models into the *Guideline* (section 3.1) and the *Guideline* contains procedures for justifying the case-by-case use of alternative models and obtaining EPA approval (section 3.2).

The *Guideline,* therefore, provides objective methods that allow a determination to be made as to what air quality model or technique is most appropriate for a particular application.

c. Air quality modeling is the preferred basis for air quality demonstrations. Nevertheless, there are rare circumstances where the performance of the preferred air quality model may be shown to be less than reasonably acceptable or where no preferred air quality model, screening model or technique, or alternative model are suitable for the situation. In these unique instances, there is the possibility of assuring compliance and establishing emissions limits for an existing source solely on the basis of observed air quality data in lieu of an air quality modeling analysis. Comprehensive air quality monitoring in the vicinity of the existing source with proposed modifications will be necessary in these cases. The same attention should be given to the detailed analyses of the air quality data as would be applied to a model performance evaluation.

d. The current levels and forms of the NAAQS for the six criteria pollutants can be found on the EPA's NAAQS Web site at *http://www.epa.gov/air/criteria.html.* Under the CAA, the NAAQS are subjected to extensive review every 5 years and the standards, including the level and the form, may be revised as part of that review. The criteria pollutants have either long-term (annual or quarterly) and/or short-term (24-hour or less) forms that are not to be exceeded more than a certain frequency over a period of time (*e.g.,* no exceedance on a rolling 3-month average, no more than once per year, or no more than once per year averaged over 3 years), are averaged over a period of time (*e.g.,* an annual mean or an annual mean averaged over 3 years), or are some percentile that is averaged over a period of time (*e.g.,* annual 99th or 98th percentile averaged over 3 years). The 3-year period for ambient monitoring design values does not dictate the length of the data periods recommended for modeling (*i.e.,* 5 years of NWS meteorological data, at least 1 year of site-specific, or at least 3 years of prognostic meteorological data).

e. This section discusses general recommendations on the regulatory application of models for the purposes of NSR, including PSD permitting, and particularly for estimating design concentration(s), appropriately comparing these estimates to NAAQS and PSD increment, and developing emissions limits. Lastly, this section provides the criteria necessary for considering use of analysis based on measured ambient data in lieu of modeling as the sole basis for demonstrating compliance with NAAQS and PSD increments.

9.2 Recommendations

9.2.1 Modeling Protocol

a. Every effort should be made by the appropriate reviewing authority (paragraph 3.0(b)) to meet with all parties involved in either a SIP submission or revision or a PSD permit application prior to the start of any work on such a project. During this meeting, a protocol should be established between the preparing and reviewing parties to define the procedures to be followed, the data to be collected, the model to be used, and the analysis of the source and concentration data to be performed. An example of the content for such an effort is contained in the Air Quality Analysis Checklist posted on the EPA's SCRAM Web site (section 2.3). This checklist suggests the appropriate level of detail to assess the air quality resulting from the proposed action. Special cases may require additional data collection or analysis and this should be determined and agreed upon at this pre-application meeting. The protocol should be written and agreed upon by the parties concerned, although it is not intended that this protocol be a binding, formal legal document. Changes in such a protocol or deviations from the protocol are often necessary as the data collection and analysis progresses. However, the protocol establishes a common understanding of how the demonstration required to meet regulatory requirements will be made.

9.2.2 Design Concentration and Receptor Sites

a. Under the PSD permitting program, an air quality analysis for criteria pollutants is required to demonstrate that emissions from the construction or operation of a proposed new source or modification will not cause or contribute to a violation of the NAAQS or PSD increments.

i. For a NAAQS assessment, the design concentration is the combination of the appropriate background concentration (section 8.3) with the estimated modeled impact of the source. The NAAQS design concentration is then compared to the applicable NAAQS.

ii. For a PSD increment assessment, the design concentration includes impacts after the appropriate baseline date from all increment consuming and increment expanding sources. The PSD increment design concentration is then compared to the applicable PSD increment.

b. The specific form of the NAAQS for the pollutant(s) of concern will also influence how the background and modeled data should be combined for appropriate comparison with the respective NAAQS in such a modeling demonstration. Given the potential for revision of the form of the NAAQS and the complexities of combining background and modeled data, specific details on this process can be found in applicable modeling guidance available on the EPA's SCRAM Web site (section 2.3). Modeled concentrations should not be rounded before comparing the resulting design concentration to the NAAQS or PSD increments. Ambient monitoring and dispersion modeling address different issues and needs relative to each aspect of the overall air quality assessment.

c. The PSD increments for criteria pollutants are listed in 40 CFR 52.21(c) and 40 CFR 51.166(c). For short-term increments, these maximum allowable increases in pollutant concentrations may be exceeded once per year at each site, while the annual increment may not be exceeded. The highest, second-highest increase in estimated concentrations for the short-term averages as determined by a model should be less than or equal to the permitted increment. The modeled annual averages should not exceed the increment.

d. Receptor sites for refined dispersion modeling should be located within the modeling domain (section 8.1). In designing a receptor network, the emphasis should be placed on receptor density and location, not total number of receptors. Typically, the density of receptor sites should be progressively more resolved near the new or modifying source, areas of interest, and areas with the highest concentrations with sufficient detail to determine where possible violations of a NAAQS or PSD increment are most likely to occur. The placement of receptor sites should be determined on a case-by-case basis, taking into consideration the source characteristics, topography, climatology, and monitor sites. Locations of particular importance include: (1) The area of maximum impact of the point source; (2) the area of maximum impact of nearby sources; and (3) the area where all sources combine to cause maximum impact. Depending on the complexities of the source and the environment to which the source is located, a dense array of receptors may be required in

some cases. In order to avoid unreasonably large computer runs due to an excessively large array of receptors, it is often desirable to model the area twice. The first model run would use a moderate number of receptors more resolved nearby the new or modifying source and over areas of interest. The second model run would modify the receptor network from the first model run with a denser array of receptors in areas showing potential for high concentrations and possible violations, as indicated by the results of the first model run. Accordingly, the EPA neither anticipates nor encourages that numerous iterations of modeling runs be made to continually refine the receptor network.

9.2.3 NAAQS and PSD Increments Compliance Demonstrations for New or Modified Sources

a. As described in this subsection, the recommended procedure for conducting either a NAAQS or PSD increment assessment under PSD permitting is a multi-stage approach that includes the following two stages:

i. The first stage is referred to as a single-source impact analysis, since only the new or modifying source is considered in the analysis. There are two possible levels of detail in conducting a single-source impact analysis with the model user beginning with use of a screening model and proceeding to use of a refined model as necessary.

ii. The second stage is referred to as a cumulative impact analysis, since it takes into account all sources affecting the air quality in an area. In addition to the project source impact, it includes consideration of background, which includes contributions from natural, nearby, and unknown sources.

b. Each stage involves increasing complexity and details, as required to fully demonstrate a new or modifying source will not cause of contribution to a violation of any NAAQS or PSD increment. As such, starting with a single-source impact analysis may alleviate the need for a more time consuming and comprehensive cumulative modeling analysis.

c. The single-source impact analysis, or first stage of an air quality analysis, begins by determining the potential of a proposed new or modifying source to cause or contribute to a NAAQS or PSD increment violation. In certain circumstances, a screening model or technique may be used instead of the preferred model because it will provide estimated worst-case ambient impacts from the proposed new or modifying source. If these worst case ambient concentration estimates indicate that there will not be a significant impact, then the analysis is sufficient for the required demonstration under PSD. If the ambient concentration estimates indicate that significant impacts may occur, then the use of a refined model to estimate the source's impact should be pursued. The refined modeling analysis should use a model or technique consistent with the *Guideline* (either a preferred model or technique or an alternative model or technique) and follow the requirements and recommendations for model inputs outlined in section 8. If the estimated ambient concentrations indicate that there will not be a significant impact, then the analysis is generally sufficient to demonstrate that the source will not cause or contribute to an exceedance. However, if the concentration estimates from the refined modeling analysis indicate that significant impacts may occur, then a cumulative impact analysis should be undertaken. The receptors that indicate the location of significant impacts should be used to define the modeling domain for use in the cumulative impact analysis (section 8.2.2).

d. The cumulative impact analysis, or the second stage of an air quality analysis, should be conducted with the same refined model or technique to characterize the project source and then include the appropriate background concentrations (section 8.3). The resulting design concentrations are used to determine whether the source will cause or contribute to a NAAQS or PSD increment violation. This determination should be based on: (1) The appropriate design concentration for each applicable NAAQS (and averaging period); and (2) the significance of the source's contribution, in a temporal and spatial sense, to any modeled violation, *i.e.,* where and when the predicted design concentration is greater than the NAAQS. For PSD increment, the cumulative impact analysis should also consider the amount of the air quality increment that has already been consumed by other sources, or, conversely, whether increment has expanded relative to the baseline concentration. Therefore, the applicant should model the existing or permitted nearby increment-consuming and increment-expanding sources, rather than using past modeling analyses of those sources as part of background concentration. This would permit the use of newly acquired data or improved modeling techniques if such data and/or techniques have become available since the last source was permitted.

9.2.3.1 Considerations in Developing Emissions Limits

a. Emissions limits and resulting control requirements should be established to provide for compliance with each applicable NAAQS (and averaging period) and PSD increment. It is possible that multiple emissions limits will be required for a source to demonstrate compliance with several criteria pollutants (and averaging periods) and PSD increments. Case-by-case determinations must be made as to the appropriate form of the limits, *i.e.,* whether the emissions limits restrict the emission factor (*e.g.,* limiting lb/MMBTU), the emission rate (*e.g.,* lb/hr), or both. The appropriate reviewing authority (paragraph 3.0(b)) and appropriate EPA guidance should be consulted to determine the appropriate emissions limits on a case-by-case basis.

9.2.4 Use of Measured Data in Lieu of Model Estimates

a. As described throughout the *Guideline,* modeling is the preferred method for demonstrating compliance with the NAAQS and PSD increments and for determining the most appropriate emissions limits for new and existing sources. When a preferred model or adequately justified and approved alternative model is available, model results, including the appropriate background, are sufficient for air quality demonstrations and establishing emissions limits, if necessary. In instances when the modeling technique available is only a screening technique, the addition of air quality monitoring data to the analysis may lend credence to the model results. However, air quality monitoring data alone will normally not be acceptable as the sole basis for demonstrating compliance with the NAAQS and PSD increments or for determining emissions limits.

b. There may be rare circumstances where the performance of the preferred air quality model will be shown to be less than reasonably acceptable when compared with air quality monitoring data measured in the vicinity of an existing source. Additionally, there may not be an applicable preferred air quality model, screening technique, or justifiable alternative model suitable for the situation. In these unique instances, there may be the possibility of establishing emissions limits and demonstrating compliance with the NAAQS and PSD increments solely on the basis of analysis of observed air quality data in lieu of an air quality modeling analysis. However, only in the case of a modification to an existing source should air quality monitoring data alone be a basis for determining adequate emissions limits or for demonstration that the modification will not cause or contribute to a violation of any NAAQS or PSD increment.

c. The following items should be considered prior to the acceptance of an analysis of measured air quality data as the sole basis for an air quality demonstration or determining an emissions limit:

i. Does a monitoring network exist for the pollutants and averaging times of concern in the vicinity of the existing source?

ii. Has the monitoring network been designed to locate points of maximum concentration?

iii. Do the monitoring network and the data reduction and storage procedures meet EPA monitoring and quality assurance requirements?

iv. Do the dataset and the analysis allow impact of the most important individual sources to be identified if more than one source or emission point is involved?

v. Is at least one full year of valid ambient data available?

vi. Can it be demonstrated through the comparison of monitored data with model results that available air quality models and techniques are not applicable?

c. Comprehensive air quality monitoring in the area affected by the existing source with proposed modifications will be necessary in these cases. Additional meteorological monitoring may also be necessary. The appropriate number of air quality and meteorological monitors from a scientific and technical standpoint is a function of the situation being considered. The source configuration, terrain configuration, and meteorological variations all have an impact on number and optimal placement of monitors. Decisions on the monitoring network appropriate for this type of analysis can only be made on a case-by-case basis.

d. Sources should obtain approval from the appropriate reviewing authority (paragraph

3.0(b)) and the EPA Regional Office for the monitoring network prior to the start of monitoring. A monitoring protocol agreed to by all parties involved is necessary to assure that ambient data are collected in a consistent and appropriate manner. The design of the network, the number, type, and location of the monitors, the sampling period, averaging time as well as the need for meteorological monitoring or the use of mobile sampling or plume tracking techniques, should all be specified in the protocol and agreed upon prior to start-up of the network.

e. Given the uniqueness and complexities of these rare circumstances, the procedures can only be established on a case-by-case basis for analyzing the source's emissions data and the measured air quality monitoring data and for projecting with a reasoned basis the air quality impact of a proposed modification to an existing source in order to demonstrate that emissions from the construction or operation of the modification will not cause or contribute to a violation of the applicable NAAQS and PSD increment, and to determine adequate emissions limits. The same attention should be given to the detailed analyses of the air quality data as would be applied to a comprehensive model performance evaluation. In some cases, the monitoring data collected for use in the performance evaluation of preferred air quality models, screening technique, or existing alternative models may help inform the development of a suitable new alternative model. Early coordination with the appropriate reviewing authority (paragraph 3.0(b)) and the EPA Regional Office is fundamental with respect to any potential use of measured data in lieu of model estimates.

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Appendix A to Appendix W of Part 51—Summaries of Preferred Air Quality Models

Table of Contents

A.0 Introduction and Availability
A.1 AERMOD (AMS/EPA Regulatory Model)
A.2 CTDMPLUS (Complex Terrain Dispersion Model Plus Algorithms for Unstable Situations)
A.3 OCD (Offshore and Coastal Dispersion Model)

A.0 Introduction and Availability

(1) This appendix summarizes key features of refined air quality models preferred for specific regulatory applications. For each model, information is provided on availability, approximate cost (where applicable), regulatory use, data input, output format and options, simulation of atmospheric physics, and accuracy. These models may be used without a formal demonstration of applicability provided they satisfy the recommendations for regulatory use; not all options in the models are necessarily recommended for regulatory use.

(2) Many of these models have been subjected to a performance evaluation using comparisons with observed air quality data. Where possible, several of the models contained herein have been subjected to evaluation exercises, including (1) statistical performance tests recommended by the American Meteorological Society and (2) peer scientific reviews. The models in this appendix have been selected on the basis of the results of the model evaluations, experience with previous use, familiarity of the model to various air quality programs, and the costs and resource requirements for use.

(3) Codes and documentation for all models listed in this appendix are available from the EPA's Support Center for Regulatory Air Models (SCRAM) Web site at *http://www.epa.gov/ttn/scram*. Codes and documentation may also available from the National Technical Information Service (NTIS), *http://www.ntis.gov*, and, when available, is referenced with the appropriate NTIS accession number.

A.1 AERMOD (AMS/EPA Regulatory Model)

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Availability

The model codes and associated documentation are available on EPA's SCRAM Web site (paragraph A.0(3)).

Abstract

AERMOD is a steady-state plume dispersion model for assessment of pollutant concentrations from a variety of sources. AERMOD simulates transport and dispersion from multiple point, area, or volume sources based on an up-to-date characterization of the atmospheric boundary layer. Sources may be located in rural or urban areas, and receptors may be located in simple or complex terrain. AERMOD accounts for building wake effects (*i.e.,* plume downwash) based on the PRIME building downwash algorithms. The model employs hourly sequential preprocessed meteorological data to estimate concentrations for averaging times from 1-hour to 1-year (also multiple years). AERMOD can be used to estimate the concentrations of nonreactive pollutants from highway traffic. AERMOD also handles unique modeling problems associated with aluminum reduction plants, and other industrial sources where plume rise and downwash effects from stationary buoyant line sources are important. AERMOD is designed to operate in concert with two pre-processor codes: AERMET processes meteorological data for input to AERMOD, and AERMAP processes terrain elevation data and generates receptor and hill height information for input to AERMOD.

a. Recommendations for Regulatory Use

(1) AERMOD is appropriate for the following applications:

- Point, volume, and area sources;
- Buoyant, elevated line sources (*e.g.,* aluminum reduction plants);
- Mobile (line) sources;
- Surface, near-surface, and elevated releases;
- Rural or urban areas;
- Simple and complex terrain;
- Transport distances over which steady-state assumptions are appropriate, up to 50km;
- 1-hour to annual averaging times; and
- Continuous toxic air emissions.

(2) For regulatory applications of AERMOD, the regulatory default option should be set, *i.e.,* the parameter DFAULT should be employed in the MODELOPT record in the Control Pathway. The DFAULT option requires the use of terrain elevation data, stack-tip downwash, sequential date checking, and does not permit the use of the model in the SCREEN mode. In the regulatory default mode, pollutant half-life or decay options are not employed, except in the case of an urban source of sulfur dioxide where a four-hour half-life is applied. Terrain elevation data from the U.S. Geological Survey 7.5-Minute Digital Elevation Model (DEM) or equivalent (approx. 30-meter resolution) should be used in all applications. Starting in 2011, data from the National Elevation Dataset (NED, *http://ned.usgs.gov*) can also be used in AERMOD, which includes a range of resolutions, ranging from 1-m to 2 arc seconds and such high resolution would always be preferred. In some cases, exceptions of the terrain data requirement may be made in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

b. Input Requirements

(1) Source data: Required input includes source type, location, emission rate, stack height, stack inside diameter, stack gas exit velocity, stack gas temperature, area and volume source dimensions, and source elevation. Building dimensions and variable emission rates are optional. Buoyant line sources require coordinates of the end points of the line, release height, emission rate, average line source width, average building width, average spacing between buildings, and average line source buoyancy parameter. For mobile sources, traffic volume; emission factor, source height, and mixing zone width are needed.

(2) Meteorological data: The AERMET meteorological preprocessor requires input of surface characteristics, including surface roughness (zo), Bowen ratio, and albedo, as well as, hourly observations of wind speed between 7zo and 100m (reference wind speed measurement from which a vertical profile can be developed), wind direction, cloud cover, and temperature between zo and 100m (reference temperature measurement from which a vertical profile can be developed). Meteorological data can be in the form of observed data or prognostic modeled data as discussed in paragraph 8.4.1(d). Surface characteristics may be varied by wind sector and by season or month. When using observed meteorological data, a morning sounding (in National Weather Service format) from a representative upper air station is required. Latitude, longitude, and time zone of the surface, site-specific (if applicable) and upper air meteorological stations are required. The wind speed starting threshold is also required in AERMET for applications involving site-specific data). When using prognostic data, modeled profiles of temperature and winds are input into AERMET. These can be hourly or a time that represents a morning sounding. Additionally, measured profiles of wind, temperature, vertical and lateral turbulence may be required in certain applications (*e.g.,* in complex terrain) to adequately represent the meteorology affecting plume transport and dispersion. Optionally, measurements of solar, or net radiation may be input to AERMET. Two files are produced by the AERMET meteorological preprocessor for input to the AERMOD dispersion model. When using observed data, the surface file contains observed and calculated surface variables, one record per hour. For applications with multi-level site-specific meteorological data, the profile contains the observations made at each level of the meteorological tower (or remote sensor). When using prognostic data, the surface file contains surface variables calculated by the prognostic model and AERMET. The profile file contains the observations made at each level of a meteorological tower (or remote sensor), the one-level observations taken from other representative data (*e.g.,* National Weather Service surface observations), one record per level per hour, or in the case of prognostic data, the prognostic modeled values of temperature and winds at user-specified levels.

(i) Data used as input to AERMET should possess an adequate degree of representativeness to insure that the wind, temperature and turbulence profiles derived by AERMOD are both laterally and vertically representative of the source area. The adequacy of input data should be judged independently for each variable. The values for surface roughness, Bowen ratio, and albedo should reflect the surface characteristics in the vicinity of the meteorological tower or representative grid cell when using prognostic data, and should be adequately representative of the modeling domain. Finally, the primary atmospheric input variables including wind speed and direction, ambient temperature, cloud cover, and a morning upper air sounding should also be adequately representative of the source area, when using observed data.

(ii) For recommendations regarding the length of meteorological record needed to perform a regulatory analysis with AERMOD, *see* section 8.4.2.

(3) Receptor data: Receptor coordinates, elevations, height above ground, and hill height scales are produced by the AERMAP terrain preprocessor for input to AERMOD. Discrete receptors and/or multiple receptor grids, Cartesian and/or polar, may be employed in AERMOD. AERMAP requires input of DEM terrain data produced by the U.S. Geological Survey (USGS), or other equivalent data. AERMAP can be used optionally to estimate source elevations.

c. Output

Printed output options include input information, high concentration summary tables by receptor for user-specified averaging periods, maximum concentration summary tables, and concurrent values summarized by receptor for each day processed. Optional output files can be generated for: A listing of occurrences of exceedances of user-specified threshold value; a listing of concurrent (raw) results at each receptor for each hour modeled, suitable for post-processing; a listing of design values that can be imported into graphics software for plotting contours; a listing of results suitable for NAAQS analyses including NAAQS exceedances and culpability analyses; an unformatted listing of raw results above a threshold value with a special structure for use with the TOXX model component of TOXST; a listing of concentrations by rank (*e.g.,* for use in quantile-quantile plots); and, a listing of concentrations, including arc-maximum

normalized concentrations, suitable for model evaluation studies.

d. Type of Model

AERMOD is a steady-state plume model, using Gaussian distributions in the vertical and horizontal for stable conditions, and in the horizontal for convective conditions. The vertical concentration distribution for convective conditions results from an assumed bi-Gaussian probability density function of the vertical velocity.

e. Pollutant Types

AERMOD is applicable to primary pollutants and continuous releases of toxic and hazardous waste pollutants. Chemical transformation is treated by simple exponential decay.

f. Source-Receptor Relationships

AERMOD applies user-specified locations for sources and receptors. Actual separation between each source-receptor pair is used. Source and receptor elevations are user input or are determined by AERMAP using USGS DEM terrain data. Receptors may be located at user-specified heights above ground level.

g. Plume Behavior

(1) In the convective boundary layer (CBL), the transport and dispersion of a plume is characterized as the superposition of three modeled plumes: The direct plume (from the stack), the indirect plume, and the penetrated plume, where the indirect plume accounts for the lofting of a buoyant plume near the top of the boundary layer, and the penetrated plume accounts for the portion of a plume that, due to its buoyancy, penetrates above the mixed layer, but can disperse downward and re-enter the mixed layer. In the CBL, plume rise is superposed on the displacements by random convective velocities (Weil *et al.,* 1997).

(2) In the stable boundary layer, plume rise is estimated using an iterative approach to account for height-dependent lapse rates, similar to that in the CTDMPLUS model (*see* A.2 in this appendix).

(3) Stack-tip downwash and buoyancy induced dispersion effects are modeled. Building wake effects are simulated for stacks subject to building downwash using the methods contained in the PRIME downwash algorithms (Schulman, *et al.,* 2000). For plume rise affected by the presence of a building, the PRIME downwash algorithm uses a numerical solution of the mass, energy and momentum conservation laws (Zhang and Ghoniem, 1993). Streamline deflection and the position of the stack relative to the building affect plume trajectory and dispersion. Enhanced dispersion is based on the approach of Weil (1996). Plume mass captured by the cavity is well-mixed within the cavity. The captured plume mass is re-emitted to the far wake as a volume source.

(4) For elevated terrain, AERMOD incorporates the concept of the critical dividing streamline height, in which flow below this height remains horizontal, and flow above this height tends to rise up and over terrain (Snyder *et al.,* 1985). Plume concentration estimates are the weighted sum of these two limiting plume states. However, consistent with the steady-state assumption of uniform horizontal wind direction over the modeling domain, straight-line plume trajectories are assumed, with adjustment in the plume/receptor geometry used to account for the terrain effects.

h. Horizontal Winds

Vertical profiles of wind are calculated for each hour based on measurements and surface-layer similarity (scaling) relationships. At a given height above ground, for a given hour, winds are assumed constant over the modeling domain. The effect of the vertical variation in horizontal wind speed on dispersion is accounted for through simple averaging over the plume depth.

i. Vertical Wind Speed

In convective conditions, the effects of random vertical updraft and downdraft velocities are simulated with a bi-Gaussian probability density function. In both convective and stable conditions, the mean vertical wind speed is assumed equal to zero.

j. Horizontal Dispersion

Gaussian horizontal dispersion coefficients are estimated as continuous functions of the parameterized (or measured) ambient lateral turbulence and also account for buoyancy-induced and building wake-induced turbulence. Vertical profiles of lateral turbulence are developed from measurements and similarity (scaling) relationships. Effective turbulence values are determined from the portion of the vertical profile of lateral turbulence between the plume height and the receptor height. The effective lateral turbulence is then used to estimate horizontal dispersion.

k. Vertical Dispersion

In the stable boundary layer, Gaussian vertical dispersion coefficients are estimated as continuous functions of parameterized vertical turbulence. In the convective boundary layer, vertical dispersion is characterized by a bi-Gaussian probability density function, and is also estimated as a continuous function of parameterized vertical turbulence. Vertical turbulence profiles are developed from measurements and similarity (scaling) relationships. These turbulence profiles account for both convective and mechanical turbulence. Effective turbulence values are determined from the portion of the vertical profile of vertical turbulence between the plume height and the receptor height. The effective vertical turbulence is then used to estimate vertical dispersion.

l. Chemical Transformation

Chemical transformations are generally not treated by AERMOD. However, AERMOD does contain an option to treat chemical transformation using simple exponential decay, although this option is typically not used in regulatory applications, except for sources of sulfur dioxide in urban areas. Either a decay coefficient or a half-life is input by the user. Note also that the Plume Volume Molar Ratio Method and the Ozone Limiting Method (section 4.2.3.4) and for point-source NO_2 analyses are available.

m. Physical Removal

AERMOD can be used to treat dry and wet deposition for both gases and particles.

n. Evaluation Studies

American Petroleum Institute, 1998. Evaluation of State of the Science of Air Quality Dispersion Model, Scientific Evaluation, prepared by Woodward-Clyde Consultants, Lexington, Massachusetts, for American Petroleum Institute, Washington, DC, 20005–4070.

Brode, R.W., 2002. Implementation and Evaluation of PRIME in AERMOD. Preprints of the 12th Joint Conference on Applications of Air Pollution Meteorology, May 20–24, 2002; American Meteorological Society, Boston, MA.

Brode, R.W., 2004. Implementation and Evaluation of Bulk Richardson Number Scheme in AERMOD. 13th Joint Conference on Applications of Air Pollution Meteorology, August 23–26, 2004; American Meteorological Society, Boston, MA.

Environmental Protection Agency, 2003. AERMOD: Latest Features and Evaluation Results. Publication No. EPA–454/R–03–003. Office of Air Quality Planning & Standards, Research Triangle Park, NC. *http://www.epa.gov/ttn/scram/7thconf/aermod/aermod_mep.pdf*.

Heist, D., et al, 2013. Estimating near-road pollutant dispersion: A model inter-comparison. *Transportation Research Part D: Transport and Environment,* 25: pp 93–105.

A.2 CTDMPLUS (Complex Terrain Dispersion Model Plus Algorithms for Unstable Situations)

References

Perry, S.G., D.J. Burns, L.H. Adams, R.J. Paine, M.G. Dennis, M.T. Mills, D.G. Strimaitis, R.J. Yamartino and E.M. Insley, 1989. User's Guide to the Complex Terrain Dispersion Model Plus Algorithms for Unstable Situations (CTDMPLUS). Volume 1: Model Descriptions and User Instructions. EPA Publication No. EPA–600/8–89–041. Environmental Protection Agency, Research Triangle Park, NC. *http://www.epa.gov/ttn/scram/dispersion_prefrec.htm#ctdmplus*. (NTIS No. PB 89–181424)

Perry, S.G., 1992. CTDMPLUS: A Dispersion Model for Sources near Complex Topography. Part I: Technical Formulations. *Journal of Applied Meteorology,* 31(7): 633–645.

Availability

The model codes and associated documentation are available on the EPA's SCRAM Web site (paragraph A.0(3)).

Abstract

CTDMPLUS is a refined point source Gaussian air quality model for use in all stability conditions for complex terrain applications. The model contains, in its entirety, the technology of CTDM for stable and neutral conditions. However, CTDMPLUS can also simulate daytime, unstable conditions, and has a number of additional capabilities for improved user friendliness. Its use of meteorological data

and terrain information is different from other EPA models; considerable detail for both types of input data is required and is supplied by preprocessors specifically designed for CTDMPLUS. CTDMPLUS requires the parameterization of individual hill shapes using the terrain preprocessor and the association of each model receptor with a particular hill.

a. Recommendation for Regulatory Use

CTDMPLUS is appropriate for the following applications:

- Elevated point sources;
- Terrain elevations above stack top;
- Rural or urban areas;
- Transport distances less than 50 kilometers; and
- 1-hour to annual averaging times when used with a post-processor program such as CHAVG.

b. Input Requirements

(1) Source data: For each source, user supplies source location, height, stack diameter, stack exit velocity, stack exit temperature, and emission rate; if variable emissions are appropriate, the user supplies hourly values for emission rate, stack exit velocity, and stack exit temperature.

(2) Meteorological data: For applications of CTDMPLUS, multiple level (typically three or more) measurements of wind speed and direction, temperature and turbulence (wind fluctuation statistics) are required to create the basic meteorological data file (''PROFILE''). Such measurements should be obtained up to the representative plume height(s) of interest (*i.e.,* the plume height(s) under those conditions important to the determination of the design concentration). The representative plume height(s) of interest should be determined using an appropriate complex terrain screening procedure (*e.g.,* CTSCREEN) and should be documented in the monitoring/modeling protocol. The necessary meteorological measurements should be obtained from an appropriately sited meteorological tower augmented by SODAR and/or RASS if the representative plume height(s) of interest is above the levels represented by the tower measurements. Meteorological preprocessors then create a SURFACE data file (hourly values of mixed layer heights, surface friction velocity, Monin-Obukhov length and surface roughness length) and a RAWINsonde data file (upper air measurements of pressure, temperature, wind direction, and wind speed).

(3) Receptor data: Receptor names (up to 400) and coordinates, and hill number (each receptor must have a hill number assigned).

(4) Terrain data: User inputs digitized contour information to the terrain preprocessor which creates the TERRAIN data file (for up to 25 hills).

c. Output

(1) When CTDMPLUS is run, it produces a concentration file, in either binary or text format (user's choice), and a list file containing a verification of model inputs, *i.e.,*

- Input meteorological data from ''SURFACE'' and ''PROFILE'',
- Stack data for each source,
- Terrain information,
- Receptor information, and
- Source-receptor location (line printer map).

(2) In addition, if the case-study option is selected, the listing includes:

- Meteorological variables at plume height,
- Geometrical relationships between the source and the hill, and
- Plume characteristics at each receptor, *i.e.,*

—Distance in along-flow and cross flow direction
—Effective plume-receptor height difference
—Effective σy & σz values, both flat terrain and hill induced (the difference shows the effect of the hill)
—Concentration components due to WRAP, LIFT and FLAT

(3) If the user selects the TOPN option, a summary table of the top four concentrations at each receptor is given. If the ISOR option is selected, a source contribution table for every hour will be printed.

(4) A separate output file of predicted (1-hour only) concentrations (''CONC'') is written if the user chooses this option. Three forms of output are possible:

(i) A binary file of concentrations, one value for each receptor in the hourly sequence as run;

(ii) A text file of concentrations, one value for each receptor in the hourly sequence as run; or

(iii) A text file as described above, but with a listing of receptor information (names, positions, hill number) at the beginning of the file.

(5) Hourly information provided to these files besides the concentrations themselves includes the year, month, day, and hour information as well as the receptor number with the highest concentration.

d. Type of Model

CTDMPLUS is a refined steady-state, point source plume model for use in all stability conditions for complex terrain applications.

e. Pollutant Types

CTDMPLUS may be used to model non-reactive, primary pollutants.

f. Source-Receptor Relationship

Up to 40 point sources, 400 receptors and 25 hills may be used. Receptors and sources are allowed at any location. Hill slopes are assumed not to exceed 15°, so that the linearized equation of motion for Boussinesq flow are applicable. Receptors upwind of the impingement point, or those associated with any of the hills in the modeling domain, require separate treatment.

g. Plume Behavior

(1) As in CTDM, the basic plume rise algorithms are based on Briggs' (1975) recommendations.

(2) A central feature of CTDMPLUS for neutral/stable conditions is its use of a critical dividing-streamline height (H_c) to separate the flow in the vicinity of a hill into two separate layers. The plume component in the upper layer has sufficient kinetic energy to pass over the top of the hill while streamlines in the lower portion are constrained to flow in a horizontal plane around the hill. Two separate components of CTDMPLUS compute ground-level concentrations resulting from plume material in each of these flows.

(3) The model calculates on an hourly (or appropriate steady averaging period) basis how the plume trajectory (and, in stable/neutral conditions, the shape) is deformed by each hill. Hourly profiles of wind and temperature measurements are used by CTDMPLUS to compute plume rise, plume penetration (a formulation is included to handle penetration into elevated stable layers, based on Briggs (1984)), convective scaling parameters, the value of H_c, and the Froude number above H_c.

h. Horizontal Winds

CTDMPLUS does not simulate calm meteorological conditions. Both scalar and vector wind speed observations can be read by the model. If vector wind speed is unavailable, it is calculated from the scalar wind speed. The assignment of wind speed (either vector or scalar) at plume height is done by either:

- Interpolating between observations above and below the plume height, or
- Extrapolating (within the surface layer) from the nearest measurement height to the plume height.

i. Vertical Wind Speed

Vertical flow is treated for the plume component above the critical dividing streamline height (H_c); *see* ''Plume Behavior.''

j. Horizontal Dispersion

Horizontal dispersion for stable/neutral conditions is related to the turbulence velocity scale for lateral fluctuations, σv, for which a minimum value of 0.2 m/s is used. Convective scaling formulations are used to estimate horizontal dispersion for unstable conditions.

k. Vertical Dispersion

Direct estimates of vertical dispersion for stable/neutral conditions are based on observed vertical turbulence intensity, *e.g.,* σw (standard deviation of the vertical velocity fluctuation). In simulating unstable (convective) conditions, CTDMPLUS relies on a skewed, bi-Gaussian probability density function (pdf) description of the vertical velocities to estimate the vertical distribution of pollutant concentration.

l. Chemical Transformation

Chemical transformation is not treated by CTDMPLUS.

m. Physical Removal

Physical removal is not treated by CTDMPLUS (complete reflection at the ground/hill surface is assumed).

n. Evaluation Studies

Burns, D.J., L.H. Adams and S.G. Perry, 1990. Testing and Evaluation of the CTDMPLUS Dispersion Model: Daytime Convective Conditions. Environmental Protection Agency, Research Triangle Park, NC.

Paumier, J.O., S.G. Perry and D.J. Burns, 1990. An Analysis of CTDMPLUS Model Predictions with the Lovett Power Plant Data Base. Environmental Protection Agency, Research Triangle Park, NC.

Paumier, J.O., S.G. Perry and D.J. Burns, 1992. CTDMPLUS: A Dispersion Model for Sources near Complex Topography. Part II: Performance Characteristics. *Journal of Applied Meteorology,* 31(7): 646–660.

A.3 OCD (Offshore and Coastal Dispersion Model)

Reference

DiCristofaro, D.C. and S.R. Hanna, 1989. OCD: The Offshore and Coastal Dispersion Model, Version 4. Volume I: User's Guide, and Volume II: Appendices. Sigma Research Corporation, Westford, MA. *http://www.epa.gov/ttn/scram/dispersion_prefrec.htm#ocd.* (NTIS Nos. PB 93–144384 and PB 93–144392)

Availability

The model codes and associated documentation are available on EPA's SCRAM Web site (paragraph A.0(3)). Official contact at Minerals Management Service: Mr. Dirk Herkhof, Parkway Atrium Building, 381 Elden Street, Herndon, VA 20170, Phone: (703) 787–1735.

Abstract

(1) OCD is a straight-line Gaussian model developed to determine the impact of offshore emissions from point, area or line sources on the air quality of coastal regions. OCD incorporates overwater plume transport and dispersion as well as changes that occur as the plume crosses the shoreline. Hourly meteorological data are needed from both offshore and onshore locations. These include water surface temperature, overwater air temperature, mixing height, and relative humidity.

(2) Some of the key features include platform building downwash, partial plume penetration into elevated inversions, direct use of turbulence intensities for plume dispersion, interaction with the overland internal boundary layer, and continuous shoreline fumigation.

a. Recommendations for Regulatory Use

OCD has been recommended for use by the Minerals Management Service for emissions located on the Outer Continental Shelf (50 FR 12248; 28 March 1985). OCD is applicable for overwater sources where onshore receptors are below the lowest source height. Where onshore receptors are above the lowest source height, offshore plume transport and dispersion may be modeled on a case-by-case basis in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

b. Input Requirements

(1) Source data: Point, area or line source location, pollutant emission rate, building height, stack height, stack gas temperature, stack inside diameter, stack gas exit velocity, stack angle from vertical, elevation of stack base above water surface and gridded specification of the land/water surfaces. As an option, emission rate, stack gas exit velocity and temperature can be varied hourly.

(2) Meteorological data (over water): Wind direction, wind speed, mixing height, relative humidity, air temperature, water surface temperature, vertical wind direction shear (optional), vertical temperature gradient (optional), turbulence intensities (optional).

(3) Meteorological data:

Over land: Surface weather data from a preprocessor such as PCRAMMET which provides hourly stability class, wind direction, wind speed, ambient temperature, and mixing height are required.

Over water: Hourly values for mixing height, relative humidity, air temperature, and water surface temperature are required; if wind speed/direction are missing, values over land will be used (if available); vertical wind direction shear, vertical temperature gradient, and turbulence intensities are optional.

(4) Receptor data: Location, height above local ground-level, ground-level elevation above the water surface.

c. Output

(1) All input options, specification of sources, receptors and land/water map including locations of sources and receptors.

(2) Summary tables of five highest concentrations at each receptor for each averaging period, and average concentration for entire run period at each receptor.

(3) Optional case study printout with hourly plume and receptor characteristics. Optional table of annual impact assessment from non-permanent activities.

(4) Concentration output files can be used by ANALYSIS postprocessor to produce the highest concentrations for each receptor, the cumulative frequency distributions for each receptor, the tabulation of all concentrations exceeding a given threshold, and the manipulation of hourly concentration files.

d. Type of Model

OCD is a Gaussian plume model constructed on the framework of the MPTER model.

e. Pollutant Types

OCD may be used to model primary pollutants. Settling and deposition are not treated.

f. Source-Receptor Relationship

(1) Up to 250 point sources, 5 area sources, or 1 line source and 180 receptors may be used.

(2) Receptors and sources are allowed at any location.

(3) The coastal configuration is determined by a grid of up to 3600 rectangles. Each element of the grid is designated as either land or water to identify the coastline.

g. Plume Behavior

(1) As in ISC, the basic plume rise algorithms are based on Briggs' recommendations.

(2) Momentum rise includes consideration of the stack angle from the vertical.

(3) The effect of drilling platforms, ships, or any overwater obstructions near the source are used to decrease plume rise using a revised platform downwash algorithm based on laboratory experiments.

(4) Partial plume penetration of elevated inversions is included using the suggestions of Briggs (1975) and Weil and Brower (1984).

(5) Continuous shoreline fumigation is parameterized using the Turner method where complete vertical mixing through the thermal internal boundary layer (TIBL) occurs as soon as the plume intercepts the TIBL.

h. Horizontal Winds

(1) Constant, uniform wind is assumed for each hour.

(2) Overwater wind speed can be estimated from overland wind speed using relationship of Hsu (1981).

(3) Wind speed profiles are estimated using similarity theory (Businger, 1973). Surface layer fluxes for these formulas are calculated from bulk aerodynamic methods.

i. Vertical Wind Speed

Vertical wind speed is assumed equal to zero.

j. Horizontal Dispersion

(1) Lateral turbulence intensity is recommended as a direct estimate of horizontal dispersion. If lateral turbulence intensity is not available, it is estimated from boundary layer theory. For wind speeds less than 8 m/s, lateral turbulence intensity is assumed inversely proportional to wind speed.

(2) Horizontal dispersion may be enhanced because of obstructions near the source. A virtual source technique is used to simulate the initial plume dilution due to downwash.

(3) Formulas recommended by Pasquill (1976) are used to calculate buoyant plume enhancement and wind direction shear enhancement.

(4) At the water/land interface, the change to overland dispersion rates is modeled using a virtual source. The overland dispersion rates can be calculated from either lateral turbulence intensity or Pasquill-Gifford curves. The change is implemented where the plume intercepts the rising internal boundary layer.

k. Vertical Dispersion

(1) Observed vertical turbulence intensity is not recommended as a direct estimate of vertical dispersion. Turbulence intensity should be estimated from boundary layer theory as default in the model. For very stable conditions, vertical dispersion is also a function of lapse rate.

(2) Vertical dispersion may be enhanced because of obstructions near the source. A virtual source technique is used to simulate the initial plume dilution due to downwash.

(3) Formulas recommended by Pasquill (1976) are used to calculate buoyant plume enhancement.

(4) At the water/land interface, the change to overland dispersion rates is modeled using a virtual source. The overland dispersion rates can be calculated from either vertical turbulence intensity or the Pasquill-Gifford coefficients. The change is implemented where the plume intercepts the rising internal boundary layer.

l. Chemical Transformation

Chemical transformations are treated using exponential decay. Different rates can be specified by month and by day or night.

m. Physical Removal

Physical removal is also treated using exponential decay.

n. Evaluation Studies

DiCristofaro, D.C. and S.R. Hanna, 1989. OCD: The Offshore and Coastal Dispersion Model. Volume I: User's Guide. Sigma Research Corporation, Westford, MA.

Hanna, S.R., L.L. Schulman, R.J. Paine and J.E. Pleim, 1984. The Offshore and Coastal Dispersion (OCD) Model User's Guide, Revised. OCS Study, MMS 84–0069. Environmental Research & Technology, Inc., Concord, MA. (NTIS No. PB 86–159803).

Hanna, S.R., L.L. Schulman, R.J. Paine, J.E. Pleim and M. Baer, 1985. Development and Evaluation of the Offshore and Coastal Dispersion (OCD) Model. *Journal of the Air Pollution Control Association,* 35: 1039–1047.

Hanna, S.R. and D.C. DiCristofaro, 1988. Development and Evaluation of the OCD/API Model. Final Report, API Pub. 4461, American Petroleum Institute, Washington, DC.

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Part IV

The President

Proclamation 9302—Anniversary of the Americans with Disabilities Act

Proclamation 9303—National Korean War Veterans Armistice Day, 2015

Federal Register
Vol. 80, No. 145
Wednesday, July 29, 2015

Presidential Documents

Title 3—

The President

Proclamation 9302 of July 24, 2015

Anniversary of the Americans with Disabilities Act, 2015

By the President of the United States of America

A Proclamation

Twenty-five years ago, the Americans with Disabilities Act (ADA) reaffirmed the idea that in America, all people are entitled to participate fully in our economy and democracy. A law deeply rooted in the principles of our Nation's founding, this landmark civil rights legislation recognized that all Americans have something to contribute to our country's story and deserve every chance to achieve their full potential. For a quarter-century, our Nation has fought to realize this law's enormous promise, and with hard work, we have helped expand what is possible so more of our friends, colleagues, and family members can live full and independent lives.

The product of tremendous effort, struggle, and sacrifice, the passage of the ADA was a victory won by countless Americans who refused to accept the world as it was and—against great odds—organized a grassroots movement to enshrine the principle of equality into law. One of the most comprehensive civil rights bills in the history of our country, the ADA promises fairness, opportunity, and complete participation in all aspects of American life for individuals with disabilities. It secures each person's right to independence, and it enables our society and our economy to benefit from the talents and contributions of all Americans by clearing obstacles to employment, transportation, public services, telecommunications, and public accommodations.

Today, as we celebrate this important anniversary and honor all those whose courage and dedication have driven our Nation's progress, we recognize that our work to uphold the spirit and the letter of this law is not yet finished. In communities throughout our country, barriers that limit our neighbors' potential have been torn down, but too many continue to encounter discrimination and structural inequalities that prohibit them from pursuing their dreams. Young people with disabilities continue to experience bullying in schools. Americans with disabilities who want to and can work are too often denied the dignity of a job. And many working Americans with disabilities still live below the poverty line.

My Administration is committed to addressing the unique challenges people with disabilities face as they seek to attain economic stability. Americans with disabilities deserve access to quality health care, affordable housing, inclusive financial institutions, and the innovative technologies that are transforming our world. That is why we have actively enforced the ADA, and why we have worked to toughen the protections against disability-based discrimination, increase accessibility in our communities, and expand opportunities for employment, education, and financial independence for people with disabilities. We have led by example within the Federal Government, and I am proud that there are now more Americans with disabilities working in Federal service than at any time in the past three decades. We continue to address bullying and harassment in our classrooms, ensuring every student has a nurturing environment in which to learn and grow. And because we know disability rights are human rights, we are championing protections and support for people with disabilities around the world.

Disability touches all of us. More than 50 million Americans have a disability, and living up to the principles of the ADA is an obligation we all share. Every person deserves equal access, equal opportunity, and equal respect, and we each must do our part to ensure our Nation's promise is within the reach of all Americans. As we reflect on 25 years of progress, let us reaffirm the inherent dignity and worth of every individual, and together, redouble our efforts to build a society where all things are possible for all people.

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 July 26, 2015, the Anniversary of the Americans with Disabilities Act. I encourage Americans across our Nation to celebrate the 25th anniversary of this civil rights law and the many contributions of individuals with disabilities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of July, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and fortieth.

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Presidential Documents

Proclamation 9303 of July 24, 2015

National Korean War Veterans Armistice Day, 2015

By the President of the United States of America

A Proclamation

Throughout history, the United States has stood as a powerful force for freedom and democracy around the world. In the face of tyranny and oppression, generations of patriots have fought to secure peace and prosperity far from home. And in 1950, as Communist armies crossed the 38th parallel just 5 years after the end of World War II, courageous Americans deployed overseas once again to stand with a people they had never met in defense of a cause in which they both believed. On National Korean War Veterans Armistice Day, we honor all those who sacrificed for freedom's cause throughout 3 long years of war, and we reaffirm our commitment to the security of the Republic of Korea and the values that unite our nations.

Often outnumbered and outgunned, nearly 1.8 million Americans fought through searing heat and piercing cold to roll back the tide of Communism. The members of our Armed Forces endured some of the most brutal combat in modern history; many experienced unimaginable torment in POW camps, and nearly 37,000 gave their last full measure of devotion. Their sacrifice pushed invading armies back across the line they had dared to cross and secured a hard-earned victory.

The Korean War reminds us that when we send our troops into battle, they deserve the support and gratitude of the American people—especially once they come home. We must make it our mission to serve all our veterans as well as they have served us, always giving them the respect, care, and opportunities they have earned. And we will never stop working to fulfill our obligations to our fallen heroes and their families. To this day, more than 7,800 Americans are still missing from the Korean War, and the United States will not rest until we give these families a full accounting of their loved ones.

Today, the Republic of Korea enjoys a thriving democracy and a bustling economy, and the legacy of our Korean War veterans continues on in the 50 million South Koreans who live with liberty and opportunity. The United States is proud to stand with our partner in Asian security and stability, and our commitment to our friend and ally will never waver—a promise embodied by our servicemen and women who fought from the Chosin Reservoir to Heartbreak Ridge and Pork Chop Hill, and by every American since who has stood sentinel on freedom's frontier.

No war should ever be forgotten, and no veteran should ever be overlooked. Today, on the anniversary of the Military Armistice Agreement that ended the Korean War, let us remember how liberty held its ground in the face of tyranny and how free peoples refused to yield. And most of all, let us give thanks to all those whose service and sacrifice helped to secure the blessings of freedom.

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 July 27, 2015, as National Korean War Veterans Armistice Day. I call upon all Americans to observe this day with appropriate ceremonies and activities that honor our distinguished Korean War veterans.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of July, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and fortieth.

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